

Disrupting Dispossession: How the Right to Counsel in Landlord-Tenant Proceedings Is Reshaping Outcomes

*Paula A. Franzese**

*Cecil J. Thomas***

I. INTRODUCTION	1255
A. The Legacy of Housing Discrimination and Segregation...	1259
B. The Anatomy of Eviction: Courts as Eviction Factories	1263
C. COVID-19 and the Convergence of Public Health and Housing Stability	1282
D. Mitigating the Eviction Crisis: Rental Assistance	1298
E. Launching a Right to Counsel for Tenants	1302
F. How the Presence of Counsel Is Disrupting Dispossession	1310
II. CONCLUSION	1322

I. INTRODUCTION

We are a nation in the process, always, of becoming. Of realizing those truths that our foundational documents describe as self-evident: that we are each entitled to the guarantees of due process and equal protection. That we are to be assured fair and impartial adjudication of our claims. That justice must be dispensed evenly and without favor, with neither bias nor prejudice. And yet, in holding our systems of government to those assurances, we encounter the difficult truths that justice is meted out disparately, that rights without a champion ring hollow, and that systems of entrenched structural and systemic inequity deny the poor the means to be heard.

The denial of process and the opportunity to be heard is felt acutely in the space of housing court adjudications, where tenants can lose their

* Peter W. Rodino Professor of Law, Seton Hall Law School, B.A. Barnard College, J.D. Columbia University School of Law

** Staff Attorney, Greater Hartford Legal Aid, B.A. M.A. Brandeis University, J.D. University of Connecticut School of Law.

place to call home in “[t]wo-minute trials in crowded courtrooms.”¹ Many of those tenants—the working poor unable to miss a day of work, the elderly, the disabled, mothers of small children—miss the hearing and suffer eviction by default at the behest of their landlords’ lawyers. Ninety percent of landlords are represented by counsel in eviction proceedings.² Fewer than 10 percent of tenants facing eviction have access to a lawyer;³ this is true no matter the grave stakes at hand. The imbalance of power and lopsided playing field all but ensure that a vulnerable tenant named in an eviction action will be dispossessed. Immeasurable suffering follows.

The absence of access to counsel is felt deeply when a low-income residential tenant faces eviction. While the landlords’ bar is adept at quickly churning out eviction filings, tenants unable to afford a lawyer are left to navigate on their own a disorienting system fraught with traps for the unwary. The resultant imbalance turns courts into eviction factories, where eviction can take less than ten minutes.⁴

Prior to the pandemic, an average of 3.6 million eviction cases per year were filed in the United States.⁵ The Eviction Lab at Princeton University estimates that in 2016, “seven evictions were filed every minute. On average, eviction judgment[s] . . . involve less than \$600 in rental debt.”⁶ As eviction moratoria expire and government resources run out, millions are at risk of eviction in the coming year.

The Authors thank Jose Ortiz, Abdul Reiman Khan, Sara Klein, Maria Roumiantseva, Taiisa Kelly, Monarch Housing Associates, Essex-Newark Legal Services, Greater Hartford Legal Aid, the McCarter & English Social Justice Project, Lauren Crane, Nina Rosella, and Amy Fox.

¹ Anna Blackburne-Rigsby & Nathan Hecht, *It Should Take More Than 10 Minutes to Evict Someone*, N.Y. TIMES (Jan. 13, 2022), <https://www.nytimes.com/2022/01/13/opinion/housing-eviction.html>.

² 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/>.

³ *Id.*

⁴ See Blackburne-Rigsby & Hecht, *supra* note 1.

⁵ ASHLEY GROMIS, EVICTION LAB, EVICTION: INTERSECTION OF POVERTY, INEQUALITY, AND HOUSING 5 (2019), https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/GROMIS_Ashley_Paper.pdf.

⁶ Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

There are catastrophic personal and societal consequences of housing displacement and housing insecurity.⁷ Tenants facing eviction risk not only losing their home and personal property but also homelessness and housing instability, disruption to employment and education, and adverse mental and physical health effects.⁸ The trauma of eviction imposes a lasting emotional and physical toll and is associated with a host of comorbidities. An eviction judgment leaves a lasting imprint on a tenant's record, resulting in what housing advocates call "the scarlet E" that can forever label a renter "a bad tenant" and thereby deny her future renting opportunities.⁹ Evictions impose immense systemic costs. With so much at stake, providing means to disrupt dispossession becomes a moral and economic imperative.

In the past few years, several jurisdictions have launched right to counsel initiatives for low-income tenants facing eviction. Those efforts are part of a growing movement to enact legislation to provide tenants with the right to counsel as a government obligation, established in law, to guarantee representation in a legal proceeding.¹⁰ Right to counsel programs are succeeding along a host of metrics. Tenants who are represented are more likely to remain housed, pay less in costs, and get more time to move.¹¹

This Article tells the story of the launch of the right to counsel in two cities whose demographics and eviction rates share much in common: Newark, New Jersey, and Hartford, Connecticut. The demographics of both cities bear living witness to the continued legacy of housing segregation and the denial of Black homeownership. They demonstrate that the burdens of housing insecurity are shouldered most by Black and brown renters and mothers with children.¹² They

⁷ See generally Clark Merrefield, *Eviction: The Physical, Financial and Mental Health Consequences of Losing Your Home*, JOURNALIST'S RES. (Oct. 15, 2021), <https://journalistsresource.org/economics/evictions-physical-financial-mental-health/>; Emily A. Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1 (2021), <https://link.springer.com/content/pdf/10.1007/s11524-020-00502-1.pdf>.

⁸ National Coalition for a Civil Right to Counsel, *The Right to Counsel for Tenants - A Growing Movement*, YOUTUBE (Jan. 20, 2022), <https://www.youtube.com/watch?v=Oq-eJdlen64>.

⁹ Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 674 (2018).

¹⁰ *Id.* at 696.

¹¹ *Id.*

¹² Erik Gartland, *Families with Children at Increased Risk of Eviction, with Renters of Color Facing Greatest Hardship*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 2, 2021, 5:00 AM), <https://www.cbpp.org/blog/families-with-children-at-increased-risk-of-eviction-with-renters-of-color-facing-greatest>.

reveal that, in both cities, evictions occur with stunning speed and devastating effects.

Nearly 30 percent of Newark and Hartford residents live below the poverty line.¹³ More than 37 percent of each city's population is Black and more than 36 percent is Hispanic or Latinx.¹⁴ In both cities, mean household income remains around \$35,000.¹⁵ Close to 80 percent of residents are renters,¹⁶ and the vast preponderance of those are rent-burdened or extremely rent-burdened.¹⁷ Hartford is one of the highest evicting cities in the country.¹⁸ Of the approximately 40,000 eviction actions filed each year in Essex County,¹⁹ of which Newark is a part, more than half are filed against Newark tenants.²⁰

In Newark, Hartford, and cities across the nation, the eviction crisis has ranged unchecked for decades and has disproportionately affected women of color with children. The words of Judge Robert Satter, who presided over the Hartford housing court forty years ago, continue to describe the contemporary landscape:

When I sit on the bench of the housing session of the superior court in Hartford, I look squarely into the face of poverty. That face is often [B]lack or brown, and frequently female, accompanied in court by small children. Sometimes the face is submissive, defeated by the battle; at the moment of my decision ordering an eviction, it may dissolve into tears Other times the face is angry, fiercely angry at the cruelty of

¹³ *QuickFacts: Hartford City, Connecticut; Newark City, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/hartfordcityconnecticut,newarkcitynewjersey/PST045221> (last visited Mar. 4, 2022).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Hartford, Connecticut Housing Data*, TOWNCHARTS, <https://www.towncharts.com/Connecticut/Housing/Hartford-city-CT-Housing-data.html> (last visited Mar. 6, 2022); *Newark, New Jersey Housing Data*, TOWNCHARTS, <https://www.towncharts.com/New-Jersey/Housing/Newark-city-NJ-Housing-data.html> (last visited Apr. 3, 2022).

¹⁷ GovLove – A Podcast About Local Government, *Reducing Evictions in Newark, NJ with Khabirah Myers*, ENGAGING LOC. GOV'T LEADERS (Jan. 31, 2020), <https://podcasts.apple.com/us/podcast/reducing-evictions-in-newark-nj-with-khabirah-myers/id993270804?i=1000464232933>.

¹⁸ *Top Evicting Large Cities in the United States*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en> (last visited on Apr. 2, 2022). Ranked by eviction rate, Waterbury is the twenty-second city on the list, Hartford twenty-ninth, Bridgeport thirty-ninth, and New Haven sixty-ninth. *Id.*

¹⁹ Paula A. Franzese et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 22 (2016).

²⁰ GovLove, *supra* note 17.

the situation: eyes blazing, lips curling, voice snarling with rage. Emotions are near the surface when what is at stake is a life necessity like housing.²¹

This Article shares the narratives behind some of the faces of eviction—the stories of the people beleaguered and worn down by hardships compounded by a legal system stacked against them. It shares some of the hopefulness wrought by right to counsel programs as it recounts how vulnerable tenants' fates changed dramatically and for the better when they were provided a lawyer to champion their rights. It is important to the task of reform that their stories and others like theirs be told. It is by learning those stories that we begin to cultivate proximity to those whose suffering lies at the heart of housing injustice. That more intimate perch makes plainer the tragedy of dispossession and, in turn, helps to summon a collective will for reform. Having a safe place to call home is intrinsic to the cause of human dignity. We can and must do better to avert the tragedy of eviction.

A. *The Legacy of Housing Discrimination and Segregation*

The laws and policies that denied Black homeownership, creating segregated and substandard stocks of public housing for people of color,²² laid the foundations for segregated living patterns and conditions that continue to this day.²³ Reinforced by multi-generational replication of depressed incomes,²⁴ the whiteness of wealth,²⁵ and the persistence of economically exclusionary development and zoning,²⁶ the legacy of government-backed residential segregation is a lived experience for whole segments of the U.S. population.

Any post-Civil War effort toward residential integration buckled under the weight of Jim Crow in the South and government-supported exclusion of Black renters and homeowners from white communities beyond that region. With the early twentieth-century advent of zoning, local governments throughout the nation adopted in earnest zoning

²¹ ROBERT SATTER, *DOING JUSTICE: A TRIAL JUDGE AT WORK* 215 (1990).

²² RICHARD ROTHSTEIN, *THE COLOR OF LAW* 36–37 (2017).

²³ Paula A. Franzese & Stephanie J. Beach, *Promises Still to Keep: The Fair Housing Act Fifty Years Later*, 40 CARDOZO L. REV. 1207, 1208 (2019).

²⁴ Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>.

²⁵ DOROTHY BROWN, *THE WHITENESS OF WEALTH* 20 (2021).

²⁶ Paula A. Franzese, *An Inflection Point for Affordable Housing: The Promise of Inclusionary Mixed-Use Redevelopment*, 52 UIC J. MARSHALL L. REV. 581, 584 (2019).

laws and land use policies that effectively insulated white families in all-white neighborhoods.²⁷

The New Deal, in turn, was built around explicit race-based discrimination in housing, entitlements, and opportunity.²⁸ Franklin Delano Roosevelt's Federal Housing Authority ("FHA") denied home mortgages to Black residents while providing generous loans and subsidies to white purchasers buying into prime sections of the newly emerging suburbs.²⁹ Black homeownership, and the opportunity for upward economic mobility that attends homeownership, became a dream denied.³⁰ Federally subsidized rental housing for Black and brown people was constructed instead in explicitly segregated, isolated, redlined quadrants still euphemistically referred to today as the "inner cities."³¹ Those were located disproportionately near toxic waste facilities, factories, and other noxious uses.³² Today, Black people are 75 percent "more likely than others to live near facilities that produce hazardous waste."³³

Throughout the twentieth century, infrastructure was built to insulate the suburbs from the inner cities. Underpasses were constructed too low for buses to get from urban centers to the suburbs' beaches, places of recreation, schools, and shops. Writing in *The Atlantic*, Ta-Nehisi Coates described federal, state, and local housing laws and policies as predicated on the belief "that Americans should enjoy easy access to the cities via the automobile and live in suburbs without [B]lack people."³⁴ By 1968, a national commission to study the consequences of residential segregation concluded that discriminatory housing laws and practices had produced "two societies, one [B]lack, one white – separate and unequal."³⁵

²⁷ ROTHSTEIN, *supra* note 22, at 44.

²⁸ *Id.* at 83.

²⁹ Franzese, *supra* note 26, at 583–84.

³⁰ *Id.* at 584.

³¹ ROTHSTEIN, *supra* note 22, at 17.

³² *Id.* at 54.

³³ Linda Villarosa, *Pollution Is Killing Black Americans: This Community Fought Back*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/magazine/pollution-philadelphia-black-americans.html>.

³⁴ Ta-Nehisi Coates, *The Ghetto, Public Policy, and the Jewish Exception*, ATLANTIC (Feb. 28, 2013), <https://www.theatlantic.com/national/archive/2013/02/the-ghetto-public-policy-and-the-jewish-exception/273592/>.

³⁵ NAT'L ADVISORY COMM'N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

The exclusion of Black residents from homeownership opportunities helped to ensure a lasting poverty that future generations would inherit. The Economic Policy Institute's study on "The State of Working America" reported that Black people suffer the highest incidence of poverty in the United States.³⁶ Close to half (46 percent) of Black children under the age of six live in poverty, compared to 14 percent of white children.³⁷ More than half of Black adults raised in poverty remain "stuck there as adults, compared to a third of whites."³⁸

The de jure, and then de facto, housing discrimination that preempted Black homeownership has adversely impacted generations of wealth building.³⁹ Home ownership is a principal predicate to economic security and future wealth. Today, only 40 percent of Black families are homeowners, compared to 74 percent of white families.⁴⁰ In 2019, the median wealth of Black households was \$24,100, compared to \$189,100 for white households.⁴¹ Prior to the pandemic, renters' median net worth was \$3,036.⁴² Homeowners' net worth was \$269,100. Of that, home equity made up \$160,100.⁴³ Reducing the racial homeownership gap would narrow the racial wealth gap by 31 percent.⁴⁴

³⁶ See *The State of Working America Key Numbers: Poverty*, ECON. POL'Y INST., <http://www.stateofworkingamerica.org/files/book/factsheets/poverty.pdf> (last visited Apr. 25, 2022) (documenting significantly higher poverty rates for Black and Hispanic populations in the United States).

³⁷ *Id.*

³⁸ Richard V. Reeves, *The Other American Dream: Social Mobility, Race and Opportunity*, BROOKINGS INST. (Aug. 28, 2013), <https://www.brookings.edu/blog/social-mobility-memos/2013/08/28/the-other-american-dream-social-mobility-race-and-opportunity/>.

³⁹ Nisa Islam Muhammad, *Dream Deferred, Dream Denied*, FINAL CALL (Nov. 4, 2020), <https://new.finalcall.com/2020/11/04/dream-deferred-dream-denied/>.

⁴⁰ Charisse Jones, *Race Matters: Gap Between Black and White Homeownership Is Vast, New Report Finds*, USA TODAY (June 29, 2020, 12:01 AM), <https://www.usatoday.com/story/money/2020/06/29/black-homeownership-lags-whites-fueling-wealth-gap-report-finds/3244738001/>.

⁴¹ Christian E. Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap Is a Generational Challenge*, CTR. AM. PROGRESS (Mar. 19, 2021), <https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/>.

⁴² Emily Barone, *The Housing Market Is Booming, but Millions of Americans Face Eviction—and the Gap Is Getting Worse*, TIME (Dec. 4, 2020), <https://time.com/5917894/evictions-housing-market-covid/>.

⁴³ *Id.*

⁴⁴ INST. FOR ASSETS & SOC. POL'Y, BRANDEIS UNIV. & DEMOS, *THE RACIAL WEALTH GAP: WHY POLICY MATTERS* 12 (2015), https://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf.

Meanwhile, the demand for affordable housing is acute, exacerbated by inflation, rising housing costs, and gentrification.⁴⁵ In 2019, “the median sales price of existing single-family homes rose faster than median household income for an eighth straight year.”⁴⁶ In cities like New York, “Billionaires’ Rows” dot skylines as skyrocketing rents shut out low- and moderate-income residents.⁴⁷ Nationally, rising rents have far outpaced increases in wages. In 2017, almost half of low-income tenants in the United States were considered rent burdened, spending more than 30 percent of their income on housing.⁴⁸

The National Low Income Housing Coalition’s Gap Report cites the stark shortage of rental units affordable to low-income households, including a shortage of more than seven million apartments available to the lowest-income renters.⁴⁹ The limited stocks of rent-subsidized or rent-stabilized rentals are in high demand and short supply. Wait lists for government-subsidized apartments can be anywhere from two to five years.⁵⁰ Many of those units are in deteriorating condition.⁵¹ Still, a

⁴⁵ Vivian Marino, *Grand Prices and a Busy Time for Residential Sales*, N.Y. TIMES, Jan. 30, 2022, at RE1.

⁴⁶ 2020 *State of the Nation’s Housing Report: 4 Key Takeaways for 2021*, HABITAT FOR HUMAN., <https://www.habitat.org/costofhome/2020-state-nations-housing-report-lack-affordable-housing>.

⁴⁷ Emily Badger & Luis Ferré-Sadurni, *As Bloomberg’s New York Prospered, Inequality Flourished Too*, N.Y. TIMES (Nov. 9, 2019), <https://www.nytimes.com/2019/11/09/upshot/bloomberg-new-york-prosperity-inequality.html>.

⁴⁸ *Housing Cost Burden for Low-Income Renters Has Increased Significantly in Last Two Decades*, NAT’L LOW INCOME HOUS. COAL. (July 6, 2020), <https://nlihc.org/resource/housing-cost-burden-low-income-renters-has-increased-significantly-last-two-decades>.

⁴⁹ ANDREW AURAND ET AL., NAT’L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AFFORDABLE RENTAL HOMES 2* (2021), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf.

⁵⁰ Social media users document the frustrations and difficulties of securing an affordable rental apartment. For example, one Tik-Tok account holder named Dutch chronicled the five-year wait before moving into his unit and the hypervigilance required to finally secure the apartment. Constantly checking movement on the 195 waitlists he was on, as soon as he saw that a unit had become available, he was the first to apply. He was then given seventy-two hours to submit more than forty documents including bank statements and pay stubs from the prior six months, tax returns, rent history and letters from his employer. The approval and vetting process took months, and once approved, it was another several months until he could move in. Dutch (@dutchdeccc), TIKTOK (Jan. 12, 2022), <https://www.tiktok.com/@dutchdeccc/video/7052507055604665647>.

⁵¹ See Franzese & Beach, *supra* note 23, at 1216–17.

2022]

DISRUPTING DISPOSSESSION

1263

vulnerable tenant will seldom assert breach of habitability standards⁵² for fear of prompting an eviction action and its resultant calamities.⁵³

Many tenants “entered the pandemic already facing housing instability and vulnerable to eviction.”⁵⁴ Harvard University’s 2020 State of the Nation Housing Report, sponsored by Habitat for Humanity, notes that COVID-19 arrived just as the country was facing “crisis-level housing affordability issues, especially for low-income households.”⁵⁵ Upwards of 30 percent of all households nationwide were housing cost burdened, spending 30 percent or more of their income on housing.⁵⁶ Nearly eighteen million households—one in seven—were severely cost burdened, “spending half or more of their income on housing.”⁵⁷ “Renters were more cost burdened than homeowners, with [46 percent] of renters cost burdened compared to [21 percent] of homeowners” and 24 percent of renters severely cost-burdened compared to 9 percent of homeowners.⁵⁸

B. *The Anatomy of Eviction: Courts as Eviction Factories*

The principal basis for an eviction action is nonpayment of rent. COVID-19 struck when half of all renter households were already spending more than 30 percent of their income on rent.⁵⁹ The Aspen Institute reports that in 2018, most renter households below the poverty line spent at least half of their income on rent, with one in four spending more than 70 percent of household income on housing.⁶⁰ Owing to persistent government underfunding, “only one in four eligible renters received federal financial assistance.”⁶¹

As eviction moratoria lifted, eviction floodgates opened in many jurisdictions. Understaffed and pressured to move crowded dockets, housing court judges can order eviction with stunning speed. Two jurists recently described the housing court landscape in this way: “Two-minute trials in crowded courtrooms. Ten-minute evictions.

⁵² Franzese et al., *supra* note 19, at 3.

⁵³ *Id.* at 39–42.

⁵⁴ Benfer et al., *supra* note 6.

⁵⁵ 2020 *State of the Nation’s Housing Report*, HABITAT FOR HUMAN., <https://www.habitat.org/costofhome/2020-state-nations-housing-report-lack-affordable-housing> (last visited Apr. 3, 2022).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Benfer et al., *supra* note 6.

⁶⁰ *Id.*

⁶¹ *Id.*

Incalculable suffering.”⁶² A system that can evict in less than ten minutes is a broken system.⁶³

The landlords’ bar can churn out filings aimed at tenant displacement with speed and efficiency. Mistakes are made in the process, particularly on the part of institutional landlords who, juggling multiple residential investment properties, can proceed for eviction based on flawed record-keeping (or worse) to wrongfully displace a tenant and secure a higher rent from the next tenant.⁶⁴

For a tenant to appear in court without legal representation requires that she navigate a procedural labyrinth rife with traps for the unwary on her own. Housing courts are notoriously impossible to navigate, even for the experienced. To successfully contest an eviction action requires substantive and procedural knowledge of the law. It requires awareness of the defenses available for nonpayment of rent when the premises are unsafe. It requires experience with and access to means of alternative dispute resolution. Put simply, it requires the effective assistance of counsel. Yet, the percent of tenants represented in housing court proceedings has never exceeded 10 percent. By contrast, 90 percent of landlords have counsel. 30 percent of tenants named in an eviction action suffer eviction by default, for failure to appear.

