

## A Nationwide Movement: The Right to Counsel for Tenants Facing Eviction Proceedings

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*When we talk about ensuring that every tenant who wants one has the right to access a lawyer, we are not just talking about balancing out the justice system so it can continue business as usual, just more efficiently. What we are really talking about is a shift in access to opportunity and power, a shift in whose voice gets heard, a shift in who gets access to the sort of information that could change their futures.<sup>1</sup>*

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<sup>1</sup> Rasheedah Phillips, Esq., Shriver Ctr. on Poverty L., Testimony on Bill No. 190386: Legal Representation in Landlord Tenant Court (Nov. 14, 2019) [hereinafter Phillips Testimony], (transcript available at [https://clsphila.org/wp-content/uploads/2019/12/RTC\\_Testimony\\_Phillips\\_11142019.pdf](https://clsphila.org/wp-content/uploads/2019/12/RTC_Testimony_Phillips_11142019.pdf)).

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## I. INTRODUCTION

Self-help eviction is impermissible in the United States. Instead, landlords are required to obtain an order from the court authorizing the removal of a tenant.<sup>2</sup> But tenant accounts, reports and research about the eviction process, and investigations of housing court show that court-ordered evictions of unrepresented tenants are effectively self-help evictions disguised in paperwork and bureaucracy.

The right to counsel for tenants facing eviction is a demonstrably effective intervention that, among other benefits, helps more tenants either remain in their homes or move with more time and money to do so. Voters across the political spectrum support establishing a right to counsel for tenants facing eviction.<sup>3</sup> Judges have voiced support for a right to counsel.<sup>4</sup> The American Bar Association supports a right to

<sup>2</sup> See *Eviction Laws Database*, LEGAL SERVS. CORP. (Jan. 1, 2021), <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>.

<sup>3</sup> Bilal Baydoun & Sean McElwee, *Voters Support a Right to Counsel for People Facing Eviction*, APPEAL (Feb. 11, 2021), <https://theappeal.org/the-lab/polling-memos/voters-support-a-right-to-counsel-for-people-facing-eviction/> (“64% of voters—including 78% of Democrats, 61% of independents, and 51% of Republicans—believe Congress should pass a measure to fund legal services to prevent evictions. 68% of voters—including 75% of Democrats, 71% of independents, and 58% of Republicans—support a right to counsel in eviction proceedings, similar to the right that exists for criminal cases.”).

<sup>4</sup> See Shira Schoenberg, *SJC Chief Justice Ralph Gants Endorses Right to a Lawyer for Tenants and Landlords in Eviction Cases*, MASSLIVE, <https://www.masslive.com/news/2019/10/sjc-chief-justice-ralph-gants-endorses-right-to-a-lawyer-for-tenants-and-landlords-in-eviction-cases.html> (last updated Oct. 30, 2019, 5:38 PM); see also,

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counsel.<sup>5</sup> Even the New York Real Estate Board supports a right to counsel.<sup>6</sup> Yet, no such right existed in the law until 2017 when, in a culmination of tenant organizing and political support, New York City became the first jurisdiction in the United States to enact such a law.<sup>7</sup> Today, there is a right to counsel for eligible tenants facing eviction in fifteen cities and three states.<sup>8</sup> Eight of these cities and all three states passed legislation in 2020 and 2021 during a tragic and overwhelming worldwide pandemic.<sup>9</sup> This dramatic rise in the number of enactments is both a testament to the power of tenant organizing and a direct response to a vicious eviction crisis that has raged unabated for decades.

In 2022, legislation has been introduced in numerous jurisdictions.<sup>10</sup> At the same time, other jurisdictions are adding funds to support increased and at times, universal, representation in eviction proceedings (“universal” meaning that all tenants receive counsel even if there is no ordinance guaranteeing it as a right).<sup>11</sup> Others are actively

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Permanent Comm’n on Access to Just., Report to the Chief Judge of the State of New York, *Appendix 5: Transcript, The Chief Judge’s 2018 Hearing on Civil Legal Services in New York State*, at 34 (2018), <https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/2018transcript.pdf>.

<sup>5</sup> See Am. Bar Ass’n Res. 112A (2006), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf); Am. Bar Ass’n Res. 612 (2022), <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2022/612-midyear-2022.pdf>.

<sup>6</sup> Real Estate Board of New York to The New York State Senate Standing Committees on Housing and Judiciary on S3082, Good Cause Evictions, REBNY Testimony 3 (Jan. 7, 2022), [https://www.nysenate.gov/sites/default/files/rebny\\_to\\_nys\\_senate\\_re\\_good\\_cause\\_testimony\\_digital\\_submission.pdf](https://www.nysenate.gov/sites/default/files/rebny_to_nys_senate_re_good_cause_testimony_digital_submission.pdf) (“Furthermore, to stabilize New Yorkers and keep them housed, the Senate should consider enacting a statewide right to counsel program, with sufficient funding to hire legal services attorneys.”).

<sup>7</sup> N.Y.C. Local Law No. 136 (2017); N.Y.C. ADMIN. CODE § 26-1302 (2021).

<sup>8</sup> See *infra* Sections II(B)–(D). Note: New Orleans, Louisiana, and Detroit, Michigan, both passed a right to counsel for tenants facing eviction in May 2022, after edits to this Article were completed.

<sup>9</sup> See *infra* Sections II(C)–(D).

<sup>10</sup> See, e.g., S.B. 101, 151st Gen. Assemb. (Del. 2021), <https://legiscan.com/DE/bill/SB101/2021>; H.B. 1863, 2022 Reg. Sess. (Haw. 2022), <https://legiscan.com/HI/bill/HB1863>; S.B. 366, 2022 Reg. Sess. (Ky. 2021), <https://legiscan.com/KY/bill/SB366/2022>; S.B. 874, 192d Gen. Ct. (Mass. 2021), <https://legiscan.com/MA/bill/S874/2021>; H.B. 1436, 192d Gen. Ct. (Mass. 2021), <https://legiscan.com/MA/bill/H1436/2021>; S.B. 4316, 92d Leg. (Minn. 2021), <https://legiscan.com/MN/bill/SF4316/2021>; A.B. 7570, 2021–22 Gen. Assemb. (N.Y. 2021), <https://legiscan.com/NY/bill/A07570/2021>; S.B. 6678, 2021–22 Gen. Assemb. (N.Y. 2021), <https://legiscan.com/NY/bill/S06678/2021>.

<sup>11</sup> See, e.g., Milwaukee, Wis., Res. 21-506 (Mar. 21, 2021), <https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=4969906&GUID=4DAB187E-D6B0-40ED-8452-E6CD0831FE97&Options=&Search> (Attachment 1: 21-506 RESOLUTION)

working to expand an existing right.<sup>12</sup> Federal bills are pending. The Eviction Prevention Act would “authorize the Attorney General to make grants to States and localities to provide the right to counsel in civil actions related to eviction.”<sup>13</sup> The “Affordable HOME Act,” would, in part, “[e]stablish funding for State governments, local governments, or Indian Tribes that have established a Right to Counsel through legislation for covered individuals who are facing ... eviction.”<sup>14</sup> Members of the White House administration are voicing support for increasing access to counsel for tenants facing eviction.<sup>15</sup> There is renewed commitment from the White House to access to justice,<sup>16</sup> and

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(appropriating American Rescue Plan Act for a “right to counsel” pilot program, but not establishing a “right” in the local law); Ithaca, N.Y., Res. 5.4, at 151 (2021), <https://www.cityofithaca.org/AgendaCenter/ViewFile/Agenda/2406?html=true#page=152> (committing city resources to the right to counsel program, but not establishing a “right” in local law).

<sup>12</sup> See e.g., NEWR DENVER, <https://newrdenver.com> (last visited Mar. 9, 2022). In Denver, Colorado, for example, the city council passed a right to counsel for tenants in 2021. DENVER, COLO. CODE art. IX (2021). Organizers in that city, however, have obtained enough signatures to include the question of expanding the right to counsel to cover all tenants, regardless of income, on the November 2022 ballot; see also, RIGHT TO COUNS. N.Y.C. COAL., *Housing Courts Must Change*, <https://www.righttocounselnyc.org/hcmc> (last visited Apr. 27, 2022).

<sup>13</sup> Eviction Prevention Act of 2021, H.R. 3580, 117th Cong. (2021).

<sup>14</sup> Affordable Housing Opportunities Made Equitable Act of 2021, H.R. 5385, 117th Cong. § 108 (2021).

<sup>15</sup> See Letter from Janet L. Yellen, Merrick B. Garland & Marcia L. Fudge to Governors, Mayors, Cnty. Execs. & C.J./State Ct. Adm’rs (Aug. 27, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf> (“Using ERA and American Rescue Plan State and Local Fiscal Recovery Funds to support the right to counsel and eviction diversion strategies. Tenants are more likely to avoid eviction and remain stably housed when they have access to legal representation. Legal counsel can also aid in the successful completion of ERA applications. We encourage state and local governments to use ERA and Fiscal Recovery Funds to launch right to counsel programs and invest in court navigators and diversion programs.”); see also Letter from Vanita Gupta to C.J./State Ct. Adm’r (June 24, 2021), <https://www.justice.gov/asg/page/file/1405886/download> (“[R]ecent studies have shown that ‘eviction diversion programs succeed when they provide comprehensive, supportive services to tenants and are designed to avoid evictions.’ Such comprehensive programs could include a combination of rental assistance, mediation, social services, and legal assistance. Where alternative dispute resolution is offered, whether pre- or post-filing, jurisdictions should consider providing access to counsel for unrepresented parties from the outset to ensure that these programs promote just outcomes and do not perpetuate structural advantages typically held by landlords.”).

<sup>16</sup> U.S. DEP’T OF JUST., A REPORT TO THE PRESIDENT OF THE UNITED STATES FROM THE ATTORNEY GENERAL OF THE UNITED STATES: PURSUANT TO THE PRESIDENT’S MEMORANDUM ON RESTORING THE DEPARTMENT OF JUSTICE’S ACCESS-TO-JUSTICE FUNCTION 2 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-to-the-President-from-the-Attorney-General-September-15-2021.pdf>. In a review of access to justice policy needs

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the Attorney General himself has called on individuals in the legal community to apply their legal knowledge to help tenants facing eviction.<sup>17</sup> The media now regularly pay attention to the right to counsel for tenants.<sup>18</sup> A *bonafide* movement has taken off.

This Article cannot capture the full meaning of the movement to establish a right to counsel for tenants facing eviction across the country. It is about much more than just the change in law. In the context of a composed piece of music, a movement is “a distinct structural unit or division having its own key, rhythmic structure, and themes and forming part of an extended musical composition.”<sup>19</sup> And the right to counsel is only a part of the more extensive tenant rights and housing justice composition. Instead, this Article zeroes in on the new legal landscape created by tenants, organizers, and advocates. Part II is an overview of the tenant right to counsel laws enacted in states and localities between 2017 and 2021. And as the number of jurisdictions with a right to counsel for tenants grows, so does the need for skilled, trained, zealous, and compassionate attorneys to represent tenants. For this reason, Part III discusses the opportunities that new and transitioning lawyers committed to housing justice have as the tenant right to counsel movement grows.

## II. THE STATUS OF THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION

### A. *But first, why?*

Housing is more than shelter, and housing need is more than affordability. Ideally, housing is a means to wealth

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and priorities, done as part of the process of “reinvigorating” the Office for Access to Justice, the Department of Justice held several listening sessions. *Id.* at 2–3. The Department found a “stakeholder desire to consider expanded priority areas,” which included “expanding civil legal representation through wider pro bono efforts, support of legal services providers, expansion of existing legal representation programs; and development of new methods and models to utilize federal resources to ensure access to counsel.” *Id.* at 3–4.

<sup>17</sup> Letter from Merrick B. Garland to Members of the Legal Cmty. (Aug. 30, 2021), <https://www.justice.gov/ag/page/file/1428626/download> (recommending that lawyers and law students help tenants access emergency rental assistance, volunteer with local legal aid providers, help courts implement eviction diversion programs, and point federal employees to a pro-bono coordinator).

<sup>18</sup> Abigail Savitch-Lew, *The Movement That Is Upending Landlords’ Power Over Tenants*, APPEAL (June 1, 2021), <https://theappeal.org/the-right-to-counsel-movement-upending-landlords-power-over-tenants/> (discussing the rise in jurisdictions with a right to counsel for tenants and exploring reasons for the increase).

<sup>19</sup> *Movement*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/movement> (last visited Mar. 9, 2022).

accumulation, a sense of belonging, the home for a web of social networks, and a place that expresses an individual's dignified choice.<sup>20</sup>

Evictions are not a threat to mere shelter; they are a threat to home. Evictions are a threat to everything contained within the four walls of a home, including privacy, well-being, and security. The devastation is all-consuming for the household, but also spreads beyond that home.

The effects [of evictions] ripple across all the lives of a household as well as those who step in to aid people suffering housing loss. Eviction upends all of the routines of daily life, requiring inordinate resources to regain a sense of normalcy. Commutes to work, health care visits, food access and day care arrangements are turned upside down. Eviction sharply contributes to transiency in school populations, disrupting the education of the child who moves as well as the chemistry of the classrooms she vacates. Housing loss is associated with a loss of custody for parents working to reunite with their children in child welfare matters. Sudden neighborhood change may endanger youth and lead to violence or desperate acts to avoid it. For all, the sheer emotional and physical stress of being uprooted is felt in myriad ways by every member of an evicted household (and the countless others with whom they interact) and is reflected in public health statistics. These often intangible costs are borne by both the evicted and the public.<sup>21</sup>

Most harmfully, evictions disproportionately impact, disrupt, and devastate the lives of people of color, particularly Black women.<sup>22</sup>

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<sup>20</sup> DAVID TROUTT, RUTGERS CTR. ON L., INEQUALITY & METRO. EQUITY, MAKING NEWARK WORK FOR NEWARKERS: HOUSING AND EQUITABLE GROWTH IN THE NEXT BRICK CITY 46 (2018) [hereinafter TROUTT, MAKING NEWARK WORK FOR NEWARKERS], <https://law.rutgers.edu/sites/law/files/CLiME%20Report%202018.pdf>.

<sup>21</sup> DAVID TROUTT, DIR., RUTGERS CTR. ON L., INEQUALITY AND METRO. EQUITY, NEWARK'S RIGHT TO COUNSEL: PROPOSED SYS. DESIGN FOR INDIGENT TENANTS FACING EVICTION 11 (2019) [hereinafter TROUTT, NEWARK'S RIGHT TO COUNSEL], <https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/5cdb429b41e8bc0001a83b1d/1557873312954/CLiME+Memo+-+Newark%E2%80%99s+RTC+Design+Final.pdf>.

<sup>22</sup> See Sandra Park & John Pollock, *Tenants' Right to Counsel Is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, AM. C.L. UNION (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond/>; see also Pearson Caldwell, *Right to Counsel Is Just as Much a Racial Justice Issue as a Housing Policy Issue*, CT MIRROR (Mar. 8, 2021), <https://ctmirror.org/2021/03/08/right-to-counsel-is-just-as-much-a-racial-justice-as-a-housing-policy/>.

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Housing exclusion, instability, and segregation are all racial in nature, sewn into the very fabric of our institutions, policies, and our value systems. Although roughly 3 million people around the country are evicted each year, it is not a coincidence that who gets evicted falls along racial and gender lines—most frequently impacting Black women and their children.<sup>23</sup>

When the Eviction Lab at Princeton University<sup>24</sup> undertook an analysis of eviction records across the country, researchers found that Black and Latinx renters, particularly women, were threatened with eviction and evicted at disproportionate rates.<sup>25</sup> “[C]enturies of systemic racism in government housing policy such as redlining, restrictive covenants, capital disinvestment, and predatory lending have created a market in which evictions and their consequences fall disproportionately on communities of color, especially on Black women.”<sup>26</sup>

This reality presents itself in the reports of numerous, if not most, individual jurisdictions who undertake such an analysis. In Philadelphia, between 2010 and 2015, “[e]viction rates in predominately African American/Black neighborhoods ... were generally more than three times that of predominantly White areas.”<sup>27</sup> In a 2015 study of Baltimore’s rent court, though Black women at that time made up only 34 percent of the city’s population, they comprised

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<sup>23</sup> Phillips Testimony, *supra* note 1.

