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California Access to Justice
Commission with the Legal
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ISSUE BRIEF

CIVIL RIGHT TO COUNSEL IN EVICTION CASES





Issue Brief: Civil Right to Counsel in Eviction Cases

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Introduction: “Civil Right to Counsel” and Access to Justice

As currently interpreted, the United States constitution does not provide a right to counsel in civil cases. “Right to counsel” is a term of art that, broadly defined, means that a person facing a legal issue is entitled to be represented by a lawyer, even if the person cannot afford to pay that lawyer.¹

A federal constitutional right to counsel exists for criminal defendants, stemming from the Sixth Amendment.² In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that this right should apply to both state and federal prosecutions of felony offenses.³ The Supreme Court has declined to hold that there is an analogous right to counsel in civil matters.⁴

Most states provide a right to counsel—either by statute or constitutional decision—for some types of civil cases, most often involving involuntary mental health treatment, parental rights, or civil incarceration.⁵ But states generally do not provide a right to counsel in many critical civil matters such as cases involving healthcare, housing, and domestic violence. Through the legal aid system, low-income and other marginalized communities receive legal assistance and representation in many civil legal areas. Yet their ability to do so is limited by legal aid funding and thousands are turned away every year.⁶

Some states, cities, and other jurisdictions have created a right to counsel for tenants facing eviction.⁷ Currently, three states and 15 cities

¹ *Right to counsel*, LEGAL INFO. INST., CORNELL LAW SCHOOL.

² US Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.”).

³ *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also *Right to counsel*, *supra* note 1.

⁴ See, e.g., John Pollock, *It's All About Justice: Gideon and the Right to Counsel in Civil Cases*, 39 ABA HUMAN RIGHTS 5 (2013).

⁵ See *Lassiter v. Dept. of Social Svcs.*, 452 U.S. 18 (1981); *Turner v. Rogers*, 564 U.S. 431 (2011). See also John Pollock, *The Case Against Case-By-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 DRAKE L. J. 763 (Spring 2013); *Interactive Map*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (2022).

⁶ LSC, *THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* (2022).

⁷ See Maria Roumiantseva, *A Nationwide Movement: The Right to Counsel for Tenants*

offer a right to counsel in eviction cases, known as “unlawful detainer” cases in California.⁸ The 2009 Sargent Shriver Civil Counsel Act—while not creating a right—dedicated significant new resources to the representation of low-income civil litigants, including tenants and landlords, via pilot projects focused on housing in six counties, mandating data collection for those projects.⁹

While there can be a right to counsel for any legal matter, this issue brief will focus solely on a right to counsel in unlawful detainer cases.

The enactment of a civil right to counsel is at the nexus of access to justice¹⁰ and affordable housing and evictions.¹¹ Low-income¹² Americans receive no or insufficient legal services for 92 percent of the legal issues they face.¹³ Yet legal issues are not rare; in

one 2022 survey, 74 percent of low-income households experienced one or more civil legal problems [per year?]; 39 percent experienced 5 or more; and 20 percent 10 or more.¹⁴ The most common types of legal issues they faced involved consumer issues, healthcare, housing, and income maintenance.¹⁵ Critically, 55 percent found that the civil legal issue they encountered substantially impacted their life, affecting their personal safety, mental health, or finances.¹⁶

California is no different: Sixty percent of low-income Californians deal with at least one civil legal issue a year.¹⁷ They receive inadequate or no legal assistance for 86 percent of their legal issues.¹⁸ Low-income and many modest-income people are often unrepresented when navigating civil legal issues.¹⁹ Nationally, 76 percent of

Facing Eviction Proceedings, 52 SETON HALL L. REV. 1351 (2022). See also Erica Braudy & Kim Hawkins, *Power and Possibility in the Era of Right to Counsel, Robust Rent Laws & COVID-19*, 28 GEORGETOWN J. ON POVERTY L. & POLICY 117 (2021) (“In the years following the Gideon decision, however, it became clear that the path to a civil right to counsel would not arrive via the Supreme Court; rather, it would be up to states and municipalities to create structures and processes for appointing counsel in civil cases.”).

