



# A Right to Counsel Is a Right to a Fighting Chance

## The Importance of Legal Representation in Eviction Proceedings

By Heidi Schultheis and Caitlin Rooney | October 2, 2019

When it comes to evictions, tenants are set up to fail. In eviction lawsuits nationwide, an estimated 90 percent of landlords have legal representation, while only 10 percent of tenants do.<sup>1</sup> Without representation, the majority of tenants lose their cases and are ultimately evicted.<sup>2</sup> This can have devastating consequences for individuals, communities, and the availability of affordable rental homes more broadly—especially as the share of families renting homes in the United States grows and the supply of affordable rental housing becomes increasingly limited.

Between 2001 and 2015, the supply of affordable rental homes did not keep pace with growth in the percentage of U.S. families that rent their homes.<sup>3</sup> Additionally, each year during this time period, gross rents increased an average of 3 percent yearly, while incomes declined 0.1 percent on average. This shortage of affordable rental homes disproportionately affects communities of color and other marginalized groups; Native American, Black, Hispanic, disabled, and LGBTQ renters are all more likely to have extremely low incomes or to live in poverty than other renters.<sup>4</sup>

This combination of limited housing supply, rising rents, and shrinking incomes has resulted in renter households spending more and more of their income on housing costs. In 2016, nearly half of the country's 43 million renter households—more than 20 million households—spent more than 30 percent of their income on rent; 11 million of these households spent more than half of their income on rent.<sup>5</sup> Meanwhile, fewer than 1 in 4 eligible low-income renter households receive federal rental assistance.<sup>6</sup> The burden of such high housing cost, along with the lack of financial assistance, make it hard for these renters to afford basic necessities such as food, transportation, and medical care.<sup>7</sup> Reflecting these harsh realities, recent public opinion polling shows that rental housing affordability is a growing concern nationwide—not only in large cities and suburbs but also in small towns and rural areas.<sup>8</sup>

On top of the dire shortage of affordable rental homes, the rising number of evictions has only exacerbated tenants' housing issues. In 2016, landlords in the United States filed an estimated 2.3 million evictions against tenants—an average of four evictions per minute.<sup>9</sup> Nearly 900,000 of these filings resulted in an actual eviction,<sup>10</sup> leading to more than 2.3 million people being displaced from their homes that year.<sup>11</sup> Like the shortage of affordable homes, evictions also disproportionately harm marginalized communities. Sociologist Matthew Desmond, founder of Eviction Lab, the first national database on evictions, compared one city's high rate of eviction for Black women with its overincarceration of Black men: "Poor black men were locked up. Poor black women were locked out."<sup>12</sup>

This issue brief explains the growing problem of evictions nationwide. It also emphasizes the importance of guaranteeing tenants legal counsel—known as a right to counsel—in efforts to mitigate this issue. It also explores how several localities are countering the problem by providing this right for tenants in eviction proceedings. A right to counsel has been proven to help tenants win eviction cases and stay in their homes, and it can soften the blow when eviction is unavoidable. In addition to significant benefits for individuals and families who rent their homes, this right benefits communities by preventing homelessness and preserving affordable rental homes all while saving as much as hundreds of millions of government dollars per year.

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## The eviction crisis

Like the problem of rental housing affordability, the eviction crisis is playing out across the country—and not just in major cities. In fact, the highest eviction rates, or the rate of households evicted relative to the number of rental units in a given area, were in small cities and rural areas.<sup>13</sup>

In addition to displacing families from their homes, evictions are shown to have lasting negative effects on mental and physical health, family unity, and economic well-being. For example, mothers who experience eviction report statistically significantly higher rates of depression, parenting stress, and material hardship than mothers who have not, and these effects can last for several years.<sup>14</sup> Children in families that experience eviction are more likely to be placed in out-of-home care, which is associated with poor short- and long-term mental and physical health outcomes for children.<sup>15</sup> Tenants facing eviction may be subject to court fees if they choose to fight the eviction notice. Tenants may also lose their belongings, as they usually have two options: They either pile their possessions on the curb despite not necessarily having a way to transport them or a secure place in which to store them, or a moving company puts the items in bonded storage that charges fees that some tenants can't afford, thus making their belongings irretrievable.<sup>16</sup> Eviction can also lead to job loss either because the time commitment and stress of the eviction proceedings cause workers to be distracted or to miss work or because after the eviction they are

forced to move to a new location further away from their job.<sup>17</sup> One study suggests that workers who are evicted are as many as 22 percentage points more likely than similarly situated people to subsequently lose their job.<sup>18</sup>

