

# HEALTH EQUITY NEWSLETTER

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Vol. 2, No. 3

Welcome to Health Equity, a monthly newsletter advocating for racial health equity and environmental justice in the United States, brought to you by Equal Justice Society and Lieff Cabraser Heimann & Bernstein LLP

## SPRING GREETINGS TO ALL THOSE WHO CELEBRATE:

Ramadan Mubarak, Eid-eh Shoma Mobarak,  
Chag Purim Sameach, Happy Easter,  
and Happy Holi!

## WOMEN'S HISTORY MONTH: MATERNAL HEALTH AND REPRODUCTIVE JUSTICE

In recognition of Women's History Month, we are turning back to the topic of our inaugural newsletter, maternal health in the United States and more broadly reproductive justice. Below we share recent advances and setbacks in the fight for reproductive justice and a guest article by Brooklyn Law student, Shiara Robinson, on the Black maternal health crisis.

Reproductive Justice (or "RJ") is the ability to decide if, when, and how to have children and to parent children with dignity and in safe environments. [SisterSong](#), a reproductive justice organization, explains that while women of color, indigenous women, and transgender people have always advocated for Reproductive Justice, the term was first coined by a group of Black women, Women of African Descent

for Reproductive Justice, in 1994 in Chicago. Reproductive Justice goes beyond reproductive choice to advance *access*. It also places the focus on and perspective from those who have been historically marginalized, and is an intersectional framework rooted in human rights law. As [Alicia Ely Yamin](#), Lecturer on Law and the Senior Fellow on Global Health and Rights at Harvard Law School explains, "advancing maternal health is inseparable from the struggle for reproductive justice."<sup>1</sup>

### Maternal Health:

► In January Lisa Holder, Equal Justice Society's president and counsel in our Hair Relaxer Litigation, appeared on the podcast *The Switch Up with Cheyanne M. Daniels*, to discuss [The Maternal Mortality Crisis: An American](#)

[Epidemic](#). Lisa discusses systemic racism in healthcare and details her own personal experience in a healthcare system where Black women are often treated as *persona non grata*. You can listen to the podcast [here](#).

► In February, midwives, midwifery students, and patients sued the state of Hawai'i alleging that the Midwifery Restriction Law "unconstitutionally criminalizes skilled midwives, birth workers, and even family members for providing care and support to pregnant and birthing people." The law has particularly impacted Native Hawaiian midwives and families of color. Native Hawaiian and other Pacific Islander people have **the highest pregnancy related mortality ratio in the country**. The plaintiffs are represented by the Center for Reproductive Rights and

<sup>1</sup> Yamin AE. Five Lessons for Advancing Maternal Health Rights in an Age of Neoliberal Globalization and Conservative Backlash. Health Hum Rights. 2023 Jun; 25(1):185-194. PMID: 37397427; PMCID: PMC10309149.

senior counsel, Hillary Schneller, explains that the law is “[akin to medical colonialism](#).” The complaint is available [here](#).



### IVF Access:

► A February Alabama Supreme Court’s decision holding embryos are persons effectively cut off access to IVF for families in Alabama. In response to this troubling order, state and federal

legislatures are considering, and in the case of Alabama passing, legislation that may address one type of access limitation while subjecting families seeking IVF treatment to further vulnerability in the event of negligence or gross misconduct by IVF providers. For example, the new Alabama law provides complete immunity (meaning, the patients have no legal recourse) to IVF clinics and doctors for damaging and/or destroying embryos and limits the liability of manufacturers (of the products and devices used in the IVF process) to IVF treatment reimbursement costs. As explained by Lieff Cabraser partner, Sarah London, to [USA Today](#), “It is vital to protect access, but we should not give complete immunity to the fertility industry and wipe out critical protections for women undergoing IVF treatment. When the industry fails to live up to minimum safety standards and the promises made

to hopeful parents, we need to ensure there is a pathway to accountability.”