⁸ ACLU & NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, NO EVICTION WITHOUT REPRESENTATION: EVICTIONS’ DISPROPORTIONATE HARMS AND THE PROMISE OF RIGHT TO COUNSEL (2022) (cities: New York City, San Francisco, Boulder, Newark, Cleveland, Philadelphia, Baltimore, Minneapolis, Toledo, Louisville, Kansas City, Denver, Seattle, New Orleans, and Detroit; states: Washington, Maryland, and Connecticut).

⁹ NPC RESEARCH, EVALUATION OF THE SARGENT SHRIVER CIVIL COUNSEL ACT (AB590) (2017) (Kern, Los Angeles, Sacramento, San Diego, Santa Barbara, and Yolo).

¹⁰ THE STATE BAR OF CALIFORNIA, THE CALIFORNIA JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF CALIFORNIANS (2019); LSC, *supra* note 5.

¹¹ See, e.g., Emily Benfer, *The American Eviction Crisis, Explained*, THE APPEAL (Mar. 3, 2021); AIMEE INGLIS & DEAN PRESTON, CALIFORNIA EVICTIONS ARE FAST & FREQUENT (2018).

¹² Those at or below 125 percent of the Federal Poverty Level (FPL).

¹³ LSC, *supra* note 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ THE STATE BAR OF CALIFORNIA, *supra* note 10.

¹⁸ *Id.*

¹⁹ See, e.g., Christine E. Cerniglia, *The Civil Self-Representation Crisis: The Need for More*

civil cases have at least one unrepresented party, most commonly the defendant.²⁰

In evictions, 93 percent of tenants are unrepresented, while 81 percent of landlords who seek evictions are represented.²¹ The Judicial Council’s *Report to the Legislature of the State of California for the Shriver Civil Counsel Act Evaluation* recited that “a recent report on eviction in Fresno County found that 73% of landlords were represented, versus only 1% of tenants.”²² Some landlords—for example, single or small-unit landlords and those who rent a spare bedroom or converted garage in their home—cannot afford an attorney. Shriver Act pilot projects offered assistance to low-income landlords, although based on the eligibility rules, landlords could not receive a lawyer’s help in cases where the tenant on the other side was unrepresented, which meant, “[a]s a

result, Shriver clients were primarily tenants facing a represented landlord.”²³

Evictions protect important interests recognized by law, as do the defenses made available by law to tenants. However, outcomes for unrepresented litigants who are opposed by a lawyer too often reflect that procedural disadvantage instead of the legal merits. The lack of access to legal help and the resulting asymmetries in representation impact litigants’ perceptions of fairness and justice, make judges’ jobs harder, and threaten the idea of equal justice in the legal system.²⁴

Representation by counsel not only increases access to the judicial system, it also increases court efficiency.²⁵ As stated in the 2009 Sargent Shriver Civil Counsel Act,²⁶

[M]any Californians are unable to meaningfully access the courts and obtain justice in a timely and effective manner. The effect is that

Data and Less Complacency, 27 GEORGETOWN J. ON POVERTY L. & POLICY 355 (2020).

²⁰ NATIONAL CENTER FOR STATE COURTS, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS (2015).

²¹ See *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (July 2022). The pro se tenant rate is 97 percent in Los Angeles County. STOUT, COST-BENEFIT ANALYSIS OF PROVIDING A RIGHT TO COUNSEL TO TENANTS IN EVICTION PROCEEDINGS (2019).

²² NPC RESEARCH, REPORT TO THE CALIFORNIA STATE LEGISLATURE FOR THE SARGENT SHRIVER CIVIL COUNSEL ACT EVALUATION 9 (June 2020), citing J. Nkosi et al., *Evicted in Fresno: Facts for housing advocates* (2019).

²³ *Id.* at II.

²⁴ AB 590, Stats. 2009, Ch. 457, Sec. 1 (“[T]he combined effect of widespread financial inability to afford representation coupled with the severe disadvantages of appearing in court without an attorney foster a destructive perception that money drives the judicial system. Respect for the law and the legal system is not encouraged if the public perceives, rightly or wrongly, that justice is mainly for the wealthy.”).