A tenant who withholds rent, as is her right when the premises fail to meet habitability standards, will become the target of an eviction action. So too will a tenant who reports housing code violations. This, no matter the implied warranty of habitability and prohibition against retaliatory eviction that is designed to protect tenants.⁶⁵ One of the principal defenses to an aggrieved tenant’s nonpayment of rent—that the premises betray habitability guarantees—is supposed to guarantee residential tenants that the apartments they rent are livable and in good repair.⁶⁶ It was created to give tenants who are, for example, without heat or running water or whose premises are fraught with rodent, bug, or mold infestation the right to lawfully withhold rent until the landlord makes the necessary repairs.⁶⁷ It is meant to be a defense to an eviction

⁶² Blackburne-Rigsby & Hecht, *supra* note 1.

⁶³ *See id.*

⁶⁴ *See* Francesca Mari, *A \$60 Billion Housing Grab by Wall Street*, N.Y. TIMES MAG. (Oct. 22, 2021), <https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html> (“Landlords can be rapacious creatures, but this new breed of private-equity landlord has proved itself to be particularly so.”).

⁶⁵ Franzese et al., *supra* note 19, at 10.

⁶⁶ *Id.* at 2–3.

⁶⁷ *Id.* at 5–8.

action and a means to affirmatively compel landlord compliance with basic requirements for safe and sound dwelling.⁶⁸ But betrayals of even the most basic habitability standards go unsanctioned when an aggrieved tenant is without the means to be meaningfully heard.⁶⁹

“Tenant reporting services” compound the harms imposed by eviction.⁷⁰ A tenant named in an eviction action is placed on a registry available to private tenant screening services retained by landlords when vetting prospective renters.⁷¹ The registries are devoid of context and do not even indicate that a listed matter was dismissed or that the named tenant prevailed.⁷² If a prospective tenant appears as a named party in a housing court proceeding, she is likely to suffer immediate rejection of her housing application.⁷³

With affordable housing in scarce supply and often years-long waitlists for federally subsidized housing known as Section 8 units, eviction can quickly lead to homelessness. The personal and systemic costs of housing displacement are vast and far-reaching. Eviction, a dire form of housing insecurity, is a common experience for low-income renters. Its health impacts are significant and often severe.

Growing bodies of data demonstrate the negative effects of eviction on mental and physical health, birth outcomes, and life expectancies.⁷⁴ Eviction is associated with a range of comorbidities including depression, anxiety, suicide, diabetes, hypertension, heart disease, and drug use.⁷⁵ “Multiple studies have linked eviction to an increased incidence of adverse birth outcomes, including low birth weight,

⁶⁸ *Id.* at 2.

⁶⁹ A study of the 40,000 residential eviction actions brought in Essex County, New Jersey, in one year found that only eighty had tenants asserting betrayal of habitability standards as a defense to their withholding of rent. *Id.* at 22. That figure is startling, particularly in view of the many documented accounts of substandard housing conditions in apartment buildings in the county. See Karen Yi, *Mom Files Class-Action Suit Claiming Building Is Rat Infested*, NJ.COM (Jan. 16, 2019), https://www.nj.com/essex/2017/10/resident_files_class-action_lawsuit_against_newark.html; see also Shannon Mullen & Payton Guion, *APP Impact: NJ ‘Renter Hell’ on Road to Fixes*, ASBURY PARK PRESS (Apr. 13, 2021), <https://www.app.com/story/insider/extras/2017/01/05/asbury-park-press-investigative-series-renter-hell/96195072/>.

⁷⁰ Franzese, *supra* note 9, at 663–64.

⁷¹ *Id.* at 667.

⁷² *Id.* at 668.

⁷³ See Franzese & Beach, *supra* note 23, at 1222.

⁷⁴ Gracie Himmelstein & Matthew Desmond, *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic*, HEALTH AFFS., Apr. 1, 2021, at 2–3.

⁷⁵ See *id.* at 3.

prematurity, and infant mortality.”⁷⁶ Eviction is associated with physical and sexual assault. Evicted adults have higher rates of hospitalizations and suffer more frequent emergency room visits than the non-evicted.⁷⁷

The evidence linking eviction to adverse health outcomes has placed greater focus on interventions to prevent housing displacement. Significantly, it was the Centers for Disease Control and not a housing department that prompted the federal eviction moratorium in response to COVID-19.⁷⁸ The exigencies of the pandemic made even more urgent the centrality of safe, sustainable housing as a matter quite literally of life and death.

In a typical year in the United States, landlords file 3.7 million eviction cases.⁷⁹ Connecticut and New Jersey, known for their centers of wealth, opportunity, and economic privilege, are also home to regions of concentrated economic hardship and housing inequities.⁸⁰ Seventy-eight percent of Newark’s residents are tenants, and two-thirds of those are rent burdened.⁸¹ Four of Connecticut’s cities—Waterbury, Hartford, New Haven, and Bridgeport—rank among the top one hundred highest evicting cities in the country.⁸² Prior to the COVID-19 pandemic and for the past several decades, Connecticut courts consistently received approximately twenty thousand eviction filings per year.⁸³ New Jersey

⁷⁶ *Id.* at 2.

⁷⁷ *Id.* at 3.

⁷⁸ See *infra* notes 188–195 and accompanying text.

⁷⁹ See EVICTION LAB, <https://evictionlab.org/> (last updated Feb. 26, 2022).

⁸⁰ See Mullen & Guion, *supra* note 69; CONN. COMM’N ON HUM. RTS. & OPPORTUNITIES, CONNECTICUT ZONING AND DISCRIMINATION 2 (2021), <https://portal.ct.gov/-/media/CHRO/Publications/CHROs-Zoning-and-Discrimination-2021-Report.pdf>; ERIN BOGGS & LISA DABROWSKI, OPEN CMTYS. ALL., OUT OF BALANCE REPORT: SUBSIDIZED HOUSING, SEGREGATION AND OPPORTUNITY IN CONNECTICUT (2017), https://d3n8a8pro7vnm.cloudfront.net/opencommunitiesalliance/pages/360/attachments/original/1510154195/Out_Of_Balance_Report_-_Final_-_Revised_11-8-17.pdf?1510154195; *Connecticut’s Housing Divide*, CONN. PUB. TELEVISION, <https://cptv.org/programs/connecticuts-housing-divide> (last visited Apr. 2, 2022).

⁸¹ Payton Guion, *N.J. Could Soon Face a Historic Housing Crises. A City Devastated by COVID-19 Might be the Epicenter.*, NJ.COM (Mar. 15, 2021, 9:18 AM), <https://www.nj.com/coronavirus/2021/03/nj-could-soon-face-a-historic-housing-crisis-a-city-devastated-by-covid-19-might-be-the-epicenter.html>.

⁸² Waterbury is the twenty-second city on the Eviction Rate list, Hartford twenty-ninth, Bridgeport thirty-ninth, and New Haven sixty-ninth. *Top Evicting Large Cities in the United States*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en> (last visited Mar. 7, 2022).

⁸³ CONN. ADVISORY COUNCIL ON HOUS. MATTERS, REP. TO THE GEN. ASSEMB., at app. C-1–2 (2021).

2022]

DISRUPTING DISPOSSESSION

1267

courts typically receive approximately 150,000 eviction filings per year.⁸⁴

In both states, most of those evictions are filed in urban centers—cities with high rates of poverty, racial segregation, and low economic opportunity. For a long time, evictions had been seen as a matter of logical consequence: a “deserved” outcome resulting from a combination of limited means, breached contractual obligations, poor choices, and broader societal ills. This oversimplified view of evictions prevented a deeper understanding of the causes of an unmitigated eviction crisis, the impact of evictions on individuals, families, and society, and the importance of interventions such as eviction diversion programs, rental assistance, and access to legal representation for tenants.⁸⁵

In recent years, a deeper and more nuanced understanding of evictions has emerged, emphasizing that “[e]viction is a cause, not just a condition, of poverty.”⁸⁶ Across the United States, evictions represent an unlevel playing field, with most tenants facing the devastating potential consequences of an eviction without representation. In housing courts throughout the nation, the overwhelming preponderance of landlords appear with counsel, and the overwhelming preponderance of tenants do not.⁸⁷

While equal justice applied without regard to economic status is a fundamental and foundational principle of the American rule of law, evictions have long been a significant exception to this rule. Evictions represent a legal and personal crisis for tenants and their families. The cruelty of the process, accomplished by armed sheriffs, bears witness to the etymological roots of the word “eviction.” From the Latin *evincere*, to evict means to “overcome and expel, conquer, subdue, vanquish;

⁸⁴ *Eviction Map and Data: New Jersey*, EVICTION LAB, <https://evictionlab.org/map/#/2016?geography=states&bounds=-187.872,4.65,-52.347,62.362&type=efr&locations=34,-74.718,39.766> (last visited Apr. 3, 2022).

⁸⁵ See, e.g., Matthew Desmond & Tracey Shollenberger, *Forced Displacement From Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1752 (2015) (“However, researchers have focused almost entirely on voluntary mobility, overlooking how involuntary displacement—disproportionately experienced by low-income households—may be consequential to neighborhood selection. . . . Second, this study suggests that renters who experience a forced move relocate to more-disadvantaged neighborhoods than those who move under less-demanding circumstances. Experiencing a forced move is associated with more than one-third of a standard deviation increase in both neighborhood poverty and crime rates, relative to voluntary moves.”).

⁸⁶ MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 299 (2016).

⁸⁷ *Id.* at 303.

prevail over; supplant.”⁸⁸ Intervention to avoid the intrinsic violence and pain of displacement can promote stability and well-being, but too often the societal response is insufficient or nonexistent.

In the years preceding the COVID-19 pandemic, a growing body of research illuminated the profound disparities and devastating personal and societal effects of the eviction crisis. Evictions disproportionately impact low-income renters, and in particular low-income women of color and their children.⁸⁹ While “incarceration had come to define the lives of men from impoverished [B]lack neighborhoods, eviction was shaping the lives of women. Poor [B]lack men were locked up. Poor [B]lack women were locked out.”⁹⁰

One study determined that Black households were more than twice as likely as white households to be evicted:

A review of several studies conducted in multiple cities between 1991 and 2002 found that approximately 80% of people facing eviction were from non-White households. Pre-COVID-19, Black women were evicted at higher rates than other groups, with 1 in 5 Black female renters reporting that they have experienced eviction compared with 1 in 12 Hispanic/Latinx women and 1 in 15 White women. Of all gender and race combinations, Black women renters are at the highest risk: In 17 out of 36 states studied, Black women faced eviction filings at double the rate of White renters.⁹¹

Memories of the safety and security of the childhood home are overwhelmingly denied to low-income children of color. Research reveals that having two children makes a household 60 percent more likely to be evicted than a household without children.⁹² One study conducted by Princeton and Columbia Universities estimates that more than one in four children born to a family living at or below the federal poverty line between 1998 and 2000 in an American city with a population greater than 200,000 experienced an eviction before their fifteenth birthday.⁹³ Children born to Black and Hispanic mothers were found to have a significantly higher risk of experiencing eviction than

⁸⁸ *Evict*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/evict> (last visited Mar. 7, 2022).

⁸⁹ Gartland, *supra* note 12.

⁹⁰ DESMOND, *supra* note 86, at 98.

⁹¹ Benfer et al., *supra* note 7, at 4–5.

⁹² Matthew Desmond & Carl Gershenson, *Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors*, 62 SOC. SCI. RSCH. 362, 369 (2017).

⁹³ Ian Lundberg & Louis Donnelly, *A Research Note on the Prevalence of Housing Eviction Among Children Born in U.S. Cities*, 56 DEMOGRAPHY 391, 394, 401 (2019).

children born to white mothers or mothers of other racial and ethnic backgrounds.⁹⁴

Since ancient times, our legal traditions have recognized the deep personal significance of home.⁹⁵ Unsurprisingly, an eviction's potential or actual sundering of that connection has devastating and enduring consequences. Eviction presents the potential for imminent homelessness and significant financial costs with the named tenant's incurrance of the landlord's court costs and attorney's fees, which will include marshal and mover costs, property loss, and property redemption expenses if the eviction results in dispossession.⁹⁶ The immediate stress of navigating an unfamiliar and expedited legal process alone, coupled with the overarching complexities of life that accompany the eviction, contribute to a maelstrom of personal and familial crisis. A 2020 study of the housing court in New Haven, Connecticut, found that tenants spent one-fifth of their time homeless or housing insecure in the months following an eviction.⁹⁷

Housing insecurity "increases stress levels and leads to mental and physical health problems including depression, anxiety, suicide, high blood pressure, cardiovascular disease, and respiratory conditions."⁹⁸ Women experiencing eviction are more likely to experience intimate partner physical and sexual assault,⁹⁹ as well as short and long term mental and physical health consequences.¹⁰⁰ Evictions are particularly

⁹⁴ *Id.*

⁹⁵ "What more sacred, what more strongly guarded by every holy feeling, than a man's own home?" THOMAS BENFIELD HARBOTTLE, *DICTIONARY OF QUOTATIONS: LATIN* 236 (1909) (citing Cicero). "And the law of *England* has [s]o particular and tender a regard to the immunity of a man's house, that it [s]t[y]les it his ca[s]tle and will never [s]uffer it to be violated with impunity." 4 WILLIAM BLACKSTONE, *COMMENTARIES* *223.

⁹⁶ See, e.g., *Cnty. Realty Mgmt. v. Harris*, 155 N.J. 212, 234 (1998) (holding that a landlord may recover reasonable attorneys' fees from tenant if expressly provided for in lease agreement).

⁹⁷ Jack Tsai et al., *Longitudinal Study of the Housing and Mental Health Outcomes of Tenants Appearing in Eviction Court*, 56 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 1679, 1684 (2020).

⁹⁸ DAN THREET ET AL., NAT'L LOW INCOME HOUS. COAL., *COSTS OF COVID-19 EVICTIONS* 5 (2020), <https://nlihc.org/sites/default/files/costs-of-covid19-evictions.pdf>; see also Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 311–13 (2015); Matthew Desmond et al., *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227, 256 (2015).

⁹⁹ See Nihaya Daoud et al., *Pathways and Trajectories Linking Housing Instability and Poor Health Among Low-Income Women Experiencing Intimate Partner Violence (IPV): Toward a Conceptual Framework*, 56 WOMEN & HEALTH 208 (2016).

¹⁰⁰ Megan E. Hatch & Jinhee Yun, *Losing Your Home Is Bad for Your Health: Short- and Medium-Term Health Effects of Eviction on Young Adults*, 31 HOUS. POL'Y DEBATE 469

devastating to children. Evictions in childhood negatively affect immediate- and long-term emotional and physical well-being,¹⁰¹ and increase the likelihood of lead poisoning, food insecurity, and academic performance issues.¹⁰²

The trauma and stress associated with childhood eviction are linked to increased likelihood of adverse childhood experiences, which have been found to have long-term adverse health consequences.¹⁰³ Eviction of pregnant mothers has been linked to adverse birth outcomes.¹⁰⁴ Evictions force tenants into successively worse housing, in “higher-risk rental market[s] in higher-crime, higher-poverty neighborhoods with substandard housing conditions.”¹⁰⁵ The legal record of the eviction has enduring consequences, taking on a life of its own in third-party reporting services, denying tenants future housing opportunities.¹⁰⁶

(2020); see also Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 91 (2012) (“Typical yet damaging, for the consequences of eviction are many and severe: eviction often increases material hardship, decreases residential security, and brings about prolonged periods of homelessness; it can result in job loss, split up families, and drive people to depression and, in extreme cases, even to suicide; and it decreases one’s chances of securing decent and affordable housing, of escaping disadvantaged neighborhoods, and of benefiting from affordable housing programs. In inner-city neighborhoods, it is women who disproportionately face eviction’s fallout.”) (internal citations omitted).

¹⁰¹ Hatch & Yun, *supra* note 100.

¹⁰² Kathryn M. Leifheit et al., *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 POPULATION HEALTH 1, 5 (2020); *Student Mobility, Evictions, and Achievement*, KANSAS CITY EVICTION PROJECT (Jan. 24, 2018), <https://static1.square-space.com/static/59ba0bd359cc68f015b7ff8a/t/5a68eb51652deaa4067f4e90/1516825427422/KC+Eviction+Project+-+Schools+Analysis.pdf>; Gabriel L. Schwartz, *Cycles of Disadvantage: Eviction and Children’s Health in the United States* (Apr. 2020) (Doctoral Dissertation, Harvard University) (Harvard University DASH Repository); Craig E. Pollack et al., *When Storms Collide: Evictions, COVID-19, and Health Equity*, HEALTH AFFS. (Aug. 4, 2020), <https://www.healthaffairs.org/doi/10.1377/forefront.20200730.190964/full/>.

¹⁰³ Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood*, 159 ARCH PEDIATRIC ADOLESCENT MED. 1104 (2005).

¹⁰⁴ See Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA PEDIATRICS 494, 496–97 (2021); Gabriel L. Schwartz et al., *Health Selection into Eviction: Adverse Birth Outcomes and Children’s Risk of Eviction Through Age 5 Years*, 190 AM. J. EPIDEMIOLOGY 1260, 1261 (2021); Aayush Khadka et al., *In Utero Exposure to Threat of Evictions and Preterm Birth: Evidence from the United States*, 55 HEALTH SERVS. RSCH. 823, 829 (2020).

¹⁰⁵ Heidi L. Allen et al., *Can Medicaid Expansion Prevent Housing Evictions?*, 38 HEALTH AFFS. 1451, 1451 (2019).

¹⁰⁶ See Cyrus Farivar, *Tenant Screening Software Faces National Reckoning*, NBC NEWS (Mar. 14, 2021), <https://www.nbcnews.com/tech/tech-news/tenant-screening->

2022]

DISRUPTING DISPOSSESSION

1271

What is an eviction?¹⁰⁷ The answer to that question is a matter of perspective. Under the law, an eviction is a legal process designed to adjudicate the conflicting interests, claims, and defenses raised by a landlord and a tenant regarding the possession of a residential dwelling unit.¹⁰⁸ To the courts, these are high-volume dockets, and cases must be moved quickly and efficiently to prevent backlogs as new cases are filed as quickly as old cases are disposed. To landlords, evictions represent a mechanism of control, to reclaim property, end an unwanted tenancy, or to bring a tenant into compliance with contractual obligations, rules, or expectations. The threat of homelessness to the tenant and her household is inherent in the process and provides the ultimate leverage in any landlord-tenant dispute.

Landlords resort to evictions in cities like Hartford and Newark at disproportionately high rates, some with enthusiasm, others reluctantly, some as a dispassionate and routine matter of protecting business and personal interests. To the tenant facing eviction, most often without the assistance of legal counsel, the process of eviction is merciless in its speed; confusing and foreign in its application of complicated legal processes and procedures; and devastating in its immediate and enduring consequences for her, her family, and her community.

Evictions in New Jersey and Connecticut are referred to as “summary process” or summary proceedings, terms that speak to the speed for which the eviction process is designed. Under Connecticut law, “summary process is a special statutory procedure intended to provide an expeditious remedy. It ‘enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms.’”¹⁰⁹ Connecticut case law “consistently states that the issues in summary process actions are limited, that the ultimate issue is possession, and that summary process is a straightforward action limited to a few simple questions of fact.”¹¹⁰ Under New Jersey law, the summary dispossession

software-faces-national-reckoning-n1260975; Franzese, *supra* note 9, at 667–72; Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, AM. C.L. UNION (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>.

¹⁰⁷ Evictions in this Article reference residential evictions.

¹⁰⁸ See *infra* notes 109–114 and accompanying text.

¹⁰⁹ *Young v. Young*, 733 A.2d 835, 838 (Conn. 1999) (internal citations omitted).

¹¹⁰ *Centrix Mgmt. Co. v. Valencia*, 76 A.3d 694, 700 (Conn. App. Ct. 2013).

statute,¹¹¹ “enacted in 1847, affords landlords ‘an expedited procedure to regain possession of leased premises, thereby avoiding the delays ordinarily associated with common-law ejectment actions.’”¹¹² The jurisdiction of the court in summary dispossess actions is exclusively statutory.¹¹³ Hence, “[t]he only remedy that can be granted in a summary-dispossess proceeding is possession [of the premises]; no money damages may be awarded.”¹¹⁴ While those judicial declarations of simplicity operate to protect the expedited nature of evictions, they belie the complexities of eviction.

Evictions exist at the confluence of landlord-tenant law, property law, contract law, and the law of negotiable instruments and often implicate other legal defenses arising under state and federal law. For the tenant facing an eviction, with all its immediate and enduring consequences, evictions pose a tremendously complex set of challenges. In recent years, we have gained a deeper understanding of the far-reaching and devastating personal and societal consequences of evictions; these are consequences that are far from simple to resolve, but require us to look deeper, and employ new strategies to address effectively.

Procedurally and practically, evictions move at breathtaking speed. In New Jersey, a landlord need not serve the tenant any notice to bring an eviction action for nonpayment of rent¹¹⁵ except where the tenant resides in federally-subsidized housing.¹¹⁶ For all other New Jersey

¹¹¹ N.J. STAT. ANN. §§ 2A:18-53–61 (West 2021).

