THE ASTHMA CRISIS IN LOW-INCOME COMMUNITIES OF COLOR: USING THE LAW AS A TOOL FOR PROMOTING PUBLIC HEALTH

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In an age of progressive medicine and medical technology, an epidemic has been growing in American cities. While the causes of the disease are largely unknown, its prevalence and severity vary dramatically by race and socioeconomic status. The impact of the disease captured the attention of national and local public health officials in the mid-1990s and elicited large-scale government and private action. However, few public health initiatives confronted the racial and socioeconomic disparities. Nearly a decade after the epidemic reached the public eye, community organizers and lawyers began to develop litigation and organizing strategies to respond to these underlying racial and socioeconomic concerns.

The epidemic is asthma.[1] Approximately 30.2 million Americans have been diagnosed with asthma in their lifetimes.[2] African Americans and Puerto Ricans have significantly higher rates of asthma prevalence,[3] hospitalization,[4] and mortality[5] than whites and non-black, non-Puerto Rican, Latino groups.[6] In general, low-income communities of color as a whole have higher rates of asthma than other communities.[7] These rates can be extreme. In Central Harlem, a predominately African American and immigrant neighborhood in New York City, as

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1. The U.S. Department of Health and Human Services (DHHS) deemed asthma an epidemic in its first comprehensive asthma action plan. *See* U.S. DEP'T OF HEALTH & HUMAN SERVS., ACTION AGAINST ASTHMA: A STRATEGIC PLAN FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES 1 (2000) [hereinafter ACTION AGAINST ASTHMA].

2. EPIDEMIOLOGY & STATISTICS UNIT, AM. LUNG ASS'N, TRENDS IN ASTHMA MORBIDITY AND MORTALITY 4 (2006) [hereinafter TRENDS IN ASTHMA].

3. TRENDS IN ASTHMA, *supra* note 2, at 2; Mary desVignes-Kendrick, Janice Nolen, Ruth Jones McClendon & Andrew Goodman, *Asthma: The Impact of Policies on Breathing Easier*, 30 J.L. MED. & ETHICS (SPECIAL SUPP.) 109, 109 (2002) [hereinafter *Impact of Policies*] (noting higher rates of asthma prevalence, particularly severe asthma, for African Americans as compared to whites).

4. *Id.* at 6.

5. *Id.* at 1–2.

6. *See also* ACTION AGAINST ASTHMA, *supra* note 1, at 26.

7. *See* ACTION AGAINST ASTHMA, *supra* note 1, at 26–27.

many as one in four children have asthma.[8] In Roxbury, a predominantly African American and Latino neighborhood in Boston, the asthma hospitalization rate is 5.5 times the average for the state of Massachusetts.[9] These low-income communities of color face an asthma crisis.

While the underlying causes of asthma are unknown, the prevalence and severity of asthma has been connected to both indoor and outdoor pollutants and poor health care and treatment.[10] The problems that plague low-income communities of color—substandard housing, environmental hazards, inadequate health care access, and the insufficient wages and lack of job opportunities that leave families with low household incomes—all contribute to the prevalence and severity of asthma.[11] Substandard housing is marked by poor indoor air quality, with mold, mildew, dust, and cockroaches all likely triggers for asthma attacks.[12] The presence of a waste transfer station or bus depot in a neighborhood creates outdoor air pollutants, which also may trigger attacks.[13] Limited access to health care and resources can also contribute to asthma severity by making proper treatment difficult to maintain.[14]

There are viable responses to the socioeconomic and environmental conditions that perpetuate the asthma epidemic. Public health practitioners—who focus on the health needs of whole communities rather than of individuals—have long been in the business of coordinating the treatment and prevention of diseases like asthma. Legal service organizations and attorneys have established practices for combating substandard housing, environmental injustice, and poverty. Unfortunately, even years after the asthma crisis first gained national

8. A study conducted by the Harlem Hospital, in conjunction with Harlem Children's Zone, a community-building initiative, attempted to test every child under the age of thirteen living or going to school in a twenty-four block area in Central Harlem. It found that 25.5% of children in the area had asthma, a result over double the statistics reported through prior studies (which had surveyed families rather than testing children). Leslie Casimir & Michael Saul, *Asthma Crisis in Harlem*, DAILY NEWS (N.Y.), Apr. 20, 2003, at 10; Richard Perez-Pena, *Study Finds Asthma in 25% of Children in Central Harlem*, N.Y. TIMES, Apr. 19, 2003, at A1.

9. Penn Loh & Jodi Sugerman-Brozan, *Environmental Justice Organizing for Environmental Health: Case Study on Asthma and Diesel Exhaust in Roxbury, Massachusetts*, 584 ANNALS AM. ACAD. POL. & SOC. SCI. 110, 116 (2002).

10. ACTION AGAINST ASTHMA, *supra* note 1, at 7–9.

11. *See infra* Part I.B.

12. *See* COMM. ON THE ASSESS. OF ASTHMA & INDOOR AIR, INST. OF MED., CLEARING THE AIR: ASTHMA AND INDOOR AIR EXPOSURES 9 tbl.2 (2000) (showing causal relationship between indoor exposure and the exacerbation of asthma); ACTION AGAINST ASTHMA, *supra* note 1, at 8–9 (linking asthma exacerbations to indoor allergens such as pets and cockroaches, and outdoor pollutants such as ozone and diesel exhaust); Gary Evans & Elyse Kantrowitz, *Socioeconomic Status and Health: The Potential Role of Environmental Risk Exposure*, *in* THE NATION'S HEALTH 93, 97 (Philip R. Lee & Carroll L. Estes eds., 2003) (linking asthma to presence of cockroaches and pollens, particularly in low-income communities).

13. GLEN ANDERSON, ENVTL. HEALTH SERIES, NAT'L CONF. OF STATE LEGIS., ASTHMA: A GROWING EPIDEMIC 2–3 (2000), http://www.ncsl.org/print/environ/envhealth/ehasthma.pdf (citing research that links high pollutant exposure to exacerbation and prevalence of asthma); ACTION AGAINST ASTHMA, *supra* note 1, at 7–9 (same).

14. ACTION AGAINST ASTHMA, *supra* note 1, at 4, 26.

attention, collaboration between the two groups is limited. Although public health practitioners have embraced public education as a tool for community empowerment, legal advocacy—which may provide the key link between public awareness and successful action for communities facing a health crisis like asthma—is largely missing from public health strategies.

In New York City, community groups, public health practitioners, and legal service organizations have joined together to create innovative programs that incorporate legal strategies to combat the disparate rates of disease in low-income communities of color.[15] While these programs are still few and far between, they constitute models that should be expanded, replicated, and recognized in nationally-coordinated strategies to combat diseases like asthma. As a start, public health practitioners and planners, along with attorneys who provide legal services, need a better understanding of how communities and their advocates can use the law to challenge the racial and socioeconomic disparities in health outcomes.

In this Article, I explore the role that legal advocacy can play in combating high asthma rates in low-income communities of color. In Part I, I examine the epidemic of asthma in these communities and describe how asthma prevalence varies by race. I then argue that this variation is due to conditions plaguing highly racially-segregated, low-income residential areas. In Part II, I examine the public health response to asthma and its underlying racial and socioeconomic disparities. I argue that the current national public health strategy fails to incorporate adequate tools for challenging the issues of race and poverty that contribute to the asthma crisis. I then describe how two local initiatives in New York City have created a collaborative framework through which community advocates, public health practitioners, and attorneys use legal strategies to assist families and communities facing asthma. In Part III, I examine these legal strategies in detail. I identify the four areas of the law that hold the most promise for communities seeking to challenge the conditions that exacerbate asthma in their neighborhoods: housing, government benefits, environmental justice, and disability rights. Using examples of fictional families in New York City, I look at how families with asthmatic children can use the law in each area to combat the problems associated with severe asthma in their communities. I also discuss the limitations on the efficacy of litigation in this context and the importance of collaboration amongst practitioners of various disciplines.

Asthma is a public health problem affected significantly by racial and socioeconomic injustice. The law provides some tools by which community actors can address these underlying problems. By collaborating to integrate legal strategies into the public health response to asthma, communities along with public health practitioners and lawyers can combat the racial and socioeconomic inequities underlying the asthma crisis in low-income communities of color.

15. *See infra* Part II.B.

I.
ASTHMA AND LOW-INCOME COMMUNITIES OF COLOR

A. National Asthma Statistics and the Impact on Low-Income Communities of Color

Asthma is a "chronic inflammatory disorder of the airways that can result in recurrent episodes of wheezing, breathlessness, chest tightness, and nighttime or early morning coughing."[16] Over twenty-two million people are afflicted with the disease in the United States.[17] This group includes over six million children, making asthma the most common chronic illness among children.[18] Considered an "epidemic" by the U.S. Department of Health and Human Services (DHHS), asthma kills over five thousand people in this country each year.[19] In addition to the lives affected by asthma, the economic costs of the disease are staggering. The annual health care cost of asthma in the United States is estimated to be over eleven billion dollars, with lost productivity costs estimated at nearly five billion dollars.[20]

Asthma's prevalence and the resulting incidence of attacks, hospitalization, and morbidity vary dramatically by race. African Americans have an asthma prevalence rate approximately 36% higher than whites[21] and an asthma attack rate approximately 40% higher than whites.[22] African Americans' hospitalization rate for asthma is over three times greater than that of whites.[23] Moreover, African Americans are twice as likely to die from asthma than whites.[24] While prevalence rates reported for Latinos tend to be lower than other groups (including non-Latino whites), Puerto Ricans tend to have higher rates of asthma prevalence and mortality than all other groups (including non-Latino African Americans).[25] In addition to differences in prevalence and attack rates,

16. *Impact of Policies*, *supra* note 3, at 109.

17. *See* LARA AKINBAMI, NAT'L CTR. FOR HEALTH STATISTICS, CTRS. FOR DISEASE CTRL. & PREV., ASTHMA PREVALENCE, HEALTH CARE USE AND MORTALITY: UNITED STATES, 2003–05 (2006), http://www.cdc.gov/nchs/products/pubs/pubd/hestats/ashtma03-05/asthma03-05.htm.

18. *See id.*

19. ACTION AGAINST ASTHMA, *supra* note 1, at 1.

20. TRENDS IN ASTHMA, *supra* note 2, at 6, 30 tbl.20. Loss of school days and loss of work are among the highest indirect costs, at one billion dollars each. *Id.* at 30 tbl.20.

21. *Id.* at 3 (citing NAT'L CTR. FOR HEALTH STATISTICS, CTRS. FOR DISEASE CTRL. & PREV., NATIONAL HEALTH INTERVIEW SURVEY (2004)).

22. *Id.* at 4.

23. *Id.* at 6.

24. *Id.* at 1–2.

25. *Id.* at 2 (discussing mortality); *id.* at 4 (discussing prevalence). This fact sheds light on the possible explanations for divergent asthma rates among ethnic and racial groups, as Puerto Ricans and African Americans reside in the most highly segregated communities in American cities. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 143–47 (1993) (noting that Puerto Ricans are the only Latino group with levels of persistent segregation similar to those of African Americans).

the quality of medical care for asthma varies by race, with fewer African Americans receiving proper medication, adequate information on the triggers of asthma, and specialist care than white asthmatics with similar insurance status, age, education, and employment status.[26]

The racial variation found in asthma-related statistics nationwide can be found on a neighborhood level as well. In many metropolitan areas, residents of inner-city neighborhoods of color have higher rates of severe asthma than residents of other city neighborhoods.[27] While data is not available at the neighborhood level throughout the United States, certain cities have identified these disparities. For example, in New York City, people in the South Bronx, East and Central Harlem, and Central Brooklyn—all predominately low-income neighborhoods of color—have much higher asthma rates than people in other city neighborhoods.[28] In Chicago, children in Humboldt Park, West Town, Roseland, and North Lawndale—neighborhoods with high percentages of African American and/or Puerto Rican residents[29]—have higher rates of asthma than children in other neighborhoods.[30] In Boston, the predominately African American neighborhoods of Dorchester and Roxbury also have disproportionately high asthma rates—more than five times the state average.[31] This data shows that low-income communities of color throughout America are facing an asthma crisis.

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26. *See* Jerry A. Krishnan, Gregory B. Diette, Elizabeth A. Skinner, Becky D. Clark, Don Steinwachs & Albert W. Wu, *Race and Sex Differences in Consistency of Care with National Asthma Guidelines in Managed Care Organizations*, 161 ARCHIVES INTERNAL MED. 1660, 1664 & tbls.3 & 4 (2001); Kimberly Atkins, *Asthma Patients' Race Affects Care, Study Says*, BOSTON GLOBE, July 11, 2001, at A3.

27. *See, e.g.*, CTRS. FOR DISEASE CTRL. & PREV., CASE STUDY: INNER-CITY ASTHMA INTERVENTION, http://www.cdc.gov/asthma/interventions/inner_city_asthma.htm (last visited Feb. 28, 2007); Luz Claudio, Leon Tulton, John Doucette & Philip J. Landrigan, *Socioeconomic Factors and Asthma Hospitalization Rates in New York City*, 36 J. ASTHMA 343, 346 (1999) [hereinafter *Socioeconomic Factors*] (noting that zip codes in New York City with the largest minority population also had the largest asthma hospitalization rates).

28. *See Socioeconomic Factors*, *supra* note 27, at 347 tbl.2. *See also* Adam M. Karpati, Thomas Matte, D. Kass, Renu Garg, Farzad Mostashari, Lorna Thorpe & Thomas R. Frieden, *Asthma Can Be Controlled*, NYC VITAL SIGNS (N.Y.C. Dep't Health & Mental Hygiene, New York, N.Y.), Apr. 2003 (No. 4), at 2, *available at* http://home2.nyc.gov/html/doh/downloads/pdf/survey/survey-2003asthma.pdf.

29. *See* STEVEN WHITMAN, CYNTHIA WILLIAMS & AMI M. SHAH, SINAI URBAN HEALTH INST., IMPROVING COMMUNITY HEALTH SURVEY: REPORT 1, at 4 (2004), *available at* http://www.sinai.org/urban/publications/FINAL%20Report%201%20v3.pdf.

30. *See id.* at 29–30. *See also* Jim Ritter, *City "Sick with Asthma," but Experts Have Plan to Get Well*, CHICAGO SUN-TIMES, May 4, 2004, at 6 (noting the high asthma rates among African American and Puerto Rican children in Chicago).

31. *See* CHIOMA NNAJI, BOSTON HEALING LANDSCAPE PROJECT, CHILDHOOD ASTHMA IN THE AFRICAN DIASPORA HEALING SYSTEMS, http://www.bmc.org/pediatrics/special/bhlp/pages/projects/chioma.htm (last visited Feb. 28, 2007).

B. *Causes and Exacerbations of Asthma for Low-Income Communities of Color*

The reason why low-income people of color face higher rates of asthma may seem simple. Poverty has negative implications for health, affecting nutrition, growth, and access to health care and medication.[32] Poverty is also linked to increased hospitalization rates for asthma[33] and is correlated with race.[34] While highly correlated, however, race and poverty independently contribute to higher rates of asthma.[35] When comparing rates of asthma within the *same* income group, race remains a factor in explaining increased asthma prevalence among children in urban areas.[36] Several explanations have been posited for why, in general, race predicts health outcomes even after socioeconomic status is taken

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32. *See, e.g.*, ROBERT J. KARP, THE DIMENSIONS OF POVERTY AMONG CHILDREN IN THE UNITED STATES: AN EXPOSITION OF CAUSES AND CONSEQUENCES (2002), *available at* http://134.174.20.45/epilogue.pdf (discussing policy and social causes of poverty, and resulting effects on families and parenting); Michael Marmot, *The Influence of Income on Health*, *in* THE NATION'S HEALTH, *supra* note 12, at 79–92 (arguing that poverty and racial inequality impacts health-care distribution and quality).