<sup>24</sup> See EVICTION LAB, [www.evictionlab.org](http://www.evictionlab.org) (last visited Apr. 27, 2022).

<sup>25</sup> MD. OFF. OF THE ATT’Y GEN., REPORT OF THE ACCESS TO COUNSEL IN EVICTIONS TASK FORCE 7 (2022) (citing Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 659 (2020)), [https://www.marylandattorneygeneral.gov/A2C\\_docs/ATC\\_Task\\_Force\\_Report.pdf](https://www.marylandattorneygeneral.gov/A2C_docs/ATC_Task_Force_Report.pdf).

<sup>26</sup> *Id.*; see also CMTY. LEGAL SERVS. OF PHILA., BREAKING THE RECORD: DISMANTLING THE BARRIERS EVICTION RECORDS PLACE ON HOUSING OPPORTUNITIES 5 (2020), [https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report\\_Nov2020.pdf](https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf) (“Evictions have been well established as systemic issues parked at the intersections of race and gender justice.”).

<sup>27</sup> REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA 4–5 (2017), [https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions\\_in\\_Philadelphia\\_brief\\_Final.pdf](https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions_in_Philadelphia_brief_Final.pdf) (“A preliminary statistical evaluation of the relationship between eviction rates and the racial composition, income level and tenure mix (i.e., the percentage owner/renter occupied) of neighborhoods suggests that the racial composition of a neighborhoods exerts a substantial and statistically significant independent effect—over and above any influence of income and tenure—on neighborhood eviction rates. Indeed, net of an area’s median household income and tenure differences, each one percentage point increase in the percent African American/Black residents in a Census tract is associated with a 0.36 percentage point increase in the eviction rate.”).

79 percent of “tenants surveyed in court.”<sup>28</sup> In Seattle, women made up 81 percent of “single-tenant cases who owed less than \$100.00 . . .”<sup>29</sup> Over 50 percent of the tenants facing eviction in Seattle in 2017 were people of color, despite comprising a little over 35 percent of the rental population.<sup>30</sup> Women of color comprised over 57 percent of all women facing eviction in Seattle in 2017.<sup>31</sup> In 2021, in Cleveland, about “42% of all eviction filings . . . were in majority Black or African American census tracts compared to approximately 19% in majority white census tracts.”<sup>32</sup> Cleveland enacted the right to counsel for tenants in 2019, and a later analysis of right to counsel clients, households, and circumstances of eviction found that, in general, the right to counsel client in that city was a Black woman with two children.<sup>33</sup>

The right to counsel is not a solution to this crisis, but it can be a vital intervention. The right to counsel can interrupt the predictability and trajectory of a typical eviction proceeding, permitting the tenant

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<sup>28</sup> PUB. JUST. CTR., JUSTICE DIVERTED: HOW RENTERS ARE PROCESSED IN THE BALTIMORE CITY RENT COURT 13 (2015), <https://abell.org/wp-content/uploads/2022/02/cd-justice-diverted216.pdf>.

<sup>29</sup> SEATTLE WOMEN’S COMM’N & KING CNTY. BAR ASS’N, LOSING HOME: THE HUMAN COST OF EVICTION IN SEATTLE 20–21 (2018) [hereinafter LOSING HOME], [https://www.kcba.org/Portals/0/pbs/pdf/HJP\\_LosingHome\\_%202018.pdf](https://www.kcba.org/Portals/0/pbs/pdf/HJP_LosingHome_%202018.pdf).

<sup>30</sup> *Id.* at 24.

<sup>31</sup> *Id.* at 23.

<sup>32</sup> STOUT RISIUS ROSS, LLC, CLEVELAND EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION: JANUARY 1 TO DECEMBER 31, 2021, at 10 (2022), [https://freeevictionhelpresults.org/wp-content/uploads/2022/01/Stouts-2021-Independent-Evaluation-of-RTC-C\\_FINAL\\_1.31.22.pdf](https://freeevictionhelpresults.org/wp-content/uploads/2022/01/Stouts-2021-Independent-Evaluation-of-RTC-C_FINAL_1.31.22.pdf).

<sup>33</sup> *Id.* at 12 (“[T]he [typical right to counsel client] is a Black female with 2 children living in private housing (i.e., not public or subsidized housing). She has household income of approximately 50% of the federal poverty level, which is approximately \$22,000 for her household size (3 people – herself and her 2 children). They have been living in their home for between 1 and 3 years and have a 1-year written lease. The children in the RTC-C client households are more likely to have disabilities (physical, intellectual, or developmental) than the general population of children in Cleveland. The majority of RTC-C clients were not working at the time of their interview because their employment was impacted by COVID-19, but they were actively seeking employment. She indicates that the home they are living in has defective conditions, which the client notified the landlord about, but the landlord has not fixed. She is seeking Cleveland Legal Aid’s assistance to avoid an eviction judgment or involuntary move, secure rental assistance, and/or secure time to move. She may or may not want to stay in her home, but if her and her children were evicted, they would likely experience homelessness—either entering emergency shelter, living unsheltered, or needing to move in with family or friends.”). The report emphasizes that the reader must be careful with this analysis: “It is critically important for the reader to appreciate that the analysis is limited to RTC-C clients and may not necessarily apply to all eviction filings in Cleveland for the reasons described above.” *Id.*



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additional opportunities and choices within the constraints of the existing system.

Tenant representation reduces racial inequity in the housing domain. Nearly 80% of those represented are people of color. Without representation, as shown below, evictions leave people on the street and on “no-rent” lists due to their eviction backgrounds. Eviction records force families to rent from landlords who prey upon their desperation. One eviction is upstream from another. Evictions force families into unhealthy and unsafe homes in neighborhoods of concentrated poverty. Nearly 80% of tenants in Housing Court have never been there before. Many are young—single moms and first-time renters. Legal representation in Housing Court can interrupt a downward spiral of poverty and racial inequity.<sup>34</sup>

The consequences of eviction are devastating, but the proceedings themselves are also complex and difficult to navigate. Even if the majority of cases are for the non-payment of rent, “clients are overwhelmingly experiencing various substantive issues, complications and disagreements in their eviction cases.”<sup>35</sup> Some complicating factors include “defective conditions, oral leases, living in public or subsidized housing, . . . previous issues with management, or . . . a person in the household with mental health challenges.”<sup>36</sup> Other routine complications include disputes over whether rent paid has been properly credited or whether the landlord has imposed illegal surcharges that have inflated the amount owed.<sup>37</sup> And most perniciously, the filing of an eviction, regardless of disposition, can attach to a tenant’s record and remain available to tenant screening companies and future landlords for years to come.<sup>38</sup> Evictions are a

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<sup>34</sup> LUKE GRUNDMAN & MURIA KRUGER, LEGAL REPRESENTATION IN EVICTIONS - COMPARATIVE STUDY 2 (2018), <https://lims.minneapolismn.gov/Download/RCAV2/15626/Legal-Aid—Eviction-Study-with-Visual-Summary.pdf>.

<sup>35</sup> STOUT RISIUS ROSS, LLC, *supra* note 32, at 13–14.

<sup>36</sup> *Id.* at 13.

<sup>37</sup> See, e.g., *Minneapolis Landlord to Pay \$1M in Court Costs Following Tenant Violations*, BRING ME THE NEWS (Mar. 24, 2022), <https://bringmethenews.com/minnesota-news/minneapolis-landlord-to-pay-1m-in-court-costs-following-tenant-violations>; *State College Landlord Imposed Illegal Added Surcharges to Student Leases: AG Shapiro*, NORTHCENTRALPA.COM (Feb. 13, 2022), [https://www.northcentralpa.com/business/state-college-landlord-imposed-illegal-added-surcharges-to-student-leases-ag-shapiro/article\\_e1ed4276-8b58-11ec-9af3-2f727152eec9.html](https://www.northcentralpa.com/business/state-college-landlord-imposed-illegal-added-surcharges-to-student-leases-ag-shapiro/article_e1ed4276-8b58-11ec-9af3-2f727152eec9.html).

<sup>38</sup> See CMTY. LEGAL SERVS. OF PHILA, *supra* note 26, at 5–10 (outlining the scope of the problem regarding eviction filing records).

leading cause of homelessness: stripping away current housing while decimating opportunities for future housing.

There are clear, demonstrated benefits to tenant representation including a greater likelihood of remaining housed and, when a tenant has to vacate, increased time to move with more money to do so. But, perhaps the most critical benefit of representation is the expansion of the choices available for a tenant. Though landlord-tenant laws differ from jurisdiction to jurisdiction,<sup>39</sup> substantive and procedural defenses to eviction, as well as counterclaims, exist in many statutory codes. Yet, the typical unrepresented tenant cannot fully utilize these. In Baltimore, for example, a study of the City's Rent Court found that almost 73 percent of respondents surveyed "did not know they could raise a defense based on serious housing defects."<sup>40</sup> And "[m]ore than half (57%) of respondents reported that they did not know they could ask the judge, at trial, to allow payment of rent into a court escrow account."<sup>41</sup> While 86 percent of respondents did not know about "the right to rent abatement."<sup>42</sup>

Respondents who cited a serious defect in their property were asked the following questions about their pre-trial knowledge of certain habitability-based defenses to rent eviction:

- a) Without filing your own lawsuit against the landlord, you may defend the rent case on the basis of the poor conditions you had previously complained about. Were you aware of that, before your recent trial date?
- b) You may ask the judge, at trial, to allow you to pay any rent due or owing into a court escrow account until your landlord completes repairs. Were you aware of that, before your recent trial date?
- c) The judge may reduce your monthly rent while the poor conditions continue to exist. Were you aware of that, before your recent trial date?

Half of respondents answered "no" to all three questions, revealing that they had no knowledge of the highlighted rights

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<sup>39</sup> See generally *The Effect of State & Local Laws on Evictions*, LEGAL SERVS. CORP., <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions> (last visited Mar. 9, 2022).

<sup>40</sup> PUB. JUST. CTR., *supra* note 28, at 20.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

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and defenses. Only 10 percent of respondents showed “full” knowledge, answering “yes” for all three prompts.<sup>43</sup>

Yet 78 percent reported having at least one threat to health and safety in their home, and of those, 72 percent reported the defect to their landlord prior to the eviction.<sup>44</sup>

Though the right to counsel is strong, effective, and fiscally responsible policy,<sup>45</sup> in most of the United States tenants do not have such a right. And without such an intervention in place, only 3 percent of tenants are represented in eviction proceedings, compared to 81 percent of landlords on average.<sup>46</sup> But this is rapidly changing. The movement to establish a right to counsel in eviction proceedings is experiencing significant growth across the country.

On the one hand, this movement is not about the law. This movement recognizes the role that lawyers play, but ultimately, it is about activating tenant power, changing the power dynamics in the landlord-tenant relationship, and using these successes to catapult housing justice forward more broadly.<sup>47</sup> The right to counsel for tenants facing eviction is part of a larger struggle.

We believe that Right to Counsel is a tool to really build power . . . [a]s organizers, as we do outreach and let folks know this right exists, we also want to talk about how we can use this right to change not only the culture of housing court, how tenants are treated and the outcomes of their cases, and create a space where landlords and their attorneys know and understand that tenants are not alone anymore, that there are many more attorneys on their side. But also use this right to change the culture within our neighborhoods, to feel bolder about telling landlords that their behavior is horrible, to come

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<sup>43</sup> *Id.* at 19.

<sup>44</sup> *Id.* at 14.

<sup>45</sup> STOUT RISIUS ROSS, LLC, *supra* note 32.

<sup>46</sup> NAT’L COAL. FOR CIV. RIGHT TO COUNS., *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, [http://civilrighttocounsel.org/uploaded\\_files/280/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_NCCRC\\_.pdf](http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf) (last updated Feb. 25, 2022).

<sup>47</sup> See generally RIGHT TO COUNS. N.Y.C. COAL., *The Right to Counsel Toolkit*, <https://www.rtctoolkit.org> (last visited Apr. 28, 2022); RIGHT TO COUNS. N.Y.C. COAL., ORGANIZING IS DIFFERENT NOW: HOW THE RIGHT TO COUNSEL STRENGTHENS THE TENANT MOVEMENT IN NEW YORK CITY (2022), [https://assets.nationbuilder.com/righttocounselnyc/pages/1334/attachments/original/1647562375/Organizing\\_is\\_Different\\_Now\\_FINAL.pdf?1647562375](https://assets.nationbuilder.com/righttocounselnyc/pages/1334/attachments/original/1647562375/Organizing_is_Different_Now_FINAL.pdf?1647562375).

up with ways to fight evictions, to stop harassment and to show people in general that housing should be a right.<sup>48</sup>

In fact, the ultimate success of the movement to establish a right to counsel for tenants facing eviction is owed to the tenants, organizers, and advocates that have prioritized and pushed this policy.

On the other hand, the right to counsel for tenants facing eviction is part of a larger movement to embed a right to counsel in proceedings across multiple civil areas of law.<sup>49</sup> Though a right to counsel is guaranteed in criminal matters where a person's life or liberty is at stake, in civil cases, where the interests at stake are similarly (and at times more) dire, the right to counsel is a patchwork of local, state, and federal caselaw and statutory law.<sup>50</sup> Scholarship about the civil right to counsel abounds, including why a right to counsel, particularly in the eviction context, must be a *right*.<sup>51</sup>

The legal landscape for tenants facing eviction has dramatically changed in the last five years. Between 2017 and 2022, sixteen jurisdictions passed the right to counsel for tenants facing eviction.<sup>52</sup> The following Section is an overview of these enactments.

#### B. 2017-2019:<sup>53</sup> *The First Five*

Prior to 2017, though many jurisdictions had already run representation tenant pilot programs,<sup>54</sup> the *right* to counsel for tenants

<sup>48</sup> RIGHT TO COUNS. N.Y.C. COAL., *Tenant Profile: Lorena Lopez, Tenant Organizer at Catholic Migration Services*, <https://www.rtctoolkit.org/chapters/13-profiles-of-leaders-in-the-rtc-movement/> (last visited Mar. 10, 2022).

<sup>49</sup> See Am. Bar Ass'n Res. 112A, at 12 (Aug. 7, 2006).

<sup>50</sup> See NAT'L COAL. FOR CIV. RIGHT TO COUNS., *Status Map*, [www.civilrighttocounsel.org/map](http://www.civilrighttocounsel.org/map) (last visited Apr. 28, 2022).

<sup>51</sup> See NAT'L COAL. FOR CIV. RIGHT TO COUNS., *Comprehensive Bibliography*, [http://civilrighttocounsel.org/resources/bibliography/comprehensive\\_bibliography](http://civilrighttocounsel.org/resources/bibliography/comprehensive_bibliography) (last visited Mar. 10, 2022); see also Andrew Scherer, *WHY A RIGHT: The Right to Counsel and the Ecology of Housing Justice*, in COLLECTED ESSAYS ON EXPANDING ACCESS TO JUSTICE VOL. 2 11, 11 (2016), [http://digitalcommons.nyls.edu/impact\\_center/17](http://digitalcommons.nyls.edu/impact_center/17).

<sup>52</sup> See NAT'L COAL. FOR CIV. RIGHT TO COUNS., *THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION: ENACTED LEGISLATION* (2022), [http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf).

<sup>53</sup> The years used throughout this Article are intended as markers. They do not and cannot encompass the time, energy, meetings, strategies, fights, protests, campaigns, and the determination and grit that tenants, organizers, and advocates have put into getting these enactments on the books.

<sup>54</sup> See e.g., KELLY JARVIS ET AL., NPC RSCH., *REPORT TO THE CALIFORNIA STATE LEGISLATURE, SARGENT SHRIVER CIVIL COUNSEL ACT EVALUATION* (2020), [https://www.courts.ca.gov/documents/Shriver-Legislative-Report\\_June-30-2020.pdf](https://www.courts.ca.gov/documents/Shriver-Legislative-Report_June-30-2020.pdf) (providing a historical

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facing eviction was non-existent. In the span of two years beginning in 2017, five cities, dotted across the United States, enacted such a right. As described in this Section, each enacted right varied in specifics. However, each helped to springboard the tenant right to counsel movement in a number of ways.

