

A Right to Counsel for Tenants in Iowa: How to Solve a Growing Access to Justice Problem Exacerbated by the COVID-19 Pandemic

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I. INTRODUCTION

“[E]viction [is] the civil equivalent of capital punishment. The person or family that is evicted suffers civic death in society. They lose not only their housing but also their independence and dignity, often becoming isolated and hopeless.”¹

In 2016, there were a total of 7,358 evictions in Iowa.² Eviction is a traumatic event which has long-lasting consequences for the individual(s) involved.³ Despite the harm caused by eviction, people facing eviction are not entitled to a lawyer.⁴ Across the United States, eviction disproportionately affects low-income tenants.⁵ Tenants facing eviction are one of the most vulnerable, yet overlooked, groups of people in the United States.⁶ The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.”⁷ However, the Sixth Amendment affords no such guarantee to individuals facing civil suits, including evictions.⁸

¹ Brian Gilmore, Opinion, *Give Tenants Lawyers: Eviction is a Nationwide Epidemic, and People Faced with Losing Everything Need Representation*, N.Y. TIMES (Oct. 9, 2018), <https://www.nytimes.com/2018/10/09/opinion/evictions-homelessness-legal-aid.html> [<https://perma.cc/7M7U-8YF9>].

² Ellen Dewitt, *Eviction Rates in Every State*, STACKER (June 17, 2020), <https://stacker.com/stories/4233/eviction-rates-every-state> [<https://perma.cc/Q3CY-S75R>].

³ Heidi Schultheis & Caitlin Rooney, *A Right to Counsel Is a Right to a Fighting Chance: The Importance of Legal Representation in Eviction Proceedings*, CTR. FOR AM. PROGRESS 1–13 (Oct. 2, 2019, 12:00 PM), <https://cdn.americanprogress.org/content/uploads/2019/10/01114529/Right-To-Counsel.pdf> [<https://perma.cc/QB75-MQFB>].

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ U.S. CONST. amend. VI.

⁸ *See id.*

Most evictions in the United States occur because tenants are unable to afford their rent.⁹ For years, the United States has faced facing an affordable housing crisis.¹⁰ Then, in early 2020, COVID-19 reached the United States.¹¹ This public health crisis mixed with an economic implosion exacerbated the affordable housing crisis already plaguing the United States and left millions of Americans in danger of eviction.¹² The federal government and state governments passed piecemeal legislation and regulations to temporarily halt evictions,¹³ seeking to prevent the expulsion of millions of renters onto the street during a pandemic.¹⁴ Many of the state-level eviction moratoriums have ended¹⁵, and the CDC's eviction moratorium ended in August 2021.¹⁶

II. BACKGROUND

This Note will examine the role of evictions in today's society, the plight of indigent tenants forced to face evictions with no legal counsel, the rise of right to counsel programs, and whether and how Iowa should implement a right to counsel program in order to protect tenants in the wake of COVID-19's impact the impact of COVID-19's impact on tenants. The background section will discuss the harms and repercussions caused by eviction, examine the impact of the COVID-19 global pandemic on low-income tenants, explore why there is currently no right to counsel for defendants in civil proceedings, assess existing right to counsel programs in cities across the country, and finally survey the process and impact of eviction proceedings in Iowa. The analysis section will then discuss what the implementation of a right to counsel program could look like in Iowa, drawing on the examples

⁹ *Why Eviction Matters*, EVICTION LAB, <https://evictionlab.org/why-eviction-matters/#affordable-housing-crisis> [<https://perma.cc/D2PJ-27RR>].

¹⁰ *Id.*

¹¹ AJMC Staff, *A Timeline of COVID-19 Developments in 2020*, AM. J. MANAGED CARE (Jan. 1, 2021), <https://www.ajmc.com/view/a-timeline-of-covid19-developments-in-2020> [<https://perma.cc/958S-R5RQ>].

¹² *30-40 Million People in America Could Be Evicted from Their Homes by the End of 2020*, NAT'L LOW INCOME HOUS. COAL. (Aug. 7, 2020), <https://nlihc.org/news/30-40-million-people-america-could-be-evicted-their-homes-end-2020> [<https://perma.cc/B8CE-MJVU>] [hereinafter *30-40 Million People Could Be Evicted*].

¹³ Ann O'Connell, *Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus*, NOLO, <https://www.nolo.com/evictions-ban> [<https://perma.cc/RMV5-FQAS>].

¹⁴ Rejane Frederick & Jaboa Lake, *Kicking Folks Out While They're Down: How the Premature Lifting of Coronavirus Restrictions Is Increasing Evictions and Worsening the Homelessness Crisis*, CTR. FOR AM. PROGRESS (July 27, 2020), <https://www.americanprogress.org/issues/poverty/reports/2020/07/27/488110/kicking-folks-theyre> [<https://perma.cc/M64N-V933>].

¹⁵ Anne O'Connell, *Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus*, NOLO (Nov. 30, 2021), <https://www.nolo.com/evictions-ban> [<https://perma.cc/RMV5-FQAS>].

¹⁶ See *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021).

of other right to counsel programs currently in existence and argue that Iowa should implement a right to counsel program to expand tenants' access to justice.

A. *The Costs and Effects of Eviction*

Evictions are often a confluence of events. The National Low Income Housing Coalition ("NLIHC") estimates that 47% of renters spend more than 30% of their income on rent.¹⁷ An estimated 25% of all renters—10.7 million households—spend more than half of their income on rent.¹⁸ Households which spend more than 30% of their total income on rent are considered "rent burdened."¹⁹ Rent burdened households usually face other serious economic pressures and lack financial security.²⁰ Nearly two-thirds of rent burdened households reported having only \$400 in savings.²¹ Lacking affordable housing, rent burdened tenants face a higher risk of eviction.²²

In 2016, 47%²³ of the country's 43 million renter households²⁴ spent more than 30% of their income on rent²⁵, while 11 million of those households spent more than half of their income on rent.²⁶ As the number of evictions in the United States continues to rise, tenants across the country grow increasingly worried about the shortage of affordable homes.²⁷ Rising rental costs and stagnant wages have renters across the country concerned about their ability to pay rent.²⁸ In 2016, landlords in the United States filed

¹⁷ JUST. IN GOV'T PROJECT, KEY STUDIES AND DATA ABOUT HOW LEGAL AID IMPROVES HOUSING OUTCOMES 2 (2021), <https://www.american.edu/spa/jpo/toolkit/upload/housing-7-30-19.pdf> [<https://perma.cc/V3WM-22MZ>].

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See id.*

²¹ *Id.*

²² *Id.*

²³ JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., AMERICA'S RENTAL HOUSING 2017, at 4 (2017), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017_0.pdf [<https://perma.cc/S25Q-R6BE>].

²⁴ *Id.* at 5.

²⁵ *Id.* at 4.

²⁶ *Id.* at 6.

²⁷ *See generally* OPPORTUNITY STARTS AT HOME, THE NEED FOR ACTION ON HOUSING AFFORDABILITY 41 (2019), <https://www.opportunityhome.org/wp-content/uploads/2019/03/Full-Report-PPT-NoEM.pdf> [<https://perma.cc/2FT6-6PXD>] (describing the financial struggle for housing affordability).

²⁸ *See id.*

an estimated 2.3 million evictions, averaging four evictions per minute.²⁹ After a landlord evicts a tenant for nonpayment of rent, a landlord can still sue the tenant for damage the tenant allegedly caused to the rental unit.³⁰ After hearing the issue, the judge can issue a judgement against the tenant, which will appear in the “public records” section of the tenant’s credit report.³¹ Having an eviction filed on record, even if the eviction was dismissed, can make it more difficult to rent in the future.³² Mothers who experience eviction report higher rates of depression, stress associated with parenting, and marital stress.³³ “An eviction has the potential to disrupt job opportunities and something as simple as a good night’s sleep for a child on a school night . . .”³⁴ Domestic violence victims and families with children face a particularly high risk of eviction.³⁵ In addition, low-income women face a high risk of eviction, particularly low-income women of color,³⁶ and evictions disproportionately affect Black women in particular, who are disproportionately likely to live in poverty.³⁷ Despite only accounting for 12.9% of the population,³⁸ 22.5% of Black women live in poverty.³⁹ In 2019, 4.15 million Black families in the United States were headed by a single

²⁹ Terry Gross, *First-Ever Evictions Database Shows: ‘We’re In the Middle Of A Housing Crisis’*, NPR (Apr. 12, 2018, 1:07 PM), <https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-the-middle-of-a-housing-crisis> [https://perma.cc/8XPH-4CCH].

³⁰ See, e.g., IOWA CODE 562A.17 (2021).

³¹ Spenser Smith, *How an Eviction Affects Your Credit*, PREVENT LOAN SCAMS (Mar. 29, 2021), <https://www.preventloanscams.org/how-evictions-affect-credit/> [https://perma.cc/A99B-J8HP].

³² Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 118–19 (2012).

³³ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, SOC. FORCES OXFORD U. PRESS 1, 6–7 (2015), https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.evictions.fallout.sf2015_2.pdf [https://perma.cc/6S5Y-FSAS].

³⁴ Jared Brey, *Tenants’ Right to Counsel on the Move, Next Stop Newark*, NEXT CITY (Jan. 10, 2019), <https://nextcity.org/daily/entry/tenants-right-to-counsel-on-the-move-next-stop-newark> [https://perma.cc/K68C-4HBM].

³⁵ *Why Eviction Matters*, *supra* note 9.

³⁶ *Id.*

³⁷ Robin Bleiweis et al., *The Basic Facts About Women in Poverty*, CTR. FOR AM. PROGRESS (Aug. 3, 2020), <https://www.americanprogress.org/issues/women/reports/2020/08/03/488536/basic-facts-women-poverty/> [https://perma.cc/27KF-Q55M].

³⁸ *Women of Color in the United States (Quick Take)*, CATALYST (Feb. 1, 2021), <https://www.catalyst.org/research/women-of-color-in-the-united-states/> [https://perma.cc/ZCB3-F9LZ].

³⁹ Bleiweis et al., *supra* note 37.

mother,⁴⁰ and one in three Black men were part of the criminal legal system.⁴¹ Although Black people represent 13.2% of the total United States population, they account for 23.8% of the population living in poverty.⁴²

The United States faces an affordable housing crisis.⁴³ As of 2019 there was a nationwide shortage of seventy-seven million affordable rental homes available for the lowest-income renters.⁴⁴ The shortage of affordable rental homes disproportionately affects households of color, who are more likely than white households to be extremely low-income renters.⁴⁵ People of color often face eviction at higher rates than their white counterparts.⁴⁶ In his groundbreaking book *Evicted*, sociologist Matthew Desmond highlights the disparities between poor Black women and poor white women in Milwaukee, one of the most racially segregated cities in the United States,⁴⁷ writing:

In Milwaukee's poorest [B]lack neighborhoods, eviction had become commonplace—especially for women. In those neighborhoods, 1 female renter in 17 was through the court system each year, which was twice as often as men from those neighborhoods and nine times as often as women from the city's poorest white areas. Women from [B]lack neighborhoods made up 9 percent of Milwaukee's population and 30 percent of its evicted tenants. If incarceration had come to define the lives of men from impoverished [B]lack neighborhoods, eviction was shaping

⁴⁰ Statista Research Department, *Number of Black Families with a Single Mother in the United States from 1990 to 2019*, STATISTA (Jan. 20, 2021), <https://www.statista.com/statistics/205106/number-of-black-families-with-a-female-householder-in-the-us/> [https://perma.cc/E9UN-5QT3].

⁴¹ See MICHELLE ALEXANDER, *THE NEW JIM CROW* 123 (10th Anniversary ed. 2020).

⁴² John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [https://perma.cc/894P-89BX].

⁴³ See generally OPPORTUNITY STARTS AT HOME, *supra* note 27 (detailing the growing concern about housing affordability and lack of policymaker action on the issue, finding that there is a shortage of affordable housing).

⁴⁴ ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AFFORDABLE HOMES* 3 (2019), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf [https://perma.cc/8APG-E8SX].

⁴⁵ *Id.* at 10.