### Right to Bodily Autonomy:

► French legislators [voted](#) to enshrine reproductive rights (abortion) in their constitution as a “**guaranteed freedom**.” This is a global first. While France has not faced the attacks on bodily and integrity reproductive rights seen here, the vote was in part a response to the fall of *Roe v Wade* in the US.

► Later this month, [CVS and Walgreens](#) will start selling **mifepristone** (a drug that terminates a pregnancy) on prescription at stores in several US states where abortion is still legal.

### Birth Control Access:

► [Opill](#), the first oral contraceptive pill to be available without a prescription in the U.S., is now available in drugstores and online.

## GUEST ARTICLE: TWO HUNDRED AND SEVENTY-FIVE DAYS BY SHIARA L. ROBINSON *Brooklyn Law School*

*“When there is no name for a problem, you can’t see the problem, and when you can’t see it, you can’t solve it.”*

-Kimberlé Crenshaw<sup>i</sup>



SHIARA L. ROBINSON  
Brooklyn Law School

### I. A MOST PRECIOUS GIFT

The United States ranks 55th globally in its maternal mortality rate.

<sup>ii</sup> Amongst high-income countries, the United States

has the highest maternal mortality rate,<sup>iii</sup> though the Centers for Disease Control and Prevention found that 84% of maternal deaths are preventable.<sup>iv</sup> In 2018, there were 17 maternal deaths for

every 100,000 live births in the United States,<sup>v</sup> with Black women three times more likely to die from pregnancy related causes than white women,<sup>vi</sup> and the infant mortality rate of Black babies was 10.8 deaths per 1,000 live births compared to 4.6 per 1,000 live birth of white babies.<sup>vii</sup>

### II. AN ANALYSIS OF THE SYSTEM

#### a. Historical and Institutional Disparities

There are several factors that contribute to the disproportionately high rate of

<sup>i</sup> Kimberlé Crenshaw, The Urgency of Intersectionality, TED WOMEN (Oct. 2016), [https://www.ted.com/talks/kimberle\\_crenshaw\\_the\\_urgency\\_of\\_intersectionality?language=en](https://www.ted.com/talks/kimberle_crenshaw_the_urgency_of_intersectionality?language=en).

<sup>ii</sup> 4 KIRA 4 MOMS, <http://www.4kira4moms.com> (last visited Dec. 13, 2023).

<sup>iii</sup> Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries, THE COMMONWEALTH FUND (Nov. 18, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries>.

<sup>iv</sup> BUSINESS WIRE (Jan. 19, 2023, 3:00 PM), <https://www.businesswire.com/news/home/20230119005321/en/Bobbie-for-Change-Elevates-Elaine-Weltero-th%E2%80%99s-Birth-Story-to-Fight-for-Improved-Black-Maternal-Care-and-Policy-Change-in-the-US>.

<sup>v</sup> Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries, THE COMMONWEALTH FUND (Nov. 18, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries>.

<sup>vi</sup> 4 KIRA 4 MOMS, <http://www.4kira4moms.com> (last visited Dec. 13, 2023).

<sup>vii</sup> Tanya Russell, Mortality Rate for Black Babies is Cut Dramatically When Black Doctors Care for Them After Birth, WASHINGTON POST (Jan. 13, 2021, 3:47 PM), [https://www.washingtonpost.com/health/black-baby-death-rate-cut-by-black-doctors/2021/01/08/e9f0f850-238a-11eb-952e-0c475972cfc0\\_story.html](https://www.washingtonpost.com/health/black-baby-death-rate-cut-by-black-doctors/2021/01/08/e9f0f850-238a-11eb-952e-0c475972cfc0_story.html).

pregnancy or childbirth related deaths, and infant mortality deaths within the Black community including societal, institutional, and healthcare related issues. Reproductive health equity researcher Rachel Hardeman credits structural racism as the root cause of the gap between infant mortality of Black babies and other babies,<sup>viii</sup> defining structural racism as the “normalization and legitimization of an array of dynamics – historical, cultural, institutional and interpersonal – that routinely advantage white [people] while producing cumulative and chronic adverse outcomes for people of color.”<sup>ix</sup>

Before babies enter the world, Black pregnant women deal with a host of healthcare disparities rooted in structural racism. Myths that Black people have thicker skin, higher pain thresholds, and countless other false notions fuel structural racism and hidden biases that plague Black women during primary and maternal healthcare. As recent as 2016, many medical students and residents believed these false truths; 40% of first- and second-year medical students endorsed the belief that “Black people’s skin is thicker than white people’s.”

