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Increasing Substantive Fairness and Mitigating Social Costs in Eviction Proceedings: Instituting a Civil Right to Counsel for Indigent Tenants in Pennsylvania

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Increasing Substantive Fairness and Mitigating Social Costs in Eviction Proceedings: Instituting a Civil Right to Counsel for Indigent Tenants in Pennsylvania

Robin M. White*

ABSTRACT

The U.S. Constitution provides criminal defendants the right to a court-appointed attorney but gives no similar protection to civil litigants. Although federal law does not supply any categorical rights to counsel for civil litigants, all 50 states have instituted the right in at least one category of civil law that substantially impacts individuals' rights. Since 2017, several U.S. cities have enacted such a right for tenants facing eviction. In so doing, these cities responded to American families' increasing rent burden, the recent publication of nationwide eviction data, the sociological research concerning the impact of eviction, and the lack of procedural and substantive fairness for tenants in court. The COVID-19 pandemic has only exacerbated the urgency for this right.

This Comment will recommend that the Pennsylvania legislature enact the nation's first statewide civil right to counsel for tenants in eviction proceedings, given the support in case law and anticipated benefits to individuals and communities. This Comment explores the unique challenges and opportunities Pennsylvania faces in implementing tenants' right to counsel, based on its demographics, its existing legal services infrastructure, and its largely rural geography. Additionally, this Comment overviews the implementation and results from similar programs in other jurisdictions. This Comment concludes by proposing concrete

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steps and raising abstract considerations for making aspirational justice a reality for tenants facing eviction in Pennsylvania.

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I. INTRODUCTION

The COVID-19 pandemic, which has created a nationwide housing crisis,¹ has exacerbated the need for a civil right to counsel for tenants in eviction proceedings.² The burgeoning eviction right-to-counsel movement commenced in August 2017, when New York City (NYC) became the first U.S. jurisdiction to codify such a right, with San Francisco, Newark, Cleveland, Philadelphia, Boulder, and Baltimore following suit.³ Other localities have implemented pilot programs or passed related legislation to address the need.⁴ Grass-roots organizers, unwilling to wait for state or federal action, have mobilized around the issue.⁵ The COVID-19 pandemic gave the

1. See Elaine S. Povich, *Eviction Looms For Millions, Despite New Federal Aid Package*, PEW CHARITABLE TRS. (Dec. 22, 2020), <https://bit.ly/2XoUtr6> [<https://perma.cc/P6CC-X76R>]. With the Centers for Disease Control and Prevention (CDC) moratorium set to expire January 31, 2021, 30–40 million renters face eviction in the middle of winter amidst a pandemic. *Id.*

2. Natalie Rodriguez, *Virus Lights Fire Under Eviction Right to Counsel Movement*, LAW 360 (Aug. 16, 2020), <https://bit.ly/3bnu4II> [<https://perma.cc/KKCS-AJTS>].

3. See Matt Bloom, *How a Voter-Approved Program in Boulder Could Drastically Reduce Evictions*, KUNC (Nov. 4, 2020), <https://bit.ly/3s8ZLF2> [<https://perma.cc/T849-GQWA>]; J.K. Dineen, *SF's Measure F Wins, Will Give Tax-Funded Legal Help to Tenants Facing Eviction*, S.F. CHRON. (June 5, 2018), <https://bit.ly/2OeQY1t> [<https://perma.cc/HU3E-W6ZB>] (adopting a universal right without income restrictions); *Help on the Way for Cleveland Families at Risk of Being Evicted*, WKYC STUDIOS (Sept. 30, 2019), <https://bit.ly/2CAG0xK> [<https://perma.cc/CS5Z-LDUX>] (adopting a plan in September 2019); Sarah Y. Kim, *Mayor Signs Bill Guaranteeing Lawyers For Renters Facing Eviction*, WYPR (Dec. 4, 2020), <https://bit.ly/3bkwsJE> [<https://perma.cc/3J2B-8Z9G>] (announcing Baltimore's passage of the legislation); Caitlin McCabe, *Philly Council Passes Right to Counsel, Giving Free Legal Representation to Tenants Who Are Evicted*, PHILA. INQUIRER (Nov. 14, 2019), <https://bit.ly/2YRU7ZY> [<https://perma.cc/6DJH-UR7J>] (announcing passage of a law giving tenants the right to counsel); Oksana Mironova, *NYC Right to Counsel: First Year Results and Potential for Expansion*, CMTY. SERV. SOC'Y (Mar. 25, 2019), <https://bit.ly/2rzlbc0> [<https://perma.cc/K44X-LH9P>] (adopting a civil right to counsel in 2017 that will phase in by zip code over five years); Rebecca Panico, *City Council Moves Ahead with Plan to Give Evicted Residents Free Legal Services*, TAP INTO NEWARK (Dec. 24, 2018), <https://bit.ly/2NE4ah4> [<https://perma.cc/8PCX-GDSK>] (announcing that City Council passed the bill in December 2018 and estimating implementation costs).