First, they did it. They showed that such a right could be established in law. Because there was variation among the cities that comprised the first five, they also proved that it could be done in jurisdictions of different populations and varying social and political realities. Second, the first five cities created concrete examples for legislation and campaign strategies. Now advocates in other jurisdictions had existing, working models for their own bill or ballot initiative. Jurisdictions that followed these initial cities could build on strategies and provisions that aligned with their priorities and alter those that did not. Organizers in New York City thoroughly documented their right to counsel campaign, such that later jurisdictions had the benefit of a full documentary as well as a free and publicly available tenant organizing toolkit.<sup>55</sup> Finally, of these, cities where the right to counsel was implemented early on produced data that advocates in other places could use in support of their own right to counsel pursuits.

#### 1. New York City, NY (2017)

In 2017, New York City, New York, became the first city in the United States to pass a right to counsel for tenants facing eviction.<sup>56</sup> This was the result of a years-long powerful campaign by tenants and community organizers.<sup>57</sup> The initial bill to establish the right to counsel for tenants facing eviction in New York City was introduced in 2014, as

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overview and recent evaluation of, among other programs, the Shrive Housing Pilot Projects).

<sup>55</sup> OUR RIGHTS! OUR POWER! THE RIGHT TO COUNSEL (RTC) CAMPAIGN TO FIGHT EVICTIONS IN NYC! (Right to Couns. N.Y.C. Coal. 2020), [https://www.righttocounselnyc.org/rtc\\_documentary](https://www.righttocounselnyc.org/rtc_documentary); *The Right to Counsel Toolkit*, *supra* note 47.

<sup>56</sup> Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 91 (2020); *see also* N.Y.C. Local Law 136 (2017); N.Y.C. ADMIN. CODE § 26-1302.

<sup>57</sup> The campaign is thoroughly memorialized in *The Right to Counsel Toolkit*, *supra* note 47; OUR RIGHTS! OUR POWER! THE RIGHT TO COUNSEL (RTC) CAMPAIGN TO FIGHT EVICTIONS IN NYC!, *supra* note 55; and ORGANIZING IS DIFFERENT NOW, *supra* note 47 ("The Right to Counsel NYC Coalition (RTCNYC) is a tenant-led, broad-based coalition that formed in 2014 to disrupt Housing Court as a center of displacement and stop the eviction crisis that has threatened our families, our neighborhoods, and our homes for too long. The Coalition is made up of tenants, organizers, advocates, legal services organizations and more.").

Int. 214,<sup>58</sup> and the City had already increased funding for legal assistance for tenants in eviction proceedings.<sup>59</sup>

The right to counsel in New York City extends to eviction proceedings in housing court and New York City Housing Authority (“NYCHA”) administrative proceedings to terminate tenancy. The law distinguishes the type of legal assistance tenants receive between those who are “covered individuals” and covered individuals who are also “income eligible.” The term “covered individual” is defined broadly to encompass tenants in New York City, including those who reside in NYCHA-operated buildings, who are respondents in an eviction case.<sup>60</sup> Covered individuals have access to brief legal assistance, which involves “individualized legal assistance provided in a single consultation by a designated organization.”<sup>61</sup> An income eligible individual is a “covered individual whose annual gross household income is not in excess of 200 percent of the federal poverty guidelines.”<sup>62</sup> Income eligible tenants are entitled to receive full representation, which is “ongoing legal representation ... and all legal advice, advocacy, and assistance associated with such representation.”<sup>63</sup> The law also specifies the

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<sup>58</sup> See *The Right to Counsel Toolkit*, *supra* note 47, at ch. 1. For a legislative history of the right to counsel bill in New York City, see NEW YORK CITY COUNCIL, LEGISLATIVE HISTORY OF LOCAL LAW 136 OF 2017, <https://legistar.council.nyc.gov/View.aspx?M=F&ID=5368529&GUID=4A83EA62-7CC5-4200-9E57-7A51B099A254> (last visited Mar. 10, 2022). For additional background on the law, see NAT’L COAL. FOR CIV. RIGHT TO COUNS., *All About the Right to Counsel for Evictions in NYC*, [http://civilrighttocounsel.org/major\\_developments/894](http://civilrighttocounsel.org/major_developments/894) (last visited Mar. 9, 2022).

<sup>59</sup> See N.Y.C. OFF. OF CIV. JUST., 2016 ANNUAL REPORT 1 (2016), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL\\_08\\_29\\_2016.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf) (“For the first time, New York City’s overall investment in civil legal services for low-income City residents will exceed \$100 million in Fiscal Year 2017. In the coming year, Mayoral programs exceeding \$83 million and City Council awards of nearly \$28 million will fund free legal services for low-income New Yorkers in areas including housing, immigration, benefits access, domestic violence and other areas of civil legal needs. As federal funding for civil legal services has declined over the last several years, the City and the New York State Judiciary have dramatically increased funding for these services. In particular, Mayoral funding for tenant legal services in Fiscal Year 2017 is ten times the level in Fiscal Year 2013.”).

<sup>60</sup> N.Y.C. ADMIN. CODE § 26-1301.

<sup>61</sup> See *id.* § 26-1301; § 26-1302(a)(1) (stating that brief legal assistance is to be provided “no later than [a covered individual’s] first scheduled appearance, or as soon thereafter as is practicable”).

<sup>62</sup> *Id.* § 26-1301.

<sup>63</sup> *Id.*; § 26-1302(a)(2). Representation begins no later than the first scheduled appearance, or as soon thereafter as practicable.

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creation of a program to provide legal services to NYCHA tenants facing administrative proceedings to terminate tenancy.<sup>64</sup>

The Office of Civil Justice (“OCJ”), an office within the Human Resources Administration, oversees coordination of the right to counsel throughout the City.<sup>65</sup> OCJ also oversees the annual report requirement, a critical component of the law that helps to capture vital information about clients served, case dispositions, and eviction practices.<sup>66</sup> To date, OCJ has published four reports about the implementation of the right to counsel in NYC.<sup>67</sup> Each of these has confirmed the success of the program. More tenants are represented. Whereas only 1 percent of tenants were represented in eviction proceedings in 2013, “more than 71% of tenants who appeared in Housing Court for eviction cases in the fourth quarter of FY2021 were represented by attorneys in court.”<sup>68</sup> And more tenants remain housed.

As in previous years, when RTC lawyers have represented tenants in court, they have been overwhelmingly successful in preserving the homes of their clients; in Housing Court eviction and NYCHA termination cases resolved by OCJ’s legal services providers in FY2021, 84% of households represented in court by lawyers were able to remain in their homes,

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<sup>64</sup> *Id.* § 26-1302(b).

<sup>65</sup> *Id.* § 26-1301 (“Coordinator. The term “coordinator” means the coordinator of the office of civil justice.”); *see also* N.Y.C. OFF. OF CIV. JUST., UNIVERSAL ACCESS TO LEGAL SERVICES A REPORT ON YEAR THREE OF IMPLEMENTATION IN NEW YORK CITY 2 (2021) [hereinafter N.Y.C., UNIVERSAL ACCESS REPORT 2021], [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA_Annual_Report_2021.pdf) (“This historic law, also known as the Right-to Counsel (RTC) or Universal Access (UA) law, tasks the Office of Civil Justice (OCJ) of the New York City Human Resources Administration (HRA) with planning and implementing programs that would provide all tenants facing eviction in New York City Housing Court whose household income is at or below 200% of the Federal Poverty Guidelines with access to full legal representation in their eviction proceedings, and brief legal assistance for those making more, as well as legal services for tenants of the New York City Housing Authority (NYCHA) facing administrative termination of tenancy proceedings.”).

<sup>66</sup> N.Y.C. ADMIN. CODE § 26-1304. An annual public hearing is also required.

<sup>67</sup> *See* N.Y.C. OFF. OF CIV. JUST., UNIVERSAL ACCESS TO LEGAL SERVICES A REPORT ON YEAR ONE OF IMPLEMENTATION IN NEW YORK CITY (2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>; N.Y.C. OFF. OF CIV. JUST., UNIVERSAL ACCESS TO LEGAL SERVICES A REPORT ON YEAR TWO OF IMPLEMENTATION IN NEW YORK CITY (2019), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA\\_Annual\\_Report\\_2019.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA_Annual_Report_2019.pdf); NYC OFF. OF CIV. JUST., UNIVERSAL ACCESS TO LEGAL SERVICES A REPORT ON YEAR THREE OF IMPLEMENTATION IN NEW YORK CITY (2020), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA\\_Annual\\_Report\\_2020.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA_Annual_Report_2020.pdf); N.Y.C., UNIVERSAL ACCESS REPORT 2021, *supra* note 65.

<sup>68</sup> N.Y.C., UNIVERSAL ACCESS REPORT 2021, *supra* note 65, at 5.

preserving these tenancies and promoting the preservation of affordable housing and neighborhood stability.<sup>69</sup>

Critically, tenant leaders and organizers are committed to further organizing “to improve and strengthen the law, and to ensure it is implemented in the strongest possible way.”<sup>70</sup> In 2021, two important amendments were made to the law. The first ensured implementation citywide approximately a year earlier than the original law provided for. Initially, the law was to be fully implemented across all zip codes by July 31, 2022.<sup>71</sup> The amendment pushed implementation across the City to be completed no later than June 1, 2021.<sup>72</sup> The second added NYC Administrative Code § 26-1306, *Community Engagement*, which now requires the City to work with community groups to “educate and inform tenants about their rights in housing court, including but not limited to holding know your rights education sessions, distributing written information to tenants and facilitating referrals of tenants to designated community groups.”<sup>73</sup> Community outreach is essential not only because it increases awareness about the right among the public, but because of broader effects for tenant organizing.<sup>74</sup>

The New York State legislature is currently considering two companion bills to establish a right to counsel for tenants facing eviction statewide.<sup>75</sup> The bills are part of the Right to Counsel NYC Coalition’s Housing Courts Must Change (“HCMC”) Campaign, launched in 2020.<sup>76</sup> The bills amend the Real Property Actions and Proceedings Law to add a new article 7-c, which would establish a right to counsel for any tenant in the state that is facing “any proceeding that could result in an individual losing such individual’s housing accommodation.”<sup>77</sup>

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<sup>69</sup> *Id.* at 8.

<sup>70</sup> *The Right to Counsel Toolkit*, *supra* note 47, at ch. 1; Press Release, New York City’s First-in-Nation Right-to-Counsel Program Expanded Citywide Ahead of Schedule (Nov. 17, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/769-21/new-york-city-s-first-in-nation-right-to-counsel-program-expanded-citywide-ahead-schedule>.

<sup>71</sup> See N.Y.C. Local Law No. 136 (2017); N.Y.C. ADMIN. CODE § 26-1302(a).

<sup>72</sup> N.Y.C. ADMIN. CODE § 26-1302(a); see also N.Y.C., UNIVERSAL ACCESS REPORT 2021, *supra* note 65, at 5 (The Office of Civil Justice had already moved toward this goal early in the pandemic. “OCJ eliminated ZIP code-based screening to make services accessible to tenants citywide in March of 2020.”).

<sup>73</sup> N.Y.C. ADMIN. CODE § 26-1306(b).

<sup>74</sup> See generally ORGANIZING IS DIFFERENT NOW, *supra* note 47.

<sup>75</sup> S. 6678-A, 2021–22 Leg., Reg. Sess. (N.Y. 2021).

<sup>76</sup> RIGHT TO COUNS. N.Y.C. COAL., *Housing Courts Must Change*, <https://www.righttocounselnyc.org/hcmc> (last visited Apr. 27, 2022).

<sup>77</sup> S. 6678-A, 2021–2022 Leg., Reg. Sess. § 800-c(3) (N.Y. 2021).



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## 2. San Francisco, CA (2018)

In San Francisco, California, efforts were already underway to make it the first civil right to counsel city, by the time that New York City enacted a right to counsel for tenants facing eviction.<sup>78</sup> In 2012, the Board of Supervisors passed ordinance 45-12, which modified the San Francisco Administrative Code to add Chapter 58, “Right To Counsel In Civil Matters.”<sup>79</sup> With this enactment, the City and County of San Francisco declared itself the “first ‘Right to Civil Counsel City’ in the United States.”<sup>80</sup> The ordinance did not, however, establish a right to counsel.

The City and County of San Francisco declares its intent to work with the Courts, the Bar Association of San Francisco, and interested persons to progress steadily toward the goal of providing counsel whenever the court, in its discretion, believes that such counsel would assist in the fair administration of justice. This declaration is not intended to immediately establish a right to counsel in civil proceedings, but rather it is a codification of the beginning of a firm commitment to this eventual goal.<sup>81</sup>

The ordinance created a year-long civil right to counsel pilot program through which income-eligible clients received free legal representation if they were dealing with a case that implicated a “‘basic human need’ such as housing, safety, or child custody.”<sup>82</sup> In the pilot program, of the reported cases where clients had full-scope representation, over 62 percent had an “excellent” result, meaning that the case was dismissed or the tenant could remain in their home, and over 34 percent had a “positive” result, meaning that the client reached a “favorable move out agreement with the landlord.”<sup>83</sup> The pilot program was a success, but tenant organizing was the force behind the eventual enactment of a right to counsel.

In June 2018, San Francisco passed the right to counsel for tenants facing eviction via the No Eviction Without Representation (“NEWR”)

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<sup>78</sup> S.F., CAL. ORDINANCE 45-12 (Feb. 16, 2012).

<sup>79</sup> S.F. ADMIN. CODE § 58; *see also* JOHN & TERRY LEVIN CTR. FOR PUB. SERV. & PUB. INT. STAN. L. SCH., SAN FRANCISCO RIGHT TO CIVIL COUNSEL PILOT PROGRAM DOCUMENTATION REPORT 4 (2014) [hereinafter JOHN & TERRY LEVIN CTR.], <https://sfbos.org/sites/default/files/FileCenter/Documents/49157-San%20Francisco%20Right%20to%20Civil%20Counsel%20Pilot%20Program%20Documentation%20Report.pdf>.

<sup>80</sup> S.F. ADMIN. CODE § 58.1.

<sup>81</sup> *Id.*

<sup>82</sup> JOHN & TERRY LEVIN CTR., *supra* note 79, at 4; *see also* S.F. ADMIN. CODE § 58.2.

<sup>83</sup> JOHN & TERRY LEVIN CTR., *supra* note 79, at 13–14.

ballot initiative, or Proposition F.<sup>84</sup> The ballot initiative was heavily supported by the Democratic Socialists of America, and the push to get Proposition F before the voters was led by Tenants Together and the San Francisco Tenants Union.<sup>85</sup> The initiative amended the San Francisco Administrative Code to include § 58.4, unofficially titled *Provision Of Legal Representation For Tenants Facing Eviction*. Pursuant to the law, both the City and County of San Francisco “shall establish, run, and fully fund a program to provide legal representation for all tenants within the City and County who are faced with legal proceedings to evict them from their residence.”<sup>86</sup> There is no income limitation, making San Francisco the first jurisdiction to provide the right universally.<sup>87</sup> The Eviction Defense Collaborative (“EDC”) is in the role of lead agency, and in charge of designing and implementing the right to counsel.<sup>88</sup> The right is fully implemented across the city and county.

Though an annual report is not required, outcomes have been reported. Results first came out in 2020.<sup>89</sup> At that time, despite the lack of an income limit, 94.3 percent of clients with full scope representation were in the extremely low, low, or moderate income category.<sup>90</sup> Of closed full scope cases, 67 percent of households remained housed; for Black tenants, this occurred 80 percent of the time.<sup>91</sup> Of households that had to vacate a unit, the results showed that 78 percent had additional time and money to vacate than those without representation.<sup>92</sup> In 2022, the EDC published outcomes for the period between March 2021 and

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<sup>84</sup> S.F. Proposition F (2018).

<sup>85</sup> Martin Kuz, *Meet the Eviction Defenders Helping to Keep Tenants at Home*, CHRISTIAN SCI. MONITOR (July 30, 2019), <https://www.csmonitor.com/USA/Society/2019/0730/Meet-the-eviction-defenders-helping-to-keep-tenants-at-home> (in depth look at the right to counsel for tenants’ implementation efforts in San Francisco); see also RIGHT TO COUNS. NYC COAL., *National Map*, [https://www.righttocounselnyc.org/rtc\\_national\\_map](https://www.righttocounselnyc.org/rtc_national_map) (last visited Apr. 27, 2022) (click “San Francisco” on map).