²⁵ *Id.* (“Expanding representation will not only improve access to the courts and the quality of justice obtained by these individuals, but will allow court calendars that currently include many self-represented litigants to be handled more effectively and efficiently.”).

²⁶ *Id.*

critical legal decisions are made without the court having the necessary information, or without the parties having an adequate understanding of the orders to which they are subject.

Thus, “right to counsel” (RTC) has much bigger implications than solely the benefits to the litigant.

At the same time, California and the country as a whole face a housing crisis. Macroeconomic factors—such as the fact that median rents increased more than six times faster than median wages over the last 40 years—have operated in conjunction with divestment from public and subsidized housing.²⁷ The result is that an overwhelming number of renters are “rent-burdened” (50 percent of all renters) or “severely rent-burdened” (25 percent), meaning they spend more than 30 percent or 50 percent of their income on rent, respectively.²⁸ Evictions now occur that

would not occur in a process in which both landlords and tenants are represented by counsel – increasing tenants’ homelessness and undermining tenants’ employment, mental and physical mental health, child wellbeing, and family stability.²⁹

For these reasons, the California Access to Justice Commission is strongly in favor of increasing access to justice by promoting and enacting local and statewide “right to counsel” laws in unlawful detainer proceedings. In the next section, we highlight data demonstrating the efficacy of a right to counsel.

Data Show a Right to Counsel Helps Unrepresented Litigants

Many studies demonstrate the positive results of access to counsel for litigants,³⁰ from jurisdiction to jurisdiction.³¹ Overall, studies show that

²⁷ ACLU & NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, *supra* note 9. This number is more than 23 times faster than wages for low-wage workers. See also NATIONAL LOW INCOME HOUSING COALITION, *OUT OF REACH: THE HIGH COST OF HOUSING* (2020).

²⁸ *Id.*

²⁹ *Id.*; STOUT, *THE ESTIMATED COST OF UNIVERSAL ACCESS TO EVICTION COUNSEL IN PENNSYLVANIA* (2021). See, e.g., Mary O’Sullivan et al., *Environmental improvements brought by the legal interventions in the homes of poorly controlled inner-city adult asthmatic patients: a proof-of-concept study*, 49 J. ASTHMA (2012).

³⁰ See, e.g., Michael T. Cassidy & Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City’s Universal Access Program*, NBER (Mar. 2022) (“We find that increases in legal representation lead to better outcomes for

tenants in housing court.”); BOSTON BAR ASSOC. TASK FORCE ON THE CIVIL RIGHT TO COUNSEL, *THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION* (2012) (“... assistance from lawyers is essential to helping tenants preserve their housing and avoid the potential for homelessness.”). See generally THE JUSTICE IN GOVERNMENT PROJECT, *KEY STUDIES AND DATA ABOUT HOW LEGAL AID IMPROVES HOUSING OUTCOMES*; Paula A. Franzese & Cecil J. Thomas, *Disrupting Dispossession: How the Right to Counsel in Landlord-Tenant Proceedings Is Reshaping Outcomes*, 52 SETON HALL L. REV. 1255 (2022).

³¹ See, e.g., LEGAL AID SOCIETY OF COLUMBUS: *TENANT ADVOCACY PROJECT EVALUATION* (2018) (“Only 1.1% of cases resulted in judgment against the tenant at a hearing in [Tenant Advocacy Project (‘TAP’)] cases,” “[t]enants assisted by TAP negotiated agreements to stay

represented tenants get to stay in their homes more frequently,³² pay lower monetary judgments (like reduced back-rent),³³ are less likely to be subjected to possessory judgments,³⁴ are more likely to receive a payment plan,³⁵ obtain more time to move when they want to or must do so,³⁶ are less likely to end up in a homeless shelter,³⁷ and are less likely to be forcibly evicted or have sheriff-enforced eviction warrants issued than unrepresented tenants.³⁸ “Disruptive displacement” can be avoided with the help of counsel: In Detroit, researchers found 97 percent of the time represented tenants avoided disruptive

in the property 240% more often than 2017 tenants not assisted by TAP,” and “TAP tenants successfully negotiated an agreement to move and avoid an eviction judgment 745% more often than 2017 tenants not assisted by TAP”).