¹¹² *Hodges v. Sasil Corp.*, 915 A.2d 1, 7 (N.J. 2007) (internal citations omitted).

¹¹³ *Hous. Auth. of Morristown v. Little*, 639 A.2d 286, 289 (N.J. 1994) (internal quotations and citations omitted) (“Unlike the common-law ejectment action, which existed prior to enactment of the summary-dispossess statute and remains available to aggrieved landlords, the jurisdiction of the court in summary-dispossess proceedings is entirely statutory.”).

¹¹⁴ *Id.* One court comments, “[i]t is very difficult to be a landlord in New Jersey. . . . Landlords are not charities. They are not philanthropic entities who are in business to subsidize their tenants. Landlords are, however, generally speaking, honest business entities who are merely trying to achieve the American dream of profiting from the ownership of land.” *Sacks Realty Co. v. Batch*, 561 A.2d 1216, 1220 (N.J. Super. Ct. Law Div. 1989).

¹¹⁵ *See* N.J. STAT. ANN. § 2A:18-61.2 (West 2021).

¹¹⁶ *See Hous. Auth. of Newark v. Raindrop*, 670 A.2d 1087, 1089 (N.J. Super. Ct. App. Div. 1996) (holding that landlord must comply with federal notice requirements in summary dispossess action to terminate a public housing tenancy); *Winns v. Rosado*, 111 A.3d 155, 157 (N.J. Super. Ct. Law Div. 2014) (holding that notice requirement also applies Section 8 tenants); *see also* 42 U.S.C § 1437d(l)(4); 24 C.F.R. § 982.310(e) and 24 C.F.R. § 982.310(e)(2)(ii).

2022]

DISRUPTING DISPOSSESSION

1273

eviction actions, and in Connecticut, landlords generally¹¹⁷ commence an eviction with the issuance of a notice to quit, usually a one-page notice served upon the tenant or her abode, terminating the lease immediately upon service and providing the tenant with a date, often in as little as three days, to quit the premises.¹¹⁸ In Connecticut, a landlord with a claim for nonpayment of rent, for example, may generally issue a notice to quit as early as the eleventh day of the month, following the expiration of a nine-day statutory grace period for payment.¹¹⁹

The service of the notice to quit generally terminates the tenant's lease immediately, converting the tenancy to one at sufferance.¹²⁰ The notice to quit must be unequivocal; thus, absent some explicit withdrawal or acceptance of settlement by the landlord, the service of a notice to quit extinguishes any unilateral right of the tenant to cure the alleged breach and prevent an eviction.¹²¹ The notice to quit will usually contain a brief disclaimer advising the tenant that any payments made after service of the notice to quit will be accepted as use and occupancy only and not as rent, meaning that further payment will not serve to reinstate the tenancy or prevent the ensuing eviction.¹²² This disclaimer legally allows the landlord to continue to accept money from the tenant, so long as he does not suggest that those payments have been accepted as rent, all while continuing to prosecute the eviction for a judgment of possession.¹²³ The service of the notice to quit orders that the tenant

¹¹⁷ In cases involving federally subsidized tenancies, additional pretermination requirements may apply. *See, e.g.*, 24 C.F.R. § 982.310 (2022) (tenancy termination procedures for Housing Choice Voucher participants); 24 C.F.R. §§ 247.1–.7 (2022) (tenancy termination procedures for project-based privately administered housing subsidy programs); CONN. GEN. STAT. § 47a-23(e) (2021) (permitting combination of federally required pretermination notice with a notice to quit issued pursuant to state law). In Connecticut cases involving allegations of lease or statutory violations, landlords must serve a pretermination notice before the issuance of a notice to quit, detailing the alleged breach and providing a fifteen-day cure period. CONN. GEN. STAT. § 47a-15 (2021).

¹¹⁸ CONN. GEN. STAT. § 47a-23 (2021); N.J. STAT. ANN. § 2A:18-61.2 (West 2021).

¹¹⁹ CONN. GEN. STAT. § 47a-15a (2021).

¹²⁰ *Waterbury Twin, LLC, v. Renal Treatment Ctrs.–Ne., Inc.*, 974 A.2d 626, 631 (Conn. 2009); *see also* N.J. STAT. ANN. § 2A:18-61.2 (West 2021).

¹²¹ *E. Hartford Hous. Auth. v. Hird*, 535 A.2d 377, 380 (Conn. App. 1988).

¹²² CONN. GEN. STAT. § 47a-23(e) (2021); *see also*, *Zitomer v. Palmer*, 446 A.2d 1084, 1086 (Conn. Super. Ct. 1982) (describing the use and occupancy disclaimer as serving “two useful purposes. It avoids misleading tenants who tender late payments and it insulates the summary process action from being flawed by the acceptance of rent after commencement of the summary process.”).

¹²³ *See Centrix Mgmt. Co. v. Valencia*, 33 A.3d 802, 805–07 (Conn. App. Ct. 2011). A tenant may challenge the court's subject matter jurisdiction over an eviction if the landlord has accepted rent or otherwise engaged in conduct that is not consistent with

vacate the premises.¹²⁴ Although a judgment for possession must be entered by the court before the tenant is required to move, tenants are often unaware that only the court has jurisdiction to enter a judgment.

In Connecticut, if the tenant does not quit the premises within the three days provided in the notice to quit, the landlord may then serve a writ, summons, and complaint, bringing the dispute to court for the resulting eviction action.¹²⁵ It is at this point that there is now a record of the court filing in an online court docket, bringing damaging consequences, as the record of the eviction may impact future housing opportunities. The summons to court and accompanying eviction complaint may be served on any day after the quit date and must be served at least six days and filed in court three days before a designated return day, which marks the technical start of the eviction proceeding.¹²⁶ From this return day, the eviction court pleadings advance every three days,¹²⁷ in contrast to the equivalent thirty-day time frame for regular civil process in Connecticut.¹²⁸

A tenant who appears in her case and files the required court pleadings in Connecticut receives eventual notice of a court mediation, in which a court-appointed mediator will attempt to broker a settlement of the case.¹²⁹ Settlements most frequently take one of two forms. The first is a stipulated judgment in favor of the landlord in which the tenant agrees to repay any arrearage, correct any alleged breach, and ensure required compliance with the terms of the stipulated judgment for a set period, usually resulting in the eventual reinstatement of the tenancy. If the tenant fails to comply with a required payment or other term of the agreement, the landlord is permitted to file an affidavit of noncompliance with the court, requesting that the court issue an order allowing a marshal to physically remove the tenant, her family, and their possessions from the apartment, in a process referred to as an “execution.”¹³⁰ The second common form of settlement of an eviction is called a “final stay” stipulated judgment, in which the tenant agrees to

an unequivocal notice to quit, such as offering a new lease agreement. The burden of proving such equivocation rests upon the tenant; *see also* *O & P Realty v. Santana*, 551 A.2d 1287, 1289 (Conn. App. 1989) (discussing use and occupancy disclaimers).

¹²⁴ N.J. STAT. ANN. § 2A:18-56 (West 2021).

¹²⁵ CONN. GEN. STAT. § 47a-23a (2021).

¹²⁶ *Id.*

¹²⁷ CONN. GEN. STAT. § 47a-26c (2021).

¹²⁸ Conn. Super. Ct. R. 10-8 (2022).

¹²⁹ CONN. GEN. STAT. § 47a-69 (2021).

¹³⁰ COMM’N ON OFF. LEGAL PUBL’N, OFFICIAL 2022 CONNECTICUT PRACTICE BOOK § 17-53 (2022).

vacate the leased premises on a specific date. In these types of agreements, any underlying disputes between the parties are usually left largely unresolved, with the agreement providing the landlord an enforceable route to regain possession of the dwelling unit through the tenant's voluntary compliance, or by request to the court for an execution order. In both potential settlements, the tenant has waived her right to a trial, avoiding the risk of almost immediate dispossession if the landlord prevails.

In July 2021, the New Jersey Supreme Court issued a series of orders announcing changes to the landlord-tenant process, including the creation of "pretrial conferences."¹³¹ These remote conferences have multiple purposes.¹³² Primarily, "landlord-tenant specialists" will assist parties in negotiations to resolve cases without trial.¹³³ Specialists will also refer tenants to sites to apply for rental and legal assistance. Lastly, specialists will identify the status of the case to help clear the court's docket. Parties that do not appear in the settlement conference allow specialists to hear only from the attending party, and parties that cannot reach a settlement will be scheduled for trial.¹³⁴

In both New Jersey and Connecticut, if mediation fails, a trial will be scheduled before a judge. Jury trials are not permitted in the summary process.¹³⁵ The landlord's claims are typically simple to prove, following basic statutory elements. In the common claim of nonpayment of rent, a landlord must only prove the existence of a lease or rental agreement, the tenant's agreement to pay rent by a certain date, the tenant's failure to pay the agreed upon rent by that date, the service of a proper notice to quit, and the tenant's continued possession

¹³¹ NOTICE TO THE BAR AND PUBLIC: LANDLORD TENANT – SUPREME COURT ACTION: (1) ADMINISTRATIVE DETERMINATIONS ON THE REPORT AND RECOMMENDATIONS OF THE JUDICIARY SPECIAL COMMITTEE ON LANDLORD TENANT; (2) ESTABLISHMENT OF NEW RESIDENTIAL LANDLORD TENANT PROCESS AS OF SEPTEMBER 1, 2021; AND (3) AMENDMENTS TO THE RULES OF COURT (2021), <https://www.njcourts.gov/notices/2021/n210715b.pdf?c=kkQ>.

¹³² Parties without access to the technology or equipment necessary to participate in a remote proceeding may contact their county courthouse and ask to use a "technology room" to request to appear in-person.

¹³³ NOTICE TO THE BAR: COVID-19 – FOURTH OMNIBUS ORDER ON COURT OPERATIONS AND LEGAL PRACTICE (2020), <https://www.njcourts.gov/notices/2020/n200612a.pdf?c=ih6>; SUPREME COURT OF NEW JERSEY OMNIBUS ORDER (2021), <https://www.njcourts.gov/host/pr/orderlandlordtenant.pdf>.

¹³⁴ SUPREME COURT OF NEW JERSEY OMNIBUS ORDER (2021), <https://www.njcourts.gov/host/pr/orderlandlordtenant.pdf>.

¹³⁵ See CONN. GEN. STAT. § 52-215 (2021) ("[T]here shall be no right to trial by jury . . . in a summary process case."); see also *Sullivan v. Lazzari*, 135 Conn. App. 831, 835–39, cert. denied, 305 Conn. 925 (2012) (rejecting a constitutional challenge to the deprivation of the right of jury trial in summary process cases).

of the dwelling unit.¹³⁶ In another common claim, lapse of time, the landlord must only prove the existence of a lease, the expiration of that lease, the service of a proper notice to quit, and the tenant's continued possession of the dwelling unit.¹³⁷ As a practical matter, these are relatively easy claims for the landlord to establish, with limited issues of proof, particularly when the landlord is represented by counsel.

Statutory, common law, and equitable defenses are available to the tenant,¹³⁸ but are much more difficult to present. For example, Connecticut law provides that a landlord may not collect rent if the landlord is not in compliance with his statutory obligations, which include the obligation to keep the rented premises and common areas in fit and habitable condition, and in compliance with applicable state and municipal building codes.¹³⁹ Connecticut courts have significantly narrowed the availability of this defense, requiring the tenant to prove that the conditions in the dwelling unit are so serious as to make the unit uninhabitable.¹⁴⁰ To prevail on such a defense, the tenant, who is most often unrepresented by counsel, must be savvy and persistent. She must arrange for the issuance of subpoenas through the court to obtain the testimony of municipal officials and the introduction of inspection

¹³⁶ CONN. GEN. STAT. § 47a-23 (2021).

¹³⁷ *Id.*

¹³⁸ CONN. GEN. STAT. § 47a-33a (2021) ("In any action of summary process under this chapter, the tenant may present any affirmative legal, equitable or constitutional defense that the tenant may have.").

¹³⁹ CONN. GEN. STAT. §§ 47a-4, -7 (2021).

¹⁴⁰ *See, e.g.,* Visco v. Cody, 16 Conn. App. 444, 450 (1988) ("Similarly, for a tenant to make a successful claim that he had the right to withhold payment of rent, he must show that the landlord's failure to comply with § 47a-7(a) materially affects his safety or has rendered the premises uninhabitable.") (internal citations and quotations omitted). A tenant's own testimony of the condition of his apartment may not be sufficient to establish a habitability defense. *See id.* at 450 (A tenant "needs to do more than assert a unilateral, self-serving statement that the premises are untenable" but must "utilize the broad range of municipal boards, agencies, and commissions to remedy defects.") (internal citations and quotations omitted). The tenant defense of retaliation has also been significantly and similarly limited. Although CONN. GEN. STAT. § 47a-20 establishes a rebuttable presumption of retaliation if a notice to quit is issued by the landlord within six months of when "the tenant has in good faith requested the landlord to make repairs," the courts have limited this defense to only "substantial" repair requests. In *Altieri v. Layton*, the Hartford Housing Court reasoned that this was a necessary interpretation to prevent countless successful assertions by tenants, noting that "there exist in excess of 12,000 substandard dwelling units requiring repairs of both a major and minor nature [in Hartford in 1979]. There is scarcely a dwelling unit in this jurisdiction beyond the pale of requiring repair." 35 Conn. Supp. 261, 267 (Super. Ct. 1979). One would imagine that the proper solution to this problem was robust application of the law on its face, not its extratextual limitation.

reports, must gather and present pictures and other evidence of the habitability issues within the rules of evidence, and must have the time, resources, and wherewithal to do all of this within a rapidly moving process, while navigating the many routine challenges of poverty. In almost all cases, the tenant faces a landlord who is represented by counsel, often a lawyer who specializes in evictions and has decades of experience.

In New Jersey, while evictions can only be ordered for cause, cause includes the tenant's nonpayment of rent.¹⁴¹ Tenants who withhold rent when leased premises are uninhabitable (as is their right by law) are promptly sued for eviction. To raise the defense to rent nonpayment—that the premises betray habitability standards—aggrieved tenants must first remit to the court all sums alleged by the landlord to be in arrears.¹⁴² Tenants are not given the opportunity to contest the accuracy of amounts claimed to be owed. Moreover, the rent posting requirement as prerequisite to assertion of the habitability defense ignores the likelihood that the aggrieved tenant is without the sums allegedly owed because she applied some or all the withheld rent to on-site remediation, as is her right.¹⁴³ The rent posting requirement as predicate to a habitability hearing has chilled aggrieved tenants' right to be heard to such an extent that of the 40,000 eviction actions filed in Essex County, New Jersey, in one year alone, only eighty of those had tenants asserting breach of habitability as a defense to rent nonpayment.¹⁴⁴

In Connecticut, if the landlord prevails at trial, and judgment enters against the tenant, the minimum statutory stay of enforcement of the judgment is just five days,¹⁴⁵ which also serves as the mandatory appeal period,¹⁴⁶ and the period of time in which the tenant must file any application for a further stay of execution.¹⁴⁷ If nothing is filed during this brief window, an order of execution for possession is issued by the court, allowing a state marshal to physically remove the tenant, her household members, and her possessions from the dwelling unit with

¹⁴¹ N.J.S.A. § 2A:18-61.1(a).

¹⁴² See, e.g., *Daoud v. Mohammad*, 952 A.2d 1091, 1092 (N.J. Super. Ct. App. Div. 2008) (providing that a tenant may raise habitability concerns conditioned upon deposit of rent with the court clerk).

¹⁴³ Franzese et al., *supra* note 19, at 18.

¹⁴⁴ *Id.* at 5.

¹⁴⁵ CONN. GEN. STAT. § 47a-35 (2021).

¹⁴⁶ *Id.*

¹⁴⁷ CONN. GEN. STAT. § 47a-37 (2021).

as little as twenty-four hours' notice.¹⁴⁸ During the execution process, tenant possessions are moved out of the apartment and placed into municipal storage, where they may be redeemed during a limited window with the payment of additional fees, or sold at public auction if left unclaimed.¹⁴⁹ The whole process of an eviction in Connecticut, in practice, by statute and common law interpretation, is designed for speed. From 2006 to 2019, the median time frame for disposition of an eviction in Connecticut, from return day to final judgment, has ranged from eighteen to twenty-nine days.¹⁵⁰ In 2019, 57 percent of Connecticut summary process cases were resolved in thirty days, and 84 percent within sixty days.¹⁵¹

In New Jersey, a landlord granted a judgment for possession can seek a warrant of removal of the tenant three days later.¹⁵² The tenant then has three business days to move all persons and personal property from the premises.¹⁵³ Once a warrant is taped to the tenant's door, she has a minimum of three days to vacate her belongings and leave the unit before a court officer physically removes the tenant, her household members, and her possessions from the dwelling unit.¹⁵⁴ In this period, a tenant may request from the court an order for orderly removal,¹⁵⁵ where the court permits the tenant up to seven days to move out, often in exchange for her waiving other rights including rights under the Abandoned Tenant Property Act¹⁵⁶ or other applications for post judgment relief such as a hardship stay,¹⁵⁷ an order to show cause, or a stay pending appeal.

¹⁴⁸ COMM'N ON OFF. LEGAL PUBL'N, OFFICIAL 2022 CONNECTICUT PRACTICE BOOK § 17-53 (2022).

¹⁴⁹ CONN. GEN. STAT. § 47a-42 (2021).

¹⁵⁰ REPORT TO THE GENERAL ASSEMBLY, app. C-5 (Jan. 6, 2021).

¹⁵¹ *Id.* at app. C-4.

¹⁵² N.J.S.A. § 6:7-1; N.J.S.A. § 2A:18-57; NOTICE TO THE BAR AND PUBLIC: LANDLORD TENANT – SUPREME COURT ACTION: (1) ADMINISTRATIVE DETERMINATIONS ON THE REPORT AND RECOMMENDATIONS OF THE JUDICIARY SPECIAL COMMITTEE ON LANDLORD TENANT; (2) ESTABLISHMENT OF NEW RESIDENTIAL LANDLORD TENANT PROCESS AS OF SEPTEMBER 1, 2021; AND (3) AMENDMENTS TO THE RULES OF COURT (2021), <https://www.njcourts.gov/notices/2021/n210715b.pdf?c=kkQ>.

¹⁵³ N.J.S.A. § 6:7-1.

¹⁵⁴ N.J.S.A. § 2A:18-57. As of March 2020, tenants now have a new window after trial to pay rental arrears, permitting payment up to three days after a warrant for removal or lockout. N.J.S.A. § 2A:42-10.16(a).

¹⁵⁵ N.J.S.A. § 6:6-6.

¹⁵⁶ N.J.S.A. § 2A:18-72.

¹⁵⁷ N.J.S.A. § 2A:42-10.1.

Statistics and statutory provisions belie the tenant's practical experience of an eviction. Tenants receiving a notice to quit often leave their homes before the matter may be filed in court, seeking to avoid the "scarlet letter" impact of having an eviction on their record. Undocumented tenants are frequently hesitant to exercise defensive strategies in court out of fear of the legal system and risk of deportation.

The standard Connecticut and New Jersey summons to court is dense, packed with instructions and information that can be hard to understand. In Connecticut, the concept of a "return day," a throwback to English common law, can be confusing, leading the tenant to believe that the date is a court hearing date, or date for appearance at the courthouse in person, rather than a placeholder date for the purposes of calculating service and filing dates, and the advancement of the legal pleadings. Since return dates in summary process in Connecticut may be set for any day except for Sundays and legal holidays, some landlords choose a Saturday return date, leading confused tenants to show up to closed courthouses.

In Connecticut, within days of the return date, the tenant is required to file an appearance form and a responsive pleading. The tenant who fails to file her appearance or a responsive pleading by the appropriate deadline faces the entry of default judgment.¹⁵⁸ During Fiscal Year 2020 in Connecticut, 37 percent of tenants lost their evictions by default for failure to appear.¹⁵⁹ From 2007 to 2020, the default judgment rate for tenants in Connecticut summary process actions has ranged from a low of 34 percent to a high of 42 percent.¹⁶⁰ Stated differently, more than one in every three tenants facing an eviction in Connecticut loses her eviction *without ever having the opportunity to present a defense*.

New Jersey court rules provide for default judgments against tenants who fail to appear or plead as required.¹⁶¹ With a lack of accessible data in New Jersey, default judgment rates are difficult to assess, but limited studies show that default judgment rates are as high as 46 percent in Newark.¹⁶² The lack of accurate data regarding the default judgment rate in New Jersey and "evictions in Newark,

¹⁵⁸ CONN. GEN. STAT. § 47a-26 (2021).

¹⁵⁹ REPORT TO THE GENERAL ASSEMBLY, App. C-6 (Jan. 6, 2021).

¹⁶⁰ *Id.*

¹⁶¹ N.J.S.A. §§ 6:6-2; -3.