⁴⁶ Peter Hepburn et al., *Racial and Gender Disparities among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction/> [https://perma.cc/4LYG-W38S].

⁴⁷ Leah Foltman & Malia Jones, *The Legacy of Milwaukee's Redlining Continues to Shape Racial Segregation*, MILWAUKEE INDEP. (Mar. 5, 2019), <http://www.milwaukeeindependent.com/syndicated/legacy-milwaukees-redlining-continues-shape-racial-segregation/> [https://perma.cc/RWU4-MFPY].

the lives of women. Poor [B]lack men were locked up. Poor [B]lack women were locked out.⁴⁸

Further, “[l]ow-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.”⁴⁹

Low-income tenants are trapped in a cycle of poverty not merely exacerbated by eviction, but caused by the resulting instability.⁵⁰ Because of this cyclical nature of poverty, indigent tenants who have been evicted once are likely to be evicted again.⁵¹ Tenants facing eviction are often indigent individuals with inadequate means to hire a private attorney.⁵² To make matters worse, the overwhelming majority of landlords have private attorneys representing them during eviction proceedings.⁵³ Many tenants are unfamiliar with their legal rights and the available legal defenses.⁵⁴ Yet, the adversarial nature of the American legal system relies on lawyers to advocate on behalf of their clients.⁵⁵ To make matters worse, many judges look down on *pro se* litigants and frequently interrupt or silence them,⁵⁶ viewing them as uneducated, uncouth, and unworthy of the court’s time and resources.⁵⁷ Most eviction proceedings take as little as twenty seconds.⁵⁸

Evictions due to nonpayment of rent are exacerbated by the national affordable housing shortage.⁵⁹ The need for affordable housing “disrupts the

⁴⁸ MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 98 (2016).

⁴⁹ Schultheis & Rooney, *supra* note 3, at 3.

⁵⁰ Gillian B. White, *America’s Insidious Eviction Problem*, *THE ATLANTIC* (Mar. 1, 2016), <https://www.theatlantic.com/business/archive/2016/03/eviction-matthew-desmond-housing/471375> [<https://perma.cc/FG3F-VJR4>].

⁵¹ *Id.*

⁵² J. Brian Charles, *Right to an Attorney? Most Tenants Face Landlords Without One.*, *GOVERNING* (May 20, 2019), <https://www.governing.com/archive/gov-right-to-attorney-legal-defense.html> [<https://perma.cc/2GSP-MBKY>].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Fern A. Fisher, Opinion, *A Simpler and Less Adversarial System Would Be More Just*, *THE REGUL. REV.* (Nov. 28, 2018), <https://www.theregreview.org/2018/11/28/fisher-simpler-adversarial-system-just/> [<https://perma.cc/QK4R-JYZV>].

⁵⁶ Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 *STAN. J.C.R. & C.L.* 63, 76 (2020).

⁵⁷ Debra Cassens Weiss, *Posner: Most Judges Regard Pro Se Litigants as Kind of Trash Not Worth the Time*, *ABA J.* (Sept. 11, 2017, 11:57 AM), https://www.abajournal.com/news/article/posner-most-judges-regard-pro-se-litigants-as-kind-of-trash-not-worth-the_t [<https://perma.cc/7CSL-QPEQ>].

⁵⁸ Petersen, *supra* note 56.

⁵⁹ See *The Problem*, *NAT’L. LOW INCOME HOUS. COAL.* <https://nlihc.org/explore-issues/why-we-care/problem> [<https://perma.cc/ZJ7Z-MZD2>].

life chances of [society's] most vulnerable citizens.”⁶⁰ Further, “[h]ousing stability anchors a household’s ability to plan for productive lives.”⁶¹ Evictions can emanate from “unlawful rent increases, disputes over the conditions of the dwelling, non-payment [of rent] because of a reduction of work hours, tenant harassment, building sales and foreclosures, and people being ejected from unlawful sublets.”⁶²

Moving homes presents many challenges to low-income tenants: moving is expensive, it means leaving behind a network of social support, and moving to areas with low costs of rents often indicates a lack of job opportunities in the area.⁶³ Tenants seek to avoid eviction not only because of the instability and physical, mental, and emotional harm it causes, but because having an eviction on their housing record can make it harder to be accepted into low-income or subsidized housing.⁶⁴ If a tenant moves out before a landlord files an eviction proceeding in court, the tenant will not have an eviction on their record and has a better chance of securing other affordable housing in the future.⁶⁵ With an affordable housing shortage across the country,⁶⁶ it is essential that low-income tenants avoid getting an eviction on their housing record.

B. *How the COVID-19 Global Pandemic has Fueled an Eviction Crisis Among Low-Income Tenants*

The COVID-19 pandemic has crippled the United States economy and led to high rates of unemployment.⁶⁷ The economy began to shut down in mid-March 2020, and by the end of April 2020, the United States economy

⁶⁰ *Newark Residents Facing Eviction Can Get Help Through Right-to-Counsel Ordinance First Suggested by Rutgers Law Center*, RUTGERS L. SCH. (June 27, 2019), <https://law.rutgers.edu/news/newark-residents-facing- eviction-can-get-help-through-right-counsel-ordinance-first-suggested> [<https://perma.cc/VM7A-HEQC>] [hereinafter *Newark Residents Can Get Help*].

⁶¹ *Id.*

⁶² *Id.*

⁶³ Emily Badger, *Why Don't People Who Can't Afford Housing Just Move Where It's Cheaper?*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/upshot/why-dont-people-who-cant-afford-housing-just-move-where-its-cheaper.html> [<https://perma.cc/CG2Y-YZ2Z>].

⁶⁴ *For Tenants: Low-income Housing Rights*, SOLID GROUND, <https://www.solid-ground.org/get-help/housing/for-tenants/low-income-housing-rights/#accordion-5-t10> [<https://perma.cc/SP9X-9BFU>].

⁶⁵ *See id.*

⁶⁶ *The Problem*, *supra* note 59.

⁶⁷ *See* CTR. ON BUDGET AND POL'Y PRIORITIES, TRACKING THE COVID-19 RECESSION'S EFFECTS ON FOOD, HOUSING, AND EMPLOYMENT HARDSHIPS 1 (2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> [<https://perma.cc/DQY2-342U>].

had lost 20.6 million jobs.⁶⁸ The unemployment rate skyrocketed to 14.7%—the highest level of unemployment the United States had seen since the Great Depression during the 1930s.⁶⁹ 20.6 million jobs were lost from mid-March through the end of April 2020.⁷⁰ Despite slow signs of economic recovery⁷¹, many of the new jobs being added are temporary positions, for a number of reasons.⁷² First, as the country emerges from any recession, cautious employers are more likely to hire contingent workers and increase hours for current employees than they are to hire new full-time employees.⁷³ Second, the uncertainty of what life will look like after the pandemic has caused some businesses to halt hiring permanent workers.⁷⁴ Third, the shift to e-commerce during the pandemic created more temporary positions.⁷⁵ Fourth, contact tracers and temperature takers hired during the pandemic are usually temporary employees.⁷⁶

Not all jobs have been affected equally by the economic downturn.⁷⁷ Economist Michelle Holder noted that “the two biggest sources of job losses among Black women have been cashiers at stores and restaurants, including fast-food, and in child care . . . she fears that many of those jobs likely won’t return even as the pandemic fades as some shifts in the economy become permanent.”⁷⁸ The pandemic has reshaped many aspects of people’s daily life, which has shifted the availability of certain jobs and is likely to cause significant changes to service industries once the pandemic subsides.⁷⁹

⁶⁸ Stephanie Soucheray, *US Job Losses Due to COVID-19 Highest Since Great Depression*, CTR. FOR INFECTIOUS DISEASE RSCH. & POL’Y (May 8, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/05/us-job-losses-due-covid-19-highest-great-depression> [<https://perma.cc/GW7U-4KZK>].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Paul Davidson, *More Temps, More Hours: Signs of an Improving Economy Emerge Despite Pullback in Hiring*, USA TODAY (Feb. 11, 2021), <https://www.usatoday.com/story/money/2021/02/11/job-market-coronavirus-hiring-near-me-temporary-jobs-economy/4464132001/> [<https://perma.cc/DQ4Z-GK8P>].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Christopher Rugaber & Alexandra Olson, *Once Again, Job Losses Fall Unequally Across the US Economy*, AP NEWS (Jan. 9, 2021), <https://apnews.com/article/us-news-consumer-spending-coronavirus-pandemic-layoffs-economy-3c333ee7a095c3e0985496fba47bbc12> [<https://perma.cc/282G-LXMV>].

⁷⁸ *Id.*

⁷⁹ *Id.*

To address the unprecedented economic crisis caused by the spread of COVID-19, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) on March 25, 2020.⁸⁰ On December 21, 2020, Congress passed a second stimulus bill (“CARES Act II”) which extended unemployment benefits. On March 11, 2021, President Joe Biden signed a 1.9 trillion-dollar COVID-19 relief bill which further extended unemployment benefits and provided a second one-time stimulus payment to eligible individuals.⁸¹

In December 2019, a bipartisan group of four senators introduced a new bill aimed at supporting right to counsel programs nationwide.⁸² Their bill, the Eviction Crisis Act, calls for the creation of a Federal Advisory Committee on Eviction Research and the creation of a national database to track evictions.⁸³ This information would help local authorities better evaluate the toll evictions take on their communities, allowing them to create legislation better targeted to reducing evictions.⁸⁴ Princeton University’s Eviction Lab currently provides the most comprehensive eviction data available in the country.⁸⁵ To address the eviction problem, we need to start by understanding the problem, which requires having data to analyze.⁸⁶ Another key component of the Eviction Crisis Act calls for increased funding for the Legal Services Corporation (“LSC”).⁸⁷ The LSC is a federally funded nonprofit established by Congress in 1974.⁸⁸ LSC currently provides funding to 132 non-profit legal aid programs in all fifty states and the District of Columbia, providing critical civil legal aid to low-income Americans who are underserved and often entirely excluded from our legal system.⁸⁹

⁸⁰ Susan Davis et al., *Senate Passes \$2 Trillion Coronavirus Relief Package*, NPR IOWA PUB. RADIO (Mar. 25, 2020, 8:21 AM), <https://www.npr.org/2020/03/25/818881845/senate-reaches-historic-deal-on-2t-coronavirus-economic-rescue-package> [<https://perma.cc/C3UW-3ZMP>]; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (codified as 42 U.S.C. § 801 (2020)).

⁸¹ Jacob Pramuk, *Biden signs \$1.9 Trillion Covid Relief Bill, Clearing Way for Stimulus Checks, Vaccine Aid*, CNBC (Mar. 11, 2021, 3:03 PM), <https://www.cnbc.com/2021/03/11/biden-1point9-trillion-covid-relief-package-thursday-afternoon.html> [<https://perma.cc/TQ37-TMQS>].

⁸² See Eviction Crisis Act of 2021, S.2182, 117th Cong. § 2(10); Samuel Adams, *Eviction Crisis Act: What It Is and Why It Matters*, OPPORTUNITY STARTS AT HOME, <https://www.opportunityhome.org/resources/eviction-crisis-act-what-it-is-and-why-it-matters/> [<https://perma.cc/L6XR-2MCF>].

⁸³ S.2182, § 7; see also Adams, *supra* note 82.

⁸⁴ *Id.*

⁸⁵ *Why Eviction Matters*, *supra* note 9.

⁸⁶ See *id.*

⁸⁷ JUST. IN GOV’T PROJECT, *supra* note 17; Adams, *supra* note 82.

⁸⁸ *How Legal Aid Works*, LEGAL SERVS. CORP. (Feb. 12, 2021), <https://www.lsc.gov/how-legal-aid-works> [<https://perma.cc/Y93T-JZQA>].