³² OFFICE OF CIVIL JUSTICE, NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, UNIVERSAL ACCESS TO LEGAL SERVICES A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY (2021) (84 percent of tenants represented through RTC remained in their homes).

³³ Cassidy & Currie, *supra* note 30. See also NPC RESEARCH, *supra* note 22.

³⁴ *Id.*

³⁵ KING COUNTY BAR ASSOC. & SEATTLE WOMEN’S COMMISSION, LOSING HOME: THE HUMAN COST OF EVICTION IN SEATTLE (2018).

³⁶ STOUT, CLEVELAND’S EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION (Jan. 31, 2022).

³⁷ Luke Grundman & Muria Kruger, *Legal Representation in Evictions - Comparative Study* (2018).

³⁸ Cassidy & Currie, *supra* note 30; NPC RESEARCH, *supra* note 22.

³⁹ STOUT uses this phrase to describe situations where the “tenant has likely experienced some level of life disruption due to the eviction filing and the eviction process.” See STOUT, THE ESTIMATED ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN DETROIT (2022) (“DETROIT”).

displacement.³⁹ Similarly, in Los Angeles, this number was 95 percent; Philadelphia, 95 percent; and Baltimore, 92 percent.⁴⁰

The different consequences for unrepresented tenants and tenants with lawyers underline the importance of legal representation. With lawyers on both sides, a case has a better chance of being decided on the merits than cases where one side lacks counsel.

According to the report in 2020, there were significant benefits to providing access to a lawyer in housing cases.⁴¹

⁴⁰ Compared to unrepresented tenants: In Los Angeles, unrepresented tenants likely experience disruptive displacement in 99 percent of eviction cases; 93 percent in Baltimore; 78 percent in Philadelphia; and 53 percent in Detroit. See STOUT, COST-BENEFIT ANALYSIS OF PROVIDING A RIGHT TO COUNSEL TO TENANTS IN EVICTION PROCEEDINGS (2019) (“LOS ANGELES”); STOUT, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY (2020) (“BALTIMORE CITY”); STOUT, ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS (2018) (“PHILADELPHIA”); STOUT, DETROIT, *supra* note 37. These numbers are similar in other jurisdictions studied, such as: Delaware—represented tenants avoided experiencing disruptive displacement 80 percent of the time, compared to unrepresented tenants experiencing such displacement 81 percent of the time—and Cleveland, avoiding disruptive displacement between 92 percent and 99 percent for represented tenants. STOUT, THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN DELAWARE (2021) (“DELAWARE”); STOUT, CLEVELAND EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION: JANUARY 1 TO DECEMBER 31, 2021 (2022).

⁴¹ NPC RESEARCH, *supra* note 22 (this report includes the results of evaluation conducted between FY2015 and FY2019. Note that comparative data in the report is based on a

- **Prevention of defaults:** One major result of the Shriver projects was the prevention of defaults by tenants, which means that they were able to seek enforcement of their rights and participate in the court system: No full representation cases resulted in default during service provision, while 26 percent of litigants without counsel defaulted.⁴² Moreover,, represented litigants filed an answer 91 percent of the time, compared to 73 percent of unrepresented litigants.⁴³
- **More affirmative defenses raised:** 84 percent of tenants with representation raised a defense (such as defective notice, rent control violation, or habitability), compared to 60 percent of comparison cases.⁴⁴
- **Settlements:** Most cases where the tenant was represented were settled (67 percent versus 34 percent), which facilitated better case outcomes for both short-

and long-term housing stability.⁴⁵

In addition, while most tenants had to move at the end of their case, represented tenants most frequently moved out under a negotiated agreement, with just 3 percent of those tenants facing a forcible eviction or lockout.⁴⁶

Eighty-three percent of represented tenants moved out as part of a settlement agreement, while just 44 percent of unrepresented tenants had such an agreement.⁴⁷

Represented tenants also received more move-out time (almost 2 weeks more) than unrepresented tenants.⁴⁸

- **Increased housing stability results:** Settlement agreements supported the housing stability of tenants, including outcomes like the sealing of eviction records (91 percent), the eviction not being reported to credit agencies (81 percent), and neutral references from the landlord (71 percent).⁴⁹ In terms of financial benefits, the

random assignment study, which involved comparing those assigned to control (full representation services) and comparison (no services) groups).