Evictions can affect renters' future housing options and credit ratings, which are intertwined. Even when evicted tenants find another place to live, they are frequently forced to live in substandard housing, often in more under-resourced neighborhoods or in unsafe conditions, which is particularly harmful for children.<sup>19</sup> Tenants whose landlords sue them for eviction often suffer damage to their credit scores; eviction filings remain on credit reports for seven years regardless of the outcome of the case.<sup>20</sup> They also are more likely to end up in a vicious cycle of housing instability and homelessness, as a record of eviction and poor credit score often make it harder to obtain housing in the future.<sup>21</sup> As Eviction Lab explains, "the evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it."<sup>22</sup>

Beyond these harmful effects on individuals and families, evictions also wreak havoc on entire communities and cities. Affordable rental homes can be lost forever when they are converted to far more expensive market-rate housing following evictions.<sup>23</sup> And cities cannot afford to lose subsidized units, as there is a current nationwide shortage of 7 million affordable and available rental homes for the lowest-income renters.<sup>24</sup>

Affordable housing investments are a crucial tool in reducing housing poverty and homelessness, improving health outcomes, boosting economic mobility, supporting job creation and retention, and strengthening the economy.<sup>25</sup> For example, a 2015 report by the National Association of Home Builders indicates that the one-year effects of building 100 affordable apartment homes in a typical local area produces 161 local jobs; generates \$2.2 million in taxes and other revenues for local governments; and increases local income by \$11.7 million.<sup>26</sup>

According to an analysis by *The New York Times*, landlords in New York City have been using evictions—including frivolous eviction proceedings such as falsely claiming that one tenant did not live in her apartment—to convert affordable rental homes into market-rate housing units, thereby deregulating them.<sup>27</sup> In one New York City neighborhood, two-thirds of the formerly rent-stabilized rental homes owned by landlords who engaged in these kinds of practices were deregulated between 2009 and 2016.

Evictions also disproportionately affect certain communities, perpetuating economic inequality. For example, families with children are more likely to face eviction than families without children, even when controlling for other factors such as race, single-mother households, the amount of rent tenants owed, and selection bias regarding the likelihood of having children.<sup>28</sup> Low-income Black women face the highest risk of eviction, with 1 in 5 Black female renters reporting that they have experienced eviction compared with 1 in 12 Hispanic women and 1 in 15 white

women.<sup>29</sup> Analysis of eviction data from Milwaukee and Richmond, Virginia, points to race-based eviction discrimination even when controlling for a variety of demographic characteristics.<sup>30</sup> Renters with mental illness can face evictions because of landlords' failure to provide accommodations for their residents, despite state and federal laws that are intended to protect renters from this harm.<sup>31</sup>

Some data also suggest that transgender people may face evictions at higher rates than the general population due to discrimination.<sup>32</sup> Although research suggests that this group faces housing discrimination at high rates, there is no federal law explicitly protecting LGBTQ people from it, and only a minority of states explicitly ban landlords from evicting LGBTQ people simply because of who they are.<sup>33</sup> Access to counsel may be particularly important in the case of evictions without just cause,<sup>34</sup> meaning people of color, LGBTQ people, and others being evicted for discriminatory reasons may especially need legal representation.

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## Evictions are part of a broader lack of civil legal representation

One proven means of curbing evictions for low-income tenants is to break the pattern of unequal representation between tenants and landlords. This can be done by guaranteeing legal representation for tenants, known as a right to counsel, when a landlord sues them for eviction.

While the Sixth Amendment to the U.S. Constitution grants criminal defendants the right to counsel,<sup>35</sup> litigants in civil matters do not have the same guarantee of legal representation—even when something as vital as their housing is on the line.

## The Legal Services Corporation

A right to counsel is distinct from eviction prevention services that some tenants receive from the Legal Services Corporation (LSC), the national organization that funds civil legal aid programs<sup>36</sup> to provide services for more than 1.7 million low-income people nationwide.<sup>37</sup> Created by Congress in 1974, the LSC is an independent nonprofit agency that receives most of its funding from congressional appropriations.<sup>38</sup> Eligibility for LSC services is limited to clients with incomes at or below 125 percent of the federal poverty guidelines. While housing problems comprise the LSC's second-largest area of case services, housing problems generally—and evictions specifically—are just one of many legal areas that LSC grantees stretch their limited funds to try to cover.<sup>39</sup> The nature and length of LSC services vary from conducting self-help workshops, giving one-time legal advice, and helping with completing documents to representing clients in court.<sup>40</sup>

Defendants in eviction cases fare much better with legal representation than they do without it, but the LSC's limited funding, eligibility requirements, variability in services, and varying expertise among attorneys means that low-income tenants in eviction suits are not guaranteed representation. Furthermore, the LSC is frequently under attack; former President Ronald Reagan attempted to abolish the organization in 1981; former U.S. Speaker of the House Newt Gingrich tried to gut its funding in the mid-1990s; and President Donald Trump's past and most recent budgets aimed to eliminate the agency altogether.<sup>41</sup> Although the LSC plays an indispensable role in funding representation and other civil legal services for low-income people, it stops short of the guaranteed representation that a right to counsel in evictions can provide.