⁸⁹ *Id.*

C. Examining Why There is No Right to Counsel for Defendants in Civil Cases

The right to counsel as a defendant in a criminal trial is one of the hallmarks of the United States legal system.⁹⁰ This fundamental right stems from the Sixth Amendment and ensures that defendants have access to a fair trial.⁹¹ However, it was not until 1932 that the United States Supreme Court recognized that the constitutional right to counsel applied to certain indigent criminal defendants in capital punishment cases in federal court.⁹² From there, the right to counsel in criminal defense cases evolved to cover indigent defendants in felonies and misdemeanors in state as well as federal court.⁹³

1. Powell v. Alabama Births the Narrow First Iteration of a Right to Counsel for Defendants Unable to Obtain Counsel in Capital Punishment Cases

Recognition of a defendant's constitutional right to counsel in a criminal proceeding first appears in *Powell v. Alabama*.⁹⁴ In *Powell*, seven young Black men riding a freight train on March 25, 1931 in Alabama were accused of raping two young white women on the train.⁹⁵ The train was intercepted, and a large, hostile crowd met the young Black men as they arrived in town and were arrested.⁹⁶ The militia was called in to assist transporting the defendants to jail.⁹⁷ The defendants were indicted and arraigned in court on March 31, 1931, where they each immediately pleaded not guilty.⁹⁸ The court record reflects that counsel was appointed to the defendants, but no counsel had in fact been employed.⁹⁹ The defendants were separated and three respective trials were held, with each trial lasting only a single day.¹⁰⁰ Under Alabama law, the punishment for rape was determined by the jury and could range

⁹⁰ See *Protection of Constitutional Rights Under the Sixth Amendment*, BUREAU OF JUST. ASSISTANCE (Dec. 11, 2019), <https://bja.ojp.gov/program/sixthamendment/sixth-amendment> [<https://perma.cc/2R4V-9AX5>] [hereinafter *Protection of Sixth Amendment Rights*].

⁹¹ See *Powell v. Alabama*, 287 U.S. 45, 52 (1932); *Protection of Sixth Amendment Rights*, *supra* note 90.

⁹² See *Powell*, 287 U.S. at 73.

⁹³ See *id.*; see *Johnson v. Zerbst*, 304 U.S. 458, 469 (1938); see *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963).

⁹⁴ See *Powell*, 287 U.S. at 73.

⁹⁵ *Id.* at 50–51.

⁹⁶ *Id.* at 51.

⁹⁷ *Id.*

⁹⁸ *Id.* at 49.

⁹⁹ *Id.*

¹⁰⁰ *Powell*, 287 U.S. at 49–50.

from ten years in prison to the death penalty.¹⁰¹ All three juries found the respective defendants guilty and sentenced them to death.¹⁰²

Upon review, the United States Supreme Court held that “[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”¹⁰³ The Court recognized “[t]he right to have counsel appointed, when necessary, is a logical corollary from the constitutional right to be heard by counsel.”¹⁰⁴ Even intelligent and educated individuals are not well-versed in the law.¹⁰⁵ They would struggle to compete with an attorney trained in the study of the law.¹⁰⁶ The practice violates the defendant’s right to Due Process under the Constitution,¹⁰⁷ which the Supreme Court later incorporated against the states.¹⁰⁸

An individual like the defendants in *Powell*—uneducated, illiterate, young, separated from their families, and facing public hostility and the death penalty—would find it almost impossible to adequately represent himself in court against a trained attorney.¹⁰⁹ Despite its powerful language, the Supreme Court’s opinion in *Powell* produced a narrow holding.¹¹⁰ The Court held that the failure to appoint counsel violated the defendants’ right to Due Process under the Fourteenth Amendment due to: the defendants’ lack of education, illiteracy, and their youth; the public hostility they faced; the fact that they were away from their home state; and the fact they faced capital punishment.¹¹¹ These factors prevented the defendants from furnishing themselves with counsel and exacerbated their need for made them more in need of counsel to adequately receive a fair trial.¹¹² As the Supreme Court noted in *Powell*:

All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or

¹⁰¹ *Id.* at 50.

¹⁰² *Id.*

¹⁰³ *Id.* at 68–69.

¹⁰⁴ *Id.* at 72.

¹⁰⁵ *Id.* at 69.

¹⁰⁶ *Powell*, 287 U.S. at 69.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 67–68; *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963).

¹⁰⁹ *Powell*, 287 U.S. at 52–54.

¹¹⁰ *Id.* at 71.

¹¹¹ *Id.*

¹¹² *Id.*

not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, “that there are certain immutable principles of justice which inherent in the very idea of free government which no member of the Union may disregard.”¹¹³

Although the Supreme Court held that the circumstances surrounding the defendants’ trials in *Powell* warranted a right to counsel for the defendants, the Court was careful to explain that the right to counsel for a criminal defendant was only mandatory in cases where the defendant was unable to obtain counsel and unable to mount their own defense due to personal limitations.¹¹⁴ The Court’s holding in *Powell* was an important first step in attaining the right to counsel for all defendants regardless of their ability to afford hiring independent counsel, but it did not provide a blanket right to counsel for criminal defendants.¹¹⁵

2. *Johnson v. Zerbst* Expands the Right to Counsel for Defendants in Federal Criminal Proceedings under the Sixth Amendment

In 1938, just a few years after *Powell*, the Supreme Court in *Johnson v. Zerbst* held that the Sixth Amendment requires the Court appoint counsel for indigent defendants in all federal criminal proceedings.¹¹⁶ The Court recognized that the right to have access to counsel in criminal proceedings “is one of the safeguards . . . deemed necessary to insure fundamental human rights of life and liberty.”¹¹⁷ In *Johnson*, the defendant was held in jail for two months before he was indicted for “feloniously uttering and passing forth” counterfeit bills.¹¹⁸ The defendant was unable to afford counsel at trial and was “arraigned, tried, convicted, and sentenced” on the same day.¹¹⁹ The Court held that the defendant’s right to counsel must be properly waived or else his Substantive Due Process rights had been violated, as was the case here since no counsel was provided to the defendant.¹²⁰ The Court held that

¹¹³ *Id.* at 71–72 (citing *Holden v. Hardy*, 169 U.S. 366, 383 (1898)).

¹¹⁴ *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 462.

¹¹⁸ *Id.* at 460.

¹¹⁹ *Id.*

¹²⁰ *Johnson*, 304 U.S. at 458, 467–68.

to “properly waive” a right one must “competently” and “intelligently” waive their right.¹²¹

3. *Betts v. Brady* Creates Confusion by Declining to Extend the Right to Counsel to Criminal Defendants in State Court

Four years later, in 1942, in *Betts v. Brady*, the Court held that the Sixth Amendment right to counsel did not extend to indigent criminal defendants charged with a felony in state court.¹²² For the next twenty-one years, the Sixth Amendment only provided criminal defendants charged with a felony in federal court with the right to counsel.¹²³ In *Betts*, the defendant was charged with a misdemeanor and asked for the court to provide him with counsel since he could not afford counsel.¹²⁴ The Court denied his request, holding that because he was not charged with a felony, the right to have counsel appointed did not apply.¹²⁵ Then in 1963, the Supreme Court issued the landmark decision in *Gideon v. Wainwright*.¹²⁶ In *Gideon*, the Court overruled *Betts* and expanded the right to counsel for a criminal defendant, holding that any criminal defendant had a right to counsel under the Sixth and Fourteenth Amendments.¹²⁷

4. *Gideon v. Wainwright* Creates the Modern Right to Counsel for Criminal Defendants

In *Gideon v. Wainwright*, the petitioner was charged in Florida state court with breaking and entering into a poolroom with the intent to commit a misdemeanor.¹²⁸ This constituted a felony under Florida law.¹²⁹ The petitioner asked for a lawyer to be appointed to his case, but the judge denied the petitioner’s request, stating he—regrettably—could not “appoint counsel to represent [Mr. Gideon] in this case [because] . . . [u]nder the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense.”¹³⁰ At trial, Mr. Gideon was thus forced to conduct his own defense and was

¹²¹ *Id.* at 468.

¹²² *Betts v. Brady*, 316 U.S. 455, 473 (1942).

¹²³ See generally *Gideon v. Wainwright*, 372 U.S. 335 (1963) (overturning the *Betts* decision in 1963, twenty-one years later).

¹²⁴ *Betts*, 316 U.S. at 456–57.

¹²⁵ *Id.* at 472–73.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Gideon*, 372 U.S. at 336.

¹²⁹ *Id.*

¹³⁰ *Id.* at 337.

convicted.¹³¹ Mr. Gideon then appealed to the Florida Supreme Court, but the Florida Supreme Court denied relief.¹³²

Mr. Gideon then brought his appeal to the United States Supreme Court, which reversed and held “that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment.”¹³³ The Court’s ruling in *Gideon* led many to hope the Court would soon expand the right to counsel to civil defendants.¹³⁴ However, in the following years, the United States Supreme Court declined to extend the right to counsel to indigent defendants in civil cases:

In 1981 the Supreme Court held in *Lassiter v. Department of Social Services* that appointment of counsel would be on a “case by case” basis in cases involving termination of parental rights, even though it recognized parental rights are fundamental and that the risk of error without counsel would often be very high. Then, going even further, the Supreme Court created a presumption against appointing counsel in any kind of civil case in which “physical liberty” (like going to jail) is not at risk. This means that people losing their homes or life-sustaining medical benefits, women facing life-threatening domestic violence, and parents at risk of losing access to their children forever, are presumed to not have a right to counsel, even if their opponent in the litigation is the State or is represented by lawyers.¹³⁵

In 2011, the United States Supreme Court again refused to extend *Gideon*’s holding to cover defendants in civil proceedings.¹³⁶ In *Turner v. Rogers*, the Court considered whether an indigent parent who faced jail time for non-payment of child support had a constitutional right to counsel.¹³⁷ The Court refused to find they had a constitutional right to counsel.¹³⁸ The Court further held that although the defendant in a civil proceeding did not have a

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 341.

¹³⁴ Louis S. Rulli, *On the Road to Civil Gideon: Five Lessons from the Enactment of a Right to Counsel for Indigent Homeowners in Federal Civil Forfeiture Proceedings*, 19 J. L. & POL’Y 683, 683 (2011).

¹³⁵ *Backdrop: The Access to Justice Crisis*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/about/history> [https://perma.cc/6S9N-PDN4].

¹³⁶ *Turner v. Rogers*, 564 U.S. 431, 435 (2011).

¹³⁷ *Id.*

¹³⁸ *Id.*

constitutional right to counsel, “the State must nonetheless have in place alternative procedures that ensure a fundamentally fair determination . . . whether the supporting parent is able to comply with the support order.”¹³⁹ As it became increasingly unlikely that a civil right to counsel would come from the United States Supreme Court, supporters of a “civil *Gideon*” turned their attention towards legislative efforts.¹⁴⁰

D. *Examining Right to Counsel Programs in Cities Across the Country*

In 2017, New York City (“NYC”) passed the first Universal Access to Counsel (“UAC”) program for indigent tenants facing eviction in the nation.¹⁴¹ Since its implementation, the program has been widely successful, proving how advantageous representation can be for tenants facing eviction proceedings.¹⁴² Community activism was the motivating factor behind NYC’s UAC program,¹⁴³ and the program began as a grassroots movement of community organizers.¹⁴⁴

1. New York City Universal Access to Counsel Program: First of Its Kind

In 2013, the Bronx community group Community Action for Safe Apartments paired up with the Urban Justice Center’s Community Development Project to issue a report advocating for legislation creating a right to counsel in housing court.¹⁴⁵ Community Action for Safe Apartments along with the Urban Justice Center and other advocacy groups and legal services providers joined together to form the Right to Counsel Coalition.¹⁴⁶ The Right to Counsel Coalition sought to educate and organize tenants and community members so they could advocate for legislation creating a right

¹³⁹ *Id.* at 435.

¹⁴⁰ See *A Civil Right to Counsel: What We’re Fighting For*, NAT’L COAL. FOR A CIV. RIGHT TO COUNSEL, <http://civilrighttocounsel.org/about> [<https://perma.cc/K89X-ECBF>] [hereinafter *A Civil Right to Counsel*]; see also AM. BAR ASS’N, ABA TOOLKIT FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS: AMERICAN BAR ASSOCIATION MODEL ACCESS ACT & BASIC PRINCIPLES FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS 1 (2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lisclaid_toolkit_for_crtc.pdf [<https://perma.cc/HH4C-KU8S>].