33. *See* ACTION AGAINST ASTHMA, *supra* note 1, at 4 (noting that low-income children are hospitalized for asthma five times more than children in higher income families). Additionally, the majority of poor asthmatic children in inner cities lack access to follow-up care or assistance in using medication. *See id.* (citing Beth Corn, Gina Hamrung, Adam Ellis, Thomas Kalb & Kirk Sperber, *Patterns of Asthma Death and Near-Death in an Inner-City Tertiary Care Teaching Hospital*, 32 J. ASTHMA 405 (1995); Ellen F. Crain, Carolyn Kercsmar, Kevin B. Weiss, Herman Mitchell & Henry Lynn, *Reported Difficulties in Access to Quality Care for Children with Asthma in the Inner City*, 152 ARCHIVES PEDIATRIC & ADOLESCENT MED. 333 (1998); Neal Halfon & Paul W. Newacheck, *Childhood Asthma and Poverty: Differential Impacts on Utilization of Health Services*, 91 PEDIATRICS 56 (1993); and Robert F. St. Peter, Paul W. Newacheck & Neal Halfon, *Access to Care for Poor Children: Separate and Unequal?*, 267 JAMA 2060 (1992)).

34. David R. Williams, *Race, Health, and Health Care*, 48 ST. LOUIS U. L.J. 13, 20 (2003) (exploring the relationship between race, ethnicity, and socioeconomic status in the health care context).

35. *See* Evalyn N. Grant, Christopher S. Lyttle & Kevin B. Weiss, *The Relation of Socioeconomic Factors and Racial/Ethnic Differences in U.S. Asthma Mortality*, 90 AM. J. PUB. HEALTH 1923, 1923–25 (2000) (concluding that socioeconomic factors contribute independently to high risk of asthma mortality in African American communities); Jane E. Miller, *The Effects of Race/Ethnicity and Income on Early Childhood Asthma Prevalence and Health Care Use*, 90 AM. J. PUB. HEALTH 428, 428–30 (2000) (finding that asthma prevalence does not decline with increasing income in African American communities as it does in other racial groups).

36. *See* Joan Cunningham, Douglas W. Dockery & Frank E. Speizer, *Race, Asthma, and Persistent Wheeze in Philadelphia Schoolchildren*, 86 AM. J. PUB. HEALTH 1406, 1409 (1996) (finding that African American children were about twice as likely as white children to have active diagnosed asthma even after controlling for social, health, and environmental factors); Victoria W. Persky, Julie Slezak, Alicia Contreras, Laura Becker, Eva Hernandez, Viswanathan Ramakrishnan & Julie Piorkowski, *Relationship of Race and Socioeconomic Status with Prevalence, Severity, and Symptoms of Asthma in Chicago School Children*, 81 ANNALS ALLERGY, ASTHMA & IMMUNOLOGY 266, 266, 270–71 (1998) (concluding that factors specific to African American race may play a role in high prevalence of asthma, independent from socioeconomic status); Nancy F. Ray, Mae Thamer, Bahar Fadillioglu & Peter J. Gergen, *Race, Income, Urbanicity, and Asthma Hospitalization in California: A Small Area Analysis*, 113 CHEST 1277, 1277–84 (1998) (concluding that even within socioeconomic groups, race plays a significant role in high rates of asthma within specific racial groups).

into account.[37] Individual characteristics correlated with race or masked by socioeconomic status—such as education level; workplace hazards; purchasing power; exposures to childhood, social, and economic adversity; and stress related to discrimination—may independently impact health.[38]

In the context of asthma, however, the strongest explanation of differences in health outcomes is the effect of residential racial segregation. Studies have linked high rates of segregation directly to major health indicators for African Americans.[39] For example, African Americans living in segregated neighborhoods suffer from lower birth weight and higher rates of infant mortality and overall mortality, on average, than people living outside those neighborhoods.[40] One reason for these differences is that the segregation of people of color into residential areas creates and compounds social and health risks, including the likelihood of living in poor indoor and outdoor environments:

> Differential exposure to risks in the physical environment may also contribute to racial differences in health. The quality of housing is generally poorer in highly segregated areas, especially those inhabited by ethnic minorities. Crowding, sub-standard housing, elevated noise levels, decreased ability to regulate temperature and humidity, as well as elevated exposure to noxious pollutants and allergens (including lead, smog, particulates, and dust mites) are all common in poor, segregated communities.[41]

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37. *See* Williams, *supra* note 34, at 22–26.

38. *Id.*

39. *See* ANTHONY P. POLEDNAK, SEGREGATION, POVERTY, AND MORTALITY IN URBAN AFRICAN AMERICANS 69–95 (1997) (analyzing segregation and poverty as predictors for mortality); Ingrid Gould Ellen, *Is Segregation Bad for Your Health? The Case of Low Birth Weight*, *in* BROOKINGS-WHARTON PAPERS ON URB. AFF. 2000, at 203, 204–5, 228–29 (William G. Gale & Janet Rothenberg Pack eds., 2000) (showing the relationship between racial segregation and racial disparities in low birth weight); Chiquita A. Collins & David R. Williams, *Segregation and Mortality: The Deadly Effects of Racism?*, 14 SOCIO. F. 495, 500–504 (1999) (noting a high correlation between racial segregation and mortality across the United States); Anthony P. Polednak, *Black-White Differences in Infant Mortality in 38 Standard Metropolitan Statistical Areas*, 81 AM. J. PUB. HEALTH 1480, 1480–81 (1991) [hereinafter Polednak, *Differences*] (same); Lloyd B. Potter, *Socioeconomic Determinants of White and Black Males' Life Expectancy Differentials, 1980*, 28 DEMOGRAPHY 303, 318 (1991) (concluding that residential racial segregation of African American males has strong effect on life expectancy differences).

40. *See* Ellen, *supra* note 39 (discussing relationship between segregation and low birth weight); Collins & Williams, *supra* note 39, at 500–504 (discussing relationship between segregation and mortality); Polednak, *Differences*, *supra* note 39, at 1480–81 (discussing relationship between segregation and infant mortality).

41. Williams, *supra* note 34, at 25 (citations omitted). *See also Socioeconomic Factors*, *supra* note 27, at 348 (positing that the high asthma hospitalization rates found in communities of color in New York City are due to inadequate medical care, substandard housing, and environmental hazards that plague those neighborhoods); Evans & Kantrowitz, *supra* note 12, at 93–117 (generally discussing how greater environmental risks lead to poorer health in communities).

In addition, segregation contributes to other aforementioned potential causes of bad health, such as lower educational attainment, lack of economic opportunities, and general community disinvestment.[42] Notably, African Americans and Puerto Ricans—the racial/ethnic groups with the highest asthma rates—are also the most highly residentially-segregated racial/ethnic groups in the United States.[43] The effects of segregation are likely to contribute to the prevalence of asthma among these low-income communities of color.

An examination of factors that exacerbate or trigger asthma also provides evidence that segregation increases the severity of asthma. While little is known about what causes the initial development of asthma in people previously without the disease, much is known about the triggers of existing asthma.[44] These triggers include "respiratory infections, house dust mites, cockroaches, animal dander, mold, pollen, cold air, exercise, stress, tobacco smoke and indoor and outdoor air pollutants."[45] As a consequence, treatment of asthma should include not only medication and monitoring of other wellness factors like proper nutrition and rest, but also reduced exposure to these triggers.[46] Yet these triggers are the very conditions that are pervasive in racially-segregated residential areas. The connection to asthma is clear: "residing near hazardous waste sites, residential exposure to air pollution, and deteriorated housing conditions are related to increased respiratory and other health problems in both adults and children."[47] In sum, many of the conditions that highly-segregated low-income communities of color face—particularly poor indoor and outdoor environmental conditions, barriers to health insurance, lack of jobs with flexible medical leave,

42. *See* MASSEY & DENTON, *supra* note 25, at 130–42 (describing the downward spiral effects of segregation on neighborhoods in terms of economic value, educational achievement housing, business investment, and job growth); Collins & Williams, *supra* note 39, at 497–500 (explaining how segregation affects socioeconomic mobility by reinforcing inferior quality education; creating a spatial mismatch of employment, depressing returns on real estate investment; causing unequal access to public and social services; and generally isolating African Americans from social and employment networks).

43. *See* MASSEY & DENTON, *supra* note 25, at 143–47 (noting that African Americans and Puerto Ricans are the two ethnic/racial groups with the highest persistent segregation indices).

44. PEW ENVTL. HEALTH COMM'N, ATTACK ASTHMA: WHY AMERICA NEEDS A PUBLIC HEALTH DEFENSE SYSTEM TO BATTLE ENVIRONMENTAL THREATS 9 (2000), http://healthyamericans.org/reports/files/asthma.pdf [hereinafter ATTACK ASTHMA].

45. ACTION AGAINST ASTHMA, *supra* note 1, at 1.

46. For discussions of children's exposure to environmental factors that trigger asthma attacks, see Jonathan Finkelstein, Anne Fuhlbrigge, Paula Lozano, Evalyn N. Grant, Reeva Shulruff, Kelly E. Arduino & Kevin B. Weiss, *Parent-Reported Environmental Exposures and Environmental Control Measures for Children with Asthma*, 156 ARCHIVES PEDIATRICS & ADOLESCENT MED. 258 (2002); Frederick E. Leickly, *Children, Their School Environment, and Asthma*, 90 ANNALS ALLERGY, ASTHMA & IMMUNOLOGY 3 (2003). *See also* Patrick L. Kinney, Mary E. Northridge, Ginger L. Chew, Erik Gronning, Evelyn Joseph, Juan C. Correa, Swati Prakash & Inge Goldstein, *On the Front Lines: An Environmental Asthma Intervention in New York City*, 92 AM. J. PUB. HEALTH 24 (2002) (describing early phases of a study designed to investigate the effect of environmental factors on the incidence of asthma attacks by reducing or eliminating the presence of those factors in certain low-income households).

47. Williams, *supra* note 34, at 25–26 (citations omitted).

poorly-equipped schools, and scarce financial and nutritional resources—all exacerbate or contribute to the severity of asthma.

II.
THE PUBLIC HEALTH RESPONSE TO ASTHMA IN LOW-INCOME COMMUNITIES OF COLOR

A. The National Public Health Strategy

If racial segregation and its effects (substandard housing, environmental injustices, and lack of financial resources) exacerbate asthma, then the public health response to asthma must address these problems in order to reduce the prevalence and severity of asthma in low-income communities of color. Public health officials have acknowledged the connections between asthma prevalence and race. However, there is no national plan of action to combat the environmental, housing-related, and financial barriers to health.

Federal agencies addressing health issues at the national planning level have widely acknowledged the problem. These agencies have developed programs aimed at researching the causes, treatment, and prevention of asthma in the population at large, and have even given special attention to the needs of low-income communities of color. For example, the National Heart, Lung, and Blood Institute (NHLBI), which facilitates the coordination of federal programs related to asthma, names as one of its five goals to "[d]evelop and evaluate community-based interventions to address the asthma problem, particularly in high-risk communities."[48] Similarly, DHHS, in its strategic plan to reduce asthma nationwide, includes as one of its four priorities to "[e]liminate the disproportionate health burden of asthma in minority populations and those living in poverty."[49] In order to accomplish these goals, these agencies coordinate the distribution of funds to support research, direct services, and public education programs to reduce asthma prevalence and improve asthma care in low-income communities of color.[50]

While the goals and actions of these federal agencies are laudable, they do not directly tackle the aforementioned factors that contribute to the high prev-

48. CLAUDE LENFANT, NAT'L HEART, LUNG & BLOOD INST., DEP'T OF HEALTH & HUMAN SERVS., COORDINATION OF FEDERAL ASTHMA ACTIVITIES 8 (2001). NHLBI notes the activities that several federal entities (such as the National Institute of Environmental Health Sciences, the Department of Housing and Urban Development, and the Environmental Protection Agency) have undertaken in furtherance of this goal, including funding asthma projects in low-income urban communities, developing methods to reduce household hazards that affect asthma, and promoting public awareness campaigns on environmental triggers in high-risk communities. *Id.* at 9.

49. ACTION AGAINST ASTHMA, *supra* note 1, at 14. In order to accomplish this goal, DHHS has provided funds for direct health services in underserved populations, supported research and education programs, and worked with local nongovernmental organizations to improve the quality of asthma care for inner-city communities of color. *Id.* at 27–28.

50. LENFANT, *supra* note 48, at 8–9; ACTION AGAINST ASTHMA, *supra* note 1, at 27–28.

alence and severity of asthma in low-income communities of color. As the Pew Environmental Health Commission has concluded, the federal public health plan for combating asthma has "failed to adequately fund intervention research studies to address environmental conditions that are known or suspected to trigger asthma attacks."[51] For example, only eight percent of National Institute of Health asthma funds have gone to any prevention studies, while the majority of funds have gone to pathophysiology and treatment.[52] Little funding goes to measures that empower individuals, families, and communities to change the conditions in their homes and neighborhoods that trigger their asthma. Even public education measures—which inform individuals of the dangers of indoor household hazards or other environmental asthma triggers—fail to take the next step of giving those individuals the tools by which they can actively address the problem.

Treatment research and public education are important parts of the effort to alleviate high asthma rates. However, for an individual, family, or community in this situation, the national public health response may seem like a distant source of relief. The current public health approach may raise *awareness* of environmental triggers among residents of highly segregated communities, but it does not enhance community members' ability to obtain repairs in their apartments or to remove power plants or waste transfer stations from their neighborhoods. On a national level, legal advocacy remains a largely unexplored avenue for combating the disparities related to asthma.

B. Local Asthma Initiatives in Low-Income Communities of Color

While there are few examples of incorporating law into public health strategies on the national level, many organizations have recognized the value of these efforts in local public health initiatives.[53] For example, doctors at Boston Medical Center, in Boston, Massachusetts, have formally incorporated lawyers into their clinical treatment teams through the Family Advocacy Program (FAP).[54] When a doctor or social worker believes that a legal barrier to medical treatment exists—whether the problem involves public benefits, housing, insurance access, family law, education, or immigration—an FAP lawyer provides legal services and advocacy.[55] Similarly, legal programs in New York City like Volunteers of Legal Services' (VOLS) Children's Project and New York Legal Assistance Group's Medical-Legal Assistance Project have linked patients in

51. ATTACK ASTHMA, *supra* note 44, at 14.

52. *Id.* at 15 chart 1.

53. *See* Pamela Tames, Paul Tremblay, Thuy Wagner, Ellen Lawton & Lauren Smith, *The Lawyer Is In: Why Some Doctors Are Prescribing Legal Remedies for Their Patients, and How the Legal Profession Can Support This Effort*, 12 B.U. PUB. INT. L.J. 505 (2003) [hereinafter *The Lawyer Is In*]; William J. Dean, *A Team Approach: Lawyers, Doctors and Social Workers*, N.Y.L.J., Sept. 9, 2002, at 3.