<sup>86</sup> S.F. ADMIN. CODE § 58.4.

<sup>87</sup> *Id.* § 58.4(a).

<sup>88</sup> EVICTION DEF. COLLABORATIVE, *Tenant Right to Counsel*, <https://evictiondefense.org/services/right-to-counsel/#:~:text=In%20November%20of%202018%2C%20San,counsel%20in%20an%20eviction%20matter.&text=Universal%20right%20to%20counsel%20in,way%20of%20keeping%20people%20housed> (last visited Apr. 27, 2022).

<sup>89</sup> MAYOR’S OFF. HOUS. & CMTY. DEV., *TENANT RIGHT TO COUNSEL: SIX-MONTH IMPLEMENTATION UPDATE TO LAND USE COMMITTEE* (2020), [http://civilrighttocounsel.org/uploaded\\_files/282/San\\_Francisco\\_RTC\\_6\\_month\\_data.pdf](http://civilrighttocounsel.org/uploaded_files/282/San_Francisco_RTC_6_month_data.pdf).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

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December 2021.<sup>93</sup> 59 percent of those who were fully represented retained their units.<sup>94</sup> Of the 30 percent who did not retain their units, 70 percent had a “favorable settlement,” which was categorized in the data as a move out with sufficient time and money.<sup>95</sup>

### 3. Newark, NJ (2018)

Newark, New Jersey, also passed the right to counsel for tenants facing eviction in 2018.<sup>96</sup> Before passage, The Rutgers Center on Law, Inequality & Metropolitan Equity (“CLiME”) issued a report about the crisis of housing affordability in Newark and recommendations for equitable growth in the city.<sup>97</sup> The ordinance is chaptered within the Rent Control Title, as Ch. 19.3, *The Provision of Legal Services in Eviction Proceedings*.<sup>98</sup> At the outset, the ordinance includes a declaration of public necessity, specifying not only the City’s crisis of homelessness and lack of affordable and habitable housing but that the crisis was created in part by the “filing of frivolous and/or retaliatory eviction actions” by residential landlords.<sup>99</sup> The declaration of public necessity goes on to state that a landlord is less likely to engage in such behavior if they know that the tenant will have legal assistance in the action.<sup>100</sup>

The right to counsel in Newark encompasses a variety of legal actions, including summary proceedings for eviction in the Superior Court of New Jersey, Essex County, administrative and grievance hearings with public housing or public rental assistance agencies after the agency has taken action that “adversely affects a tenant’s rights, duties, welfare, or status and could result in eviction,” and appeals of rent control board decisions “that adversely affects a tenant’s rights, ability to pay the rent, or otherwise retain occupancy.”<sup>101</sup> Tenants are eligible for representation in a covered proceeding if their annual gross household income is not in excess of 200 percent of the federal poverty

<sup>93</sup> EVICTION DEF. COLLABORATIVE, TENANT RIGHT TO COUNSEL DATA – OUTCOMES MARCH 2021 THROUGH DECEMBER 2021, [http://civilrighttocounsel.org/uploaded\\_files/290/RTC\\_outcomes\\_March\\_2020\\_-\\_Dec\\_2021.pdf](http://civilrighttocounsel.org/uploaded_files/290/RTC_outcomes_March_2020_-_Dec_2021.pdf) (last visited April 27, 2022).

<sup>94</sup> *Id.* 30 percent of represented tenants did not retain their units, and for the remaining 11 percent the outcome was “unknown.”

<sup>95</sup> *Id.*

<sup>96</sup> NEWARK, N.J., ORDINANCE § 19:3-0 (2018) (establishing “access to free legal representation to Newark’s low-income residents facing eviction in landlord tenant court by creating the Office of Tenant Legal Services”).

<sup>97</sup> TROUTT, MAKING NEWARK WORK FOR NEWARKERS, *supra* note 20.

<sup>98</sup> NEWARK, N.J., ORDINANCE § 19.3-0(b).

<sup>99</sup> *Id.* § 19.3-0(b).

<sup>100</sup> *Id.* § 19.3-0(c).

<sup>101</sup> *Id.* § 19.3-1.

guidelines and their case “poses no conflict of interest to the City.”<sup>102</sup> The ordinance establishes an Office of Tenant Legal Services (“OTLS”), under the Department of Economic and Housing Development, the coordinator of which is to establish and administer the program.<sup>103</sup> Eligible tenants “shall receive” representation no later than their first scheduled appearance, or as soon thereafter as practicable.<sup>104</sup> Since passage, the ordinance was amended to expand the definition of “covered proceeding” and the pool of eligible legal service providers.<sup>105</sup> One of the amendments mandates the Law Department to take eligible referrals for appointment of counsel from a designated organization, independent of the OTLS.<sup>106</sup>

Newark began implementing the right to counsel in the spring of 2019.<sup>107</sup> The process of implementation has been documented<sup>108</sup> and it has been reported that between 2019 and 2021, the OTLS took over 800 cases.<sup>109</sup> Reportedly, the OTLS contracts with two legal services providers and a law firm to provide representation to clients.<sup>110</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.* § 19.3-2(a).

<sup>104</sup> NEWARK, N.J., ORDINANCE § 19.3-2(a)(3).

<sup>105</sup> NEWARK, N.J., ORDINANCE § 19:3-1 (2021).

<sup>106</sup> This was an amendment to the original ordinance, after a lawsuit was filed against the City Council and City Clerk. See Ord. No. 6PSF-C (Aug. 4, 2021), <https://ecode360.com/NE4043/laws/LF1395902.pdf> (“This amendment is in compliance with the terms of a Settlement Agreement and General Release, which is simultaneously submitted to the Municipal Council for its review and approval, which seeks to resolve litigation pending in the Superior Court of New Jersey, Law Division, Essex County, bearing Docket No.: ESX-L-7289-19, and brought against the City Clerk and the Municipal Council.”).

<sup>107</sup> See TROUTT, NEWARK’S RIGHT TO COUNSEL, *supra* note 21 (a memorandum with recommendations for implementation of the right to counsel in Newark).

<sup>108</sup> RESULTS FOR AMERICA, *Newark’s Office of Tenant Legal Services: Protecting Renters and Preventing Evictions Through Free Legal Counsel* (Nov. 15, 2021), <https://catalog.results4america.org/program/legal-support-for-tenants-facing-eviction/legal-counsel-to-prevent-evictions-newark-nj?x-craft-preview=TRopzTXNCo&token=Z5OUw1uKAe15Y0RQUg4OutnprQBuxS2x>.

<sup>109</sup> Ashley Balcerzak, *Most Tenants Don’t Have Lawyers in Eviction Cases. NJ Looks to Change That in 3 Cities*, NORTHJERSEY.COM (Sept. 2, 2021), <https://www.northjersey.com/story/news/new-jersey/2021/09/02/new-jersey-eviction-moratorium-end-date-coming-eviction-lawyer/5599029001/>.

<sup>110</sup> *Id.*

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## 4. Cleveland, OH (2019)

Cleveland, Ohio, passed the right to counsel for tenants in September 2019.<sup>111</sup> In Cleveland, the right extends to tenants occupying a dwelling with least one child whose annual gross household income doesn't exceed 100 percent of the federal poverty guidelines.<sup>112</sup> The right covers "any proceeding in Cleveland Municipal Court, Housing Division ("Housing Court") to evict, eject, or terminate the tenancy of a covered individual."<sup>113</sup> The organizations designated to provide legal services can be "a not-for-profit organization or an entity to be determined, that has the capacity to provide legal services per the standards set by the American Bar Association Standards for the Provision of Civil Legal Aid (ABA standards) to income-eligible individuals facing eviction."<sup>114</sup> Legal representation is provided as soon as possible after the proceeding is initiated but no later than the first scheduled appearance.<sup>115</sup>

The law requires that "designated organizations shall work with the lead partner organization and community partners to engage and educate tenants of their rights and available resources."<sup>116</sup> The United Way of Greater Cleveland is the lead partner organization,<sup>117</sup> and, with Cleveland Legal Aid, developed a Communications & Outreach Working Group that leads tenant engagement.<sup>118</sup> The Democratic Socialists of America ("DSA") have played an important role in building awareness among tenants through door knocking.<sup>119</sup>

The right was implemented in July 2020, at the height of the COVID-19 pandemic. An annual report is required, and the initial six-month

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<sup>111</sup> CLEVELAND, OHIO, CODE OF ORDINANCES § 375.12 (effective June 30, 2020).

<sup>112</sup> *Id.* § 375.12(a)(2).

<sup>113</sup> *Id.* § 375.12(a)(3).

<sup>114</sup> *Id.* § 375.12(a)(5).

<sup>115</sup> *Id.* § 375.12(b)(1).

<sup>116</sup> *Id.* § 375.12(b)(4).

<sup>117</sup> CLEVELAND, OHIO, CODE OF ORDINANCES § 375.12(b)(3) (effective June 30, 2020); *Independent Review Shows Positive Outcomes for Right to Counsel*, CLEVELAND CITY COUNCIL (Jan. 31, 2022), [https://www.clevelandcitycouncil.org/resources/news-media/independent-review-shows-positive-outcomes-right-counsel#:~:text=In%20October%202019%2C%20Council%20approved,in%20the%20Cleveland%20Housing%20Court; see also THE LEGAL AID SOC'Y OF CLEVELAND & UNITED WAY OF GREATER CLEVELAND, RIGHT TO COUNSEL ANNUAL REPORT TO CLEVELAND CITY COUNSEL 10-11 \(2021\), https://unitedwaycleveland.org/wp-content/uploads/documents/2020-Right-to-counsel-annual-report.pdf](https://www.clevelandcitycouncil.org/resources/news-media/independent-review-shows-positive-outcomes-right-counsel#:~:text=In%20October%202019%2C%20Council%20approved,in%20the%20Cleveland%20Housing%20Court; see also THE LEGAL AID SOC'Y OF CLEVELAND & UNITED WAY OF GREATER CLEVELAND, RIGHT TO COUNSEL ANNUAL REPORT TO CLEVELAND CITY COUNSEL 10-11 (2021), https://unitedwaycleveland.org/wp-content/uploads/documents/2020-Right-to-counsel-annual-report.pdf).

<sup>118</sup> THE LEGAL AID SOC'Y OF CLEVELAND & UNITED WAY OF GREATER CLEVELAND, *supra* note 117, at 13.

<sup>119</sup> *Id.*

report was published in January 2021.<sup>120</sup> It showed that 93 percent of represented households who sought to avoid eviction or involuntary move, avoided displacement.<sup>121</sup> 83 percent of represented households obtained additional time to move when that was their goal.<sup>122</sup>

In January 2022, Stout Risius Ross, LLC published an annual independent evaluation of the right to counsel in Cleveland for the City Council.<sup>123</sup> The evaluation showed that more tenants are represented as a direct result of the right to counsel.<sup>124</sup> Whereas the Cleveland Housing Court docket between 2011 and 2019 showed that between 1 percent and 2 percent of tenants were represented, “[i]n 2021, tenants were represented in 16% of all eviction proceedings.”<sup>125</sup> In cases where clients were represented pursuant to right to counsel in 2021, “Cleveland Legal Aid was able to achieve approximately 88% of all clients’ case goals.”<sup>126</sup> Of the 94 percent of clients who had the goal of preventing an eviction judgment or involuntary move, 93 percent achieved that outcome.<sup>127</sup> Lawyers also helped tenants secure rental assistance. “Of the 21% of RTC-C clients who were not aware of rental assistance, approximately 98% had the goal of securing rental assistance (in addition to other goals), and Cleveland Legal Aid achieved this goal for 81% of them.”<sup>128</sup> There were significant fiscal benefits documented as well. Stout found that the overall “preliminary” fiscal impact for Cleveland and Cuyahoga County “was approximately \$4.3 to \$4.7 million.”<sup>129</sup> It is estimated that Cleveland and Cuyahoga County at large,

likely avoided social safety net costs of at least \$1.8 million to \$1.9 million (housing social safety net responses, Medicaid spending on in-patient and emergency room health care, and out-of-home foster care) and retained approximately \$2.5 million to \$2.8 million in federal funding and economic value (federal and state funding for Cleveland Metropolitan School

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<sup>120</sup> CLEVELAND, OHIO, CODE OF ORDINANCES § 375.12(b)(7); *see also* THE LEGAL AID SOC’Y OF CLEVELAND & UNITED WAY OF GREATER CLEVELAND, *supra* note 117, at 3.

<sup>121</sup> THE LEGAL AID SOC’Y OF CLEVELAND & UNITED WAY OF GREATER CLEVELAND, *supra* note 117, at 15-16.

<sup>122</sup> *Id.*

<sup>123</sup> STOUT RISIUS ROSS, LLC, *supra* note 32.

<sup>124</sup> *Id.* at 26.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 30.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 10.

<sup>129</sup> STOUT RISIUS ROSS, LLC, *supra* note 32, at 11.

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District and economic value of avoiding out-migration/  
population loss) through RTC-C.<sup>130</sup>

#### 5. Philadelphia, PA (2019)

Philadelphia, Pennsylvania, enacted the right to counsel for tenants facing eviction in 2019 after a series of steps and reports.<sup>131</sup> Before passage, in 2017, the Reinvestment Fund issued a policy brief about eviction filings in the City and found that unique eviction filings between 2010 to 2015 resulted in “roughly 1 in 14 renters being subject to a court recorded eviction filing each year.”<sup>132</sup> That same year, after holding public hearings on the eviction crisis in the City,<sup>133</sup> the City Council “added \$500,000 to anti-eviction measures to the city budget.”<sup>134</sup> In 2018, Stout Risius Ross, LLC issued a report about the return on investment of ensuring legal representation for tenants facing eviction for The Philadelphia Bar Association’s Civil Gideon and Access to Justice Task Force.<sup>135</sup> The report found that “[w]ith an annual investment of approximately \$3.5 million, the City of Philadelphia (the ‘City’) could provide legal assistance to all tenants unable to afford representation, avoiding \$45.2 million in costs to the City annually.”<sup>136</sup> That same year,

<sup>130</sup> *Id.*

<sup>131</sup> PHILA., PA., CODE § 9-808 (2019).

<sup>132</sup> REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA (2017), [https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions\\_in\\_Philadelphia\\_brief\\_Final.pdf](https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions_in_Philadelphia_brief_Final.pdf).

<sup>133</sup> See Jake Blumgart, *Council Hearing Examines Evictions, Substandard Housing, and Possible Solutions*, WHYY (Mar. 2017), <https://whyy.org/articles/council-hearing-examines-evictions-substandard-housing-and-possible-solutions/>; see also, Phila. City Council, Joint Committee on Licenses and Inspections, Public Health and Human Services 3-20-2017, YOUTUBE (Mar. 22, 2017), <https://www.youtube.com/watch?v=o3PQv-DshCg&t=6532s>.

<sup>134</sup> Jake Blumgart, *Philadelphia Sets Aside \$500,000 to Help Renters Fight Eviction*, WHYY (June 29, 2017), <https://whyy.org/articles/philadelphia-sets-aside-500-000-to-help-renters-fight-eviction/>.

<sup>135</sup> STOUT RISIUS ROSS, LLC, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS (2018), <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>.