There are misconceptions that a Black woman’s financial situation, level of education or lifestyle are a direct correlation to maternal death and infant

mortality. However, the most famous athlete in the world, Serena Williams, experienced a near-death experience after delivering her first child due to nurses minimizing her needs.<sup>xi</sup> If the critically acclaimed G.O.A.T., is easily dismissed by healthcare staff multiple times, the likelihood of everyday Black women having similar interactions is high.



### **b. Alternative Routes to Motherhood/Childbirth**

Therefore, many Black women have turned to alternative methods for pregnancy and childbirth support. Doula and midwives are experts that can aid families in making the transition from pregnancy to parenthood.<sup>xii</sup> A birthing and/or postpartum doula provides nonmedical techniques, and recovery and emotional support<sup>xiii</sup>—things often overlooked in traditional medical facilities, as women

are generally discharged from hospitals three days after vaginal birth.<sup>xiv</sup>

Certified nurse-midwives are licensed, independent health care providers,<sup>xv</sup> recognized under federal law as registered professionals.<sup>xvi</sup> The Cleveland Clinic defines a midwife as a healthcare provider who is trained to provide obstetric and gynecological services, including primary care, prenatal and obstetric care, and routine gynecological care like annual exams and contraception.<sup>xvii</sup> Between 2019 and 2020 there was a 30% increase in Black women who opted to give birth in a “community birth setting”—a birth center or home birth—not a hospital.<sup>xviii</sup>

## **III. SOLUTIONS TO SWADDLE FUTURE BABIES**

The crux of this crisis is of discriminatory origin and at the center are Black women who find themselves at the intersection of being Black, being women, and being pregnant. The gift of a successful birth and healthy baby transcends racial lines and should be something that unites us as Americans.

### **a. Two Hundred and Seventy-Five Days**

To eradicate the Black maternal health crisis and subsequent Black infant mortality crisis, several changes must occur.

viii Tanya Russel, *Mortality Rate for Black Babies is Cut Dramatically When Black Doctors Care for Them After Birth*, WASHINGTON POST (Jan. 13, 2021, 3:47 PM), [https://www.washingtonpost.com/health/black-baby-death-rate-cut-by-black-doctors/2021/01/08/e9f0f850-238a-11eb-952e-0c475972cfc0\\_story.html](https://www.washingtonpost.com/health/black-baby-death-rate-cut-by-black-doctors/2021/01/08/e9f0f850-238a-11eb-952e-0c475972cfc0_story.html).

ix Id.

x Janice A. Sabin, *How We Fail Black Patients in Pain*, AAMC (Jan. 6, 2020) <https://www.aamc.org/news/how-we-fail-black-patients-pain>.

xi Serena Williams, *How Serena Williams Saved Her Own Life*, ELLE (Apr. 5, 2022, 7:00 AM), <https://www.elle.com/life-love/a39586444/how-serena-williams-saved-her-own-life/>.

xii *Doula vs. Midwife: What's The Difference*, HEALTHLINE (Apr. 7, 2023), <https://www.healthline.com/health/pregnancy/doula-vs-midwife>.

xiii Id.

xiv NEW YORK-PRESBYTERIAN, <https://www.nyp.org/womens/pregnancy-and-birth/labor-delivery/frequently-asked-questions#:~:text=How%20long%20will%20I%20stay,approximately%202%20nights%2C%203%20days>.

xv *Essential Facts About Midwives*, AMERICAN COLLEGE OF NURSE-WIVES (May 2019), <https://www.midwife.org/acnm/files/cclibraryfiles/filename/000000007531/EssentialFactsAboutMidwives-UPDATED.pdf>.

xvi 42 CFR § 440.165 (1982).

xvii CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/22648-midwife>.

xviii Nicquel Terry Ellis, *As The Nation Battles A Maternal Health Crisis, More Women of Color Are Choosing Birth Centers Over Hospitals*, CNN (Dec. 9, 2023, 1:00 PM), <https://www.cnn.com/2023/12/09/us/women-of-color-birth-centers-reaj/index.html>.