¹⁶² Norrinda Brown Hayat & Marta Paczkowska, *After Monitoring Eviction Court for a Month, It's Clear That the System Is Failing Tenants*, NJ.COM (Mar. 1, 2020, 9:26 AM), <https://www.nj.com/opinion/2020/03/after-monitoring-eviction-court-for-a-month-its-clear-that-the-system-is-failing-tenants.html>.

specifically, not only undermines the seriousness of its eviction problem, but also makes it difficult to address.”¹⁶³

If the tenant is successful in filing the correct paperwork at the correct time, she will receive notice of a mediation. Within the context of the mediation, tenants, often unrepresented by counsel, are typically advised that a loss at trial could result in an order to vacate in as little as five days.¹⁶⁴ While this is a true statement of the law and the potential consequences of a loss at trial, this is a frightening proposition, and lends itself to fear-based decision making. A tenant who is unrepresented cannot make an informed and independent assessment of the risks and benefits of settling or going to trial, or effectively negotiate for the best available settlement. The unrepresented tenant has usually not had the benefit of discovery, or the routine due diligence that an attorney will undertake to investigate, develop and present a proper defense. For the mediation, the landlord’s attorney’s marching orders are usually relatively simple: get the rent paid as quickly as possible or get the tenant out as quickly as possible. Without the assistance of counsel, the tenant navigates this stressful process alone, and is hardly equipped to achieve a just and equitable outcome.

The traditional eviction process brings significant additional financial costs to the tenant, in the form of multiple trips to court that can cause missed work, childcare expenses, and additional transportation costs. Landlords, relying on contractual attorneys’ fees and court costs provisions contained in the lease, will often pass along the costs of the eviction to the tenant, as an additional requirement of a reinstatement agreement. Eviction filing fees, service of process fees, and the landlord’s attorney’s fees easily add onerous financial obligations to the tenant’s rental ledger. If the landlord is unable to obtain a stipulated agreement with the tenant agreeing to repay these expenses, the landlord may then charge those eviction costs to the tenant’s security deposit after the tenancy ends,¹⁶⁵ or pursue recovery of the sums in a separate collection action against the tenant. If the

¹⁶³ *Id.*

¹⁶⁴ See CONN. GEN. STAT. § 47a-35 (2021).

¹⁶⁵ In most tenancies in Connecticut, the landlord may demand a security deposit equivalent of up to two months’ rent. CONN. GEN. STAT. § 47a-21 (2021). In New Jersey, deposits are generally limited to one half times one month’s rent, but landlords are permitted to deduct charges and fees in accordance with the terms of the lease. N.J. STAT. ANN. §§ 46:8-21.1–.2 (West 2021). New Jersey does, however, protect the return of security deposits; under statute, a tenant who successfully brings an action for return of security deposit is awarded “double the amount of said moneys, together with full costs of any action and, in the court’s discretion, reasonable attorney’s fees.” N.J. STAT. ANN. § 46:8-21.1 (West 2021).

eviction results in a reinstatement agreement, the tenant must meet all of those financial obligations precisely and quickly, or risk almost immediate dispossession. If the eviction results in a final stay agreement, or a judgment after trial, the tenant must find alternate housing within the extremely limited amount of time provided, or face homelessness.

In Hartford and Newark, before the COVID-19 pandemic largely changed the ordinary course of court business, a typical eviction court date was stressful, confusing, and tense. In Hartford, fifty to sixty cases would be scheduled for mediation or hearing every Monday and Tuesday at 9:30 a.m. or 9:45 a.m.; in Newark, close to 200 cases would be scheduled daily, totaling 40,000 cases every year just in Essex County, New Jersey.¹⁶⁶ The courtroom would be packed with dozens of tenants, often accompanied by young children.¹⁶⁷ Tenants who failed to appear for the morning calendar call were typically defaulted for failing to appear between 10:30 a.m. and 11:00 a.m., requiring additional motions, filing fees, and court appearances.

Landlords, tenants, and attorneys who appeared for the morning calendar call would wait in crowded hallways for their case to be called for a meeting in a small office with the housing mediator. Court personnel and marshals would move between the court and the hallway, to call cases, and handle the routine business of the court. A typical, pre-pandemic eviction required a tenant to make multiple visits to the courthouse: to file responsive pleadings, to seek the assistance of the court clerks, and to appear for trial. State marshals serving eviction pleadings and orders or moving people and property out of a unit at the end of an eviction would do their work in close proximity to tenants, their families, neighbors, and movers, among others. With the COVID-

¹⁶⁶ Karen Rouse, *Why Tenants Lose When They Go Up Against Landlords in Newark*, WNYC (Mar. 6, 2017), <https://www.wnyc.org/story/why-tenants-lose-against-landlords-newark/>. Statewide, there were about 173,000 landlord-tenant actions pre-pandemic. Christina Blunda, *Special Civil Part*, N.J. CTS. (2018), <https://www.njcourts.gov/courts/civil/specialcivil.html?lang=eng>.

¹⁶⁷ An Associate Professor of Pediatrics at Drexel University College of Medicine testified at a Philadelphia City Council hearing that, “science has shown that children who live in stressful environments, such as substandard housing, the threat of eviction, homelessness and poverty, have changes in their neurological system that affect their ability to learn, to focus, and to resolve conflicts.” 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> (citing Taylor, Daniel R. Testimony Presented to City Council Committee on Licenses and Inspections and the Committee on Public Health and Human Services Regarding Resolution 160988 (March 20, 2017)).

19 pandemic shutting down much of the United States in March of 2020, the business of evictions simply could not continue as usual. Virtually every stage of a typical eviction posed the increased risk of infection.

The pandemic forced a collective reckoning with the harsh realities of housing insecurity as the health crisis and resultant economic crisis put unprecedented numbers of renters at risk of displacement. Certain estimates show that, in New Jersey alone, approximately 450,000 renter households have some form of rental arrears.¹⁶⁸ As a result, “New Jersey could experience 304,000 eviction filings ... an estimated 600% increase from pre-COVID-19 levels.”¹⁶⁹ This harm will be disproportionately felt by Black and Brown renter households for whom generational poverty ... would undoubtedly be exacerbated.”¹⁷⁰

C. *COVID-19 and the Convergence of Public Health and Housing Stability*

In March of 2020, the rapid spread of COVID-19 fundamentally changed the world as we knew it, resulting in federal¹⁷¹ and state¹⁷² declarations of emergency. Courts were rapidly closed, and court business was limited to only those matters of the highest priority.¹⁷³ Soon, federal and state eviction moratoria were implemented, severely limiting the filing and prosecution of evictions.¹⁷⁴ Pending evictions

¹⁶⁸ STOUT RISIUS ROSS, LLC, THE POTENTIAL IMPACT OF COVID-19 RELATED EVICTIONS IN NEW JERSEY 4 (July 23, 2020), https://fairsharehousing.org/images/uploads/NJ_COVID_Eviction_Impact_Report_2020.07_.23_.pdf.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* (“Approximately 42% of non-White New Jersey renter households compared to 18% of White New Jersey renter households will not be able to pay their rent next month. Approximately 49% of all Black New Jersey renter households will not be able to pay their rent next month, the highest in New Jersey among all ethnicities.”).

¹⁷¹ Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15,337 (Mar. 17, 2020).

¹⁷² DECLARATION OF PUBLIC HEALTH AND CIVIL PREPAREDNESS EMERGENCIES (Mar. 10, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf>.

¹⁷³ STATEMENT FROM CHIEF COURT ADMINISTRATOR PATRICK L. CARROLL III (Mar. 18, 2020), <https://www.jud.ct.gov/HomePDFs/JudgeCarrollStatement.pdf> (“Our overarching challenge throughout the crisis has been to balance the constitutional obligation of the courts to remain open with protecting the health and safety of every individual who enters a state courthouse.”). COVID-19 NOTICE: MINIMIZING THE NUMBER OF PEOPLE IN A CT STATE COURTHOUSE (Mar. 26, 2020), https://www.jud.ct.gov/HomePDFs/Notice_Minimizing_people_courthouse.pdf (limiting entry into Connecticut courthouses to matters involving temporary restraining orders, civil protective orders, and criminal arraignments or other criminal proceedings).

¹⁷⁴ Discussed *infra* at Section I.B.

2022]

DISRUPTING DISPOSSESSION

1283

were largely put on hold, with executions for possession stayed by multiple court and executive orders in New Jersey and Connecticut.¹⁷⁵ The implementation of these eviction moratoria were a necessary public health intervention, intended to prevent the further spread of COVID-19:

Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.¹⁷⁶

Evictions disproportionately impact people who are also more likely to suffer from comorbidities that increase the risk of severe illness and fatality from COVID-19.¹⁷⁷ As COVID-19 vaccinations became

¹⁷⁵ STATE OF CONNECTICUT SUPERIOR COURT ORDER (May 15, 2020), <https://jud.ct.gov/HomePDFs/executionstayJuly1.pdf>; STATE OF CONNECTICUT SUPERIOR COURT ORDER (June 9, 2020), <https://www.jud.ct.gov/HomePDFs/ExecutionStayAug1.pdf>; STATE OF CONNECTICUT SUPERIOR COURT ORDER (July 20, 2020), <https://www.jud.ct.gov/HomePDFs/ExecutionStaySeptember.pdf>.

¹⁷⁶ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

¹⁷⁷ Benfer et al., *supra* note 7, at 2 (“Eviction and housing displacement are associated with increased COVID-19 infection and mortality rates. Eviction and housing instability provide a wide array of COVID-19 transmission opportunities that have had the effect of undermining mitigation strategies and stifling pandemic control efforts. Eviction immediately leads to overcrowding, doubling up, homelessness, and housing instability. These increase contact with others and hinder compliance with the strategies necessary to contain COVID-19, including social distancing, self-quarantining, and hand hygiene. In the long-term, eviction results in severe and lasting poor health outcomes and economic costs that further threaten individual health and well-being and hampers pandemic control and recovery.”); Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2563 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576; see also Leila Rafei, “The Very Prescription Is to Stay Home”: What It’s Like to Be Evicted During a Global Pandemic, AM. C.L. UNION (Aug. 13, 2020), <https://www.aclu.org/news/racial-justice/the-very-prescription-is-to-stay-home-what-its-like-to-be-evicted-during-a-global-pandemic/>.

available, cities and neighborhoods with the highest eviction rates were also those with the lowest vaccination rates.¹⁷⁸ An unmitigated national eviction crisis in the midst of the COVID-19 pandemic threatened to pose significant societal costs, in the form of increased shelter, social service, healthcare, and child welfare expenses.¹⁷⁹ In November of 2020, conservative and selective assessments of these potential public costs by the Federal Reserve and Stout Risius Ross ranged from \$61.5 million to \$88.1 million.¹⁸⁰ In addition to eviction moratoria, two significant measures emerged as effective eviction mitigation strategies: further emergency rental assistance, and new or expanded initiatives to provide legal counsel to tenants facing eviction.

Under the Consolidated Appropriations Act of 2021, enacted on December 27, 2020, \$25 billion (ERA1) was distributed to states for emergency rental assistance.¹⁸¹ The American Rescue Plan Act of 2021, enacted on March 11, 2021, made a second phase of emergency rental assistance (ERA2) of \$21.55 billion available.¹⁸² Funding was primarily allocated to rent, utilities, and arrears. Up to 10 percent of the funding could also be utilized for housing stability services, including the provision of access to legal counsel in eviction proceedings.¹⁸³ As of December 31, 2021, state and local jurisdictions reported expending almost \$16.4 billion of ERA1 funding and \$4.2 billion of ERA 2 funding,

¹⁷⁸ Olivia Jin et al., *Neighborhoods with Highest Eviction Filing Rates Have Lowest Levels of COVID-19 Vaccination*, EVICTION LAB (June 11, 2021), <https://evictionlab.org/filing-and-vaccination-rates/>.

¹⁷⁹ DAN THREET ET AL., supra note 98; see also ELIZABETH MARCH, BEHIND CLOSED DOORS: THE HIDDEN HEALTH IMPACTS OF BEING BEHIND ON RENT, CHILD'S HEALTHWATCH (2011), https://childrenshealthwatch.org/wp-content/uploads/behindcloseddoors_report_jan11-.pdf.

¹⁸⁰ *Id.*

¹⁸¹ *Emergency Rental Assistance Program*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited Apr. 3, 2022).

¹⁸² *Id.*

¹⁸³ Press Release, U.S. Dep't of the Treasury, Secretary of the Treasury Yellen, Attorney General Garland and Secretary of the Department of Housing and Urban Development Fudge Sent Letter to Governors, Mayors, and State Courts Urging Use of Emergency Rental Assistance Over Eviction (Aug. 27, 2021) (on file with the U.S. Dep't of the Treasury) ("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 John Pollock, *Using Right to Counsel as an Eviction Diversion Strategy*, NAT'L LEAGUE OF CITIES (Oct. 26, 2021), <https://www.nlc.org/article/2021/10/26/using-right-to-counsel-as-an-eviction-diversion-strategy/>.

2022]

DISRUPTING DISPOSSESSION

1285

providing rent, utility, and arrears financial assistance to over 3.8 million unique renter households.¹⁸⁴

The first federal eviction moratorium, implemented by the Coronavirus Aid, Relief, and Economic Security [CARES] Act,¹⁸⁵ began on March 27, 2020 and ended on July 24, 2020, and required the landlord to issue a thirty-day notice to the tenant before the initiation of an eviction action.¹⁸⁶ The CARES Act eviction moratorium applied only to properties participating in federal assistance programs, or properties with federally-backed mortgages.¹⁸⁷ Because of these limitations, the CARES Act eviction moratorium only reached an estimated 28.1 to 45.6 percent of occupied rental units across the country.¹⁸⁸

On September 4, 2020, the Centers for Disease Control (CDC) ordered a nationwide eviction moratorium.¹⁸⁹ Originally set to expire on December 31, 2020, the CDC moratorium was extended multiple times, legislatively through January 31, 2021,¹⁹⁰ then repeatedly by the CDC¹⁹¹ to March 31, 2021,¹⁹² again to June 30, 2021,¹⁹³ and then to July

¹⁸⁴ *Emergency Rental Assistance Program: Reporting*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/reporting> (last visited Apr. 3, 2022) (data compiled in *Emergency Rental Assistance Monthly Compliance Report: December 1-31, 2021* excel worksheet, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fhome.treasury.gov%2Fsystem%2Ffiles%2F136%2F2021-Monthly-ERA-Data.xlsx&wdOrigin=BROWSELINK>).

¹⁸⁵ Coronavirus Aid, Relief, and Economic Security [CARES] Act, 15 U.S.C. §§ 9001–9141.

¹⁸⁶ CARES Act, 15 U.S.C. § 9058.

¹⁸⁷ *Id.*

¹⁸⁸ *Housing Policy Impact: Federal Eviction Protection Coverage and the Need for Better Data*, FED. RESRV. BANK OF ATLANTA, <https://www.atlantafed.org/community-development/publications/partners-update/2020/covid-19-publications/200616-housing-policy-impact-federal-eviction-protection-coverage-and-the-need-for-better-data> (last visited Apr. 15, 2022).

¹⁸⁹ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020).

¹⁹⁰ See Consolidated Appropriations Act, 2021, Pub. L. 116–260, § 502, 134 Stat. 2078–2079.

¹⁹¹ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020 (Feb. 3, 2021).

¹⁹² Press Release, Ctrs. For Disease Control & Prevention, Media Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Extending the Eviction Moratorium (Jan. 29, 2021), <https://www.cdc.gov/media/releases/2021/s0129-extending-eviction-moratorium.html>.

¹⁹³ Press Release, Ctrs. For Disease Control & Prevention, Media Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Extending the Eviction Moratorium (Mar.

31, 2021.¹⁹⁴ On August 3, 2021, the CDC ordered a new moratorium, applicable only in areas of high and substantial COVID-19 transmission.¹⁹⁵ On August 26, 2021, the U.S. Supreme Court vacated a stay of a lower court decision invalidating the August 3, 2021, CDC eviction moratorium, thereby ending the moratorium across the country.¹⁹⁶

By design, interpretation, and application, the CDC eviction moratorium suffered from certain significant limitations. The CDC moratorium did not: (1) prevent the initiation of new evictions; (2) stop the continued prosecution of evictions until the final enforcement of judgment; (3) apply to all evictions (only to those for nonpayment of rent); or (4) become effective automatically and universally.¹⁹⁷ Instead, the CDC moratorium required the tenant to complete a complicated declaration and submit it to her landlord, or the court, to receive any applicable protections.¹⁹⁸ Courts sometimes interpreted the CDC moratorium as broadly invalid, or inapplicable in individual circumstances, limiting the consistent application of the CDC moratorium.¹⁹⁹

29, 2021), <https://www.cdc.gov/media/releases/2021/s0329-Eviction-Moratorium.html>.

¹⁹⁴ Press Release, Ctrs. For Disease Control & Prevention, CDC Director Extends the Eviction Moratorium for 30 Days (June 24, 2021), <https://www.cdc.gov/media/releases/2021/s0624-eviction-moratorium.html>.

¹⁹⁵ Press Release, Ctrs. For Disease Control & Prevention, CDC Issues Eviction Moratorium Order in Areas of Substantial and High Transmission (Aug. 3, 2021), <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html>.

¹⁹⁶ Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485 (2021).

¹⁹⁷ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020); see also *Centers for Disease Control and Prevention (CDC) Eviction Moratorium FAQs for HUD's Office of Public and Indian Housing*, U.S. DEP'T OF HOUS. & URB. DEV., https://www.hud.gov/sites/dfiles/PIH/documents/PIH%20FAQs%20CDC%20Order_10.19.20_Round%201.pdf (last updated Oct. 19, 2020).

¹⁹⁸ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020) ("To qualify for the protections of this Order, a tenant, lessee, or resident of a residential property must provide a completed and signed copy of a declaration with the elements listed in the definition of 'Covered person' to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live.").

¹⁹⁹ See Peter Hepburn et al., *U.S. Eviction Filing Patterns in 2020*, 7 *SOCIUS* 1, 5 (2021) (noting that "state interpretation, adoption, and implementation [of applicable moratoria] varied widely"); see also Emily Benfer, *How Policymakers (and Courts) Sabotaged Eviction Moratoria*, *THE APPEAL* (Apr. 2, 2021), <https://theappeal.org/the-lab/explainers/explainer-how-policymakers-and-courts-sabotaged-eviction-moratoria/>; John Kruzel, *Texas Courts Defy CDC Eviction Pause*, *THE HILL* (Apr. 9, 2021,

2022]

DISRUPTING DISPOSSESSION

1287

With many renters facing housing insecurity throughout the country, federal and local governments acted quickly to keep tenants in their homes. Two complementary policies emerged to address the issue: (1) eviction moratoria and (2) rental relief. The federal eviction moratorium was implemented by Congress in March 2020 as part of the CARES Act.²⁰⁰ In effect for 120 days, it expired in July 2020 and was not renewed.²⁰¹ In response, the CDC stepped in to issue its own nationwide moratorium, which was extended several times before it was struck down by the U.S. Supreme Court.²⁰²

In addition to the eviction moratoria, Congress enacted emergency rental assistance as part of the CARES Act. This provided \$46 billion to states to help cover rent for those facing financial hardship due to COVID.²⁰³ As of the end of November 2021, the Treasury reported that about \$25 to \$30 billion of the funding had been distributed.²⁰⁴ There continues to be immense need for rental assistance; several states have already used up their share of the funding, and requests for additional funding have largely been unsuccessful.²⁰⁵ As relief aid dwindled, eviction moratoria were lifted, leaving courts even more inundated.

Amidst the rapidly shifting landscape of state and federal eviction moratoria, the implementation of virtual court proceedings across the country also presented significant challenges for tenants facing eviction. By July of 2020, Connecticut housing courts began to shift to virtual

3:01 PM], <https://thehill.com/regulation/547414-texas-courts-defy-cdc-eviction-pause-as-state-sits-on-1b-in-federal-rental-aid>.

²⁰⁰ Coronavirus Aid, Relief, and Economic Security [CARES] Act, 15 U.S.C. § 9058.

²⁰¹ *Id.*; MAGGIE McCARTY & LIBBY PERL, CONG. RSCH. SERV., IN11516, FEDERAL EVICTION MORATORIUMS IN RESPONSE TO THE COVID-19 PANDEMIC 1 (2021), <https://crsreports.congress.gov/product/pdf/IN/IN11516>.

²⁰² *See supra* notes 189–196 and accompanying text. The Supreme Court found that the CDC exceeded its authority, but state and local moratoria were implemented in some areas to help stem the flow evictions.

²⁰³ GRANT A. DRIESSEN ET AL., CONG. RSCH. SERV. R46688, PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM (2021), <https://crsreports.congress.gov/product/pdf/R/R46688>.

²⁰⁴ Press Release, U.S. Dep't of the Treasury, November Sets New Record for Emergency Rental Assistance Disbursed—\$2.9 Billion to Aid 665,000 Households—As Eviction Filings Remain Below Pre-Pandemic Levels Nationally (Jan. 7, 2022), <https://home.treasury.gov/news/press-releases/jy0551>.

²⁰⁵ Sophie Kasakove & Glenn Thrush, *Federal Rental Assistance is Running Out, With Tenants Still in Need*, N.Y. TIMES (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/us/federal-rental-assistance-evictions.html> (New York requested an additional billion in funding, but only received an addition \$27 million, or 3% of what they asked for).

proceedings,²⁰⁶ and by September of 2020, previous judicial orders staying the issuance of eviction executions in Connecticut were lifted.²⁰⁷ By mid-September of 2020, Connecticut courts had resumed the entry of default judgments in civil and family matters, including evictions,²⁰⁸ and began to conduct hearings on previously issued eviction executions to determine if the landlord could proceed.²⁰⁹ Within the space of six months, Connecticut eviction court proceedings had largely shifted to electronic and virtual formats.

