

BUILDING A HOUSE FOR GIDEON: THE RIGHT TO COUNSEL IN EVICTIONS

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“[T]he justification for providing attorneys to low-income renters can be numerically quantified, [but] the real justification is in our country’s bones: the guarantee to life and liberty.”¹

The United States appears to be on the cusp of an eviction defense revolution. For the first time in U.S. history, tenants facing eviction in several jurisdictions are guaranteed legal representation. In under two years, three cities passed legislation establishing the right to counsel in evictions, and many more states and cities are poised to follow. Jurisdictions nationwide should build on this movement and similarly enact legislation to provide a right to an attorney for those facing the loss of a core human interest, their home. This Article examines three groundbreaking right to counsel statutes from New York City, San Francisco, and Newark, New Jersey, argues for jurisdictions nationwide to adopt similar legislation, and provides a framework for improving existing and future legislation.

The Article places the right to counsel in evictions against the backdrop of the housing crisis and in the context of the history of the civil right to counsel movement. Evictions are filed at a rate of four per minute in the United States. Eviction courts have been characterized by legal scholars as “eviction machines,” churning out orders evicting unrepresented tenants in favor of their represented landlords, regardless of the merits of the case. The consequences of eviction are tragic, impacting tenants’ physical and mental health for years. Evictions both destabilize and place an increased financial burden on communities. However,

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1. Sarah Free, Opinion, *Time to Confront Connecticut’s Eviction Crisis – With Lawyers*, HARTFORD COURANT (Feb. 10, 2019) (alteration in original), <https://perma.cc/4J2F-F9ML>.

when tenants are represented by a lawyer, they are dramatically more successful. Tenants with counsel effectively raise defenses, obtain settlement agreements to avoid eviction, and obtain repairs so they can live in safe and healthy conditions.

This Article argues that cities and states across the country should adopt their own right to counsel in eviction legislation. It also provides a framework for strengthening existing laws and future legislation, arguing that the right to counsel should attach earlier in the eviction process and that tenants should be guaranteed representation in both cases terminating housing assistance and affirmative cases seeking to remedy substandard housing conditions.

INTRODUCTION	65
I. UNSHELTERED, UNSUBSIDIZED, AND UNREPRESENTED	67
A. The Home as the Building Block for Everything Else	68
B. The Scarcity of Safe, Decent Housing	71
1. The affordable housing crisis	71
2. Unsubsidized	72
3. Uninhabitable	74
C. Unrepresented	75
II. WHO IS GIDEON AND WHY DOES EVERYONE WANT HIM TO BE CIVIL?	
.....	80
A. An Obvious Truth: The Right to Counsel in Criminal Proceedings	81
B. Be Civil, Gideon: The Right to Counsel in Civil Proceedings .	84
C. No <i>Gideon</i> , No How	88
III. THE RIGHT TO COUNSEL IN EVICTIONS BECOMES “UNIVERSAL”	91
IV. THE BUILDING BLOCKS: STRENGTHENING AND EXPANDING THE RIGHT TO COUNSEL IN EVICTIONS	98
A. The Right to Counsel Should Attach Upon Receipt of a Notice Terminating Tenancy	99
1. How the eviction machine works	99
2. Notice: You have the right to free representation from a lawyer	101
B. The Right Should Attach to Administrative Housing Assistance Termination Hearings	103
1. Air your grievances: Full representation for public housing tenants	104
2. Section 8 terminations: Where an eviction can be lost before it is ever filed	105
3. Dear Gideon, we terminated your voucher and you have the right to a free attorney	106
C. The Right Should Be Expanded to Protect Tenants’ Right to Live in Safe and Healthy Housing	108
CONCLUSION	112

INTRODUCTION

James² was a 21-year-old man with an intellectual disability whose Section 8 voucher³ had been erroneously terminated the previous month. After being unable to secure an attorney before his voucher termination hearing, he was required to defend himself. Without his voucher, he could not afford rent, and his landlord filed an eviction.

The day of his eviction hearing, he sat with his mother on the benches outside of the courtroom. There was an uncomfortable, quiet buzz in the hallway as landlords and tenants waited to be called. When James' legal aid attorney arrived and greeted him, other tenants watched curiously. He was the only tenant with an attorney that day, and probably one of few who would not be evicted. While James' attorney quietly explained what would happen in the courtroom, the clerk began calling all the names of tenants who never signed in, and the judge quickly entered orders of eviction in favor of their landlords.⁴ Eventually the clerk called James. They entered the small courtroom. The judge and the attorneys spoke rapidly using words that meant nothing to James or his mother, and a few minutes later, the judge announced she was going to dismiss the case. Everyone stood up and James and his mother followed his attorney out of the courtroom. Once out in the hallway, the attorney quickly explained that James won because his landlord gave him an improper notice. She then ran to speak with the landlord's attorney. When she returned, the attorney explained that the landlord was willing to give James the week to move out before he would attempt to evict him again. James would be homeless again, but at least he would not have an eviction on his record.⁵

James' attorney then appealed the housing authority's decision to terminate James' voucher. After a year and a half of negotiations, re-hearings, appeals, and briefs, a district court judge ordered that the housing authority's actions and the hearing officer's decision were arbitrary and capricious. Over two years after his initial termination hearing, James moved back into an apartment with a voucher. During the pendency of the case, counsel for the housing authority would repeatedly state in briefs that James had *chosen* not to have counsel present at

2. Names and facts changed to protect identity.

3. The Housing Choice Voucher Program, often called Section 8, is a federal housing subsidy program that eligible low-income tenants can use to pay for housing on the private rental market. *Policy Basics: The Housing Choice Voucher Program*, CTR. ON BUDGET & POLICY PRIORITIES, (May 3, 2017), <https://perma.cc/T4B3-UEU8>. See also *infra* Parts I.B.2 and IV.B.2.

4. Some studies show half or more of tenants do not show up for their eviction hearing, perhaps because they feel powerless to prevent their eviction. See *infra* Part IV.A.2.

5. A record of eviction can prevent tenants from obtaining other housing, and even receiving housing assistance. See *infra* Parts I.A and I.B.2.

the initial hearing. If James had had counsel available to him, it is virtually certain that his voucher would not have been terminated. He would not have needed to sleep in a car parked in various places around the city. Nor would he have had to move into a house that was in foreclosure and owned by his mother's abusive ex-partner, where he slept on the unfinished floor. He would not have suffered the loss of his home, his proudest possession, or experience the indignity of having it taken away when he knew he had done nothing wrong.

Though James' case is appalling, the fact that he had an attorney at his eviction hearing to successfully raise his defense was fortunate compared to most. When tenants have an attorney, they are far more likely to be successful in eviction court.⁶ The vast majority of tenants, however, are unrepresented through the eviction process,⁷ and eviction courts, sometimes referred to as eviction machines or eviction mills, hurriedly churn out orders evicting tenants regardless of the merits of the case.⁸

In 2017, recognizing the dire consequences of eviction, New York City adopted groundbreaking legislation guaranteeing the right to counsel in evictions. Since then, San Francisco, and Newark, New Jersey⁹ have adopted their own legislation guaranteeing the right to counsel, and many more cities and states appear likely to follow suit.¹⁰

Part I will describe the dire consequences of inadequate housing, explain the United States' housing crisis, and demonstrate why the right to counsel in evictions is a critical piece of the solution. Part II will discuss the history of the right to counsel in the United States. It will place the development of the right to counsel in eviction proceedings in the context of a broader movement toward a right to counsel in civil proceedings. It will also analyze some of the critiques of the civil right to counsel movement and argue specifically that the right to counsel in eviction proceedings should be expanded. Part III reviews the three right to counsel laws which already exist, along with pending legislation, and

6. See *infra* Part I.C.

7. Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J. L. & GENDER 55, 78 (2018). Most Section 8 voucher holders also represent themselves in termination hearings, which are fraught with the potential for error. And, very few termination decisions are ever appealed. See Angela McNair Turner, *The Elephant in the Hearing Room: Colorblindness in Section 8 Voucher Termination Hearings*, 13 BERKELEY J. AFR.-AM. L. & POL'Y 45, 50-52 (2011).

8. See *infra* Part I.C. The terms eviction mills and eviction machines are commonly used in media and scholarship for eviction courts. See, e.g., Breezy A. Schmidt, *North Dakota Case Study: The Eviction Mill's Fast Track to Homelessness*, 92 N.D. L. REV. 595 (2017); Kim Barker et al., *The Eviction Machine Churning Through New York City*, N.Y. TIMES, (May 20, 2018), <https://perma.cc/8HM4-BCL5>.

9. Prior to the publication of this article, the City of Cleveland became the fourth city to pass a right to counsel in eviction law on October 1, 2019. The law ensures counsel for certain low-income tenants with at least one child who are facing eviction. *City of Cleveland Creates Right to Counsel in Cleveland Housing Court*, LEGAL AID SOC'Y OF CLEVELAND (Oct. 1, 2019) [hereinafter *Cleveland Creates Right to Counsel*], <https://perma.cc/5EHN-BY4D>.

10. See *infra* Part III.

discusses other jurisdictions that are moving toward such legislation. Finally, Part IV proposes strengthening right to counsel in eviction laws by ensuring that the right attaches earlier in the eviction process, and that the right also applies to the termination of housing assistance. It further proposes that policymakers and advocates should consider expanding the right to counsel beyond eviction defense to affirmative actions against landlords who fail to maintain habitability standards, and lays out a pilot project for doing so.

I. UNSHELTERED, UNSUBSIDIZED, AND UNREPRESENTED

The negative impact of inadequate housing on a person's well-being, their perception of self, and their physical and mental health is profound and well-documented.¹¹ Indeed, it can be a matter of life or death.¹² Despite this, the role of housing as a basic human need is not apparent from policy and practice in the United States.¹³

The United States is in the midst of a housing crisis, and while the problem is not new, it is getting worse.¹⁴ There is a lack of affordable housing.¹⁵ There are far fewer housing assistance subsidies than are needed.¹⁶ Much of the housing stock that is affordable to low-income individuals has substandard or sometimes life-threatening conditions.¹⁷ And four evictions are filed every minute across the country,¹⁸ the outcomes of which favor landlords regardless of whether the tenant

11. *E.g.*, RACHEL G. BRATT ET AL., *Why a Right to Housing is Needed and Makes Sense: Editor's Introduction to A RIGHT TO HOUSING* 1, 3-4 (Rachel G. Bratt et al. eds. 2006).

12. "[H]omeless persons are 3-4 times more likely to die than the general population." JAMES J. O'CONNELL, NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, *PREMATURE MORTALITY IN HOMELESS POPULATIONS: A REVIEW OF THE LITERATURE* 13 (2005). Conditions in the home, such as lead or overcrowding, can also cause serious risk of harm or death. *See* BRATT ET AL., *supra* note 11, at 2-3; Emily A. Benfer, *Contaminated Childhood: How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color*, 41 HARV. ENVT'L. L. REV. 493, 495 (2017).

13. *See infra* Parts I.A. and I.B.

14. In his 1988 article, Andrew Scherer described the individual experience of a low-income tenant after the Sheriff removed her belongings from her home and changed the lock. He noted, "Some variation of this scene occurs in poor communities in this country virtually every day." The same could be said in 2020. Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. C.R.-C.L. L. REV. 557, 558 (1988); *see* MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 5 (2016); Terry Gross, *First-Ever Evictions Database Shows: 'We're in the Middle of a Housing Crisis'*, NPR (Apr. 12, 2018), <https://perma.cc/RUQ5-L22G>.

15. *See, e.g.*, JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *THE STATE OF THE NATION'S HOUSING* 2019, at 7, 36 (2019) [hereinafter *STATE OF THE NATION'S HOUSING*], <https://perma.cc/9K6G-75ZX>.

16. *See, e.g., id.*

17. *E.g.*, Pam Fessler, *Low-Income Renters Squeezed Between Too-High Rents and Subpar Housing*, NPR (Mar. 30, 2016), <https://perma.cc/GD6S-VV7X>. *See generally* Benfer, *supra* note 12 (concerning lead hazards and the impact on children of color in the United States).

18. Gross, *supra* note 14.

has a meritorious defense.¹⁹

The housing crisis is complex, and ensuring all Americans have safe, decent housing will require a multi-faceted approach, which may look different depending on the jurisdiction.²⁰ However, ensuring all tenants facing eviction have a right to counsel is a critical component of the solution. A right to counsel in eviction cases will allow lawyers to protect the tenants' rights that already exist but are under-enforced. It will balance the inequity between represented landlords and unrepresented tenants, advancing the narratives and rights of all tenants. And, lawyers representing tenants will be able to identify systemic inefficiencies and inequities, some of which may require solutions beyond litigation.²¹

A. The Home as the Building Block for Everything Else

Housing is central in an individual's life. It is a safe space, a retreat from the world.²² Inadequate housing can touch every facet of life.²³ It can increase the risk of chronic illness, infectious disease, physical and sexual assaults, and even

19. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 48 (2010) (eviction outcomes favor landlords regardless of merits).

20. STATE OF THE NATION'S HOUSING, *supra* note 15, at 1-6; ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL., OUT OF REACH 6-8 (2019); OPPORTUNITY STARTS AT HOME, WITHIN REACH: AMBITIOUS FEDERAL SOLUTIONS TO MEET THE HOUSING NEEDS OF THE MOST VULNERABLE PEOPLE 3-5 (2019). For example, a city like Washington, D.C. grappling with gentrification may require different approaches than a rural town in the Midwest, though the problems of eviction, homelessness, and lack of affordable housing are present in both. STATE OF THE NATION'S HOUSING, *supra* note 14, at 1-6 (analyzing some of the complexities of the housing crisis). Compare Public Affairs, *New York City Gentrification Creating Urban 'Islands of Exclusion,' Study Finds*, BERKELEY NEWS (Apr. 10, 2019), <https://perma.cc/2QRT-SE4B>, with Kevin Hardy, *Rural Iowa Has a Housing Crisis. Here's How a Handful of Communities Are Solving It*, DES MOINES REG. (Mar. 30, 2019), <https://perma.cc/9ALM-PH8Q>. Other measures jurisdictions will need to consider in conjunction with right to counsel laws include incentives to create affordable housing, increasing the availability of housing assistance programs, rent control, tenant protections, and funds to help tenants pay owed rent. Emily Badger, *Many Renters Who Face Eviction Owe Less Than \$600*, N.Y. TIMES (Dec. 12, 2019), <https://perma.cc/5D4F-7UWS>.

21. See *infra* Part I.C.

22. DESMOND, *supra* note 14, at 293-94; Sabbeth, *supra* note 764-65; see BRATT ET AL., *supra* note 11, at 3-4.

23. For purposes of this article, the author includes homelessness, living in a shelter, or living in housing which is undesirable because of unsafe or unhealthy conditions of the neighborhood or the house itself. DESMOND, *supra* note 14, at 300 ("[W]ithout stable shelter, everything else falls apart.").

death.²⁴ The stress of simply being behind on rent is correlated with poor health.²⁵

Inadequate housing also has a profound effect on mental health.²⁶ Housing impacts a person's dignity and self-perception, and inadequate housing can create or exacerbate psychological distress, anxiety, and depression.²⁷ Mothers who are unstably housed report higher rates of depression than those with stable housing.²⁸ Some evidence indicates that even years after experiencing an eviction, mothers are more likely to be depressed, and report feeling less happy, energetic, and optimistic than their peers.²⁹

Children without stable housing often switch schools³⁰ and miss significantly more days of school than stably housed children.³¹ Unstably housed children are at higher risk for developmental delay, decreased academic achievement, anxiety, depression, behavioral disturbances, and even death.³²

Inadequate housing is also a cause of other serious problems, which themselves harm a person's health and well-being. A lack of stable housing has been linked with job loss and increased contact with the criminal justice system.³³

24. James Krieger & Donna L. Higgen, *Housing and Health: Time Again for Public Health Action*, AM. J. PUB. HEALTH (May 2002), <https://perma.cc/GXQ2-3846> (chronic health issues, infectious diseases); Sabbeth, *supra* note 7, at 66-67 (assaults); O'Connell, *supra* note 12 (death from homelessness); see BRATT ET AL., *supra* note 11, at 2-3 (higher risk of exposure house fires and exposure to lead paint, raising risk of disease such as asthma). For a robust discussion of the physical health impacts of substandard housing, see Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL'Y 59, 70 (2016).

25. ELIZABETH MARCH ET AL., CHILDREN'S HEALTH WATCH, BEHIND CLOSED DOORS: THE HIDDEN IMPACTS ON BEING BEHIND ON RENT (Jan. 2011); see also ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 6 (2019) ("Financial hardships and housing instability caused by the lack of affordable housing have significant consequences for the health and well-being of poor families.").

26. Gold, *supra* note 24, at 59, 73.

27. See BRATT ET AL., *supra* note 11, at 3-4; Krieger & Higgen, *supra* note 24.

28. MARCH ET AL., *supra* note 25.

29. DESMOND, *supra* note 14, at 298; Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, INST. FOR RES. ON POVERTY, UNIV. OF WIS.-MADISON: FAST FOCUS 1 (Mar. 2015), <https://perma.cc/8UFE-F42K> ("Poor single mothers with young children, particularly African Americans, are at especially high risk of displacement."); see also *Cleveland Creates Right to Counsel*, *supra* note 9 (unsafe and unstable housing has life-long consequences including negatively impacting academic, health, and quality of life outcomes).

30. Martha Galvez & Jessica Luna, *Homelessness and Housing Instability: The Impact on Education Outcomes*, URBAN INST. 2 (Dec. 2014), <https://perma.cc/CG68-A6SV>.

31. See BRATT ET AL., *supra* note 11, at 4.

32. *Id.*; AURAND ET AL., *supra* note 25 ("disrupts learning and negatively impacts academic achievement"). Families with children have a "particularly high risk for eviction." EVICTION LAB, *Questions and Answers About Eviction*, <https://perma.cc/94F3-DPV2>. "[H]omeless children are fifty percent more likely to die before their first birthday than housed poor children." John Pollock & Michael S. Greco, *It's Not Triage If the Patient Bleeds Out*, 161 U. PA. L. REV. 40, 45 (2012).