¹⁴¹ NYU FURMAN CTR., IMPLEMENTING NEW YORK CITY’S UNIVERSAL ACCESS TO COUNSEL PROGRAM: LESSONS FOR OTHER JURISDICTIONS 1 (Dec. 2018), https://furmancenter.org/files/UAC_Policy_Brief_12_11-18.pdf [<https://perma.cc/EB5Z-2KD9>].

¹⁴² See *350,000 New Yorkers Receiving Free Legal Help to Fight Evictions Through Right to Counsel*, CITY OF N.Y. (Dec. 13, 2019), <https://www1.nyc.gov/office-of-the-mayor/news/613-19/350-000-new-yorkers-receiving-free-legal-help-fight-evictions-right-counsel> [<https://perma.cc/L7KC-DWBA>] [hereinafter *350,000 New Yorkers Fight Evictions*].

¹⁴³ NYU FURMAN CTR., *supra* note 141, at 6.

¹⁴⁴ *Id.* at 5.

¹⁴⁵ *Id.* at 6.

¹⁴⁶ *Id.*

to counsel in housing court for low-income individuals.¹⁴⁷ City Council Members Mark Levine and Vanessa Gibson introduced legislation in 2014 which would require the New York City Office of Civil Justice (“OCJ”) within the next five years to implement programs which provided tenants facing eviction with free access to legal services within the next five years.¹⁴⁸ In July 2017, after many hearings and negotiations, the New York City Council approved an amended bill which Mayor de Blasio signed in August 2017.¹⁴⁹

NYC needed to create new infrastructures to support a UAC program.¹⁵⁰ The OCJ was charged with implementing and overseeing the UAC program.¹⁵¹ The UAC program requires that the OCJ employ only non-profit organizations “[t]o ensure smooth implementation and provide high-quality representation.”¹⁵² NYC’s OCJ is part of the New York City Human Resources Administration/Department of Social Services (“HRA”) and was formed in 2015 “to meet the civil legal needs of low-income New Yorkers.”¹⁵³

NYC’s UAC program increases the percentage of tenants with counsel at eviction proceedings, which leads to significantly higher successful outcomes where tenants are able to stay in their homes.¹⁵⁴ In 2013, 1% of tenants facing eviction had an attorney;¹⁵⁵ in the last quarter of 2018, 30% of tenants had an attorney.¹⁵⁶ In zip codes with the UAC program, in the last quarter of 2018, 56% of tenants had an attorney.¹⁵⁷ In 2018, 84% of tenants represented by counsel were able to stay in their homes.¹⁵⁸ In 2019,

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ NYU FURMAN CTR., *supra* note 141, at 6.

¹⁵⁰ *Id.* at 7.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ NYC HUM. RES. ADMIN., DEP’T OF SOCIAL SERVS. NYC OFF. OF CIV. JUST. 2016 ANN. REP. 3 (2016), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf [<https://perma.cc/5MT7-3L6M>].

¹⁵⁴ *See* NYU FURMAN CTR., *supra* note 141, at 7.

¹⁵⁵ 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>, [<https://perma.cc/3NRU-SDVZ>].

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

NYC saw a 20% drop in eviction filings.¹⁵⁹ The default rate for evictions¹⁶⁰ has dropped roughly 35% from 2016 to 2019.¹⁶¹

A little over a year after implementation of the UAC¹⁶² program, evictions declined more than five times faster in zip codes which were part of the UAC program than those in zip codes not part of the UAC program.¹⁶³ Between 2017 and 2018, there was a citywide decline in evictions, and 64% of that decline in evictions came from zip codes which were part of the UAC program.¹⁶⁴ “Since the City began implementing its ‘Universal Access’ initiative in 2017, 1 in 3 New Yorkers facing eviction now have right to free legal representation in court.¹⁶⁵ Prior to this administration, approximately 1 in 100 tenants facing eviction had access to such services.”¹⁶⁶ The UAC program’s success rates prove that representation by counsel is an essential tool for tenants need when facing eviction.¹⁶⁷

Critics argue NYC’s UAC program does not do enough to help tenants fight evictions.¹⁶⁸ The council members who introduced the original bill are working with the Right to Counsel Coalition to advocate for expanding the UAC program by raising the income threshold to 400 percent of the federal poverty level and “[f]unding tenant organizing to ensure tenants are aware of their rights before they arrive in housing court.”¹⁶⁹ Tenants in NYC’s UAC program often first learn they have the right to a free attorney at their first court date.¹⁷⁰ If they accept counsel, the case typically must be postponed so the counsel can review the case.¹⁷¹ NYC’s UAC program currently fails to serve tenants who cannot come back for another court date due to work or childcare responsibilities and thus lose the opportunity for counsel to work

¹⁵⁹ *All About the Right to Counsel for Evictions in NYC*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (May 14, 2020), http://civilrightstocounsel.org/major_developments/894 [<https://perma.cc/PA2H-D86Y>] [hereinafter *All About the Right to Counsel NYC*].

¹⁶⁰ The default rate is the rate at which tenants do not show up for their scheduled housing court date. Mironova, *supra* note 155.

¹⁶¹ *Id.*

¹⁶² The UAC program is often referred to as the Right to Counsel; these terms are used interchangeably in this Note. *See* Mironova, *supra* note 155.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *350,000 New Yorkers Fight Evictions*, *supra* note 146.

¹⁶⁶ *Id.*

¹⁶⁷ *See id.*

¹⁶⁸ Mironova, *supra* note 15.

¹⁶⁹ *Id.*

¹⁷⁰ NYU FURMAN CTR., *supra* note 141, at 8.

¹⁷¹ Petersen, *supra* note 56, at 102.

on their case.¹⁷² Some tenants are mistrustful of attorneys, having been let down by them in the past, and therefore require time to get to know their attorney before trusting them as counsel.¹⁷³ Furthermore, some tenants are simply too confused and overwhelmed when they show up to their eviction hearing to take the time to meet with an attorney.¹⁷⁴ Therefore, it is imperative to inform the public about the UAC program so tenants can learn of these programs and utilize them.¹⁷⁵

Providing tenants with counsel in eviction proceedings is only one small part of a much larger issue.¹⁷⁶ Many tenants face repeat evictions because the underlying reason or reasons they are being evicted have not changed.¹⁷⁷ The underlying causes of eviction need to be addressed, like poverty, loss of benefits, unemployment or under employment, and systemic racism, to name just a few. After NYC enacted its UAC program, other cities began to implement their own right to counsel laws and programs for tenants facing eviction.¹⁷⁸

2. San Francisco Passes ‘Prop F’—the First Access to Counsel Law Which Applies to All Tenants, Regardless of Income Level

In 2018, San Francisco became the second city in the United States to pass a legal right to counsel law for tenants facing eviction.¹⁷⁹ Unlike NYC’s UAC program, San Francisco’s right to counsel law has no income requirement.¹⁸⁰ San Francisco’s Right to Civil Counsel Pilot Program began with a \$100,000 grant which funded a single staff attorney at the Justice & Diversity Center at the Bar Association of San Francisco.¹⁸¹ This attorney

¹⁷² NYU FURMAN CTR., *supra* note 141, at 13.

¹⁷³ *Id.* at 15.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 8.

¹⁷⁶ Petersen, *supra* note 56 at 68–69.

¹⁷⁷ Jack Newton et al., *Civil Gideon and NYC’s Universal Access: Why Comprehensive Public Benefits Advocacy is Essential to Preventing Evictions and Creating Stability*, 23 CUNY L. REV. 200, 226–27, 231 (2020).

¹⁷⁸ See *All About Cleveland’s Eviction Right to Counsel*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (Feb. 5, 2021), http://civilrighttocounsel.org/major_developments/1382 [https://perma.cc/R96F-VBFY] [hereinafter *All About Cleveland Right to Counsel*]; see *All About the Right to Counsel for Tenants in San Francisco*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (Jun. 1, 2021), http://civilrighttocounsel.org/major_developments/1179 [https://perma.cc/K92J-7QSH] [hereinafter *All About the Right to Counsel in S.F.*].

¹⁷⁹ *All About the Right to Counsel in S.F.*, *supra* note 178.

¹⁸⁰ *Id.*

¹⁸¹ Press Release, Bd. of Supervisors President David Chiu, Bd. President David Chiu and Advoc. Release Stanford Rep. on Right to Civ. Couns., Highlight Need for Eviction Def. Funding (May 20, 2014), <https://sfbos.org/sites/default/files/FileCenter/Documents/491>

was tasked with recruiting the participation of law firms, coordinating volunteer attorneys, and developing training materials.¹⁸² The Justice & Diversity Center partnered with the non-profit organization Eviction Defense Collaborative to develop efficient systems for referrals and placing clients with attorneys.¹⁸³ The pilot program leveraged a \$100,000 grant into an estimated \$2.12 million worth of pro bono legal services.¹⁸⁴

In 2018 San Francisco's Mayor announced \$5.8 million in additional funding for the right to counsel program over the next two years, in addition to the \$7.5 million San Francisco was already spending on eviction prevention services.¹⁸⁵ According to Mayor Breed, "no one should face eviction alone without knowing their rights."¹⁸⁶ He recognized that "[o]ne of the most important things we can do to prevent displacement and homelessness is keep people housed in the first place."¹⁸⁷ Eviction proceedings are inherently unfair, with "landlords . . . represented by attorneys at a rate of 6 to 1 as compared to the number of tenants represented by counsel."¹⁸⁸ San Francisco Tenant's Union was a driving force behind Proposition F.¹⁸⁹ However, unlike NYC's UAC program, San Francisco's right to counsel program did not allocate funding for its implementation.¹⁹⁰ Instead, Mayor Breed had to rebalance the city's budget for fiscal year 2018–2019 to include \$1.9 million in funding and \$3.9 million in fiscal year 2019 to 2020.¹⁹¹

Despite this, San Francisco's right to counsel program has seen great success from its implementation.¹⁹² A hearing in February 2020 held by Dean

58-Press%20Release%20-%20President%20Chiu%20and%20Stanford%20Law%20School%20Release%20Eviction%20Defense%20Report.pdf [https://perma.cc/3JHZ-D8HG].

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Press Release, Off. of the Mayor of San Francisco, Mayor London Breed Announces Additional Funding for Eviction Prevention and Legal Serv. for Tenants (Aug. 8, 2018), <https://evictiondefense.org/wp-content/uploads/2018/08/press-release-Aug-2018.pdf> [https://perma.cc/TX7G-F356] [hereinafter Mayor of San Francisco Press Release].

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Press Release, Martina I. Cucullu Lim, Incoming Exec. Dir. of the Eviction Def. Collaborative, Prop F Has Passed!!! (June 6, 2018), https://evictiondefense.org/wp-content/uploads/2018/06/EDC-Announces-the-passing-of-Prop-F_06-06-2018-PRESS-RELEASE.pdf [https://perma.cc/YL9U-5FAK].

¹⁸⁹ *Id.*

¹⁹⁰ Mayor of San Francisco Press Release, *supra* note 185.

¹⁹¹ *Id.*

¹⁹² *All About the Right to Counsel in S.F.*, *supra* note 178.