54. *See The Lawyer Is In*, *supra* note 53, at 505–506.

55. *See id.* at 509–10.

hospitals with pro bono lawyers.[56] Through these programs, when a patient needs an immigration lawyer for a relative to enter the United States as a likely organ donor[57] or an abused child's custody arrangement needs to be stabilized through family law,[58] lawyers work with doctors to provide the appropriate services. Through the success of such efforts, the benefits of connecting legal and health services are gaining recognition. As one set of commentators has noted in justifying close collaboration between doctors and lawyers, "many physicians who know that their patients' unmet needs are having a deleterious impact on their patients' health don't have the knowledge or experience to advocate effectively in the legal arena. Lawyers do."[59]

When combating a disease like asthma, the potential benefits of incorporating law into public health practice are particularly potent. Asthma is not a disease that indiscriminately strikes individuals. It is a public health problem that is profoundly affected by environment and financial resources and thus disproportionately affects low-income communities of color. Collaboration between health practitioners and lawyers may not only facilitate treatment for asthma patients—it may halt or reverse an alarming public health trend in their communities. Given the nature of this disease, community members, public health officials, medical professionals, and lawyers have good reason to come together to tackle asthma as an issue of justice.

Several organizations in New York City have begun to use collaborative models for the provision of asthma-related medical, social, and legal services. The Harlem Children's Zone (HCZ) Asthma Initiative and South Brooklyn Legal Services' (SBLS) Healthy Homes Project, for example, emphasize the importance of partnerships among communities, hospitals, and lawyers to accomplish the goal of reducing asthma. Their approaches to asthma treatment and prevention go well beyond the community education techniques promoted by federal agencies' national strategic planning. They deal directly with the racial and socioeconomic disparities that contribute to the high rates of asthma in low-income communities of color.

1. The Harlem Children's Zone Asthma Initiative

HCZ is a non-profit, community-building initiative in Central Harlem, an area in New York City home primarily to African Americans, as well as to Caribbean, West African, and Latino immigrants.[60] HCZ has developed strong partnerships with individuals, families, churches, businesses, schools, and non-profits in the area and helps children by supporting academic, recreational, and

56. *See* Dean, *supra* note 53, at 4.

57. *See id.* at 3.

58. *See The Lawyer Is In*, *supra* note 53, at 511.

59. *Id.* at 506 (citations omitted).

60. Harlem Children's Zone, http://www.hcz.org (last visited Feb. 28, 2007). The Harlem Children's Zone encompasses a sixty-block area in upper Manhattan. *Id.*

social achievement through after-school, parenting, employment, and housing programs.[61] In 2001, HCZ launched the HCZ Asthma Initiative, a community-based health program for children with asthma, in partnership with Harlem Hospital's Department of Pediatrics, Columbia University's Harlem Health Promotion Center, Dr. T. Berry Brazelton's Touchpoints program, and the New York City Department of Health.[62] HCZ Asthma Initiative staff, building on existing community ties, works with pediatricians, nurses, social workers, community workers, and schools to screen children for asthma. This group then plans and initiates individually-tailored social, medical, educational, environmental, and legal interventions in the children's home and school environments.

The process of asthma intervention[63] begins when the HCZ Asthma Initiative conducts screenings of children age twelve and under who live in and/or attend school in the Harlem Children's Zone.[64] Parents fill out a questionnaire, which HCZ Asthma Initiative staff examines to determine whether the child has asthma. If the child has asthma, an HCZ Asthma Initiative community health worker will then contact the child's family and work with them to ensure that the child has access to medical care. HCZ Asthma Initiative staff will also work with the child's doctor to ensure that she and her family understand how to manage the asthma medication. The community health worker also visits the child's home to assess the indoor environment and provide solutions to asthma triggers like dust, mold, and roaches. For example, if a home visit reveals that the air quality is poor, HCZ Asthma Initiative staff will follow up by providing a home air filter.

In the course of screening over three thousand children in Central Harlem, HCZ Asthma Initiative staff realized that some of the problems its participants face, particularly those arising from poor housing conditions, are legal issues. In 2003, the HCZ Asthma Initiative reached out to VOLS to connect with pro bono attorneys from LeBoeuf, Lamb, Greene & MacRae, a private law firm. When legal intervention is needed, attorneys represent HCZ Asthma Initiative participants in housing court to require landlords to make necessary repairs. The HCZ Asthma Initiative has found that often a simple phone call from an attorney to a landlord is enough to prompt repairs, thus preventing the need for a court visit. HCZ Asthma Initiative staff and program participants have discovered that the law provides a means by which the asthma crisis can be addressed in Harlem.

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61. *Id.*

62. *Id. See also* Stephen W. Nicholas, Betina Jean-Louis, Benjamin Ortiz, Mary Northridge, Katherine Shoemaker, Roger Vaughan, Michaela Rome, Geoffrey Canada & Vincent Hutchinson, *Addressing the Childhood Asthma Crisis in Harlem: The Harlem Children's Zone Asthma Initiative*, 95 AM. J. PUB. HEALTH 245, 246 (2005) (describing the structure of the HCZ Asthma Initiative program) [hereinafter *Childhood Asthma Crisis*].

63. Unless otherwise noted, discussion of the HCZ Asthma Initiative program's logistics stems from *Childhood Asthma Crisis*, *supra* note 62, and an interview with Katherine Shoemaker, Dir. of Special Projects for the President, Harlem Children's Zone, in New York, New York (Jan. 28, 2005).

64. *See supra* note 60.

2. South Brooklyn Legal Services Healthy Homes Project

Like HCZ, SBLS identified asthma as an important issue affecting the surrounding community.[65] Since SBLS provides free civil legal services to low-income New Yorkers in the South Brooklyn area, it addressed the asthma problem directly from a legal perspective. SBLS conducted a survey with the State University of New York's (SUNY) Downstate Medical Center in Flatbush, Brooklyn,[66] and they found that the families of people with asthma and other chronic illnesses must address numerous legal issues as they try to alleviate their ailments. In response, SBLS launched its Healthy Homes Project. Staffed by attorneys from SBLS's Housing Unit, the Healthy Homes Project is dedicated to serving the legal needs of people in South Brooklyn with chronic health problems, particularly asthma. Patients interested in pursuing a legal issue related to their illness—such as obtaining necessary repairs from a landlord, challenging insurance coverage problems for asthma medication, and applying for Supplemental Security Income (SSI)[67]—are referred to the Healthy Homes Project by staff from two Brooklyn hospitals: SUNY Downstate Medical Center and Lutheran Hospital.

As a legal services provider, SBLS is in a unique position to explore new legal avenues for addressing the needs of the community. For example, through conversations with its clients, SBLS identified the Family and Medical Leave Act[68] as another potential legal tool to provide relief to the parents of asthmatic children, who often need time off from work to care for their chronically ill children.[69] SBLS has also investigated the possibility of categorizing asthma as a disability for the purposes of obtaining a "health priority" for public housing waitlists.[70]

The activities of HCZ and SBLS exemplify how interested organizations can apply legal tools to combat the asthma crisis through a collaborative approach. As awareness of the nature of asthma and of the potential to use law to combat asthma increases, more communities can create similar projects to safe-

65. Unless otherwise noted, discussion of SBLS's processes stems from the author's experience as a volunteer with the Healthy Homes Project and from conversations with Jennifer Levy, SBLS Housing Unit Co-Director, and Sandhya Reju, SBLS Housing Unit Staff Attorney, in Brooklyn, New York (Oct. 2003–Apr. 2004).

66. Like Central Harlem, Flatbush and neighboring areas in Brooklyn are home to many low-income African Americans, Latinos, and other people of color. *See* N.Y.C. Dep't City Planning, Brooklyn Community District 14, http://www.nyc.gov/html/dcp/pdf/lucds/bk14profile.pdf.

67. *See* Supplemental Security Income for the Aged, Blind, and Disabled, 42 U.S.C. §§ 1381–1383f (2003).

68. Pub. L. No. 103-3, 107 Stat. 6 (1993) (codified as amended at 29 U.S.C. §§ 2601, 2611–19, 2631–36, 2651–54 (2004).

69. *Id.* The FMLA allows qualifying employees to take reasonable leave to care for themselves or another family member with certain medical problems.

70. Applicants for public housing who have disabilities may be eligible for priority status for their local public housing waitlist. *See, e.g.*, N.Y.C. Hous. Auth., Need Based Preference, http://www.nyc.gov/html/nycha/html/assistance/need_based.shtml (last visited Feb. 28, 2007).

guard their health and environment. By forming strong partnerships, communities, public health officials, medical practitioners, and lawyers can address the racial and socioeconomic justice issues underlying public health problems like asthma.

III.
LAW AS A MEANS FOR ADDRESSING THE ASTHMA CRISIS: THE CASE OF NEW YORK CITY

The benefits of incorporating law into public health strategies are only as potent as the gains that the law can actually achieve in practice. In this part of the article, I assess the four areas of the law that hold the most promise as tools for alleviating high asthma rates in low-income communities of color: housing, government benefits, environmental justice, and disability rights. Each of these areas offers a way to address a particular, pressing need for individuals suffering from asthma in low-income, racially-segregated neighborhoods: housing law to address the need for healthy, asthma-friendly housing; government benefits law to address the need for financial resources and access to health insurance; environmental law to address the need for better neighborhood air quality; and disability rights law to address the need for health-related accommodations at school or work. Community advocates can ensure that individuals and families can pursue legal action in these areas by establishing strong partnerships between health care practitioners (who are often most aware of the health consequences of an unmet legal need) and attorneys (who can address the legal need). Using examples of hypothetical families dealing with chronic asthma in low-income neighborhoods of color in New York City, I explore the potential of these four areas of law to combat the asthma crisis.[71] I then discuss briefly the

71. Laws addressing racial discrimination in the provision of health care also provide a means for challenging racial disparities underlying health outcomes. This area of the law is not included in this Article because it does not fit within a collaborative legal-health services approach to alleviating asthma in low-income communities of color. Instead, it involves lawsuits against hospitals or other health care providers. Nevertheless, communities should be aware of these laws and the problem they address.

Civil rights advocates as well as the medical profession recognize that there is widespread racial discrimination in the provision of health care. *See* COMM. ON UNDERSTANDING AND ELIMINATING RACIAL & ETHNIC DISPARITIES IN HEALTH CARE, INST. OF MED. OF THE NAT'L ACADS., UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE 5 (Brian D. Smedley, Adrienne Y. Stith & Alan R. Nelson eds., 2003) [hereinafter IOM REPORT]; MINORITY AFFAIRS CONSORTIUM, AM. MED. ASS'N, REPORT ON RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE (2003), http://www.ama-assn.org/ama/pub/category/print/6925.html (last visited Feb. 28, 2007) [hereinafter AMA REPORT]. *See also* Marianne Engelman Lado, *Unfinished Agenda: The Need for Civil Rights Litigation to Address Race Discrimination and Inequalities in Health Care Delivery*, 6 TEX. F. ON C.L. & C.R. 1, 5–11 (2001) (attributing racial disparities in health care access to historic patterns of exclusion and discrimination); Sidney D. Watson, *Race, Ethnicity and Quality of Care: Inequalities and Incentives*, 27 AM. J.L. & MED. 203, 205–10 (2001) (attributing racial disparities in health care to medical error).

Communities of color can challenge discrimination in hospitals and medical facilities through civil rights law. *See generally* Lado, *supra*, at 33–44 (discussing areas for litigation and advo-

limitations of litigation and note the importance of using the law as a framework for a collaborative approach to combating these problems.

A. Housing Law as a Means for Addressing Substandard Housing and the Indoor Environmental Triggers of Asthma

The Smiths are a family of four living in a small, two-bedroom apartment in Brooklyn. Their youngest daughter, fourteen-month-old Melissa, has been to the emergency room twice in the last few weeks for an asthma attack. Her pediatrician diagnosed her with asthma when she was a year old and advised the Smiths to regularly clean her clothing and toys, cover her bedding in dust-proof covers, and keep their apartment well-

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cacy). Litigation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2000), which prohibits discrimination by entities receiving federal funding, has become less effective for current health care access strategies due to recent court decisions. *See* Gwendolyn Roberts Majette, *Access to Health Care: What a Difference Shades of Color Make*, 12 ANNALS HEALTH L. 121, 127–30 (2003). *See also infra* notes 114–22 and accompanying text. However, the Hill-Burton Act, 42 U.S.C. §§ 291–291o-1 (2000), and the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd (2000), have been used to challenge racial discrimination in health care access or treatment.

The Hill-Burton Act authorizes federal funding to public and nonprofit medical facilities. Before state agencies can recommend approval of a facility's funding application, they must submit a state plan containing assurances that

> (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

42 U.S.C. § 291c(e) (2000). *See* Armstrong v. Fairmont Cmty. Hosp. Ass'n, 659 F. Supp. 1524, 1527 (D. Minn. 1987) (describing the community service and uncompensated care assurances). The assurances are designed to prevent discrimination in the provision of health services and can be used to challenge discriminatory practices by these hospitals. *See Armstrong*, 659 F. Supp. at 1531–33 (describing legislative history of the statute); 42 C.F.R. § 124.603(a)(1) (2005) (implementing nondiscriminatory community service provisions of the Hill-Burton Act); *id.* § 124.606(a)(4) (permitting private rights of action).

Under EMTALA, hospitals that receive federal funds and provide emergency care must properly screen every patient seeking emergency room services and stabilize any patients with an emergency medical condition before transferring her to another facility. 42 U.S.C. §§ 1395dd(a)–(c) (2000); Abercrombie v. Osteopathic Hosp. Founders Ass'n, 950 F.2d 676, 680–81 (10th Cir. 1991) (interpreting strict liability standard under the statute). An individual may sue a hospital for failure to comply with either of these provisions if she suffered harm as a result. 42 U.S.C. § 1395dd(d) (2000) (enforcement provisions); *Abercrombie*, 950 F.2d at 680 (same). To prove an EMTALA claim based on inadequate screening, an individual must show that she received a screening that deviated from the defendant hospital's usual practice or that she received no screening at all. *See* Carodenuto v. New York City Health & Hosps. Corp., 593 N.Y.S.2d 442, 446 (Sup. Ct. 1992). To prove an EMTALA claim based on failure to stabilize or inappropriate transfer, an individual must show, as a preliminary matter, that the hospital determined that she had an "emergency medical condition." *See* Jones v. Wake County Hosp. Sys., Inc., 786 F. Supp. 538, 543–44 (E.D.N.C. 1991); Coleman v. McCurtain Mem'l Med. Mgmt., 771 F. Supp. 343, 346 (E.D. Okla. 1991). If she can then show that the hospital failed to stabilize her or inappropriately transferred her to another facility, liability under EMTALA is established. *See* 42 U.S.C. § 1395dd(c) (2000); Delaney v. Cade, 986 F.2d 387, 391–93 (10th Cir. 1993); Fuentes Ortiz v. Mennonite Gen. Hosp., 106 F. Supp. 2d 327, 332–33 (D.P.R. 2000).

ventilated. She also prescribed medication for Melissa. Despite the Smiths' efforts to follow the doctor's orders, Melissa still suffered from frequent wheezing episodes and severe attacks, especially at night. When her pediatrician asked the Smiths more about their apartment, she learned that the conditions in the apartment were poor—cockroaches and other small pests were present throughout the apartment and the Smiths saw signs of mold and mildew on some of the walls. Despite their attempts to get rid of the pests and clean the apartment thoroughly, the problems remained. When they spoke to their landlord about the apartment, he gave them bait traps for the cockroaches and told them that he could paint the walls in the next few months. The landlord has done nothing further to abate the conditions, and Melissa's symptoms persist. The Smiths' older son, John, has also begun to develop wheezing. The Smiths have looked for another apartment, but have not seen any affordable ones in better condition that are near their workplaces.