<sup>136</sup> *Id.* at 6 (“Stout has also estimated that the return on investment is at least \$12.74 – that is, for every dollar Philadelphia spends on providing legal representation to low-income tenants, it will receive a benefit of at least \$12.74. Stout’s assessment of annual cost is based on providing legal services to approximately 4,400 Philadelphia tenants facing eviction proceedings. Stout estimates that providing representation to low-income tenants facing eviction in Philadelphia would result in 14,418 individuals avoiding disruptive displacement. The cost of providing legal counsel to those tenants is estimated to be \$3.5 million, while the benefit would be approximately \$45.2 million,

Philadelphia's City Council endeavored to identify strategies to help alleviate poverty in the city, focusing on three specific policy areas: housing, jobs and education, and the social safety net.<sup>137</sup> In its March 2019 "Narrowing the Gap" report, passage of a right to counsel law for tenants facing eviction was one of the strategies recommended, in part because

the eviction process in the city is relatively burdensome on tenants. Landlords must only provide tenants with a notice of eviction, which is their responsibility to contest, and which becomes the City's duty to enforce in the event of non-compliance. Furthermore, 55% of evicted households who contest their evictions receive default judgements because of inability to pay for counsel. Landlords can outmatch tenants in hiring counsel, which effectively means that most victims decide not to contest.<sup>138</sup>

Ultimately, the ordinance establishing a right to counsel for tenants passed the City Council on November 14, 2019.<sup>139</sup> The right was added as Section 9-808 to the Philadelphia Code, titled *Legal Representation in Landlord Tenant Court*.<sup>140</sup> The Office of the Managing Director issued regulations pertaining to Section 9-808 in late 2021.<sup>141</sup> The law extends counsel to tenants whose annual gross income doesn't exceed 200 percent of the federal poverty guidelines and covers tenants of the Philadelphia Housing Authority.<sup>142</sup> Tenants are eligible for representation in "any" judicial or administrative action for eviction or termination of tenancy or housing subsidy.<sup>143</sup> This includes proceedings deemed "functional equivalents" of such cases by a designated

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therefore yielding the return on investment mentioned above. The return on investment includes the benefits of both Stout's direct and repeat impact analyses, discussed in further detail below." *Id.* at 8.).

<sup>137</sup> Letter from Philadelphia City Council, *Narrowing the Gap: Strategies to Alleviate and Prevent Poverty in Philadelphia*, PHILA. CITY COUNCIL (Mar. 2019), <http://phlcouncil.com/wp-content/uploads/2019/03/NarrowingTheGapReport.pdf>.

<sup>138</sup> *Id.* at 9.

<sup>139</sup> See City Council, City of Phila., Bill No. 19038601, 2019, <https://phila.legistar.com/LegislationDetail.aspx?ID=3943568&GUID=EC5846F5-CECE-414F-A9F4-CA2F49D698B1&Options=ID%7CText%7C&Search=tenants&FullText=1> (last visited Apr. 27, 2022).

<sup>140</sup> PHILA., PA., CODE § 9-808 (2019).

<sup>141</sup> OFF. OF THE MANAGING DIR., REGULATIONS REGARDING CHAPTER 9-800 OF THE PHILADELPHIA CODE: LANDLORD AND TENANT §§ 1-10 (2021), <https://regulations.phila-records.com/pdfs/MDO%20Regulation%20-%20Right%20to%20Counsel.pdf>.

<sup>142</sup> PHILA., PA., CODE § 9-808(1)(a).

<sup>143</sup> *Id.* § 9-808(1)(b).



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organization.<sup>144</sup> Representation also extends to first appeals and to specific cases that tenants can bring affirmatively to remedy a violation of specific law.<sup>145</sup> Eligible tenants receive full representation at the notice of intent to initiate a covered proceeding, as soon as possible after initiation of the proceeding, or when a designated organization determines that a proceeding should be initiated.<sup>146</sup> The ordinance also contains important provisions about community outreach and education:

One of the most innovative aspects of this bill is the requirement to provide community education in neighborhoods directly impacted by the eviction crisis to educate and empower tenants and communities on their housing rights and responsibilities. This helps to ensure that tenants know their rights before they come into contact with the courts, so that credit-damaging eviction filings and default judgments where tenants don't get an opportunity to work out resolutions, are reduced.<sup>147</sup>

For implementation, the law provides for a managing director to oversee the program. Only non-profit entities can be designated organizations for the purpose of providing legal services.<sup>148</sup> The law incorporated a multi-year phase in and was contingent on the Managing Director certifying that the office could fund the program.<sup>149</sup> In February 2022, implementation began in two zip codes with the hope to expand in the next fiscal year.<sup>150</sup>

*C. 2020: The First Enactments During the Pandemic*

These first five cities enacted a right to counsel for tenants facing eviction prior to the COVID-19 pandemic. As the pandemic overtook the country, the focus on the nationwide eviction crisis sharpened. Congress approved close to \$50 billion for emergency rental

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.* Representation extends to affirmative cases to remedy a “violation of Chapter 9-800 of this Code, Philadelphia Fair Housing Ordinance, or Chapter 9-1600 of this Code, Prohibition Against Unlawful Eviction Practices.” *Id.*

<sup>146</sup> PHILA., PA., CODE § 9-808(2)(a).

<sup>147</sup> Phillips Testimony, *supra* note 1.

<sup>148</sup> PHILA., PA., CODE § 9-808(1)(c).

<sup>149</sup> *Id.* § 9-808(2)(c).

<sup>150</sup> Taylor Allen, *Some Philly Tenants Facing Eviction Now Guaranteed Free Legal Help*, AXIOS PHILA. (Feb. 1, 2022), <https://www.axios.com/local/philadelphia/2022/02/01/philadelphia-right-to-counsel-eviction-pilot-zip-codes> (right to counsel to be implemented in zip codes 19139 (North Philadelphia) and 19121 (West Philadelphia)).

assistance,<sup>151</sup> and all levels of government began issuing measures to protect tenants, including moratoria on eviction proceedings.<sup>152</sup> In this context, combined with the data coming out of cities that already implemented the right to counsel, advocates were able to advance the right to counsel in Boulder, Colorado, and Baltimore, Maryland, and pave the way for the many more to join them in 2021.

### 1. Boulder, CO (2020)

Voters in Boulder, Colorado, approved a ballot initiative providing the right to counsel for tenants in 2020 and made it the first city to do so during the pandemic.<sup>153</sup> In Boulder, tenant organizing was a major component of the campaign to establish the right, and Boulder's Democratic Socialists of America ("DSA") chapter was integral to the development of the No Eviction Without Representation ("NEWR") campaign.<sup>154</sup> Boulder's City Council tried to change the ballot initiative to provide income limits, and potentially a lesser increase in the fee that would be used to fund the program.<sup>155</sup> But these changes were not made.

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<sup>151</sup> See Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong., <https://home.treasury.gov/system/files/136/era-1-program-statute-section-501.pdf> (\$25 billion dollars for emergency rental assistance program); American Rescue Plan Act of 2021, H.R. 1319, 117th Cong., <https://home.treasury.gov/system/files/136/era-2-program-statute-section-3201.pdf> (\$21.55 billion dollars for emergency rental assistance program).

<sup>152</sup> See EVICTION LAB, *COVID-19 Housing Policy Scorecard*, <https://evictionlab.org/covid-policy-scorecard/> (last visited Apr. 27, 2022); see also Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sept. 4, 2020), <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>.

<sup>153</sup> BOULDER, COLO., ORDINANCE 8412 (2020), [https://library.municode.com/co/boulder/ordinances/municipal\\_code?nodeId=1048833](https://library.municode.com/co/boulder/ordinances/municipal_code?nodeId=1048833); see also Ian S. Thompson, *Securing Tenants' Right to Counsel Is Critical to Fighting Mass Evictions*, AM. C.L. UNION: NEWS & COMMENTARY, <https://www.aclu.org/news/racial-justice/securing-tenants-right-to-counsel-is-critical-to-fighting-mass-evictions/> (last visited Mar. 20, 2022).

<sup>154</sup> NEWR Boulder, FACEBOOK, <https://www.facebook.com/photo/?fbid=196364841868960&set=ecnf.100068893672627> (last visited Mar. 20, 2022).

<sup>155</sup> NEWR Boulder, FACEBOOK, <https://www.facebook.com/photo/?fbid=182543793251065&set=ecnf.100068893672627> (last visited Apr. 27, 2022).

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In November 2020, 59 percent of City voters voted yes to Ballot Issue 2B,<sup>156</sup> *No Evictions Without Representation*.<sup>157</sup> Boulder's right to counsel is codified within the City's Code under Title XII, Human Rights, Chapter 2 Landlord Tenant Relations as the *Eviction Prevention and Rental Assistance Services ("EPRAS") Program*.<sup>158</sup> The right to counsel extends to all tenants, without an income limitation.<sup>159</sup> Covered proceedings include eviction cases, related counterclaims, Section 8 housing subsidy termination matters, "any related proceeding to assist a tenant to remain housed," as well as appeals.<sup>160</sup> One caveat is that where a state or federal program provides representation in eviction, the City no longer has an obligation to guarantee legal services. In addition, the ordinance contains a provision to increase the rental license excise tax to cover the costs of the program.<sup>161</sup> The ordinance provides for a Tenants' Committee,<sup>162</sup> but oversight of implementation is to be done by the City Manager. The EPRAS program was implemented in January 2021.<sup>163</sup> In the 2021 annual report on the first year of the program, of the eighty-eight City of Boulder eviction cases observed, eviction was prevented in sixty-eight.<sup>164</sup>

## 2. Baltimore, MD (2020)

In Baltimore, Maryland, the right to counsel for tenants facing eviction was enacted in late 2020.<sup>165</sup> Once again, a series of reports preceded the ordinance. In 2015, the Public Justice Center,<sup>166</sup> along with

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<sup>156</sup> BE HEARD BOULDER, *Ballot Issue 2B: No Evictions Without Representation*, <https://www.beheardboulder.org/no-evictions-without-representation> (last updated Oct. 6, 2020).

<sup>157</sup> Matt Bloom, *How A Voter-Approved Program in Boulder Could Drastically Reduce Evictions*, KUNC (Nov. 4, 2020), <https://www.kunc.org/2020-11-04/how-a-voter-approved-program-in-boulder-could-drastically-reduce-evictions>.

<sup>158</sup> BOULDER MUN. CODE §12-2-1, [https://library.municode.com/co/boulder/codes/municipal\\_code?nodeId=TIT12HURI\\_CH2LAENREEVPRREASSE\\_12-2-1LEIN](https://library.municode.com/co/boulder/codes/municipal_code?nodeId=TIT12HURI_CH2LAENREEVPRREASSE_12-2-1LEIN).

<sup>159</sup> *Id.* §12-2-2.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Members of the Tenants' Committee receive a stipend of \$1,000 annually.

<sup>163</sup> CITY OF BOULDER LAND ACKNOWLEDGEMENT CREATIVE BRIEF, CITY OF BOULDER 2021 EVICTION PREVENTION AND RENTAL ASSISTANCE SERVICES ANNUAL REPORT (2022), <https://bouldercolorado.gov/media/7099/download?inline=>.

<sup>164</sup> *Id.* at 7.

<sup>165</sup> BALT. CITY CODE art. 13, § 6-A, [https://legislative.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing%20\(crctd%2012-27-21\).pdf](https://legislative.baltimorecity.gov/sites/default/files/Art%2013%20-%20Housing%20(crctd%2012-27-21).pdf).

<sup>166</sup> The Public Justice Center is the parent organization of the National Coalition for a Civil Right to Counsel, of which the author is Associate Coordinator.

the Right to Housing Alliance and professors from the University of Baltimore and Johns Hopkins University, published a report about Baltimore City's rent court.<sup>167</sup> 78 percent of respondents "reported having at least one threat to health or safety existing in their home at the time they appeared at court."<sup>168</sup> Yet,

[s]ixty-five percent of those who reportedly had a serious defect in their home (37 of 57) were unaware that they could raise a defense based on those defects. Half were unaware that they could ask a judge at a trial to allow them to pay any rent due or owing into a court escrow account until a landlord completed repairs. And over 80 percent were unaware that a judge could reduce the monthly rent while poor conditions existed. No wonder then that, of disputants who could have raised a significant housing defect and prior notice to the landlord, fewer than half (25 of 53) even attempted, before a judge, to discuss the problems or expressly ask to pay into an escrow account.<sup>169</sup>

In May 2020, Stout Risius Ross, LLC published a report for the Public Justice Center about the economic impact of a right to counsel for tenants in Baltimore City.<sup>170</sup> The firm estimated the "annual cost of disruptive displacement and potential costs avoided as a result of a right to counsel in Baltimore City eviction cases that accrue to Baltimore City and Maryland to be approximately \$35.6 million annually."<sup>171</sup> This translates into "a dollar value of a right to counsel for every dollar invested of at least \$6.24 for Baltimore City and Maryland combined."<sup>172</sup> Baltimore Renters United, self-described as "a coalition of independent non-profit groups, legal services organizations, tenants' associations, and community-based organizations who convene around a common purpose: working towards a Baltimore in which all renters live in safe and affordable housing that has security of tenure," launched the

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<sup>167</sup> PUB. JUST. CTR., *supra* note 28.

<sup>168</sup> *Id.* at 14.

<sup>169</sup> *Id.* at 33.

<sup>170</sup> STOUT RISIUS ROSS, LLC, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY (2020), [https://bmorerentersunited.org/wp-content/uploads/2020/05/Baltimore-RTC-Report\\_FINAL\\_5.8.2020.pdf](https://bmorerentersunited.org/wp-content/uploads/2020/05/Baltimore-RTC-Report_FINAL_5.8.2020.pdf).

<sup>171</sup> *Id.* at 8.

<sup>172</sup> *Id.*

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campaign to enact the right to counsel in law.<sup>173</sup> The ordinance was signed into law in December 2020.<sup>174</sup>

The right in Baltimore covers court evictions and administrative proceedings to terminate tenancy or subsidy, the “functional equivalent of a proceeding” and first appeals.<sup>175</sup> Baltimore also includes representation for tenants bringing a limited set of affirmative cases.<sup>176</sup> There is no income limit and a “covered” individual is one “who occupies a dwelling within the City of Baltimore under a claim of legal right other than the owner,” including tenants of the Baltimore City Housing Authority.<sup>177</sup> But in the provision of legal services, the Commissioner “shall seek to prioritize the provision of legal representation based on median income with covered individuals having the lowest median income receiving the highest priority.”<sup>178</sup> Representation is tied to the initiation of the proceeding, and as with other similar ordinances, includes the caveat that representation begin no later than the first appearance.<sup>179</sup> The ordinance specifies that the designated organizations charged with providing the direct representation are to be non-profit providers only.<sup>180</sup> The ordinance also includes provisions to ensure tenant outreach, engagement, education, and awareness about the right to counsel.<sup>181</sup>

Baltimore’s right to counsel for tenants is to be phased in over a period of four years. The phase in process will incorporate prioritization criteria including the availability of funding, attorney

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<sup>173</sup> BALT. RENTERS UNITED, *History of BRU*, <https://bmorerentersunited.org/about/> (last visited Apr. 4, 2022); see also BALT. RENTERS UNITED, <http://bmorerentersunited.org/rtc/stoutreport/> (last visited Apr. 4, 2022) (listing the organizations that comprise Baltimore Renters United).

<sup>174</sup> BALT., MD., ORDINANCE 20.465 (Dec. 2, 2020). The Ordinance was introduced as Council Bill 20-0625 and signed into law by the Mayor on December 2, 2020. The Ordinance takes effect 120 days after enactment. See also BALT., CITY CODE art. 13, § 6A-6 (2021).

<sup>175</sup> BALT. CITY CODE art. 13, § 6A-1(e)(1)(ii) (2021).

<sup>176</sup> *Id.* § 6A-1(e)(2) (including any proceeding to remedy a violation of the Rent Escrow Law in general, landlord’s noncompliance with lease, “[r]etaliatory actions as under the Rent Escrow law, retaliatory actions due to reporting violations or complaints,” and “restrictions relating to taking or threatening to take possession of dwelling unit”).

<sup>177</sup> *Id.* § 6A-1(d).

<sup>178</sup> *Id.* § 6A-3(a)(2).

<sup>179</sup> *Id.* § 6A-3(a)(1).

<sup>180</sup> *Id.* § 6A-1(f).