### **i. Legislative Action**

Legislation that will help lower the Black maternal and infant mortality rates will address access to health insurance and doula and midwifery care, funding for community-based organizations, postpartum healthcare, and non-clinical support during and after pregnancy. The Black Maternal Health Momnibus Act is comprised of thirteen titles, each introduced as a standalone bill by a Member of the Black Maternal Health Caucus<sup>xix</sup>. The Act was officially introduced to Congress in the Senate on May 15, 2023, by Senator Cory Booker.

### **ii. Implicit Bias Training**

Much of what we learn comes from home or how we are brought up, so people can only be faulted for their unconscious biases to an extent.

Unconscious bias training seeks to raise awareness of the mental shortcuts that lead to snap judgments that are often based on race and gender. The most effective training goes beyond pure awareness by teaching trainees to manage their biases, change their behavior, and track their progress.<sup>xxii</sup>

This training should be integrated into medical curriculums at all levels and cover racial discrimination, racial-based myths, and require the delivery of quality patient care to all patients, regardless of race. The training should also include bedside manner, social skills, and empathy—skillsets that are not always second nature to extremely intellectual people such as doctors—and the implication of one's unconscious bias on those skills.

### **iii. Doula and Midwife Access Expansion**

With so many Black women turning to doula and midwifery care, access to this alternative maternal healthcare should be expanded and promoted. Insurance plans should emphasize this benefit to policy holders. Specifically, coverage for certified midwives and certified nurse midwives—certified professionals who can practice at hospitals, clinics, birth centers or clients' homes. Additionally, more education about the safety and efficacy of these alternative maternal healthcare methods needs to be shared.

### **iv. Community Activation and Education**

*“Without community there is no liberation.” Audre Lorde<sup>xxiv</sup>*

Equally important is community activation and education to spread awareness about the crisis. To truly see change, individuals besides Black mothers and families need to care. Pregnant and non-pregnant Americans of all races must join the fight to combat this crisis. And it begins in personal circles, during community conversations, across social media platforms, at fireside chats and beyond; simply by sharing facts.

### **b. Challenges**

This will not be without challenges. Most concerning are lack of connection or care about the issue and shifting the center. When issues have a centralized message, people tend to shift the center, making it about them or deflecting from the people who are at the center. The change this



article seeks is not to disparage other pregnant women or invalidate their issues. It is about the Black maternal health crisis—the disparities faced by Black women, that are statistically backed.

Another concern is that the rising spotlight on the issue could cause severe backlash. This could manifest in counter organizations that claim additional support for Black expecting mothers and babies is unfair treatment and an equal protection violation. In the wake of the multitude of affirmative action lawsuits, this would not be surprising. Backlash might also arise by medical providers refusing to submit to implicit bias training or claiming they have none.

However, the change that I am seeking will not just benefit Black women and families but all Americans looking to expand their families as racial equity historically benefits all Americans.

xix BLACK MATERNAL HEALTH CAUCUS, <https://blackmaternalhealthcaucus-underwood.house.gov/Momnibus>.

xx Black Maternal Health Momnibus Act, S. 1606, 118th Cong. (2023).

xxi Francesca Gina and Katherine Coffman, *Unconscious Bias Training That Works*, HARVARD BUSINESS REVIEW (Sept.-Oct. 2021), <https://hbr.org/2021/09/unconscious-bias-training-that-works>.

xxii Id.