33. See Pollock & Greco, *supra* note 32, at 44 & n.31; see generally Matthew Desmond & Carl Gershenson, *Housing and Employment Instability Among the Working Poor*, 63 SOC.

Soaring rents lead most low-income tenants to spend over half of their income on rent, leading to excruciating budget choices and the inability to afford other basic necessities, such as electricity, water, food, and medicine.³⁴ As a result, these low-income tenants frequently sacrifice food, medical care, and medications to pay rent.³⁵

The loss of a home can also affect a person's ability to find a new home. Often, tenants who are forced to move³⁶ have a record of eviction, poor credit history, and are unable to obtain a referral from their prior landlord.³⁷ As a result, these tenants ultimately move to less desirable neighborhoods in homes with unsafe and unhealthy housing conditions.³⁸ Perversely, many tenants find themselves in eviction proceedings because they complained about or withheld rent due to housing code violations.³⁹ A record of an eviction proceeding—even one not resulting in eviction—can prevent someone from obtaining safe, decent housing.⁴⁰

The impacts on individuals who are unstably housed also strain and destroy communities,⁴¹ which are destabilized when those invested in schools and neighborhoods are forced out.⁴² The financial burden on communities also goes up because the costs of providing shelter and related services, such as medical care, use of public benefits, and police intervention for the homeless, increase.⁴³ The housing tenants obtain after a forced move is often seen as temporary, so tenants do not invest in the community, causing further destabilization.⁴⁴

PROBS. 1 (2016).

34. See DESMOND, *supra* note 14, at 4, 15.

35. AURAND ET AL., *supra* note 25, at 6.

36. Tenants can be forced to move through the formal eviction process, but often, they move before an eviction is ever filed, sometimes because of illegal actions by the landlord. See *infra* Part IV.A.1.

37. See Gold, *supra* note 24, at 65, 81-82.

38. *Id.* at 60-61; see also DESMOND, *supra* note 14, at 297; Christine MacDonald, *Persistent Evictions Threaten Detroit Neighborhoods*, DETROIT NEWS (Oct. 16, 2017), <https://perma.cc/K4BZ-4P9C> (“[I]n 2015 alone, the vast majority of [Detroit] landlords who took their renters to court [for eviction] were themselves operating illegally.”).

39. See, e.g., DESMOND, *supra* note 14, at 15-19; MacDonald, *supra* note 38.

40. See Gold, *supra* note 24, at 60-61 (discussing how a tenant whose name is placed on a detainer petition can be negatively impacted in a search for other housing); Gross, *supra* note 14; see also DESMOND, *supra* note 14, at 69.

41. See DESMOND, *supra* note 14, at 70; Sabbeth, *supra* note 7, at 66-67.

42. See DESMOND, *supra* note 14, at 70.

43. Sabbeth, *supra* note 7, at 55, 68-69; *Fostering Collaboration in Housing and Health*, URBAN INST., HEALTH POLICY CENTER, <https://perma.cc/N6ZA-5X5N>. In a small study done in Cedar Rapids, Iowa with eight homeless individuals over five years, each participant cost the government \$4,754.00 less per month on average when they were stably housed than when they were homeless. Brian Morelli, *What Can Reverse the Cost of Homelessness? Stable Housing, 5-year Study Shows*, GAZETTE (Iowa) (June 24, 2019), <https://perma.cc/FAE8-ZVVK>.

44. DESMOND, *supra* note 14, at 70.

B. The Scarcity of Safe, Decent Housing

On a single night in 2017, over 500,000 people were homeless in the United States.⁴⁵ Millions more could not afford both their rent and other necessities like food and medicine.⁴⁶ Though the fundamental nature of safe, decent housing is indisputable, millions of low-income people across the United States are inadequately housed.⁴⁷ For many renters, there are simply not enough affordable units available.⁴⁸ Habitually underfunded federal programs only meet the need of about a quarter of the renters who qualify for housing assistance.⁴⁹ Some states, recognizing the dire consequences of failing to ensure safe, decent housing, have passed legislation to produce more affordable housing and provide more tenant protections from eviction.⁵⁰ Still, much more action is needed.⁵¹

1. The affordable housing crisis

There are not enough affordable housing units in the United States.⁵² The causes of the lack of affordable housing units are complex, but include a slow recovery from the Great Recession, labor shortages, building and land costs, the focus on building high-end housing units, regulatory restraints, rising rent and utility costs, and stagnating incomes.⁵³

The result, however, is clear: low-income individuals are spending too much of their income on housing.⁵⁴ Extremely low-income renters, or those who earn up to 30% of the median area income, make up one-quarter of all renter households.⁵⁵ The United States has a shortage of seven million affordable rental homes for extremely low-income renters.⁵⁶ Put another way, there are only 33 physically adequate and available units for every 100 extremely low-income

45. AURAND ET AL., *supra* note 25, at 2.

46. *Id.*; STATE OF THE NATION'S HOUSING, *supra* note 15, at 32-33 (“[F]amilies with children in the bottom expenditure quartile with severe cost burdens spent less than \$700 on average for all non-housing costs per month in 2017, including just \$310 for food . . .”).

47. *See* AURAND ET AL., *supra* note 25.

48. *See id.* at 2-5.

49. Gross, *supra* note 14, at 3.

50. STATE OF THE NATION'S HOUSING, *supra* note 15, at 35.

51. *Id.* at 36.

52. *See, e.g.*, AURAND ET AL., *supra* note 25, at 1; NAT'L L. CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS 6 (Oct. 23, 2017) [hereinafter PROTECT TENANTS], <https://perma.cc/3KUL-PPT5>.

53. STATE OF THE NATION'S HOUSING, *supra* note 15, at 1-6; Desmond, *supra* note 29, at 1-2. Another problem that is leading to a lack of affordable housing is the shift from homeownership to renting. *See* DEP'T OF HOUS. & URBAN DEV., OFFICE OF POLICY DEV. & RESEARCH, WORST CASE HOUSING NEEDS 2017 REPORT TO CONGRESS 20 (2017) [hereinafter WORST CASE HOUSING NEEDS], <https://perma.cc/W69U-NSAU>.

54. *See, e.g.*, AURAND ET AL., *supra* note 25, at 1.

55. *Id.* at 1, 9.

56. *Id.* at 3.

renters.⁵⁷ Thus, over 70% of those extremely low-income renters spend more than half of their income on housing. Unsurprisingly, this shortage leads to homelessness, housing instability, relocation to substandard housing, and the inability to afford other basic needs, resulting in worse physical and mental health outcomes.⁵⁸

2. Unsubsidized

Since the passage of the National Housing Act of 1937, the United States has created several housing assistance programs to ensure renters pay no more than 30% of their income toward rent.⁵⁹ The two largest, and perhaps most well-known programs are the Housing Choice Voucher Program, commonly known as Section 8, and public housing.⁶⁰ These two programs house 2.2 million⁶¹ and 1.2 million households respectively.⁶² They, along with several other programs, provide housing stability for low-income households that the private market cannot.⁶³ Despite the wide-ranging positive effects of stable housing these programs are severely underfunded – and have been for decades.⁶⁴ The budget for federal housing assistance has continued to decrease, while the need for the assistance has risen.⁶⁵ Only one in four eligible households receives any kind of housing assistance.⁶⁶

57. WORST CASE HOUSING NEEDS, *supra* note 53, at 9.

58. STATE OF THE NATION'S HOUSING, *supra* note 15, at 32-33; *see also supra* Part I.A.

59. *See Policy Basics: Federal Rental Assistance*, CTR. ON BUDGET & POL'Y PRIORITIES, (Nov. 15, 2017) [hereinafter *Federal Rental Assistance*], <https://perma.cc/ZJ6Q-4VEC>; Desmond, *supra* note 29, at 1.

60. *See* Meghan P. Carter, *How Evictions from Subsidized Housing Routinely Violate the Rights of Persons with Mental Illness*, 5 NW. J. L. & SOC. POL'Y 118, 123 (2010); *How the LIHTC Program Works*, NAT'L HOUS. LAW PROJECT (Sept. 7, 2017), <https://perma.cc/K2NX-TKW8>.

61. Alison Bell et al., *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, CTR. ON BUDGET & POL'Y PRIORITIES (Dec. 20, 2018, 10:45 AM), <https://perma.cc/9R7B-WQFU>.

62. DESMOND, *supra* note 11, at 302.

63. AURAND ET AL., *supra* note 25, at 13-14; *see also* STATE OF THE NATION'S HOUSING, *supra* note 15, at 33. For more on other housing subsidy programs *see generally* Carter, *supra* note 60.

64. AURAND ET AL., *supra* note 25, at 13; *Public Housing*, NAT'L HOUS. LAW PROJECT, <https://perma.cc/N6VE-PTMB>. For more on the positive effects of housing subsidies *see* DESMOND, *supra* note 14, at 302. For more on the cause and background of public housing's severe underfunding *see* Nestor M. Davidson, *Public Housing as Housing of Last Resort: Department of Housing and Urban Development v. Rucker (2002)*, in *THE POVERTY LAW CANON: EXPLORING THE MAJOR CASES* 274, 274-82 (Maria A. Failing & Ezra Rosser eds., 2016).

65. PROTECT TENANTS, *supra* note 52, at 11-12.

66. AURAND ET AL., *supra* note 20, at 5. Some state and local jurisdictions have worked to create their own affordable housing programs, but much more is needed to meet the need. *See* STATE OF THE NATION'S HOUSING, *supra* note 15, at 35-36.

Due to funding shortages, there are very long waitlists for federal housing assistance programs.⁶⁷ In some larger metro areas, it can take decades to get off the list, and in others the waitlists are simply closed.⁶⁸ To help manage the waitlists, most agencies who administer housing assistance programs at the local level, known as Public Housing Authorities (PHAs), create preference systems for applicants.⁶⁹ For example, a preference for local residents and homeless individuals may enable them to rise to the top of the waitlist over others.⁷⁰ Incredibly, an eviction record or an unpaid debt may be a mark *against* a person's application for housing assistance.⁷¹

Even for the lucky applicants who receive assistance, many challenges still exist. In many jurisdictions across the country, landlords are not required to accept Section 8 vouchers.⁷² Many landlords refuse vouchers, citing the difficulties of inspections and paperwork, though income and racial discrimination play a large role in the refusal to accept them as well.⁷³ This discrimination, combined with monthly rent caps, can make using the voucher very difficult.⁷⁴ Recipients are given only a short period of time to use the voucher before they lose it altogether.⁷⁵ As a result, voucher holders are often forced to live in low-income neighborhoods with poor housing conditions.⁷⁶

Once housed, tenants face a myriad of rules and oversight that those who can afford to rent in the private market do not.⁷⁷ These rules are often unintuitive

67. Alicia Mazzara, *Housing Vouchers Work: Huge Demand, Insufficient Funding for Housing Vouchers Mean Long Waits*, CTR. ON BUDGET & POLICY PRIORITIES (Apr. 19, 2017), <https://perma.cc/9UXZ-DXSZ>.

68. See, e.g., Petula Dvorak, *In D.C., a Public-Housing Waiting List with No End*, WASH. POST (Apr. 11, 2013), <https://perma.cc/7HPS-M94M>; Rachel Hinton, *CHA Opens Waitlist for Public Housing for 1st Time in 4 Years*, CHI. SUN-TIMES (Dec. 19, 2018), <https://perma.cc/5L73-M5T4>; Mazzara, *supra* note 67.

69. Mazzara, *supra* note 67.

70. *Id.*

71. DESMOND, *supra* note 14, at 297; see also *Reasons for Denial*, MASS. LAW REFORM INST. (Dec. 2009), <https://perma.cc/L3U4-6REF>.

72. Alana Semuels, *How Housing Policy is Failing America's Poor*, ATLANTIC (June 24, 2015), <https://perma.cc/M7CM-Y77Q>; Bell, *supra* note 61. Some jurisdictions prohibit what is called "source of income discrimination," meaning landlords must accept Section 8 vouchers, and can be penalized for discrimination for refusing to do so. For example, in the District of Columbia a landlord found to have engaged in source of income discrimination can be required to pay the tenant applicant up to \$5000. See, e.g., D.C. CODE §§ 2-1402.21(a), 2-1403.13(a), 42-2851.06.

73. See, e.g., Krista Sterken, *A Different Type of Housing Crisis: Allocating Costs Fairly and Encouraging Landlord Participation in Section 8*, 43 COLUM. J.L. & SOC. PROBS. 215, 221-22 (2009); Semuels, *supra* note 72.

74. DESMOND, *supra* note 14, at 148; Semuels, *supra* note 72.

75. See John M. Lerner, *Private Rights Under the Housing Act: Preserving Rental Assistance for Section 8 Tenants*, 34 B.C. J.L. & SOC. JUST. 41, 65 (2014); Semuels, *supra* note 72.

76. PROTECT TENANTS, *supra* note 52, at 20; Semuels, *supra* note 72.

77. See Margaretta E. Homsey, *Procedural Due Process and Hearsay Evidence in*

and overly burdensome. For example, many PHAs regulate how long a family can be away from their unit and require written notification for relatively short absences.⁷⁸ PHAs commonly monitor tenant activities to find violations by tracking police reports and Electronic Benefit Transfer (EBT, also known as food stamps) usage. For example, some jurisdictions have concluded that people not on the lease were living in the unit or that tenants were not living in their unit because they spent their food stamp money in a different city.⁷⁹ Many times, these alleged violations, even where evidence is lacking, result in the termination of subsidies and ultimately eviction.⁸⁰ Unsurprisingly, the consequences from the loss of a subsidized unit are severe.⁸¹

3. Uninhabitable

For many reasons, low-income tenants live in homes with substandard or even life-threatening conditions.⁸² These conditions include structural deficiencies, pest and vermin infestations, broken appliances, mold, lack of heat or water, broken plumbing, and indoor hazards such as lead.⁸³

Older housing stock, with more hazards and substandard conditions, is more likely to be inhabited by low-income renters.⁸⁴ Many renters accept hazardous conditions fearing that their landlord will retaliate and evict them if they complain.⁸⁵ For some landlords, especially those renting properties with the

Section 8 Housing Voucher Termination Hearings, 51 B.C. L. REV. 517, 519-20 (2010); McNair Turner, *supra* note 7, at 55-56.

78. See, e.g., CEDAR RAPIDS HOUS. SERVS., 2019 HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN 5-8 (July 1, 2019), <https://perma.cc/AG7C-D5NA>. Families cannot be away from their unit for more than fourteen days without notifying the PHA in writing in advance. *Id.* Families must again notify the PHA in writing if they are going to be gone longer than they originally anticipated. The PHA will only accept written notification, by regular mail, fax, or in person. *Id.* at 11-8.

79. Homsey, *supra* note 77, at 520. This author has repeatedly encountered such tactics through her work representing low-income tenants. See generally Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 667 (2009).

80. See Homsey, *supra* note 77, at 555; see also *infra* Part IV.B.2 (the termination of a voucher and eviction are not the same thing, but the termination of a voucher will usually lead to an eviction because without the voucher a tenant must pay full market rent). In her experience representing low-income tenants, this author has repeatedly encountered termination attempts based on very little evidence gathered from PHA monitoring of tenant activities, including contracts with state inspectors who investigate public benefits fraud.

81. See Carter, *supra* note 60, at 126; *infra* Part IV.B.3.

82. See *supra* Part I.A and I.B; Semuels, *supra* note 72.

83. Gold, *supra* note 24, at 59, 70; see also DESMOND, *supra* note 14, at 76.

84. See AURAND ET AL., *supra* note 25, at 11-12; WORST CASE HOUSING NEEDS, *supra* note 53, at 3.

85. Tenants who complain are also at risk of a local authority deeming the unit uninhabitable for human occupancy, forcing the tenant to move. See, e.g., DESMOND, *supra* note 14, at 75; ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, ESSENTIALS OF HEALTH JUSTICE: A PRIMER 109 (2019); Brian Goldstone, *The New American Homeless*, NEW REPUBLIC (Aug. 21, 2019), <https://perma.cc/F8WE-9DA8>.

worst housing code violations, evicting a tenant and finding a new resident is cheaper than making repairs.⁸⁶ In many jurisdictions retaliation is illegal, but the law often goes unenforced.⁸⁷ The threat of retaliation is compounded for those who are behind on rent and already at risk of eviction.⁸⁸ Those who are evicted are often forced to move to less desirable neighborhoods with worse conditions.⁸⁹

Subsidized tenants are not necessarily spared. Despite inspections meant to protect Section 8 voucher holders, many wind up in substandard living conditions.⁹⁰ Due to decades-long underfunding, many public housing units are in a state of severe disrepair, further limiting the supply of safe, decent housing and displacing those who lived there.⁹¹

Like homeless individuals and the unstably housed, people living in substandard conditions are at higher risk of both physical and mental health diseases, including asthma, lead poisoning, depression, anxiety, and increased risk of death.⁹²

C. Unrepresented

The lack of affordable housing, unavailable subsidies, and poor housing conditions too often coalesce into a forced move. In 2016, an estimated 2.3 million evictions—a rate of four every minute—were filed in the United States.⁹³ Countless more individuals and families are forced to move without a formal eviction being filed.⁹⁴ These informal, often illegal, forced moves take many forms: the landlord pays the tenant to leave; the landlord turns off water, electricity, or removes the front door;⁹⁵ or the city condemns the house for poor

86. PROTECT TENANTS, *supra* note 52, at 7.

87. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 109.

88. DESMOND, *supra* note 14, at 75.

89. Gold, *supra* note 24, at 60-61; DESMOND, *supra* note 14, at 297.

90. “In 2012, city enforcement officers ordered an apartment complex in Austin evacuated after a second-floor walkway sagged and then collapsed. Officials blamed termite damage and said the low-income and Section 8 voucher-holders were hesitant to report unsafe conditions because they knew how hard it was to find an affordable place to live and didn’t want to be evicted.” Semuels, *supra* note 72; see Terrence McCoy, *Washington’s Worst Case of Lead Poisoning in Decades Happened in a Home Sanctioned by Housing Officials*, WASH. POST (Jan. 30, 2017), <https://perma.cc/GYF5-ZM52>.