4. See, e.g., Martin Austermuhle, *Need a Lawyer to Fight an Eviction? A New D.C. Program Provides One for Free*, WAMU 88.5 AM. U. RADIO (Mar. 18, 2017), <https://bit.ly/2CBbYKk> [<https://perma.cc/FKE3-ELEW>] (describing Washington, D.C. Council's grant program through the D.C. Bar Foundation to provide legal services to low-income tenants facing eviction); Marissa Wenzke & Wendy Burch, *L.A. County Supervisors Vote 5–0 for Permanent Rent Control Measure Affecting 100,000 Tenants in Unincorporated Areas*, KTLA (Sept. 10, 2019), <https://bit.ly/2O82StY> [<https://perma.cc/2MFG-42A7>] (announcing Los Angeles's funding for five pilot programs providing legal services to tenants in eviction proceedings).

5. See, e.g., MASS. RIGHT TO COUNS. COAL., <https://bit.ly/2OeUgBR> [<https://perma.cc/DX44-CGSN>] (last visited Mar. 15, 2021) (campaigning for a civil right to

issue new exigency as more and more American families could not make rent, leading to appeals to the Biden-Harris administration for policy change.⁶ A right to counsel in eviction has garnered support from a public majority, even among voters across the political spectrum.⁷

Matthew Desmond, Princeton sociologist and MacArthur Genius grant recipient, has been instrumental in raising public awareness of the frequency and devastating impact of eviction.⁸ Princeton University's Eviction Lab, for which Desmond is Principal Investigator, published the first database of U.S. eviction data, revealing a dramatic increase in nationwide evictions over the past 20 years.⁹ In 2000, localities executed 518,873 evictions; but, by 2016, evictions had nearly doubled to 898,479.¹⁰ These numbers, while staggering, represent only court-ordered evictions and exclude informal evictions.¹¹ Eviction Lab and Wake Forest University Law School's Professor Emily Benfer partnered to develop a COVID-19 Housing Policy Scorecard that outlines state-level renter protections and evaluates each state on a five-star scale.¹²

counsel in eviction proceedings); RIGHT TO COUNS. NYC COAL., <https://bit.ly/2Q7VTUg> [<https://perma.cc/9ZEK-CCNQ>] (last visited Mar. 15, 2021) (cataloguing news releases, implementation data, and campaign resources for a civil right to counsel in eviction proceedings).

6. Sarah Chamberlain, *Ensuring Safe, Stable Housing Should Be Top Priority for New Administration, Congress*, FORBES (Dec. 18, 2020), <https://bit.ly/39fHMUJ> [<https://perma.cc/S6X4-S86M>].

7. JAMILA MICHENER, THE JUSTICE COLLABORATIVE INST. & DATA FOR PROGRESS, THE CASE FOR A RIGHT TO COUNSEL IN HOUSING COURT 3 (2020), <https://bit.ly/39fUumE> [<https://perma.cc/G4EJ-LLMW>] (finding 59% of likely voters support an eviction right to counsel analogous to the right to counsel for criminal defense).

8. See *About Eviction Lab*, EVICTION LAB (last visited Mar. 15, 2021), <https://bit.ly/2rZA1XM> [<https://perma.cc/93NW-D9LT>]. Matthew Desmond primarily raised awareness through his 2016 Pulitzer Prize winning book *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY*. *Id.*

9. *Id.*; *National Estimates: Eviction in America*, EVICTION LAB (May 11, 2018), <https://bit.ly/2Kd1yEJ> [<https://perma.cc/C6VD-F93V>].

10. *National Estimates*, *supra* note 9.

11. See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 4–5 (2016) (stating that nearly half of Milwaukee's forced moves are informal evictions, which may occur in a tenant buyout when a landlord offers a tenant money to voluntarily leave); see also *Methodology Report v.1.1.0*, EVICTION LAB 1, 2 (May 7, 2018), <https://bit.ly/2RRkFsE> [<https://perma.cc/EFP8-FVN4>] (describing illegal lockouts in which the landlord precludes tenant access or forcibly removes the tenant's belongings).

12. *COVID-19 Housing Policy Scorecard*, EVICTION LAB, <https://bit.ly/35qVbZ3> [<https://perma.cc/CAD9-ERP>] (last visited Mar. 15, 2021). By this measure, Pennsylvania rates a lowly 0.0/5.00. *Pennsylvania COVID-19 Housing Policy Scorecard*, EVICTION LAB (last updated Mar. 3, 2020), <https://bit.ly/2Xnxg8D> [<https://perma.cc/LBA2-FVR9>].