<sup>181</sup> BALT. CITY CODE art. 13, § 6A-3(c) (2021).

availability, and the scope of the need.<sup>182</sup> An annual report is required addressing specific data points including how many covered individuals were served, the extent of the legal representation performed, information about case outcomes, and tenant education and engagement data.<sup>183</sup>

#### D. 2021: *The Makings of a Movement*

In 2021, it became undeniable that a movement to establish the right to counsel in eviction proceedings had truly taken off. A total of nine jurisdictions, including (incredibly) three states, passed such a right during 2021. In addition, there was significant interest throughout 2021 from media and from federal and national agencies and organizations. One of the most significant supports for many jurisdictions was the availability of federal funding for increased legal representation,<sup>184</sup> as well as actual pronouncements from federal agencies on the availability of a portion of this funding for legal services, and right to counsel enactments specifically.<sup>185</sup>

##### 1. Citywide Enactments

###### i. Seattle, WA (2021)

In September 2018, the Housing Justice Project of the King County Bar Association and the Seattle Women's Commission issued a report about evictions in King County, Washington.<sup>186</sup> The report found that "[t]enants with legal counsel were about twice as likely to remain in their homes as those who did not."<sup>187</sup> Seattle passed the right to counsel for tenants facing eviction, called unlawful detainer suits, on March 29,

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<sup>182</sup> BALT., MD., ORDINANCE 20.465, § 3 (Dec. 2, 2020).

<sup>183</sup> BALT. CITY CODE art. 13, § 6A-5(a) (2021).

<sup>184</sup> See generally NAT'L COAL. FOR CIV. RIGHT TO COUNS., FEDERAL FUNDING TO SUPPORT STATE/LOCAL TENANT RIGHT TO COUNSEL EFFORTS 1 (2021), [http://civilrighttocounsel.org/uploaded\\_files/278/Federal\\_funding\\_for\\_tenant\\_RTC\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/278/Federal_funding_for_tenant_RTC_FINAL.pdf).

<sup>185</sup> See generally Janet L. Yellen, Merrick B. Garland & Marcia L. Fudge, Eviction Moratorium Joint Letter, Treasury Department 2 (Aug. 27, 2021), <https://home.treasury.gov/system/files/136/Eviction-Moratorium-Joint-Letter.pdf>; see also U.S. DEP'T OF TREASURY, *Emergency Rental Assistance Frequently Asked Questions* 12 (last updated Aug. 25, 2021), <https://home.treasury.gov/system/files/136/ERA-FAQ-8-25-2021.pdf> (Question 23: "ERA1 and ERA2 both allow for up to 10 percent of the funds received by a grantee to be used for certain housing stability services. What are some examples of these services?").

<sup>186</sup> See generally LOSING HOME, *supra* note 29.

<sup>187</sup> *Id.* at 65 ("Of cases where tenants did not have counsel (898), only 14.6% were able to remain in the units. In contrast, 23.4% of tenants with counsel remained in their unit.").

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2021.<sup>188</sup> The right is codified as the *Right to Legal Counsel in Eviction Proceedings*, within the City’s Housing Code.

The right extends to *indigent* tenants named in an unlawful detainer suit, and indigency is defined broadly to include tenants who “at any stage of an unlawful detainer suit, [are] unable to pay the cost of counsel for representation in the unlawful detainer suit because [their] available funds are insufficient to retain counsel.”<sup>189</sup> The right to counsel attaches when the person requests counsel “as soon as practicable” after the summons is served upon them.<sup>190</sup> The tenant has representation until the case is dismissed, judgment is entered, or counsel withdraws.<sup>191</sup>

The ordinance specifies that legal representation is provided by agencies that are experienced, close to the King County Courthouse, and have the ability to provide services in multiple languages.<sup>192</sup> The Seattle Department of Construction and Inspections (“SDCI”) oversees implementation in that the Director of SDCI is authorized to “negotiate and execute a contract for unlawful detainer defense services. . . .”<sup>193</sup> An owner is required to include information about the right to counsel in required eviction notices, and failure to do so is a defense to eviction.<sup>194</sup> No annual report is required, but providers “shall report the number of cases and estimated attorney hours spent on court proceedings beyond or in lieu of representation at a show cause hearing or first appearance.”<sup>195</sup>

ii. Louisville, KY (2021)

In April 2021, Louisville, Kentucky, passed the right to counsel for tenants facing eviction, making it the first one in the South to do so.<sup>196</sup>

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<sup>188</sup> See SEATTLE, WASH., ORDINANCE 126301 (Mar. 29, 2021); see also Memorandum from Asha Venkataraman on Council Bill 120007: Right to Counsel for Tenants Facing Eviction in Seattle to the Sustainability and Renters Rights Committee (Mar. 4, 2021), <https://seattle.legistar.com/View.ashx?M=F&ID=9215200&GUID=9C75DF09-15C4-4B96-9CBB-9145FA06568D>; see LOSING HOME, *supra* note 29, at 58 (providing a definition for unlawful detainer suits).

<sup>189</sup> SEATTLE, WASH., MUN. CODE, § 22.206.195(A) (2021).

<sup>190</sup> *Id.* § 22.206.195(B).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* § 22.206.195(C).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* § 22.206.195(D).

<sup>195</sup> *Id.* § 22.206.195(G).

<sup>196</sup> LOUISVILLE, KY., CODE § 151.60 -.61 (2021); Abigail Savitch-Lew, *The Movement That Is Upending Landlords’ Power Over Tenants*, APPEAL (June 1, 2021),

The City Council was overwhelmingly in support of the right to counsel, voting the law in 22-4.<sup>197</sup> The ordinance covers any proceeding in Jefferson County District Court, Eviction Court, to “evict, eject, or terminate the tenancy of a covered individual.”<sup>198</sup> The ordinance applies to “[a]ny person who occupies a dwelling, with at least one child . . . whose annual gross income is not in excess of 125% of the federal poverty guidelines . . . .”<sup>199</sup> Though, to be covered, a person must reside with at least one child.<sup>200</sup> The child cannot be named as a defendant in the proceeding.<sup>201</sup> Louisville’s ordinance incorporates community organizations, which can be contracted by the lead partner organization to “conduct non-legal social services or outreach work around the issues of eviction and homelessness.”<sup>202</sup>

Louisville’s ordinance sets up a structure where a lead partner organization contracts<sup>203</sup> with designated organizations to provide legal services.<sup>204</sup> The designated organizations can be non-profits or other entities that have capacity to provide legal services.<sup>205</sup> They “shall provide legal services” to an eligible person “as soon as possible after the initiation of the proceeding, and no later than at the time of the individual’s first scheduled appearance . . . .”<sup>206</sup> They must provide representation “unless there is a conflict of interest, or other circumstances make full legal representation infeasible to render.”<sup>207</sup> In addition to identifying and contracting with designated organizations to provide full representation, the lead partner organization is also charged with developing a program that will provide brief legal assistance to those individuals “when full representation . . . is not

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<https://theappeal.org/the-right-to-counsel-movement-upending-landlords-power-over-tenants/> (stating that Louisville was the first city in the South).

<sup>197</sup> See Bailey Loosemore, *Louisville Approves Free Legal Services for Low-Income Families Facing Eviction*,

LOUISVILLE COURIER J. (Apr. 22, 2021), <https://www.courier-journal.com/story/news/local/2021/04/22/louisville-metro-council-approves-right-to-counsel/7340394002/>.

<sup>198</sup> LOUISVILLE, KY., CODE § 151.60 (2021).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* § 150.60.

<sup>201</sup> *Id.* § 151.61(F).

<sup>202</sup> *Id.* § 151.60; § 151.61(E).

<sup>203</sup> Or utilizes a “grant[] or other services agreement.” *Id.* § 151.61(A).

<sup>204</sup> *Id.* § 151.60; § 151.61(A).

<sup>205</sup> LOUISVILLE, KY., CODE § 151.60 (2021).

<sup>206</sup> *Id.* § 151.61(A).

<sup>207</sup> *Id.*



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possible.”<sup>208</sup> Pursuant to the language in the ordinance, the designated organization can be contracted to provide both full representation and brief legal assistance. A quarterly report is due from the designated organizations to the lead partner organization, and the lead partner organization is to submit a written report to Metro Council on January 31 of each year.<sup>209</sup>

iii. Denver, CO (2021)

The Denver City Council passed the right to counsel for tenants unanimously in June 2021.<sup>210</sup> The bill before the City Council passed and codified an Eviction Legal Defense program, which had been implemented in 2018 and utilized Colorado Legal Services to represent people facing eviction at or below 200 percent of the federal poverty guidelines.<sup>211</sup>

Denver’s right to counsel covers judicial and administrative eviction proceedings or any “civil claim for monetary damages for nonpayment of rent, including any proceeding deemed by a designated organization as the functional equivalent of such a proceeding, and any related appeals . . . .”<sup>212</sup> The right also extends to “action[s] by a governmental assistance-providing agency terminating a subsidy or otherwise adversely affecting a tenant’s rights, duties, welfare or

<sup>208</sup> *Id.* § 151.61(C).

<sup>209</sup> *Id.* § 151.61(H); § 151.61(J).

<sup>210</sup> Denver added Title IX to Code of Ordinances, called *Tenant Legal Services*. DENVER, COLO., CODE art. IX (2021); *see also* Esteban L. Hernandez, *Low-Income Denverites Will Be Able to Get an Attorney for Free During Eviction Proceedings*, DENVERITE (June 7, 2021), <https://denverite.com/2021/06/07/low-income-denverites-will-be-able-to-get-an-attorney-for-free-during-eviction-proceedings/>.

<sup>211</sup> STEVE DELCASTILLO, DENVER COUNTY EVICTION LEGAL DEFENSE FUND: A DESCRIPTION OF THE DENVER RESIDENTS SERVED 2018 REPORT 4 (2019); *see also* *Denver Eviction Legal Defense Pilot*, DENVERGOV (June 11, 2018), [https://www.denvergov.org/content/dam/denvergov/Portals/767/Documents/Updated\\_2018\\_06\\_11\\_Denver\\_Eviction\\_Legal\\_Defense\\_Pilot\\_Program.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/767/Documents/Updated_2018_06_11_Denver_Eviction_Legal_Defense_Pilot_Program.pdf) (“All thirteen Denver City Council members have pooled \$131,500 in donations from their office budgets and a personal contribution to launch a pilot eviction defense program for Denver Residents. The program will be coordinated by Colorado Legal Services, which has decades of experience providing eviction defense to a small number of very vulnerable clients living in public housing or utilizing vouchers. The program will also utilize networks of volunteer lawyers and make other referrals. Strong community demand for legal defense funding emerged during the development of Denver’s Housing Plan, and was a priority for stakeholders convened by the City Council Housing and Homelessness Work Group.”); Robin Kniech, *Eviction Legal Defense Pilot*, CITY OF DENVER, <https://www.denvergov.org/content/denvergov/en/denver-council-district-12/priorities/projects-and-plans/eviction-legal-defense-pilot.html> (last visited Apr. 4, 2022).

<sup>212</sup> DENVER, COLO., CODE art. IX, § 27-192(2) (2021).

status.”<sup>213</sup> Tenants are eligible for representation if they seek access to services and their income “is equal to or less than 80% of the area median income . . . .”<sup>214</sup> and tenants of Denver’s Housing Authority are covered.<sup>215</sup> The right to counsel in a covered proceeding attaches “as soon as practicable after the initiation of a covered proceeding, but no later than their first scheduled appearance.”<sup>216</sup> For prioritization purposes, throughout implementation, “[t]he executive director of the department of housing stability shall grant priority to covered individuals with the lowest median income.”<sup>217</sup> The city oversees “procurement and selection” of the designated organizations to provide representation.<sup>218</sup> An annual report is required.<sup>219</sup>

Denver had competing efforts for enactment of a right to counsel.<sup>220</sup> While the City Council considered the above-described enactment, tenants and organizers supported a right to counsel without income limitation and with a dedicated funding source.<sup>221</sup> There is still a pending campaign to bring the issue to voters via a ballot initiative, called NEWR Denver (No Eviction Without Representation).<sup>222</sup> NEWR Denver seeks a right to counsel that is not means tested, i.e., does not have an income limit.<sup>223</sup> In addition, the proposed citizen initiated ordinance language would include a rental excise tax to fund the program, a tenant legal services and assistance coordinator, and a

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.* § 27-192(1).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* § 27-193(c).

<sup>217</sup> *Id.* § 27-193(d).

<sup>218</sup> *Id.* § 27-193(b).

<sup>219</sup> DENVER, COLO., CODE art. IX, § 27-194 (2021).

<sup>220</sup> *Denver Enacts Eviction Right to Counsel*, NAT’L COAL. FOR CIV. RIGHT TO COUNS. (June 15, 2021), [http://civilrighttocounsel.org/major\\_developments/1515](http://civilrighttocounsel.org/major_developments/1515); *see also* Esteban L. Hernandez, *Low-Income Denverites Will Be Able to Get an Attorney for Free During Eviction Proceedings*, DENVERITE (June 7, 2021), <https://denverite.com/2021/06/07/low-income-denverites-will-be-able-to-get-an-attorney-for-free-during-eviction-proceedings/>.

<sup>221</sup> *About*, NEWR DENVER, <https://newrdenver.com/about/> (last visited Apr. 27, 2022) (The proposed ballot language can be downloaded.).

<sup>222</sup> *Id.* (“Universal right to counsel corrects this imbalance of power and knowledge by helping renters understand their rights when navigating the complicated eviction procedure. With an attorney at their side, renters facing the devastation of eviction have a fighting chance to stay housed, negotiate safe terms, find rental assistance, and avoid homelessness. We need NEWR.”).

<sup>223</sup> *Why We Oppose Means Testing*, NEWR DENVER (June 14, 2021), <https://newrdenver.com/why-we-oppose-means-testing/>.

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tenants' committee to provide tenant oversight.<sup>224</sup> In September 2021, the campaign submitted 13,200 signatures to the Denver Elections Division, which was enough for the initiative to appear on the November 2022 ballot.<sup>225</sup>

iv. Toledo, OH (2021)

In September 2021, Toledo passed the right to counsel for tenants facing “[a]ny proceeding in the Toledo Municipal Court to evict, eject, or terminate the tenancy of a covered individual, or any appeal of such a proceeding.”<sup>226</sup> Legal Aid of Western Ohio reported that, in Toledo, landlords are represented by attorneys about 75 percent of the time, while for tenants it is only 2 percent of the time.<sup>227</sup> The right to counsel is income-limited and applies to any tenant, including those renting from Lucas Metropolitan Housing,<sup>228</sup> whose annual gross income does not exceed 200 percent of the federal poverty guidelines.<sup>229</sup> Tenants are entitled to receive legal services as soon as possible after the proceeding is initiated but no later than the *second* appearance.<sup>230</sup> For eligible tenants, the designated organization, which in Toledo is defined as a non-profit organization or association with the capacity to provide legal services,<sup>231</sup> must endeavor to provide full legal representation, unless “there is a conflict of interest, or other circumstances make it infeasible to provide Full Legal Representation.”<sup>232</sup>

Toledo’s ordinance allows the designated organization to promulgate the regulations applicable to implementing a right to counsel program and its funding limits.<sup>233</sup> Community groups are provided for in law for purposes of tenant education and advertisements in the media.<sup>234</sup> The right is to be phased in over five

<sup>224</sup> *About*, NEWR DENVER, *supra* note 221.

<sup>225</sup> *Signatures Submitted for the 2022 Ballot*, NEWR DENVER (Sept. 21, 2021), <https://newrdenver.com/signatures-submitted-for-the-2022-ballot/>.

<sup>226</sup> TOLEDO, OH., CODE §1768.01(c) (2021).

<sup>227</sup> Shaun Hegarty, *New Legal Help for People in Toledo Facing Eviction*, ABC NEWS (Sept. 17, 2021, 6:30 PM), <https://www.13abc.com/2021/09/17/new-legal-help-people-toledo-facing-eviction/> (quoting Veronica Martinez of Legal Aid of Western Ohio).

<sup>228</sup> *See generally About Lucas*, LUCAS METRO. HOUS., <https://www.lucasmha.org/about-lucas> (last visited Apr. 4, 2022).

<sup>229</sup> TOLEDO, OH., CODE § 1768.01(b) (2021).

<sup>230</sup> *Id.* § 1768.02(a).

<sup>231</sup> *Id.* § 1768.01(e).

<sup>232</sup> *Id.* § 1768.02(a).

<sup>233</sup> *Id.* § 1768.02(d).