91. See BRATT ET AL., *supra* note 11, at 6; *Public Housing*, *supra* note 64; see also Morgan Baskin, *Nearly One-Third of the City’s Public Housing Stock Is at Risk of Becoming Uninhabitable*, WASH. CITY PAPER (Dec. 20, 2018), <https://perma.cc/3JPR-L77V>.

92. Gold, *supra* note 24, at 70-73; *supra* Part I.A.

93. Gross, *supra* note 14.

94. Desmond, *supra* note 29, at 3; Andrew Flowers, *How We Undercounted Evictions By Asking the Wrong Questions*, FIFTYEIGHT (Sept. 15, 2016), <https://perma.cc/TU4C-VVX3>.

95. Flowers, *supra* note 94. This author has represented clients in all three scenarios – water turned off, electricity turned off, and removed windows and doors. See also Editorial, *A Right to a Lawyer to Save Your Home*, N.Y. TIMES (Sept. 23, 2016), <https://perma.cc/YEQ8-LLDB>.

conditions.⁹⁶ In many cases, tenants, not knowing or understanding their legal rights, leave upon receiving a notice not legally sufficient to end their tenancy.⁹⁷ These moves, which often would have been avoidable if the tenants had an attorney,⁹⁸ result in job loss, school disruptions, worse housing conditions, and homelessness.⁹⁹

For those who make it to eviction court¹⁰⁰ the process is often devastatingly simple. Tenants, who are “typically poor, often women, and disproportionately racial and ethnic minorities,” are quickly pushed through high-volume courtrooms without much, if any, chance to raise a defense.¹⁰¹ In one study, most eviction cases took less than a minute, with many lasting fewer than 20 seconds.¹⁰² Most landlords are represented by counsel, while most tenants are not.¹⁰³ Even without counsel, landlords still fare much better than tenants regardless of the merits, probably due to systemic bias.¹⁰⁴ Judges know the law in the way it is presented by the repeat players in their courtroom, the landlords and their counsel.¹⁰⁵ And, they often fail to require landlords to carry their burden of proof.¹⁰⁶ Meanwhile, judges are unfamiliar with the rights of tenants, even those clearly stated in statutes.¹⁰⁷ Tenants are frequently interrupted or silenced by judges.¹⁰⁸

When tenants have an attorney with them at an eviction proceeding, the dynamic changes dramatically.¹⁰⁹ Tenants are three to nineteen times more likely

96. Goldstone, *supra* note 85.

97. See Sabbeth, *supra* note 7, at 80.

98. See *infra* Part IV.A.2.

99. *Supra* Part I.A. “Eviction is a leading cause of homelessness, especially for families with children.” Desmond, *supra* note 29, at 4. Eviction was the cause of homelessness for 47% of the families in New York City homeless shelters. Gold, *supra* note 24, at 69.

100. In one study less than twenty percent of tenants came to court. WILLIAM E. MORRIS INST. FOR JUSTICE, INJUSTICE IN NO TIME: THE EXPERIENCE OF TENANTS IN MARICOPA COUNTY JUSTICE COURTS 2 (2005).

101. Engler, *supra* note 19, at 47, 50. For an example of the experience in eviction court, see Erica C. Barnett, *Can Changes to Laws Make a Difference in Seattle’s Eviction Courts?*, SEATTLE MAG. (Feb. 2019), <https://perma.cc/Q4QK-KC3N>. See also John Whitlow, *Lawyer Calls Court an Eviction Machine*, ALBUQUERQUE J. (Jul. 19, 2019, 12:02 AM), <https://perma.cc/C82J-2ZCY>.

102. WILLIAM E. MORRIS INST. FOR JUSTICE, *supra* note 100.

103. E.g., Sabbeth, *supra* note 7, at 55, 78.

104. *Id.* at 99, 113.

105. *Id.* at 78-79.

106. *Id.*; see also MacDonald, *supra* note 38; Whitlow, *supra* note 101.

107. Sabbeth, *supra* note 7, 78.

108. Engler, *supra* note 19, at 50-51 n.56.

109. See, e.g., Risa E. Kaufman et al., *The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel*, 45 COLUM. HUM. RTS. L. REV. 772, 784 (2014); see also Clare Pastore, *Gideon Is My Co-Pilot: The Promise of Civil Right to Counsel Pilot Programs*, 17 UDC/DCSL L. REV. 75, 82 (2014); Luke Grundman et al., *In Eviction Proceedings, Lawyers = Better Outcomes*, BENCH & B. MINN., Feb. 2019, at 20; LEGAL AID SOC’Y OF COLUMBUS, TENANT ADVOCACY PROJECT EVALUATION 6 (2018),

to be successful if they are represented by an attorney.¹¹⁰ Early data from New York City zip codes where the right to an attorney in eviction court has rolled out¹¹¹ indicates that eviction orders are declining five times faster than in zip codes without a right to an attorney.¹¹² When tenants are represented, they are less likely to be evicted, but also less likely to default, more likely to receive rent abatement and repairs, and more likely to obtain favorable settlements.¹¹³ Critically, these positive results require attorneys to represent a tenant in the courtroom and in negotiations.¹¹⁴ Merely being supported with legal advice or raising a valid defense pro se is not nearly as effective as being represented by an attorney.¹¹⁵ The fact that tenants fare dramatically better with an attorney is not surprising. Though the cases are often extremely short, landlord-tenant law can be complex for anyone unfamiliar with the process.¹¹⁶

Representation does more than just improve the chances of remaining stably housed. It improves outcomes for all tenants because landlords will be less likely to bring meritless cases, knowing that they will face an attorney in the courtroom.¹¹⁷ That saves communities money by avoiding the costs of shelters,

<https://perma.cc/H89P-5Y7W>; STOUT R. ROSS, PHILA. B. ASS'N, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS 7 (Nov. 3, 2018).

110. Engler, *supra* note 19, at 37, 48-49; *see also* Pollock & Greco, *supra* note 32, at 47.

111. The law guaranteeing low-income tenants counsel in evictions is being rolled out by zip code and is to be fully implemented in 2022. VICKI BEEN ET AL., N.Y.U. FURMAN CTR., IMPLEMENTING NEW YORK CITY'S UNIVERSAL ACCESS TO COUNSEL PROGRAM: LESSONS FOR OTHER JURISDICTIONS 2, 7 (2018), <https://perma.cc/X53R-CKGG>.

112. Oksana Mironova, *NYC Right to Counsel: First Year Results and Potential for Expansion*, CMTY. SERV. SOC'Y (Mar. 25, 2019), <https://perma.cc/DJT5-CYGR>; *see also* Editorial, *L.A. Renters Deserve a 'Right to Counsel' for Evictions*, L.A. TIMES (Apr. 23, 2019), <https://perma.cc/5VPF-QZQV>.

113. Engler, *supra* note 19, at 49; *see* Rachel Kleinman, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 FORDHAM URB. L.J. 1507, 1516 (2004).

114. Engler, *supra* note 19, at 48-49; *see also* Jessica Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. POVERTY L. & POL'Y 453, 504 (2011).

115. Engler, *supra* note 19, at 48-49.

116. *See* Kleinman, *supra* note 113, at 15. In the author's experience, even counsel for landlords who did not often practice in housing court were frequently unfamiliar with procedural requirements and substantive rights.

117. *See* Pamela Cardullo Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Poverty in America's Inner Cities*, 25 STAN. L. & POL'Y REV. 163, 180 (2014). "Landlords frequently file non-meritorious claims to which tenants have defenses . . ." Sabbeth, *supra* note 7 at 80. *See also* The Editorial Board, *supra* note 95; *cf.* ALAN W. HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 17 (May 9, 2018), <https://perma.cc/8P6L-3ZPX> ("[T]hrough sustained and effective advocacy, legal services lawyers were able to fundamentally change the way that public and private entities dealt with the poor As a result of legal services representation, welfare and public housing bureaucracies . . . began to act in accordance with established rules and to treat poor people more equitably and in a manner more sensitive to their needs."); Laurie Ball Cooper, *Legal Responses to the Crisis of Forced Moves Illustrated in Evicted*, 126 YALE L.J. F. 448 (2017), <https://perma.cc/C2LN->

homeless services, and job loss.¹¹⁸ The presence of lawyers also increases the legitimacy of the adversarial system for tenants, and helps identify and combat systemic inefficiencies and injustices.

Lawyers' ability to help ensure access to safe, decent housing regardless of income is not limited to eviction defense. An attorney can raise claims and defenses to ensure habitable conditions,¹¹⁹ prevent the denial or termination of housing assistance,¹²⁰ and hold landlords accountable for discrimination.¹²¹

Unfortunately, the need is far greater than the availability of attorneys.¹²² Problems with rental housing are one of the highest need civil legal areas, but the vast majority of tenants do not receive representation.¹²³ Civil legal aid, which has existed in various forms in the United States since the nineteenth century, has constantly faced underfunding in the face of massive unmet need.¹²⁴ During the War on Poverty, an organized national effort to increase civil legal services to low-income Americans began, which eventually resulted in the establishment of the Legal Services Corporation (LSC).¹²⁵ LSC funds civil legal service organizations across the country, and has met resistance since its creation.¹²⁶ In part, this resistance arises from the success of legal aid organizations' advocacy and litigation against large corporations and the government.¹²⁷ Though LSC survived two attempts to eliminate it from the federal budget in 1980 and 2017, its funding has been drastically reduced.¹²⁸

Legal aid organizations which accept LSC funds are also limited by restrictions on who they can represent, who they can sue, how they can sue, and issues they can work on.¹²⁹ For example, LSC-funded organizations are restricted

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118. See Ortiz, *supra* note 117 at 165, 178-79; Ross, *supra* note 109; *infra* Part II.C.

119. Ortiz, *supra* note 117, at 180; see also Gold, *supra* note 24, at 70.

120. See Brief for Disability Law Center as Amicus Curiae Supporting Appellee at 4, *Carter v. Lynn Housing Authority*, 447 Mass. App. Ct. 1104 (2006) (No. 2005-P-171), 2006 WL 4777189; Engler, *supra* note 19, at 64-66.

121. Ortiz, *supra* note 117, at 178-79; see also Kaufman, *supra* note 109, at 776 (“[A] rigorous effort to protect the right to housing in the United States must also seek to secure the right to counsel in civil cases.”); Cooper, *supra* note 117, at 454.

122. LEGAL SERVICES CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 44 (2017), <https://perma.cc/2YZV-QECA>.

123. “A full 29% of households living in a rented home . . . experienced a related civil legal problem in [2016-2017].” LEGAL SERVICES CORP., *supra* note 122, at 30. See also Sabbeth, *supra* note 7, at 78.

124. See HOUSEMAN, *supra* note 117, at 8-9.

125. *Id.* at 11-22.

126. *Id.* at 19-21.

127. See Louis S. Rulli, *On the Road to Civil Gideon: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J.L. & POL’Y 683, 684 (2011); see also HOUSEMAN, *supra* note 117, at 13, 29.

128. HOUSEMAN, *supra* note 117, at 5-6, 27, 29, 38; Tonya L. Brito, *The Right to Civil Counsel*, DAEDALUS, Winter 2019, at 56-58.

129. Brito, *supra* note 128, at 58; Rulli, *supra* note 127, at 696.

from working with non-citizens (with a few exceptions) and prisoners,¹³⁰ and cannot be involved in cases related to welfare reform, abortion issues, or desegregation of public schools.¹³¹ They also cannot file class actions, lobby, or organize.¹³² The lack of funding and restrictions on representation means that more than 62% of issues brought to LSC-funded civil legal aid receive inadequate or no legal assistance.¹³³ This does not account for the civil legal needs for which individuals did not seek assistance or never make it through the intake process.¹³⁴ LSC estimates that around 98% of tenants appear in eviction court alone.¹³⁵ The so called “justice gap” is not just a low-income problem either. Many individuals with incomes well above the cut-off for legal aid cannot afford the cost of a lawyer.¹³⁶

The inability to meet the huge civil legal need means that an enormous number of litigants are representing themselves in civil legal proceedings.¹³⁷ In response, courts, bar associations, LSC, and other advocates have adapted strategies and programs to assist pro se litigants.¹³⁸ The research on the effectiveness of these programs is lacking.¹³⁹ However, what is available indicates that tenants receiving only pro se support or unbundled legal services, such as document drafting or receiving advice about their defenses, fare about as poorly as those without any assistance at all.¹⁴⁰ Tenants with counsel fare dramatically better even compared to tenants with some support.¹⁴¹

130. *LSC Restrictions and Other Funding Sources*, LEGAL SERVICES CORP. (Mar. 1, 2019), <https://perma.cc/4XX6-D4ZH>.

131. *Id.*

132. *Id.*

133. LEGAL SERVICES CORP., *supra* note 122, at 14, 38.

134. *Id.* at 14, 29, 40.

135. *Id.* at 9, 29, 40.

136. *See* TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 14.

137. *E.g.*, Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 987 (2012); Engler, *supra* note 19, at 38-39.

138. *See* David J. Dreyer, *Déjà Vu All Over Again: Turner v. Rogers and the Civil Right to Counsel*, 61 DRAKE L. REV. 639, 658-59 (2013); Engler, *supra* note 19, at 42-43; Deborah L. Rhode et al., *Access to Justice Through Limited Legal Assistance*, 16 NW. J. HUM. RTS. 1, 4-6 (2018); Steinberg, *supra* note 114, at 458-65. Judges see the impacts of the unmet need in civil legal services, perhaps more than anyone else, and there is large support among them for civil legal aid. Fern A. Fisher, *Why Judges Support Civil Legal Aid*, DAEDALUS, Winter 2019, at 171-73.

139. *See* Dreyer, *supra* note 138, at 639, 659-60; Rhode et al., *supra* note 138, at 7; Steinberg, *supra* note 114, at 474.

140. Rhode et al., *supra* note 138, at 8; Steinberg, *supra* note 114, at 480-95. “[Sixty percent] of the judges who responded [to the Boston Bar Association Statewide Task Force to Expand Civil Legal Aid in Massachusetts Judge’s Survey] felt that lack of representation negatively impacted the court’s ability to ensure equal justice to unrepresented litigants” BOS. BAR ASS’N, *INVESTING IN JUSTICE: A ROADMAP TO COST-EFFECTIVE FUNDING OF CIVIL LEGAL AID IN MASSACHUSETTS* 3 (2014) [hereinafter *INVESTING IN JUSTICE*].

141. Rhode et al., *supra* note 138, at 8; Steinberg, *supra* note 114, at 482; *cf.* Engler,

The right to counsel alone will not solve the nation's housing crisis. It must be a part of a larger solution. But empirically, having a lawyer makes a dramatic impact. A lawyer can prevent the individual tragedies that are common with forced moves, which will have a positive impact on communities across the country.¹⁴² And when all tenants can and do assert their rights, the cultural and institutional structures which allow the housing crisis to persist will finally weaken.¹⁴³ With the consequences of inadequate housing so dire and the fundamental right to access to justice so difficult to attain in eviction proceedings, that there should be a right to counsel in evictions seems to be "an obvious truth."¹⁴⁴

II. WHO IS GIDEON AND WHY DOES EVERYONE WANT HIM TO BE CIVIL?

In 1963, decades after its first right to counsel decision, the Supreme Court decided *Gideon v. Wainwright*.¹⁴⁵ *Gideon* established the right to appointed counsel in felony criminal proceedings in state courts.¹⁴⁶ Since *Gideon*, many scholars, policymakers, judges, and advocates have concluded that "the language and the rationale of *Gideon* [and its predecessors] applie[s] to civil cases just as much as to criminal cases."¹⁴⁷ Yet the Supreme Court has failed to establish such a right, even in serious cases where civil litigants are at risk of losing their children¹⁴⁸ or their liberty.¹⁴⁹ But just as they did prior to *Gideon*, state courts, legislatures, and local governments have propelled the right to counsel, or the "civil *Gideon*,"¹⁵⁰ movement forward, creating a patchwork of laws and court decisions guaranteeing counsel in various civil cases across the country.¹⁵¹

Three cities—first New York City, then San Francisco, and finally Newark,

supra note 19, at 80-82 (explaining that lawyers with expertise in the area who are familiar with the forum and procedure are more effective).

142. See *supra* Parts I.A.1-I.A.2.

143. See Ortiz, *supra* note 117, at 180.

144. "[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

145. *Id.* at 335. The first right to counsel decision was *Powell v. Alabama*, 287 U.S. 45, 61 (1932).

146. *Gideon*, 372 U.S. at 344-45.

147. Justice Earl Johnson Jr., *50 Years of Gideon, 47 Years Working Toward a "Civil Gideon"*, 47 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 35, 47-48 (2013); see also Debra Gardner, *Pursuing a Right to Counsel in Civil Cases: Introduction and Overview*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 167, 167-68 (defining the term "civil *Gideon*").

148. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981).

149. The Supreme Court held that the state had no obligation to appoint counsel to indigent defendant in a civil contempt case. *Turner v. Rogers*, 564 U.S. 431, 448 (2011).

150. Gardner, *supra* note 147 (defining the term "civil *Gideon*"); *Gideon*, 372 U.S. at 344-45.

151. Brito, *supra* note 128, at 57.

New Jersey¹⁵²—recently extended the right to counsel to tenants in eviction proceedings.¹⁵³ Many other jurisdictions appear poised to follow with their own similar legislation.¹⁵⁴ Placing these new laws in the context of the history of the right to counsel movement reveals many parallels to the pre-*Gideon* movement and makes clear that the right to counsel in eviction proceedings is both realistically achievable and necessary.¹⁵⁵ A Supreme Court civil *Gideon* decision may or may not be somewhere in the distant future. Regardless, the right to counsel is necessary for tenants to have meaningful access to the courts,¹⁵⁶ and state and local governments appear ready to ensure this right will no longer be denied.¹⁵⁷

A. An Obvious Truth: The Right to Counsel in Criminal Proceedings

“Providing equal justice for poor and rich, weak and powerful alike is an age-old problem.”¹⁵⁸ Equality before the law, including the right to counsel, has been recognized since at least the fifteenth century.¹⁵⁹ The right has evolved significantly over the centuries and continues to evolve today.¹⁶⁰ In the Supreme

152. On October 1, 2019, Cleveland became the fourth city to pass a law ensuring the right to counsel to certain low-income tenants. *Cleveland Creates Right to Counsel*, *supra* note 9.