The shift in Connecticut and New Jersey to virtual eviction proceedings mirrors court eviction proceedings across the country. By November of 2020, “[forty-three] states encouraged or allowed remote eviction proceedings,” while seven states mandated the practice.²¹⁰ The shift to virtual proceedings added new layers of difficulty for tenants facing an already complicated process, now conducted through a private internet access route, and through a plethora of virtual platforms. Basic access to broadband internet and necessary hardware has become a significant issue. In May of 2020, various sources estimated that between 21 and 162 million Americans were without internet access.²¹¹

Even as evictions moved to virtual proceedings, studies of the “digital divide” in Connecticut, New Jersey, and nationally revealed significant disparities in access to broadband internet and computers.²¹²

²⁰⁶ See *The Judicial Branch is Expanding its Remote Capabilities*, CONN. JUD. BRANCH (July 28, 2020), <https://www.jud.ct.gov/HomePDFs/RemoteCapabilities720.pdf> (announcing new plans for remote housing mediations, and the elimination of signature requirements on eviction agreements developed during virtual mediations).

²⁰⁷ *Order*, CONN. SUPER. CT. (Sept. 3, 2020), <https://www.jud.ct.gov/HomePDFs/executionstayliftingv2.pdf>.

²⁰⁸ *Notice of Resumption of Defaults and Nonsuits in Civil and Family Matters*, CONN. JUD. BRANCH (Sept. 9, 2020), <https://www.jud.ct.gov/HomePDFs/CivilFamilyMattersNotice.pdf>.

²⁰⁹ *Notice Regarding Summary Process (Eviction) Execution Hearings and Centers for Disease Control and Prevention’s Eviction Moratorium*, CONN. JUD. BRANCH (Sept. 14, 2020), <https://www.jud.ct.gov/HomePDFs/MoratoriumEvictions.pdf>.

²¹⁰ Annie Nova, *30 Second Trials: Judges Muting Tenants. The Problems with Virtual Evictions.*, CNBC (May 1, 2021, 10:04 AM), <https://www.cnbc.com/2021/05/01/virtual-eviction-hearings-often-deprive-renters-of-their-rights.html>.

²¹¹ *Who’s Not Online in America Today? Expert Says COVID-19 Pandemic Highlights the Need to Expand Broadband Access*, PEW CHARITABLE TRS. (May 29, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/05/29/whos-not-online-in-america-today>.

²¹² JOHN B. HARRIGAN, DALIO EDUC., *THE DIGITAL DIVIDE IN CONNECTICUT: HOW DIGITAL EXCLUSION FALLS HARDEST ON LOW-INCOME HOUSEHOLDS IN CITIES, OLDER ADULTS, COMMUNITIES OF COLOR, AND STUDENTS* (2020), https://www.dalioeducation.org/Customer-Content/www/CMS/files/DigitalDivide_Report_2020_Final.pdf.

In September of 2020, a report issued by Dalio Education on the digital divide found that almost a quarter of Connecticut households lacked high speed internet access, noting that such access issues “fall hardest on low-income residents, older adults and communities of color.”²¹³ Despite New Jersey having higher overall levels of broadband connectivity statewide, with approximately 85 percent of households connected, many communities are still struggling.²¹⁴ According to a report by the National Digital Inclusion Alliance, Elizabeth, Trenton, and Camden, New Jersey, have been ranked the sixth, twelfth, and twenty-sixth worst-connected cities in the nation, respectively.²¹⁵ In 2019, around a quarter of households in these cities lacked broadband connections of any type and another quarter of households were only connected through cellular data plans.²¹⁶

In Connecticut, 36 percent of households that fall below the state’s median income line lack high-speed internet access at home.²¹⁷ Thirty-five percent of Hispanic households and 34 percent of Black households lack broadband internet access, compared to 21 percent of white households.²¹⁸ Forty-two percent of Connecticut residents rely upon subsistence government benefits such as Medicaid, and 45 percent of Connecticut residents with a disability were found to lack such broadband access.²¹⁹ The geographic alignment between high eviction rates and lack of broadband and computer access further highlights the disadvantages created for tenants with virtual eviction proceedings. The Dalio study found that 40 percent of households in Hartford, Waterbury, New Britain, Bridgeport, and New Haven lacked broadband internet access at home, and 37 percent of residents in these cities did not own computers.²²⁰

Legal Services of New Jersey’s Poverty Research Institute reported that “[three] million people in New Jersey, including 800,000 children, were living in poverty prior to the COVID-19 pandemic.”²²¹ The study

²¹³ *Id.*

²¹⁴ *Quick Facts, New Jersey; United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/NJ,US/INT100219>.

²¹⁵ *Worst Connected Cities 2019*, NAT’L DIGIT. INCLUSION ALL., <https://www.digitalinclusion.org/worst-connected-cities-2019/> (last visited Mar. 20, 2022).

²¹⁶ *Id.*

²¹⁷ HERRIGAN, *supra* note 212.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Nick Devlin, *One-Third of N.J. Living in Poverty, Nonprofit Says. Here’s How Much It Costs to Live in Your County*, NJ ADVANCE MEDIA (July 18, 2021, 10:00 AM),

found that “poverty in New Jersey, which is on the upper end of many cost-of-living metrics, is triple the official federal calculations of what constitutes poverty. For each individual county in New Jersey, the true cost of living is at least 2.48 times higher than the federal poverty line.”²²² One in ten state residents live at or below the poverty line, and one in seven children in New Jersey live in poverty.²²³

New Jersey is one of the “most expensive states to live in, with homeownership costs that lead the nation.”²²⁴ Thirty-six percent of households are rentals.²²⁵ Minimum-wage earners in the state “would have to work a whopping 106 hours per week to afford a modest one-bedroom apartment at the fair market rent of \$1,165 per month.”²²⁶ Rent affordability calculators advise that no more than 30 percent of monthly income be used for rent so that monies are available for other essentials such as food.²²⁷ Yet households in New Jersey living in poverty would have to spend 85 percent of monthly income to afford the median gross rent for a two-bedroom apartment.²²⁸

In New Jersey, 343,597 households are without an internet subscription, and “301,704 more households receive their internet connection solely via a cellular data plan.”²²⁹ “Elizabeth, Trenton and Camden have been ranked 6th, 12th and 26th worst-connected cities in

<https://www.nj.com/data/2021/07/one-third-of-nj-living-in-poverty-nonprofit-says-heres-how-much-it-costs-to-live-in-your-county.html>.

²²² *Id.*

²²³ Hannan Adely & Dave Sheingold, *New Jersey Is Rich and Getting Richer. But Lots of Poverty Remains.*, NORTHJERSEY.COM (Sept. 13, 2018, 12:01 AM), <https://www.northjersey.com/story/news/2018/09/13/new-jersey-economy-improving-federal-census-data-shows/1283150002/>.

²²⁴ *Id.*

²²⁵ Jeff Goldman, *An Average N.J. resident Needs to Make This Much to Afford a 2-Bedroom Apartment*, NJ ADVANCE MEDIA (June 9, 2017, 2:07 PM), https://www.nj.com/news/2017/06/a_typical_nj_resident_needs_to_make_this_much_to_a.html.

²²⁶ *Id.*

²²⁷ *Rent Affordability Calculator*, RENTCAFE, <https://www.rentcafe.com/rent-affordability-calculator/> (last visited Apr. 4, 2022).

²²⁸ Devlin, *supra* note 221.

²²⁹ *Types of Computers and Internet Subscriptions*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=New%20Jersey%20internet%20connection&tid=ACSST1Y2019.S2801> (last visited Feb. 27, 2022) (Most recent data collected in 2019 by the American Community Survey with findings released by the U.S. Census Bureau); Rebecca L. Watts, *Thousands in New Jersey Still Don't Have Broadband Access*, STAR-LEDGER (June 16, 2021, 2:29 PM), <https://www.nj.com/opinion/2021/06/thousands-in-new-jersey-still-dont-have-broadband-access-opinion.html#:~:text=New%20Jersey%20is%20ranked%20first,access%20to%20high%20speed%20broadband>.

the nation, respectively.”²³⁰ While New Jersey leads the nation for best broadband access, that access is denied in the state’s most impoverished centers.

Both the digital divide and the eviction crisis fall hardest on the same particularly vulnerable populations.²³¹ As courts across the country have moved almost universally to virtual eviction proceedings, reports of tenant access issues have become common: technological and connectivity challenges; forced participation by phone²³² while judges,

²³⁰ Watts, *supra* note 229.

²³¹ See also Andrew Perrin & Sara Atske, *Americans with Disabilities Less Likely than Those Without to Own Some Digital Devices*, PEW RSCH. CTR. (Sept. 10, 2021), <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/>; Emily A. Vogels, *Some Digital Divides Persist Between Rural, Urban and Suburban America*, PEW RSCH. CTR. (Aug. 19, 2021), <https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/>; Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in the U.S.*, PEW RSCH. CTR. (July 16, 2021), <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>; Colleen McClain, *34% of Lower-Income Home Broadband Users Have Had Trouble Paying for Their Service Amid COVID-19*, PEW RSCH. CTR. (June 3, 2021), <https://www.pewresearch.org/fact-tank/2021/06/03/34-of-lower-income-home-broadband-users-have-had-trouble-paying-for-their-service-amid-covid-19/>; Emily A. Vogels, *Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption*, PEW RSCH. CTR. (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>; Andrew Perrin & Sara Atske, *7% of Americans Don’t Use the Internet. Who Are They?*, PEW RSCH. CTR. (Apr. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they/>.

²³² The increased use of virtual/video court proceedings may present broader concerns for the proper conduct of hearings. See, e.g., Alicia Bannon & Janna Adelstein, *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, BRENNAN CTR. FOR JUST. (Sept. 10, 2020), <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court> (summarizing prior studies finding that video proceedings were likely to result in higher criminal bond amounts, greater likelihood of deportation in immigration proceedings, and disparities or inconsistencies in credibility assessments. The report also notes the limits of video conferencing in facilitating private attorney client communications, and that virtual proceedings may result in a lower likelihood of representation by legal counsel). The increased use of virtual court proceedings frequently means that litigants without high-speed internet or appropriate devices such as computers and video cameras are forced to participate by phone. During the summer of 2021, law student interns at Greater Hartford Legal Aid, Inc., randomly selected remote live-streaming eviction matters from judicial districts across the state for observation. Of the 196 observed proceedings, 52 resulted in an adverse outcome for the tenant. Of those 52 proceedings, “73% of those appearing over the phone had adverse outcomes in their hearings compared with 47% of those appearing” by video. Only 11 percent of the tenants appearing in any of the observed proceedings were represented by counsel. STEPHEN KENNEDY, GREATER

landlords, and landlords' attorneys participate by video; the inability or difficulty of presenting and reviewing evidence and critical documents; unfamiliarity with differing virtual software platforms; and muting and "Zoom bombing" among others problems.²³³ Given what is at stake—the stability, security, and safety of home—these technological issues present serious challenges to fair, equitable, and just eviction proceedings in a landscape that is already heavily skewed against tenants.

As the pandemic has evolved and eviction moratoria have expired across the country, eviction filings have increased and evictions continue to move forward at breathtaking speed.²³⁴ Observing that it should take more than ten minutes to evict someone,²³⁵ two jurists recently advocated for increased use of court-sponsored eviction diversion programs.²³⁶ This call not to return to the status quo ante—the pre-COVID-19 eviction crisis—is wise. The COVID-19 pandemic, coupled with a national reckoning on racial injustice, brought increased awareness of the dangers of an unmitigated eviction crisis, a crisis that has always disparately impacted our most vulnerable populations. The resulting interventions in 2020 and 2021—federal and state eviction moratoria, unprecedented rental assistance programs, and a growing right to counsel movement for tenants facing eviction—provide a roadmap for a more just, holistic, and logical management of evictions, ensuring better outcomes for courts, landlords, tenants, and society at large.

As noted previously, landlords typically filed, pre-pandemic, some 3.7 million evictions a year.²³⁷ According to estimates by Princeton

HARTFORD LEGAL AID, TENANTS AT A DISADVANTAGE IN REMOTE EVICTION PROCEEDINGS (2021) (on file with author).

²³³ See Chris Arnold, *Zoom Call Eviction Hearings: 'They'll Throw Everything I Have Out On The Street'*, WGBH (June 19, 2020), <https://www.wgbh.org/news/national-news/2020/06/20/zoom-call-eviction-hearings-theyll-throw-everything-i-have-out-on-the-street>; Nova, *supra* note 210; Eileen Guo, *Logging in to Get Kicked Out: Inside America's Virtual Eviction Crisis*, MIT TECH. REV. (Dec. 2, 2020), <https://www.technologyreview.com/2020/12/02/1012810/video-evictions-zoom-webex/>; Carey L. Biron, *Tech Issues Hobble U.S. Tenants Fighting Eviction in Remote Hearings*, REUTERS (Mar. 30, 2021, 6:12 AM), <https://www.reuters.com/article/us-usa-evictions-tech-feature-trfn/tech-issues-hobble-u-s-tenants-fighting-eviction-in-remote-hearings-idUSKBN2BM15L>.

²³⁴ See Eli Saslow, *The Return of the 10-Minute Eviction*, WASH. POST (Dec. 15, 2021, 5:00 AM), <https://www.washingtonpost.com/nation/2021/12/15/phoenix-evictions-pandemic/>.

²³⁵ Blackburne-Rigsby & Hecht, *supra* note 1.

²³⁶ *Id.*

²³⁷ EVICTION LAB, *supra* note 79.

University's Eviction Lab, federal, state, and local eviction moratoria had a significant effect on the eviction crisis, resulting in the filing of an estimated 1.55 million fewer evictions in 2020.²³⁸ These interventions, while imperfect, were critical at a time when an unprecedented number of Americans faced the risk of eviction.

Projections by the Federal Reserve and global advisory firm Stout Risius Ross estimated the number of renter households at risk of eviction, nationwide, at between 6.7 and 13.9 million in September 2020.²³⁹ That staggering risk of evictions continued throughout much of the pandemic. In October of 2021, a report by the Center on Budget and Policy Priorities estimated that 16 percent of all adult renter households were behind on rent.²⁴⁰ Renter households of color reported being behind on rent at double or more the rate of white renters; 28 percent of Black renters, 18 percent of Latino renters, and 20 percent of Asian renters said they were not caught up on rent, compared to 12 percent of white renters.²⁴¹ At the same time, one in five renters living with children (23 percent) reported being behind on the rent, nearly double the rate of renter households without children (12 percent).²⁴²

While federal, state, and local moratoria and other eviction prevention measures were successful in significantly reducing the overall rate of evictions in 2020, the same historic racial disparities continued in eviction trends. Black and Latinx renters, particularly female renters, have historically been disproportionately at risk of eviction filings, a trend which continued during the pandemic.²⁴³ The Eviction Lab's Eviction Tracking System, drawing from eviction filing data from sites across the country, found that while Black renters make up 22.8 percent of all renters in these sites, they are consistently

²³⁸ Peter Hepburn et al., *U.S. Eviction Filing Patterns in 2020*, EVICTION LAB (Apr. 27, 2021), <https://evictionlab.org/us-eviction-filing-patterns-2020/>; Jacob Haas et al., *Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration*, EVICTION LAB (Dec. 9, 2021), <https://evictionlab.org/updates/research/eviction-filing-trends-after-cdc-moratorium/>.

²³⁹ NAT'L LOW INCOME HOUS. COAL. & THE UNIV. OF ARIZ. JAMES E. ROGERS COLL. OF L. INNOVATION FOR JUST., *COSTS OF COVID-19 EVICTIONS* 3 (2020), <https://nlihc.org/sites/default/files/costs-of-covid19-evictions.pdf>.

²⁴⁰ *The COVID-19 Economy's Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (last updated Feb. 10, 2022).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Hepburn, *supra* note 199.

overrepresented in eviction filings, at 37.9 percent of eviction filings prior to the pandemic, and 35.2 percent of eviction filings between March 15, 2020, and December 31, 2020.²⁴⁴

Going into the COVID-19 pandemic, New Jersey renters faced a high risk of eviction due to soaring housing costs and a comparative lack of affordable housing. The National Low Income Housing Coalition estimates that 85 percent of New Jersey renter households are extremely low-income (at or below 30 percent of area median income), with 71 percent of those households defined as severely cost-burdened, spending more than half of household income on rent each month.²⁴⁵ A shortage of 205,285 necessary affordable housing units contributes to this inherent rental market instability.²⁴⁶ New Jersey has the sixth highest housing wage in the country, requiring an individual working minimum wage of twelve dollars per hour to work eighty-eight hours per week to afford a modest one bedroom rental home at a fair market rental rate.²⁴⁷

Unsurprisingly, the risk of eviction for New Jersey renter households was particularly high during the height of the pandemic and tracked the racial and familial status disparities²⁴⁸ seen across the country. Data from February 3–15, 2021, indicates that:

More than 1 in 6 (17%) adults in renter or homeowner households with children reported that they were not ‘caught up’ on rent or mortgage.²⁴⁹ This is driven largely by renter households, of whom 25 percent reported being behind on rent. Black households reported not being caught up on rent or mortgage (close to 1 in 3 households, or 30%). One (1) in 4 U.S. adults (24%) in households with children reported limited confidence that their household would be able to make their next rent or mortgage payment on time. Among Black households with children, 40 percent reported limited confidence in their ability to pay on time. Of those not up to date on rent or mortgage, 36 percent of all households with

²⁴⁴ *Id.*; Hepburn, *supra* note 238.

²⁴⁵ *Gap Report: New Jersey*, NAT’L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap/2019/nj> (last visited Feb. 26, 2022).

²⁴⁶ *Id.*

²⁴⁷ *Out of Reach 2021: New Jersey*, NAT’L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/or/new-jersey> (last visited Feb. 26, 2022).

²⁴⁸ See Chrishana M. Lloyd et al., *Racism and Discrimination Contribute to Housing Instability for Black Families During the Pandemic*, CHILD TRENDS ¶ 4 (Mar. 18, 2021), <https://www.childtrends.org/publications/racism-and-discrimination-contribute-to-housing-instability-for-black-families-during-the-pandemic>.

²⁴⁹ *Id.*

children—and 50 percent of Black households with children—said that eviction or foreclosure was somewhat or very likely in the next two months.²⁵⁰

Similarly, as the pandemic began, Connecticut renters were particularly vulnerable to the risk of eviction, especially because of high housing costs and a relative lack of affordable housing. Between 1960 and 2018, the percentage of Connecticut renters paying more than half of their household income to rent had doubled from 11.9 percent to 26 percent.²⁵¹ The National Low Income Housing Coalition estimates that 31 percent of Connecticut renter households are extremely low-income (at or below 30 percent of area median income), with 64 percent of those households described as severely cost-burdened, spending more than half of household income on rent each month.²⁵² A shortage of 86,717 necessary affordable housing units contributes to this inherent rental market instability.²⁵³ Connecticut has the tenth highest housing wage in the country, requiring an individual working minimum wage of twelve dollars per hour to work seventy-four hours per week to afford a modest one-bedroom rental home at a fair market rental rate.²⁵⁴

Expectedly, the risk of eviction for Connecticut renter households was particularly high during the height of the pandemic and tracked the racial and familial status disparities²⁵⁵ seen across the country. Evaluating data from August of 2019 to March of 2021, policy advocacy organization Connecticut Voices for Children found that one in four Connecticut renter households with children were behind on rental payments, a rate 2.4 times greater than households without children.²⁵⁶

²⁵⁰ *Id.*

²⁵¹ P'SHIP FOR STRONG CMTYS., HOUSING AND HOMELESSNESS IN CT 2021 (2021), https://www.pschoosing.org/sites/default/files/inline-files/Housing_in_CT_2021.pdf.

²⁵² *Connecticut: State Data Overview*, NAT'L LOW INCOME HOUS. COAL., <https://nlihc.org/housing-needs-by-state/connecticut> (last visited Apr. 3, 2022).

²⁵³ *Id.*

²⁵⁴ *Out of Reach 2021: Connecticut*, NAT'L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/or/connecticut> (last visited Mar. 20, 2022).

²⁵⁵ See RYAN WILSON, CONNECTICUT VOICES FOR CHILDREN MORE THAN A HEALTH CRISIS: LONG-TERM EFFECTS OF THE COVID-19 PANDEMIC ON CONNECTICUT YOUTH AND FAMILIES 5 (2021), https://ctvoices.org/wp-content/uploads/2021/04/More-than-a-Health-Crisis_Just-Research.pdf ("The United States' and Connecticut's historic and ongoing systemic racial disparities have persisted into the current pandemic; in fact, the pandemic has exacerbated these disparities. For example, in 2019, five percent of white children in Connecticut lived in poverty, but that number jumps up to 27 percent for Black children and 29 percent for Hispanic children. While 23 percent of white children lived in households with high housing cost burdens in 2019, that number was more than double for Black and Hispanic children to 54 percent and 50 percent, respectively.").

²⁵⁶ *Id.* at 14.