<sup>234</sup> *Id.* § 1768.02(b).

years, but in its early stages of implementation it has already shown signs of success.<sup>235</sup>

v. Minneapolis, MN (2021)

On October 8, 2021, Minneapolis City Council unanimously adopted a right to counsel ordinance for tenants facing eviction.<sup>236</sup> Mid-Minnesota Legal Aid, the Volunteer Lawyers Network, and HOME Line, a tenant advocacy organization, all supported the enactment.<sup>237</sup> In 2018, Mid-Minnesota Legal Aid and the Volunteer Lawyers Network conducted a study looking at the effect of tenant representation in Hennepin County, Minnesota.<sup>238</sup> The resulting report showed “significant gains in housing stability for tenants who have lawyers representing them in Housing Court. The study shows that the best results are obtained through full representation, and that significant gains are also seen when clients receive limited representation.”<sup>239</sup> In July 2020, the City Council’s Committee on Community Planning &

<sup>235</sup> TOLEDO, OH., CODE § 1768.02(i) (2021) (noting also the potential for an extension); see *All About Toledo’s Right to Counsel For Tenants Facing Eviction*, NAT’L COAL. FOR CIV. RIGHT TO COUNS. (April 15, 2021), [http://civilrighttocounsel.org/major\\_developments/1536](http://civilrighttocounsel.org/major_developments/1536).

<sup>236</sup> See MINNEAPOLIS, MINN., CODE §§ 143.10–143.50 (2021); see also *City Council Approves Right to Counsel Ordinance for Low-Income Renters Facing Eviction*, CITY OF MINNEAPOLIS (Oct. 8, 2021), <https://www.minneapolismn.gov/news/2021/october/city-council-approves-right-to-counsel-ordinance-/#:~:text=The%20Minneapolis%20City%20Council%20unanimously,or%20out%20of%20housing%20altogether>.

<sup>237</sup> Letter from Muria Kruger, Hous. Program Manager & Res. Att’y, Volunteer Lawyers Network, to Minneapolis City Council (Sept. 29, 2021) (available at [https://lims.minneapolismn.gov/Download/FileV2/24898/Right-to-Counsel-public-comment\\_10012021.pdf](https://lims.minneapolismn.gov/Download/FileV2/24898/Right-to-Counsel-public-comment_10012021.pdf)).

<sup>238</sup> GRUNDMAN & KRUGER, *supra* note 34.

<sup>239</sup> *Id.* (concluding that: (1) “Fully represented tenants win or settle their cases 96% of the time, clients receiving limited/brief services win or settle 83% of the time, and those without any legal services win or settle only 62% of the time”; (2) “The settlements made by fully represented tenants are significantly better. Represented tenants are almost twice as likely to stay in their homes”; (3) “If fully represented tenants agree to move, they get twice as much time to do so—and are much less likely to have an eviction record to make the move more difficult. Nearly 80% of tenants with lawyers leave court without an eviction record stemming from the case, compared with just 6% of unrepresented tenants”; (4) “Fully represented tenants are four times less likely to use homeless shelters. Results vary but one study suggested that represented tenants used shelter at only one quarter of the rate as others who were unrepresented, resulting in shelter cost savings (at current project rates) of more than \$231,000 per year”; and (5) “Unrepresented tenants are between four and five times more likely than fully represented tenants to face the worst possible outcome of an eviction case: The abrupt, forced departure from their homes by sheriff deputies”).

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Economic Development issued a directive to staff of various City agencies

to pursue strategies to support tenants facing eviction in Minneapolis, including: 1. Funding and resource strategies to provide right to counsel for all low-income Minneapolis renters facing eviction in Hennepin County Housing Court including use of City funds, partnerships with non-profit legal providers, partnerships with other public agencies, and philanthropic partnerships.<sup>240</sup>

In response to this directive, the staff issued a report with an overview of strategies employed in other jurisdictions, including those with a right to counsel.<sup>241</sup>

The right applies to all eviction cases, and includes counterclaims and appeals.<sup>242</sup> It currently applies to “a tenant of a rental dwelling unit located in the City of Minneapolis, including any tenant in a rental dwelling unit required to be licensed pursuant to Chapter 244 or any tenant in a building operated by the Minneapolis Public Housing Authority.”<sup>243</sup> It is not limited to low-income tenants in the language of the ordinance, but the purpose of the ordinance is to enact a right to counsel for low-income tenants, and the program director has great discretion to change eligibility requirements including adding income

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<sup>240</sup> *Strategies to Support Tenants Facing Eviction in Minneapolis (2020-00786)*, CITY OF MINNEAPOLIS, <https://lims.minneapolismn.gov/File/2020-00786> (last visited Apr. 27, 2022).

<sup>241</sup> See DEAN PORTER-NELSON & KATIE TOPINKA, STRATEGIES TO SUPPORT TENANTS FACING EVICTION IN MINNEAPOLIS, CITY OF MINNEAPOLIS, <https://lims.minneapolismn.gov/Download/RCAV2/15627/Right%20to%20Counsel%20Report.pdf>; *Strategies to Support Tenants Facing Eviction in Minneapolis (RCA-2020-01186)*, MINNEAPOLISMN.GOV, <https://lims.minneapolismn.gov/RCA/7090> (last visited Apr. 27, 2022).

<sup>242</sup> MINNEAPOLIS, MINN., CODE § 143.20 (2021).

<sup>243</sup> *Id.* (defining “covered individual”).

eligibility requirements.<sup>244</sup> Covered individuals are “eligible to receive access to legal services” before their first appearance.<sup>245</sup>

The ordinance creates the position of a program director who is charged with duties implementing and maintaining the right to counsel.<sup>246</sup> A designated organization does not have to be a non-profit; it can be any “organization, association, or person which employs or is associated with attorneys.”<sup>247</sup> The program director is required to provide a written report.<sup>248</sup>

Though the ordinance is technically a right to counsel, the program director has a lot of discretion to modify existing provisions “based on budgetary and resource availability and to maximize program effectiveness and impact.”<sup>249</sup> This language applies to potential modifications of a covered individual, covered proceeding, and even the definition of legal services.<sup>250</sup> There is no provision for community group involvement and the program director is in charge of publicizing the program “in manners designed to reach and inform covered individuals.”<sup>251</sup> Once funding is solidified, the program director and the designated organization “shall commence implementation of the program . . . in a manner designed to maximize the effectiveness and impact of the program.”<sup>252</sup>

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<sup>244</sup> *Id.* § 143.10(b) (“The city enacts this chapter to create a right to counsel for low-income tenants, commonly understood to be tenants whose income is less than two hundred percent (200) percent of the federal poverty line, and to establish a goal of ensuring that all low-income tenants facing eviction have an attorney provided to them.”). *But see id.* § 143.20 (defining a “covered individual” as “[a] tenant of a rental dwelling unit located in the City of Minneapolis, including any tenant in a rental dwelling unit required to be licensed pursuant to chapter 244 or any tenant in a building operated by the Minneapolis Public Housing Authority. The program director, based on budgetary and resource availability and to maximize program effectiveness and impact, may establish additional required qualifications for covered individuals, including but not limited to income-level requirements”).

<sup>245</sup> *Id.* § 143.30(b).

<sup>246</sup> *Id.* § 143.20.

<sup>247</sup> *Id.* § 143.40(b).

<sup>248</sup> *Id.* § 143.50(d).

<sup>249</sup> *See id.* § 143.10 (defining “covered individual,” “covered proceeding,” and “legal services”).

<sup>250</sup> *See id.*

<sup>251</sup> *Id.* § 143.50(a).

<sup>252</sup> MINNEAPOLIS, MINN., CODE § 143.40(c).

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## vi. Kansas City, MO (2021)

Kansas City, Missouri, passed the right to counsel for tenants facing eviction on December 9, 2021.<sup>253</sup> The ordinance amends the Housing Chapter of the Code of Ordinances, adding Title III, *Tenants' Right to Counsel*,<sup>254</sup> and establishes the Tenants' Right to Counsel program.<sup>255</sup> Several major tenant-led organizations, including KC Tenants and Stand Up KC, and a legal services non-profit, the Heartland Center for Jobs and Freedom, advanced the successful campaign.<sup>256</sup>

In Kansas City, the right extends to all tenants without income or other eligibility requirements, except those related to location of the property.<sup>257</sup> The right also broadly defines which proceedings are covered and applies to any proceeding filed by a property owner demanding the "removal of a tenant from the tenant's current residence."<sup>258</sup> Actions filed outside of Kansas City concerning property in Kansas City are also covered.<sup>259</sup> Representation lasts from initiation to dismissal or final judgment,<sup>260</sup> and attorneys are specifically permitted to file applications for a new trial or to appeal as applicable.<sup>261</sup>

For implementation purposes, the ordinance provides that the Department of Housing and Community Development will create the role of "Tenant Legal Services and Assistance Director."<sup>262</sup> This Director is in charge of contracting with and coordinating the service providers, overseeing the provision of legal services, coordinating with the courts to ensure that tenants receive notice and around eviction data gathering and sharing, outreach, and developing a system for tenant feedback.<sup>263</sup> The Tenant Legal Services and Assistance Director is required to submit

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<sup>253</sup> *Search Agenda Items*, KAN. CITY MO. OFF. OF THE CITY CLERK, <https://kansascity.legistar.com/Legislation.aspx> (search in search bar for "No. 211067" and change the year to 2021; then follow the "211067" hyperlink under "File #") (last visited Apr. 4, 2022); KAN. CITY, MO., CODE §§ 35-20–25 (2021).

<sup>254</sup> KAN. CITY, MO., CODE §§ 35-20–25.

<sup>255</sup> *Id.* § 35-21(a).

<sup>256</sup> See Natalie Wallington & Cortlynn Stark, *Tenants' Right to Counsel: How a New Law Could Help You Avoid Eviction in Kansas City*, KAN. CITY STAR (Feb. 6, 2022, 1:03 AM), <https://www.kansascity.com/news/politics-government/article256472856.html>.

<sup>257</sup> KAN. CITY, MO., CODE § 35-20 (defining "covered individual or tenant").

<sup>258</sup> *Id.* (defining "covered proceeding").

<sup>259</sup> *Id.*

<sup>260</sup> *Id.* § 35-21(b)(1).

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* § 35-23(a).

<sup>263</sup> KAN. CITY, MO., CODE § 35-23(b) (2021).

an annual report about the program and implementation efforts.<sup>264</sup> The report, to the extent possible, has to include metrics about the clients served and the outcomes achieved.<sup>265</sup> The law also directly provides for tenant input by establishing a Tenants' "Right to Counsel Advisory Committee" to oversee and advise the director and implementation.<sup>266</sup> The ordinance outlines the duties of the committee, requirements for committee membership, membership terms, and meeting requirements.<sup>267</sup> It specifically prohibits retaliation by landlords against tenants for receipt of representation and includes an administrative citation fine for violation.<sup>268</sup>

## 2. Statewide Enactments: The First Three States

### i. Washington State (2021)

On April 22, 2021, Washington became the first state to enact a statewide right to counsel for tenants facing eviction (called "unlawful detainer" actions in Washington).<sup>269</sup> The Tenants Union of Washington State, emphasizing that it "built on the leadership and wins of bilingual Latinx Burien tenants in 2019 to tirelessly organize tenants across Washington," supported the enactment.<sup>270</sup> The right was codified as Chapter 59.18.640, *Indigent Tenants*, of the Revised Code of Washington's Landlord Tenant Title and is part of a larger set of recent landlord-tenant reforms in the state.<sup>271</sup> It is the first of the right to counsel laws to mandate the appointment of counsel by the courts.<sup>272</sup>

Any eligible tenant in an unlawful detainer is entitled to the appointment of counsel.<sup>273</sup> There is an indigency requirement, but "indigent" is defined broadly to include tenants "who, at any stage of a court proceeding" receive a specified form of public assistance or have an annual income, after taxes, of 200 percent or less of the Federal

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<sup>264</sup> *Id.* § 35-23(c).

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* § 35-22.

<sup>267</sup> *Id.* § 35-22.

<sup>268</sup> *Id.* § 35-25.

<sup>269</sup> See S.B. 5160, 67th Leg., 2021 Reg. Sess. (Wash. 2021) (Engrossed Second Substitute); WASH. REV. CODE § 59.18.640.

<sup>270</sup> TENANTS UNION OF WASH. STATE, ANNUAL REPORT 2021, <https://tenantsunion.org/pdf/TU-2021-Annual-Report-FINAL.pdf> (last visited May 18, 2022).

<sup>271</sup> *Right to Counsel for Indigent Tenants: Implementation Plan*, WASH. STATE OFF. OF CIV. LEGAL AID 8-9 (July 15, 2021), <https://ocla.wa.gov/wp-content/uploads/2021/07/Implementation-Plan-Right-to-Counsel-for-Indigent-Tenants-7-15-21-Final.pdf>.

<sup>272</sup> *Id.* at 11.

<sup>273</sup> WASH. REV. CODE § 59.18.640(2)(a).



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Poverty Guidelines.”<sup>274</sup> The law charges the Office of Civil Legal Aid (“OCLA”) with administering and implementing the right to counsel.<sup>275</sup> The law prioritizes indigent tenants who reside in the counties with greater rates of eviction and indigent tenants who are disproportionately at risk of eviction.<sup>276</sup>

An implementation plan was issued by the OCLA in July 2021.<sup>277</sup> A press release about the implementation plan indicated that implementation was not only proceeding on time but expected to be completed earlier than the required twelve-month timeline as set out in the law.<sup>278</sup> In October 2021, the program was already underway in numerous counties.<sup>279</sup> The current plan incorporates a research team to conduct a two-year study of the right to counsel program:

OCLA believes it critical to undertake a rigorous contemporaneous effort to monitor and assess the effectiveness of this intervention. Consequently, OCLA has engaged a research team at the Evans School to undertake a two-year study of the RTC program. This study will provide OCLA, the Legislature, and stakeholders with a clear picture of the relationship between appointed counsel and housing stability for tenants facing eviction.<sup>280</sup>

For implementation, OCLA will contract with qualified providers in each judicial district who meet the basic criteria, including “in-house capacity

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<sup>274</sup> *Id.* § 59.18.640(2)(b). The types of public assistance are specified: “Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans’ benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, Medicaid, or supplemental security income.” *Id.*

<sup>275</sup> *Right to Counsel for Indigent Tenants: Implementation Plan*, *supra* note 271, at 4 (noting that the OCLA is “an independent judicial branch agency that administers and oversees legislatively appropriated funding for civil legal aid services throughout Washington State”).

<sup>276</sup> *Id.* § 59.18.640(1).

<sup>277</sup> Wash. Cts.: Press Release Detail, OCLA Delivers Plan for Launching Washington State’s First-in-Nation “Right to Counsel” Program (July 15, 2021) [hereinafter Wash. Cts. Press Release], <https://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=46118>; see generally *Right to Counsel for Indigent Tenants: Implementation Plan*, *supra* note 271.

<sup>278</sup> Wash. Cts. Press Release, *supra* note 277.

<sup>279</sup> Heidi Groover, *In ‘Historic’ Move, Free Attorneys Provided for Tenants Facing Eviction in Some Washington Counties*, SEATTLE TIMES (Oct. 4, 2021, 6:00 AM), <https://www.seattletimes.com/business/real-estate/in-historic-move-free-attorneys-for-tenants-facing-eviction-to-begin-in-a-dozen-washington-counties/>.

<sup>280</sup> *Right to Counsel for Indigent Tenants: Implementation Plan*, *supra* note 271, at 21.

and substantive expertise in landlord-tenant, eviction, fair housing, and other relevant housing laws.”<sup>281</sup>

Upon full statewide implementation, more than 60 attorneys will engage in the full-time defense of tenants in unlawful detainer proceedings in every corner of the state. The Northwest Justice Project, the state’s flagship legal aid program, will be the largest provider of RTC services hosting 24 RTC attorneys across the state. OCLA is also contracting with 11 local legal aid Housing Justice Projects that have a demonstrated history of providing effective representation of tenants in eviction cases.<sup>282</sup>

To ensure public awareness of the right to counsel, notice provisions in eviction proceedings were amended to require notice of the right to counsel.<sup>283</sup> In addition, the Northwest Justice Project is tasked with developing a statewide eviction defense screening line.<sup>284</sup>

ii. Maryland (2021)

Maryland’s statewide right to counsel passed the legislature in April 2021, and was enacted May 30, 2021, without the Governor’s signature.<sup>285</sup> Renters United Maryland, a “coalition of independent non-profit, legal services, and community-based organizations,” pushed the legislation forward as part of a broader Housing Justice Package.<sup>286</sup> The law is codified within the Landlord and Tenant title as Subtitle 9 *Access to Legal Representation in Eviction Cases* and is administered by the Maryland Legal Services Corporation (“MLSC”).<sup>287</sup> An eligible tenant is a member of a household with an income of not greater than 50 percent of the median income in the state, adjusted by household size.<sup>288</sup> Tenants of public housing authority units are covered.<sup>289</sup> Representation extends to judicial and administrative proceedings to

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<sup>281</sup> *Id.* at 10.

