

RIGHT TO COUNSEL

By John Pollock, Coordinator, National Coalition for a Civil Right to Counsel

A right to counsel guarantees that an eligible person will be offered a lawyer who will provide full legal representation at government expense. The national civil right to counsel movement focuses on establishing such a right in “basic human needs” civil cases, such as those involving shelter, safety, sustenance, health, child custody, and physical liberty. In the landlord/tenant context, “eviction right to counsel” means that eligible tenants are offered full legal representation in an eviction proceeding (and sometimes proceedings functionally equivalent to an eviction, such as housing subsidy terminations), while “tenant right to counsel” includes additional proceedings such as affirmative actions to enforce tenant rights

History of Civil Right to Counsel

While the federal constitution provides a right to counsel for indigent defendants in criminal cases, there is no similarly broad federal constitutional right in civil cases. In 1967, the U.S. Supreme Court recognized a right to counsel for children in juvenile delinquency cases, which are technically civil but quasi criminal. Since then, the Court has twice more considered the right to counsel in civil cases, once in 1981 for termination of parental rights and once in 2011 for parents civilly incarcerated due to being unable to pay child support. In both instances, the Court declined to recognize a federal constitutional right to counsel, adding that where physical liberty is not at stake there is a presumption that there is no right to counsel. While the Court has never addressed the right to counsel for eviction cases, it has said there is no fundamental right to housing, which when combined with its right to counsel jurisprudence makes it highly unlikely that it would recognize such a right to counsel under the federal constitution for the foreseeable future. Because

of this landscape, the right to counsel in civil cases, including eviction matters, is left for state and local governments to determine.

Based on their own state constitutions, state courts can recognize constitutional rights to counsel that the Supreme Court does not. [Many have done so \(https://tr.ee/q0ta4y\)](https://tr.ee/q0ta4y) for various civil matters, particularly those involving parental rights or physical liberty. However, to date, there has not been a decision from a state court that fully addresses, much less recognizes, the right to counsel for tenants facing eviction.

Regardless of the position of the courts, city and state governments can pass laws to enact a right to counsel. Each year, [hundreds of bills \(https://civilrighttocounsel.org/current-legislative-developments/\)](https://civilrighttocounsel.org/current-legislative-developments/) are introduced around the country that create or strengthen the right to counsel in one or more types of civil cases. In the housing context, [twenty six jurisdictions \(https://tr.ee/8e9X2a\)](https://tr.ee/8e9X2a), including five states, nineteen cities, and two counties, have passed ordinances or bills (or have had ballot initiatives approved by voters) that create a right to counsel for tenants facing eviction.

A right to counsel law creates a legal obligation for a city, county, or state to provide eligible tenants with a lawyer. In most jurisdictions, over half of tenants do not respond to the eviction complaint or participate in the proceedings, often due to justifiable feelings of disempowerment, confusion, or despair. Enacting a law sends a message to the community that the jurisdiction is firmly committing to changing the existing system. A law is far more visible to the community than a budget appropriation that can appear one year and disappear quietly the next, which helps with accountability, and ensures that the government has a stake in making the program work. Finally, the law provides more assurances to legal aid providers that the program will last, which is critically important as such providers will have to invest substantial time and resources into scaling up to meet the demands of increased representation.

Essential Parameters and Structure of Eviction Right to Counsel Laws

Covered proceeding: All eviction right to counsel laws cover court proceedings in which a landlord seeks to evict a tenant, although it is possible for a right to counsel to be limited to certain kinds of eviction proceedings (such as those involving the housing authority). Some enactments go further to cover situations where a housing authority seeks to terminate a housing subsidy such as Section 8, as losing the subsidy will almost always cause the tenant to fall behind on rent and be evicted and sometimes cover some matters where the tenant seeks to enforce rights (like habitability, anti-discrimination, or lead paint laws). Further, some have chosen to go further and provide representation before an eviction is filed in court.