The challenges that tenants in eviction cases encounter when seeking legal aid are indicative of a large gap between the civil legal needs of low-income people and the resources available to meet those needs. A 2017 LSC report found that 86 percent of all civil legal problems for low-income people nationwide receive insufficient or no help at all.<sup>42</sup> Those who seek assistance from the LSC fare slightly better: Between 62 percent and 72 percent of the 1,700 civil legal problems for which low-income people seek LSC-funded legal aid receive inadequate or no legal assistance. People of color—particularly Black people—as well as women, households headed by single women, people with disabilities, LGBTQ people, and immigrants all experience poverty at disproportionately high rates and are more likely to need legal assistance.<sup>43</sup> These glaring inequities, combined with extensive data on the effectiveness of legal representation in a variety of civil cases, have given rise to a broad call for a civil right to counsel among legal professionals and advocates in recent decades.<sup>44</sup>

While federal law does not guarantee a right to counsel in civil cases, many states and localities have begun to recognize its critical value in certain civil legal matters and have adopted a right to counsel at the state and local levels across various policy areas, including evictions, mental health proceedings, civil forfeiture, domestic violence, child custody disputes, and more.<sup>45</sup> This progress has taken years. Short of being able to provide every civil litigant with guaranteed representation, policymakers at all levels could establish this right more widely for specific cases such as evictions.

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## The right to counsel has wide-ranging benefits for tenants and communities

Extensive research indicates that tenants with legal representation are much more likely to avoid an eviction judgment and to keep possession of their homes than unrepresented tenants. In addition to these primary effects, a right to counsel offers several secondary benefits to defendants who are sued for eviction. Attorneys may be able to keep eviction filings off tenants' records, arrange for alternative housing, negotiate reasonable amounts of time for tenants to move out, reduce or eliminate money owed to the landlord, or help tenants apply for rental assistance.<sup>46</sup> Keeping eviction filings off tenants' credit reports means not only avoiding damage to their credit scores, which directly affects access to credit and interest rates, but also increasing the likelihood that they will be able to secure decent, safe housing in the future because landlords will not be able to deny them housing due to their eviction history.<sup>47</sup> Tenants who are evicted from federally subsidized housing programs stand to benefit significantly from keeping eviction filings off their records because, in some circumstances, federally subsidized housing programs must deny housing to tenants who have been evicted from such programs.<sup>48</sup>

A 2013 study on eviction cases in Manhattan showed that providing legal counsel to tenants was associated with a 77 percent decrease in the number of cases that resulted in a warrant for eviction.<sup>49</sup> Similarly, a 2010 study from Massachusetts revealed a 77 percent decrease in judgments for eviction when tenants were represented as well as a 45 percent decrease in the number of cases in which tenants lost their homes.<sup>50</sup>

Two eviction-prevention pilot programs in Boston used a randomized study to measure the effect of full legal representation for a targeted group of low-income tenants facing eviction between 2009 and 2011.<sup>51</sup> In one program, two-thirds of tenants with full representation retained their homes, compared with just one-third of similar unrepresented tenants. Tenants with full representation also received a combined total of more than \$306,000 in financial benefits, such as damage payments and waived rent, compared with about \$73,000 total for unrepresented tenants. Additionally, tenants with full representation benefited from having ample time to find new housing. The second program showed little difference in retaining homes between fully represented and unrepresented tenants, though it is not clear why. Both pilot programs revealed that full representation allows attorneys to have a thorough understanding of each client's case and to manage the case accordingly.

In Hennepin County, Minnesota, data collected between 2016 and 2018 showed how the extent of representation—full, limited, or none—influences a variety of tenant outcomes in eviction cases. In all dimensions of the study, tenants with full or limited representation fared better than unrepresented tenants.<sup>52</sup> Tenants with full representation won 21 percent of their cases, while those with limited representation won 24 percent of cases, and unrepresented tenants won only 11 percent of cases. Fifty-two percent of fully represented tenants remained in their homes, compared with 48 percent of tenants with limited representation and just 31 percent of unrepresented tenants. Similarly, 78 percent of fully represented tenants left court without eviction filings on their records, while this was true for only 17 percent of tenants with limited representation and 6 percent of unrepresented tenants. Notably, the study also concluded that represented tenants are four times less likely than unrepresented tenants to enter homeless shelters.