Desmond contextualizes the eviction crisis, even preceding COVID-19, in a period of historically stagnant incomes and exponential increases in housing costs.¹³ The result is that “[t]oday, the majority of poor renting families in America spend over half of their income on housing, and at least one in four dedicates over 70 percent to paying the rent and keeping the lights on.”¹⁴ The supply of affordable rental homes did not meet the rising demand between 2001 and 2015.¹⁵ Governmental programs are unable to make up the difference, as less than 25 percent of low-income, at-risk renters receive federal rental assistance.¹⁶

Eviction has detrimental secondary effects on individuals and the community.¹⁷ The far-reaching collateral consequences for individuals include homelessness, loss of jobs and benefits, displacement of children from schools, loss of child custody, and decreased physical and mental health metrics.¹⁸ During the COVID-19 pandemic, eviction has further aggravated infection and mortality rates.¹⁹ Eviction’s disproportionate incidence in communities of

13. See DESMOND, *supra* note 11, at 4.

14. *Id.*

15. Heidi Schultheis & Caitlin Rooney, *A Right to Counsel is a Right to a Fighting Chance*, CTR. FOR AM. PROGRESS (Oct. 2, 2019), <https://ampr.gs/2LWmIYN> [<https://perma.cc/E3VQ-KHK3>]; see also PEW CHARITABLE TRS., *AMERICAN FAMILIES FACE A GROWING RENT BURDEN* (2018), <https://bit.ly/2RyVDwP> [<https://perma.cc/R2AE-F6T4>] (citing a 19% increase in rent-burdened households and a 42% increase in severely rent-burdened households between 2001 and 2015).

16. Schultheis & Rooney, *supra* note 15.

17. See Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 66–69 (2018).

18. See DESMOND, *supra* note 11, at 5; accord *Why Eviction Matters*, EVICTION LAB (last visited Mar. 15, 2021), <https://bit.ly/32zkLXz> [<https://perma.cc/6KF2-TG84>] (illustrating the desperation eviction causes); Sabbeth, *supra* note 17, at 66–68 (describing the upheaval of moving to a less desirable neighborhood, losing possessions, destroying relationships, disrupting access to work and school, negatively impacting school performance, and causing job loss, anxiety and depression); Schultheis & Rooney, *supra* note 15 (stating that evicted workers are 22% more likely than similarly situated people to lose their jobs); STOUT RISIUS ROSS, *ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS* ¶¶ 48–58 (2018), <https://bit.ly/3boBTaL> [<https://perma.cc/P33F-8Z6J>] (describing the pernicious effect on employment, education, health outcomes, child abuse/neglect and foster care, ability to re-rent, and homelessness).

19. Emily Benfer, Gregg Gonsalves & Danya Keene, *The Coming Wave of Evictions Will Significantly Worsen America’s COVID-19 Crisis*, THE APPEAL (Dec. 7, 2020), <https://bit.ly/3q5qz7i> [<https://perma.cc/BB7F-FD5B>]. Eviction not only weakens the immune system of those threatened with eviction, but also it can also result in comorbidities. *Id.* Beyond that, eviction creates obvious environmental crowding and transiency that facilitates infection. *Id.* Eviction alone caused an estimated 433,700 cases and 10,700 deaths. *Id.* States that lifted eviction moratoria, after 16 weeks, saw COVID-19 infection rates rise by 2.1 times—and

color calamitously coincides with disproportionate COVID-19 devastation in these same communities.²⁰ Furthermore, eviction records impact tenants' personal credit and potential income earnings, which in turn makes finding housing difficult.²¹

"Eviction isn't just a condition of poverty; it's a cause of poverty Eviction is a direct cause of homelessness, but it also is a cause of residential instability, school instability [and] community instability."²² A 2014 Massachusetts study suggests 15 percent of evicted families and 20 percent of evicted individuals resort to emergency shelter.²³ Eviction and resulting homelessness substantially burden public resources such as emergency shelters, law enforcement, emergency medical services, and public assistance or unemployment insurance.²⁴

Policymakers, facing the compelling data about eviction's impact and legal asymmetry, have begun to respond.²⁵ Despite some legislative efforts, no federal or statewide right to counsel exists for these vulnerable tenants.²⁶ In October 2020, the Pennsylvania

death rates by 5.4 times—the rate of the states that kept the eviction moratoria in place. *Id.* See also Emily A. Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, J. URB. HEALTH (Jan. 7, 2021), <https://bit.ly/38uYIHM> [<https://perma.cc/ST2L-9573>] [hereinafter *Eviction, Health, Inequity, and the Spread of COVID-19*].

20. See *Eviction, Health, Inequity, and the Spread of COVID-19*, *supra* note 19 (noting that Black households were two times more likely than White households to be evicted and that Black Americans are dying from COVID-19 at 2.1 times the rate of non-Hispanic White Americans). Pre-pandemic data reveals eviction's disproportionate impact on women of color. See Schultheis & Rooney, *supra* note 15; see also DESMOND, *supra* note 11, at 98 ("Women from black neighborhoods made up 9% of Milwaukee's population and 30% of its evicted tenants. If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out.").

21. See Sabbeth, *supra* note 17, at 67–68.

22. Terry Gross, *First-Ever Evictions Database Shows: 'We're in the Middle of a Housing Crisis'*, NPR (Apr. 12, 2018), <https://n.pr/2YP7dHG> [<https://perma.cc/SJB7-GK3D>] (quoting Matthew Desmond).