Preston—one of the principal architects of Proposition F¹⁹³ and now a City Supervisor—showcased the law’s success.¹⁹⁴ From 2018 to 2019, San Francisco saw a 10% decrease in the filing rate of evictions.¹⁹⁵ Currently, two-thirds of tenants receive full-scope representation, and of those, 67% are able to stay in their homes.¹⁹⁶ For Black tenants, that number rises to 80%.¹⁹⁷ “Guaranteeing a right to counsel is one of the most powerful tools to stop the displacement of African-Americans: four out of five African American tenants who receive an eviction notice and get help through this program end up staying in their homes. . . .”¹⁹⁸ In addition, although San Francisco’s eviction right to counsel program lacks an income limit, “85% of those receiving counsel are extremely low or low income.”¹⁹⁹ Only 9% of tenants utilizing the program are moderate income and just 6% are slightly above moderate income.²⁰⁰ As of February 2020, eviction rates were down and “more than 700 San Francisco households who faced eviction in the past six months were able to stay in their homes.”²⁰¹

Proposition F required San Francisco to fully implement the tenant right to counsel program by July 2019.²⁰² To reach full implementation, San Francisco’s tenant right to counsel program would require an estimated seventeen to twenty-two additional attorneys, each costing \$220,000, which includes paralegal costs, litigation expenses, and overhead costs.²⁰³ The attorney would make \$75,000 working full-time for one of the nonprofit partners’ organizations, which the city pays to provide legal representation to

¹⁹³ Prop F was a ballot initiative proposed by voters in San Francisco County that would provide funding for all tenants facing eviction, regardless of their income level. On June 5, 2018, Prop F was approved, winning 55.74% of the vote. *San Francisco, California, Proposition F, City-Funded Legal Representation for Tenants Facing Eviction (June 2018)*, BALLOTEDIA, [https://ballotpedia.org/San_Francisco,_California,_Proposition_F,_City-Funded_Legal_Representation_for_Tenants_Facing_Eviction_\(June_2018\)](https://ballotpedia.org/San_Francisco,_California,_Proposition_F,_City-Funded_Legal_Representation_for_Tenants_Facing_Eviction_(June_2018)) [https://perma.cc/E8HV-76LN].

¹⁹⁴ Press Release, Civ. Right to Couns., Supervisor Dean Preston Holds Hearing on Implementation for Right to Counsel Law, (Feb. 24, 2020), http://civilrighttocounsel.org/uploaded_files/262/PRESS_RELEASE_-_Supervisor_Dean_Preston_Holds_Hearing_Monday_on_Implementation_for_Right_to_Counsel_Law.pdf [https://perma.cc/6WJL-7X43] [hereinafter Supervisor Holds Hearing].

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *All About the Right to Counsel in S.F.*, *supra* note 178.

²⁰⁰ *Id.*

²⁰¹ Supervisor Holds Hearing, *supra* note 194.

²⁰² *Id.*

²⁰³ *Id.*

tenants.²⁰⁴ Each attorney can provide high-quality legal representation for fifty cases, but attorneys are currently being over-worked, with some handling as many as eighty-one cases.²⁰⁵ Tenants who receive less than full-scope representation have only a 38% success rate of staying in their housing.²⁰⁶ Employing an insufficient number of attorneys to balance the work leads to long hours for little pay which can quickly lead to burnout.²⁰⁷ Overworked attorneys are less able to provide high-quality representation.²⁰⁸ If San Francisco's right to counsel program continued at its current success rate of keeping 67% of tenants who receive full scope representation in their housing, it would cost approximately \$6,470 to keep a tenant in their home.²⁰⁹ Thus, at the program's current rate, keeping tenants in their home costs significantly less than placing them in shelters or building below-market-rate housing.²¹⁰

3. Cleveland, Ohio Becomes the First Midwestern City to Pass a Right to Counsel Bill for Tenants Facing Eviction

In October 2019, Cleveland became the first midwestern city to pass a right to counsel bill.²¹¹ Cleveland's right to counsel law applies to "tenants facing eviction who are at or below 100% of the federal poverty level and have children."²¹² The United Way of Greater Cleveland committed \$3 million to help launch the right to council ordinance.²¹³ "The City of Cleveland found that the lack of legal counsel for low income tenants with children during eviction cases is a violation of a basic human right."²¹⁴ Like the right to council ordinances which came before it, the Cleveland right to counsel ordinance is a result of community organizing and activism.²¹⁵

²⁰⁴ Laura Wenus, *Right to Counsel Helps Tenants Stay in Place, But Effort is Short on Attorneys*, S.F. PUB. PRESS (Mar. 9, 2020), <https://www.sfpublicpress.org/right-to-counsel-helps-tenants-stay-in-place-but-effort-is-short-on-attorneys/> [<https://perma.cc/9DVJ-MJYK>].

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *See id.*

²⁰⁸ *See id.*

²⁰⁹ Supervisor Holds Hearing, *supra* note 194.

²¹⁰ Wenus, *supra* note 208.

²¹¹ *City of Cleveland Creates Right to Counsel in Cleveland Housing Court*, LEGAL AID SOCIETY OF CLEVELAND (Oct. 1, 2019, 2:58 PM), <https://laslev.org/20191001/> [<https://perma.cc/G9K3-RVUG>] [hereinafter *Cleveland Creates Right to Counsel*].

²¹² *All About Cleveland Right to Counsel*, *supra* note 178.

²¹³ *Id.*

²¹⁴ *Cleveland Creates Right to Counsel*, *supra* note 211.

²¹⁵ *Id.*

The ordinance grew from Legal Aid’s Housing Justice Alliance, “a group Legal Aid created in Northeast Ohio to promote legal representation for tenants facing evictions.”²¹⁶ The United Way of Greater Cleveland and the Cleveland City Council work together to oversee implementation of the program.²¹⁷ The United Way works with the Legal Aid Society of Cleveland, which will provide the legal services.²¹⁸ After initial funding and support from the Sisters of Charity Foundation to explore a right to counsel ordinance, the Housing Justice Alliance formed an advisory committee to address evictions in Cleveland after receiving funding from a local charity.²¹⁹ The Cleveland City Council President and a councilman served on this advisory committee,²²⁰ which informed the right to counsel ordinance which was ultimately passed.²²¹

Cleveland has roughly 9,000 evictions filed each year, yet only 1-2% of tenants are represented by counsel.²²² The right to counsel ordinance asserts that:

[L]ack of legal counsel for tenants during eviction cases is a violation of a basic human right . . . this housing emergency destabilizes families and neighborhoods, especially the most vulnerable among us, resulting in homelessness, decreased property values, and harm to social tranquility and the general welfare of the City . . . these conditions pose a serious threat to the public health, safety and welfare of the residents of the City, as well as to the City’s economic stability, viability and growth.²²³

“Right to counsel is not about tenant versus landlord—it’s about stabilizing the person in need to prevent eviction . . .”²²⁴ Researchers found that “tenants typically fly solo in the face of eviction.”²²⁵ Additionally, an average payment

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Cleveland Creates Right to Counsel*, *supra* note 211.

²²¹ *Id.*

²²² *All About Cleveland Right to Counsel*, *supra* note 178.

²²³ *Id.*

²²⁴ Kaylyn Hlavaty, *Legislation Passes to Protect Children in Homes Facing Eviction by Providing Free Legal Help for Low-income Tenants*, NEWS 5 CLEVELAND (Oct. 1, 2019, 8:32 AM), <https://www.news5cleveland.com/news/local-news/cleveland-metro/legislation-passes-to-protect-children-in-homes-facing-eviction-by-providing-free-legal-help-for-low-income-tenants> [https://perma.cc/W5VS-FLLE].

²²⁵ *Id.*

of \$1,200 in rental support could prevent eviction.²²⁶ This is only a fraction of the cost of a stay at an emergency shelter for a family, which can cost more than \$16,000 for nights in a shelter.²²⁷

Researchers at Case Western Reserve University analyzed five years' worth of eviction data from the Cleveland Housing Court and spent several weeks in housing court interviewing tenants who had been evicted.²²⁸ More than 90% of the eviction cases the researchers observed were for non-payment of rent.²²⁹ On average, the families only owed less than \$2,000 in unpaid rent.²³⁰ The researchers found that "[t]hose facing eviction were disproportionately low-income, black women (with children), who were head of the households."²³¹ It is especially important to focus on the harms of structural racism in the United States and how that affects housing for Black Americans. "The use of homeless shelters increased for all households after an eviction filing, but significantly more for those who received an eviction order" from a court.²³² Children from households which had an eviction filed against them had a higher risk of lead poisoning compared to other low-income children in Cleveland.²³³ Children from households which had an eviction filed against them also missed more days of school after the eviction was filed.²³⁴ At the time an eviction is filed, children between seventh and twelfth grade miss about 15% of school days per year.²³⁵ In the year the eviction occurs, those students miss 20% of school days per year.²³⁶

The ordinance relies on a partnership between the United Way of Greater Cleveland, the Cleveland City Council, Legal Aid Society of Cleveland, and the Housing Justice Alliance.²³⁷ To help ensure a smooth transition, United Way created a free, confidential, twenty-four-hour lifeline staffed by referral specialists who can answer tenants' questions about the

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Homelessness Just 'One of the Concerns' When Someone is Evicted: Case Western Reserve University Researchers Tracked Eviction in City of Cleveland, with Troubling Results*, THE DAILY (Jan. 27, 2020), <https://thedaily.case.edu/homelessness-just-one-of-the-concerns-when-someone-is-evicted> [<https://perma.cc/DRM8-CJBZ>] [hereinafter *Case Western Tracks Evictions*].

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Case Western Tracks Evictions*, *supra* note 228.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ Hlavaty, *supra* note 224.

new ordinance and refer them to the proper resources to access legal services if they meet the eligibility requirements.²³⁸

4. Newark, New Jersey Passes a Right to Counsel Program to Help Address its Housing Crisis

In 2018, Newark, New Jersey passed an ordinance guaranteeing the right to counsel to low-income tenants, becoming just the third city in the United States implement a right to counsel program for tenants.²³⁹ Newark's law is similar to NYC's UAC program in many ways.²⁴⁰ The legislation addresses the housing emergency in Newark created in part by landlords filing frivolous evictions and taking retaliatory actions against tenants.²⁴¹ In Newark, "nine out of ten tenants facing an eviction were not represented by a lawyer."²⁴² Like NYC's UAC program, Newark's right to counsel law created an Office of Tenant Legal Services tasked with creating a program providing free legal counsel in landlord-tenant court for people earning below 200% of the federal poverty line.²⁴³ Newark implemented a pilot program to roll out free legal counsel to income-eligible tenants.²⁴⁴ The program is expected to cost between \$750,000 and \$1 million annually and will provide a consultation or full legal representation to between 5,000 and 7,000 tenants a year.²⁴⁵ The law sees Newark partner with "anchor institutions, nonprofit and pro bono legal services to develop a system of tenant counselors and free attorneys."²⁴⁶

Community organizing helps drive this current right to counsel movement in eviction proceedings, unlike previous civil right to counsel movements which were largely driven by lawyers and aimed at the courts.²⁴⁷ The Rutgers Law School Center for Law, Inequality and Metropolitan Equity ("CLiME") researched evictions in Newark, and Newark adopted the right

²³⁸ *Id.*

²³⁹ Rebecca Panico, *City Council Moves Ahead with Plan to Give Evicted Residents Free Legal Services*, TAPINTO NEWARK (Dec. 24, 2018, 8:20 AM), <https://www.tapinto.net/towns/newark/articles/city-council-moves-ahead-with-plan-to-give-evicted-residents-free-legal-services> [<https://perma.cc/UP78-JDTS>].

²⁴⁰ See NYU FURMAN CTR., *supra* note 141 at 8; Brey, *supra* note 34.

²⁴¹ Brey, *supra* note 34.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Brey, *supra* note 34.

to counsel ordinance partially based on CLiME's recommendation.²⁴⁸ CLiME is a member of Newark's local affordable housing coalition and has partnered with the city to implement the city's right to counsel ordinance.²⁴⁹

Newark's right to counsel program focuses on ensuring that residents have quality affordable housing.²⁵⁰ The program seeks to "protect the legal rights of low-income Newark tenants facing unwarranted, potentially illegal, evictions by their landlords" and end the cycle of abusive landlords who have "free reign to hound and harass tenants."²⁵¹ New Jersey law mandates that corporations which own property have legal representation.²⁵² Newark's right to counsel program presents an opportunity to "even the playing field and stop [corporations] from taking advantage of Newark residents with limited resources."²⁵³ Eligible residents will receive legal services from volunteer pro bono and Newark-based lawyers who are committed to assisting the right to counsel program.²⁵⁴ Newark hired a Rutgers Law graduate to oversee its new Office of Tenant Services, which will oversee the creation and implementation of the program.²⁵⁵

E. *An Overview of Evictions in Iowa*

Governor Reynolds passed a moratorium on evictions in March 2020, but this moratorium ended in May 2020, taking away a vital lifeline for Iowans unable to pay rent.²⁵⁶ The original Centers for Disease Control's ("CDC")

²⁴⁸ *Newark Residents Facing Eviction Can Get Help Through Right-to-Counsel Ordinance First Suggested by Rutgers Law Center*, RUTGERS L. SCH. (June 27, 2019), <https://law.rutgers.edu/news/newark-residents-facing-eviction-can-get-help-through-right-counsel-ordinance-first-suggested> [<https://perma.cc/TTS4-TJPS>] [hereinafter *Newark Residents Can Get Help*].