This example presents a problem that is prevalent for many families with asthma sufferers living in low-income communities of color: inadequate housing. When asthma is diagnosed, a doctor usually prescribes medication and treatment. However, such medication and treatment is often ineffective when the patient's home environment contains asthma triggers like mold, dust, and cockroaches. A thorough doctor usually informs the patient and her family that their home must be clean, dust-free, and protected from any other allergens that might trigger asthma. Yet even armed with that knowledge, many residents of apartment complexes in low-income communities of color can do little to change their indoor living environment on their own. Problems like roaches and vermin are often a building-wide phenomenon, and unseen holes in the walls and floorboards make them difficult to contain. Mold and mildew often stem from leaky pipes and other problems beyond a tenant's capacity to repair. At some point, the landlord must intervene to fix these underlying problems.

Of course, not all landlords are responsive to tenants' requests for maintenance. Even those who are, as in the example above, may fall short of providing meaningful repairs. In some instances, legal action may be necessary to ensure that landlords fulfill their legal duties. These duties include the alleviation of mold through the repair of water leaks and the eradication of vermin or insect infestation through extermination and plugging of holes in the walls.[72] While problems like mold, mildew, cockroaches, and mice often prove difficult to abate, housing law provides a tool that individuals and families can utilize to exercise more control over their indoor environment.

Housing law, broadly defined, includes at least three bases for an action to

72. *See, e.g.*, Morbeth Realty Corp. v. Rosenshine, 323 N.Y.S.2d 363 (Civ. Ct. 1971) (reading implied warranty of habitability into city housing maintenance code and awarding partial rent abatement to tenant for landlord's failure to eliminate cockroaches and water leaks); Northwood Village, Inc. v. Curet, N.Y.L.J., May 6, 1998, at 34 (Suffolk County Dist. Ct. 1998) (awarding tenant full abatement for landlord's breach of warranty of habitability for failure to abate roach and vermin infestation, repair gas leak, and fix broken tiles).

compel the proper maintenance and repair of a housing unit.[73] First, the "warranty of habitability," an implied covenant that courts have applied to lease contracts between landlords and tenants, requires landlords to maintain the premises in a habitable state that does not threaten the health, safety, or welfare of the tenant.[74] Second, local housing maintenance codes also require landlords to maintain proper housing standards.[75] Third, local health codes often contain regulations or guidelines for the abatement of household hazards, such as lead and mold.[76]

In affirmative civil suits and defensive actions against their landlords, tenants in New York City have attempted to get the repairs and extermination necessary to improve their housing conditions. For example, a tenant with an insect and vermin infestation in her apartment can bring a Housing Part action against her landlord.[77] Her claims may include that the landlord breached the warranty of habitability by endangering her safety and welfare and that the landlord violated sections 27-2005 and 27-2018 of the New York City Administrative Code by failing to keep the premises in good repair and to eradicate rodents and pests, respectively.[78] To aid in this legal action, the New York City Department of Housing Preservation and Development will inspect the property and classify conditions as housing code violations until the landlord corrects them.[79] Many tenants have successfully raised these claims, securing abatement awards for the period in violation and, presumably, household repairs.[80]

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73. Although beyond the scope of this Article, some provisions of the Fair Housing Act may also provide individuals with means to change the conditions and policies in their residences that prevent them from using and enjoying the premises. For example, § 3604(f) provides a basis for a "handicapped" individual to challenge a landlord's "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling," 42 U.S.C. § 3604(f)(3)(B) (2000), or a "refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises . . . if such modifications may be necessary to afford such person full enjoyment of the premises . . . .", *id.* at § 3604(f)(3)(A).

74. *See, e.g.*, Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1074–80 (D.C. Cir. 1970) (applying duty to repair to urban residential landlords); Park West Mgmt. Corp. v. Mitchell, 391 N.E.2d 1288, 1291–93, 1295 (N.Y. 1979) (holding that failure to repair violates implied warranty of habitability).

75. *See, e.g.*, N.Y.C. ADMIN. CODE § 27-2005 (2003) (duty of owner to keep premise in good repair); *id.* § 27-2018 (eradication of rodents and pests).

76. In New York City, the Department of Health and Mental Hygiene has published guidelines detailing how mold conditions should be safely corrected. PROGRAM OF ENVTL. & OCCUPATIONAL DISEASE EPIDEMIOLOGY, N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, GUIDELINES ON ASSESSMENT AND REMEDIATION OF FUNGI IN INDOOR ENVIRONMENTS (2000), *available at* http://www.nyc.gov/html/doh/html/epi/moldrpt1.shtml [hereinafter MOLD GUIDELINES]. Regulations for the abatement of lead can be found in RULES OF THE CITY OF NEW YORK tit. 25 § 173.14 (2006 Supp.).

77. *See* Press Release, N.Y.C. Dep't of Hous. Pres. & Dev., Know Your Rights as a Tenant (July 5, 2005), *available at* http://www.nyc.gov/html/hpd/html/pr2005/pr-07-05-05.shtml.

78. *See supra* note 75 and accompanying text.

79. *See* Press Release, N.Y.C. Dep't of Hous. Pres. & Dev., *supra* note 77.

80. *See, e.g.*, Kipsborough Realty Corp. v. Goldbetter, 367 N.Y.S.2d 916, 922 (Civ. Ct. 1975)

Legal remedies[81] have also been used to address household mold, a prevalent culprit of many asthmatics' symptoms.[82] Since mold is classified as a "nuisance" and can be a housing code violation under New York law, tenants can bring actions to require their landlord to remove mold, correct water leaks that lead to mold problems, and fix any ventilation problems that contribute to mold and mildew.[83] The New York City Department of Health and Mental Hygiene (DOH) has published specific guidelines for how landlords can safely remediate mold problems.[84] The guidelines are not binding regulations and therefore have not been strongly enforced by housing courts or the DOH. However, in response to numerous tenants' complaints regarding the effects of mold in their apartments, South Brooklyn Legal Services[85] brought a Housing Part action to enforce the guidelines on behalf of a tenant with an asthmatic child.[86] In their brief, they argued that the proper elimination of mold as required by state and city law necessitated careful remediation, including removal of current mold; correction of underlying water accumulation; and use of protective materials and air monitoring for the work area and workers.[87] Using these methods ensures that mold problems are corrected, rather than simply concealed. Generally, New York housing courts have recognized the seriousness of mold

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(awarding damages for landlord's failure to repair water leak in tenant's ceiling); Morbeth Realty Corp. v. Rosenshine, 323 N.Y.S.2d 363 (Civ. Ct. 1971) (reading implied warranty of habitability into city housing maintenance code and awarding partial rent abatement to tenant for landlord's failure to eliminate cockroaches and water leaks); Walton Ave. Props. v. Smith, N.Y.L.J., Aug. 11, 1999, at 24 (N.Y. Civ. Ct. 1999) (awarding partial rent abatement to tenant for landlord's failure to repair constant water leak and collapsed bathroom ceiling); Northwood Village, Inc. v. Curet, N.Y.L.J., May 6, 1998, at 34 (Suffolk County Dist. Ct. 1998) (awarding tenant full abatement for landlord's breach of warranty of habitability for failure to abate roach and vermin infestation, repair gas leak, and fix broken tiles); ATM Four LLC v. Rodriguez, N.Y.L.J., Nov. 12, 1997, at 31 (Nassau County Dist. Ct. 1997) (awarding partial rent abatement for landlord's failure to exterminate roach and vermin infestation and to repair leaks).

81. *See infra* notes 85–88 and accompanying text.

82. Meyer Kattan, *Asthma and the Indoor Environment*, *in* WORKING TOGETHER TO COMBAT URBAN ASTHMA: CONFERENCE HOSTED BY THE CENTER FOR URBAN EPIDEMIOLOGIC STUDIES AT THE NEW YORK ACADEMY OF MEDICINE 39, 42 (1998) (describing mold as one of the second biggest factors causing asthma sensitivity in inner-city children).

83. A "nuisance" includes

> any condition which is "dangerous to human life or detrimental to health" as well as any dwelling which "is not sufficiently ventilated" or any condition which "renders the air . . . unwholesome." All such conditions are unlawful. The Department of Housing Preservation and Development . . . classifies code violations for mold problems as a nuisance condition.

Petitioner's Memorandum of Law in Support of Petitioner's Motion to Order Mold Remediation Pursuant to Department of Health Guidelines at 5, Huertero v. 969 Realty Co., H.P. 736/04 (Civil Ct. 2004) (citing N.Y. MULT. DWELL. LAW § 309 (McKinney 2004) (nuisance definition) and N.Y.C. Dep't of Hous. Pres. & Dev. Violation Order No. 510 (code violations for mold)) [hereinafter Mold Brief].

84. *See* MOLD GUIDELINES, *supra* note 76.

85. *See supra* Part II.B.2.

86. *See* Mold Brief, *supra* note 83.

87. Mold Brief, *supra* note 83, at 8–10. *See also* MOLD GUIDELINES, *supra* note 76, § 3.4

and have issued various forms of relief, including rent abatement and emergency corrections.[88]

Through the warranty of habitability, local housing maintenance codes, and local health codes, housing law provides a means for asthma sufferers to address their poor indoor environments. Community organizations can partner with attorneys to meet the needs of families suffering from asthma and living in substandard housing. By filing actions against their landlords, these families can receive the repairs necessary to improve the quality of their indoor environment.

B. Government Benefits Law as a Means for Increasing Access to Supportive Financial Resources

> *The Johnson family lives in a three-bedroom apartment in the Bronx. Mr. and Mrs. Johnson work long hours to provide for their three young children. When their youngest child, James, developed asthma, Mrs. Johnson often had to take time off from work to take care of him. She eventually lost her job when workforce cuts were made; now the entire family is uninsured because Mr. Johnson's job does not include health benefits. The Johnsons' reduced income and lack of insurance has made it difficult for them to pay their rent, the mounting medical bills for James's medication and treatment, and other bills. James's doctor reports that his condition is worsening and that daily medication is necessary to keep his asthma under control.*

This example illustrates another common and immediate problem that individuals suffering from asthma face: a significant strain on already limited financial resources. Chronic illnesses like asthma often entail expenses for medication and nutritional needs, days of missed work to care for oneself or one's asthmatic child, and other new financial challenges. During times of crisis, such as the loss of a job or the illness of another family member, an indigent family coping with chronic asthma can find themselves in immediate need of additional income or health insurance. Government benefits can provide the means by which they can maintain minimally adequate resources and still access necessary medication.

Federal and state laws provide income-eligible individuals and families with the opportunity to receive public assistance, food stamps, Medicaid, and other government benefits that provide necessary resources for survival. The federal

88. *See* Mold Brief, *supra* note 83, at 6–7 (citing Pallotta v. Perry, No. 2001-962NC, slip op. 40328U (N.Y. App. Term May 17, 2002) (granting partial abatement for poor housing conditions, including water leak causing mold and mildew); 157 E. 57th St. v. Birrenbach, N.Y.L.J., May 15, 2003, at 2 col. 6 (N.Y. Civ. Ct.) (finding that tenants were constructively evicted from their apartment due to mold condition and granting full rent abatement); Matter of Garcia, N.Y.L.J., Nov. 13, 2002, at 17 col. 1 n.7 (N.Y. Civ. Ct.) (noting health dangers resulting from chronic exposure to mold); Aybar v. Tsionkas, N.Y.L.J., Oct. 24, 2001, at 17 (N.Y. Civ. Ct.) (ordering Department of Housing Preservation and Development to correct all immediately hazardous conditions, including mold, in household where young children with asthma resided); 61 Melvin Ave. Realty Corp. v. Brantley, N.Y.L.J., Mar. 15, 1994, at 23 (N.Y. Civ. Ct.) (awarding partial abatement for mildew condition).

government provides funding for certain forms of government benefits to states and local welfare offices in whole or in part under such programs as the Temporary Aid to Needy Families (TANF),[89] the Food Stamp Program,[90] Medicaid,[91] and Supplemental Security Income (SSI).[92] States often provide supplementary or more expansive benefits in addition to those provided by federal programs. For example, New York State residents also have the benefit of temporary and family assistance programs run by the New York State Office of Temporary and Disability Assistance (OTDA).[93] Using the various laws and regulations governing eligibility for such programs and rights to appeal adverse determinations, lawyers can provide individuals with guidance in obtaining or maintaining government benefits, particularly in times of health crisis.[94]

One source of government benefits that is sometimes overlooked by families with asthmatic children is SSI. Unlike federal family assistance or state safety net programs, SSI is managed by the Social Security Administration (SSA)[95] and tends to provide a higher level of benefits for families in need. In addition, a person who receives SSI for twenty-four months automatically qualifies for Medicare, even if she was not previously eligible.[96]

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89. TANF grew out of welfare reform in 1996. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. § 1305 (2000). *See also* Office of Family Assistance, U.S. Dep't of Health & Human Servs., http://www.acf.hhs.gov/programs/ofa (last visited Feb. 28, 2007).

90. The Food Stamp Act was originally passed in 1977. *See* Food Stamp Act of 1977, Pub. L. No. 95-113, 91 Stat. 958 (codified as amended at 7 U.S.C. § 2011–2025 (2000 & Supp. III 2000)).

91. Medicaid is a federal/state entitlement program codified in Title XIX of the Social Security Act. 42 U.S.C. tit. 19 (2000). *See* Ctrs. for Medicare & Medicaid, U.S. Dep't of Health & Human Servs., http://cms.hhs.gov/medicaid/ (providing overview and scope of benefits) (last visited Feb. 28, 2007).

92. Supplemental Security Income is codified in Title XVI of the Social Security Act. 42 U.S.C. tit. 16 (2000). *See* U.S. Soc. Sec. Admin., Social Security Online, Supplemental Security Income, http://www.ssa.gov/notices/supplemental-security-income/ (describing benefits and eligibility) (last visited Feb. 28, 2007).

93. *See* Office of Temp. & Disability Assistance Home, http://www.otda.state.ny.us (follow "Disability Determinations", "Food Stamps", and "Temporary Assistance" hyperlinks) (last visited Feb. 28, 2007). *See also* N.Y. COMP. CODES R. & REGS. tit. 18 (2006) (codifying OTDA regulations).

94. Information on how to apply for public assistance usually can be found by contacting local and/or state government health and/or human services/resources agencies. The Supreme Court has held that a public assistance recipient has a right to due process when the government seeks to change or terminate her benefits. Goldberg v. Kelly, 397 U.S. 254 (1970). States have operationalized these rights: under New York State law, for example, applicants and recipients of public assistance, food stamps, and Medicaid are entitled to a fair hearing when they want to contest a decision to deny or reduce their benefits. N.Y. COMP. CODES R. & REGS. tit. 18 § 358-1 (Supp. 2006).

95. *See supra* note 92.