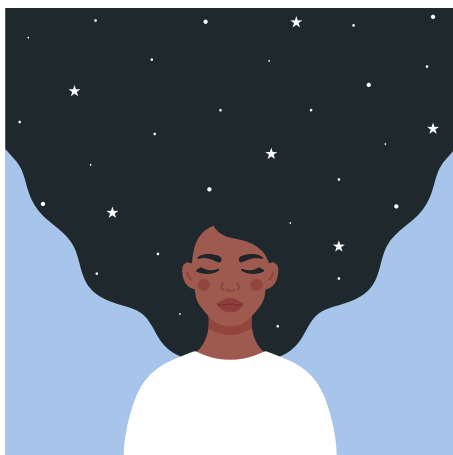
xxiii CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/22648-midwife>.

xxiv Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House* (1984).

xxv Wally Adeyemo, *Racial Equity Benefits All Americans*, U.S. DEPARTMENT OF THE TREASURY (Jun. 7, 2023), <https://home.treasury.gov/news/featured-stories/racial-equity-benefits-all-americans>.



## CIVIL RIGHTS DOCKET UPDATE



### HAIR RELAXER LITIGATION

Last month was the one year anniversary of the consolidation of cases across the country into a single federal court litigation (“multidistrict litigation” or “MDL”) seeking to hold hair relaxer companies responsible for gynecologic cancers caused by their products. Over eight thousand women, represented by over 100 different law firms, have filed cases that are now pending before one federal judge, Hon. Mary Rowland in Chicago, Illinois.

The Court is actively managing the pre-trial investigation and evidence collection process, and holding the parties to strict deadlines. The fact discovery period is scheduled to close on January 17, 2025. The Court will also be appointing a “special master” to manage the collection of materials stored on computers amongst the parties. A special master is a person the Court appoints to assist it in managing complex litigation and resolving disputes. In this case, the disputes are related to the identification, collection, and preservation of decades of electronically stored information related to the sale and marketing of Defendants’ hair relaxer products.

The Court recently denied L’Oréal USA’s motion to reconsider a prior

court ruling that ordered L’Oréal USA to produce documents from its French parent company. The Court denied L’Oreal’s motion and ordered that L’Oreal must produce the documents as previously ordered.

On December 19, 2023, Judge Rowland issued Case Management Order No. 9, which governs the procedures necessary to complete Plaintiff Fact Sheets (“PFS”) and the signing of authorizations for the release of certain records. A PFS is a standardized questionnaire-styled form used to gain information about plaintiffs’ product usage and injuries. All information disclosed on a PFS or records produced under a signed authorization is treated as confidential. We recognize that completing the PFS can feel burdensome and be upsetting for some of our clients. However for most plaintiffs, this is likely the most time-consuming requirement that will need to be completed in this litigation. If you have any questions about the PFS process, please do not hesitate to reach out to a member of our legal team.

Please stay up to date by visiting [hairrelaxercase.org](https://hairrelaxercase.org).

### CAMP LEJEUNE

Many people of color spent time at Marine Corps Base Camp Lejeune in North Carolina between August 1953 and December 1987. During that time, people at the base were exposed to contaminated water that has since been linked to many cancers and other illnesses. Claims based on these illnesses are progressing quickly in North Carolina federal court, with Elizabeth Cabraser of Lieff Cabraser serves as one of the court-appointed Co-Lead Counsel for Plaintiffs. Trials for “Track 1” diseases—bladder cancer, kidney cancer, leukemia,

Parkinson’s disease, and non-Hodgkin’s lymphoma—will begin by the end of this year. The court recently picked the “Track 2” diseases, which will head to trial next: prostate cancer, kidney disease, lung cancer, liver cancer, and breast cancer. Plaintiffs’ leadership posts all of the court’s most recent decisions at [camplejeunecourtinfo.com](https://camplejeunecourtinfo.com).

Anyone who thinks exposure at Camp Lejeune might have caused an illness—to themselves or to a deceased loved one—can file an administrative claim with the Navy. If the Navy does not respond for six months, they can file a claim in court using a simplified Short Form Complaint. We recommend speaking with an attorney before taking any action, as the information provided to the Navy can limit damages in a lawsuit. More information can be found [here](#).



### JACKSON, MISSISSIPPI AND BENTON HARBOR, MICHIGAN LEAD WATER CRISIS CASES

Lead is a toxic metal that causes severe health consequences, especially in children. There is [no safe level of exposure to lead](#).