23. *Mayor Walsh Advocates for Right to Counsel and Protections for Older Adults in Eviction Proceedings*, CITY BOS. (July 17, 2019), <https://bit.ly/2CvFOzT> [<https://perma.cc/U9FQ-XDYF>].

24. See Sabbeth, *supra* note 17, at 68–69; see also STOUT RISIUS ROSS, *supra* note 18, ¶ 58 (estimating \$40 as the per-person, per-day cost of emergency housing in Philadelphia with an average duration of 183 days).

25. See *supra* notes 1–7 and accompanying text; see *infra* notes 34–37 for a description of the legal asymmetries in eviction proceedings.

26. Elizabeth Weill-Greenberg, *Most Tenants Facing Eviction Don't Have a Right to an Attorney. Lawmakers Want to Change That*, APPEAL (Feb. 18, 2021), <https://bit.ly/3vpk9DG> [<https://perma.cc/4SUZ-F5L9>] ("But despite the high stakes, no right-to-counsel programs existed at the city, state, or federal level until 2017" when NYC enacted its Universal Access to Counsel program, and six cities have since followed suit). State legislators in Connecticut, Massachusetts, and Ma-

House Democratic Policy Committee held a hearing regarding a statewide right to counsel in evictions.²⁷

Pennsylvania legislators should adopt a right to counsel for indigent tenants in eviction proceedings.²⁸ Part II of this Comment will explore the significant merits, legal foundation, historical context, and institutional support for this civil right to counsel.²⁹ Part III will outline a process for moving forward with the right-to-counsel initiative, including proposing a model act,³⁰ modifying that act to meet Pennsylvania's needs,³¹ and incorporating feedback from jurisdictions that have instituted similar programs.³²

II. BACKGROUND

A. *Merits for a Right to Counsel in Eviction Proceedings*

Both fundamental fairness and economic prudence support the appointment of counsel for indigent tenants facing eviction.

1. *Fairness Concerns*

State courts are the formal enforcement mechanism for evictions.³³ Because 90 percent of landlords and only 10 percent of tenants have legal representation, the power dynamic in eviction proceedings tips heavily toward the landlord.³⁴ The resulting asymmetry raises due process, fairness, and legitimacy concerns.³⁵ Landlords also hold unique power as “repeat players” in housing court,

ryland have proposed a right to counsel in eviction. *See* S. 652, Session Year 2019 (Conn. 2019); H.R. 1537, 191st Gen. Court (Mass. 2019); H.R. 3456, 191st Gen. Court (Mass. 2019); S. 913, 191st Gen. Court (Mass. 2019); H.R. 18, Session Year 2021 (Md. 2021); S. 154, Session Year 2021 (Md. 2021). Federal legislators have also proposed eviction right-to-counsel legislation. *See, e.g.*, Eviction Prevention Act of 2019, H.R. 5298, 116th Cong. (2019); The Place to Prosper Act, H.R. 5072, 116th Cong. (2019); HELP Act of 2020, S. 4399, 116th Cong. (2020); HELP Act of 2020, H.R. 7847, 116th Cong. (2020).

27. *Legal Aid for Tenants Facing Eviction*, 2019–20 Leg. Sess. (Pa. 2020), <https://bit.ly/2LwohPG> [<https://perma.cc/RVB4-ZKYY>]. Advocates from various Pennsylvania legal aid and public interest organizations, the National Coalition for a Civil Right to Counsel (NCCRC), the Philadelphia Bar Association, and Pennsylvania IOLTA Board provided lawmakers with compelling data on the need for a civil right to counsel in eviction. *See id.*

28. *See infra* Section III.A.

29. *Infra* Part II.

30. *Infra* Section III.A.

31. *Infra* Section III.B.

32. *Infra* Section III.C.

33. *See* Schultheis & Rooney, *supra* note 15.

34. *Id.*

35. *See* Sabbeth, *supra* note 17, at 78; *see also* Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveals About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 37, 48 n.47 (2010) (describing a study in

triggering judges' implicit bias.³⁶ Tenants often sign settlements against their interest based on the landlords' lawyers' misrepresentation or coercion.³⁷

2. *Better Result and a Return on Investment*

Tenants with attorneys achieve better results by more frequently avoiding negative judgments and defaults, obtaining better settlements, and winning more trials.³⁸ Represented tenants are anywhere from 3 to 19 times more likely than pro se tenants to win in eviction proceedings.³⁹

Jurisdictions that implement a right to counsel in eviction proceedings not only improve outcomes for individuals but also stand to reap financial benefits. Estimates preceding Philadelphia's adoption of the right to counsel conservatively state that the city will save \$45.2 million by investing \$3.5 million to fund representation—an overall return on investment of \$12.74 for every \$1.00 spent.⁴⁰ Tenant representation increases courts' efficiency by shortening the complaints' pending period, strengthening the claims' merits, decreasing the filing rate for motions to show cause to stay eviction and motions for post-eviction relief, decreasing judges' time spent

which most hearings lasted under one minute with “judgments overwhelmingly favoring landlords”).