⁴² *Id.* at 21. A default occurs if “a tenant does not file an answer within 5 days of the unlawful detainer complaint filing, a default judgment is entered and the tenant loses their housing without ever presenting their side of the case.” Eight percent of full representation cases did end in default overall due to the fact that the default had already been entered at intake and the lawyers was unable to get it set aside.

⁴³ *Id.*

⁴⁴ *Id.* at 48.

⁴⁵ *Id.* at 23. Just 4 percent ended in trial. Fewer trials and more settlements mean not just more fairness but also more efficient court processes: More negotiated settlements allow courts to save resources otherwise expended on trials.

⁴⁶ *Id.* at 13.

⁴⁷ *Id.* at 23–24.

⁴⁸ *Id.* at 24.

⁴⁹ *Id.* at 16 (in the random assignment study, represented tenants were more likely to receive one or more additional benefits (50 percent vs. 25 percent), such as a neutral reference from the landlord (32 percent vs. 6 percent), record sealing (20 percent vs. 12 percent), and the case not being reported to a credit agency (16 percent vs. 1 percent)).

median amount saved⁵⁰ by represented tenants was nearly \$2,000, and 66 percent created back-rent payment plans.⁵¹ Represented tenants were more likely to reach compromises on monetary claims such as back rent (38 percent of represented tenants paid the full claimed amount vs. 43 percent of unrepresented), all holdover damages (9 percent vs. 17 percent), or landlord's attorney's fees (19 percent vs. 34 percent.⁵² In addition, landlords more frequently agreed to address habitability (16 percent) and reasonable accommodations (14 percent) concerns in settlements with represented tenants.⁵³ Finally, one year after the end of litigation, 71 percent of represented tenants had obtained a new rental unit, compared to 43 percent of unrepresented tenants.⁵⁴

The positive consequences of representation on both sides benefit landlords as well as tenants. Higher proportions of settlements can save landlords expense and time, as can

consensual moveouts. Represented tenants will make better-advised decisions about whether to go to trial, trial strategy, and what arguments and defenses to pursue, and trials are more efficient when parties are represented, which also benefits landlords.

Reported data indicate positive outcomes showing the impact of providing counsel to tenants even without a codified right. For example:

- In **New York City**, 84 percent of households with representation through the city's right to counsel program stayed housed.⁵⁵
- In **San Francisco**, 59 percent of tenants receiving full-scope representation stayed in their homes (compared to just 19 percent of limited-scope tenants).⁵⁶
- Ninety-three percent of **Cleveland** tenants served by the right to counsel program were able to avoid an eviction or involuntary move.⁵⁷ Moreover, 83 percent received more time to move and 89 percent were able to mitigate damages.⁵⁸

⁵⁰ *Id.* at 17. This is based on how much landlords demanded in their complaints versus how much tenants ultimately had to pay, such as for past due rent and holdover damages.

⁵¹ *Id.* In the random assignment study, represented tenants on average saved \$2,413, which was almost \$800 more than unrepresented tenants, at \$1,645.

⁵² *Id.* at 25.

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 33.

⁵⁵ OFFICE OF CIVIL JUSTICE, *supra* note 32.

⁵⁶ *Tenant Right to Counsel Data – Outcomes March 2021 through December 2021*, EVICTION DEFENSE COLLABORATIVE.

⁵⁷ THE LEGAL AID SOCIETY OF CLEVELAND & THE UNITED WAY OF GREATER CLEVELAND, ANNUAL REPORT TO CLEVELAND CITY COUNCIL AND COURTESY REPORT TO CLEVELAND MAYOR'S OFFICE (2021).