96. *See* SOC. SEC. ADMIN., WHAT YOU NEED TO KNOW WHEN YOU GET SOCIAL SECURITY DISABILITY BENEFITS 7 (2006), *available at* http://www.ssa.gov/pubs/10153.pdf. Of course, a person can be eligible for Medicare or Medicaid regardless of SSI eligibility if they meet the separate eligibility requirements for Medicare or Medicaid.

A child who suffers from asthma can qualify for SSI funds if she proves that her asthma meets or equals the SSA's "listing of impairments."[97] To meet the listing, three types of evidence are generally accepted: (1) "forced expiratory volume test" (FEVT) results; (2) evidence that serious medical intervention was required despite prescribed treatment; or (3) evidence of persistent low-grade wheezing.[98] Demonstrating this evidence has proved hard for families with asthmatic children.[99] Typically, the FEVT results necessary to meet the listing's requirements can be established only if the test is administered during a severe asthma attack, which doctors and families seldom do.[100] To demonstrate persistent low-grade wheezing, families must provide x-rays of their child's pulmonary hyperinflation or peribronchial disease, or evidence of the use of corticosteroids for an average of more than five days per month for at least three months in a single year, along with proof that their child wheezes on a regular basis.[101] Proving persistent wheezing is difficult and may require numerous medical reports documenting the child's wheezing over a long period.[102]

Perhaps the most clear-cut way to meet the SSI evidentiary standard for asthma is to track the child's hospitalizations and thus show that serious medical intervention was required. If a child's asthma leads to hospitalizations (in spite of following a treatment regimen) at least six times a year for attacks (with any hospitalization lasting more than twenty-four hours counting as two hospitalizations), then the child qualifies under the SSI listing.[103] Medical records for each hospitalization, including the length of stay, severity of attack, and treatment, should provide enough information for a child to qualify for SSI.

In the event that a child cannot prove she meets the listing in one of these ways, she can attempt the more difficult task of proving medical or functional equivalence to the listing through careful documentation and analysis.[104] "An impairment 'equals' a listed impairment when the set of symptoms, signs and laboratory findings in the medical evidence supporting the claimant 'are at least equivalent in severity to the set of medical findings for the listed

97. 20 C.F.R. pt. 404 subpt. P app.1 listing 103.03 (2005) [hereinafter Listing 103.03]. *See also* Chris Palamountain, *Children with Asthma Prove Vulnerable to SSI Cuts*, 19 YOUTH LAW NEWS, Jan.–Feb. 1998, at 1.

98. Listing 103.03, *supra* note 97.

99. Palamountain, *supra* note 97, at 3, 7–8. At least one court has reversed an SSA finding that an asthmatic child was not eligible for SSI. Smith v. Massanari, 139 F. Supp. 2d 1128 (C.D. Cal. 2001). The court found that the Commissioner of the SSA did not properly account for the opinion of the child's treating physician and her mother's testimony regarding the severity of her asthma. *See id.* at 1133–34. However, the court noted that the plaintiff would have to provide evidence that she meets all the listing requirements. *See id.* at 1134–35.

100. *See* Palamountain, *supra* note 97, at 3, 7–8.

101. Listing 103.03(C), *supra* note 97.

102. *See* Palamountain, *supra* note 97, at 6–7.

103. Listing 103.03(B), *supra* note 97.

104. Palamountain, *supra* note 97, at 8–14.

impairment.'"[105] Thus, even asthma that is marked by fewer hospitalizations can be considered "equal" to the SSI listing if the hospitalizations are coupled with numerous other documented medical interventions for severe asthma attacks.[106] In addition, SSA must consider testimony from the child's parents and treating physician, and must give specific reasons if rejecting the testimony.[107] However, applicants are often denied SSI initially, and must then navigate a long appeals process.[108]

Communities can use the law to ensure that they receive the full benefits for which they qualify—including SSI. The availability of legal representation to assist with the application and appeals process can often make a considerable difference in a family's ability to secure these financial resources.

C. *Environmental Justice as a Means for Addressing Outdoor Environmental Triggers of Asthma*

> *The Lopez family lives in a two-bedroom apartment in West Harlem. Mr. and Mrs. Lopez have two children with asthma, and Mrs. Lopez is pregnant with a third child. Both of their children have suffered from asthma since infancy, despite having moved to relatively new and well-managed apartment units. In talking with the parents of their children's classmates, Mr. and Mrs. Lopez learn that many of the children at the local elementary school and in their neighborhood also suffer from asthma. Some of the families believe that the smog and pollution in the air around their homes and schools worsen their children's asthma symptoms. Mr. and Mrs. Lopez notice that trucks often run through their neighborhood, and they often smell faint chemicals in the air when they walk within blocks of a water treatment plant near the school. When they learn that the city is considering placing another plant in their area, the Lopez family and other community members wonder whether they can do anything to clean up the air around their homes.*

As this example illustrates, the outdoor environment also influences the prevalence and severity of asthma. Local industrial sites, power plants, and motor vehicles all emit air pollutants that are associated with declined lung function, wheezing, chronic cough, and respiratory illnesses like bronchitis and asthma, particularly for young children.[109] Research has specifically linked

105. Martinez Nater v. Sec'y of Health & Human Servs., 933 F.2d 76, 77 (1st Cir. 1991) (internal citations omitted).

106. *See id.* at 78–79.

107. Smith v. Massanari, 139 F. Supp. 2d 1128, 1133–34 (C.D. Cal. 2001) (finding SSA Commissioner's unexplained rejection of the testimony of the applicant's doctor and parent to be reversible error).

108. Palamountain, *supra* note 97, at 14.

109. *See* Joel Schwartz, *Air Pollution and Children's Health*, 113 PEDIATRICS 1037 (2004) (surveying research on air pollution's harmful effects on children); George D. Thurston & David V. Bates, *Air Pollution as an Underappreciated Cause of Asthma Symptoms*, 290 JAMA 1915 (2003) (urging policymakers to more closely regulate emissions leading to ozone formation). *See also* Evans & Kantrowitz, *supra* note 12, at 93–117.

asthma prevalence with the proximity of the asthmatic's residence to high traffic areas and other pollution sources.[110] As one scholar noted, "[p]erhaps more than any other environmental disease, the prevalence of asthma reflects the diversity and magnitude of environmental risks faced by people of color and low-income communities."[111]

Low-income communities of color in New York City have many pollution sources near their residences and have high rates of asthma. These communities have used environmental laws to reduce the sources of pollution in their area. Their experiences demonstrate that environmental law at the federal, state, and local level can provide communities with tools for alleviating their asthma crisis. Specifically, using the tools of the environmental justice movement, community organizations can curtail the pollution emitted from undesirable and hazardous facilities and combat traffic-related pollution.

1. Reducing pollution from hazardous facilities in communities with high asthma rates

Reducing the effects of hazardous facilities in low-income communities of color has been the primary goal of the environmental justice movement since its conception. The environmental justice movement was spurred by landmark studies in the early 1980s indicating that the race of residents was the best predictor of the decision to build commercial waste facilities.[112] Given the significant correlation found between the location of African American residences and the siting of sources of pollution, community leaders began to identify and challenge environmental siting decisions and decision-making processes that discriminated against or otherwise disadvantaged people of color.[113]

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110. Tonny J. Oyana & Jamson S. Lwebuga-Mukasa, Spatial Relationships Among Asthma Prevalence, Health Care Utilization, and Pollution Sources in Neighborhoods of Buffalo, New York, 66 J. ENVTL. HEALTH 25, 35 (2004) (demonstrating that the proximity of a residence to pollution release sources is statistically associated with prevalence of diagnosed asthma); Thurston & Bates, supra note 109, at 1916 (noting findings of a statistically significant association between the exposure to air pollution, specifically ozone, and asthma).

111. Michel Gelobter, *The Meaning of Urban Environmental Justice*, 21 FORDHAM URB. L.J. 841, 851 (1994) (internal citations omitted).

112. The practice of siting hazardous facilities in low-income communities of color first gained national attention in 1982 when North Carolina state officials decided to build a hazardous landfill in a predominately African American county. The controversy over the decision sparked an investigation of siting practices by the U.S. General Accounting Office (GAO) and a nationwide study by the United Church of Christ Commission for Racial Justice (UCC-CRJ), both of which concluded that race was a significant factor in environmental siting. *See* Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 CORNELL L. REV. 1001, 1009–13 (1993) (describing the GAO and UCC-CRJ studies, as well as numerous state and local studies that support the conclusion that people residing in communities where hazardous facilities are sited are predominately people of color); Michael K. Dorsey, *Race, Poverty, and Environment*, 22 LEGAL STUD. F. 501, 505–6 (1998) (detailing the North Carolina protests and subsequent GAO and UCC-CRJ reports).

113. *See, e.g.*, Michael Fisher, *Environmental Racism Claims Brought Under Title VI of the*

In presenting these challenges, communities have relied upon a number of legal tools,[114] including claims under the Equal Protection Clause of the Fourteenth Amendment,[115] Title VI of the Civil Rights Act of 1964,[116] 42 U.S.C. § 1983,[117] federal environmental statutes such as the National Environmental Policy Act (NEPA),[118] state and local environmental statutes,[119] and common law tort claims.[120] However, the utility of Title VI and § 1983 for combating environmental injustices was undercut after recent Supreme Court and federal circuit court decisions foreclosed private rights of action under those statutes to enforce disparate impact claims.[121] Environmental justice litigation under the Equal Protection Clause has also been relatively unsuccessful.[122] In this part of

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Civil Rights Act, 25 ENVTL. L. 285, 289–91 (1995) (defining "environmental racism" and suggesting its use in anti-discrimination lawsuits).

114. *See, e.g.*, *id.* at 303–13 (arguing that these federal, state, and local civil rights and environmental laws have been used, but with infrequent success); Sten-Erik Hoidal, *Returning to the Roots of Environmental Justice: Lessons from the Inequitable Distribution of Municipal Services*, 88 MINN. L. REV. 193, 202–10 (2003) (same).

115. U.S. CONST. amend XIV, § 1 ("No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

116. 42 U.S.C. § 2000d (2000).

117. Section 1983, also known as the Civil Rights Act of 1871, authorizes civil actions for deprivations of rights:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects . . . any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

42 U.S.C. § 1983 (1996).

118. 42 U.S.C. § 4321 et seq (2000).

119. *See, e.g.*, N.Y. ENVTL. CONSERV. §§ 3-0301(1)(b), (2)(m), & 8-0113 (McKinney 2006); N.Y. COMP. CODES R. & REGS. tit. 6, §§ 617.1–.20 (Supp. 2006).

120. *See* RESTATEMENT (SECOND) OF TORTS §§ 821B, 821C(1) (1979) (describing elements of nuisance claims).

121. *See* Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (holding that no private right of action exists to enforce disparate impact regulations promulgated under the regulation-authorizing section of Title VI); S. Camden Citizens in Action v. N.J. Dep't of Envtl. Prot., 274 F.3d 771, 790–91 (3d Cir. 2001) (holding that disparate impact regulations cannot be enforced under § 1983). *See also* Hoidal, *supra* note 114, at 205–9 (describing the impact of *Sandoval* and *South Camden Citizens in Action* on environmental justice litigation); Kyle W. La Londe, *Who Wants to Be an Environmental Justice Advocate?: Options for Bring an Environmental Justice Complaint in the Wake of* Alexander v. Sandoval, 31 B.C. ENVTL. AFF. L. REV. 27, 34–50 (2004) (describing alternate causes of action for environmental justice litigation after *Sandoval*).

122. The Equal Protection Clause has been of little use to environmental justice advocates in the past. *See* Luke W. Cole, *Environmental Justice Litigation: Another Stone in David's Sling*, 21 FORDHAM URB. L.J. 523, 541–43 (1994) (discussing political benefits as motivations for advocates who continue to pursue unsuccessful claims under the Equal Protection Clause); Fisher, *supra* note 113, at 303–7 (discussing unsuccessful equal protection claims); *id.* at 306 (noting that "[a]bsent a 'smoking gun' which reveals intentional discrimination, the difficult burden of proof imposed by [Supreme Court precedent] seems likely to continue to frustrate plaintiffs seeking an Equal Protection remedy for environmental racism," despite parallels to municipal services cases). However, some advocates do believe that the Equal Protection Clause can and should be applied to the environmental justice context. *See, e.g.*, Hoidal, *supra* note 120, at 214–20 (arguing that environmental justice advocates should bring equal protection claims modeled after successful

the Article, I thus focus on how low-income communities of color can use federal and local environmental statutes and common law tort claims to protect their outdoor environment.

a. Using environmental statutes to mitigate pollution from hazardous facilities

Of all the environmental justice tools, federal environmental statutes and their state and local counterparts tend to be regarded as the most successful.[123] A community facing an asthma crisis can use these laws to challenge the siting or management of environmentally hazardous facilities in their neighborhoods. Federal laws such as the Resource Conservation and Recovery Act (RCRA),[124] the Clean Air Act (CAA),[125] and the NEPA[126] establish minimum environmental standards for permit and siting decisions concerning potentially hazardous facilities that may affect air quality.[127] Under the RCRA, for example, a community group can sue anyone "who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment."[128] Under the CAA, a community group can sue anyone "alleged to have violated . . . or to be in violation of . . . an emission standard or limitation" covered under the Act.[129] Community groups can also sue certain entities for violating procedural requirements. Under NEPA, programs that are managed, funded, or delegated by the federal government are required to consider and disclose information in an Environmental Impact Statement (EIS) to the public before undertaking a project

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municipal services equalization suits).

123. *See* Cole, *supra* note 122, at 526 ("Generally, it is easiest to block a facility using environmental laws. Judges are familiar with such challenges and understand them; the law is fairly clear and generally supports credible challenges to improperly permitted facilities."). *See also* La Londe, *supra* note 121, at 47 (discussing Cole's suggestion) (internal citations omitted).

124. 42 U.S.C. §§ 6901–6992k (1976).

125. 42 U.S.C. § 7401 et seq. (1990).

126. 42 U.S.C. §§ 4321 et seq. (1990).

127. *See, e.g.*, Jacalyn R. Fleming, *Justifying the Incorporation of Environmental Justice into the SEQRA and Permitting Processes*, 6 ALB. L. ENVTL. OUTLOOK 55, 63–64 (2002) (discussing the applicability of RCRA, CAA, and the Clean Water Act to environmental justice issues in New York).

128. 42 U.S.C. § 6972(a)(1)(B) (2000). *See also* Middlesex County Bd. of Chosen Freeholders v. N.J. Dep't of Envtl. Prot., 645 F. Supp. 715 (D.N.J. 1986) (allowing suit alleging imminent and substantial endangerment); Jones v. Inmont Corp., 584 F. Supp. 1425 (S.D. Ohio 1984) (allowing suit against off-site generator as "contributing to" imminent hazards).