153. *See infra* Part III.

154. *Id.*

155. *See* Russell Engler, Turner v. Rogers and the Essential Role of the Courts in Delivering Access to Justice, 7 HARV. L. & POL’Y REV. 31, 36 (2013); Paul Marvy & Debra Gardner, A Civil Right to Counsel for the Poor, 32 HUM. RTS. 8, 9 (2005); Clare Pastore, A Civil Right to Counsel: Closer to Reality?, 42 LOY. L.A. L. REV. 1065, 1085 (2009); Tresa Baldas, *Suits, Legislation Over a Civil Right to Counsel Grow Across U.S.*, LAW.COM (Sept. 19, 2008), <https://perma.cc/699Y-L7WX>.

156. *See, e.g.*, Engler, *supra* note 19, at 46-51.

157. *See infra* Part III. Indeed, some members of Congress also appear ready to consider right to counsel in evictions and have also introduced other legislation in hopes of combating the eviction crisis. Badger, *supra* note 20.

158. Griffin v. Illinois, 351 U.S. 12, 16 (1956). *See generally* John MacArthur Maguire, *Poverty and Civil Litigation*, 36 HARV. L. REV. 361 (1923) (describing the evolution of the concept of equality before the law).

159. WILLIAM M. BEANEY, THE RIGHT TO COUNSEL IN AMERICAN COURTS 8 (1955); Maguire, *supra* note 158, at 361-79.

160. At the time the Sixth Amendment right to counsel was ratified, what that right meant in England and among the colonies varied immensely. In England, a defendant charged with a felony or treason did not have a right to counsel unless he raised a question of law, but a person accused of a misdemeanor or a party in a civil case was entitled to counsel. Meanwhile, in at least twelve of the colonies, by constitution, statute, or practice, the right to counsel existed for at least some categories of crimes. In some instances, a defendant was entitled to have retained counsel, and in others the court was required to appoint counsel if one could not be retained due to indigence. Powell v. Alabama, 287 U.S. 45, 61-69 (1932); BEANEY, *supra* note 159, at 14-22; *see also* N.Y.C. ADMIN. CODE § 26-1301, 1302; John Pollock, *Where We’ve Been, Where We’re Going: A Look at the Status of the Civil Right to Counsel, and Current Efforts*, MGMT. INFO. EXCHANGE J., Summer 2012, at 29-30, <https://perma.cc/HR4N-6YBP>.

Court's first decision on the right to counsel, the Court provided powerful support for a broad right and laid the groundwork for future expansion, including for *Gideon* itself.¹⁶¹ In *Powell v. Alabama*, seven young African American men were accused of raping two white women and were sentenced to death days after indictment without the assistance of counsel.¹⁶² Relying on the fundamental nature of the right to be heard, Justice Sutherland wrote for the court,

[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law.¹⁶³

The Court found that the right to counsel was included in the conception of due process of law and applied to the states.¹⁶⁴ Despite this broad language, the Court narrowly tailored its opinion, and held that the failure to appoint counsel was a denial of due process only in the particular circumstances of this case and failed to create a broader right.¹⁶⁵

A few years later, in *Johnson v. Zerbst*, the Court ruled that the Sixth Amendment itself guaranteed the appointment of counsel for indigent defendants in federal criminal proceedings.¹⁶⁶ In doing so, the Court noted that the Sixth Amendment right to counsel is "necessary to insure fundamental human rights of life and liberty," and said that it

embodies a realistic recognition of the *obvious truth* that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is presented by experienced and learned counsel.¹⁶⁷

Just a decade after *Powell* and four years after *Zerbst*, the Court ignored its unequivocal declaration of the fundamental nature of the right to counsel and declined to extend the right to the states.¹⁶⁸ In *Betts v. Brady*, the defendant Betts was indicted for robbery in a Maryland state court.¹⁶⁹ He told the judge he did not have the money to hire a lawyer and asked the court to appoint one for him.¹⁷⁰ He was told that it was not the practice in that county to appoint counsel except in rape and murder cases.¹⁷¹ He was found guilty by the judge, sitting without a

161. See Leonard Schroeter, *The Right to Counsel as Developed in the United States Supreme Court*, WASH. ST. B. NEWS, October 1999, at 30-31; Note, *The Indigent's Right to Counsel in Civil Cases*, 76 YALE L.J. 545, 548-49, 552 (1967) [hereinafter Note].

162. *Powell*, 287 U.S. at 49-59.

163. *Id.* at 68-69.

164. *Id.* at 67-68.

165. *Id.* at 71.

166. *Johnson v. Zerbst*, 304 U.S. 458, 467-68 (1938).

167. *Id.* at 462-63 (emphasis added). This language was used in *Gideon*, where the Court stated that it is an "obvious truth" that an indigent defendant "cannot be assured a fair trial unless counsel is provided for him." *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

168. *Betts v. Brady*, 316 U.S. 455, 471 (1942), *overruled by Gideon*, 372 U.S. 335.

169. *Id.* at 456.

170. *Id.* at 456-57.

171. *Id.* at 457.

jury, and sentenced to eight years in prison.¹⁷² The Court held that under these circumstances, where the defendant was forty-three, of ordinary intelligence, and had been in court before, failing to appoint counsel was not so “offensive to the common and fundamental ideas of fairness” that it amounted to a due process violation.¹⁷³ Notably, the Court in *Betts* concluded that if it determined that the right to counsel extended to the states through the Fourteenth Amendment, it would also need to furnish counsel in civil cases involving property, as the Fourteenth Amendment requires due process to property as well as life and liberty.¹⁷⁴

The *Betts* decision was met with much criticism from academics and the legal community.¹⁷⁵ In its aftermath, state courts were left with an unworkably vague standard, wherein they had to consider the competence of the defendant and the complexity of the issues in each case.¹⁷⁶ If these two factors created “special circumstances,” wherein a fair trial could not be had without representation, then counsel had to be appointed.¹⁷⁷ The result was that where no statutory right existed, state courts tended not to find the special circumstances necessary to require the appointment of counsel.¹⁷⁸

In the twenty-one years before *Betts* was overruled by *Gideon*, the expansion of the right to counsel gained support from bar groups and state legislatures, who passed right to counsel statutes across the country.¹⁷⁹ By the time the Court considered *Gideon*, most states were providing counsel to indigent criminal defendants, while only five still had laws against appointing counsel in non-capital cases.¹⁸⁰ Twenty-two states filed amicus curiae briefs in *Gideon* arguing that *Betts* was “an anachronism when handed down,” and should be overruled.¹⁸¹ Only three states supported the continued use of *Betts*.¹⁸²

As political pressure continued to grow—and the *Betts* rule became more and more obviously impossible to apply—Clarence Gideon’s petition for writ of

172. *Id.*

173. *Id.* at 472-73; see also Marvin Becker & George Heidlebaugh, *The Right to Counsel in Criminal Cases – An Inquiry into the History and Practice in England and America*, 28 NOTRE DAME L. REV. 351, 352 n.8 (1953).

174. *Betts v. Brady*, 316 U.S. 455, 473 (1942), overruled by *Gideon v. Wainwright*, 372 U.S. 335 (1963).

175. William M. Beaney, *The Right to Counsel: Past, Present, and Future*, 49 VA. L. REV. 1150, 1154 (1963).

176. Note, *supra* note 161, at 553. Indeed, even the Court itself had difficulty consistently applying the standard. See BEANEY, *supra* note 159, at 194.

177. See Note, *supra* note 161, at 553.

178. *Id.*

179. Beaney, *supra* note 175, at 1156.

180. The five states that had laws against the appointment of counsel in non-capital cases were Alabama, Florida, Mississippi, North Carolina, and South Carolina. Yale Kamisar, *The Right to Counsel and the Fourteenth Amendment: A Dialogue on “The Most Pervasive Right” of an Accused*, 30 U. CHI. L. REV. 1, 17-20 (1962). See also Sabbeth, *supra* note 7, at 71.

181. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963).

182. *Id.*

habeas corpus was presented to the Court.¹⁸³ Gideon had been charged with the felony of having broken and entered a poolroom with the intent to commit a misdemeanor.¹⁸⁴ He had allegedly stolen beer, wine, Cokes, and some coins from the juke box.¹⁸⁵ Like Betts, Gideon appeared in court without an attorney or any money to hire one and asked the court to appoint one for him.¹⁸⁶ The Florida state court denied his request.¹⁸⁷ In response, Gideon stated, “The United States Supreme Court says I am entitled to be represented by Counsel.”¹⁸⁸ The Supreme Court would eventually agree, but not before he was required to present his own defense, found guilty by jury, and sentenced to five years in prison.¹⁸⁹

In reversing the Florida state court’s conviction, overruling *Betts*, and extending the right to counsel to the states, the Court relied on its precedents in *Powell* and *Zerbst*.¹⁹⁰ The Court admitted that *Betts* was an “abrupt break” from those “well-considered precedents,” and declared,

[n]ot only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an *obvious truth*.¹⁹¹

After *Gideon*, the Court extended the right to counsel further, including to juveniles,¹⁹² misdemeanor cases,¹⁹³ and other critical stages of criminal proceedings.¹⁹⁴ But the Court has yet to recognize the “obvious truth” that its reasoning is equally applicable in civil litigation.¹⁹⁵

B. Be Civil, Gideon: The Right to Counsel in Civil Proceedings

Long before *Gideon*, advocates and policymakers understood that equality under law cannot exist when indigent people are forced to defend their basic civil rights without an attorney.¹⁹⁶ Many European countries enacted a statutory right

183. Beaney, *supra* note 175, at 1153.

184. *Gideon*, 372 U.S. at 336.

185. Andrew Cohen, *How Americans Lost the Right to Counsel, 50 Years after ‘Gideon,’* ATLANTIC (Mar. 13, 2013), <https://perma.cc/BG9X-G4W4>.

186. *Gideon*, 372 U.S. at 337.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 342-43, 345.

191. *Id.* at 344 (emphasis added).

192. *In re Gault*, 387 U.S. 1, 36 (1967).

193. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972).

194. *History of Right to Counsel*, NAT’L LEGAL AID & DEF. ASS’N, <https://perma.cc/4YUG-4MDX>.

195. See, e.g., Johnson Jr., *50 Years of Gideon*, *supra* note 147, at 48.

196. Maguire, *supra* note 153, at 361-79; see also Paul Marvy, *Thinking About a Civil Right to Counsel Since 1923*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 170, 170-75 (2006); Rulli, *supra* note 127, at 690.

to counsel in civil proceedings decades before the United States guaranteed the right in criminal proceedings.¹⁹⁷ France has had the right since 1851.¹⁹⁸ In 1979, the European Court of Human Rights ruled that appointed counsel in civil cases for low-income people was a human right.¹⁹⁹

After *Gideon*, the concept enjoyed prominence among both national leaders and scholars.²⁰⁰ But the hope that a federal constitutional right to counsel in civil proceedings was on the horizon was dashed in 1981 when the U.S. Supreme Court affirmed a parental rights termination without counsel in *Lassiter v. Department of Social Services*.²⁰¹ For right-to-counsel advocates, the case had seemed like the obvious next step on a path to a broader right to counsel in civil proceedings.²⁰² As Justice Blackmun said in the dissent, “Surely there can be few losses more grievous than the abrogation of parental rights.”²⁰³ Many would choose a loss of liberty over the loss of a child,²⁰⁴ and an attorney is critical in these proceedings which are fraught with the potential for error.²⁰⁵ Recognizing this critical need and the importance of the fundamental right to parent, most states had a statutory right to counsel in parental rights termination cases by the

197. Justice Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 *FORDHAM INT’L L.J.* S83, S89 (2000); Marvy & Gardner, *supra* note 155 at 8.

198. Johnson, Jr., *Equal Access to Justice*, *supra* note 197. The right to counsel in civil proceedings is not just a European right. “Azerbaijan, India, Zambia and many other countries” around the world all provide the right to counsel in civil proceedings. Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), <https://perma.cc/M68P-4RPS>.

199. *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) at 305 (1979), noted in Erica K. Lopez, *Right to Counsel in Civil Cases: Evolving Developments, Pilots, and Partnerships*, INSIDETRACK (Sept. 5, 2018), <https://perma.cc/G5FS-9TGP>.

200. In 1964, then Attorney General Robert F. Kennedy gave a speech at the University of Chicago, in which he said, “We have secured the acquittal of an indigent person—but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.” *Law Day Address*, 13 U. CHI. L. SCH. REC. 24, 26 (1965), reprinted in Rulli, *supra* note 127, at 684; see also Johnson Jr., *50 Years of Gideon*, *supra* note 147, at 48; Dreyer, *supra* note 138, at 647-48.

201. Johnson Jr., *50 Years of Gideon*, *supra* note 147, at 49; Rulli, *supra* note 127, at 685.

202. See Dreyer, *supra* note 138, at 650-51.

203. *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 40 (1981) (Blackmun, J., dissenting).

204. “It is curious that the Court considers a one-day jail sentence to be more intrusive on liberty than a lifelong revocation of the parental right to the care, custody, and companionship of a child.” Anthony H. Trembley, *Alone Against the State: Lassiter v. Department of Social Services*, 15 U.C. DAVIS L. REV. 1123, 1136-37 (1982).

205. Judy Mann, *Court’s Sensitivity Is Highly Selective*, WASH. POST (June 5, 1981), <https://perma.cc/LCP9-6QJK> (ABA argued that parents in termination proceedings need lawyers because “the proceedings are prone to error, that there is a lack of uniform judicial criteria and that there is misplaced reliance on sometimes ill-trained and overworked social workers”). In *Lassiter*’s case there was probably also racism and sexism, and a disregard for the realities of poverty at play. See Brooke D. Coleman, *Lassiter v. Department of Social Services: Why Is It Such A Lousy Case?*, 12 *NEV. L.J.* 591, 591-92 (2012).

time *Lassiter* was heard.²⁰⁶ State support was a factor the Court relied on in both *Gideon* and other post-*Gideon* right to counsel cases.²⁰⁷ The Court in *Lassiter* found these laws “enlightened and wise,”²⁰⁸ but was unwilling to come to the “obvious conclusion” that due process requires the aid of counsel in parental rights termination proceedings.²⁰⁹

Once again the Court created an “ad hoc approach thoroughly discredited nearly [twenty] years” prior in *Gideon*.²¹⁰ And just as in the aftermath of *Betts*, after *Lassiter* state court judges simply avoided appointing counsel rather than going through the analysis laid out by the Court.²¹¹ With Abby Gail Lassiter’s chances of regaining custody of her son gone, so too was much of the hope that advocates had of a federal constitutional right to counsel in civil proceedings. But just as they did after *Gideon*, states “pick[ed] up the mantle.”²¹² Many states now have a constitutional or statutory right to counsel in parental termination cases.²¹³

The *Lassiter* decision ended the momentum of the civil right to counsel movement for many years.²¹⁴ However, the movement reemerged around the turn of the twenty-first century as the massive unmet need for legal assistance among low-income tenants persisted.²¹⁵ This new movement, which received the name “civil *Gideon*” after a speech given in 1997 by Judge Robert Sweet,²¹⁶ has seen renewed prominence in law review articles, symposia, and task forces over the last two decades.²¹⁷ In 2003, the National Coalition for a Civil Right to Counsel (NCCRC) was founded.²¹⁸ In part because of the NCCRC’s work, the American Bar Association (ABA) House of Delegates passed a resolution in 2006 urging

206. See Pollock, *supra* note 160, at 29.

207. *In re Gault*, 387 U.S. 1, 37-38 (1967); Pollock, *supra* note 160.

208. *Lassiter*, 452 U.S. at 34 (1981).

209. *Id.* at 35 (1981) (Blackmun, J., dissenting).

210. *Id.* Ultimately, the Court ruled that there is a presumption against the appointment of counsel where physical liberty is not at stake and held that trial courts should engage in the three-pronged analysis laid out in *Mathews v. Eldridge* to determine whether an indigent litigant has overcome that presumption. *Id.* at 31-33. See generally *Mathews v. Eldridge*, 424 U.S. 319 (1976) (introducing balancing test analyzing individual’s interest, risk of error with process and probable value of additional process, and burden of additional process and interest of government).

211. See Dreyer, *supra* note 138, at 650-53.

212. Pollock, *supra* note 160, at 30.

213. See Laura K. Abel & Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 245, 252-60 (2006).

214. Rulli, *supra* note 127, at 697-99; Johnson Jr., *50 Years of Gideon*, *supra* note 147, at 49; Dreyer, *supra* note 138, at 651-52; Engler, *supra* note 19, at 38; *A Civil Right to Counsel: Closer to Reality* *supra* note 155, at 1078.

215. See Engler, *supra* note 19, at 38; Dreyer, *supra* note 138, at 651-52.

216. Pastore, *supra* note 109, at 76; Robert W. Sweet, *Civil Gideon and Confidence in a Just Society*, 17 YALE L. & POL’Y REV. 503, 503 (1998).