An analysis of more than 100,000 nonpublic housing eviction cases in Philadelphia filed between 2012 and 2017 examined how represented and unrepresented tenants fared in terms of forcible displacement and other disruptions that often accompany eviction.<sup>53</sup> Tenants with representation were forcibly displaced from their homes in just 5 percent of cases, compared with a staggering 78 percent of unrepresented tenants. Represented tenants were also twice as likely as unrepresented tenants to receive a favorable judgment. Tenants with representation were 15 percent less likely than unrepresented tenants to have a second eviction case brought against them.

Fewer evictions means fewer devastating consequences that tend to result from evictions, including forced moves that disrupt nearly every dimension of a household; entries into homeless services systems and the trauma that accompanies homelessness; and extremely high eviction-related monetary costs that cities must shoulder.<sup>54</sup> A 2016 cost-benefit analysis of a right to counsel in eviction cases for renters with incomes up to 200 percent of the federal poverty level in New York City found that the net cost savings for the city would be \$320 million per year, after accounting for the cost of providing counsel.<sup>55</sup> Specifically, \$251 million would be saved by preventing 5,237 families from entering shelters; \$9 million would be saved by preventing 278 individuals from entering unsheltered homelessness; and \$259 million would be saved by preserving 3,414 affordable rental homes. A report about the two randomized pilot projects in Boston indicated that if the state provided representation for a targeted group of Massachusetts renters, then the state would achieve a net savings of more than \$3 million in emergency homeless shelter costs alone.<sup>56</sup> A report about the Philadelphia analysis estimates that more than 14,000 Philadelphians could avoid eviction every year and that the city could realize annual net savings of more than \$40 million if the city provided representation to all low-income tenants.<sup>57</sup> This is a conservative estimate of cost savings, as additional unquantified costs are expected to result from fewer evictions filed, including a decreased negative effect on tenant credit scores and the preservation of affordable homes, among other savings.

In response to the growing eviction crisis and in recognition of the effectiveness of guaranteed legal counsel, some local governments have stepped up to offer solutions for renters who just want a fighting chance against eviction lawsuits. The next section covers some notable examples of approaches to a right to counsel that are meaningfully combating the eviction crisis and its related consequences.

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### Three localities implementing right to counsel citywide

Recognizing the huge threat that evictions pose to renters, local governments of three large metropolitan cities—New York City, San Francisco, and Newark, New Jersey—are stepping up to help renters stay in their homes by providing a right to counsel in eviction cases.

#### New York City

In August 2017, after years of advocacy by tenant rights groups, legal services providers, neighborhood associations, and many others, New York City became the first U.S. city to establish a right to counsel for low-income tenants in eviction cases when Mayor Bill de Blasio (D) signed it into law.<sup>58</sup> The city previously provided legal representation for some low-income renters, but this assistance reached only about 15 percent of tenants in eviction cases in 2016.<sup>59</sup> The law, which will be fully implemented by 2022, guarantees full legal representation for renters with incomes at or below 200 percent of the federal poverty guidelines as well as one-time legal consultations for all renters regardless of income.<sup>60</sup>

In its first year of implementation, in the first 15 ZIP codes covered by the new law, 56 percent of tenants who went to court for eviction proceedings had legal representation, and another 2 percent received brief assistance or free legal advice.<sup>61</sup> By comparison, the citywide representation rate in eviction cases during this time was 30 percent—up from just 1 percent in 2013. Evictions decreased 11 percent in the ZIP codes covered by the new law, while they decreased only 2 percent in the rest of the city.<sup>62</sup>

In addition to annual net cost savings of \$320 million, the city expects savings in the form of reduced service costs for children in families experiencing homelessness, fewer job-loss supports, fewer rental law enforcement costs, and an overall reduction in the number of eviction cases filed.

### San Francisco

The Bay Area tech hub, with its soaring home prices and high homelessness rate, became the second U.S. city to implement a right to counsel in eviction cases in June 2018.<sup>63</sup> After a year of work by tenant advocacy organizations, voters voiced their support for tenant representation by passing a ballot measure, known as the No Eviction Without Representation Act, that guarantees legal counsel to tenants in eviction lawsuits regardless of their income. The inclusion of tenants at all income levels is a significant departure from the income limit in the New York City law and a reflection of how rising housing costs are affecting people farther up the income spectrum.