129. 42 U.S.C. § 7604(a)(1) (2000). *See also* New York v. Niagara, 263 F. Supp. 2d 650 (W.D.N.Y. 2003) (holding that prior owner's failure to implement emissions control technology constituted CAA violation); Communities for a Better Env't v. Cenco Ref. Co., 180 F. Supp. 2d 1062 (C.D. Cal. 2001) (holding that management district's failure to require emissions control technology when granting construction permits violated CAA). *But see* Wilder v. Thomas, 659 F. Supp. 1500 (S.D.N.Y. 1987) (noting that the kinds of conditions and requirements that one can sue to enforce under the CAA are limited).

that may have adverse environmental effects.[130] This process requires public notice; allows environmental experts and members of potentially-impacted communities to participate in siting decisions; and can lead to the denial of a permit for the project.[131] A community group may be able to sue an agency for its failure to meet NEPA requirements, at which point a court can issue an injunction preventing the proposed project from moving forward until the EIS is filed properly.[132]

A low-income community of color may find its strongest legal tool in the state versions of these procedural environmental assessment statutes. Several states have adopted stronger or broader versions of NEPA.[133] New York State in particular has adopted the State Environmental Quality Review Act (SEQRA),[134] which local community groups have used to challenge the issuance of permits to hazardous facilities and to regulate acts that impact public health.[135] Under SEQRA, the "lead agency" for a project with possible environmental implications must assess the potential impact.[136] Broader than NEPA,

130. 42 U.S.C. § 4332(2)(C) (Supp. III 2000). *See also* Fleming, *supra* note 127, at 61 (explaining requirements of environmental review of proposed federal projects); Jason Pinney, *The Federal Energy Regulatory Commission and Environmental Justice: Do the National Environmental Policy Act and the Clean Air Act Offer a Better Way?*, 30 B.C. ENVTL. AFF. L. REV. 353, 389–90 (2003) (describing EIS as method "to induce agencies to 'stop-and-think'" and to disclose publicly before acting on potentially harmful environmental projects).

131. *See* Fleming, *supra* note 127, at 61–62; Pinney, *supra* note 130, at 390–92.

132. The possibility of a court issuing an injunction is strong due to the general lack of other remedies under the statute. *See* 4-9 TREATISE ON ENVIRONMENTAL LAW § 9.04(2)(b) (2006):

> If NEPA is applicable—i.e., if the agency's action meets the statutory requirement of 'major federal action having significant impact on the human environment,' and if it is shown that no impact statement, or an inadequate statement, has been filed, then an injunction will issue almost invariably, because an injunction is the only remedy designed to prevent a possibly irreversible change to the environment before the range of potential environmental consequences of the proposed action can be fully explored.

Id. (internal citations omitted). *See also* Nat'l Audubon Soc'y v. Hoffman, 132 F.3d 7, 17 (2d Cir. 1997) (holding that Forest Service "violated NEPA by failing to adequately consider all relevant environmental factors prior to making its finding of no significant impact" for logging project, and requiring agency reconsider its environmental assessment); Catron County Bd. of Comm'rs v. U.S. Fish & Wildlife Serv., 75 F.3d 1429, 1439–40 (10th Cir. 1996) (affirming district court's grant of preliminary injunction preventing agency which did not comply with NEPA from designating area as critical habitat given concerns that it would lead to significant flooding).

133. *See, e.g.*, 4-9 TREATISE ON ENVIRONMENTAL LAW § 9.08(1) (2005) (noting that twenty-six states have adopted laws requiring the filing of environmental impact statements); *The Hazardous Waste Facility Siting Controversy: The Massachusetts Experience,* 12 AM. J. L. & MED. 131, 136–38 (1986) (describing the Massachusetts Hazardous Waste Facility Siting Act); Cole, *supra* note 122, at 528–30 (discussing the role of the California Environmental Quality Act in California environmental justice challenges); Fleming, *supra* note 127, at 68–74 (discussing how the New York State Environmental Quality Review Act can be used to address environmental justice issues).

134. N.Y. ENVTL. CONSERV. §§ 3-0301(1)(b), (2)(m) & 8-0113 (McKinney 2006); N.Y. COMP. CODES R. & REGS. tit. 6, §§ 617.1–.20 (Supp. 2006).

135. See Fleming, *supra* note 127, at 71–72, 76–79 (describing case studies of environmental justice lawsuits).

136. § 617.6(a)–(b).

SEQRA requires that the lead agency consider the project's short- and long-term impact on social, economic, and aesthetic aspects of a community as a whole.[137] If the lead agency determines that the project will have a significant impact, then an EIS is required.[138] "At a minimum, where adverse environmental effects may result from a project, measures should be developed to mitigate those effects after alternatives to avoid or minimize those effects have been exhausted."[139] Thus, along with describing the impact of the project, the EIS must also list alternatives to the project and the steps the agency is taking to mitigate harmful effects.[140] Using SEQRA, plaintiffs can challenge the lead agency's decisions, particularly if the agency has failed to give an adequately "hard look" at the environmental impacts of the project.

Applying broad statutes like SEQRA, community groups have successfully challenged the siting of hazardous facilities in low-income communities of color. For example, a coalition of community organizations from low-income communities of color in New York City brought a lawsuit against the New York Power Authority (NYPA) and the New York State Board on Electric Generation Siting and the Environment, challenging the authorization for siting eleven gas-power turbine generators in their neighborhoods.[141] Pursuant to SEQRA, NYPA designated itself the lead agency for the turbine siting project, and prepared an Environmental Assessment Form, concluding that the project "would not have any potential significant environmental impacts."[142] However, the community groups were concerned that the turbines would release "PM 2.5 emissions," which have been associated with "premature mortality and increased hospital admissions . . . ; increased respiratory symptoms and disease in children and individuals with cardiopulmonary disease such as asthma; decreased lung function, particularly in children and individuals with asthma; and alterations in lung tissue structure and in respiratory tract defense mechanisms."[143] The coalition's claim in state court asserted that the agency failed to consider these health effects. The court concluded that NYPA indeed failed to take the required "hard look" at the "undisputed potential adverse health effects that can result from PM 2.5 emissions."[144] The court ordered NYPA to prepare an Environmental Impact Statement and enjoined the agency from further construction or operation of the turbine facilities.[145] SEQRA has also been used by community groups in

137. *See* Fleming, *supra* note 127, at 68–70.

138. § 617.7(a)(1).

139. Fleming, *supra* note 127, at 70.

140. § 617.9(b)(1).

141. *See* Uprose v. Power Auth. of N.Y., 729 N.Y.S.2d 42 (App. Div. 2001), *appeal denied*, 762 N.E.2d 931 (N.Y. 2001).

142. *Id.* at 44.

143. *Id.* at 46 (internal citations omitted).

144. *Id.*

145. *Id.* at 43.

other settings to challenge an agency's decision to proceed with a harmful project or action affecting their neighborhoods.[146]

Federal and state environmental statutes provide communities with tools by which they can protect themselves from the air pollution emitted by facilities sited in their neighborhoods. Using federal laws like NEPA and CAA and state statutes like New York's SEQRA, community members can require agencies to publicize, consider, and mitigate the hazardous effects of their facilities before siting them in their neighborhoods. By employing these tools, low-income communities of color can help ensure a healthier outdoor environment for their asthmatic children.

b. Using nuisance claims to alleviate pollution from hazardous facilities

In addition to environmental laws, common law public and private nuisance claims can also provide a basis for environmental justice claims against state and local siting decisions. Typically, to bring a public nuisance claim,

> the plaintiff must prove there has been "an unreasonable interference with a right common to the general public." In determining the unreasonableness of the interference one must consider "whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort[,] or the public convenience." Other considerations are "whether the nuisance is proscribed by a statute, ordinance or administrative regulation" or is "of a continuing nature or has produced a permanent or long-lasting effect" and the "actor knows or has reason to know" that the action has a "significant effect upon the public right." In order to recover in a public nuisance claim, the plaintiff must have suffered a "harm of a kind different from that suffered by other members of the public" or "have authority as a public official or public agency to represent the state or a political subdivision in the matter," or otherwise "have standing to sue as a representative of the general public."[147]

For a private nuisance claim, a plaintiff must prove (1) that "there has been a 'nontrespassory invasion of [his] interest in the private use and enjoyment of [his] land' which has resulted in substantial harm," and (2) that the invasion is intentional and unreasonable, or is unintentional and "'otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.'"[148]

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146. *See, e.g.*, New York City Coal. to End Lead Poisoning v. Vallone, 794 N.E.2d 672 (N.Y. 2003); Williamsburg Around the Bridge Block Ass'n v. Giuliani, 637 N.Y.S.2d 241 (Sup. Ct. 1995), *aff'd*, 644 N.Y.S.2d 252 (App. Div. 1996); Chinese Staff & Workers Ass'n v. City of New York, 502 N.E.2d 176 (N.Y. 1986).

147. La Londe, *supra* note 121, at 43–44 (quoting RESTATEMENT (SECOND) OF TORTS §§ 821B, 821C(1) (1979)) (alteration in original) (additional citation omitted).

148. *Id.* at 43 (quoting RESTATEMENT (SECOND) OF TORTS §§ 821D, 822 (1979)) (alteration in

Low-income communities of color in New York City have used nuisance laws and community organizing to obtain relief from environmental hazards in their neighborhoods. For example, in 1992, several community and environmental justice groups in Harlem sued New York City and the New York City Department of Environmental Protection (DEP) to prevent noxious emissions from the North River sewage-disposal plant.[149] Previous environmental violations at the plant had been addressed in an order from the New York State Department of Environmental Conservation (DEC).[150] The community groups sued the City and DEP, seeking enforcement of the order; an injunction based on common law nuisance claims; and monetary damages for injuries to their health, property, and quality of life due to the noxious odors and fumes.[151] The parties reached a settlement in which the City and DEP agreed to enforce strictly corrective actions by specific dates and with significant penalties; to complete an assessment of odor emissions after corrections were made; to designate West Harlem Environment Action and the Natural Resources Defense Council as co-enforcers of the DEC order; and for the City to provide $1.1 million for a North River Fund to address environmental and public health issues in West Harlem.[152]

Nuisance law has often been used by state agencies and private individuals to challenge the effects of pollution by public and private actors.[153] Along with environmental statutes, such common law tort claims can be used by low-income communities of color to alleviate the harmful pollution emitted from hazardous facilities in their neighborhoods. Using these tools, communities can improve their outdoor environment.

2. Reducing traffic-related air pollution in communities with high asthma rates

In addition to pollution-reduction efforts that target local hazardous facilities, communities of color have also worked to limit harmful fuel emissions from the traffic in their streets. In order to control the level of traffic-related air pollutants in urban residential areas, several states have enacted "anti-idling" regulations.[154] These regulations limit the amount of time an engine may "idle,"

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original) (additional citation omitted).

149. Vernice D. Miller, *Planning, Power and Politics: A Case Study of the Land Use and Siting History of the North River Water Pollution Control Plant*, 21 FORDHAM URB. L.J. 707, 720 (1994).

150. *See id.* at 719 (citing *In re* New York City Dep't Envtl. Prot. Order No. R2-3669-91-05 (July 1, 1992) (North River Sewage Treatment Plant—Odor, Flow and Air Emissions Control Order)).

151. *See id.* at 720 (citing W. Harlem Envtl. Action v. New York City Dep't Envtl. Prot., No. 92-45133 (N.Y. Sup. Ct. May 17, 1993)).

152. *See id.* at 721.

153. *See, e.g.*, State v. Schenectady Chems., Inc., 479 N.Y.S.2d 1010 (App. Div. 1984) (upholding state attorney general's authority to bring legal proceedings on behalf of the state to abate public nuisance).

154. *See* Cal. Air Res. Bd., App. B: Summary of Anti-Idling Regulations in Other States

i.e., remain on while the vehicle is not in motion, and thus reduce the pollutants released into the vehicle and the surrounding air. By limiting emissions, these regulations serve an important function in combating asthma, since emissions from fuel—particularly diesel exhaust—have been found to exacerbate allergies and asthma.[155] Like environmental law and common law tort claims, communities can use anti-idling regulations to exercise control over their outdoor environment.

Two regulations specifically prohibit excessive idling in New York City.[156] A state regulation limits the idling of diesel-fueled buses and trucks to five consecutive minutes;[157] a city anti-idling regulation limits idling to three minutes, and covers all motor vehicles.[158] Both regulatory schemes require residents to complain to the relevant state or city official, whose agency will then investigate the infraction and enforce the law.[159]

Larger-scale enforcement of the anti-idling regulations can provide greater relief than efforts to simply ticket individual violators. Both state and city regulations allow for enforcement against the owners of vehicle fleets and the land upon which the fleets idle. The city regulation states that "no person shall cause or permit" idling;[160] the state regulation specifically applies its anti-idling provisions to persons who own, operate, or lease vehicles, or who own or occupy land and have "actual or apparent dominion or control over the operation" of the vehicles.[161] Relying on these regulations, the New York State Attorney General's office has used its broad enforcement powers[162] to target numerous bus fleets for systematically violating anti-idling regulations, including Greyhound Bus Lines; Frito-Lay, Inc.; Community Coach, Inc.; Gray Line New York

(2002), *available at* http://arb.ca.gov/toxics/sbidling/appb.pdf.

155. *See* NAT'L CTR. FOR ENVTL. ASSESSMENT, U.S. ENVTL. PROT. AGENCY, HEALTH ASSESSMENT DOCUMENT FOR DIESEL ENGINE EXHAUST, EPA/600/8-90/057F, at 1–4 (2002). *See also* Thurston & Bates, *supra* note 109.

156. N.Y. COMP. CODES R. & REGS. tit. 6 §§ 217-3.1 to -3.3 (2004) (state regulation); N.Y.C. ADMIN. CODE § 24-163 (Supp. 2005) (city regulation). *See also* RULES OF THE CITY OF NEW YORK tit. 34 § 4-08 (Supp. 2003–2006) (city rule mirroring language of city regulation).

157. N.Y. COMP. CODES R. & REGS. tit. 6 § 217-3.2.

158. N.Y.C. ADMIN. CODE § 24-163 (2005).

159. For the most part, the state and city regulatory scheme operate similarly, albeit through different agencies. The New York State Department of Environmental Conservation enforces state regulations formally through "conservation officers" (police officers with the mandate to enforce environmental laws), with violations adjudicated in criminal court. N.Y. COMP. CODES R. & REGS. tit. 6, § 641.1 (2007) (conservation officers); *id.* § 640.1 (granting trial court jurisdiction). The New York City Department of Environmental Protection enforces the city anti-idling regulation through "peace officers" (officers, not police, with the mandate to enforce city environmental regulations), with violations adjudicated by the City Environmental Control Board. N.Y.C. ADMIN. CODE § 24-355 (peace officers); *id.* § 24-178 (granting board jurisdiction).

160. N.Y.C. ADMIN. CODE § 24-163.

161. N.Y. COMP. CODES R. & REGS. tit. 6, § 217-3.2.

162. N.Y. EXEC. LAW § 63(3) (McKinney 2002) (granting Attorney General the power to investigate, settle, and sue companies if there is evidence of fraud or illegality—typically violations of local, state, or federal law on a repeated basis).

Tours, Inc.; Leisure Lines, Inc.; and Suburban Trails, Inc.[163] When applied broadly to the owners of truck or bus fleets, parking lots, and vehicle transfer stations, anti-idling laws can have a significant effect on traffic-related emissions in a community.