For the same period of time, more than one in five Black and Hispanic renter households in Connecticut reported that they were behind on rent payments, and were twice as likely to report such rental housing instability as their white counterparts.²⁵⁷

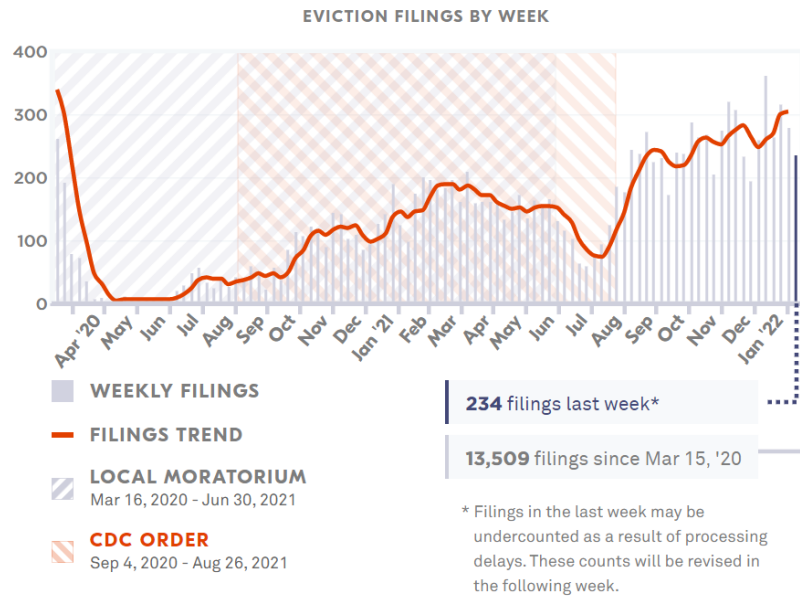


Figure 1: <https://evictionlab.org/eviction-tracking/connecticut/>

Although Connecticut renter households were at particular risk of large-scale eviction filings, Connecticut's eviction filings were significantly lower for much of 2020 and 2021, due primarily to a series of statewide eviction moratoria. On April 10, 2020,²⁵⁸ Connecticut issued one of the most robust eviction moratoria in the country at the time,²⁵⁹ preventing the initiation of almost all new eviction cases except for cases of serious nuisance.²⁶⁰ The effect on weekly eviction filings

²⁵⁷ *Id.* at 15.

²⁵⁸ Office of Governor Ned Lamont, Exec. Order No. 7X, sec. 1 (Apr. 10, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7X.pdf>.

²⁵⁹ See *Connecticut*, EVICTION LAB, <https://evictionlab.org/covid-policy-scorecard/ct/> (last visited Apr. 4, 2022).

²⁶⁰ See CONN. GEN. STAT. § 47a-15 (2021). Cases alleging serious nuisance involve threatening or inflicting bodily harm, substantial and willful destruction of the rented dwelling unit, conduct which presents an immediate and serious danger to the health

was immediate and dramatic. Over the course of the declared emergency, Connecticut's eviction moratorium was gradually relaxed to allow new categories of eviction, allowing evictions when the unpaid rent reached more than six months' unpaid rent, or when the landlord claimed a *bona fide* intention to use the premises for his own personal residence, for example.²⁶¹ Following the expiration of Connecticut's eviction moratorium in June of 2021, a new executive order,²⁶² which remained in effect until February 15, 2022, made significant modifications to the traditional Connecticut eviction process;²⁶³ the changes were designed to encourage landlords and tenants to participate in Connecticut's federally funded emergency rental assistance program, UniteCT.²⁶⁴ While this new order did not limit or prevent the filing of new evictions, it lengthened the period of time given to the tenant in a notice to quit from three days to thirty days; modified the effect of the notice to quit to clarify that this thirty-day period now operated as an opportunity for cure; required landlords to file applications for UniteCT²⁶⁵ before initiating most new evictions; and allowed tenants to seek a thirty-day stay of an eligible eviction during the pendency of an application to UniteCT.²⁶⁶

On March 19, 2020, New Jersey Governor Philip D. Murphy issued an executive order that prevented removal from the home by staying writs of possession and enforcement of orders of eviction but permitted eviction and/or foreclosure proceedings.²⁶⁷ New Jersey ranked twenty-

and safety of other tenants or the landlord, or use of the premises for the sale of drugs or prostitution.

²⁶¹ See, e.g., Office of Governor Ned Lamont, Exec. Order No. 9E (Sept. 30, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-9E.pdf>.

²⁶² See Office of Governor Ned Lamont, Exec. Order No. 12D (June 30, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-12D.pdf>.

²⁶³ Office of Governor Ned Lamont, Exec. Order No. 13 (July 19, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-13.pdf>. (extending Executive Order 12D to September 30, 2021); Office of Governor Ned Lamont, Exec. Order No. 14, sec. 1, <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-14.pdf> (extending provisions of Executive Order 12D to February 15, 2022).

²⁶⁴ See Office of Governor Ned Lamont, Executive Order No. 12D (June 30, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-12D.pdf>.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at sec. 4.

²⁶⁷ Exec. Order No. 106, 52 N.J.R. 553(a) (Mar. 19, 2020).

second in a national comparison of housing relief offered from the periods of March 15, 2020, to June 30, 2021.²⁶⁸ This Order was extended on August 4, 2021, but has since ended as of January 1, 2022.²⁶⁹ The effect of the moratorium did little to immediately impact weekly eviction filings with 45,600 eviction filings pending from the months of March 2020 to October 2020 alone.²⁷⁰

Recently, Governor Murphy signed a law intended to alleviate cases filed against those affected by the pandemic by requiring dismissal of cases against tenants earning below 120 percent of their county average median income who missed rent between March 2020 and August 2021, or between March 2020 and December 2021 for tenants earning below 80 percent of their county average median income, so long as the tenant has filled out a certification attesting to their income and application for rental assistance.²⁷¹ Courts will also adjourn cases for sixty days if tenants have a pending request for rental assistance.²⁷²

D. *Mitigating the Eviction Crisis: Rental Assistance*

In early 2021, the Connecticut Department of Housing opened a new rental assistance program, UniteCT, to administer over \$400 million in ERA1 and ERA2 funding.²⁷³ Eligible Connecticut households were required to demonstrate household income at or below 80 percent of Area Median Income with financial hardship and a risk of homelessness or housing instability attributed to COVID-19.²⁷⁴ The program provided 100 percent of rental arrearages accrued after March 14, 2020, with the possibility of prospective rental assistance in three-month periodic payments, subject to \$15,000- and twelve- to fifteen-month total assistance limits.²⁷⁵ Eligible households could also receive payment of 100 percent of electricity arrears. Successful program completion also provided eviction protections, requiring landlords to

²⁶⁸ *COVID-19 Housing Policy Scorecard*, EVICTION LAB, <https://evictionlab.org/covid-policy-scorecard/> (last visited Mar. 20 2022).

²⁶⁹ Exec. Order No. 249, 53 N.J.R. 1415(b) (Aug. 4, 2020).

²⁷⁰ Lloyd et al., *supra* note 248.

²⁷¹ Exec. Order No. 249, 53 N.J.R. 1415(b) (Aug. 4, 2020).

²⁷² Ashley Balcerzak, *NJ Evictions: Step-by-Step Guide to What a Landlord-Tenant Case Looks Like*, NORTHJERSEY.COM (Sept. 9, 2022, 4:00 AM), <https://www.northjersey.com/story/news/new-jersey/2022/02/08/guide-landlord-tenant-court-eviction-moratorium-nj/9190914002/>.

²⁷³ Thomas Breen, *\$400M Still Available in State Rental Aid*, NEW HAVEN INDEP. (July 30, 2021, 3:00 PM), https://www.newhavenindependent.org/article/rent_relief_update.

²⁷⁴ *UniteCT Guidelines*, STATE OF CONN. DEP'T OF HOUS. (Oct. 21, 2021), https://portal.ct.gov/-/media/DOH/UniteCT/Guidelines_Condensed.pdf.

²⁷⁵ *Id.*

2022]

DISRUPTING DISPOSSESSION

1299

withdraw any pending eviction, and to refrain from initiating an eviction during the assistance period.²⁷⁶ UniteCT closed to new applications on February 15, 2022.²⁷⁷

Both tenants and landlords reported experiencing challenges with the program.²⁷⁸ For the many tenants who were able to successfully navigate the program, the program provided significant benefits. As of February 24, 2022, Connecticut distributed over \$225 million in rental and utility assistance to 35,631 unique assisted households.²⁷⁹ On the same date, however, over \$193 million in assistance payments remained in progress, even as evictions had largely returned to the status quo ante COVID-19.²⁸⁰

New Jersey opened applications for the first phase of the COVID-19 Emergency Rental Assistance Program (“CVERAP”) in July 2020, and

²⁷⁶ *Id.*

²⁷⁷ *UniteCT - Emergency Rental Assistance for Connecticut's Economy*, STATE OF CONN. DEP'T OF HOUS., <https://portal.ct.gov/DOH/DOH/Programs/UniteCT> (last visited Apr. 4, 2022) (“As of February 15th, 2022 the UniteCT program has suspended new rent and electric application submissions and recertification intake. Tenants and landlords who have a Rent Relief Case # will have until March 31st, 2022 to complete their applications. Any cases not fully completed by March 31st, 2022 will be withdrawn from the case review process. Fully submitted cases are reviewed in accordance with the program guidelines and availability of Treasury’s funding.”).

²⁷⁸ Mark Pazniokas, *Connecticut Quickens Distribution of Pandemic Rental Relief, but Backlog Remains*, CT MIRROR (Aug. 2, 2021), <https://ctmirror.org/2021/08/02/connecticut-quickens-distribution-of-pandemic-rental-relief-but-backlog-remains/>; Ginny Monk, *CT Rental Assistance Program No Longer Taking Applications. Here's What It Means For Tenants Facing Eviction*, NEW HAVEN REG. (Feb. 22, 2022), <https://www.nhregister.com/realestate/article/CT-rental-assistance-program-no-longer-taking-16937291.php?src=nhrhpalestate>; Ginny Monk, *CT Rental Assistance Program a 'Nightmare' for Some Landlords*, MIDDLETOWN PRESS (Jan. 19, 2022), <https://www.middletownpress.com/realestate/article/CT-rental-assistance-program-a-nightmare-16787037.php?t=053f34b30f>.

²⁷⁹ UNITECT DASHBOARD, <https://app.powerbigov.us/view?r=eyJrIjoizDEwODU3YWQ6ZTRiMy00YzE0LTkyMDItZDM0YTU4NTdjYWQ2IiwidCI6IjExOGI3Y2ZhLWEzZGQtNDhiOS1iMDI2LTMxZmY2OWJiNzM4YiY9&pageName=ReportSection> (last visited Feb. 24, 2022).

²⁸⁰ Office of Governor Ned Lamont, Exec. Order No. 12D (June 30, 2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-12D.pdf>. The Connecticut General Assembly enacted a limited legislative extension of a portion of this executive order, preserving the ability of a tenant to seek a thirty-day stay in an eviction due to a pending UniteCT application until April of 2022. *See Connecticut Extends Emergency Declarations to Continue Protecting Renters from Eviction*, NAT'L LOW INCOME HOUS. COAL. (Oct. 18, 2021), <https://nlihc.org/resource/connecticut-extends-emergency-declarations-continue-protecting-renters-eviction>. With the closure of that program to new applications, however, this provision is limited in its potential application.

payments began in September 2020.²⁸¹ The program was designed to provide temporary rental assistance up to six months for those with a household income at or below 80 percent of the area median that suffered a substantial reduction in income due to COVID-19 and at risk of housing instability.²⁸² Households were expected to pay a minimum of 30 percent of their income towards rent, and DCA would cover the difference.²⁸³ The program did not assist with arrears.²⁸⁴ The first phase consisted of \$91.75 million in federal Coronavirus Relief Fund monies and was distributed to 15,000 households, with each applicant receiving an average award of \$6,000.²⁸⁵

In 2021, New Jersey received over \$1 billion in ERA1 and ERA2 funds, including about \$500 million distributed directly to local governments for their own rental assistance programs.²⁸⁶ New Jersey allocated these additional funds to the CVERAP-II and its extension, the Eviction Protection Program ("EPP"). From March 22, 2021, through December 15, 2021, the state accepted applications for its CVERAP-II. The qualifications for CVERAP-II remained the same as the first phase, but applicants were eligible for up to twelve months of rental assistance towards rent arrears occurring after March 13, 2020, as well as future rent.²⁸⁷

Financial assistance for current and future rent was limited to three months, after which the applicant's household income was reviewed to determine if assistance was still needed.²⁸⁸ After

²⁸¹ Press Release, State of N.J., Governor Phil Murphy, ICYMI: Murphy Administration's COVID-19 Emergency rental Assistance Program (CVERAP) Stabilizes Housing for More than 15,000 Households (Mar. 8, 2021), <https://www.nj.gov/governor/news/news/562021/approved/20210308b.shtml#:~:text=TRENTON%20%E2%80%93%20The%20Murphy%20Administration%20today,to%20the%20COVID%2D19%20pandemic>.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ GRANT A. DRIESSEN ET AL., CONG. RSCH. SERV., R46688, PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM (2021), <https://crsreports.congress.gov/product/pdf/R/R46688> (\$353 million directly to state in ERA1, \$280 million directly to state in ERA 2, and the rest went to local governments).

²⁸⁷ NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, MARCH 16, 2021 – MURPHY ADMINISTRATION ANNOUNCES SECOND PHASE OF RENTAL ASSISTANCE PROGRAM FOR NEW JERSEY RESIDENTS IMPACTED BY THE COVID-19 PANDEMIC, <https://www.nj.gov/dca/news/news/2021/approved/20210316.html>.

²⁸⁸ COVID-19 Emergency Rental Assistance Program Phase II (CVERAP Phase II), N.J. DEP'T OF CMTY. AFFS., <https://www.nj.gov/dca/cverap2.shtml> (last visited Apr. 3, 2022);

recertification, a household was eligible to receive assistance for additional months, subject to the availability of remaining funds, but not to exceed twelve months (plus an additional three months if necessary to ensure housing stability).²⁸⁹ New Jersey's rental assistance program was quickly deployed. By October 15, 2021, New Jersey had distributed all the \$353 million in federal ERA1 funds, putting the state among the first in the nation in terms of percentage of funds distributed.²⁹⁰

The EPP, an extension of CVERAP-II, provides relief for up to two years for those experiencing extended economic losses.²⁹¹ Financial assistance under EPP is based on a calculation using the household's income and contract rent, where total family share of monthly rental obligations would not exceed 30 percent.²⁹² The program is split into tiers based on income.²⁹³ Tier I applicants, or very low-income households, are eligible to receive maximum assistance for future rent.²⁹⁴ Tier II applicants, or low- and moderate-income households, can receive a maximum assistance of \$800 per month for future rent.²⁹⁵ Tier III applicants, or middle-income households, can receive maximum assistance for arrears only.²⁹⁶ Tier I and Tier II households can receive a maximum of twenty-four months of assistance, and Tier III households can receive a maximum of twelve months of assistance.²⁹⁷

NJ DCA Emergency Rental Assistance Program FAQs, N.J. DEP'T OF CMTY. AFFS., https://www.nj.gov/dca/divisions/dhcr/offices/docs/FAQs_CVERAP.pdf.

²⁸⁹ *COVID-19 Emergency Rental Assistance Program Phase II (CVERAP Phase II)*, *supra* note 288; *NJ DCA Emergency Rental Assistance Program FAQs*, *supra* note 288.

²⁹⁰ *DCA Disburses \$365 Million in Federal Emergency Rental Assistance*, N.J. DEP'T OF CMTY. AFFS. (Oct. 22, 2021), <https://www.nj.gov/dca/news/news/2021/approved/20211022.shtml>.

²⁹¹ *Frequently Asked Questions For Eviction Prevention Program (EPP)*, N.J. DEP'T OF CMTY. AFFS., <https://njdca.onlinepha.com/en-US/Pages/View/186/epp-faq-landing-page> (last visited Apr. 4, 2022).

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Frequently Asked Questions For Eviction Prevention Program (EPP)*, N.J. DEP'T OF CMTY. AFFS., <https://njdca.onlinepha.com/en-US/Pages/View/186/epp-faq-landing-page> (last visited Apr. 4, 2022).

E. *Launching a Right to Counsel for Tenants*

Until 2017, no jurisdiction had a right to counsel for tenants.²⁹⁸ As a result of a years-long, tenant led-campaign, New York City became the first city with a right to counsel for tenants.²⁹⁹ In 2018, San Francisco followed by passing right to counsel legislation.³⁰⁰ Notably, San Francisco's right to counsel obligation is the first without an income limit for eligibility.³⁰¹ In 2019, Cleveland and Philadelphia also passed right to counsel legislation.³⁰² Philadelphia's ordinance allows tenants to bring some affirmative cases against landlords.³⁰³ The right to counsel initiatives in those cities have proven successful.³⁰⁴ Eviction filing rates are decreasing with San Francisco down 10 percent and New York City down 30 percent.³⁰⁵ In New York City, 84 percent of represented tenants remained housed.³⁰⁶ Further, 93 percent of represented tenants in Cleveland and 67 percent of represented tenants in San Francisco avoided eviction or an involuntary move.³⁰⁷

As of 2022, sixteen jurisdictions now have a right to counsel for tenants, including three states (Connecticut, Maryland, and Washington) and thirteen cities (Baltimore, Boulder, Cleveland, Denver, Kansas City, Louisville, Minneapolis, Newark, New York City, Philadelphia, San Francisco, Seattle, and Toledo).³⁰⁸ Efforts to expand right to counsel programs have been bolstered by both popular support and economic data.³⁰⁹ A recent study indicated that a majority of voters across the nation supported right to counsel in eviction cases.³¹⁰ Several

²⁹⁸ *Tenant Right to Counsel*, NAT'L COAL. FOR CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel (last visited Feb. 27, 2022).

²⁹⁹ National Coalition for a Civil Right to Counsel, *The Right to Counsel for Tenants – A Growing Movement*, YOUTUBE (Jan. 20, 2022), <https://www.youtube.com/watch?v=OqeJdIen64>.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *The Right to Counsel for Tenants*, *supra* note 299.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Bilal Baydoun & Sean McElwee, *Voters Support a Right to Counsel for People Facing Eviction*, THE APPEAL (Feb. 11, 2021), <https://theappeal.org/the-lab/polling-memos/voters-support-a-right-to-counsel-for-people-facing-eviction/>. The increase in momentum of the movement, as evidenced by the increasing number of jurisdictions

2022]

DISRUPTING DISPOSSESSION

1303

studies of cost-benefit analysis show that New York City is on track to see significant net savings because of its program, with the benefits of providing counsel far outweighing the costs.³¹¹

As noted previously, tenant legal representation rates in evictions across the country are consistently below 10 percent, while 90 percent of landlords are represented by counsel.³¹² Eviction right to counsel programs have significantly changed that landscape. In New York City, the first city to adopt an eviction right to counsel program:

71% of tenants who appeared in Housing Court for eviction cases in the fourth quarter of FY2021 were represented by attorneys in court, up from 38% in the first half of FY2020 and a substantial increase in legal representation for New York City tenants compared to 2013, when the citywide representation rate was 1% as reported by the State Office of Court Administration.³¹³

From 2013 to 2019, overall eviction filings dropped 41 percent overall, including a 15 percent drop in 2019 alone.³¹⁴ Evictions fell five times faster in zip codes where New York City's right to counsel law took effect in 2018 than in zip codes without right to counsel.³¹⁵ In 2021, "84% of [NYC] households represented in court by lawyers were able to remain

with right to counsel provisions, is supported by a recent poll that indicates a majority of voters nationwide support a right to counsel in eviction proceedings.

³¹¹ STOUT RISIUS ROSS, INC., THE FINANCIAL COST AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL IN EVICTION PROCEEDINGS UNDER INTRO 214-A (2016), <https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf>. Stout projected that NYC would experience a net cost savings of \$320 million, accounting for benefits of the program significantly outweighing the cost of providing counsel.

³¹² *But see Tenant Right to Counsel*, NAT'L COAL. FOR CIV. RIGHT TO COUNS., http://www.civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel (last visited Apr. 4, 2022) ("For many years, it was regularly reported that tenants were represented 10% of the time, compared to 90% of landlords. However, our most recent data from several dozen jurisdictions actually puts the tenant representation figure at a mere 3% and the landlord figure at 81%.").

³¹³ OFF. OF CIV. JUST. N.Y.C. HUM. RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY 5 (2021), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA_Annual_Report_2021.pdf.

³¹⁴ OFF. OF CIV. JUST. N.Y.C. HUM. RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR THREE OF IMPLEMENTATION IN NEW YORK CITY 10 (2020), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA_Annual_Report_2020.pdf (Pre-pandemic data is used because eviction moratoria in 2020 and 2021 significantly reduced the number of evictions.).

³¹⁵ Oksana Mironova, *NYC Right to Counsel: First Year Results and Potential for Expansion*, CMTY. SERV. SOC'Y (Mar. 25, 2019), https://www.cssny.org/news/entry/nyc-right-to-counsel#_edn3.

in their homes, preserving these tenancies and promoting the preservation of affordable housing and neighborhood stability.”³¹⁶ In Fiscal Year 2021, NYC right to counsel legal organizations provided legal assistance to approximately 100,000 individuals in approximately 42,000 households, “facing housing challenges including eviction, disrepair, landlord harassment and other threats to their tenancies.”³¹⁷

Studies of eviction right to counsel programs in other jurisdictions reveal similar positive outcomes. Analysis of civil legal aid representation of tenants in Baltimore found that “when tenants are represented, they can avoid the high likelihood of disruptive displacement in 92 percent of cases.”³¹⁸ A comparable study in Philadelphia found that represented tenants avoided displacement in 95 percent of cases.³¹⁹

Investment in access to justice for low-income tenants facing eviction results in significant governmental and societal costs savings. In Philadelphia, a recent study found that \$3.5 million could provide legal assistance to all tenants unable to afford representation, avoiding \$45.2 million in costs to Philadelphia annually.³²⁰ In Baltimore, that same study found that the \$5.7 million cost to fully implement right to counsel for low-income tenants facing eviction would produce a total combined savings of \$35.6 million.³²¹ A recent report by the Boston Bar Association estimates creating an eviction right to counsel in eligible cases in Massachusetts would cost \$26.29 million; yield savings of \$63.02 million in shelter, health care, and foster costs (savings of at least \$2.40 for each dollar spent); and keep 15,969 people in their homes per year.³²²

In December 2018, Newark became the third city in the country to enact tenants’ right to counsel legislation, guaranteeing counsel for residents facing eviction whose household income is 200 percent or less

³¹⁶ OFF. OF CIV. JUST. N.Y.C. HUM. RES. ADMIN., *supra* note 313, at 8.