36. See Sabbeth, *supra* note 17, at 79 (citing to Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 570 (1992)). Bezdek's article describes the institutional exclusion of the poor when judges misapply procedural rules against unrepresented tenants and interrupt or silence tenant testimony. Bezdek, *supra*, at 540–42. Similarly, Engler cites a study of Philadelphia courts in which landlords appear to win independently of representation because “all landlords and their attorneys act as repeat players, reinforcing judges' orientation to eviction by virtue of their complaint.” Engler, *supra* note 35, at 51 (internal citation omitted).

37. See Sabbeth, *supra* note 17, at 79–80 (explaining that Housing Court settlements are notoriously one sided and that landlord claims frequently lack merit or are clearly defensible).

38. See Engler, *supra* note 35, at 48–49.

39. *Id.*; see also Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881, 900–10, tbl. 2 (2016) (organizing the results from studies on the efficacy of tenant representation and explaining why the 2012 Greiner et al. study is inconsistent with other results); STOUT RISIUS ROSS, *supra* note 18, ¶ 59 (citing a randomized trial finding that represented tenants were 4.4 times more likely to remain in their homes and describing how attorneys acquired continuances, increased chances of settlement from 7% to 26%, and helped tenants avoid adverse judgments).

40. STOUT RISIUS ROSS, *supra* note 18, ¶¶ 118, 119–24 (explaining that the actual savings may be much higher based on incalculable factors such as overcrowded living conditions' impact on children's health and education, adults' income potential, and adults' mental health; improved enforcement of rent regulations; and decreased number of eviction filings).

explaining the law to tenants, and increasing the likelihood of out-of-court settlement.⁴¹ Over time, eviction filing rates will likely decrease because the landlords will not bring frivolous claims against represented tenants, and rates of multiple proceedings will similarly decrease if cases are resolved with finality.⁴² Furthermore, jurisdictions will benefit when the justice system gains legitimacy and public confidence from its fair treatment of individuals who receive an advocate.⁴³

3. *Opposition to the Right*

Support for tenants' right to counsel is not universal. Opponents generally cite the public expense of providing such services.⁴⁴ Although free legal services are a significant financial commitment, downstream savings in emergency shelter, healthcare, education, and employment more than justify the representation costs.⁴⁵ Beyond that, the democratic value of access to justice may require it.⁴⁶

Another opposition concern is that such a right favors tenants at landlords' expense.⁴⁷ However, the procedural appointment of counsel does not change the substantive laws governing eviction. Rather, balanced representation ensures that the court equally hears both parties' interests.⁴⁸ Other opponents argue that appointing tenants counsel is a poor use of public funds because the benefit of having counsel is overexaggerated⁴⁹ and such expendi-

41. *See id.* ¶ 61.

42. *See id.* ¶ 123.

43. *See id.* ¶ 62.

44. Rachel Kleinman, Note, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 *FORDHAM URB. L.J.* 1507, 1520–21 (2004) (citing cost as a governmental interest weighing against appointing counsel in the *Eldridge* analysis).

45. *See supra* note 40 and accompanying text.

46. *See Kleinman, supra* note 44, at 1520–21 (responding that such a governmental interest should be served regardless of cost and that cost should not weigh into the court's evaluation whether a constitutional right exists).

47. *See id.* at 1520–23 (describing that landlords may incur more expenses and pass those costs to tenants but ultimately concluding that such costs do not defeat the net benefits of appointing counsel); Ben Berke, *Legislators Weigh Public Defender-Like System for Tenants Facing Eviction*, ENTERPRISE (Sept. 6, 2019), <https://bit.ly/2QDxtAB> [<https://perma.cc/2RXU-QG6D>] (citing a landlord association spokesperson's opinion that public funds would be better spent on public housing or housing vouchers).

48. *See, e.g.*, SHRIVER CIVIL COUNSEL ACT IMPLEMENTATION COMM., JUDICIAL COUNCIL REPORT TO THE LEGISLATURE: SARGENT SHRIVER CIVIL COUNSEL ACT, app. A at 4 (2017), <https://bit.ly/2Fnoui0> [<https://perma.cc/3RYV-M6RT>] [hereinafter 2017 SHRIVER COMM. REPORT] (reporting that most tenants still had to leave their homes but were able to find more stable housing as a result of counsel negotiating a reasonable settlement).

49. Kleinman, *supra* note 44, at 1525–28.

ture does not address the core issue of the affordable housing shortage.⁵⁰ However, pilot programs demonstrate the net benefits of representation,⁵¹ and failing to institute a beneficial measure because it does not fully resolve the issue only allows the perfect to become the enemy of the good.