Working with their state Attorney General's office to target the worst culprits of idling is one way for low-income communities of color in congested, high-traffic areas to reduce fuel emissions around their neighborhoods. In New York City, community organizations have played a key role in these kinds of actions. For example, residents of Hunt's Point in the South Bronx, an area with one of the highest asthma rates in country,[164] have been struggling with their asthma crisis for years. As a community consisting mostly of low-income people of color, they bear a disproportionate burden of New York City's waste treatment and processing facilities.[165] In addition, they also host the largest produce market terminal in the country—Hunt's Point Produce Market—which has five hundred or more diesel-fueled trucks in its lots at any given time, many engaged in illegal idling.[166] Annual emissions from the idling were estimated at more than seventy-two tons of nitrogen oxides, carbon monoxides, and volatile organic compounds a year.[167] In response to the community's concerns about their air quality, the New York State Attorney General investigated the Hunt's Point Produce Market, which falls under the state anti-idling law because it controls the operation of the trucks in its lot.[168] Under a settlement agreement, Hunt's Point Produce Market agreed to educate drivers about the idling laws through signs and brochures; hire peace officers to enforce anti-idling laws; issue summonses for violations; implement a community health project; explore alternative technologies; and report on their enforcement efforts.[169] Community leaders praised the agreement as a step towards reducing the asthma rate in their community.[170]

In a similar effort to combat childhood asthma, community advocates in New York City have also focused on the issue of public school bus exhaust. School buses emit dangerous levels of diesel exhaust into the buses and surrounding air.[171] Given the impact for low-income children of color, community

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163. *See* Press Release, Office of N.Y. State Att'y Gen., Hunt's Point Market to Reduce Diesel Fumes in the South Bronx (June 20, 2003), *available at* http://www.oag.state.ny.us/press/2003/jun/jun20a_03.html [hereinafter Hunt's Point Press Release].

164. *See id.*

165. Luz Claudio, Teresa Torres, Eva Sanjurjo, Llyod R. Sherman & Philip J. Landrigan, *Environmental Health Sciences Education—A Tool for Achieving Environmental Equity and Protecting Children,* 106 ENVTL. HEALTH PERSP. 849, 851 (Supp. 1998).

166. *See* Hunt's Point Press Release, *supra* note 163.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *See* ENV'T & HUMAN HEALTH, INC., CHILDREN'S EXPOSURE TO DIESEL EXHAUST ON SCHOOL BUSES 24–25 (2002), *available at* http://www.ehhi.org/reports/diesel (describing carcino-

leaders in New York City have called for changes in the operation of the public school buses.[172] In response to community advocates' concerns, the New York State Attorney General's office investigated four private bus companies, which collectively operate over sixty percent of the school buses contracted with the Department of Education in New York City.[173] When the investigation revealed that these companies repeatedly violated state and city anti-idling laws, the Attorney General negotiated an anti-idling agreement with them.[174] Under the settlement, the companies agreed to limit idling to no more than one minute within one block of a school; to implement a monitoring plan and other operations to ensure compliance with anti-idling laws; and to fund a $47,000 tree-planting project for public schools.[175] In addition, three of the companies agreed to install diesel exhaust filters with money available through the New York Power Authority.[176]

The Hunt's Point and school bus examples demonstrate that community advocacy with the state Attorney General's office can result in widespread enforcement of anti-idling laws, aimed at reducing asthma for communities in need. Community organizations can also take matters into their own hands, as exemplified by community-led lawsuits in New York City challenging the traffic pollution associated with waste transfer stations. For example, South Bronx Clean Air Coalition and Neighbors Against Garbage—collectively representing communities in the South Bronx, Williamsburg, and Greenpoint—filed a lawsuit in state court to force the New York City Sanitation Department to adopt stricter regulations for determining where waste transfer stations can be located.[177] As a result, the court ordered the Sanitation Department to issue new regulations.[178] Other community organizations have filed additional lawsuits to strengthen the regulations,[179] to oppose city contracts with truck haulers,[180] and to defeat siting

geneity of diesel exhaust); *id.* at 38–44 (presenting detailed research findings on particulates in diesel exhaust); U.S. Envtl. Prot. Agency, Clean School Bus USA—Human Health, http://www.epa.gov/otaq/schoolbus/humanhealth.htm (last visited Feb. 28, 2007); *School Bus Pollution and Its Impact on Children: Hearing Before the Puerto Rican/Hispanic Task Force, the Standing Comm. on Environmental Conservation, the Standing Comm. on Transportation, and the Standing Comm. on Education*, 2003 Assemb. 11 (N.Y. 2003) (statement of Peter R. Smith, Acting President, N.Y.S. Energy Research & Dev.) [hereinafter *School Bus Hearing*] (on file with author).

172. *See* Press Release, Office of N.Y. State Att'y Gen., School Bus Fleets Agree to Reduce Urban Air Pollution (Jan. 23, 2004), *available at* http://www.oag.state.ny.us/press/2004/jan/jan27a_04.html [hereinafter School Bus Press Release].

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. Salvatore Arena, *Foes Trash Increase in Transfer Depots*, N.Y. DAILY NEWS, June 5, 1996, at 1.

178. David Rohde, *Williamsburg/Greenpoint: A Victory, Perhaps Brief, On Garbage*, N.Y. TIMES, Apr. 13, 1997, § 13, at 10.

179. Douglas Martin, *Lawsuit Over Plan for Trash Transfer Stations*, N.Y. TIMES, Feb. 24, 1999, at B8.

180. *See, e.g.*, Paul H.B. Shin, *Garbage Plan Trashed B'klyn Speakers Lead Siege*, N.Y.

proposals that endanger the community.[181] Through these lawsuits and community organizing, communities of color have taken an active role in reducing pollution from idling and truck traffic.

Community organizations have also applied laws and regulations creatively to provide anti-pollution services to schools and residential areas with particularly high rates of asthma. By creating a "no-idling zone" around their neighborhoods or schools and otherwise mapping and investigating idling in their communities, low-income communities of color have taken direct action to focus on idling violations affecting their children. The Asthma Free School Zone (AFSZ) in New York City exemplifies the potential of the "no-idling zone." In and around its school sites, it concentrates on a combination of programs, including (1) enforcement of non-idling laws; (2) clean-fuel technology on school buses; (3) asthma care capacity at school; (4) roadwork and construction guidelines; (5) elimination of coal heating systems; and (6) smoking cessation.[182] Additionally, AFSZ can customize programs for schools to improve traffic flow, implement street greening, prevent other local sources of pollution, and provide other trainings.[183] By focusing on individual schools in New York, AFSZ can create effective partnerships between community members, teachers, school nurses, and children to help reduce asthma rates and attacks. Other communities across the country have used similar partnerships to undertake "community mapping"—a process through which neighbors come together to identify and address sources of pollution in their area—to enforce anti-idling laws.[184] By engaging large numbers of community members in local

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DAILY NEWS, Apr. 15, 1999, at 2. *See also* Ian Urbina, *Mayor is Urged to Use Barges to Carry Commercial Trash*, N.Y. TIMES, Sept. 17, 2004, at B3.

181. *See, e.g.*, Dennis Hevesi, *Brooklyn Waterfront; Lawsuit Seeks to Block a Garbage Incinerator in the Navy Yard*, N.Y. TIMES, Nov. 12, 1995, § 13, at 10; Bob Liff, *Waste-Transfer Permit Yanked: Ruling Is Another Victory for Red Hook in Trash War*, N.Y. DAILY NEWS, May 12, 2000, at 1.

182. Laura Green, *East Village Schools to Be in Asthma Pilot Program*, THE VILLAGER, Mar. 12, 2003, at 14.

183. Asthma Free School Zone, Site-Specific Program, http://www.afsz.org/Pop_ups/program_folder/ site_specific.html (last visited Feb. 28, 2007).

184. *See, e.g.*, Loh & Sugerman-Brozan, *supra* note 9, at 116–21. In Massachusetts, Alternatives for Community & Environment, an environmental justice organization, identified asthma and its causes as a main concern of the community through its youth leadership program, the Roxbury Environmental Empowerment Project (REEP). *Id.* at 116–17. REEP organized a community mapping project to address the issue of diesel exhaust and poor air quality in Roxbury, a low-income neighborhood of color in Boston. *Id.* at 117–18. Students in REEP worked with law students to map land use lot by lot in their neighborhood, identifying fifteen diesel bus and truck garages within 1.5 miles of their school. *Id.* at 119. Working with another neighborhood association, the students counted the number of buses that drive through the area and mapped the information. *Id.* They observed that buses idled for up to thirty to forty minutes, in violation of a state statute limiting idling time to five minutes. *Id.* at 119–20. In response, the REEP students started an anti-idling campaign: handing out informational tickets about the anti-idling law, wearing dust masks with "dump diesel" and "stop idling" written on them, and holding a press conference with state officials. *Id.* at 120. As a result, the city transportation authority agreed to post anti-idling signs and educate their drivers, and a more established group was formed. *Id.*

environmental concerns, these approaches to anti-idling enforcement can help communities exercise some control over their outdoor environment.

As shown by these examples, environmental justice litigation and organizing can help alleviate the public health problems posed by asthma. When asthma-stricken communities are confronted by the placement of a new industrial plant or waste site in their area, they can mobilize using federal and state environmental statutes to challenge that decision. When facilities emit high levels of pollution into the air, community advocates can use nuisance laws to seek relief. Communities can use traffic and anti-idling regulations to reduce the emissions from vehicles on the street. Such laws provide low-income communities of color with tools to promote and protect their health, and to press for positive changes in their outdoor environment.

D. Disability Rights Laws as a Means for Ensuring Reasonable Accommodations for People with Asthma

> *Ten-year-old Jill is falling behind in her schoolwork. She has missed several days of school due to asthma and asthma-related health problems. Part of the school is undergoing construction and Jill has begun to suffer asthma attacks while in the building. Her mother, Ms. Jordan, makes sure that Jill has her inhaler with her at all times. But because Jill is so young, she often has to rely on the school nurse to help her use her inhaler. Often the attacks become so severe that Jill has to leave school early. Ms. Jordan attempts to meet with Jill's teachers to determine a way to help her make up the work, but the teachers say that Jill will just have to find a way to catch up on her own. Ms. Jordan, who is raising Jill by herself, is worried that she won't be able to help Jill keep up at school without help from her teachers, and is concerned that Jill's asthma is getting worse.*

As this example shows, public and private entities often fail to provide the necessary services and accommodations that people with disabilities need to ensure the proper treatment of their ailments. In communities where institutions are already overburdened, public and private inaction can exacerbate the barriers faced by people with disabilities—particularly those faced by children. For example, the law requires schools to provide reasonable accommodations for asthmatic children so they can receive an adequate education.[185] Without such accommodations, asthmatic children may have high absentee rates, lower grades than those of their peers, and even face an unsafe environment. Schools often lack plans for responding to students' asthma attacks; some schools even prohibit asthmatic children from carrying or administering their own inhalers, and instead require them to store the inhalers with the school nurse or secretary.[186]

185. *See infra* notes 188–191 and accompanying text.

186. *Asthma Attacks at School are Disruptive to Routine, Under-Diagnosed*, HEALTH & MED. WK. (ATL.), Oct. 6, 2003, at 69; Laurie Tarkan, *Educating Schools About Life with Asthma*, N.Y. TIMES, Nov. 19, 2002, at F6.

In addition, many private school bus companies refuse to retrofit their buses with available clean-air technology that could help provide a safe environment for asthmatic children.[187]

Applying the requirements of federal and state disability rights laws can lead to improved outcomes for asthmatic children. Public and private entities can and should provide reasonable accommodations to asthmatic children and prohibit discrimination against them because their asthma is a disability. Schools must provide specialized education plans for certain asthmatic children. Schools and school bus companies could greatly improve the health outcomes of asthmatic children by providing them with what are arguably reasonable accommodations, such as adopting plans that allow children to self-administer asthma medication or installing available, low cost, clean-air technology. Thus, disability rights laws are another set of important legal tools for communities faced with an asthma crisis.

1. Asthma as a disability

A threshold question for all disability rights laws is whether the law encompasses the complainant's condition. Applicable disability rights laws include the Americans with Disabilities Act (ADA)[188] and the Rehabilitation Act of 1973,[189] which prohibit discrimination against people with disabilities and require reasonable accommodations by certain private and public entities; the Individual with Disabilities Education Act (IDEA),[190] which specifically applies to educational institutions and ensures children with disabilities the right to specialized services; and state analogues, such as the New York State Human Rights Law (NYSHRL),[191] which broadly prohibits discrimination and requires reasonable accommodations, similar to the ADA and Rehabilitation Act. These laws each define "disability" differently. Under current case law interpreting and applying these definitions, courts are more likely to include asthma as a disability under IDEA and NYSHRL than under the ADA and the Rehabilitation Act.

IDEA covers children with specific types of disabilities who require special education and related services.[192] The statute also includes a broad category of "other health impairments."[193] Federal regulations governing the statute define "other health impairments" as

187. Peter M. Rivera, *School Bus Companies Ignore Chance to Clean Air*, TIMES UNION (Albany, N.Y.), Aug. 2, 2003, at A6; Sondra Wolfer, *Exhaust-ing School Bus Work: A Drive to Get Companies to Reduce Diesel Pollution*, N.Y. DAILY NEWS, Sept. 5, 2003, at 2.

188. 42 U.S.C. §§ 12101–12213 (2000).

189. 29 U.S.C. §§ 701–96 (2000).

190. 20 U.S.C. §§ 1400–91 (2000).

191. N.Y. EXEC. LAW §§ 290–301 (McKinney 2005). *See also* N.Y.C. ADMIN. CODE §§ 8-101 to -131 (Supp. 2005).

192. 20 U.S.C. § 1401(3) (2000).

193. *Id.* § 1401(3)(i).

> having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—(i) is due to chronic or acute health problems such as asthma . . . and (ii) adversely affects a child's educational performance.[194]

Thus, an asthmatic child is only considered a child with a disability under IDEA if the condition alone or with other ailments prevents her from learning and necessitates special education.[195] Although case law has not directly addressed the issue, a showing that asthma leads to a large number of missed school days and necessitates a plan for providing homework assignments and make-up work should satisfy this requirement.[196]

In New York, state and local disability rights laws also apply to asthmatics. For example, under NYSHRL, a disability is defined as

> (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment . . . .[197]

Under NYSHRL, a person is disabled as long as her impairment is demonstrable by medically accepted standards.[198] Read more broadly than most federal disability statutes, NYSHRL does not include the ADA's requirement that a person's impairment substantially limit or impair the person's major life activities.[199] Conditions such as obesity,[200] panic disorder with agoraphobia,[201] and gender identity disorder[202] have all fallen under the purview of NYSHRL.[203] Thus, medically-documented asthma would constitute a disability under NYSHRL.

Unlike IDEA and NYSHRL, the Rehabilitation Act and the ADA are not clearly applicable to people with asthma. Both statutes use near identical

194. 34 C.F.R. § 300.7(c)(9) (2005).

195. *Id.* § 300.7(a)(2)(i)–(ii).

196. *See infra* note 206 and accompanying text.

197. N.Y. EXEC. LAW § 292(21) (McKinney 2005).

198. *Id.* § 292(21)(a). *See also* Doe *ex rel.* Pumo v. Bell, 754 N.Y.S.2d 846, 851 (Sup. Ct. 2003) (noting that plaintiff is protected under NYSHRL because disorder has been clinically diagnosed by a doctor using medically accepted standards).

199. *See Doe*, 754 N.Y.S.2d at 850–51 (citing State Div. of Human Rights *ex rel.* McDermott v. Xerox Corp., 480 N.E.2d 695 (N.Y. 1985)).

200. *McDermott*, 480 N.E.2d at 698–99.

201. Reeves v. Johnson Controls World Servs., Inc., 140 F.3d 144, 155–56 (2d Cir. 1998).

202. *Doe*, 754 N.Y.S.2d at 851.