³¹⁷ *Id.* at 3.

³¹⁸ STOUT RISIUS ROSS, LLC, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY 11 (2020), <https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/baltimore-rtc-report-final-5-8-2020.pdf>.

³¹⁹ STOUT RISIUS ROSS, LLC, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW -INCOME TENANTS 7 (2018), https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report_11-13-18.pdf.

³²⁰ *Id.* at 8.

³²¹ STOUT RISIUS ROSS, LLC, *supra* note 318, at 8.

³²² MARTHA SAMUELSON ET AL., BOSTON BAR ASS’N, ASSESSING THE BENEFIT OF FULL LEGAL REPRESENTATION IN EVICTION CASES IN MASSACHUSETTS 4 (2020), <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>.

2022]

DISRUPTING DISPOSSESSION

1305

than the current federal poverty level.³²³ With a total population of 311,549, close to 30 percent of Newark residents live below the poverty line.³²⁴ More than 50 percent of the city's population is Black and more than 36 percent is Hispanic or Latino.³²⁵ Mean household income is \$35,199.³²⁶ Close to 80 percent of residents are renters, and the vast preponderance of those are rent-burdened or extremely rent-burdened.³²⁷ Of the approximately 40,000 eviction actions filed each year in Essex County³²⁸ (of which Newark is a part), more than half are filed against Newark tenants.³²⁹

Newark's right to counsel initiative operates in conjunction with the What Works Cities Economic Mobility Initiative and uses the Office of Tenant Legal Services to match eligible tenants with lawyers.³³⁰ In a city where 80 percent of the residents are renters and one in four tenants receives an eviction notice each year, the unmet need for legal representation is significant.³³¹ From its launch date through September 2021, the Office of Tenant Legal Services accepted over 800 cases.³³² Khabirah Myers, Esq., operates the office and does heroic work under challenging circumstances.³³³ Myers maintains fifty or more of her own cases a month and manages contracts with Essex Newark Legal

³²³ NEWARK, N.J., CODE §§ 19:3-0–19:3-4.

³²⁴ *QuickFacts: Newark City, New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newarkcitynewjersey> (last visited Feb. 26, 2022).

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ GovLove, *supra* note 17.

³²⁸ Franzese et al., *The Implied Warranty of Habitability Lives*, *supra* note 19, at 5.

³²⁹ GovLove, *supra* note 17.

³³⁰ *7 Strategies for Reducing the Number of Evictions in Your Community*, BLOOMBERG CITIES (Feb. 26, 2020) [hereinafter *7 Strategies*], <https://bloombergcities.medium.com/7-strategies-for-reducing-the-number-of-evictions-in-your-community-fee926daaeba>.

³³¹ Alison Gardy, *What Works Cities: Newark's Fight for Housing Stability*, MEDIUM (Dec. 22, 2020), <https://medium.com/what-works-cities-economic-mobility-initiative/newarks-fight-for-housing-stability-5230ee395465>; see THE CITY OF NEWARK, NEW JERSEY, LEGIS. RSCH. CTR., *An Ordinance to Amend and Supplement Title XIX, of the Revised General Ordinances of the City of Newark, New Jersey, 2000, by Creating a New Chapter, Establishing Access to Free Legal Representation to Newark's Low-Income Residents Facing Eviction in Land* (Dec. 12, 2018), <https://newark.legistar.com/LegislationDetail.aspx?ID=3600177&GUID=706512AB-9068-4508-8193-1F1C1293ABE5&Options=&Search=&FullText=1>.

³³² Ashley Balcerzak, *Most Tenants Don't Have Lawyers in Eviction Cases. NJ Looks to Change That in 3 Cities*, NORTHJERSEY.COM (Sept. 2, 2021, 4:00 AM), <https://www.northjersey.com/story/news/new-jersey/2021/09/02/new-jersey-eviction-moratorium-end-date-coming-eviction-lawyer/5599029001/>.

³³³ *See id.*

Services, Essex County Legal Aid Association, and the law firm Jalloh & Jalloh to take on additional cases.³³⁴ Fewer than fifteen to twenty-five lawyers handle approximately 3,000 to 5,000 cases a year.³³⁵

After opening its doors in June 2019, the program showed results from the start by taking on 140 cases in its first four months, helping more than 350 residents avoid homelessness.³³⁶ Within the first year, the program helped nearly 1,000 residents stay housed.³³⁷ Once the pandemic struck in March 2020, the program focused on addressing extrajudicial evictions, such as illegal lockouts occurring despite the eviction moratorium.³³⁸ Now, post-moratorium, the office faces a backlog of eviction filings that accumulated during the moratorium.³³⁹ To help meet the rising need, the Office of Tenant Legal Services recently attained certification as a *pro bono* service provider, allowing it to provide continuing legal education accredited trainings on landlord-tenant law with the aim of attracting additional lawyers to support the influx of cases.³⁴⁰

Prior to the pandemic, 55 percent of those who sought assistance from the Office of Tenant Legal Services had been sued for eviction based on non-payment of rent; more than 75 percent of all renters seeking assistance were women.³⁴¹ Myers recounts that

[O]f the non-payment of rent cases her office handles, nearly 90% had at least one viable, legal defense for a stay of eviction, such as a lack of maintenance on the property or unsafe living conditions. However, most residents do not have the legal expertise or ability to hire someone with legal expertise to defend them in court.³⁴²

She adds that a number of nonpayment of rent cases are brought in error or based on illegal rent increases. In many instances, tenants have

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*; 7 *Strategies*, *supra* note 330.

³³⁷ RJ Vogt, *As COVID-19 Safeguards End, Eviction Wave Begins*, LAW360 (July 12, 2020, 8:02 PM), <https://www.law360.com/articles/1290313/as-covid-19-safeguards-end-eviction-wave-begins>.

³³⁸ *Id.*

³³⁹ *See id.*

³⁴⁰ *Newark's Office of Tenant Legal Services: Protecting Renters and Preventing Evictions Through Free Legal Counsel*, RESULTS FOR AM. (Nov. 15, 2021), <https://catalog.results4america.org/program/legal-support-for-tenants-facing-eviction/legal-counsel-to-prevent-evictions-newark-nj?issueArea=2228>.

³⁴¹ GovLove, *supra* note 17.

³⁴² *Id.*

withheld rent (as is their right) because of habitability concerns.³⁴³ In her experience, many Newark renters never appear in court to defend themselves because they were never informed of their court date or even that eviction proceedings had been filed against them.³⁴⁴

Recently, in response to the impact that COVID-19 has had in creating a staggering unemployment rate leading to food insecurity and housing instability, New Jersey's Department of Community Affairs announced in 2021 a one-year pilot program, the Expanded Access to Counsel and Homelessness Diversion Anti-Eviction Pilot Program, introduced in Atlantic City, East Orange, and Trenton, with potential for expansion.³⁴⁵ The program aims to provide qualifying tenants in those three cities with access to counsel and other support services to help divert evictions and keep people stably housed.³⁴⁶ The three cities chosen for the pilot were selected based on several housing metrics, such as eviction filings, shelter and homelessness rates, local poverty levels, and data showing eviction as a "main contributing factor of housing displacement."³⁴⁷ The program will provide low-income tenants in danger of eviction with legal services and assistance with application deadlines, eligibility requirements for federal and state assistance, local food shelter details, and help with filling out applicable paperwork.³⁴⁸ The program is paid for with \$1.4 million of federal stimulus CARES Act Funds and will be available to renters earning less than 200 percent of the federal poverty level.³⁴⁹

The pilot will run for one year, during which the program will provide funding to legal and social services providers to defend against eviction; funding will also be available to cover rental arrears, relocation assistance, and other services as needed.³⁵⁰ The right to counsel program will work in tandem with other state support programs, such as the COVID-19 Emergency Rental Assistance Program and the Low-

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Sophie Nieto-Munoz, *New Anti-Eviction Program Launching in Three Cities*, N.J. MONITOR (Aug. 26, 2021, 7:00 AM), <https://newjerseymonitor.com/2021/08/26/new-anti-eviction-program-launching-in-three-cities/>; *DCA Commissioner's Statement to the Assembly Budget Committee*, N.J. DEP'T OF CMTY. AFFS., (Apr. 12, 2021), <https://www.nj.gov/dca/news/news/2021/approved/20210412a.html>.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *See id.*

³⁴⁹ Balcerzak, *supra* 332.

³⁵⁰ *Id.*

Income Home Energy Assistance Program.³⁵¹ After the one-year pilot, the Department of Community Affairs will evaluate the program's success and potential for replication or expansion across the state.³⁵²

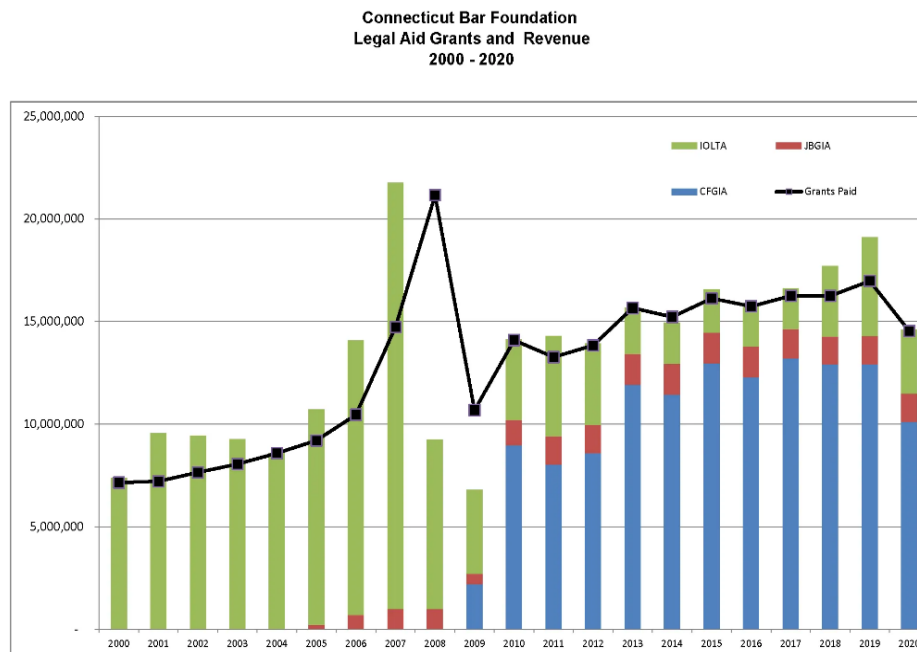


Figure 2: <https://www.ctbarfdn.org/what-we-do/legal-services-grants.html>

Amidst this growing right to counsel movement, and amid the COVID-19 pandemic in June 2021, Connecticut became the third state in the country to enact a statewide right to counsel statute.³⁵³ For decades, Connecticut's three major civil legal aid programs, Connecticut Legal Services, Greater Hartford Legal Aid, and New Haven Legal Assistance Association have been the only significant providers of legal representation for tenants facing evictions, housing subsidy terminations, and related housing legal matters involving habitability, illegal entry, and detainers.³⁵⁴ As with the Legal Services Corporation

³⁵¹ *See id.*

³⁵² *See id.*

³⁵³ *See* CONN. PUB. ACTS 21-34 (effective July 1, 2021).

³⁵⁴ STATE OF CONN. JUD. BRANCH SUPER. CT., RIGHTS AND RESPONSIBILITIES OF LANDLORDS AND TENANTS IN CONNECTICUT 28 (2014), https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/dph/environmental_health/lead/pdf/Tenant-Rights-pdf.pdf.

and civil legal services across the country, funding for civil legal aid in Connecticut has not fully recovered from the 2008 fiscal crisis.³⁵⁵

The road to the creation of a statewide eviction right to counsel program in Connecticut began in earnest in 2016.³⁵⁶ That year, a legislative taskforce, led by the Connecticut Bar Association and the Connecticut Bar Foundation, convened to consider Connecticut's access to civil justice crisis and recommend solutions.³⁵⁷ The Task Force to Improve Access to Legal Counsel in Civil Matters issued its report in December of 2016.³⁵⁸ Among its recommendations was the enactment of a civil right to counsel for tenants facing eviction in Connecticut:

Given the prevalence of housing-related legal issues among low-income Connecticut residents, the high percentage of cases in which landlords are represented, but tenants are not, the huge difference having a lawyer can make for a tenant being sued for eviction, and the devastating effects of eviction, homelessness, and prolonged housing instability, it is imperative that access to counsel for low-income tenants in eviction proceedings be improved dramatically. While significantly expanding access to counsel for tenants in eviction proceedings will require considerable initial funding, there is ample evidence that doing so will eventually save Connecticut far more than it will cost.³⁵⁹

Initially, legislative efforts to enact a right to counsel in Connecticut were met with little success.³⁶⁰ That changed in 2021, when a coalition of tenants, legal aid providers, bar associations, medical providers, political and community advocates and organizers, and many others joined together to advance a statutory right to counsel.³⁶¹ The pandemic's impact on the eviction crisis and a national reckoning with

³⁵⁵ Adiel Kaplan, *More People Than Ever Need Legal Aid Services. But the Pandemic Has Hit Legal Aid Funding Hard*, NBC NEWS (Apr. 25, 2021, 6:00 AM) <https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hit-n1264989>.

³⁵⁶ JUDICIARY COMM. CONN. GEN. ASSEMBLY, REPORT OF THE TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS 5 (2016), https://www.cga.ct.gov/jud/tfs/20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters/Final%20Report.pdf.

³⁵⁷ *Id.*

³⁵⁸ *Id.* at 4.

³⁵⁹ *Id.* at 21.

³⁶⁰ See S.B. 652, Gen. Assemb., Jan. Sess. (Conn. 2019), <https://legiscan.com/CT/bill/SB00652/2019>.

³⁶¹ See *Connecticut Is Third State with Eviction Right to Counsel*, NAT'L COAL. FOR CIV. RIGHT TO COUNS. (Dec. 30, 2021), http://civilrighttocounsel.org/major_developments/1367.

issues of systemic racism brought about a new urgency to the need to confront Connecticut's once and future eviction crisis.³⁶² The availability of significant American Recovery Plan Act funds further buoyed those efforts, resulting in the enactment of a statute guaranteeing a new statewide right to counsel in eviction cases, funded by \$20 million in the first two years of the program.³⁶³

The newly created statute, Connecticut Public Act No. 21-34 (2021), effective July 1, 2021, creates a phased-in right to counsel for tenants facing residential eviction or housing subsidy terminations. Tenants at or below 80 percent of statewide median income, or receiving certain government assistance, are eligible for assistance, within the determined priorities.³⁶⁴ Landlords are required to issue a one-page notice explaining the program as an attachment to any notice to quit or notice of housing subsidy termination.³⁶⁵ A statutory working group provides advice regarding the implementation and operations of the program.³⁶⁶

In January of 2022, the newly created eviction right to counsel program opened in fourteen zip codes in Bridgeport, Danielson, Hartford, New Haven, Putnam, Waterbury, West Haven, and Willimantic, Connecticut. The first phase of the program prioritizes urban and rural zip codes with high eviction rates.³⁶⁷ As lawyers are continuously hired across the state, the program is anticipated to expand to additional zip codes across the state.³⁶⁸

F. *How the Presence of Counsel Is Disrupting Dispossession*

A Nigerian proverb reminds us that "until the lion has a historian, the hunter will always be the hero." It is by telling the stories of the people left out of the promise of equal access to justice that we come to

³⁶² See 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/>.

³⁶³ STATE OF CONN., CONNECTICUT'S PLAN FOR THE AMERICAN RESCUE PLAN ACT OF 2021: A ROADMAP FOR A TRANSFORMATIVE, EQUITABLE AND HEALTHY RECOVERY FOR OUR STATE 18 (2021), <https://portal.ct.gov/-/media/Office-of-the-Governor/News/2021/20210426-Governor-Lamont-ARPA-allocation-plan.pdf#page=22>.

³⁶⁴ See CONN. PUB. ACTS 21-34(a)(6) (effective July 1, 2021).

³⁶⁵ CONN. PUB. ACTS 21-34(e)(4)(f).

³⁶⁶ CONN. PUB. ACTS 21-34(e)(1).

³⁶⁷ EVICTIONHELPCT, <https://www.evictionhelpct.org/> (last visited Mar. 3, 2022).

³⁶⁸ See Ginny Monk, *CT Offers Legal Help to Tenants Facing Eviction in These 14 Neighborhoods*, NEW HAVEN REG. (Jan. 31, 2022), <https://www.nhregister.com/news/article/CT-offers-legal-help-to-tenants-facing-eviction-16818534.php?src=nhrhpdesecep>.

better understand our shared humanity. COVID-19's ravages laid bare our collective vulnerability and interdependency. It summoned the recognition that *what we do for others we do for ourselves. What we do to each other, we do to ourselves.*

That recognition is reignited every time we learn the stories of the people behind the cases—the mothers and fathers, grandparents, sons and daughters—who endure the hardships of housing insecurity and immeasurable pain of eviction. The call for reform becomes even more urgent when we are given proximity to the suffering of people who dwell in uninhabitable spaces without complaint for fear of reprisal or, worse, displacement. In many cases, it is only a few hundred dollars in rent arrears that stands between housing stability and homelessness. But without access to opportunities for eviction prevention and diversion, eviction is all but assured.

The cases described here are representative of those in Newark and Hartford where lawyers appointed to represent vulnerable tenants succeeded at changing outcomes for the better. In each instance one finds a person, a fellow traveler, seeking a benevolent witness to validate and ease some of their struggles and pain. In all but one of the cases,³⁶⁹ the presence of counsel helped to level an otherwise lopsided playing field and achieve some modicum of justice. Still, restorative justice for the people whose stories are recounted here, and too many others similarly situated, has yet to be fully imagined, let alone achieved.

While the data and studies discussed herein illuminate the scope and scale of the eviction crisis in places like Newark and Hartford, individual tenant stories present a fuller perspective of housing displacement as a matter of personal, familial, and community crisis. Those stories describe an access to justice crisis for tenants navigating evictions without legal representation. Access to legal counsel in an eviction is a matter of fundamental and equal justice, justice for future generations, and racial justice. The stories presented below detail the eviction experiences of real people and families in Newark and Hartford with changes to names and certain identifying information to protect privacy and attorney-client privilege.

³⁶⁹ See *infra* text (describing case of tenant “Nigel”).

1. Alice: A Pretextual Wrongful Eviction

This case concerned the illegal eviction of a Newark tenant, Alice. To avoid the eviction moratorium in place at the time,³⁷⁰ the landlord wrongfully claimed that Alice was a squatter and unauthorized to be in the apartment. In fact, she was a lawful rent-paying tenant, just as she had been for the preceding fourteen years. Presumably seeking to garner a higher rent for the apartment, the landlord misused New Jersey's ejectment statutes to dispossess her. Not having received notice, Alice failed to appear at the ejectment hearing, and the judge ordered dispossession. While out food shopping, she was locked out of her apartment and rendered homeless without her medications and with her two beloved service dogs left alone in the apartment.

A fuller account of the story is even more disturbing. It is a narrative of grossly unequal bargaining power, abuse of the judicial system, and coercion. It is a story of the devastating consequences of housing displacement and the post-trauma that remains. It is also, ultimately, a powerful illustration of how a tenant without counsel is at the mercy of a system rife with minefields. When, finally, Alice was able to secure counsel, she was restored to possession of the premises. Still, she has yet to realize full restoration for the damages sustained because of the wrongful displacement and continues to suffer the health consequences of the trauma of the illegal lockout.

At the time of this writing, Alice was turning fifty-nine. She suffers from several mental and physical disabilities, including depression compounded by the loss of her son. For the past fourteen years, she has lived in the same one-bedroom apartment in Newark, New Jersey. The rundown neighborhood bears witness to the legacy of redlining and white flight. Her building, like the others on the block, is in disrepair. Nonetheless, she maintains her apartment in pristine condition. Visits to the site found her apartment immaculate and well-maintained. It is an oasis in a building in need of significant restoration.

Rodents dart about the building's entryway. The stair railings wobble and are at risk of falling off the wall. There are broken windows along the side of the building and trash pilings in the backyard. The premises' driveway is subsiding. Mold can be found along the outside of the building. Alice said that she suffers the intermittent absence of heat in the winter. She recounted that the landlord has done no remediation, despite her requests. All maintenance, including painting,

³⁷⁰ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020); N.J. Exec. Order No. 106 (Mar. 19, 2020).

2022]

DISRUPTING DISPOSSESSION

1313

the installation of security cameras, and snow removal, has been performed by Alice at her own cost.