²⁴⁹ *Id.*

²⁵⁰ *Free Legal Help for Low Income At-risk Tenants Facing Eviction Now in Operation and Taking Applications*, CITY OF NEWARK NEWS (June 3, 2019), <https://www.newarknj.gov/news/free-legal-help-for-low-income-at-risk-tenants-facing-eviction-now-in-operation-and-taking-applications> [<https://perma.cc/ZWP4-4DLU>].

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Newark Residents Can Get Help*, *supra* note 60.

²⁵⁶ Ian Richardson, *Iowa Will Help Some Affected by COVID-19 Closures Avoid Eviction, Foreclosure for Up to 4 Months*, DES MOINES REG. (May 29, 2020, 4:17 PM), <https://www.desmoinesregister.com/story/news/politics/2020/05/29/coronavirus-in-iowa-kim-reynolds-announces-eviction-foreclosure-prevention-program/5278907002/> [<https://perma.cc/REB6-FUCJ>]; see also Ian Richardson, *For More than 500 Iowans Facing Eviction, Coronavirus-related Order Gives a Short Reprieve*, DES MOINES REG. (Mar. 22, 2020, 1:47 PM), <https://www.desmoinesregister.com/story/news/politics/2020/03/22/coronavirus-governor-suspends-many-evictions-giving-iowans-relieve/2878230001/> [<https://perma.cc/NZ4U-C2TE>].

halt on residential evictions ended on August 26, 2021.²⁵⁷ Currently, an estimated 51,000–104,000 households in Iowa are at risk of eviction due to the economic impact of COVID-19.²⁵⁸ That is 14%–31% of all Iowa households²⁵⁹, equaling anywhere from 118,000–239,000 Iowans.²⁶⁰ Various sectors of Iowa’s economy shrank in April 2020 at the beginning of the pandemic.²⁶¹ As of July 4, 2020, COVID-19 had cost Iowa’s economy \$5.1 billion and 211,174 jobs.²⁶²

Eviction proceedings for nonpayment of rent vary significantly according to state law.²⁶³ Iowa has one of the shortest eviction-notice waiting periods in the country.²⁶⁴ Iowa Code Section 562A.27(2) states:

If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord’s intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.²⁶⁵

If the tenant has not paid rent once the three-day notice period has ended, the landlord can go before a judge and petition for a forcible entry and detainer action, which begins the legal proceeding to evict the tenant from the dwelling.²⁶⁶ Iowa has six different categories of notices used to inform a tenant when they must vacate the premises by and the reason for the notice: the three-day notice to quit, the three-day notice for nonpayment of rent, the three-day notice of “clear and present danger,” the seven-day notice to cure

²⁵⁷ *National Moratorium: Federal Eviction Moratorium*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>. [https://perma.cc/6BF3-D94R].

²⁵⁸ EMILY BENFER ET AL., NAT’L LOW INCOME HOUS. COAL., *THE COVID-19 EVICTION CRISIS: AN ESTIMATED 30-40 MILLION PEOPLE IN AMERICA ARE AT RISK 7* (2020), https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf [https://perma.cc/7NX7-CZSW].

²⁵⁹ *Id.* at 7.

²⁶⁰ *Id.*

²⁶¹ IOWA WORKFORCE DEV., *IOWA’S WORKFORCE AND THE ECONOMY 2021 1* (2021), https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/documents/2018/iowaworkforceandtheeconomy_2021.pdf [https://perma.cc/655B-4HZ3].

²⁶² *Id.*

²⁶³ *See State Laws on Termination for Nonpayment of Rent*, NOLO, (Dec. 10, 2020), <https://www.nolo.com/legal-encyclopedia/state-laws-on-termination-for-nonpayment-of-rent.html> [https://perma.cc/JC85-H5MS] [hereinafter *State Laws on Nonpayment*].

²⁶⁴ *See id.*

²⁶⁵ IOWA CODE § 562A.27(2) (2021).

²⁶⁶ *Id.*

lease violations, the seven-day notice of lease termination with no right to cure, and the thirty-day termination notice.²⁶⁷

Iowa's three-day notice period for nonpayment of rent is among the shortest in the country.²⁶⁸ In comparison, in Washington, D.C., tenants have thirty days after their missed rent payment to either pay rent or move out before the landlord may file an eviction proceeding in court.²⁶⁹ In Minnesota, tenants must receive fourteen days' notice if they have a tenancy at will, meaning they have no lease.²⁷⁰ In Indiana and North Carolina, a tenant has ten days after their missed rent payment to either pay rent or move out before the landlord may file for eviction in court.²⁷¹ Tenants in Nebraska, Michigan, and Kentucky receive seven days' notice for nonpayment of rent.²⁷² In Illinois, tenants have five days from their missed rent payment to pay or move out before the landlord may file an eviction proceeding.²⁷³

Data from 2016 shows Iowa had an eviction rate of 2%, making it the state with the 18th lowest eviction rate in the country.²⁷⁴ However, a 2% eviction rate in 2016 translates to 7,358 total evictions in Iowa, which is over 7,000 Iowans who were forcibly removed from their homes in 2016 alone!²⁷⁵ Iowa had an eviction filing rate of 4% in 2016, filing 14,520 evictions, making it the state with twenty-fourth lowest eviction filing rate in the country.²⁷⁶ In 2016 there were 365,324 renter-occupied households in Iowa, which accounted for 28.5% of all households—nearly a third of Iowans.²⁷⁷ The median monthly rent was \$697, and the average rent burden was 27.5%.²⁷⁸ In 2016, Iowa's poverty rate was 8.1%.²⁷⁹ As of 2019, Iowa's poverty rate rose

²⁶⁷ *Id.* § 562A.21(1), 562.27A(1)–(5).

²⁶⁸ *State Laws on Nonpayment*, *supra* note 263. If the landlord posts the notice of nonpayment of rent on the tenant's main entrance and sends the notice by regular and certified mail, the tenant has seven days to pay their late rent before their landlord can file a forcible entry and detainer action in court and commence an eviction. *Evictions 101*, IOWA LEGAL AID (Nov. 8, 2021), <https://www.iowalegalaid.org/resource/evictions-101> [<https://perma.cc/2VGY-JWNT>].

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Dewitt, *supra* note 2.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Dewitt, *supra* note 2.

²⁷⁹ *Id.*

to 11.2%,²⁸⁰ creating a growing need to provide legal counsel to indigent and low-income tenants.²⁸¹ In 2019, the median value of owner-occupied units in Iowa was \$158,900,²⁸² and the median percentage of income spent per month on the home was 16%.²⁸³ In 2019, the median gross rent in Iowa was \$808, and this accounted for 26.5% of household income.²⁸⁴ Renters thus spend a higher percentage of their income on rent than homeowners do.²⁸⁵ Consider this troubling fact: “Iowa’s Linn County, where the city of Cedar Rapids is located, ranks among the 100 U.S. locations with the highest eviction rates.”²⁸⁶ Advocates explain the region is considered high-risk for renters, leading renters to calculate the cost of a potential eviction into rents, which increases housing costs for already-struggling families and leads to more evictions.²⁸⁷

Iowa can respond to this housing crisis by ensuring low-income tenants are provided with legal representation during eviction proceedings. The Iowa Legislature should pass legislation providing free legal representation to low-income tenants to restore justice to tenants at a critical moment where an unprecedented number of Iowan’s face homelessness. Tenants in Iowa have faced an unfair legal system long before COVID-19, but with the economic shutdown caused by COVID-19, the nation is finally paying attention to the struggles of tenants. Most tenants cannot afford legal representation, which creates a huge disadvantage when landlords often appear with counsel in eviction proceedings.²⁸⁸ To make the legal system more equitable for tenants during the current pandemic and beyond, Iowa needs to ensure tenants are provided with counsel.²⁸⁹

In Davenport in 2017, 35.4% of the population rented,²⁹⁰ which is 35,096 renters out of a total population of 99,247 people, with 15,076 people renting single unit housing, 7,191 people renting two-to-four-unit housing, and

²⁸⁰ *Quick Facts Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/IA> [https://perma.cc/3FU7-THBF].

²⁸¹ *Id.*

²⁸² *Iowa Quick Facts*, IOWA.GOV, <https://www.iowadatacenter.org/quickfacts> [https://perma.cc/2589-9EYA].

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ Dewitt, *supra* note 2.

²⁸⁷ *Id.*

²⁸⁸ *See* Schultheis & Rooney, *supra* note 3, at 1.

²⁸⁹ *Id.*

²⁹⁰ Michael Maciag, *Renter Population Data by City*, GOVERNING (Mar. 27, 2019), <https://www.governing.com/archive/city-renter-population-housing-statistics.html> [https://perma.cc/Z82Q-22WP].

12,307 renting five-or-more-unit housing.²⁹¹ In Des Moines, the largest city in Iowa, 80,574 people rented their housing units, accounting for 38.5% of the city's population.²⁹² Des Moines saw a 41% increase in renters from 2000 to 2017, accounting for an additional 23,577 renters.²⁹³ In Cedar Rapids, the second most populous city in the state, 34,328 people rented, accounting for 27% of the overall population.²⁹⁴ Cedar Rapids saw a 16% increase in renters from 2000 to 2017,²⁹⁵ accounting for 4,637 additional renters.²⁹⁶ In Iowa City, home to the University of Iowa, 49.3% of the population rents²⁹⁷, and in Ames, Iowa, where Iowa State University is located, 57.2% of the population rents.²⁹⁸

Eviction disproportionately affects Black Iowans because Black Americans have the lowest rates of home ownership in the country compared to other racial groups.²⁹⁹ Black women are excluded from the most prolific jobs in the state.³⁰⁰ The most commonly held jobs by residents of Iowa, by number of employees, are: driver/sales workers and truck drivers, employing 47,511 individuals;³⁰¹ elementary and middle school teachers, employing 41,241 individuals;³⁰² and laborers and freight, stock, and material movers employing 36,785 individuals.³⁰³ These professions are dominated by white men.³⁰⁴ Black employees working as driver/sales workers and truck drivers make less than their white counterparts³⁰⁵; Black drivers/sales

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Maciag, *supra* note 290.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Courtney Connley, *Why the Homeownership Gap Between White and Black Americans is Larger Today Than It was Over 50 Years Ago*, CNBC MAKE IT (Aug. 21, 2020, 9:21 AM), <https://www.cnbc.com/2020/08/21/why-the-homeownership-gap-between-white-and-black-americans-is-larger-today-than-it-was-over-50-years-ago.html> [<https://perma.cc/MKZ3-MBLS>].

³⁰⁰ See *Iowa State: Economy*, DATA USA, <https://datausa.io/profile/geo/iowa#economy> [<https://perma.cc/7BU7-GUTW>].

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

workers and truck drivers make only \$14,904 per year on average while white driver/sales workers and truck drivers make an average of \$50,737 per year.³⁰⁶

In addition, Black laborers and freight, stock, and material movers have an average full-time annual salary of \$27,532,³⁰⁷ while the average annual salary for white Iowans holding such jobs is \$33,088.³⁰⁸ There is also a significant dearth of Black teachers in Iowa.³⁰⁹ While 80% of teachers in public elementary and secondary schools across the United States were white in the 2015 to 2016 school year, the lack of diversity is even worse in Iowa.³¹⁰ “Every single district in the state had teaching staffs that were more than 92% white in 2018.”³¹¹ Not only are Black women all but excluded from teaching jobs, but the trucking industry is sexist and rampant with sexual assault, precluding many women from those jobs as well.³¹² Sexual harassment and sex-based discrimination are also prevalent in male-dominated jobs, which include many occupations involving physical labor.³¹³ Black women are thus excluded from the top three most common job opportunities in Iowa, and when they do manage to gain employment at one of these jobs, they are underpaid compared to white people in the same jobs and face sexual harassment.³¹⁴ Black families are disparately impacted by this job exclusion because in 2019, 4.15 million Black families in the United States were headed by a single mother.³¹⁵ Further augmenting this issue: one in three Black men are thrown into prison by our criminal “justice” system.³¹⁶

Tenants often leave their homes prematurely in eviction proceedings.³¹⁷ Many tenants are unaware of the court proceedings and fall victim to their

³⁰⁶ *Iowa State: Economy*, *supra* note 305.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Megan Valley, *Why Doesn't Iowa Have More Black Teachers? As Fewer Students are Enrolled in Teaching Programs, Licensure Changes May Help*, QUAD-CITY TIMES, (Feb. 18, 2020), https://qctimes.com/news/local/education/why-doesnt-iowa-have-more-black-teachers-as-fewer-students-are-enrolled-in-teaching-programs/article_ba0cf1b0-4e76-5326-80ed-531c0da41890.html [<https://perma.cc/3YGG-2Q8J>].