203. Under New York City human rights law, a disability is also defined broadly as "any physical, medical, mental or psychological impairment, or a history or record of such impairment," with no requirement of limitations on major life activities. N.Y.C. ADMIN. CODE § 8-102(16)(a) (Supp. 2005).

language and define disability as a "physical or mental impairment" that "substantially limits . . . major life activities," "a record of such an impairment," or being "regarded as having such an impairment."[204] "Major life activities," according to the federal regulations, are "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."[205] Severe asthma can impair a person's ability to breathe, speak, walk, learn, and work; can be recorded and documented through medical records of hospitalizations, doctor's appointments, and medication usage; and has recognizable symptoms such as wheezing. Thus, a person with sufficiently severe asthma should be covered under these laws.[206] However, many courts have rejected the applicability of the ADA and the Rehabilitation Act to asthmatics, citing concerns about whether the plaintiff's asthma was truly a substantial limitation on a major life activity.[207]

Some of these concerns stem from the Supreme Court's holding in *Sutton v. American Airlines*,[208] which read the ADA and the Rehabilitation Act to apply only if an ailment substantially limits a major life function *while being properly treated*.[209] While this determination must be made on case-by-case basis,[210] courts have relied on *Sutton* and general doubts regarding the severity of asthma when treated to hold that the ADA and the Rehabilitation Act do not apply to asthmatic plaintiffs. For example, in *Boone v. Reno*,[211] a district court dismissed an asthmatic woman's claims of employment discrimination under the Reha-

204. 29 U.S.C. § 705(20)(B) (2000) (Rehabilitation Act); 42 U.S.C. § 12102(2) (2000) (ADA).

205. 34 C.F.R § 104.3(j)(2)(ii) (2005).

206. Indeed, some entities, like school districts, have decided that asthmatic children are covered by these statutes and have accommodated them appropriately. *See, e.g.*, Tracy v. Beaufort County Bd. of Educ., 335 F. Supp. 2d 675, 680 (D.S.C. 2004) (noting that plaintiff's school had formulated a "Section 504 Accommodation Plan" under the Rehabilitation Act after plaintiff suffered an asthma attack); Babicz v. Sch. Bd. Of Broward County, 135 F.3d 1420, 1421 (11th Cir. 1998) (noting that plaintiffs' children's school implemented Section 504 accommodation plans because of children's numerous asthma-related absences).

207. *See* White v. Honda of Am. Mfg., Inc., 241 F. Supp. 2d 852, 857 (S.D. Ohio 2003) (plaintiff's asthma did not substantially limit a major life activity since it only affected her ability to breathe around exhaust and other environmental irritants); Castro v. Local 1199, Nat'l Health & Human Servs. Employees Union, 964 F. Supp. 719, 725 (S.D.N.Y. 1997) (plaintiff's asthma did not substantially limit a major life activity since it only affected her breathing in extreme cold, humidity or strong winds); Gaddy v. Four B Corp., 953 F. Supp. 331, 337 (D. Kan. 1997) (plaintiff's asthma did not substantially limit a major life activity since she could control her asthma with medication and treatment); Heilweil v. Mount Sinai Hosp., 32 F.3d 718, 723–24 (2d Cir. 1994) (plaintiff's asthma did not substantially limit a major life activity since she could exercise and work in other locations within her workplace).

208. 527 U.S. 471 (1999).

209. *Id.* at 488–89 (holding that plaintiff with visual impairments that could be corrected by medication or other means did not have an impairment that substantially limited a major life activity).

210. *Id.* at 483.

211. 121 F. Supp. 2d 109 (D.D.C. 2000).

bilitation Act, holding that her asthma did not limit a substantial life activity.[212] The plaintiff claimed that her asthma, which had resulted in multiple attacks requiring hospitalization, limited her ability to breathe, and thus was covered under relevant law.[213] Citing the Supreme Court's ADA decision in *Sutton*, the district court stated that her argument failed because "the relevant inquiry is what kind of impairment her asthma is in its corrected state"; her breathing was manageable with asthma medication.[214] Furthermore, the court noted that she was unable to demonstrate that the defendant knew that her breathing was significantly impaired by her asthma in general.[215]

Children with severe asthma have not fared better in the courts than adults under these laws. In *Block v. Rockford Public School District # 205*,[216] parents sued the school board, claiming discrimination against their child as a result of her asthma.[217] The plaintiffs argued that the school failed to consistently provide their child with homework assignments, was unwilling to allow her to play softball, and refused to consider her asthma-related absences when calculating grades.[218] Notably, the student's asthma, which was typically manageable, significantly worsened when she was in her school building.[219] However, in part because this trigger was location-specific, the court held that the student was not disabled under the ADA and the Rehabilitation Act.[220] As the court explained:

> While it is true that breathing is a basic function of life and as such a major life activity . . . and that [plaintiff's] asthma and allergies affect her breathing, the key "is the extent to which the impairment restricts the major life activity." [Plaintiff's] deposition testimony is clear that her breathing problems did not restrict her in anyway [sic] except when she was at [her school]. At other times, one dose from her inhaler took care of her problems. A person is not disabled if by employing mitigating measures such as medication her impairment does not substantially limit her in any major life activity. . . . [Plaintiff's] testimony is clear that her condition did not substantially limit any major life activity. She could exercise, play sports and go to school. She may have been substantially limited in her ability to attend classes at [her school], but this location specific limitation was not a substantial limitation on a major life activity. She was physically able to attend school elsewhere.[221]

212. *Id.* at 113.
213. *Boone*, 121 F.Supp. 2d at 110.
214. *Id.* at 112 n.2.
215. *Id.*
216. No. 1-C-50133, 2002 U.S. Dist. LEXIS 24480 (N.D. Ill. Dec. 20, 2002).
217. *Id.* at *4.
218. *Id.*
219. See *id.*
220. *See id.* at *6–*7.
221. *Id.* at *6–*8 (internal citations omitted).

Thus, because the court found that the plaintiff's asthma did not substantially limit a major life activity, the fact that she suffered severe attacks in school was not enough for the court to consider her "disabled" under the Rehabilitation Act or the ADA.[222]

The analysis in these cases relies on a misunderstanding of the nature of asthma. Asthma can be treated with medication, but even regular medication will not necessarily prevent sudden attacks that can occur when an asthmatic person comes into unexpected contact with a trigger such as dust, allergens, or fumes. Thus, even when treated, asthma still limits a person's ability to breathe, work, and learn. One post-*Sutton* decision noted that asthma can have severe limitations on breathing, as a major life activity, even when treated:

> [Defendant] argues that plaintiff's asthma does not substantially limit his breathing because it can be controlled through mitigating measures, namely by using inhalers and taking hot showers. Although the court must consider any factors that may mitigate plaintiff's impairment, the presence of mitigating measures does not mean that an individual is not protected by the ADA. Rather, an individual may still be substantially limited in a major life activity, notwithstanding the use of a corrective device like medicine, which may only lessen the symptoms of an impairment. In other words, "the use or nonuse of a corrective device does not determine whether an individual is disabled; that determination depends on whether the limitations an individual with an impairment actually faces are in fact substantially limiting."
>
> . . . While these [mitigating] measures may lessen the duration of plaintiff's attacks, they do not lessen the limitations he faces when exposed to tobacco smoke or its residue . . . . Based on the above, the court easily finds that genuine issues of material fact exist as to whether plaintiff's asthma substantially limited his major life activity of breathing.[223]

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222. A person who fails to meet the substantially limiting impairment test can still be found disabled under the ADA if she can show that she was "regarded as having such an impairment." 42 U.S.C. § 12102(2)(C) (2000). This can be established by a finding that the person

> (1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation; (2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (3) Has none of the [physical or mental] impairments defined [at 29 C.F.R. § 1630.2(h)] but is treated by a covered entity as having a substantially limiting impairment.

29 C.F.R. § 1630.2(l)(1)–(3) (2004). Thus, if a person can demonstrate that the covered entity treated her as if she had a substantially limiting impairment, she could be considered disabled under the ADA.

223. Serv. v. Union Pac. R.R. Co., 153 F. Supp. 2d 1187, 1191–92 (E.D. Cal. 2001) (internal citations omitted).

Despite this reasoning, the majority of courts have not looked favorably on ADA and Rehabilitation Act claims for people with asthma. Fortunately, IDEA and state and local disability rights laws do not require a showing of substantial limitation on a major life activity and, as a result, continue to serve as powerful tools.[224]

2. Using IDEA and state and local disability rights laws to protect children with asthma

The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living."[225] A state is eligible for financial assistance under IDEA if it assures the federal government that it has policies and procedures to fulfill statutory goals.[226] In New York, each school board must establish a Committee on Special Education (CSE) to review information concerning disabled children.[227] The CSE must then develop an Individualized Education Program (IEP), a specialized education plan to meet the needs of each disabled child.[228] An IEP for an asthmatic child might include provisions to give the child notice of her assignments and make-up work while at home after an asthma attack;[229] extra assistance from the teacher or after-school tutoring when needed;[230] access to inhalers and other medication at school;[231] and homebound instruction when necessary.[232]

To allege a violation of IDEA, plaintiffs may challenge the adequacy of either the IEP or the child's education and related services (regardless of the adequacy of the IEP), or both.[233] Plaintiffs might have to exhaust administrative remedies regarding the IEP before bringing suit under IDEA.[234] Thus, a plaintiff

224. Some circuits require that parties exhaust IDEA administrative remedies before pursuing a federal court action against an educational institution, even if remedies are only sought under the ADA and the Rehabilitation Act. *See* Babicz v. Sch. Bd. of Broward County, 135 F.3d 1420, 1422 (11th Cir. 1998); Charlie F. *ex rel* Neil F. v. Bd. of Educ. of Skokie Sch. Dist. 68, 98 F.3d 989, 993 (7th Cir. 1996); Hope v. Cortines, 69 F.3d 687 (2d Cir. 1995). *But see* Witte v. Clark County Sch. Dist., 197 F.3d 1271 (9th Cir. 1999) (not requiring plaintiff to exhaust IDEA administrative remedies where plaintiff did not seek IDEA relief).

225. 20 U.S.C. § 1400(d)(1)(a) (2000).

226. 20 U.S.C. § 1412(a) (2000).

227. Ne. Cent. Sch. Dist. v. Sobol, 595 N.E.2d 339, 341 (N.Y. 1992).

228. *Id.*

229. *See Babicz*, 135 F.3d at 1421 n.6; Tracy v. Beaufort County Bd. of Educ., 335 F. Supp. 2d 675, 681–82 (D.S.C. 2004).

230. *See Tracy*, 335 F. Supp. 2d at 680.

231. *See Babicz*, 135 F.3d at 1421 n.6.

232. *See Tracy*, 335 F. Supp. 2d at 680.

233. *See* Susavage v. Bucks County Schs. Intermediate Unit, No. 00-6217, No. 22, 2002 U.S. Dist. LEXIS 1274, at *49–*50 (E.D. Pa. Jan. 22, 2002) (citing Ridgewood Bd. of Educ. v. N.E. *ex rel* M.E., 172 F.3d 238, 250 (3rd Cir. 1999)).

234. *Id.* at *50.

might commence an IDEA suit concerning an asthmatic child after administrative remedies have failed to address the problems faced by the child at school, whether the problems are related to the inadequacy of the IEP and/or the school's unwillingness to provide the necessary education and related services.

State law also provides potential remedies and covers a broader range of agencies and individuals than IDEA. NYSHRL covers a wide range of entities, including providers of public accommodations; employers; and owners, managers, and lessees of housing accommodations.[235] To allege a violation of NYSHRL, a plaintiff must show that the defendant either discriminated against her on the basis of her disability or did not make reasonable accommodations for her disability.[236] In the case of reasonable accommodations violations, the plaintiff must show that the accommodations do not jeopardize the well-being of others,[237] and, for certain covered entities, must also show that the accommodations do not constitute an undue hardship.[238]

Under applicable disability rights laws, entities such as schools, employers, and private providers of public accommodations are required to provide reasonable accommodations to people with asthma. For children, schools are required to craft IEP plans to meet their needs. A community that faces challenges to treating and managing asthma due to inhospitable conditions in schools and other public and private areas can use disability rights laws to ensure better conditions.

E. The Importance of Collaborative Efforts Given the Limitations on the Role of Litigation

Litigation is certainly not a panacea for communities facing an asthma crisis. Every area of the law discussed above has limitations when used in litigation. A housing action or an SSI appeal can take months to resolve. Environmental justice litigation is complex, often requiring considerable community support. A disability rights lawsuit against a school or an employer is often an action of last resort and invariably strains relationships between students and schools, employees and employers. The decision to pursue a legal action is always a difficult one, requiring careful consideration of the risks and rewards.

Nonetheless, many of the cases discussed above demonstrate the potential for individuals and families faced with asthma to raise successful legal claims.

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235. N.Y. EXEC. LAW § 296 (McKinney 2005).

236. Doe *ex rel.* Pumo v. Bell, 754 N.Y.S.2d 846, 851 (2003). New York City Human Rights Law also applies to public accommodations providers and mandates that such providers make reasonable accommodations meeting the needs of persons with disabilities. N.Y.C. ADMIN. CODE § 8-107(4), (15)(a) (2001).

237. *See Doe*, 754 N.Y.S.2d at 854 (citing Chevron U.S.A., Inc. v. Echazabal, 536 U.S. 73 (2002)).

238. N.Y. EXEC. LAW § 296(3)(b) (McKinney 2005) (listing factors used to determine whether accommodations impose undue hardship); *id.* § 296(10)(b)(1) (defining undue hardship).

Organizations like South Brooklyn Legal Services and the Harlem Children's Zone have had particular success in pursuing some of these kinds of actions. These efforts have been successful, in part, because a broad base of community partners—doctors, hospitals, lawyers, community advocates, and families—have supported their initiatives. Often, in this collaborative context, an awareness of the law does not lead to contentious litigation, but instead to a better understanding of each entity's rights and responsibilities. Thus, armed with an understanding of housing law, tenants can approach their landlord with a request for building-wide repairs and may get a response without going to housing court. Similarly, environment justice campaigns are often just as effective agents of change as environmental lawsuits. The law can provide a framework for approaching the racial and socioeconomic disparities in asthma rates without necessitating litigation itself. Either way, an understanding of the law is a powerful tool for communities faced with an asthma crisis.

CONCLUSION

Low-income communities of color across the country face disproportionately higher rates of asthma than other communities. These disparities are tied to the conditions affecting poor, highly racially-segregated neighborhoods—inadequate housing, environmental hazards, a lack of financial resources, and overburdened schools and workplaces. While the national public health strategy to combat asthma recognizes the racial and socioeconomic disparities in asthma rates, it has not comprehensively considered how legal strategies can assist individuals, families, and communities in addressing these underlying problems. Some local initiatives have filled the void by developing innovative collaborations between health practitioners and lawyers to serve the broad needs of asthma sufferers. These collaborative efforts should be expanded and replicated. Housing, government benefits, environmental justice, and disability rights laws can serve as the focus of these collaborative efforts. The potential for these laws to help people with asthma demonstrates the important role of law in addressing racial and socioeconomic disparities in health at the community level. With this information, public health officials, medical practitioners, hospitals, lawyers, and community advocates can collaborate to challenge the effects of racial and socioeconomic injustice that contribute to severe asthma in low-income communities of color.