Alice has a written lease that runs from year to year. She pays \$330 per month for rent, and a Housing Choice Program Voucher, the federal housing subsidy program commonly referred to as Section 8, provides the landlord another \$800 per month for rent. Without exception she pays rent on time, notwithstanding the significant infirmities on site. She noted that she has seen the building's landlord on site less than five times over the past six years since he purchased the building. He is a real estate investor who owns several Section 8 buildings in Newark.

In September of 2021, she was away from the apartment for one week after an altercation with her estranged wife. Alice explained that her wife, off her medications, was behaving erratically, became violent in response to attempts to subdue her, and called the police. As a result, Alice went to jail for three days and then to the hospital for surgery. All charges against Alice were quickly dismissed.

When she returned to her apartment, she found a notice on the door addressed to "unauthorized occupants." Confused, she went to the Essex County Courthouse and showed a clerk there her lease and Section 8 paperwork. The clerk told her that the notice was in error and reassured her that she was a lawful resident and not a squatter. Later, when Alice found in her mailbox correspondence addressed to "unauthorized occupants" she returned it to the post office, unopened, presuming it must have been delivered to the wrong address. She telephoned her landlord to let him know of the error. Those calls were not returned.

In February of 2021, Alice received a phone call from her sister, who lives in the apartment upstairs, that sheriff's deputies had come to Alice's apartment to change the locks. At the time, Alice was out food shopping. She asked to speak with the sheriff, who came to the phone and advised her that she had been declared by the court to be an unauthorized occupant of the premises. When Alice protested, she was advised by the sheriff to get an injunction seeking reinstatement.

By the time Alice got home thirty minutes later, she had been locked out of her apartment without her medications and with her two animal support dogs locked inside. In the span of those thirty minutes since receiving her sister's call, she became homeless and at risk of losing her Section 8 voucher.

Distraught, Alice made her way to the Essex County courthouse to explain that a terrible mistake had been made and that she needed to get back into her apartment. Once there, she was directed to a waiting room and given paperwork to fill out seeking reinstatement. She was

left to wait for seven hours, at which point a clerk told her that a judge had reviewed her request and denied it. Why? Because at a hearing that took place without her knowledge three months earlier, in November of 2020, she was declared an unauthorized occupant of the premises. Alice knew nothing about that hearing. When she failed to appear for it, a default judgment was entered against her. This notwithstanding that a simple fact-check would have confirmed that she was a lawful tenant, just as she had been for the preceding fourteen years, pursuant to the terms of a lawful lease.

Now displaced, Alice's sister put her up in a local Hilton Inn. Bereft and panic-stricken, Alice eventually found her way to Newark's Office of Tenant Services, where she was appointed counsel under the aegis of the city's right to counsel program. Counsel moved first to secure access to the apartment to allow Alice to retrieve her medications and leave food and water for her beloved pets.

Alice's lawyers describe how they were stunned to find that Alice, a rent-paying tenant, had been ejected as if she were a trespasser on site. This no matter that she was a rent paying tenant and that the landlord was also receiving sizable Section 8 payments on her behalf. The landlord, through his counsel, had misrepresented the facts—falsely claiming that Alice was an unknown squatter—as a strategy to circumvent the eviction moratorium then in place. Without any fact-finding or testimony and without Alice (who was never named as a party to the action and never received notice), the court took the allegations of the landlord's counsel as given and summarily ordered ejectment.

Alice spent nine days out of her apartment until her attorneys succeeded in getting a dismissal of the case with prejudice and a declaration that she be restored to possession. She wept as she described those nine days and the trauma of not knowing what would become of her and whether her dogs would survive.

In March of 2021, two weeks after returning to her apartment, the landlord began harassing Alice, calling her repeatedly and revealing the true reason for the wrongful ejectment action. He wanted Alice out so that he could lease the apartment at a higher rent; her maintenance and care had rendered the apartment the most sought after in the building. To persuade her to vacate the landlord has offered her as much as \$3,000 in cash. She has repeatedly rejected his overtures, but the calls keep coming. Alice describes how every time the landlord's number appears on her phone, she relives the trauma of her displacement. Her blood pressure rises, and her depression worsens. She worries that the landlord, intent on reaping a higher rent for the apartment, will again use illicit means to force her out.

Tenant's counsel recounts that they had reached out to landlord's counsel not once or twice, but several times to settle and dismiss this case. Landlord's lawyer either refused to speak or indicated no interest in settlement. That was baffling for at least two reasons. First, the wrongful ejection action was in clear violation of multiple laws—federal and state due protections, New Jersey's Anti-Eviction Act, and the Governor's moratorium on evictions, among other protections. Second, counsel represented, in open court, that he never received the tenant's calls or messages, and when corrected by the court, weaponized the fact of tenant's arrest to somehow justify the illegal dispossession.

There are countless individuals in Alice's shoes. The only difference? Alice was one of the few tenants appointed counsel, and she was willing to fight. Most tenants, understandably, are not willing to face the specter of landlord retaliation should they assert their rights. Even more tenants are simply trying to move on with their lives and not re-live traumatized pasts. Vulnerable tenants, like undocumented residents, are even less likely to ever approach a legal services organization for assistance out of fear for status reporting. The downstream consequences are too severe. In Alice's situation, without immediate entry to retrieve her medication and without financial assistance from her sister, the consequences would have been fatal.

Alice not only experienced the initial injury of homelessness, but now must muster her energy to speak up—to challenge a corroded culture around property and housing. She has lost much of her faith in law and society. Where strangers, friends, and foes ought to be able to participate in a neutral court forum to resolve their differences with amicability and respect, instead she saw a power structure that was deferential to unchecked landlord behavior.

As for Alice's attorneys, there too is depreciated faith in systems to fairly protect tenants. There is also the sustained realization that multiple bodies of law—federal, state, and local—are still not enough to skew a culture that disproportionately favors landowners and allows for abuse of systems intended to provide low-income renters with safe, affordable housing. This institutional lessor, like most, receives sizable Section 8 federal and state government subsidies intended to assure that the leased premises be safe, up to housing code specifications, and habitable. The landlord, derelict in meeting those duties but still receiving monthly checks from both the government and the tenant, had little incentive to remediate. Instead, it fell on the tenant to do the work of on-site remediation and maintenance at her own cost.

Alice's lawyers recount that even while collecting monthly government rent subsidies on Alice's behalf and monthly rent payments from Alice herself, landlord and his counsel feigned surprise when they

could not pretend that Alice was *not* a tenant. Fourteen years of an otherwise peaceful relationship between landlord and tenant was lost because there was an opportunity to collect more rent, at the attempted expense of an elderly woman's life and dignity as well as an attempted subversion of hard-fought for laws.

Alice's lawyers describe her case as one that keeps tenants' organizers, attorneys, and advocates up at night—the realization that while Alice's story seemingly has a neat ending, there are innumerable more tenants who have already been illegally evicted. Even those, like Alice, who remain in their homes are at the mercy of their landlord's will. The trauma Alice bears is an injury that no one, except those in her position, can or will ever appreciate.

2. *Renata: A Wrongful Claim for Nonpayment of Rent*

Renata is a disabled senior citizen improperly evicted and dispossessed from her apartment based on a wrongful claim for nonpayment of rent. This no matter that she was current on her rent throughout the tenancy. Unable to walk and suffering from congestive heart failure, Renata could not appear at the initial court date. Not there to defend herself in court, a default judgment was entered against Renata and the landlord proceeded with the removal process. Despite attempting to represent herself in subsequent hearings, Renata was unable to successfully fight the eviction. By court order she was locked out of her apartment with her clothing, medicines, and personal belongings still inside the premises. With nowhere else to go, she lived in a substandard emergency waystation for thirty-five days.

Thereafter, Renata was appointed counsel. Her lawyer prevailed on appeal in reversing the order for eviction. Renata was restored to possession of the apartment. Still, the physical and emotional toll of displacement wears heavy on her. Her lawyer recounts that she is no longer the mentally engaging, happy, and outgoing person she was before her eviction. She remains traumatized by the extended dispossession and the helplessness that she felt, alone and locked out of her home. She reports that she now suffers with depression. Her attorney has observed her significant cognitive decline in the aftermath of the lockout. Renata seldom leaves her apartment now, for fear of one day returning home to again find her locks changed.

2022]

DISRUPTING DISPOSSESSION

1317

3. Nigel: The Intersection of COVID-19 and Eviction

This tragic case of lies at the crossroads of COVID-19 and housing displacement. Nigel, a sixty-six-year-old Haitian immigrant, had been living in the same apartment in Newark for five years when the emergency lockdown cost him his job. Unable to pay rent for November of 2020, he was promptly served with a notice of eviction despite the eviction moratorium then in place. The basis for the eviction was “clutter and waste in the apartment.” Nigel could not read or speak English. Without a lawyer, he did not understand the notice of action against him.

The court summarily ordered eviction based on the allegation that Nigel was a hoarder. The court granted possession to the landlord on Christmas Eve of 2020. Nigel, a devout Christian, was crushed, collapsing as he realized what had occurred. The stress sent him to the hospital. While there, he contracted COVID-19. In the meantime, he was appointed counsel. His lawyers were working to appeal the eviction when, a few weeks after he was admitted to the hospital, Nigel succumbed to the virus and passed away.

4. Tamra: The Toll of Eviction on Mothers

Tamra faced an eviction from an apartment in Hartford during the COVID-19 pandemic. A single mother with a newborn baby, Tamra was employed and expecting at the start of the pandemic but became unable to work as her due date approached and the risk to herself and her unborn child grew. She eventually lost her job and, once well, was unable to find new employment because of the economic shutdown. After the birth of her child, Tamra took up working in the gig economy, delivering food through a restaurant delivery app, keeping her newborn baby with her during her deliveries. During the winter months, she stopped working as a delivery driver, fearful for the safety and well-being of her child in the cold, harsh weather.

Tamra soon faced eviction for nonpayment of rent. Her landlord was represented by an attorney, while she was unable to secure legal representation initially. She entered into a stipulated agreement with her landlord’s attorney, agreeing to repay the amounts that he claimed that she owed. The repayment agreement was unaffordable, providing that she would pay large sums of money towards the arrearage each month, in addition to the monthly rent, within a relatively short period of time. Faced with the pressure of an eviction and the risk of

homelessness to her family, Tamra took the agreement that was offered, meeting with her landlord's attorney in his office to sign the agreement.

Tamra received a financial reprieve when she successfully applied for UniteCT, the federally funded rental assistance program in Connecticut, which paid her landlord thousands of dollars to bring her current on her arrearage and towards her current and prospective rental obligations. But that was not the end of her eviction ordeal.

Under the terms of the UniteCT program participation agreement, landlords are required to file a withdrawal of an eviction upon approval of the assistance application. Tamra's landlord did not file a withdrawal, and demanded additional payments from her, threatening to proceed with a request for an execution of eviction if she did not comply. Although evictions in Connecticut are limited to the question of possession, landlords recognize the potential of a pending eviction to serve as leverage to ensure continued payments or other compliance, as the filing of an affidavit of noncompliance and request for an execution order may be accomplished in a matter of days with little additional expense. In Connecticut, a landlord who files an affidavit of noncompliance alleging nonpayment of monetary sums will receive an order of execution immediately on the third business day after filing, if the tenant does not file an objection, without the necessity of a hearing.³⁷¹ Many tenants do not file the requisite objection in time, so execution is automatically issued, and the tenant receives the execution order with a date and time, as little as twenty-four hours later, on which a marshal will return to physically remove the tenant, her family, and her possessions, from the dwelling unit. When the state rental assistance payments ended, Tamra's landlord took advantage of his noncompliance with the UniteCT program rules and sought an immediate execution. He would have received an execution order on the third business day had Tamra not attained counsel.

Tamra was able to obtain a legal aid lawyer at this stage to help her fight the threatened immediate eviction. Over the landlord's objection the court denied the landlord's request for an immediate eviction order and ordered him to comply with the UniteCT program rules and withdraw the eviction. On review of the UniteCT documentation, the

³⁷¹ See COMM'N ON OFF. LEGAL PUBL'N, OFFICIAL 2022 CONNECTICUT PRACTICE BOOK § 17-53 (2022) ("Whenever a summary process execution is requested because of a violation of a term in a judgment by stipulation or a judgment with a stay of execution beyond the statutory stay, a hearing shall be required. *If the violation consists of nonpayment of a sum certain, an affidavit with service certified in accordance with Sections 10-12 through 10-17 shall be accepted in lieu of a hearing unless an objection to the execution is filed by the defendant prior to the issuance of the execution. The execution shall issue on the third business day after the filing of the affidavit.*") (emphasis added).

legal aid lawyer then determined that the benefit payment calculation was incorrect. The lawyer filed an administrative appeal with the Connecticut Department of Housing, which administers the UniteCT program. The appeal was successful, resulting in the release of thousands of dollars of additional rental assistance, which would be paid to Tamra's landlord. Tamra and her child were able to keep her housing and with several additional months of rental assistance available to her, could maintain decent, safe, and sanitary housing while focusing on building longer term stability for herself and her baby. During this new period of rental assistance, Tamra found full-time employment, ensuring her ability to pay her rent in the future.

Legal representation leveled the playing field for Tamra, ensuring that the landlord complied with his legal obligations arising from his receipt of significant rental assistance funds. The presence of counsel for Tamra assured that she did not lose her home unlawfully, and that both she and her landlord benefited from the recalculation of UniteCT assistance benefits. Without legal assistance, Tamra likely would have been evicted in a matter of days, unaware of her legal rights under applicable law and the rental assistance program.

5. Agnes and Al: A Wrongful Eviction Against an Elderly, Disabled Couple

Husband and wife Agnes and Al are senior citizens. Both suffer from multiple disabilities. Neither speaks English. They sought legal assistance after a default judgment was entered against them in an unlawful eviction action for "lapse of time," a basis for eviction when the landlord alleges that the lease has expired. Under the terms of Connecticut's good cause eviction statute, the couple could not lawfully be evicted for lapse of time because of their age and disabilities.³⁷² Unable to appear in court and unaware of the defense to the eviction action, a default judgment was nonetheless entered against them.

Unfortunately, cases like these are brought by landlords with some regularity, either because they are not aware of a tenant's specific circumstances, do not inquire, are not aware of the good cause protection statute, or, in some cases, roll the proverbial dice in the hopes that the tenant will not raise the defense or that the landlord will obtain a default judgment or stipulated judgment for possession through the eviction process. When judgment entered against Agnes and Al, they

³⁷² CONN. GEN. STAT. § 47a-23c (2021).

joined the 37 percent of tenants who lose their eviction cases by default judgment in Connecticut each year.

This case demonstrates just one of the many potential routes to functional victory for a landlord before a matter is ever heard by the judge. The tenant may leave without challenging the eviction out of fear of the consequences of an eviction record. The landlord may obtain a judgment for failure to appear or plead, or obtain an unfair or unrealistic stipulated judgment, negotiated by a landlord's attorney against a self-represented party, with a mediator who is restricted from providing legal advice.

Agnes and Al did not understand the legal papers served on them, and therefore did not respond by filing an appearance form and pleadings with the court. When they were served with the papers, they went to speak to the landlord's property manager to understand what was happening. The property manager told them not to worry about the court papers. The tenants trusted him and did nothing further. In the meantime, the landlord obtained a judgment by default against them.

The tenants eventually received the court notice of the eviction judgment against them and sought help. Counsel was appointed and quickly realized that because judgment had already entered against the tenants there was an extremely limited window in which to act to protect their legal rights. Once judgment has entered, the tenant only has five days to file anything, as execution may issue any time after the statutory five-day stay period.³⁷³ Upon review, the legal aid lawyer determined that Agnes and Al's lease was still in effect and could prove as such based on the very lease attached to the eviction complaint that was filed with the court. The default judgment was reopened by the court, and the eviction case withdrawn, reinstating the tenants to their lease and preserving the safety and security of their home.

6. *Gerald: The Habitability Defense Actualized by the Presence of Counsel*

Gerald suffers from several chronic conditions, including post-traumatic stress disorder. He has been homeless before, because of a prior eviction, and was truly terrified of becoming homeless again. He is extremely economically disadvantaged but had recently received a Section 8 housing voucher.

³⁷³ CONN. GEN. STAT. §§ 47a-26, -26a, -35 (2021).

Gerald suffered default for failing to appear in the eviction action brought against him. He never received any of the eviction papers, so did not have notice of the pendency of the matter. He lived in a building affected by a host of habitability issues, including a lack of secure outer doors. The eviction papers, which were served upon his abode, were likely placed in an open common entryway, open to the elements, his neighbors, and other individuals who entered his building through the unsecure front doors. Due to those security lapses, Gerald often missed or lost important mail.

When Gerald learned of his default judgment through a second mailed court notice, he went to the law library located in the Superior Court of Hartford, where he was able to print out a blank package of the injunction and *audita querela*³⁷⁴ papers, which he filled out himself, without any legal assistance. The court denied Gerald's self-represented filing, ruling that he had not met the legal standard for the granting of an injunction and an *audita querela* in his papers. The court provided modest equitable relief, ruling that Gerald would have to move out in a matter of weeks.

Gerald then sought representation from legal aid. In addition to the typical devastating consequences of an eviction, he also faced the potential loss of his Section 8 voucher if eviction proceeded, which would prevent him from securing new housing in the future.³⁷⁵ He had waited years on a wait list to receive this voucher, and it was the only route to long term housing stability for him given his limited income and prior experiences with homelessness. Fearful that the court record would show he had been evicted by a marshal, he inquired about entering a homeless shelter, only to learn that the shelter for men had a wait list of over 100 people ahead of him in the middle of winter.

Gerald's counsel drafted a new injunction request and writ of *audita querela*, together with a motion to open the judgment. In this new set of pleadings, Gerald was able to raise and present multiple defects in the eviction papers and new legal defenses that had not been previously

³⁷⁴ Under Connecticut law, "[a]udita querela is a limited and extraordinary legal remedy, based on equity, to inhibit the unconscionable use of a lawful judgment because of matters arising subsequent to the judgment. The broad issue becomes not comparative inconvenience but comparative hardship. . . . Courts have a longstanding general power of equity to afford relief against unreasonable conduct even when the activity is otherwise lawful." *Westfarms Assocs. v. Kathy-John's, Inc.*, No. SPH 851130901 733, 1986 WL 400555, at *2 (Conn. Super. Ct. Mar. 17, 1986) (internal citations omitted).

³⁷⁵ An eviction is grounds for termination of Section 8 program participation. *See* 24 C.F.R. § 982.552(c)(1)(ii) (allowing termination "if any member of the family has been evicted from federally assisted housing in the last five years").

presented, including claims arising from the habitability and security issues in his apartment and building. The eviction was reopened by order of the court and was eventually withdrawn when it became apparent to the landlord's attorney that the legal defects in the case would result in a likely dismissal. In the meantime, Gerald was put in touch with a community agency that helped him with case management and supportive services. The withdrawal of the eviction, coupled with these new supportive services, have ensured his continued housing stability.

II. CONCLUSION

Home. The concept is evocative, deeply personal, and essential to all that we hold most dear. It is where we imagine that all roads lead at the end of any effort or journey. Amid the COVID-19 pandemic, home took on even deeper meaning, where so many aspects of our lives merged into one place for one long, trying time. Evictions destroy the safety and security of home, and therefore destroy lives.

We have too long accepted a troubling reality of evictions as unequal and harsh justice, allowing vulnerable tenants to be thrown out of their homes in expedited legal proceedings without access to legal counsel. During the ravages of the pandemic, millions of economically disadvantaged renters faced the loss of their homes through eviction. The circumstances leading to that end were not a matter of individual choice or action. The COVID-19 eviction crisis was driven by public health and economic factors of unprecedented nature, driving so many that had previously been stable, along with those who had always been on the margins, into housing instability.

In the administration of justice, "the rich and the poor do not stand on an equality before the law, the traditional method of providing justice has operated to close the doors of the courts to the poor, and has caused a gross denial of justice in all parts of the country to millions of persons."³⁷⁶ Those words describe the eviction crisis today. The mechanisms that coerce displacement not only divest the poor of their place to call home but place in the hands of their persecutors "the most powerful and ruthless weapon ever invented."³⁷⁷

Evictions represent a legal emergency, posing immense threat to opportunity, health, personal and economic well-being, and children's education and welfare, perpetuating a long legacy of racial and

³⁷⁶ REGINALD HEBER SMITH, JUSTICE AND THE POOR, CARNEGIE FOUND. FOR ADVANCEMENT TEACHING, no. 13, 1919, at 1, 8.

³⁷⁷ *Id.* at 9.

2022]

DISRUPTING DISPOSSESSION

1323

economic injustice. The growing eviction right to counsel movement recognizes this moment of crisis, creating a meaningful and impactful intervention designed to level an imbalanced playing field.

Fifty years ago, Michael Harrington wrote in *The Other America: Poverty in the United States*, “What shall we tell the American poor, once we have seen them? . . . I want to tell every well-fed and optimistic American that it is intolerable that so many millions should be maimed in body and in spirit . . .”³⁷⁸

Since our nation’s founding we have aspired to equal and impartial justice and to meaningful due process of law. Those principles form the bedrock of our rule of law and our system of justice, perfect in expression but often imperfect in practice. Guaranteeing a right to counsel to tenants facing eviction advances justice when it matters most, when so much is in the balance. In advocating for and advancing the right to representation, we further our journey of becoming: one America, one nation, with liberty and justice for all.

³⁷⁸ MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* 18 (1962).