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Sidney Gold, *Sexual Harassment in the Trucking Industry*, HG.ORG LEGAL RES., <https://www.hg.org/legal-articles/sexual-harassment-in-the-trucking-industry-52777> [<https://perma.cc/4KRJ-3SB4>].

³¹³ *Women in Male-Dominated Industries and Occupations (Quick Take)*, CATALYST (Oct. 29, 2021), <https://www.catalyst.org/research/women-in-male-dominated-industries-and-occupations/> [<https://perma.cc/X9VQ-6NHK>].

³¹⁴ *Iowa State: Economy*, *supra* note 300.

³¹⁵ Statista Research Department, *supra* note 40.

³¹⁶ ALEXANDER, *supra* note 41, at 9.

³¹⁷ *Newark Residents Can Get Help*, *supra* note 60.

landlord's intimidation tactics.³¹⁸ Thus, many tenants lose the opportunity to put forward legal defenses.³¹⁹ They lose their home before they have had a chance to share information with the court "about the habitability of their homes," including "complaints about heat and hot water, or the safety and sanitary requirements of the property."³²⁰ "Providing legal services to fight eviction is a critical emergency step toward helping city residents who are often struggling with additional issues, such as physical or mental disabilities or involvement with the criminal justice system or welfare agencies."³²¹

III. ANALYSIS

There are many important factors Iowa must consider before implementing a right to counsel law,³²² but Iowa has the benefit of learning from the cities which have already passed and started implementing their right to counsel laws. Based on the existing right to counsel programs, Iowa should gradually phase in implementation of its right to counsel law. Following NYC's guidelines for implementing a right to counsel program based off its UAC program, Iowa must first address the logistical challenges of implementing a right to counsel program.³²³ In order to avoid completely overwhelming the courts and the legal services providers, wherever the right to counsel program is implemented, a solid infrastructure must first be built to support the incoming flux of tenants.³²⁴

A. *Determining the Scope of a Right to Counsel Program in Iowa*

One of the first things Iowa needs to consider is the scope of its intended right to counsel program.³²⁵ Will the program be phased in or implemented all at once? If the program will be phased in, what will that look like? Iowa should set specific time and area-coverage goals to help ensure that the right to counsel program will have achievable goals and an actionable plan to reach those goals.³²⁶ Iowa also needs to consider whether it will create requirements which must be met in order to participate in its right to counsel program, similar to NYC's UAC program,³²⁷ or whether its right to counsel program

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² NYU FURMAN CTR., *supra* note 141, at 9–17.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *See id.*

³²⁶ *See id.*

³²⁷ 350,000 *New Yorkers Fight Evictions*, *supra* note 146.

will be open to anyone facing eviction like San Francisco's Prop F.³²⁸ Another imperative question Iowa must consider is who will be responsible for providing the free legal counsel.³²⁹ Creating the foundation for a right to counsel program in Iowa almost certainly would require hiring more attorneys because Iowa Legal Aid is already understaffed due to dwindling resources.³³⁰ Additionally, Iowa will need to consider the likely surge on the courts' resources and how this will be addressed.³³¹

Another area of great importance will be determining the source of funding for the program.³³² Iowa should avoid San Francisco's right to counsel model which passed its right to counsel ordinance without allocating any funds for implementation.³³³ Iowa should account for the cost of its proposed right to counsel program and allocate where the funds will come from within the budget. The state's budget had a \$305.5 million surplus at the end of 2020.³³⁴ In fiscal year 2019, Iowa had a budget surplus of \$289 million.³³⁵ The state government should allocate funds from its surplus to begin a pilot program in a city with high rates of evictions and then eventually expand city by city until the right to counsel program covers the entire state. To make the most impact in the shortest amount of time, Iowa should first implement its right to counsel program in Davenport, which in 2016 had an eviction rate of 4.72% in 2016,³³⁶ more than double the statewide eviction rate of 2.0% in 2016.³³⁷ It is critical that whichever city decides to implement a right to counsel program first creates an advisory committee to research evictions and assess the necessary elements of an effective right to counsel program for that city.³³⁸ More court staff may be needed, so implementing a

³²⁸ Ida Mojadad, *Tenant Right to Counsel Moves Forward*, SFWEEKLY (Nov. 28, 2018, 3:23 PM), <https://www.sfwkly.com/news/tenant-right-to-counsel-moves-forward/> [<https://perma.cc/M5GN-9Y4H>].

³²⁹ See NYU FURMAN CTR., *supra* note 141, at 9–17.

³³⁰ *Iowa Legal Aid Funding: Find a Fix to Ensure Access to Justice*, THE GAZETTE (Feb. 10, 2015, 5:30 AM), <https://www.thegazette.com/subject/opinion/staff-editorial/iowa-legal-aid-funding-find-a-fix-to-ensure-access-to-justice-20150210> [<https://perma.cc/9BQP-N9AY>].

³³¹ See NYU FURMAN CTR., *supra* note 141, at 9–17.

³³² *Id.*

³³³ Mojadad, *supra* note 328.

³³⁴ *Iowa Budget Closes with Full Cash Reserves, Surplus of \$305M*, OFFICE OF THE GOVERNOR OF IOWA (Sept. 30, 2020), <https://governor.iowa.gov/press-release/iowa-budget-closes-with-full-cash-reserves-surplus-of-305m#:~:text=Gov.,million%20in%20its%20General%20Fund> [<https://perma.cc/8CVK-JGHG>] [hereinafter *Iowa Budget Surplus of \$305M*].

³³⁵ *Id.*

³³⁶ *Top Evicting Large Cities in the United States*, EVICTION LAB (2016), <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate> [<https://perma.cc/3ELA-F893>].

³³⁷ Dewitt, *supra* note 2.

³³⁸ See NYU FURMAN CTR., *supra* note 141, at 9–17.

schedule might be necessary to ensure that tenants and attorneys have private space to meet before their hearing.

Iowa must also decide when tenants should be notified about their assigned counsel³³⁹ and how will they be notified.³⁴⁰ Tenants should be notified of their opportunity to be represented by counsel sometime after receiving an eviction notice, but before their scheduled court date.³⁴¹ Ideally, tenants would be notified before the eviction is filed in court so they can try and avoid having an eviction on their record. Informing tenants about their assigned counsel presents a challenge which has yet to be solved.³⁴² Figuring out a how to assign tenants to an attorney will require an organized system for the program to be as efficient as possible. Additionally, Iowa must consider the potential effects of a universal access to counsel program on landlord-tenant interactions.³⁴³ Iowa needs to assess whether there are potential harms tenants associated with a right to counsel law face.³⁴⁴ For example, will a right to counsel program encourage more landlords to hire attorneys, or will it make landlords engage in more frequent illegal evictions, or take more extreme illegal eviction measures to avoid court?

Landlords are already taking matters into their own hands and attempting to evict tenants through illegal means instead of taking tenants to court.³⁴⁵ These illegal means include landlords “changing the locks, taking the tenant’s belongings, removing the front door, [and] turning off the heat or electricity.”³⁴⁶ Landlords also sometimes deny tenants services to which they are legally entitled but may not be aware of on their own.³⁴⁷ For example, in public housing units, tenants are entitled to a grievance hearing before a neutral third party after being served with a notice to vacate the premises, but before the landlord can file an eviction action in court.³⁴⁸ Attorneys representing tenants will be able to hold landlords accountable in court,³⁴⁹

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *See generally id.* at 9–17 (discussing the challenges of assigning counsel to tenants right before their court appearance).

³⁴² *See id.* at 9–17.

³⁴³ *Id.*

³⁴⁴ NYU FURMAN CTR, *supra* note 141.

³⁴⁵ Petersen, *supra* note 56, at 70.

³⁴⁶ Ann O’Connell, *Consequences of Illegal Evictions: Find Your State’s Laws on Illegal “Self-Help” Evictions.*, NOLO (Dec. 10, 2020), <https://www.nolo.com/legal-encyclopedia/consequences-of-illegal-evictions.html> [<https://perma.cc/72NZ-NNDC>].

³⁴⁷ *For Tenants: Low-Income Housing Rights Overview*, SOLID GROUND, <https://www.solid-ground.org/get-help/housing/for-tenants/low-income-housing-rights/#accordion-5-t10> [<https://perma.cc/L39E-TXC7>].

³⁴⁸ *Id.*

³⁴⁹ *See* Schultheis & Rooney, *supra* note 3, at 1.

and tenants will be able to receive remedies for landlords' illegal actions.³⁵⁰ In Iowa, the tenant may sue for and recover "[a]ctual damages, plus punitive damages up to twice the monthly rent and attorneys' fees."³⁵¹ In addition, if the tenant decides to terminate the lease, the landlord must return all the tenant's prepaid rent and security deposits.³⁵²

Although the Iowa Constitution only guarantees the right to counsel in criminal proceedings,³⁵³ the Iowa Legislature has enacted three statutes which guarantee the right to counsel in certain civil actions, including upon the filing of a child-in-need-of-assistance petition, the filing of a termination-of-parental-rights petition, and to the responding party when a guardian ad litem is appointed for a child.³⁵⁴ Currently, the right to counsel exists in limited form in certain civil proceedings in almost every jurisdiction in the United States.³⁵⁵ State courts, state legislatures, and localities have seen progress in enacting a right to counsel in certain civil proceedings in recent years.³⁵⁶ In addition, the National Coalition for a Civil Right to Counsel is a coalition of over three hundred participants and two hundred partners operating in forty states founded in 2003 with the goal of expanding legal support to individuals in civil cases involving basic human needs.³⁵⁷ Moreover, in 2006 the American Bar Association ("ABA") unanimously adopted a recommendation supporting a civil right to counsel for low-income individuals.³⁵⁸ It urged federal and state governments "to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction."³⁵⁹ The ABA's recommendation creates a sample Act providing guidance to state legislatures which are considering implementing a civil right

³⁵⁰ O'Connell *supra* note 346.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ See IOWA CONST. art. I, § 10 (1857).

³⁵⁴ Laura Abel & Max Rettig, *Brennan Ctr. for Just., State Statutes Providing for a Right to Counsel in Civil Cases*, CLEARINGHOUSE REV. J. OF POVERTY L. & POL'Y 245, 255 (2006), https://www.brennancenter.org/sites/default/files/legacy/d/download_file_39169.pdf [<https://perma.cc/QFG8-SEVC>].

³⁵⁵ Petersen, *supra* note 56, at 87.

³⁵⁶ *National Coalition for a Civil Right to Counsel*, PUB. JUST. CTR., <http://www.publicjustice.org/en/national-coalition-for-a-civil-right-to-counsel/> [<https://perma.cc/A9H2-ZCTC>].

³⁵⁷ *A Civil Right to Counsel*, *supra* note 140.

³⁵⁸ AM. BAR ASS'N, TASK FORCE ON ACCESS TO CIVIL JUSTICE: REPORT TO THE HOUSE OF DELEGATES 2–3 (2006), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf [<https://perma.cc/K8MA-PDXQ>].

³⁵⁹ *Id.* at 1.

to counsel for these categories,³⁶⁰ which Iowa could look to for guidance when implementing its right to counsel program.