217. Engler, *supra* note 19, at 43; Rulli, *supra* note 127, at 698-99.

218. *About*, NAT’L COAL. FOR A CIVIL RIGHT TO COUNSEL, <https://perma.cc/9PD5-6YE2>.

courts and legislatures to adopt a civil right to counsel when basic human needs are at stake,²¹⁹ and has established a model statute for states.²²⁰ The resolution was endorsed by multiple state and local bar associations and some have created their own civil right to counsel subcommittees.²²¹

Advocates for civil *Gideon* have refocused their efforts on state and local litigation and legislative measures.²²² Progress has been made: in virtually every jurisdiction in the country, the right to counsel exists in at least some civil proceedings.²²³ At least eleven jurisdictions that, prior to *Lassiter*, had recognized a federal constitutional right to counsel in parental rights terminations have since held that the right is embodied in their state constitutions.²²⁴ Other states have found a constitutional right to counsel in a wide variety of proceedings, including involuntary mental health commitment, private custody, domestic violence, paternity, and guardianship proceedings.²²⁵ In some states, advocates have pursued legislative action to gain rights to counsel in many of the same proceedings as have been found constitutionally elsewhere.²²⁶ Several jurisdictions have also run pilot programs in order to analyze the costs and case outcomes of the right to counsel in various civil proceedings.²²⁷ Many of these pilots have focused on providing counsel for eviction defense because of the large numbers of pro se eviction defendants and the growing body of data that indicates lawyers can dramatically improve tenant outcomes in evictions.²²⁸

In 2011, the Supreme Court again passed over an opportunity to advance the constitutional civil right to counsel in *Turner v. Rogers*.²²⁹ In *Turner*, a parent was jailed several times for civil contempt for non-payment of child support.²³⁰ Rather than find a right to counsel, the Court held that trial courts could implement other procedures to gauge a respondent's ability to pay in order to

219. *Other NCCRC Work*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL, <https://perma.cc/T7FK-CJS3>.

220. WORKING GRP. ON CIVIL RIGHT TO COUNSEL, AMERICAN BAR ASS'N, A.B.A. TOOLKIT FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS: AMERICAN BAR ASSOCIATION MODEL ACCESS ACT & BASIC PRINCIPLES FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS 2-9 (2011), <https://perma.cc/HH4C-KU8S>; Pollock, *supra* note 160, at 29-30.

221. Pollock, *supra* note 160 at 31.

222. *Id.* at 30-31; Engler, *supra* note 19, at 43-44.

223. See Abel & Rettig, *supra* note 213, at 245, 252-70.

224. Pollock, *supra* note 160, at 30. For a passionate argument supporting the right to counsel in parental rights termination proceedings, see *Frase v. Barnhart*, 379 A.2d 100, 129, 131-39 (Md. 2003) (Cathell, J., concurring).

225. Pollock, *supra* note 160, at 30; Abel & Rettig, *supra* note 213, at 245.

226. Pollock, *supra* note 160, at 30-31; Abel & Rettig, *supra* note 213, at 245; Pollock & Greco, *supra* note 32, at 54.

227. Pastore, *supra* note 109, at 75; Rulli, *supra* note 127, at 701-03; Sabbeth, *supra* note 7, at 76-77.

228. See Sabbeth, *supra* note 7, at 59, 76-77; see also *supra* Part I.C.

229. *Turner v. Rogers*, 564 U.S. 431 (2011).

230. *Id.* at 436.

ensure fairness.²³¹ Though disappointing to advocates, the civil *Gideon* movement continues, focusing on state and local litigation and legislation.²³²

C. No *Gideon*, No How

A civil right to counsel is not universally supported.²³³ However, very basic concepts of justice and the available economic data about the right to counsel in evictions rebut the arguments raised by its opponents.

No doubt for many, including the Supreme Court itself, the skepticism is rooted in cost.²³⁴ However, cost is not a reason to deny litigants due process.²³⁵ Equality before the law is basic to the very idea of democracy and we must find a way to fund it.²³⁶ Few things violate these basic principles like the eviction mill,²³⁷ especially given the devastating and dire consequences of the loss of home.²³⁸ This alone should be enough to overcome any concerns that the right to counsel in evictions could be costly. But, of course, it is not—states and the federal government frequently fail to provide funding to ensure litigants their basic rights.²³⁹

However, the right to counsel in evictions may actually save money.²⁴⁰ The cost of homelessness and related services far exceeds the cost to ensure attorneys for all low-income tenants in eviction court.²⁴¹ One study by an independent

231. *Id.* at 447-48. The Court did leave open the possibility that if the opposing party in a child support case was the state rather than another unrepresented party, due process might require the appointment of counsel. *Id.* at 449.

232. “*Turner* [] should be viewed as more of a footnote because the battleground for the expansion of these rights had already long since shifted from the federal theater to the state courts when that case came down.” Pollock & Greco, *supra* note 32 at 53.

233. See Barton & Bibas, *supra* note 137, at 980.

234. *Id.* at 990; Pastore, *supra* note 109, at 79. See also Note, *supra* note 161, at 549; Frase v. Barnhart, 379 A.2d 100, 138 (Md. 2003) (Cathell, J., concurring); Gagnon v. Scarpelli, 411 U.S. 778, 788 (1973).

235. “[I]t is a dangerous precedent, and unacceptable in a civilized society, to suggest . . . that fundamental rights should be protected only when money is available.” Pollock & Greco, *supra* note 32, at 49; see also *id.* at 50, 55; Johnson Jr., *Equal Access to Justice*, *supra* note 197, at S84.

236. “[E]qual justice for all, irrespective of means,” has been called the “‘cornerstone’ of U.S. democracy.” Johnson Jr., *Equal Access to Justice*, *supra* note 197, at S84 (quoting REGINALD HEBER SMITH, *JUSTICE AND THE POOR* (1919)).

237. See *supra* Part I.C.

238. See *supra* Part I.A.

239. See, e.g., Margaret A. Costello, *Fulfilling the Unfulfilled Promise of Gideon: Litigation as a Viable Strategic Tool*, 99 IOWA L. REV. 1951, 1956-57 (2014).

240. See *Investing in Justice*, *supra* note 140, at 17 (“Independent Economic Studies Confirm Increased Civil Legal Aid Is A Sound Economic Investment.”).

241. See *supra* Part I.A; *supra* note 113; see also Stout Risius Ross, *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, at 3-5 (Mar. 16, 2016), <https://perma.cc/X9W4-T56S>; Christine MacDonald, *Group Wants Renters to Have Lawyers in Eviction Cases*, DETROIT NEWS (Mar. 12, 2019),

economic consulting firm found that funding some representation in Massachusetts eviction and foreclosure proceedings would cost \$9.49 million and save the Commonwealth \$25.51 million.²⁴² “In other words, for every dollar spent on civil legal aid in eviction and foreclosure cases, Massachusetts stands to save \$2.69”²⁴³ A similar study done in Philadelphia indicated that \$3.5 million annually could provide legal assistance to all tenants unable to afford representation and the City would avoid \$45.2 million in annual costs.²⁴⁴ In New York City, the new civil housing counsel law is expected to save the City \$320 million annually.²⁴⁵

Another criticism of the right to counsel in evictions is that it could actually decrease the number of safe and healthy affordable housing units available.²⁴⁶ The argument is that increasing costs to landlords may incentivize them to decrease maintenance on their properties, abandon the rental market altogether, or pass the costs on to tenants, further harming low-income tenants more broadly.²⁴⁷ No data exists to support this argument. A similar concern was raised in the years after LSC was established, based on a study in New Haven, Connecticut.²⁴⁸ The concern was that the tenants would use litigation to delay the eviction process, and landlords would lose rent during the delay.²⁴⁹ In a 1995 analysis in the Yale Law and Policy Review, Steven Gunn criticized the study as methodologically flawed, and found that legal services attorneys did not increase costs for landlords and many times negotiate settlements wherein tenants paid most or all of their rent.²⁵⁰

While the legislation that exists is too new to fully analyze outcomes, the fact that evictions in New York City have dropped so steeply could be an indicator that landlords are choosing not to bring frivolous suits because they know their tenant will have an attorney.²⁵¹ If in fact the right to counsel for

<https://perma.cc/V4LK-63QB>; ROSS, *supra* note 109, at 7-8; Matthew Desmond, Opinion, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), <https://perma.cc/76XX-SLHG>.

242. *Investing in Justice*, *supra* note 140, at 4, 17.

243. *Id.* at 4.

244. ROSS, *supra* note 109, at 6. The study considered households with 30% or less of the area median income as those unable to afford representation. *Id.* at 35-36.

245. ROSS, *supra* note 241, at 3, 5.

246. See generally Note, *Legal Services and Landlord-Tenant Litigation: A Critical Analysis*, 82 YALE L.J. 1495, 1502 (1973) [hereinafter *Legal Services and Landlord-Tenant Litigation*] (describing argument that the increased availability of attorneys for tenants due to the existence of Legal Services could lead to a decrease in affordable housing).

247. See *id.* at 1502-03; Peter Vickery, *Tenants’ Right to Counsel Has Anti-Property Origins*, MASSLANDLORDS.NET, <https://perma.cc/5MGY-FK22>.

248. A second unpublished study was done in 1991. Steven Gunn, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL’Y REV. 385, 386 (1995).

249. *Legal Services and Landlord-Tenant Litigation*, *supra* note 246, at 1496-99.

250. Gunn, *supra* note 248, at 386-87.

251. See Goldstone, *supra* note 85 (“since spurious cases tend to be dropped when

tenants in evictions imposed such costs on landlords that affordable housing would disappear, then other legislative measures should be implemented to avoid such negative consequences. It is untenable to argue that tenants should not have a meaningful right to raise valid defenses against landlords because it costs the landlords too much.

Detractors also suggest that the indigent criminal defense system is so flawed that a similar system should not be the goal for civil litigation.²⁵² This is a strange argument because, as pointed out by David Udell and Laura Abel, even recognizing the indigent criminal defense system's flaws, few would suggest we go back to pre-*Gideon* rights to solve its problems.²⁵³ The idea would be similar to advocates arguing "against extending the *Gideon* right to misdemeanor defendants [] on the ground that felony defendants were receiving inadequate legal assistance."²⁵⁴ Proponents also recognize the flaws in indigent criminal defense. The NCCRC has adopted the language "civil right to counsel,"²⁵⁵ rather than civil *Gideon*, in part to make clear that the goal is not to replicate the indigent criminal defense system.²⁵⁶ They also argue that we can learn from the indigent criminal defense system to create a better functioning civil litigation system.²⁵⁷ Indeed, the ABA Model Access Act aims to help states to address some of the issues with the indigent criminal defense system.²⁵⁸

Critics also argue that the appointment of lawyers in civil cases could cause unnecessary delay and even create an asymmetry that would make the hearing less fair.²⁵⁹ For example, if the debtor in a civil contempt case like *Turner* has counsel, but the parent who is owed the child support does not, the parent that needs the money for the child could be harmed.²⁶⁰ The obvious response is that both sides should receive court-appointed counsel. A parent relying on child support for all or part of their income would certainly fall under a basic human need category.²⁶¹ More importantly to the topic of this Article, in eviction

there's an attorney on the other side, providing low-income renters with access to legal representation . . . is a logical first step in curtailing unwarranted removals").

252. See Barton & Bibas, *supra* note 137, at 980.

253. Pollock & Greco, *supra* note 32, at 50.

254. *Id.* (quoting Memorandum from David Udell & Laura Abel, Nat'l Coal. for a Civil Right to Counsel, Info. for Civil Justice Sys. About Civil Right to Counsel Initiatives, at 11 (June 9, 2009)).

255. This Article makes no proposal for how the right to counsel in civil proceedings should be funded or implemented. The author chose to use 'civil *Gideon*' and 'civil right to counsel' interchangeably.

256. *The Right to Counsel in Criminal and Civil Cases*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL, <https://perma.cc/FB89-XG72>; see also Brito, *supra* note 128, at 56-63.

257. *The Right to Counsel in Criminal and Civil Cases*, *supra* note 256.

258. *Id.*; ABA MODEL ACCESS ACT 104 (AM. BAR ASS'N 2010), <https://perma.cc/AJ7V-F3CH>.

259. *Turner v. Rogers*, 564 U.S. 431, 447 (2011).

260. See *Gagnon v. Scarpelli*, 411 U.S. 778, 787 (1973); see also Dreyer, *supra* note 138, at 652-53.

261. See *infra* Part II.B.2.

proceedings, where most landlords have attorneys and most tenants do not, tenants should have a right to counsel if asymmetry is a concern.²⁶²

Alternatively, opponents offer procedural and pro se reform.²⁶³ These are important but will likely not be sufficient for tenants in eviction cases. Courts where evictions are held are often set up to be pro se friendly but instead have become “eviction machines.”²⁶⁴ Many procedural protections exist for the tenant in court, but tenants are often unable to use them successfully without counsel.²⁶⁵

Justice demands that tenants facing eviction be guaranteed the right to be heard by counsel. The fear that the system to provide the right is imperfect is not a good reason not to act. And financial considerations are not a barrier to action, either—they are the very reason many jurisdictions across the country have passed or are considering a right to counsel in eviction.

III. THE RIGHT TO COUNSEL IN EVICTIONS BECOMES “UNIVERSAL”

In 2017, New York City became the first jurisdiction in the United States to pass legislation guaranteeing a right to counsel in eviction cases.²⁶⁶ Since then, San Francisco and Newark, New Jersey,²⁶⁷ have passed their own laws guaranteeing the right, and many other jurisdictions appear poised to follow.²⁶⁸

New York City advocates have been pushing for a right to counsel for low-income tenants for decades.²⁶⁹ Since New York City’s Housing Court was created in the early 1970s, disparities between landlords with attorneys and tenants without them has raised much concern.²⁷⁰ By 2013, this concern, combined with a growing number of rent-burdened New Yorkers, led to the creation of a coalition which began organizing and advocating for the right to counsel in housing court.²⁷¹ Even before the legislation was signed into law in

262. See Sabbeth, *supra* note 7.

263. Barton & Bibas, *supra* note 137, at 987.

264. See, e.g., Kim Barker et al., *supra* note 8. In many jurisdictions evictions are held in small claims court, which is set up to be easily accessible for the pro se litigant. E.g., J. RICHARD CAMPBELL ET AL., HAMILTON COUNTY SMALL CLAIMS LITIGANTS’ BOOKLET (2016).

265. See *supra* Part I.C.

266. Andrew Scherer, *New York City’s “Universal Access” Legislation: One Giant Leap for the Civil Right to Counsel*, MGMT. INFO. EXCHANGE J., Fall 2017, at 32, 32, <https://perma.cc/VVY7-598K>.

267. On October 1, 2019, Cleveland became the fourth city to pass a law ensuring the right to counsel to certain low-income tenants. *Cleveland Creates Right to Counsel*, *supra* note 9.

268. RIGHT TO COUNSEL IN EVICTION MATTERS IS GAINING GROUND, STOUT, Oct. 14, 2019, <https://perma.cc/K2LW-F8UH>. See also Jenifer McKim, ‘Someone to Speak for You’: Low-Income Tenants Get Lawyers for Housing Court, NPR (Apr. 3, 2019), <https://perma.cc/2FGM-N7LP>; Soni Sangha, *Eviction on Trial*, U.S. NEWS (Jan. 22, 2019), <https://perma.cc/F4RW-Q2FF>.

269. BEEN ET AL., *supra* note 111, at 5; see also Scherer, *supra*, note 14, at 557.

270. See BEEN ET AL., *supra* note 111, at 4-5.

271. *Id.* at 5-6.

2017, New York City increased its budget for legal services to low-income tenants and saw a twenty-four percent decline in evictions.²⁷² Now, the “Universal Access to Counsel Program” (“UAC”) is being rolled out over the next several years, with full coverage of all city ZIP codes by 2022.²⁷³

The UAC guarantees representation to income-eligible tenants in eviction proceedings in Housing Court.²⁷⁴ It also provides for either representation or advice to tenants in New York City Housing Authority (“NYCHA”) administrative proceedings to terminate tenancy in buildings owned by the Housing Authority.²⁷⁵ This is important because in order to evict a tenant from public housing, NYCHA must first terminate tenancy through an administrative process and then seek an eviction order in the Housing Court.²⁷⁶ Once a tenant loses at the administrative hearing it is very difficult to defend an eviction in Housing Court.²⁷⁷ Therefore, the right to counsel at the administrative hearing is crucial to actually protecting public housing tenants from eviction.²⁷⁸ But the law does not provide counsel for administrative hearings terminating Section 8 vouchers.²⁷⁹

Tenants in an eviction proceeding in Housing Court who are above the income threshold are eligible for brief legal advice but not full representation.²⁸⁰ Tenants receiving either full representation or brief legal advice are to receive access to services “no later than their first scheduled appearance in [Housing Court or an NYCHA administrative hearing] . . . or as soon thereafter as is practicable.”²⁸¹ Income eligibility is currently set at a household income of 200% of the federal poverty guideline or less, which in 2019 is \$51,500 for a family of four.²⁸² Though this captures most of the tenants in Housing Court, it leaves some populations in a very expensive city vulnerable,²⁸³ and advocates are currently

272. *Id.* at 9 n.44; see also Andrew Stelzer, *Proposition F: Free Legal Aid for Tenants Facing Eviction*, S.F. PUB. PRESS (May 1, 2018), <https://perma.cc/M75W-QE36>.

273. N.Y.C., N.Y., ADMIN CODE §§ 26.1302(b) (2019).

274. *Id.* §§ 26.1301-02.

275. *Id.*

276. Sabbeth, *supra* note 7, at 82; MFY LEGAL SERVICES INC., HOW DO I HANDLE NYCHA TERMINATION-OF-TENANCY PROCEDURES? 1 (2016).

277. See Sabbeth, *supra* note 7, at 82.

278. *Id.*

279. *Id.* The Section 8 program is run by NYCHA, but voucher holders rent in the private market. *Policy Basics: The Housing Choice Voucher Program*, *supra* note 5. However, NYCHA can terminate vouchers for a multitude of reasons, and if a tenant loses a voucher they will likely be evicted because they will be unable to pay full market rent. See *infra* Part IV.B.2.

280. N.Y.C., N.Y., ADMIN CODE §§ 26.1301-02 (2019).

281. *Id.* § 26.1302.

282. *Id.* §§ 26.1301-02 (setting income eligibility level); Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167, 1168 (Feb. 1, 2019).

283. Jake Sporn, “Right to Counsel” Leaders Call for Expansion of Landmark Tenants’ Rights Law, MARK LEVINE COUNSEL MEMBER WEBSITE (June 8, 2018), <https://perma.cc/WZ7R-MGE2>.

pushing to raise income-eligibility to 400% of the federal poverty guideline.²⁸⁴ Eligible tenants are represented by attorneys from designated non-profit legal services organizations.²⁸⁵

Notably, the right provided under the UAC is subject to appropriation.²⁸⁶ The law also requires the program coordinator to capture data related to the services provided and hold an annual public hearing on the law to “receive recommendations and feedback.”²⁸⁷ Presumably this data will be used for funding decisions in the future.