⁵⁸ *Id.*

- Under **Boulder’s** program, 77 percent of evictions were prevented and, for the remaining evictions, the tenant did not enroll in the legal representation program or defaulted.⁵⁹

Other studies outside of the right to counsel context show promising results.⁶⁰ In a Minnesota comparative study, researchers found that tenants with full representation won or settled 96 percent of the time (compared to 62 percent for unrepresented tenants) and were almost twice as likely to remain housed.⁶¹ Represented Minnesota tenants received other important benefits: They were less likely to use a homeless shelter, less likely to be forcibly evicted, and received more time to move.⁶² Similarly, in a Massachusetts comparative study, around two-thirds of those receiving full representation

retained possession of their units, compared to one-third of tenants receiving unbundled services, and obtained much higher payments or rent waivers.⁶³

In addition, legal representation helps address the disparate racial and gender⁶⁴ impact of evictions.⁶⁵ For instance, in the Minnesota study cited above, almost 80 percent of the people represented were people of color, demonstrating the implications for race-based inequity.⁶⁶ In terms of community-specific impact, taking San Francisco as an example, 80 percent of Black tenants receiving full-scope representation remained in their homes.⁶⁷ Thus, access to counsel can help BIPOC communities remain housed.

Finally, there is a cost-effectiveness argument to be made for recognition of a right to counsel.⁶⁸ Investment in a right

⁵⁹ CITY OF BOULDER, 2021 EVICTION PREVENTION AND RENTAL ASSISTANCE SERVICES ANNUAL REPORT (2021).

⁶⁰ See, e.g., AUBREY HASVOLD & JACK REGENBOGEN, *FACING EVICTIONS ALONE* (2017) (“The assistance of an attorney significantly improved tenants’ chances of remaining in their homes. In the few instances in which a renter had legal counsel, they usually prevailed in the eviction proceeding. Without representation, the dispossession rate was 43 percent in [Denver Housing Authority] cases and 68 percent in the sample of private housing cases.”).

⁶¹ Grundman & Kruger, *supra* note 37.

⁶² *Id.*

⁶³ D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901 (2013) (the payments or rent waivers were an average net of 9.4 months of rent per case

for full representation recipients, versus 1.9 months of rent per case for unbundled).

⁶⁴ See, e.g., JANE PLACE NEIGHBORHOOD SUSTAINABILITY INITIATIVE, *UNEQUAL BURDEN, UNEQUAL RISK: HOUSEHOLDS HEADED BY BLACK WOMEN EXPERIENCE HIGHEST RATES OF EVICTION*.

⁶⁵ See, e.g., Peter Hepburn et al., *Racial and Gender Disparities among Evicted Americans*, 7 SOCIOLOGICAL SCIENCE 649 (2020); Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J. LAW & GENDER 55 (2018).

⁶⁶ Grundman & Kruger, *supra* note 37.

⁶⁷ MAYOR’S OFFICE OF HOUSING & COMMUNITY DEVELOPMENT, *ANNUAL PROGRESS REPORT 2020–2021*. Generally, 67 percent of full-scope clients stayed in their homes according to these data.

⁶⁸ See JUDICIAL COUNCIL OF CALIFORNIA, *FINAL REPORT FROM THE WORK GROUP ON HOMELESSNESS TO THE CHIEF JUSTICE* (2021). See also STOUT, *THE ESTIMATED COST OF*

to counsel can help cities and states save money by reducing the costs of systems that address eviction’s fallout, such as emergency healthcare, homeless shelters, foster care, and transitional housing.⁶⁹ Extensive research and analysis—much of it conducted by the independent national consulting firm Stout Risius Ross—has established reliable estimates of savings from right to counsel measures:

- **Los Angeles:** The city would save around \$120 million, and the county almost \$227 million, with investments in a right to counsel of about \$35 million and \$47 million, respectively.⁷⁰
- **Baltimore:** An annual investment of a little more than \$5 million in a right to counsel would net almost \$36 million in benefits or avoided costs to the city and the state.⁷¹
- **Philadelphia:** The city could save around \$45 million with an annual investment of just \$3.5 million.⁷²
- **Detroit:** By investing just under \$17 million, the city could save around \$19 million, but also

realize an additional economic value of almost \$40 million.⁷³

- **Delaware:** The state could save almost \$10 million by investing just over \$3 million in a right to counsel.⁷⁴

Whether for its positive fiscal impact, for the difference full representation makes in communities of color and for people whose preferred language is not English, for homelessness prevention, or for the sake of due process, a right to counsel just makes sense.⁷⁵

Where Has a Right to Counsel Been Enacted?