4. *Why Make It a Right?*

Simply funding representation for indigents in proceedings threatening their basic human needs is an insufficient resolution because such individuals need a *right* to counsel.⁵² A legal *right* means representation is a person's "just claim . . . [.] for the infringement of which claim the state provides a remedy in its courts."⁵³

A right is different from a benefit or a privilege because right-holders derive *power* from the right, which cannot be denied or terminated.⁵⁴ Such a right is rooted in the movement toward civil rights, equality, and human dignity.⁵⁵ Eviction cases pit the landlord's economic interests against the tenant's need for shelter.⁵⁶ However, Housing Court is not an appropriate venue for the "free market," which requires "rational cooperation, full information and zero transaction costs."⁵⁷ Instead, Housing Court requires government intervention to mitigate the hostile environment of asymmetrical representation, institutional power imbalance, and high transactional costs for tenants.⁵⁸ Recognizing the *right* of tenants to be represented in eviction proceedings constitutes a fundamental, and arguably necessary, shift in power.⁵⁹

50. Laura Kusisto, *As Rents Rise, Cities Strengthen Tenants' Ability to Fight Eviction*, WALL ST. J. (Dec. 26, 2019), <https://on.wsj.com/2MQvUhF> [<https://perma.cc/XL8Z-JEE7>] (quoting a spokesperson for National Apartment Association).

51. *See, e.g., infra* Section III.C.

52. *See generally* Andrew Scherer, *Why a Right: The Right to Counsel and the Ecology of Housing Justice*, IMPACT CTR. FOR PUB. INT. L. (2016), <https://bit.ly/2ZIQHce> [<https://perma.cc/YA8L-F5MW>]. Andrew Scherer is the Director of the Impact Center for Public Interest Law's Right to Counsel Project at New York Law School. *See id.* at 11 n.1.

53. *Id.* at 12 (emphasis omitted).

54. *See id.* at 12–13.

55. *See id.*

56. *See id.* at 14.

57. *See id.*

58. *See id.*

59. *See id.* at 12.

B. *Finding the Legal Foundation for the Civil Right-to-Counsel Policy Proposal*

In *Gideon v. Wainwright*,⁶⁰ the U.S. Supreme Court held that the Sixth Amendment and the Due Process Clause demand appointment of counsel at public expense for indigent criminal defendants in felony cases.⁶¹ Since that ruling, the “Civil Gideon” movement has advocated for the recognition of a parallel right in civil proceedings.⁶² The National Coalition for a Civil Right to Counsel (“NCCRC”) is the most preeminent right-to-counsel organization—and whose Coordinator John Pollock is a penetrating voice in the movement—advancing its mission to “encourage, support, and coordinate advocacy to expand recognition and implementation of a right to counsel for low-income people in civil cases that involve basic human needs such as shelter, safety, sustenance, health, and child custody.”⁶³ Even in civil cases not threatening a person’s physical liberty, such as parental termination, child dependency, civil commitment, paternity, or guardianship proceedings, the stakes are still extremely high.⁶⁴ Procedural protections should depend on the proceeding’s stakes rather than on a wooden distinction between criminal and civil law.⁶⁵ The civil right to counsel has a constitutional foundation in the federal and state Due Process Clause, Equal Protection Clause, and the principle of fundamental fairness.⁶⁶

60. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

61. *Id.* at 344–45.

62. See *A Civil Right to Counsel: What We’re Fighting For*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (last visited Mar. 15, 2021), <https://bit.ly/2NEZhnO> [<https://perma.cc/QD44-73ZR>] [hereinafter *What We’re Fighting For*]. Federal District Judge Robert A. Sweet first coined the term “Civil Gideon,” but the movement now favors the term “civil right to counsel” primarily to clarify its focus on basic human needs in civil cases rather than on a universal right in all civil cases. *The Right to Counsel in Criminal and Civil Cases*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (last visited Mar. 15, 2021), <https://bit.ly/2Q8yHW4> [<https://perma.cc/U3NV-EQGX>].

63. *What We’re Fighting For*, *supra* note 62.

64. See *Pennsylvania Status Map*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (last visited Mar. 15, 2021), <https://bit.ly/33NLNfv> [<https://perma.cc/BTZ6-E6TL>]; *What We’re Fighting For*, *supra* note 62.

65. See *In re Gault*, 387 U.S. 1, 41 (1967) (holding that the Due Process Clause requires the right to counsel in juvenile delinquency proceedings in which a child’s liberty is at risk).

66. See *infra* Section II.B; see also Andrew Scherer, *Why People Who Face Losing Their Homes in Legal Proceedings Must Have a Civil Right to Counsel*, 3 CARDOZO PUB. L. POL’Y & ETHICS J. 699, 702, 716–21 (2006); Jonathan K. Stubbs, *The Ripple Effects of Gideon: Recognizing the Human Right to Legal Counsel in Civil Adversarial Proceedings*, 49 STETSON L. REV. 457, 475, 484, 490 (2020) (advocating a construction of the 6th, 5th, 14th, and 9th Amendments that “facilitate[s]