The other two existing right to counsel in eviction laws were clearly influenced by New York City’s law. The Newark law, which was passed in December 2018, is nearly identical down to the provisions requiring data capture and annual public hearings.²⁸⁸ Like New York City, its passage was driven by a coalition of housing advocates.²⁸⁹ But the timing that the right to counsel attaches, which is similar in both laws, poses a unique problem in Newark. In both cities the right attaches at the first hearing.²⁹⁰ In New Jersey, unlike New York City, evictions are summary actions.²⁹¹ This means they happen on a very tight timeline, and decisions on possession usually occur at the first and only hearing.²⁹² This dramatically limits a lawyer’s ability to prepare a defense for their client.

The Newark law also has several differences from the New York City law, resulting in more limited coverage of tenants. Unlike the UAC, Newark’s law calls for the creation of a pilot project²⁹³ and does not provide separate rights for

284. *Id.*

285. Scherer, *supra* note 266.

286. N.Y.C., N.Y., ADMIN CODE § 26.1302 (2019). The UAC is implemented and funded through the Office of Civil Justice (“OCJ”). The OCJ was created as part of the Human Resources Administration, New York City’s social services agency, to oversee city-funded civil legal services available to low-income tenants. N.Y.C. HUM. RESOURCES ADMIN., N.Y.C. OFFICE OF CIVIL JUSTICE 2018 ANNUAL REPORT 2-3, 5 (2019), <https://perma.cc/5V46-XKDX>; N.Y.C. HUM. RESOURCES ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR ONE OF IMPLEMENTATION IN NEW YORK CITY 1 (2018), <https://perma.cc/RA8X-H4LR>. For more on what “subject to appropriation” means for the right to counsel see Scherer, *supra* note 266, at 34.

287. N.Y.C., N.Y., ADMIN CODE §§ 26.1303-04 (2019).

288. NEWARK, N.J., REV. GEN. ORDINANCES §§ 19:3-0-19:3-4 (2000).

289. DAVID D. TROUTT, RUTGERS CENTER ON LAW, INEQUALITY AND METROPOLITAN EQUITY (CLIME), NEWARK’S RIGHT TO COUNSEL: A PROPOSED SYSTEM DESIGN FOR INDIGENT TENANTS FACING EVICTION 2, 18 (Apr., 2019), <https://perma.cc/QH9V-TC45>.

290. NEWARK, N.J., REV. GEN. ORDINANCES § 19:3-2(a)(3) (2000).

291. TROUTT, *supra* note 289, at 3.

292. *Id.*

293. NEWARK, N.J., REV. GEN. ORDINANCES § 19:3-2(a) (2000). It thus has substantially less funding than the New York right. A legal services attorney in Newark that this author spoke to cited the reality that New York’s constitutional right to shelter made the dynamic of their law different than Newark’s. *See also* Alexis Stephens, Editorial, *Can Other U.S. Cities Follow in NYC’s Footsteps to Help Renters?*, NEXT CITY (Feb. 21, 2017), <https://perma.cc/24SE-T7HE> (Philadelphia advocate notes “[w]e’re a little behind because our

tenants who are not income-eligible.²⁹⁴ The Newark law also lacks language regarding administrative hearings at the public housing authority.²⁹⁵ However, unlike in New York City, where the merits of a public housing eviction are usually determined in an administrative proceeding, the merits of a public housing eviction are litigated in New Jersey Superior Court,²⁹⁶ though some Newark public housing tenants are eligible to request an informal grievance hearing with the housing authority.²⁹⁷ These informal meetings can sometimes prevent the filing of an eviction.²⁹⁸ Public housing evictions make up an estimated 60-70% of the evictions of indigent tenants in New Jersey.²⁹⁹ Prior to the law's passage, a memorandum by Rutgers' Center on Law, Inequality and Metropolitan Equity outlined important considerations for the law. It recognized the particular vulnerabilities of public housing tenants and suggested that the right to an attorney should attach at an informal grievance hearing prior to an eviction proceeding.³⁰⁰ However, nothing about the rights of public housing tenants or an earlier right to counsel was ultimately codified.³⁰¹

The Newark law also has a notably strongly worded declaration of emergency. It explicitly states that homelessness, risk of homelessness, and living in uninhabitable living conditions due to the shortage of housing is an emergency, and that "[t]his emergency was created, in part, by the filing of frivolous and/or retaliatory eviction actions by landlords"³⁰² It goes on to state that "[a] landlord will be less likely to file a frivolous lawsuit if she/he is aware that her/his tenant will be assisted by legal counsel" and "[a] lack of knowledge and awareness of their legal rights [and] the fear of being evicted . . . discourages many Newark tenants from fighting eviction actions and to complain about substandard housing conditions."³⁰³

San Francisco's law, which was the second in the nation, was passed through

city isn't the same size and there isn't the same legacy of tenancy advocacy as New York . . . [w]e don't have as much money and . . . prior to recently there really hasn't been a way to access information without taking a very tedious look at municipal court data.").

294. NEWARK, N.J., REV. GEN. ORDINANCES §§ 19:3-0-19:3-4 (2000).

295. *Id.*

296. *See* TROUTT, *supra* note 289, at 8.

297. U.S. DEP'T OF HOUS. & URBAN DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK 203 (2003). This author spoke to a legal services attorney in Newark who said that while HUD technically requires that a tenant in public housing have an opportunity to request a grievance procedure hearing prior to an eviction filing, it does so only sporadically, usually when a legal aid attorney is involved.

298. *Id.*

299. TROUTT, *supra* note 289, at 4, 8.

300. *Id.* at 17.

301. NEWARK, N.J., REV. GEN. ORDINANCES §§ 19:3-0 to -4 (2000). This author spoke to advocates on the ground who indicated that the program was still being rolled out and program specifics were still being worked out.

302. *Id.* § 19:3-0.

303. *Id.*

a ballot initiative known as Prop F.³⁰⁴ A right to counsel coalition, relying on San Francisco's 2012 commitment to become the first "right to civil counsel city" in the United States, and citing the New York City law, submitted 21,000 petition signatures to bring the initiative to the ballot.³⁰⁵ On June 5, 2018, the majority of San Franciscans voted yes, and the No Eviction Without Representation Act of 2018 was passed.³⁰⁶ Unlike the New York City and Newark laws, Prop F requires that all tenants in San Francisco have a right to counsel in eviction cases, regardless of income.³⁰⁷ That right includes "full scope" representation, which includes filing responsive pleadings, appearing on behalf of the tenant, and advice until the petition is withdrawn, the case is dismissed, or a judgment in the matter is entered.³⁰⁸ The representation is to be available to a tenant thirty days after receiving a notice from the landlord indicating their intent to file an eviction or upon the service of an eviction complaint, whichever happens first.³⁰⁹ There is no mention of tenants in administrative proceedings with the San Francisco Housing Authority in the initiative,³¹⁰ and few other details were specified about how the program would be structured or funded.³¹¹ However, San Francisco has already approved some funding and appointed the Eviction Defense Collaborative ("EDC") to design and implement the program.³¹² EDC works with several legal service providers to match a tenant facing eviction with a provider.³¹³ Though the right is in theory universal, on its website EDC notes that there may be times when an attorney is not available.³¹⁴ If no attorney is available, EDC will work to ensure a tenant facing eviction at least has an attorney at the mandatory settlement conference a week before trial.³¹⁵

These three cities appear to be on the forefront of a revolution. Many other cities and states across the country seem poised to pass or propose their own legislation guaranteeing a right to counsel in housing cases.³¹⁶ Legislation has

304. *From the Field: San Francisco Voters Guarantee Right to Counsel for All Tenants Facing Eviction*, NAT'L LOW INCOME HOUS. COAL. (Apr. 30, 2019), <https://perma.cc/KLK8-V26L>.

305. *Id.*; *San Francisco Is Second City to Enact Right to Counsel in Housing Cases*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL (June 5, 2018), <https://perma.cc/S4GR-TNXZ>.

306. *From the Field*, *supra* note 304.

307. *Id.*

308. S.F., Cal., No Eviction Without Representation Act of 2018 (June 5, 2018).

309. The eviction complaint is called an unlawful detainer complaint. *Id.*

310. *Id.*

311. *From the Field*, *supra* note 304.

312. Laura Waxmann, *Tenant Advocacy Groups Set To Receive Funding Under 'Right To Counsel' Program*, S.F. EXAMINER (Nov. 28, 2018), <https://perma.cc/DM4V-JV6N>; EVICTION DEFENSE COLLABORATIVE, TENANT RIGHT TO COUNSEL, <https://perma.cc/9F2L-H4X6>.

313. Waxmann, *supra* note 312.

314. EVICTION DEFENSE COLLABORATIVE, *supra* note 312.

315. *Id.*

316. Indeed, prior to the publication of this article, Cleveland became the fourth city to pass a right to counsel in evictions law. *Cleveland Creates Right to Counsel*, *supra* note 9.

been introduced in Philadelphia,³¹⁷ and the first statewide legislation has been introduced in Massachusetts,³¹⁸ Connecticut, and Minnesota.³¹⁹ The proposed legislation in all four jurisdictions is relatively short. Philadelphia and Massachusetts' proposed legislation appears to draw heavily from New York City's law.³²⁰ Philadelphia's proposal would extend the right to those at up to 200% of the federal poverty guidelines, like New York City's.³²¹ Massachusetts would extend it only to those at up to 125% of the guidelines.³²² Meanwhile, the Connecticut proposal, which is only a few lines, would extend the right to "a tenant who is a defendant in a summary process matter and whose total yearly earnings are less than fifty thousand dollars"³²³ None of the proposed legislation in Philadelphia, Massachusetts, or Connecticut mentions any right to counsel in hearings held by the local housing authority.³²⁴ The Minnesota proposal, however, would provide counsel only for public housing evictions.³²⁵ None of the current proposed legislation would provide a right to Section 8 voucher holders in administrative termination proceedings.³²⁶

Many other cities, including Minneapolis,³²⁷ Chicago,³²⁸ Cleveland,³²⁹

317. Phila., Pa., Bill No. 190386 (May 9, 2019), <https://perma.cc/GTR9-7WL3>.

318. H.D. 1618, 191st Gen. Court (Mass. 2019).

319. S.B. 652, 2019 Gen. Assemb., Jan. 2019 Sess. (Conn. 2019); S.F. 1785, 2019 S., 91st Sess. (Minn. 2019).

320. *Compare* Phila., Pa., Bill No. 190386 (May 9, 2019), <https://perma.cc/5RZQ-FF3Z>, and H.D. 1618, 191st Gen. Court (Mass. 2019), with N.Y.C., N.Y., ADMIN CODE §§ 26.1301-1304 (2019).

321. *Compare* Phila., Pa., Bill No. 190386 (May 9, 2019), with N.Y.C., N.Y. ADMIN CODE §§ 26.1301-1302 (2019).

322. H.D. 1618, 191st Gen. Court (Mass. 2019).

323. S.B. 652, 2019 Gen. Assemb., Jan. 2019 Sess. (Conn. 2019).

324. *Id.*; H.D. 1618, 191st Gen. Court (Mass. 2019); Phila., Pa., Bill No. 190386 (May 9, 2019).

325. S.F. 1785, 2019 S., 91st Sess. (Minn. 2019); H.F. 2593, 2019 H.R., 91st Sess. (Minn. 2019).

326. S.B. 652, 2019 Gen. Assemb., Jan. 2019 Sess. (Conn. 2019); H.D. 1618, 191st Gen. Court (Mass. 2019); Phila., Pa., Bill No. 190386 (May 9, 2019).

327. Jessica Lee, *As Minneapolis Council Moves Toward Finalizing 2019 Budget, Members Focus On Housing, Public Safety Issues*, MINNPOST, (Dec. 3, 2018), <https://perma.cc/UGQ6-J6LW>.

328. Lawyers' Committee for Better Housing, *Opening The Door On Chicago Eviction: Legal Aid Attorneys Make The Difference*, CHI. EVICTIONS (May 2019), <https://perma.cc/HS6H-7R2Y>.

329. On October 1, 2019, Cleveland became the fourth city to pass a law ensuring the right to counsel to certain low-income tenants. *Cleveland Creates Right to Counsel*, *supra* note 9.

Cincinnati,³³⁰ Los Angeles,³³¹ and the District of Columbia,³³² have taken some of the first steps toward a potential right to counsel by increasing funding for legal services for low-income tenants and commissioning studies and pilots on the cost, need, and impact of such legislation.³³³ Most of these efforts have been driven by community organizing, which is unique among right to counsel movements.³³⁴

Some predict that the idea of allowing a person to be forcibly removed from their home without representation will, in time, be as appalling as pre-*Gideon* indigent criminal defense seems today.³³⁵ They see the right to counsel in evictions as one more stepping stone on the path to a robust federal constitutional right to counsel.³³⁶ Whether or not that is the case, it is clear the momentum for a right to counsel in evictions is building.³³⁷ Though the growth in the right thus far has primarily been in large cities, it will likely be adopted more widely.³³⁸ Many cities are realizing that “fair administration of justice”³³⁹ requires the right to counsel.³⁴⁰ And the realization that the right can save money might be the impetus to finally achieving it.³⁴¹

330. Lucy May & Craig Cheatham, *I-Team: What Nearly 50,000 Eviction Filings in Four Years Have Done to Hamilton County*, WCPO CINCINNATI (June 21, 2018), <https://perma.cc/92MH-7NR7>.

331. Editorial, *Support Funding for Civil Counsel in California*, L.A. TIMES (May 16, 2019), <https://perma.cc/Y9BG-R347>.

332. Washington, D.C., Expanding Access to Justice Act (2016).

333. See Editorial Board, Editorial, *L.A. Renters Deserve A ‘Right To Counsel’ For Evictions*, L.A. TIMES (Apr. 23, 2019), <https://perma.cc/F9M9-GM8Z>; Jasper Scherer, *D.C. Council to Consider Free Legal Help for Poor Residents in Housing Cases*, WASH. POST (Oct. 14, 2016), <https://perma.cc/VR4P-7R7B> (“The legislation is part of McDuffie’s ultimate goal of establishing a ‘right to counsel’ in all civil cases in the District.”); Nobile, *supra* note 329.

334. Jared Brey, *Tenants’ Right to Counsel on the Move, Next Stop Newark*, NEXT CITY (Jan. 10, 2019), <https://perma.cc/Q9ER-G2S5>; Karen Yi, *Newark Wants to Guarantee a Free Lawyer for Low-Income Residents Facing Eviction*, N.J. ADVANCE MEDIA (May 1, 2018), <https://perma.cc/A7JK-NEW5>.

335. See Pastore, *supra* note 155, at 1085.

336. See *id.*

337. See Brey, *supra* note 293 (“If you think about it, after no place having the right to counsel [in evictions] for eternity, having three cities do it within the span of essentially a year is pretty miraculous.”).

338. See Brito, *supra* note, 128, at 56-63 (describing the momentum of the civil right to counsel movement and that the funding for right to counsel laws has surprised many skeptics). But see Brito, *supra* note 128, at 57 (noting that “if the right to civil counsel develops state by state, it will likely become more robust and better funded . . . in blue states . . . while remaining limited and poorly funded in red states”).

339. No Eviction Without Representation Act, A Ballot Initiative for the People of the City and County of San Francisco, November 1, 2017 (on file with author).

340. See *supra* Part I.C.

341. See *supra* Part II.C; see also Laura K. Abel, *Economic Benefits of Civil Legal Aid*, NAT’L CTR. FOR ACCESS TO JUST. AT CARDOZO L. SCH. (2012).

IV. THE BUILDING BLOCKS: STRENGTHENING AND EXPANDING THE RIGHT TO COUNSEL IN EVICTIONS

The consequences of a forced move or inadequate housing can be devastating.³⁴² The data repeatedly show that expanding access to counsel can help keep people housed.³⁴³ Though the current momentum of the right to counsel movement is centralized in urban areas, the housing crisis is not so limited. Inadequate and unaffordable housing and high rates of evictions are problems in large cities and small rural areas,³⁴⁴ on the coast and in the heartland, and regardless of a state's politics.³⁴⁵ As such, the right to counsel in evictions should be extended across the country.³⁴⁶

It is an exciting moment for jurisdictions looking to establish a right to counsel in evictions. Such legislation will not only have a positive impact where it is adopted but has the potential to shape law and policy across the nation for many years to come. As more and more cities and states look to create their own right to counsel, they will rely on the early adopters as a model, just as Newark, Massachusetts, and Philadelphia have relied heavily on New York City's law.³⁴⁷

Advocates wishing to advance the right to counsel in evictions can do what has already been done by the earliest adopters. They can build coalitions and study housing instability and eviction rates in their own jurisdiction, the disparities between landlords with lawyers and tenants without, and the impact that the presence of counsel has on outcomes in eviction cases.³⁴⁸ This information may be persuasive even in places considered traditionally less progressive than early adopters for one of the same reasons that support for civil legal aid has historically crossed the political spectrum: it is a good investment.³⁴⁹

There are many considerations for any jurisdiction adopting a right to counsel in eviction law. Some major considerations that have already been raised by lawmakers and those analyzing existing legislation include where funding will come from; who should provide the legal services; what level of experience and training is necessary for appointed counsel; whether there should be an income limit for assistance; the rates for compensation for appointed counsel and

342. See *supra* Parts I.A-I.B.

343. *Supra* Part I.C.

344. Hardy, *supra* note 20.

345. See, e.g., *Questions and Answers About Eviction*, EVICTION LAB, <https://perma.cc/JQA4-2LWW>.

346. The right needs to be coupled with other measures to adequately combat the housing crises. See *supra* Part I.C.

347. *Supra* Part III.