The right to counsel in eviction cases is growing. Fifteen cities and three states⁷⁶—including New York City, San Francisco, Cleveland, Louisville, Connecticut and Maryland—now offer a true right to counsel in unlawful detainer cases. Some cities and counties—such as Milwaukee County, Wisconsin and Rochester, New York—offer a representation program that does not

UNIVERSAL ACCESS TO EVICTION COUNSEL IN PENNSYLVANIA (2021); STOUT, CLEVELAND EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION (2022).

⁶⁹ See, e.g., STOUT, THE ESTIMATED COST OF AN EVICTION RIGHT TO COUNSEL OUTSIDE OF NEW YORK CITY (2022).

⁷⁰ STOUT, LOS ANGELES, *supra* note 40.

⁷¹ STOUT, BALTIMORE CITY, *supra* note 40.

⁷² STOUT, PHILADELPHIA, *supra* note 40.

⁷³ STOUT, DETROIT, *supra* note 39.

⁷⁴ STOUT, DELAWARE, *supra* note 40.

⁷⁵ ACLU & NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, *supra* note 9 (“The results of the research are clear: Rates of eviction were significantly lower for tenants who were represented in housing court compared to those who were not, and providing representation is a cost-effective measure.”).

⁷⁶ As of this brief, see *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL (NCCRC) (last modified Oct. 2022).

codify a guaranteed right.⁷⁷ Dozens of other jurisdictions are using federal funding to expand tenant representation.⁷⁸

New York City created the first right to counsel program.⁷⁹ In 2017, New York City enacted a right to counsel initiative, providing free legal services to income-eligible tenants facing eviction.⁸⁰ The program began in just a small number of zip codes but now operates citywide. It is administered through the Office of Civil Justice of the New York City Human Resources Administration.⁸¹ Income-eligible tenants receive full representation and those with incomes above 200 percent of the federal poverty level can access brief advice.⁸² In 2013, just 1 percent of tenants were represented by counsel; now, with a right to counsel, that number exceeds 71 percent.⁸³

California Right to Counsel Efforts

As noted, while not creating a right, the 2009 Sargent Shriver Civil Counsel Act

dedicated significant resources to the representation of litigants in unlawful detainer proceedings in six counties.⁸⁴ In 2018, San Francisco created California's first right to counsel program.⁸⁵ Los Angeles also has seen ongoing work to establish a right to counsel.⁸⁶ The County of Los Angeles, City of Los Angeles, and local community and legal service providers created Stay Housed L.A. to coordinate efforts supported by increased funding for homelessness prevention including representation in unlawful detainer proceedings.⁸⁷ Advocacy continues in the fight to create and fund a right to counsel for unlawful detainer proceedings in Los Angeles.⁸⁸

There also have been important efforts aimed at creating a statewide right to counsel in California. First, in 2021, the Work Group on Homelessness—established by California Supreme Court Chief Justice Tani G. Cantil-Sakauye—recommended the creation of a program for statewide, full-scope legal representation in residential unlawful

⁷⁷ *Id.* See also *Status Map*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL; Roumiantseva, *supra* note 7.

⁷⁸ *Legal Services Use Fed. Funds for Tenant Rep / Right to Counsel*, NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL.

⁷⁹ OFFICE OF CIVIL JUSTICE, *supra* note 32. See also Elizabeth Weill-Greenberg, *Most Tenants Facing Eviction Don't Have a Right to An Attorney. Lawmakers Want to Change That*, THE APPEAL (Feb. 18, 2021) ("Numerous city councils and state legislatures are debating giving renters a right to counsel, which can make the difference between stability and catastrophe.").

⁸⁰ *Id.* See also NYU FURMAN CENTER, IMPLEMENTING NEW YORK CITY'S UNIVERSAL

ACCESS TO COUNSEL PROGRAM: LESSONS FOR OTHER JURISDICTIONS (2018).

⁸¹ *Id.*

⁸² *Id.* See also *Free Lawyers for Tenants (Universal Access to Legal Services)*, NYCOURTS.GOV; *Poverty Guidelines 2023*, NEW YORK STATE DEPT. OF LABOR.