Proposed class actions have been filed on behalf of residents of Jackson, Mississippi and Benton Harbor, Michigan alleging residents have consumed lead-contaminated water in their public water supply through the actions and failures of their elected officials and private companies.

In Benton Harbor, Michigan, plaintiffs successfully defeated the State of Michigan's motion to dismiss the case in the Court of Claims. In federal court, the claims are moving forward against the City of Benton Harbor. The defendants have appealed both these orders in favor of plaintiffs. A third proposed class action has been filed in Michigan state court against the private engineering companies and City defendants. The City defendants have filed a motion arguing plaintiffs' claims are untimely and plaintiffs opposed this motion.

In Jackson, on February 5, 2024, the federal court judge dismissed plaintiffs' constitutional claims but allowed plaintiffs to file an amended complaint to strengthen claims against the City of Jackson. Regardless of the outcome, Plaintiffs' negligence claims move forward against the City of Jackson and the private engineering company and the case continues.

To learn more, please visit: Benton Harbor: <https://www.lieffcabraser.com/environment/benton-harbor-water-poisoning/> and Jackson: <https://www.lieffcabraser.com/environment/jackson-mississippi/>.

## **SOCIAL MEDIA HARMS TO CHILDREN AND TEENS**

In 2023, both the Surgeon General and the American Psychological Association put out health advisories on the harmful impact social media use can have on our youth. These harms include anxiety and depression, eating



disorders, self-harm, and suicidal behavior. Social media use, however, may differ by race, ethnicity, and gender. As recently reported by the [New York Times](#), a new study by Pew found “Black and Hispanic teenagers ages 13 to 17 spend far more time on most social media apps than their white peers. One-third of Hispanic teenagers, for example, say they are ‘almost constantly’ on TikTok, compared with one-fifth of Black teenagers and one-tenth of white teenagers. Higher percentages of Hispanic (27 percent) and Black teenagers (23 percent) are almost constantly on YouTube compared with white teenagers (9 percent); the same trend is true for Instagram.” Social media thus can disproportionality impact the mental well-being of Black and Hispanic teenagers. If you are concerned about the impact of social media on your child's self-esteem and mental health, please consult the Surgeon General's advisory by clicking [here](#). For more information about lawsuits against the social media companies for harms caused to youth, please click [here](#).

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child's self-esteem and mental health, please consult the Surgeon General's advisory by clicking [here](#). For more information about lawsuits against the social media companies for harms caused to youth, please click [here](#).



### NECROTIZING ENTERCOLITIS (NEC) IN BABIES FED COW-MILK INFANT FORMULA

[NEC](#) is the most common, serious gastrointestinal disease affecting newborn infants. Preterm and low birth weight babies have a higher risk

of NEC. LCHB represents families whose children suffered by using this product.

The potentially lethal disease NEC in preterm and low-weight infants has been linked to the use of cow-milk based formula, including Similac and Enfamil. Despite the strong medical evidence establishing the extreme dangers that cow-based products pose for premature infants, manufacturers have marketed and continue to market their cow-based products as an equally safe alternative to breast milk, and indeed have promoted their products as necessary for additional nutrition and growth. Formula companies have historically targeted women of color and systemic and structural barriers, including racism, have resulted in Black and Hispanic families using formula (rather than breastfeeding) at higher rates than white families. To learn more, please click [here](#).

### TALCUM POWDER LITIGATION

Johnson & Johnson marketed talcum powder to women and girls, especially

women and girls of color, for decades for personal hygiene use and as a method of absorbing moisture. Tens of thousands of lawsuits have been filed by women alleging Johnson & Johnson's baby powder and Shower to Shower products caused their epithelial ovarian cancer. As alleged in the lawsuits, the ovarian cancer risks were concealed from consumers, a "failure to warn" that has led to injuries and deaths from talc exposure. LCHB represents women who suffered ovarian cancer after use of this product. For more information, please [click here](#).



## MEET OUR LEGAL TEAM



**TO SIGN UP**

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