348. See Stephens, *supra* note 293.

349. For example, the Maryland Access to Justice Commission determined that a right to counsel in areas of basic human need would cost approximately \$106 million, and that civil legal aid lawyers generated approximately \$190 million in economic benefit for the state in a single calendar year. MD. ACCESS TO JUSTICE COMM'N, ECONOMIC IMPACT OF CIVIL LEGAL SERVICES IN MARYLAND 1 (2013), <https://perma.cc/A6XE-P4LE>.

what the scope of representation should be: advice only, full representation, or something else.³⁵⁰ With the aim of vigorously protecting more tenants from housing instability and unsafe conditions, this article proposes strengthening right to counsel in eviction laws by ensuring that the right attaches earlier in the eviction process, and that the right applies to the termination of housing assistance. It further proposes that policymakers and advocates consider expanding the right to counsel beyond eviction defense to affirmative actions against landlords who fail to maintain habitability standards and lays out a pilot project as a starting point for doing so.

A. The Right to Counsel Should Attach Upon Receipt of a Notice Terminating Tenancy

Under currently existing laws, the right to counsel in evictions attaches at the time of hearing or, in San Francisco, thirty days after receiving a notice from the landlord indicating an intent to evict.³⁵¹ This is too late to meaningfully protect many tenants, so the right should attach earlier. This is especially true because many people are forced to move, and are at risk of homelessness, before an eviction is ever filed.³⁵² Requiring the right to counsel in evictions to attach at the time a termination notice is received and plainly stating the right in many languages on the termination notice will protect more tenants.

1. How the eviction machine works

Laws governing the eviction process vary from state to state.³⁵³ Many states that adopted the Uniform Residential Landlord Tenant Act altered some language, especially regarding the amount of time a tenant is given to remedy a lease violation.³⁵⁴ Eviction proceedings are also known as summary dispossession or forcible entry and detainer actions.³⁵⁵ Evictions generally occur because a tenant is holding over after the lease has been terminated, often because of a lease violation.³⁵⁶ Most often, the violation is nonpayment of rent

350. See generally BEEN ET AL., *supra* note 111; S. 1785, 2019 Leg., 91st Sess. (Minn. 2019).

351. See *supra* Part III.

352. See *infra* Part IV.A.1.

353. See *Real Property Law – Landlord and Tenant: Eviction, Unlawful Detainer & Tenant Protections at Foreclosure*, LEXIS NEXIS (Apr. 2019), <http://advance.lexis.com>.

354. See generally *id.* Because of this variation, many nuances exist that are outside the purposes and scope of this article.

355. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137 (2000).

356. See National Conference of Commissioners on Uniform State Laws, *Uniform Residential Landlord and Tenant Act* (2015), <https://perma.cc/6K3L-HYA4> (holdover can also occur when the tenant remains after the term of the lease has passed).

when due.³⁵⁷ Most states require landlords to serve a notice before bringing an action for eviction.³⁵⁸ For most violations, including nonpayment of rent, most states require that the tenant be given some amount of time to remedy the violation after service of the notice and before the tenancy terminates,³⁵⁹ but this “cure period” can be as short as three days.³⁶⁰ If the tenant fails to cure within the time period, the lease is terminated and the landlord can file an eviction action.³⁶¹

Eviction actions are usually summary proceedings, meaning they are generally limited in nature and happen very quickly.³⁶² Sometimes only the issue of possession is at question, though most states allow counterclaims or defenses for the landlord’s failure to maintain the unit.³⁶³ Generally, once the eviction action is commenced, a single, usually quick, hearing is held, and the issue of possession is decided during the hearing.³⁶⁴ A ruling on possession usually takes about six to ten days from the filing of an eviction action.³⁶⁵ If the judge rules to evict, tenants usually have at most a week or two to remove themselves and their belongings, or be forced out by the sheriff or marshal.³⁶⁶

Critically, many forced moves happen before an eviction action is ever commenced.³⁶⁷ Landlords force tenants out in a variety of informal, often illegal ways.³⁶⁸ Even the receipt of a notice purporting to terminate a tenancy, regardless of whether it is legally sufficient, may cause tenants who do not understand their rights to move before an action is filed.³⁶⁹

357. Sabbeth, *supra* note 7, at 80; *see also* Schmidt, *supra* note 8, at 634.

358. *Real Property Law*, *supra* note 353.

359. *E.g.*, IOWA CODE ANN. §§ 562A.27, 562A.27A. *See generally* Uniform Residential Landlord and Tenant Act (2015), *supra* note 356.

360. *E.g.*, IOWA CODE § 562A.27A.

361. *E.g.*, *id.* §§ 562A.27, 562A.27A, 562A.34(4).

362. Spector, *supra* note 355, at 137. For background on the historical development of the summary eviction process, *see* Lauren A. Lindsay, Comment, *Protecting the Good-Faith Tenant: Enforcing Retaliatory Eviction Laws by Broadening the Residential Tenant’s Options in Summary Eviction Courts*, 63 OKLA. L. REV. 101, 103 (2010).

363. Spector, *supra* note 355, at 137; Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 529, 537 (1982) (explaining that most states require landlords to maintain habitability, and most implied warranty states allow tenants to raise habitability issues as a defense); *see, e.g.*, Uniform Residential Landlord Tenant Act §§ 2.104, 4.105 (allowing for counterclaim when landlord fails to maintain fit premises).

364. Spector, *supra* note 355, at 137.

365. *Id.*

366. Lindsay, *supra* note 362, at 104-05.

367. Matthew Desmond, *Forced Out*, N.Y. TIMES (Jan. 31, 2016), <https://perma.cc/A9EL-F3J7> (noting that “[n]early half of the forced moves of renting families in Milwaukee are ‘informal evictions’”); *supra* Part I.C.

368. *Supra* Part I.C.

369. *Id.*

2. Notice: You have the right to free representation from a lawyer

The right to counsel should attach at the moment a tenant receives a termination notice. The notice should be required to plainly state that the tenant has “a right to free representation from a lawyer.” The notice of the right to counsel should be in multiple languages, varying by jurisdiction.

The right must attach earlier than current laws to provide adequate protection for tenants. By requiring the right to attach at the time the notice is served, more tenants will be protected from informal forced moves, will have the advice they need to be able to mount a defense before they lose it, and will attend their court hearings.³⁷⁰

From the time a tenant receives a notice to the time their eviction hearing is held could be a matter of days.³⁷¹ Thus, the right to counsel at the time the notice is served is also critical to enable an attorney to properly investigate and prepare a defense. Even in jurisdictions like New York, where multiple hearings may be held, there is a huge advantage to the right attaching at the time the notice is served. If there is an obvious defense, that attorney may be able to work with the landlord or his counsel to resolve the case prior to the hearing or at the first hearing. This will save court resources, as well as time and resources for the legal services organizations representing tenants. It will also save tenants from having to appear in court multiple times, forcing them to miss work or find childcare. This is very important for low-income individuals who often do not have flexible work schedules or vacation time to spare for court. It also could be the difference in their ability to afford rent.

Research indicates that many tenants who are forced to move never make it to court.³⁷² In one study, only twenty percent of tenants actually appeared in court for their eviction hearings.³⁷³ This statistic only captures the people who had eviction actions filed against them; it fails to capture those who moved before an action was ever filed. If tenants have access to an attorney soon after receiving a notice, they can understand their rights and likely outcomes and make an educated decision about whether to move or not.

In many cases, tenants may have a valid defense that they would not know about without the assistance of an attorney. For example, there are many technical procedural defenses that a lawyer can raise that are too complicated for a tenant to successfully raise on their own.³⁷⁴ In other cases, a tenant may know they have a defense but decide it is not worth raising because the judge will not believe them, or the landlord’s attorney will make it impossible to win. For example, a tenant who paid rent but receives a notice claiming that she did not

370. See *supra* Parts I.C., IV.A.1.

371. See *supra* Part IV.A.1.

372. See *supra* Parts I.C., IV.A.1.

373. WILLIAM E. MORRIS INST. FOR JUSTICE, *supra* note 100, at 45.

374. See *supra* Part I.C.; see also Cooper, *supra* note 117, at 453; Sabbeth, *supra* note 7, at 111-16.

may be emboldened to raise her defense and appear in court with a lawyer on her side.³⁷⁵

It is critical that a tenant be able to speak to an attorney soon after receiving a termination notice. Timelines to remedy breaches can be very short.³⁷⁶ In some jurisdictions, once the cure period has passed, even if the final hearing has not happened, a landlord does not have to forego possession.³⁷⁷ For example, where a tenant has received a notice that he must pay rent within three days but does not offer rent until the fourth day, the landlord is not required to accept the rent and can proceed with the eviction action. On the other hand, if a tenant does not understand the notice correctly or misunderstands or miscalculates the day he was served, the tenant may choose not to cure and move because he thinks it is too late to cure, when it in fact is not. If a tenant receives advice immediately after receiving a notice, he can act to remedy where possible and ensure that he makes a record of his cure, lowering the chances that an eviction action will ever be filed.

Even when a tenant is unable to cure, or when her likelihood of success is low, access to an attorney after service of the notice can be extremely valuable. An attorney's advice can help a tenant decide to move or otherwise comply with the notice before eviction proceedings are brought, saving court and attorney resources, and preventing the tenant from an eviction record, which could harm her chances of renting elsewhere.

Obviously, it is critical that the notice itself states that a tenant has a right to free representation from a lawyer. The failure to inform a tenant of the right would potentially undermine a great deal of the benefits of the right attaching at the point a notice is received. Requiring landlords to put this language on the notice may serve as extra protection from frivolous or illegal attempts at forcing their tenant out.³⁷⁸ Because the incentive for landlords not to include the language could be great, proving the service of a notice with that language should be a condition precedent to the eviction court's jurisdiction. In other words, landlords should be required to prove that they properly served a notice with the language notifying tenants of their rights to a free attorney before a judge can hear their case.

Finally, the notice of a right to a free lawyer should be plainly written in multiple languages. The language of the notice must be simply written to ensure as many people as possible comprehend the right. Indicating that the advice from a lawyer is free is also important to avoid undermining the right completely. Federal law requires organizations receiving federal funding to provide

375. See Jake Bittle, *NYC's Legal Assistance Program for Tenants Is Saving Thousands From Eviction*, GOTHAMIST (Nov. 15, 2018), <https://perma.cc/9JP9-5A3W>.

376. See, e.g., IOWA CODE § 562A.27(2).

377. *Id.*

378. *Cf.* NEWARK, N.J., REVISED GEN. ORDINANCES § 19:3-0 (stating that a landlord will be less likely to file a frivolous eviction if he knows the tenant will be represented by counsel).

meaningful access to their services to all limited English proficiency (“LEP”) individuals.³⁷⁹ The Department of Justice has created guidelines to help organizations determine what language their materials should be available in based on the population they serve; these same guidelines could be used to determine which languages to print the notice of right to counsel in. It would be best to have the right translated into all the languages required by the statute to avoid bad translations and miscommunication. The same population that does not read English is more likely to be unfamiliar with American landlord-tenant norms and requirements and may be more vulnerable to an illegal forced move.³⁸⁰

While the full details of implementation are beyond the scope of this article, it should be noted that a right that attaches at the time a termination notice is received will require more resources, at least initially. It may ultimately save money, however, by reducing the number of frivolous filings by landlords who know they have to face an attorney and by causing more cases to settle.³⁸¹ It will also reduce substantial costs for homeless services to those who would otherwise be forced out before an eviction is ever filed.³⁸²

B. The Right Should Attach to Administrative Housing Assistance Termination Hearings

New York City is the only jurisdiction with a current right to counsel in evictions law that contemplates the termination of housing assistance.³⁸³ Even so, the New York City law only protects public housing tenants, not Section 8 voucher holders, and does not guarantee full representation.³⁸⁴ Though Section 8 voucher holders make up the largest group of tenants receiving housing assistance, the right to counsel does not extend to voucher termination hearings. Tenants who receive housing assistance are extremely vulnerable, and the consequences of losing assistance are dire.³⁸⁵ Guaranteeing full representation for public housing tenants and voucher holders in administrative proceedings is critical to the goals of right to counsel laws because these tenants are most likely to become homeless and struggle to find housing again.³⁸⁶

379. See Exec. Order No. 13,166, 3 C.F.R. § 289 (2000); U.S. DEPT. OF JUSTICE, ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 – NATIONAL ORIGIN DISCRIMINATION AGAINST PERSONS WITH LIMITED ENGLISH PROFICIENCY (2011) (compliance standards that recipients of federal financial assistance must follow to ensure that their programs and activities are accessible to LEP persons).

380. See Deena Greenberg et al., *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115, 135-40 (2016).

381. See *supra* Part I.C.

382. See Ortiz, *supra* note 117, at 180.

383. *Supra* Part III.

384. *Id.*

385. See *infra* Part IV.B.3.

386. *Id.*

1. Air your grievances: Full representation for public housing tenants

Current and future right to counsel in eviction laws should include the right to full representation upon receiving notice of a public housing termination. Of the three current right to counsel laws, only New York City's addresses rights specific to those with housing assistance.³⁸⁷ It provides for "brief legal assistance or full legal representation" in administrative hearings terminating tenancy from buildings NYCHA operates.³⁸⁸ In New York City, the housing authority must terminate housing assistance in an administrative proceeding before seeking an eviction in Housing Court.³⁸⁹ It is very difficult to win in Housing Court once the tenant loses the administrative proceeding, which is why the right to counsel at the administrative hearing is so important.³⁹⁰ Full representation in Housing Court will often not be enough if a public housing tenant has already lost at the administrative hearing. It makes little sense to waste resources on full representation at the later hearing if the attorney is not going to be at the hearing that matters in practice. New York City and other cities with public housing should guarantee full representation at public housing termination administrative hearings.

Even where the merits are decided in eviction court, the right to counsel in evictions should attach at the time the housing assistance termination notice is received. In most cities, such as Newark, the merits of a public housing eviction are litigated in the same court that hears evictions.³⁹¹ However, in most cases a public housing tenant is entitled to an informal grievance hearing prior to the termination.³⁹² The tenant must request this informal grievance hearing within a specified time period after receiving a housing assistance termination notice.³⁹³ Sometimes these informal meetings can prevent an eviction filing.³⁹⁴ Thus, representation at the time the notice is received is very important so that tenants can be advised of their right to request a grievance hearing and have counsel with them at the hearing.³⁹⁵

Just as in evictions generally, the right to counsel in public housing termination hearings should attach upon receipt of the notice to terminate so that the attorney can adequately prepare a defense.³⁹⁶

387. See *supra* Part III.

388. N.Y.C., N.Y., ADMIN. CODE §§ 26-1301-02 (2019).

389. MFY LEGAL SERVICES INC., *supra* note 276.

390. *Id.*

391. See CLiME, *supra* note 289.

392. 24 C.F.R. § 966.53, § 966.54.

393. U.S. DEP'T OF HOUS. & URBAN DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK, 209 (2003).

394. MASS. LAW REFORM INST., USING YOUR PUBLIC HOUSING GRIEVANCE PROCESS: A KNOW YOUR RIGHTS GUIDE FOR PUBLIC HOUSING TENANTS IN MASSACHUSETTS 5 (2006).

395. This author spoke with a legal services attorney in Newark who explained that in his experience tenants rarely requested grievance hearings unless an attorney was involved.

396. See *supra* Part IV.A.2.

2. Section 8 terminations: Where an eviction can be lost before it is ever filed

While variation exists among public housing authorities (PHAs), the Department of Housing and Urban Development (“HUD”) provides the basic procedural guidelines for Section 8 terminations.³⁹⁷ Note, as will be discussed at more length below, the termination of a Section 8 voucher is not the same as an eviction.³⁹⁸ A tenant can remain in their rental unit after their voucher is terminated, but they will be required to pay full market rent.³⁹⁹

The reasons for terminations are many. Even errors that seem minor, such as failing to submit paperwork on time, can be a cause for termination.⁴⁰⁰ Other reasons include individuals living in the unit who are not on the lease, debts owed to other PHAs, criminal activity, alcohol abuse, fraud against the program, and eviction from the subsidized unit.⁴⁰¹ PHAs monitor criminal reports and other activities, such as EBT usage, actively searching for violations.⁴⁰² Once the PHA decides a violation has occurred, in most cases it has the discretion to terminate the voucher or take other action.⁴⁰³ Often the PHA decides to terminate and issues a termination letter stating the reasons for the decision to terminate.⁴⁰⁴ Termination letters are frequently sent without any investigation or even speaking with the voucher holder.⁴⁰⁵

The voucher holder then must request a hearing to appeal the decision, or the decision is final. The hearing is often extremely informal and lacks many protections common in other judicial proceedings.⁴⁰⁶ Hearings are held in front of hearing officers, who are appointed by (and often employees of) the PHA, and who are not required to have any legal expertise.⁴⁰⁷ Even when hearing officers do not work for a PHA, they have often built a relationship with PHA employees,

397. Homsey, *supra* note 77, at 540-41.

398. U.S. DEP’T OF HOUS. & URBAN DEV., HOUSING CHOICE VOUCHER PROGRAM GUIDEBOOK, at 15-8 (2013).

399. *Id.* at 15-9, 15-10.

400. McNair Turner, *supra* note 7, at 56.

401. See Homsey, *supra* note 77, at 518; Wendy Tolson Ross, *Protecting the Unsophisticated Tenant: A Call for a Cap on Late Fees in the Housing Choice Voucher Program*, 34 SETON HALL LEGIS. J. 227, 230-33, 244 (2010).

402. See *supra* note 75.

403. See Homsey, *supra* note 77, at 518-19.

404. *Id.* at 518.

405. See Lerner, *supra* note 75, at 42; see, e.g., Sykes v. City of Cedar Rapids, District Court of Linn County No. CVCV082678 (“[the housing authority employee who] made the initial decision to terminate Plaintiff’s Voucher . . . did not speak with Plaintiff prior to making the decision to terminate Plaintiff’s Section 8 Voucher”); Runa Rajagopal, *Oversight: NYCHA’s Administrative Hearing Process and Judicial Proceedings*, MFY LEGAL SERVICES (Jan. 23, 2008), <https://perma.cc/2X2L-2654>.