The new law went into effect in July 2019.<sup>64</sup> Mayor London Breed (D) allotted \$5.8 million to cover the costs of providing legal counsel in these cases to last through the end of fiscal year 2020. Advocates for the law argued that a right to counsel was needed to reduce San Francisco's homelessness rate—17 percent of which is attributed to eviction<sup>65</sup>—and to increase woefully low rates of legal representation; in 2014, at least 80 percent of tenants in eviction cases were unrepresented.<sup>66</sup> The city will likely see improvements in these and other tenant outcomes once the new law has been in effect long enough to produce data.

### Newark, New Jersey

New Jersey's most populated city<sup>67</sup> became the third in the nation to guarantee legal representation for tenants in eviction cases in December 2018.<sup>68</sup> Newark city council members and advocates from law schools, community groups, and legal services providers<sup>69</sup> worked together to develop an ordinance to prevent evictions for the nearly 80 percent of Newark residents who rent their homes.<sup>70</sup> At an expected annual cost of between \$750,000 and \$1 million, the new legislation guarantees legal representation in eviction cases for tenants with incomes at or below 200 percent of the federal poverty line and is expected to provide representation or consultation to between 5,000 and 7,000 Newark renters every year.<sup>71</sup>

The city hired a coordinator for its new Office of Tenant Legal Services, which began accepting applications for tenants seeking legal representation in eviction cases in early June.<sup>72</sup> The city has committed \$400,000 thus far to the new initiative and is seeking additional funding. Eligible applicants will be referred to either a pro bono attorney or a legal services provider that is contracting with the city.<sup>73</sup>

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## Conclusion

Safe, affordable, and accessible housing is essential for family stability, social and economic well-being, and mental and physical health.<sup>74</sup> But affordable rental homes are in extremely short supply, and the eviction crisis further threatens their dwindling numbers. Despite the growing percentage of people in the United States who rent their homes in recent years,<sup>75</sup> renters still face frighteningly steep odds when faced with eviction.

There are opportunities at the federal, state, and local levels to develop and implement a right to counsel in eviction cases. Cities and states can begin this process by first identifying the scope of their eviction problem. This will involve collecting eviction data from courts and administrative proceedings—the latter being where public housing eviction cases take place—that can be disaggregated by several demographic factors, including race and ethnicity, age, sex, disability status, income, source of income, household size and composition, prior evictions, prior homelessness, address, the reason the eviction judgment was entered, whether or not the tenant and landlord had legal representation, the type of landlord (public or private; corporate or small scale), and case outcome. In localities and states where these data have not yet been collected, state or city officials can develop pilot projects that provide representation for a period of time and study the projects' outcomes. Localities that have already collected these valuable data and used them to determine the scope of their eviction problem could offer a right to counsel to particular tenant groups such as tenants who participate in state or local rental assistance programs or who fall below a particular income threshold such as 150 percent or 200 percent of the federal poverty guidelines. Programmatic specifics should be tailored to meet the needs of the state or locality based on analysis of local eviction data.

At the federal level, the U.S. government could create a right to counsel fund to counter evictions, possibly administered by the U.S. Department of Housing and Urban Development (HUD) or by the U.S. Department of Justice, with funding available only to states or localities that guarantee legal representation for tenants. Alternatively, HUD could incentivize housing authorities to contract with legal services organizations to provide counsel in eviction proceedings for all tenants who receive federal rental assistance—a group on whom HUD already collects robust demographic data. Regardless of the mechanism by which the federal govern-

ment supports a right to counsel in eviction cases, HUD should also create its own thorough database on nationwide evictions for government and public use, modeled after Eviction Lab.

Furthermore, a right to counsel in eviction proceedings can and should be paired with other tenant protections at all levels of government such as anti-rent-gouging measures and emergency rental assistance. Protections should also include the prohibition of evictions without just cause and of discrimination against classes that are not explicitly legally protected but that too often are targets for discrimination, such as source of income.<sup>76</sup> Building upon the examples outlined in this brief, localities, states, and the federal government should develop practices and policies that increase tenant access to legal representation and strengthen other tenant protections. Doing so would help stem the growing tide of evictions, save millions of dollars, and give renters a fighting chance of staying in their homes.

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**Author's note:** CAP uses "Black" and "African American" interchangeably throughout many of our products. We chose to capitalize "Black" in order to reflect that we are discussing a group of people and to be consistent with the capitalization of "African American."

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