Eligibility: The [gold standard](https://tr.ee/GBGonG) (<https://tr.ee/GBGonG>) provides coverage for all tenants facing eviction. Some jurisdictions limit eligibility to people under a certain income level (for instance, 200% of the federal poverty level) and/or have other requirements, such as only covering tenants with children. For a law to be considered to provide a right, the eligibility parameters must be “objective” (such as income level, presence of children in the household, etc.), not “subjective” (such as the perceived merit of the case).

Full legal representation: In the traditional legal services model, attorneys “triage” cases, directing the most resources to the cases they perceive to be most meritorious and providing brief or limited services to others (while turning some away entirely). But under a right to counsel model, all eligible tenants are provided full representation, meaning the attorney must provide whatever services are necessary to best fulfill the tenant’s goals regardless of resources. This does not mean that the attorney is obligated by the law to take any particular action, such as seeking a full hearing or filing motions. Rather, the attorney must identify the actions that would benefit the particular case and pursue those actions. In some instances, the best outcome can be obtained through negotiating with the landlord or helping the tenant obtain rent assistance.

Funding: Right to counsel programs are paid for by the city, county, and/or state government. Sometimes this comes from general revenue, while at other times a specific revenue source is created or tapped, such as a tax or fee on rental units, a developer fee, or a fee on transfers of properties. Some jurisdictions relied initially on COVID-19 emergency federal funding (https://civilrighttocounsel.org/major_developments/1463), such as the Emergency Rental Assistance Program and Fiscal Recovery Funds, but many have [already replaced such funding](https://tr.ee/77Z9Ge) (<https://tr.ee/77Z9Ge>) with a long-term revenue source.

Justifications for a Right to Counsel for Tenants Facing Eviction

There are many reasons why a right to counsel for tenants facing eviction is essential. Below are some of the reasons, and others have been [outlined elsewhere](https://www.rtcadvocacy.org/stage1-4) (<https://www.rtcadvocacy.org/stage1-4>).

DIRECT AND COLLATERAL CONSEQUENCES OF EVICTIONS

The destructive consequences of eviction have been [well documented](https://tr.ee/130roa) (<https://tr.ee/130roa>). Some evicted tenants become homeless, potentially facing incarceration and criminal prosecution, serious health consequences, and loss of child custody, employment, and belongings. Tenants who are evicted but avoid homelessness may still come face to face with similar consequences due to rapid displacement, relocation, and housing instability. Additionally, an eviction record, often referred to as a “Scarlet E” (<https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/>), is typically a public record that can make it extremely difficult to secure new housing.

RACE EQUITY AND FAMILY STABILITY

Data has conclusively shown that [tenants of color are disproportionately affected](https://tr.ee/iWpiMw) (<https://tr.ee/iWpiMw>) by the 3.6 million evictions filed annually. In particular, Black Americans made up only 18.6% of all renters yet accounted for 51.1% of those threatened with

eviction and 43.4% of those who were evicted. [Recent data \(https://evictionlab.org/eviction-and-educational-trajectories/\)](https://evictionlab.org/eviction-and-educational-trajectories/) has also shown that families with children face eviction twice as often.

IMBALANCE OF POWER

In a landlord/tenant relationship, the imbalance of power begins the moment the landlord and tenant enter a contract to rent because the contract is prepared by the landlord, with set terms the tenant typically cannot negotiate. When eviction is in the picture, the power imbalance is further amplified by the unequal interests at stake, since only the tenant is facing loss of their home. Without a right to counsel in place, [on average \(https://tr.ee/Boq3vj\)](https://tr.ee/Boq3vj) only 4% of tenants are represented nationwide, compared to 83% of landlords. This massive disparity has affected the way housing courts operate. For instance, landlord attorneys or representatives are often “repeat players” in the court: they appear frequently, build substantive and procedural experience, and develop relationships with court staff and judges that benefit their clients. Additionally, the imbalance has led many courts to establish a practice of sending unrepresented tenants to meet with the landlord’s attorney in the hallway prior to tenants attempting to present their case. During these hallway meetings, tenants are often pressured to agree to terms set out by the landlord’s attorney.