<sup>282</sup> Wash. Cts. Press Release, *supra* note 277.

<sup>283</sup> WASH. REV. CODE § 59.18.057 (2021).

<sup>284</sup> *Right to Counsel for Indigent Tenants: Implementation Plan*, *supra* note 271, at 12.

<sup>285</sup> *Landlord and Tenant – Residential Tenants – Access to Counsel*, MD. GEN. ASSEMBLY (2021), <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/HB0018?ys=2021RS>.

<sup>286</sup> Renters United Maryland, *Recap on Key Renter Protections in MDGA21*, RENTERS UNITED MARYLAND (Apr. 13, 2021), <https://rentersunitedmaryland.org/mdga21-recap-on-key-renter-protections/>.

<sup>287</sup> MD. CODE ANN., REAL PROP. § 8-903(a) (2022).

<sup>288</sup> *Id.* § 8-901(c)(2).

<sup>289</sup> *Id.* § 8-901(c)(1).

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evict a tenant or to terminate a tenancy or a subsidy.<sup>290</sup> First appeals are covered so long as they are based on sufficient grounds, as determined by the legal services provider.<sup>291</sup> Representation can begin once the notice to terminate tenancy is issued or at the initiation of the eviction proceeding.<sup>292</sup> Alternatively, a designated organization can determine that a proceeding “related to a constructive eviction” should be initiated.<sup>293</sup> Legal representation should begin no later than the first appearance but the law couches this in a caveat – *if feasible*.<sup>294</sup> The law specifies that designated organizations must be non-profit organizations with the ability to provide legal representation.<sup>295</sup>

Tenant education and outreach is incorporated into the law in a variety of ways. MLSC is directed to contract with community groups, also non-profit entities, for tenant outreach, engagement, education, and information sharing.<sup>296</sup> To increase tenant awareness about the program and to include tenants for whom English is not a first language, the law requires creation of a rights pamphlet in multiple languages, as determined by MLSC.<sup>297</sup> The sheriff must include the pamphlet when serving the tenant.<sup>298</sup>

The law also creates an Access to Counsel in Evictions Task Force, which evaluates the provision of legal services, studies potential funding sources, and makes policy and statutory recommendations for improvement.<sup>299</sup> In January 2022, the Access to Counsel in Evictions Task Force issued its report and recommendations for implementation of the right to counsel in Maryland.<sup>300</sup> Recently, the Maryland General Assembly passed two bills which will help fund the program.<sup>301</sup>

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<sup>290</sup> *Id.* § 8-904(a).

<sup>291</sup> *Id.* § 8-904(a).

<sup>292</sup> *Id.* § 8-904(b)(1)(i)–(ii).

<sup>293</sup> MD. CODE ANN., REAL PROP. § 8-904(b)(1)(iii) (2022).

<sup>294</sup> *Id.* § 8-904(b)(2).

<sup>295</sup> *Id.* § 8-901(d).

<sup>296</sup> *Id.* §§ 8-901(b), 8-906.

<sup>297</sup> *See id.* § 8-905.

<sup>298</sup> *Id.* § 8-905(b).

<sup>299</sup> REPORT OF THE ACCESS TO COUNSEL IN EVICTIONS TASK FORCE, *supra* note 25, at 33.

<sup>300</sup> *Id.* at 33 app. B. (summarizing the recommendations set out by the Task Force, which include recommendations about outreach and education, as well as program design, implementation, assessment, evaluation, and funding.).

<sup>301</sup> S.B. 662, 2022 Leg., Reg. Sess. (2022 Md.), <https://legiscan.com/MD/bill/SB662/2022>; H.B. 571, 2022 Leg., Reg. Sess. (2022 Md.), [https://legiscan.com/MD/bill/HB571/2022?utm\\_campaign=rss&guid=7eYyjY4jyfTZazm2jAbtDs](https://legiscan.com/MD/bill/HB571/2022?utm_campaign=rss&guid=7eYyjY4jyfTZazm2jAbtDs).

## iii. Connecticut (2021)

Connecticut passed the right to counsel for tenants facing eviction in June 2021.<sup>302</sup> As in San Francisco, California, and Boulder, Colorado, the Democratic Socialists of America were pivotal in the campaign leading to the enactment.<sup>303</sup> Connecticut's right is limited to income eligible individuals who are residential tenants, lessees, or occupants.<sup>304</sup> A tenant is "income-eligible" if their total household income does not exceed 80 percent of the state's median income, adjusted for family size.<sup>305</sup> Alternatively, an individual can meet the income eligibility requirement if they receive a specified form of public assistance.<sup>306</sup> The right to representation extends to court evictions and administrative proceedings. An eligible tenant can be represented upon delivery of a notice to quit, the initiation of a summary proceeding, and any administrative proceeding to "preserve a state or federal housing subsidy or to prevent a proposed termination of the lease."<sup>307</sup> Service providers who will represent the covered individuals must be not-for-profit legal services organizations.<sup>308</sup>

For implementation purposes, the Judicial Branch is tasked with identifying and contracting with an administering entity to oversee the right to counsel program.<sup>309</sup> This entity oversees funding the program. In addition, the law creates an eleven-member "working group to advise on matters and policies affecting the right to counsel program, to effectuate the right to counsel."<sup>310</sup> The administering entity develops

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<sup>302</sup> 2021 Conn. Acts 21-34 (Reg. Sess.); Conn. Gen. Stat. Ann. § 47a-75.

<sup>303</sup> CENT. CT DSA, *Right to Counsel for Evictions in Connecticut*, [https://actionnetwork.org/petitions/right-to-counsel-for-evictions-in-connecticut?source=direct\\_link&&fbclid=IwAR3qsDAqA62J2c5VIXDo2jKVepo9xVECFvBXS09XwIXj\\_vvnD6PHIP3u4zA](https://actionnetwork.org/petitions/right-to-counsel-for-evictions-in-connecticut?source=direct_link&&fbclid=IwAR3qsDAqA62J2c5VIXDo2jKVepo9xVECFvBXS09XwIXj_vvnD6PHIP3u4zA) (last visited Apr. 4, 2022).

<sup>304</sup> CONN. GEN. STAT. ANN. § 47a-75(a)(1).

<sup>305</sup> *Id.* § 47a-75(a)(6)(A).

<sup>306</sup> This includes Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program benefits, Medicaid, Supplemental Security Income, refugee resettlement benefits, rental assistance under Chapter 138a of the general statutes, or the federal Housing Choice Voucher Program. *Id.* § 47a-75(a)(6)(B).

<sup>307</sup> *Id.* § 47a-75(a)(2).

<sup>308</sup> *Id.* § 47a-75(a)(3). In addition, these organizations must "(1) [h]ave substantial expertise in housing law and landlord tenant law and substantial experience furnishing free legal assistance to eligible individuals; (2) have a demonstrated history of serving the low-income community; (3) identify the geographic area in which such organization provides legal representation; (4) have a plan to reach and provide legal representation to income-eligible persons with limited English proficiency; and (5) provide appropriate supervision and training." *Id.* § 47a-75(b).

<sup>309</sup> *Id.* § 47a-75(b).

<sup>310</sup> *Id.* § 47a-75(e)(1) (specifying appointment procedures).

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the phase in process, which incorporates consultation with the working group and service providers, and which prioritizes certain areas based on a variety of factors.<sup>311</sup>

To ensure greater tenant awareness and effectiveness of the right, the law allows designated organizations to subcontract to community organizations not only for tenant outreach but also for the provision of legal services.<sup>312</sup> The law also requires a one-page, plain language notice to be attached by the owner, landlord, or agent to the lease, the notice to quit or to terminate subsidy, and to the summons and complaint.<sup>313</sup> The Court, in issuing a notice about a scheduled eviction mediation or hearing, has to include notice about the right to counsel as well.<sup>314</sup>

The right to counsel in Connecticut launched in January 2022 in several zip codes. An annual report is required, which must include, among other metrics, the number of eligible people served, extent of representation, and outcomes achieved, with the first one due in January 2023.<sup>315</sup>

## III. LOOKING FORWARD

*During the height of the Civil Rights Movement, then-Attorney General Robert F. Kennedy urged members of the legal profession, as part of their obligation to support equal justice under law, to use their knowledge and skills to advance the rights of those who were most vulnerable. Once again, the legal community has an obligation to help those who are most vulnerable. We can do that by doing everything we can to ensure that people have a meaningful opportunity to stay in their homes and that eviction procedures are carried out in a fair and just manner.*<sup>316</sup>

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<sup>311</sup> The factors include: “(1) [t]he prioritization of certain groups of individuals by income, zip codes, census tracts or other priority criteria developed in consultation with the designated organizations and the working group; (2) the availability of program funding; (3) the number of trained legal services attorneys available to provide legal representation; and (4) the scope of the need for legal representation.” *Id.* § 47a-75(g).

<sup>312</sup> *Id.* § 47a-75(b).

<sup>313</sup> *Id.* § 47a-75(f)(1)-(2).

<sup>314</sup> *Id.* § 47a-75(f)(3).

<sup>315</sup> *Id.* § 47a-75(i).

<sup>316</sup> Letter from Merrick Garland, Att’y Gen., U.S., to Members of the Legal Community (Aug. 30, 2021) (on file at <https://www.justice.gov/ag/page/file/1428626/download>); see also *Fact Sheet: The White House and Department of Justice Announced 99 Law Schools in 35 States and Puerto Rico Continue to Answer the Attorney General’s Call to Action for Stronger Access to Justice and Court Reform on Eviction Prevention*, THE WHITE HOUSE (Jan. 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/>

The significance of the movement to establish a right to counsel for tenants cannot be overstated. In the last five years, tenants, organizers, and advocates have transformed the legal landscape for tenants facing eviction. Where no jurisdiction had such a right in 2017, eighteen now do. And it was difficult work. Obstacles and opposition appeared at every turn. In New York City, the tenant-led campaign had to build and activate the groundswell of support for years before the right was enacted.<sup>317</sup> In Denver, though there is a right to counsel, efforts are still underway to expand and strengthen it.<sup>318</sup> Seattle's proposed bill language would have established yet another universal right to counsel, but at the last minute, council members voted 8-1 to amend the language to apply to indigent people only.<sup>319</sup> In Philadelphia, though the right to counsel passed, until recently, funding was an issue.<sup>320</sup> Funding was only recently secured in Maryland.<sup>321</sup>

As the number of jurisdictions with an enacted right to counsel for tenants has grown, there have been important recommendations for broadening and strengthening these laws. These include extending the application of the right to administrative proceedings where eviction can result, attaching the right to a notice terminating tenancy, expanding the right to cover Section 8 subsidy terminations, and extending the right to affirmative litigation for violations of safe and habitable

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01/28/fact-sheet-the-white-house-and-department-of-justice-announced-99-law-schools-in-35-states-and-puerto-rico-continue-to-answer-the-attorney-generals-call-to-action-for-stronger-access-to-just/ (presenting information about eviction prevention efforts made throughout 2021, including a list of law schools that have responded to the Attorney General's call to action).

<sup>317</sup> OUR RIGHTS! OUR POWER! THE RIGHT TO COUNSEL (RTC) CAMPAIGN TO FIGHT EVICTIONS IN NYC!, *supra* note 55.

<sup>318</sup> *About*, NEWR DENVER, *supra* note 221.

<sup>319</sup> Jerry Ianelli, *Seattle's City Council Gives Poor Residents Right to Eviction Attorneys*, APPEAL (Mar. 29, 2021), <https://theappeal.org/seattles-city-council-gives-poor-residents-right-to-eviction-attorneys/>.

<sup>320</sup> In Baltimore, Bill No. 20-0625, which would establish the right to counsel in the City, was making its way through the City Council when the Department of Housing and Community Development submitted a memorandum requesting numerous changes to the language of the law as it set to oversee implementation and provision of legal services under the bill. See Memorandum from Alice Kennedy, Balt. Acting Hous. Comm'r, to the President and Members of the Baltimore City Council (Nov. 1, 2020), <https://baltimore.legistar.com/LegislationDetail.aspx?ID=4659244&GUID=77F2AE9E-8F22-4DA9-8248-775803D3C766&Options=ID%7CText%7C&Search=20-0625>.

<sup>321</sup> See Maryland Bills, *supra* note 301.

housing.<sup>322</sup> But beyond the necessary work of bettering existing and future laws, there is also a specific and growing need related to effective implementation: the need for attorneys.<sup>323</sup>

Even as we understand that this movement to be about tenant rights and power more broadly, implementation of the right to counsel for tenants requires lawyers. The right to counsel necessitates legal services provider infrastructure and *counsel*. Most of the enactments require designated organizations to have capacity, or ability to build capacity, and experience to do so. As these enactments pass, there are increasing opportunities for new and transitioning lawyers committed to housing justice to become tenant attorneys.<sup>324</sup> And to make the right to counsel effective is not simply to increase the number of lawyers doing the work but to do so meaningfully. The tenant right to counsel movement requires not just an influx of lawyers, but compassionate, trained, skilled, and zealous lawyers.

There are opportunities for lawyers to represent tenants in court, administrative proceedings, and appeals. In jurisdictions where representation can begin upon service of a notice to quit before filing of the eviction, there are potential opportunities to represent clients in alternative dispute resolution and eviction diversion programs. And the growing opportunities extend beyond lawyering. There are a variety of roles contemplated, if not outright stated, in right to counsel enactments as well. Social workers, paralegals, administrative staff, and experienced supervisors are critical to the infrastructure of the designated organizations that are to provide meaningful legal representation in these cases. Community organizers and tenant leaders are necessary not only for advancing awareness about the right

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<sup>322</sup> See e.g., Erika Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 67 (2020) ("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."); see also Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J. L. & GENDER 55 (2018).

<sup>323</sup> See generally Rachel Holliday Smith, 'Universal' Counsel: Advocates Want to Nix Income Caps for Housing Court Help, CITY (Mar. 9, 2022, 7:34 PM), <https://www.thecity.nyc/2022/3/9/22969950/universal-counsel-advocates-want-to-nix-income-caps-for-housing-court-help> (discussing capacity issues for New York City's right to counsel); Chau Lam, *Tenants Threatened with Eviction Face Housing Court Without Lawyers*, GOTHAMIST (Mar. 9, 2022), <https://gothamist.com/news/tenants-threatened-with-eviction-face-housing-court-without-lawyers>.

<sup>324</sup> See NAT'L COAL. FOR CIV. RIGHT TO COUNS., *Status Map*, *supra* note 50 (tracking the current status of the right to counsel for tenants).

among tenants but also for effective, accountable implementation, and harnessing tenant power to achieve even more critical housing justice reform. Researchers and evaluators are necessary not only for analyzing data from existing programs but to evaluate on-the-ground eviction realities for jurisdictions pursuing a right to counsel. And there is room for those committed to advancing the right to counsel and to housing justice reform more broadly through policy work. Importantly, as attorneys and advocates are called upon to serve in this field, the organizations employing them must commit to creating workplaces that allow them to thrive and continue pursuing this powerful work.

#### IV. CONCLUSION

Tenants, organizers, and advocates have created a nationwide movement around the right to counsel for tenants facing eviction. In many ways, this movement is not about the ultimate enactment in law. Instead, it is a mere part of a much larger conversation about and demand for tenant dignity, tenant rights, and true housing justice. Yet, one very clear result of all the energy and work behind this movement is the change in the legal landscape. Today there are cities and states with a right to counsel for tenants codified in law. Just five years ago, this wasn't true. And the landscape continues to shift. As the movement grows and the law expands, so do the opportunities for new and transitioning attorneys and advocates committed to advancing housing justice.