⁸³ *Id.*

⁸⁴ NPC RESEARCH, *supra* note 22.

⁸⁵ Roumiantseva, *supra* note 7.

⁸⁶ *Id.*

⁸⁷ ABOUT STAY HOUSED L.A.

⁸⁸ NCCRC, *All About the Eviction Right to Counsel Efforts in Los Angeles* (last updated Feb. 14, 2023).

detainer proceedings for all litigants who are unable to afford counsel.⁸⁹ The Work Group noted that eviction leads to homelessness but full-scope representation by counsel strengthens housing stability.

During the 2021–22 legislative cycle, an expansion of statewide tenant representation was proposed in AB 1487.⁹⁰ The legislation identified homelessness prevention as one of the main benefits of such programs.⁹¹ The bill passed in both houses and was supported by more than 80 organizations. It would have established a Homelessness Prevention Fund to be administered by the State Bar of California’s Legal Services Trust Fund Commission.⁹² The Governor vetoed the bill because it lacked a specific budget appropriation.⁹³ Efforts to establish and fund a right to counsel in California continue.

Providing Lawyers for Low-Income Landlords in a System of Equal Access to Justice

Much of the existing data and debate regarding the need for a right to counsel in unlawful detainer proceedings relates to unrepresented tenants and the imbalance when they face represented

landlords seeking to evict them, along with the gravity of the interests at stake, which can include potential homelessness. The Access Commission also recognizes reasons why an even-handed right to counsel program will provide counsel to low-income landlords in unlawful detainer proceedings.

For example, the Work Group on Homelessness recommended that right to counsel programs can serve low-income landlords as well as tenants, finding:

Landlords are represented by counsel in approximately 85 to 90 percent of unlawful detainer cases. Single- or small-unit landlords, however, are sometimes unrepresented, and they, like tenants, may find the unlawful detainer process hard to understand and navigate. The difficulties in complying with procedural rules, which may result in courts rejecting complaints for filing, may be compounded by the requirements imposed in response to the COVID-19 pandemic. In addition, a landlord without counsel may be less inclined to resolve a case before judgment.⁹⁴

There also may be situations where landlords face the risk of homelessness

⁸⁹ JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 68 at 7 (full-scope legal representation in residential unlawful detainer proceedings for all litigants who are unable to afford counsel).

⁹⁰ AB 1487, Legal Services Trust Fund Commission: Homelessness Prevention Fund: grants: eviction or displacement (2021–2022).

⁹¹ See, e.g., *Bill Sponsors For Homelessness Prevention Fund Disappointed With Governor Newsom’s Veto, Resolved To Pass Through Budget Process*, WESTERN CENTER ON LAW & POVERTY (Oct. 12, 2021).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 6.

or other hardships if they are unable to evict non-paying tenants, and situations where a tenant might be represented but the landlord cannot afford counsel and would qualify for legal services assistance if it were available.

Accordingly, the Access Commission supports creating and funding a right to counsel that includes litigants on either side of unlawful detainer proceedings, judged by the same economic criteria, with the goal to increase fairness and just results, minimize homelessness, and support fair and even-handed access to the courts without the imbalance of having one party represented and the other, low-income party navigating the unlawful detainer court system without assistance.

Conclusion: CalATJ Supports the Statewide and Local Enactment of a Civil Right to Counsel in California

Based on our discussion of the benefits, we firmly endorse a right to counsel in unlawful detainer proceedings in California for all litigants who are low-income and unable to afford to hire a lawyer.

Specifically, we support Recommendation 1.1 from the report of the Work Group on Homelessness to

the Chief Justice of the California Supreme Court:

Encourage and support legislative efforts to create and fund a statewide program that provides full-scope legal representation in residential unlawful detainer proceedings for all litigants who are unable to afford counsel.⁹⁵

As detailed throughout this report, right to counsel works: It keeps people housed, preventing homelessness, preserving affordable housing, reducing racial housing inequity, and increasing housing stability. Consequently, federally, statewide, and locally, we are strongly in favor of access to free counsel under right to counsel programs for all low-income litigants in California.

⁹⁵ JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 68.