LEGAL COMPLEXITY OF EVICTIONS

Eviictions are complex legal proceedings that move extremely quickly, and like most legal proceedings they were not designed with unrepresented litigants in mind. Evictions can raise issues as varied as whether the lease terms have been breached, whether the tenant was properly served with notice of the eviction, whether the landlord has complied with the Fair Housing Act, whether the landlord has properly credited all rent paid or has tacked on illegal surcharges, and whether other federal, state, and local laws have been followed (such as eviction moratoria, just cause eviction laws, lead paint registration, landlord licensing, or filing requirements related to rental assistance). In fact, any tenant protections enacted by a jurisdiction may be ineffective if there is no tenant’s attorney to ensure they are being complied with, as courts do not proactively screen

landlord cases for legal flaws. In nonpayment of rent cases, a landlord’s failure to maintain and repair the unit can be a defense to eviction, but [studies have shown \(https://tr.ee/uNPu6Y\)](https://tr.ee/uNPu6Y) tenants cannot successfully assert such a defense without counsel.

Even where there are no legal issues to be addressed, courts still have to make three important determinations in a case where the tenant is going to vacate the unit: 1) whether the eviction will be on the tenant’s record; 2) whether the landlord will receive a judgment for rent owed in addition to regaining possession of the unit; and 3) the amount of time the tenant will have to relocate. Without counsel, tenants are hard pressed to succeed on any of these fronts, and these matters can conclusively determine whether the tenant is able to both obtain new housing and avoid homelessness.

EFFECTIVENESS OF COUNSEL

Even before any jurisdiction had enacted a right to counsel for tenants facing eviction, decades of studies had demonstrated that the presence of counsel makes a determinative difference in eviction cases. For instance, a [California study \(https://tr.ee/LmgaHS\)](https://tr.ee/LmgaHS) found that fully represented tenants stayed in their units three times as often as those receiving limited or no legal assistance. When tenants did have to move, fully represented tenants were given twice as long to do so. A [study out of Hennepin County Minnesota \(https://tr.ee/SBll65\)](https://tr.ee/SBll65) found that a) represented tenants were twice as likely to stay in their homes, received twice as long to move if necessary, and were four times less likely to use a homeless shelter than those without counsel; and b) 78% of represented tenants left with a clean eviction record, compared to 6% of unrepresented tenants.

The enacted right to counsel programs have only reinforced these success statistics. For instance, in [New York City \(https://tr.ee/wpGdmG\)](https://tr.ee/wpGdmG), 72-93% of represented tenants (depending on the borough) were able to remain in their homes, while in [San Francisco \(https://tr.ee/YY1kN0\)](https://tr.ee/YY1kN0), the figure is 63% (with 92% avoiding homelessness), and in [Boulder \(https://tr.ee/maSzbZ\)](https://tr.ee/maSzbZ), it has been 59%. In [Cleveland \(https://tr.ee/H906V6\)](https://tr.ee/H906V6), only 14% of defendants with representation received a writ, compared with 50% of unrepresented defendants. In [Kansas City \(https://tr.ee/LVyxkE\)](https://tr.ee/LVyxkE), 82% of

represented tenants have had their evictions dismissed or the judge ruled in their favor. In [Louisville \(https://tr.ee/uAD3Aj\)](https://tr.ee/uAD3Aj), 1,515 children were prevented from becoming homeless, while [2024 data from the program \(https://tr.ee/NEscRx\)](https://tr.ee/NEscRx) shows that 99% of the tenants who received extended representation either delayed or avoided an eviction in 2024 Q4.