Low-income tenants in Iowa are in dire need of legal assistance. Iowa cannot wait with bated breath for the Supreme Court to one day hold that indigent tenants in civil cases have the right to counsel. Instead, Iowa needs to follow other jurisdictions and begin to implement a right to counsel program to ensure that tenants are receiving a fair trial in Iowa. It is economically efficient to invest in a universal access to counsel program because “[t]he cost of homelessness and related services far exceeds the cost to ensure attorneys for all low-income tenants in eviction court.”³⁶¹ Increasing tenants’ access to counsel often leads to settlements, which benefits landlords because they receive back-due rent.³⁶² Iowa ended fiscal year 2020 with a \$305.5 million surplus; it should allocate funds from the surplus to begin the implementation of a UAC program.³⁶³ Keeping tenants in their homes would be cheaper than providing them with emergency and transitional services.³⁶⁴ In Des Moines, it costs \$581 to provide an individual with housing and services for one month in an emergency shelter setting.³⁶⁵

B. *Assessing the Challenges and Benefits of Implementing a Right to Counsel Program in Iowa*

There are foreseeable hinderances to an Iowa right to counsel program which require advance consideration. Iowa cities seem to lack the large-scale community organizing which was essential to bringing NYC’s UAC program into fruition.³⁶⁶ It seems unlikely that the conservative governor of Iowa³⁶⁷ and the conservative constituency who reelected Senator Joni Ernst, ardent supporter of former-President Trump,³⁶⁸ will support a right to counsel program; it will thus seemingly fall to the individual cities and their residents

³⁶⁰ *Id.* at 2.

³⁶¹ Petersen, *supra* note 56, at 88.

³⁶² Steven Gunn, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL’Y R. 385, 386–387 (1995).

³⁶³ *Iowa Budget Surplus of \$305M*, *supra* note 334.

³⁶⁴ See HUD Study Examines Costs Associated with First-Time Homelessness, NAT’L LOW INCOME HOUS. COAL. (Apr. 9, 2014), <https://nlihc.org/resource/hud-study-examines-costs-associated-first-time-homelessness> [<https://perma.cc/W4VZ-HKNH>].

³⁶⁵ *Id.*

³⁶⁶ See NYU FURMAN CTR., *supra* note 141 at 6.

³⁶⁷ Trip Gabriel & Astead W. Herndon, *As Governor Resists Mask Mandate, Iowans Sour on the G.O.P.*, N.Y. TIMES (Oct. 29, 2020), <https://www.nytimes.com/2020/10/23/us/politics/iowa-kim-reynolds-face-masks.html> [<https://perma.cc/7XUX-PREA>].

³⁶⁸ Brianna Pfannenstiel, *‘Six More Years!’: Republican U.S. Sen. Joni Ernst Wins Reelection, Beating Democrat Theresa Greenfield*, DES MOINES REG. (Nov. 4, 2020, 4:15 PM), <https://www.desmoinesregister.com/story/news/politics/2020/11/02/iowa-election-results-us-senate-theresa-greenfield-joni-ernst/5997461002/> [<https://perma.cc/5B88-B6YX>].

to advocate for a right to counsel program. Community organizing galvanized the right to counsel programs seen in other cities throughout the country,³⁶⁹ and it can be utilized to galvanize a right to counsel movement for indigent tenants in Iowa, but it will also require a commitment by localities, the Iowa Legislature, voters, and grassroots advocacy organizers.

For residents facing eviction or the threat of eviction, a lawyer can provide invaluable assistance.³⁷⁰ Without the guidance of counsel, “[t]enants are left on their own to navigate an evolving maze of federal and local directives that dictate when and how an eviction can occur, a legal landscape that has become infinitely more confusing during the COVID-19 pandemic.”³⁷¹ Creating a right to counsel program in Iowa will protect Iowans from illegal and unfair evictions. At the moment, the eviction process in Iowa is inherently inequitable because the majority of landlords are represented in court by attorneys, whereas the overwhelming majority of tenants show up to their eviction hearing without counsel, if they show up at all.³⁷² Not only do tenants face an unequal opportunity to present their case to a judge,³⁷³ but many tenants do not even make it to court.³⁷⁴ Implementing a right to counsel program will ensure Iowa tenants get a fair day in court and protect them from receiving unfair treatment from biased judges.³⁷⁵ Many landlords and judges are hostile towards low-income defendants.³⁷⁶ There is a great need to protect low-income tenants’ rights because they are especially vulnerable since eviction is a substantial loss which can impact every aspect of a person’s life and have severe, long-lasting consequences.³⁷⁷

In *Powell*, the Court noted, “the proceedings, from beginning to end, took place in an atmosphere of tense, hostile, and excited public sentiment.”³⁷⁸ Eviction proceedings, like other proceedings with high rates of pro se

³⁶⁹ See *All About the Right to Counsel NYC*, *supra* note 159; see also *All About the Right to Counsel in S.F.*, *supra* note 178; see also NYU FURMAN CTR., *supra* note 141, at 6; see also Brey, *supra* note 34.

³⁷⁰ See Schultheis & Rooney, *supra* note 3, at 1.

³⁷¹ 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), <https://theappeal.org/most-tenants-facing-eviction-dont-have-a-right-to-an-attorney-lawmakers-want-to-change-that/> [https://perma.cc/WX8L-WTW4].

³⁷² Schultheis & Rooney, *supra* note 3, at 1.

³⁷³ *Id.*

³⁷⁴ Petersen, *supra* note 56, at 101.

³⁷⁵ See Weiss, *supra* note 57.

³⁷⁶ *Id.*

³⁷⁷ Schultheis & Rooney, *supra* note 3, at 7.

³⁷⁸ *Powell v. Alabama*, 287 U.S. 45, 51 (1932)).

litigants, can occur in a tense and hostile atmosphere.³⁷⁹ “[E]viction courts, sometimes referred to as eviction machines or eviction mills, hurriedly churn out orders evicting tenants regardless of the merits of the case.”³⁸⁰ An eviction action, once commenced, generally consists of a short hearing, where the judge determines the issue of possession of the rental unit.³⁸¹ The court typically issues a ruling six to ten days from the commencement of the eviction action.³⁸² At these hearings, the landlord often has counsel while the defendant rarely does.³⁸³ Pro se litigants are disadvantaged in court proceedings because they lack the skills and knowledge attorneys have which are necessary to navigate the legal system.³⁸⁴ Most landlords already have an attorney, so the concern about hiring attorneys if a right to counsel law is passed is immaterial.³⁸⁵ In addition, landlords do not face the prospect of immediately losing their home.³⁸⁶ Also, with an attorney, a tenant has a fighting chance, so it does not matter as much that the other side has an attorney because it will be a fair legal proceeding.

IV. CONCLUSION

Throughout its history, Iowa has implemented progressive legal reforms, bucking the status quo and instead upholding the principals of the United States and Iowa Constitutions.³⁸⁷ Iowa’s Constitution states “[a]ll men and women are, by nature, free and equal, and have certain inalienable rights—among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and

³⁷⁹ *Cf.* Weiss, *supra* note 57 (discussing Judge Posner’s opinion of some judges’ often-hostile views about pro se litigants).

³⁸⁰ Petersen, *supra* note 56, at 66.

³⁸¹ *Id.* at 100.

³⁸² *Id.*

³⁸³ Schultheis & Rooney, *supra* note 3, at 1.

³⁸⁴ *Cf.* Powell v. Alabama, 287 U.S. 45, 64–65 (1932) (“[N]otice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law . . . The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.”).

³⁸⁵ Schultheis & Rooney, *supra* note 3, at 1.

³⁸⁶ *See id.*

³⁸⁷ *See* CITY OF DUBUQUE, A TIMELINE OF IOWA’S CIVIL RIGHTS HISTORY (2020), <https://www.cityofdubuque.org/DocumentCenter/View/1178/History-of-Iowa-Civil-Rights> [<https://perma.cc/VY92-ANW9>].

happiness.”³⁸⁸ In 1839, the Territorial Supreme Court held that a slave residing in Iowa retained his freedom.³⁸⁹ The Court declared that “[n]o man in this territory can be reduced to slavery” eighteen years before the United States Supreme Court’s infamous *Dred Scott* decision.³⁹⁰ In 1851, Iowa became only the third state to ban anti-miscegenation laws.³⁹¹ It would take over one hundred years before the Supreme Court struck down the last anti-miscegenation law in the United States in *Loving v. Virginia*.³⁹²

In another revolutionary move, the Iowa Supreme Court in 1868 held that separate schools for Black and white children were not equal, thus integrating Iowa public schools ninety-six years before *Brown v. Board of Education* integrated public schools at the national level.³⁹³ Iowa also took a progressive stance in 1976 when “the Iowa Supreme Court held that the state’s sodomy law, as applied to private consensual conduct of an opposite-sex couple, violated the federal Constitution’s equal protection guarantee by criminalizing conduct for unmarried persons that was not criminalized for married couples,”³⁹⁴ a full twenty-five years before the United States Supreme Court overruled the fourteen remaining state sodomy laws in *Lawrence v. Texas*.³⁹⁵ In yet another trailblazing decision, the Iowa Supreme Court held in 1980 that “a child custody order could not be modified merely because the custodial parent was in an interracial relationship.”³⁹⁶ Four years later, the United States Supreme Court followed suit in *Palmore v. Sidoti*.³⁹⁷ In 2009, Iowa became just the third state in the nation to legalize same-sex marriage,³⁹⁸ six years before the United States Supreme Court would legalize same-sex marriage nationally.³⁹⁹

It is time for Iowa to embrace its progressive legal history and implement a right to counsel law for indigent tenants. Since the United States Supreme Court held in *Gideon* that the Constitution guaranteed a defendant the right to counsel in a criminal trial, legal and fair housing advocates hoped that the Court would one day extend this principle to civil cases; however, when

³⁸⁸ IOWA CONST. of 1857 art. 1 § 1.

³⁸⁹ CITY OF DUBUQUE, *supra* note 387.

³⁹⁰ *Id.*; Editorial, *Dred Scott Case*, HISTORY.COM (Aug. 26, 2020), <https://www.history.com/topics/black-history/dred-scott-case> [<https://perma.cc/24QL-2DF2>].

³⁹¹ CITY OF DUBUQUE, *supra* note 387.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Palmore v. Sidoti*, 466 U.S. 429, 431 (1984).

³⁹⁸ CITY OF DUBUQUE, *supra* note 381.

³⁹⁹ *Obergefell v. Hodges*, 576 U.S. 644, 740 (2015).

presented with opportunities to do so, the Court has declined to extend the *Gideon* to civil defendants.⁴⁰⁰ Iowa needs to act now to prevent a housing catastrophe and protect its most vulnerable citizens by creating a legal right for indigent tenants to receive counsel in eviction proceedings. Iowans face a housing crisis which is only poised to worsen as the most devastating effects of COVID-19 continue to be felt. The Iowa Legislature is tasked with representing the interests of the people of Iowa. Iowans need relief. They need a fair fighting chance. A right to counsel in eviction proceedings would keep many Iowans in their homes during one of the worst pandemics in modern history and prevent exacerbating an already devastating public health crisis.

Iowa can look to the right to counsel programs other jurisdictions have implemented to establish its own right to counsel program more efficiently and effectively for low-income tenants. The legislature must seize this moment while there is growing support for the right to counsel movement nationally and widespread public interest in relief for tenants facing a hostile legal system with no government aid. Guaranteeing indigent tenants' legal representation is a fundamental step towards creating a more equitable justice system for Iowa tenants. The Iowa Legislature has the power and opportunity to protect Iowa tenants from being unfairly and illegally evicted while narrowing the justice gap in eviction proceedings and delivering justice to its most vulnerable citizens. With the number of renters growing in most Iowa cities⁴⁰¹ and the economic impact of COVID-19 decimating renters, it is time for the Iowa Legislature to step up in and provide relief to its desperate citizens. The success other cities have seen in decreasing eviction filings and keeping tenants in their homes should be proof enough that right to counsel programs are beneficial and worth the cost and time to implement.

⁴⁰⁰ See *Turner v. Rogers*, 564 U.S. 435, 451 (2011).

⁴⁰¹ Maciag, *supra* note 290.