1. *Federal Setbacks to the Civil Right to Counsel*

Federal courts largely reject a categorical right to counsel in civil cases. In *Lassiter v. Department of Social Services*,⁶⁷ the U.S. Supreme Court delivered a significant setback to the civil right-to-counsel movement.⁶⁸ The Court found no categorical due process right to counsel, despite the compelling liberty interests of a defendant against whom the state initiated termination of parental rights proceedings on grounds of neglect.⁶⁹ The Court instead relied on a case-by-case analysis under *Mathews v. Eldridge*⁷⁰ to determine whether the lower court erred in not appointing counsel.⁷¹ To determine what procedures due process requires, *Eldridge* outlined a three-factor test weighing the private interests at stake, the procedural risk of errors, and the government's countervailing interest.⁷² Even though all three *Eldridge* factors weighed toward appointment of counsel,⁷³ the *Lassiter* Court added the presumption that counsel is necessary only when physical liberty is in jeopardy and held that due process would not require appointed counsel in all parental termination proceedings.⁷⁴

However, *Lassiter* did not completely foreclose the possibility of a categorical right to counsel in some civil cases.⁷⁵ In 2011, the U.S. Supreme Court held in *Turner v. Rogers*⁷⁶ that, in important civil cases, courts need to either provide counsel or provide equivalent procedural safeguards.⁷⁷ *Turner* involved an unrepresented defendant who served jail time for failing to pay his court-ordered child support obligation.⁷⁸ Even though the proceeding

(and not frustrate[s]) universal freedom and justice" by legislating a right to counsel for indigent persons in proceedings in which their basic human needs are threatened).

67. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981).

68. See Clare Pastore & John Pollock, *Into the Breach: Progress on the Right to Counsel in Civil Matters*, 41 L.A. LAW. 13, 13–14 (2018).

69. *Lassiter*, 452 U.S. at 31–32; see also *id.* at 13.

70. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

71. *Lassiter*, 452 U.S. at 27 (citing *Eldridge*, 424 U.S. at 335).

72. *Eldridge*, 424 U.S. at 335.

73. See *Lassiter*, 452 U.S. at 27–31 (acknowledging that the legal right to parenthood is a strong private interest, that the proceeding's complexity posed a significant risk of error, and that the state's conflicted interests ultimately weighed in favor of appointing counsel).

74. *Id.* at 31 (affirming ultimately the trial court's decision not to appoint counsel).

75. See Christopher Bangs, Note, *Raising the Bar: Towards a Civil Right to Counsel in Pennsylvania*, 30 GEO. J. LEGAL ETHICS 593, 599–600 (2017).

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

77. Bangs, *supra* note 75, at 600 (citing *Turner*, 564 U.S. at 448–49).

78. *Turner*, 564 U.S. at 436.

implicated the defendant's physical liberty, the Court determined that the Due Process Clause did not require appointment of counsel if equivalent procedural safeguards were in place.⁷⁹

The Court cited three considerations: (1) the "ability to pay" determination was similar to the indigency determination for appointment of counsel; (2) appointing counsel to one party and not the other causes asymmetry; and (3) using the alternative procedural safeguards⁸⁰ already available would avoid "drawbacks inherent in recognizing an automatic right to counsel."⁸¹ While declining to give a categorical right to counsel in civil contempt proceedings, the Court narrowly ruled that due process does not require *automatic* appointment of counsel in civil contempt proceedings stemming from child support orders, as long as the opposing party does not have counsel, and the court provides procedural safeguards.⁸² Even though the result in *Turner* unfavorably rules out the inverse of *Lassiter's* presumption against counsel when physical liberty is not at stake, the Court's approach arguably leaves the door open to a categorical, automatic right to counsel for defendants in certain classes of civil cases.⁸³

2. *States' Post-Lassiter Actions*

Despite the federal courts' hesitancy to adopt a categorical civil right to counsel, state courts have found various legal grounds for automatic appointment of counsel in cases threatening basic human needs.⁸⁴ Based on state constitutional due process requirements, courts in Alaska, California, and Florida found a categorical right to counsel for indigent parents in privately initiated proceedings for termination of parental rights.⁸⁵ Perhaps most strikingly, despite that its state constitution's due process clause was coextensive to the federal counterpart, the Alaska Supreme Court unequivocally

79. *Id.* at 446–48.

80. *See id.* at 447–48. The Court enumerates the required safeguards: (1) notice to the defendant that his 'ability to pay' is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.

Id.

81. *Id.* at 446–47.

82. *See id.* at 448.

83. *See Bangs, supra* note 75, at 599–600.

84. Clare Pastore, *Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions*, 40 CLEARINGHOUSE REV. 186, 186–87 (2006).

85. *Id.* at 191.

sided with the *Lassiter* dissent in ruling that due process required appointment of counsel.⁸⁶ State constitutional equal protection clauses guarantee parents in Iowa, North Dakota, Oregon, and Illinois the right to counsel in privately or publicly initiated proceedings to terminate parental rights.⁸⁷

Every state has adopted a civil right to counsel in some civil cases.⁸⁸ For example, 45 states, and Washington, D.C., have adopted a categorical⁸⁹ right to counsel in proceedings for termination of parental rights, and the remaining 5 states have either a discretionary⁹⁰ right.⁹¹ In civil commitment proceedings, 49 states established a categorical right.⁹² In contrast, only six states have a qualified⁹³ right to counsel in eviction proceedings; and, the right is generally at the local level.⁹⁴