Also notable is the effect that right to counsel has had on the eviction filing rate. A recent [report \(https://tr.ee/F91mNX\)](https://tr.ee/F91mNX) cited filing drops of 40%, 10%, 25%, and 11% in NYC, San Francisco, Cleveland, and Connecticut respectively. Such a drop in the filing rate, besides reducing the scourge of evictions, has a positive effect on court resources and takes pressure off of RTC programs.

COST SAVINGS

Beyond the impacts on individual tenants and families, evictions take a high toll on communities due to the high costs of homeless shelters, emergency medical care, foster care for children, unemployment benefits, and school displacement costs. However, [studies have repeatedly shown \(https://tr.ee/cKs86t\)](https://tr.ee/cKs86t) that providing a right to counsel saves substantially more than it costs. For instance, a report out of Detroit found that “For every dollar invested in a right to counsel for low-income tenants facing eviction in Detroit, Stout conservatively estimates an economic benefit to Detroit of at least \$3.52.”

SYSTEMIC IMPACT

[Studies](#) have shown that RTC’s impact goes well beyond the individual eviction cases. The RTC changes the way courts and landlords behave, empowers tenants to enforce their rights even outside the eviction context, improves the overall delivery of legal services, and leads to policy and court procedure reform.

For More Information

Benfer, E. A., Hepburn, P., Nazarro, V., Robinson, L., Michener, J., & Keene, D. E. (2025). A Descriptive Analysis of Tenant Right to Counsel Law and Praxis 2017–2024. *Housing Policy Debate*, 1–26. <https://doi.org/10.1080/10511482.2025.2467136> (<https://www.tandfonline.com/doi/full/10.1080/10511482.2025.2467136>)

[tandfonline.com/doi/full/10.1080/10511482.2025.2467136](https://www.tandfonline.com/doi/full/10.1080/10511482.2025.2467136))

National Coalition for a Civil Right to Counsel’s [tenant right to counsel page \(https://civilrighttocounsel.org/resources/organizing_around_right_to_counsel/\)](https://civilrighttocounsel.org/resources/organizing_around_right_to_counsel/) and [Eviction RTC Guide \(https://www.rtcadvocacy.org/\)](https://www.rtcadvocacy.org/)

National Coalition for a Civil Right to Counsel, Human Impact Partners, ChangeLab Solutions, PolicyLink, and Results for America: [Advancing Racial and Health Justice Through a Right to Counsel for Tenants: A Primer for the Public Health Field \(https://tr.ee/WNxvmG\)](https://tr.ee/WNxvmG)

John Pollock, [Right to Counsel for Tenants Facing Eviction: Justifications, History, and Future](https://ir.lawnet.fordham.edu/ulj/vol51/iss5/4/), 51 *Fordham Urban L. J.* 1439 (2024) (<https://ir.lawnet.fordham.edu/ulj/vol51/iss5/4/>)

ACLU, [Issue Brief: No Eviction Without Representation \(https://www.aclu.org/wp-content/uploads/publications/no_eviction_without_representation_research_brief_0.pdf\)](https://www.aclu.org/wp-content/uploads/publications/no_eviction_without_representation_research_brief_0.pdf)

Center for American Progress, [A Right to Counsel is a Right to a Fighting Chance \(https://www.americanprogress.org/article/right-counsel-right-fighting-chance/\)](https://www.americanprogress.org/article/right-counsel-right-fighting-chance/)

CityHealth, [Legal Support for Renters \(https://www.cityhealth.org/our-policy-package/legal-support-for-renters/\)](https://www.cityhealth.org/our-policy-package/legal-support-for-renters/)

National League of Cities, [Using Right to Counsel as an Eviction Diversion Strategy \(https://tr.ee/W1RTUw\)](https://tr.ee/W1RTUw) (blog) and [Expanding Access to Legal Representation: Right to Counsel & Eviction Prevention \(https://tr.ee/chM3HU\)](https://tr.ee/chM3HU) (webinar)