406. McNair Turner, *supra* note 7, at 50.

407. *Id.*

which can create bias in decision-making.⁴⁰⁸ This relationship is usually apparent to voucher holders, which can be intimidating and undermines the hearing's legitimacy.⁴⁰⁹ At the hearing, which is often held in a small room at the PHA office, housing authority employees will present the case and the tenant is expected to defend themselves.⁴¹⁰ The rules of evidence do not apply, and hearsay is frequently admitted and relied upon.⁴¹¹ Presenting a defense can be challenging for a non-lawyer under the best of circumstances, and these hearings are often not the best of circumstances. For example, unexpectedly having to prove that someone does not live at your home can actually be quite challenging. The lack of legal training on the part of the hearing officer and the PHA employee presenting the case can increase the difficulty. Nonetheless, the development of the record at these hearings can be important for an appeal,⁴¹² though appeal rights are limited.⁴¹³

As mentioned above, if a voucher is terminated, the voucher holder is not automatically evicted.⁴¹⁴ A landlord must follow the law of the local jurisdiction to evict the voucher holder.⁴¹⁵ Though a tenant will usually end up in eviction after termination of the voucher because they will no longer be able to afford rent, the actual issue which leads to the termination in the first place will not be adjudicated in the eviction proceeding.⁴¹⁶ Most other housing assistance subsidies are litigated in the same court where all evictions are held,⁴¹⁷ though, like in New York, some public housing tenants can also be evicted prior to a state court proceeding.⁴¹⁸

3. Dear Gideon, we terminated your voucher and you have the right to a free attorney

None of the existing right to counsel in eviction laws apply to Section 8

408. *Id.* at 51.

409. *Id.*

410. *Id.*

411. Homsey, *supra* note 77, at 520-21.

412. McNair Turner, *supra* note 7, at 51.

413. *Id.* at 45, 51.

414. See U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 398.

415. *Id.* at 15-3.

416. Note in some circumstances the landlord can evict a tenant, and that eviction will then be the cause of the voucher termination proceeding. See 24 C.F.R. § 982.552(c)(1)(ii).

417. PHAs are allowed to evict tenants through a court action where the merits of the case would be heard. U.S. DEP'T OF HOUS. & URBAN DEV., PUBLIC HOUSING OCCUPANCY GUIDEBOOK 203 (2003). Other subsidized housing programs such as project-based vouchers and low-income tax credit units operate with private owners, and therefore evictions would also be brought through a court action. *Project-Based Vouchers*, NAT'L HOUS. LAW PROJECT, <https://perma.cc/FD4U-YCTC>; *How the LIHTC Program Works*, NAT'L HOUS. LAW PROJECT, (Sept. 7, 2017), <https://perma.cc/9NX9-WG57>.

418. Public housing tenants can be evicted in a court action or an administrative action as long as they are afforded a pre-eviction hearing, if the jurisdiction permits it. *Id.*

voucher recipients in voucher termination hearings.⁴¹⁹ While many jurisdictions do not have any public housing, many have Section 8. It is the largest housing assistance program in the country and continues to expand even as public housing complexes are being demolished.⁴²⁰ Jurisdictions across the country should include a right to counsel which attaches upon receipt of the notice terminating a Section 8 voucher.⁴²¹

In New York City, roughly 90,000 families have Section 8 vouchers.⁴²² By the time any one of those voucher holders arrive in Housing Court, it will likely be too late for the appointed attorney to keep their client housed. With short deadlines to appeal a termination decision, even the most sympathetic and worthy arguments against the termination may no longer be able to be raised in the court proceeding.⁴²³ Without protecting these voucher holders at the hearing that actually matters, the right to counsel is not truly “universal.” Across the country more than two million voucher holders would be in the same position no matter how many cities pass right to counsel in eviction legislation, if the right does not attach in time for an attorney to appear at the informal PHA hearing.⁴²⁴

Voucher holders are often among the most vulnerable of all tenants. Over half are seniors or disabled adults; most others are families with children.⁴²⁵ By nature of their eligibility to receive housing assistance, they cannot afford market rent. Thus, the consequences of losing assistance are dire and very likely include homelessness.⁴²⁶ One study found that poor families that did not receive assistance were four times more likely to have lived in a shelter or on the streets in the fourth year of the study than comparable families that did receive assistance.⁴²⁷ And “many of the characteristics that make a participant especially qualified for a Section 8 voucher are the very characteristics that will make it exceptionally difficult for them to effectively present their ‘case’ in an informal hearing.”⁴²⁸ For example, many housing assistance recipients have lower education levels⁴²⁹ or have disabilities.⁴³⁰ Both mental and physical disabilities

419. See *supra* Part III.

420. See, e.g., McNair Turner, *supra* note 7, at 45-48.

421. The merits of a termination in other housing assistance programs are usually litigated in a regular eviction proceeding. See *supra* Part IV.B.1.

422. Devin Gannon, *The City Will Issue New Section 8 Vouchers For The First Time In Two Years*, 6SQFT (May 10, 2018), <https://perma.cc/Q4K3-44NJ>.

423. See *supra* Part IV.B.2.

424. Bell et al., *supra* note 61 (Section 8 voucher program subsidizes housing for over 2.2 million families).

425. See *Federal Rental Assistance*, *supra* note 59, at 2.

426. McNair Turner, *supra* note 7, at 45.

427. BARBARA SARD, CTR. ON BUDGET & POLICY PRIORITIES, NUMBER OF HOMELESS FAMILIES CLIMBING DUE TO RECESSION 10 (2009), *cited in* Homsey, *supra* note 77, at 549 n.224.

428. McNair Turner, *supra* note 7, at 51.

429. Tolson Ross, *supra* note 401, at 236.

430. McNair Turner, *supra* note 7, at 51.

could limit a person's ability to file a request for a hearing, let alone appear at the hearing and raise a strong defense. Even well-educated voucher holders without any disabilities may have difficulty presenting a defense in informal PHA hearings which forego many of the basic standards generally believed to ensure due process.⁴³¹

If the purpose of right to counsel in eviction laws is to keep people housed and off the streets, Section 8 voucher holders cannot be overlooked. This is especially true because once a housing authority has terminated a voucher, former recipients may be blocked from receiving assistance in the future.⁴³² And as many voucher holders have no realistic ability to increase their income and no ability to afford market rent, they will become homeless.⁴³³

Finally, for all the same reasons that the right to counsel should attach at the time a notice terminating tenancy is served, the right to counsel in Section 8 termination hearings should attach upon notice.⁴³⁴ And the notices should be plainly written in multiple languages.⁴³⁵

C. The Right Should Be Expanded to Protect Tenants' Right to Live in Safe and Healthy Housing

The lack of affordable housing leads many low-income tenants to accept poor housing conditions.⁴³⁶ As public health scholars Elizabeth Tobin-Tyler and Joel B. Teitelbaum posit, "an unhealthy and unsafe roof over one's head may be better than no roof at all."⁴³⁷ But, as noted earlier, the impacts and risks of poor housing conditions can be severe.⁴³⁸ Poor conditions harm both the physical and mental health of tenants.⁴³⁹ Health risks include permanent neurological damage from lead poisoning,⁴⁴⁰ developing or exacerbating asthma, living amongst rodents, and risk of burns and natural gas poisoning because tenants have to use their ovens and space heaters to warm their homes.⁴⁴¹ These risks are disproportionately higher for people of color and low-income individuals.⁴⁴²

Tenants have the right to live in healthy and safe housing.⁴⁴³ Most

431. *Supra* Part IV.B.2.

432. *Id.*

433. Over half of all voucher holders are seniors and adults with disabilities. *Policy Basics: The Housing Choice Voucher Program*, *supra* note 3.

434. *See supra* Part IV.A.2.

435. *Id.*

436. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 73-74.

437. *Id.* at 74.

438. *See supra* Parts I.A, I.B.3.

439. *Id.*

440. Benfer, *supra* note 12, at 495.

441. *See* Sabbeth, *supra* note 7, at 107-08; *see also* TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 73-74.

442. *See* TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 74.

443. *Id.* at 108; *see also* Sabbeth, *supra* note 7, at 64.

jurisdictions have laws, usually referred to as housing codes, which provide the standards for housing.⁴⁴⁴ Most jurisdictions also have inspectors whom tenants can call to complain about housing code violations.⁴⁴⁵ If the inspector agrees there is a violation, she can notify the landlord of the violation and fine the landlord if he fails to make the necessary repairs.⁴⁴⁶ Tenants can also bring affirmative actions against their landlords for failure to maintain the unit, but usually habitability issues are not raised until an eviction hearing, which is often too late.⁴⁴⁷

Unfortunately, low-income tenants face many barriers to enforcing their right to healthy and safe housing.⁴⁴⁸ Despite reforms over the last several decades, including the warranty of habitability,⁴⁴⁹ reforms allowing tenants to raise habitability issues as a defense in summary eviction proceedings,⁴⁵⁰ and the creation of special courts to handle housing code violation claims,⁴⁵¹ too many low-income tenants across the country are living in unhealthy conditions.⁴⁵² “[23] million housing units have lead-based paint hazards, 17 million have high exposure to indoor allergens, and 6 million have moderate to severe infrastructure problems.”⁴⁵³

Tenants are often afraid to complain because of fear of retaliation.⁴⁵⁴ Though many states have laws against retaliation, they are often not enforced.⁴⁵⁵ Critically, when tenants owe rent they are not protected from retaliation laws.⁴⁵⁶ When tenants do complain, their landlords may choose to evict them and rent to someone willing to accept poor conditions rather than make repairs.⁴⁵⁷ Housing inspection agencies are often underfunded, making it difficult to get an inspection or other adequate response.⁴⁵⁸ Many tenants do not know they can

444. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 108.

445. *Id.*

446. *Id.*

447. See Sabbeth, *supra* note 7, at 106; Michele Cotton, *When Judges Don’t Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 66 (2015).

448. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 109.

449. See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 461 (2011).

450. See Sabbeth, *supra* note 7, at 112.

451. See generally Jessica K. Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at A Problem-Solving Housing Court*, 42 L. & SOC. INQUIRY 1058, 1061 (2017).

452. *Supra* Part I.B.3.

453. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 74.

454. See *supra* Part I.A.

455. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 109.

456. E.g., IOWA CODE § 562A.36(3)(b); see also DESMOND, *supra* note 14, at 75.

457. PROTECT TENANTS, *supra* note 52; see *supra* Part I.A.; see also TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 109.

458. TOBIN-TYLER & TEITELBAUM, *supra* note 85, at 108-09; see also Martin Austeruhle, *Want To Be A Housing Inspector? D.C. Considers Uber-Style Plan To Recruit Residents For The Job*, WAMU AM. UNIV. RADIO (Mar. 29, 2019), <https://perma.cc/24U2->

raise habitability as a defense to an eviction, and when they do, their claim is often inappropriately denied.⁴⁵⁹ Similarly, most tenants would not know about their right to bring an affirmative action against their landlord or would fear filing suit without representation.⁴⁶⁰

Having lawyers available when a landlord fails to respond to a request to repair a housing code violation is critical.⁴⁶¹ Both on an individual and a systemic level, lawyers can make clear that the laws meant to protect the health and safety of tenants will be enforced.⁴⁶² By providing a right to counsel in evictions, jurisdictions may start seeing systemic change in housing conditions because habitability issues can be raised as counterclaims and defenses in eviction proceedings, and attorneys may be more successful at raising them than tenants.⁴⁶³ With the new influx of attorneys in eviction cases, and likely increase in habitability defenses, research should be done into the impact of a lawyer in improving housing conditions through those defenses.

Even if attorneys started successfully raising habitability defenses in eviction cases, many people living in substandard conditions are not being evicted and need another method to advance their rights and improve their conditions. As Kathryn Sabbeth suggests in her article, *Housing Defense as the New Gideon*, jurisdictions could consider expanding the right to counsel to affirmative actions against landlords for housing code violations.⁴⁶⁴ Because a right to counsel scheme in affirmative cases raises new and challenging considerations, pilot programs should be created to consider the best approach, as has been done with the initiation of other right to counsel programs.⁴⁶⁵

A right to counsel in affirmative cases is potentially more challenging than in defense cases, as demonstrated by the nuances in the proposal laid out below,⁴⁶⁶ but given the devastating consequences of substandard housing conditions, it is worth the extra hurdles to develop an appropriate approach. The idea is not entirely novel. For example, New York's Family Court Act guarantees the right to counsel to parent petitioners who affirmatively bring custody cases.⁴⁶⁷ When the District of Columbia considered its right to counsel in eviction law, it also contemplated a right to counsel in housing conditions cases.⁴⁶⁸

One concern about a right to counsel in affirmative housing cases is the risk of unsubstantiated lawsuits. However, this concern should not detract from the

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459. See Cotton, *supra* note 447, at 59.

460. See Super, *supra* note 449, at 406-07.

461. See, e.g., Gold, *supra* note 24, at 70.

462. See *supra* Part I.C.

463. See Cotton, *supra* note 447, at 86.

464. See Sabbeth, *supra* note 7, at 63.

465. See *supra* Part II.B; see also Pastore, *supra* note 109, at 80-84.

466. See Sabbeth, *supra* note 7, at 108-09, 111.

467. N.Y. FAM. CT. ACT § 262(a)(v) (McKinney 2012).

468. Sabbeth, *supra* note 7, at 108 n.426.

initiation of pilot programs, as it is hard to imagine a large influx of frivolous suits against landlords for housing conditions, especially given the limited financial incentive for tenants.⁴⁶⁹

Safeguards can also be put into place to minimize the risk that resources will be spent on the provision of counsel to tenants with frivolous claims. A pilot program for right to counsel in affirmative housing conditions cases should test procedures that can help ensure the seriousness of the claims of tenants bringing affirmative cases prior to appointment of counsel before a larger rollout of a broader right to counsel.⁴⁷⁰ Such an approach should rely largely on existing infrastructure.

For a tenant to file a case, he or she should be required to fill out a standard form complaint. That form would require that a housing inspection be completed that yields evidence of housing conditions violations before a tenant could obtain counsel to assist in filing. The form would also give tenants the option to check a box indicating they were fearful of retaliation and did not want to pursue an action without the assistance of an attorney.

If a housing inspection was completed, the form would then require the tenant to confirm that the report was provided to the landlord and that a set number of days had passed to give the landlord the opportunity to make repairs. If the tenant sought emergency repairs or the restoration of essential services, fewer days or none at all could be required before filing.⁴⁷¹ The tenant would be required to attach the housing inspection report, indicating that a violation existed. This could be quickly reviewed by a judge or a designated court administrator in the same way that *in forma pauperis* forms are reviewed before a litigant is allowed to proceed. The judge or administrator would be required to look at the materials to confirm that a housing code violation likely existed, the right to counsel would attach, and the tenant could proceed.

If a tenant checked the box indicating that they feared retaliation and did not want to request a housing inspection, the pilot program should allow a tenant to seek advice from an attorney. After speaking with an attorney, the tenant could either decide to take no action, request an inspection, or request a hearing with a judge to determine eligibility for counsel.

The attorney advising the tenant may be able to provide tips to help the tenant show the judge that he needs representation. The eligibility criteria may be a simple showing of (1) a reasonable fear of retaliation based on the circumstances and (2) a likely housing code violation. Judges should require no more than the testimony of the tenant as evidence that the criteria are met. The right should be the norm, and a denial of the right to counsel should only be issued in

469. See, e.g., IOWA CODE § 562A.21(2) (2006); Uniform Residential Landlord and Tenant Act § 4.101 (a tenant can obtain reasonable damages for a landlord's failure to maintain the premises and only allows attorney's fees if the failure to maintain was willful).

470. See Sabbeth, *supra* note 7, at 76-77 (discussing earlier pilots).

471. See, e.g., IOWA CODE § 562A.23 (2019).

extraordinary circumstances. This is acceptable because again, it is unlikely that allowing tenants this right will open the flood gates to frivolous claims against landlords.

However, even with the right to counsel, many tenants would never file an affirmative housing conditions case in the first place.⁴⁷² For this reason, the pilot program should also include funding for public information campaigns.⁴⁷³ A successful program would also require a housing inspection system that works. This may require increased funding for the housing inspection agency in addition to the funding for appointed counsel.

Any pilot program should also be used to study the realities of pro se litigants raising (and not raising) housing conditions, and the impact on outcomes when a tenant has a lawyer. Just as studies on eviction helped propel the right to counsel in evictions forward, studies on housing condition outcomes may build momentum to include affirmative housing cases as part of the right to counsel. With lawyers involved, the housing codes that exist may finally be enforced, and tenants may finally be able to expect to live in healthy and safe homes. As Elmo and John Oliver so rightly put it when singing about America's lead epidemic, "[housing conditions are] a really big problem, [] seems like [they're] everywhere, we can do more to fix [them], but first, we all have to care."⁴⁷⁴

CONCLUSION

"[E]viction [is] the civil equivalent to capital punishment. The person or family that is evicted suffers civic death in society. They lose not only their housing but also their independence and dignity, often becoming isolated and hopeless."⁴⁷⁵ Lawyers can ensure that the rights tenants have are enforced and recognized. The right to counsel in evictions and beyond can prevent the individual tragedies of forced moves and inadequate housing and weaken the systemic injustices of the eviction machine. With New York City, San Francisco, and Newark leading the way, more cities are poised to ensure tenants' equality before the law. Many more "civic deaths" can be prevented by ensuring the right to counsel attaches earlier in the eviction process, by guaranteeing counsel in cases terminating housing assistance, and by providing representation in affirmative cases seeking to remedy substandard housing conditions.

472. *Cf. Super*, *supra* note 449, at 406, 409 (discussing the reasons tenants may choose not to raise the warranty of habitability; for example, in tight markets, tenants may fear being forced to move to even worse housing).

473. *See id.* at 406.

474. *Last Week Tonight with John Oliver* (HBO television broadcast Apr. 17, 2016).

475. Brian Gilmore, Opinion, *Give Tenants Lawyers*, N.Y. TIMES (Oct. 9, 2018), <https://perma.cc/7M7U-8YF9>.