3. *Civil Right-to-Counsel Developments Under Pennsylvania Law*

Like other state courts, Pennsylvania courts have demonstrated a willingness to charter their own path in interpreting due process to require a civil right to counsel in certain categories of civil cases.⁹⁵ In 1982, *Corra v. Coll*⁹⁶ was the first Pennsylvania case to weigh the *Eldridge* factors and to recognize a categorical right to counsel.⁹⁷ Pursuant to the requirements of fundamental fairness and due process, this decision not only recognized the right to coun-

86. *Id.* at 188 (citing *In re K.L.J.*, 813 P.2d 276, 282 n.6 (S. Ct. Alaska 1991)) (“[W]e reject the case-by-case approach set out by the Supreme Court in *Lassiter*.”).

87. *Id.* at 191.

88. See *Status Map*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS. (last visited Mar. 15, 2021), <https://bit.ly/2O1cmai> [<https://perma.cc/6BYY-JMYW>] (visually depicting states’ right-to-counsel laws).

89. *Id.* (meaning that indigent individuals need not meet any other criteria to be appointed counsel beyond needing to request an attorney).

90. *Id.* (“Courts are permitted but not required to appoint counsel for any indigent individual in this type of case. A request may be required.”).

91. *Id.*

92. *Id.* (including every state except Indiana).

93. *Id.* A qualified right to counsel means:

[t]he established right to counsel or discretionary appointment of counsel is limited in some way, including: the only authority comes from a lower/intermediate court decision or a city government, not a high court or state legislature; a case has cast doubt on prior authority; a statute is ambiguous; or the right or discretionary appointment is not for all individuals or proceedings within that type of case.

Id.

94. *Id.* (including California, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania).

95. See Bangs, *supra* note 75, at 600.

96. *Corra v. Coll*, 451 A.2d 480 (Pa. Super. Ct. 1982).

97. See Bangs, *supra* note 75, at 600–01.

sel for putative fathers in paternity adjudications but also explicitly rejected as deficient, at least in some contexts, the *Lassiter* case-by-case analysis.⁹⁸

In 2010, the Pennsylvania Supreme Court addressed appointment of counsel in a termination of parental rights proceeding, the same substantive issue addressed in *Lassiter*.⁹⁹ Rather than performing a case-by-case analysis, the court disposed of the case in accordance with the Pennsylvania Supreme Court's pre-*Lassiter* decision¹⁰⁰ holding that "an individual is entitled to counsel at any proceeding which may lead to the deprivation of 'substantive rights.'"¹⁰¹ In recognizing a right to appointed counsel, the court apparently relied on the same due process and equal protection doctrine cited in the pre-*Lassiter* decision.¹⁰²

In 2018, the Pennsylvania Superior Court applied the *Turner* test in *Commonwealth v. Diaz*¹⁰³ to determine whether procedural safeguards provided a sufficient alternative to court-appointed counsel for an indigent defendant in a civil contempt hearing for fees and fines.¹⁰⁴ The court ruled that the Due Process Clause re-

98. See *Corra*, 451 A.2d at 488 n.11. The court stated:

Moreover, we do not believe that fundamental fairness may be maintained by determining whether an indigent is entitled to appointed counsel on a case-by-case basis, subject to appellate review, as the *Lassiter* Court held with respect to parental termination proceedings. It is often difficult to assess the complexities which might arise in a given paternity trial before that trial is held; thus, a case-by-case approach would necessarily require an after-the-fact evaluation of the record to determine whether appointed counsel could have affected the result reached in a paternity proceeding.

Id.

99. See *In re Adoption of L.J.B.*, 995 A.2d 1182, 1182 (Pa. 2010) (remanding the case to determine "whether the Petitioner was eligible for the appointment of counsel").

100. *Id.* (citing *In re Adoption of R.I.*, 312 A.2d 601 (Pa. 1973)).

101. *In re Adoption of R.I.*, 312 A.2d at 602 ("A parent's [sic] concern for the liberty of the child . . . involves too fundamental an interest and right . . . to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer.").

102. *In re Adoption of L.J.B.*, 995 A.2d at 1182. *In re Adoption of R.I.* addressed appointment of counsel on due process and equal protection grounds; see *In re Adoption of R.I.*, 312 A.2d at 602 ("To deny legal assistance under such circumstances would . . . constitute a violation of his due process rights and, in light of the express statutory provision for legal representation for those who can afford it, a denial of equal protection of the laws as well.") (internal citation omitted).

103. *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. Ct. 2018).

104. See *id.* at 856–63. The reasoning in *Diaz* later supported an expansion of its rule to the family law context when fees were owed to a private party rather than to the state. *B.A.W. v. T.L.W.*, 230 A.3d 402, 408 (Pa. Super. Ct. 2020). The court was required to evaluate litigant's entitlement to court-appointed counsel because the proceeding had a clear likelihood of imprisonment. *Id.*

quires that the right to counsel for this class of defendants attach “in any proceeding in which the court finds there is a likelihood of imprisonment.”¹⁰⁵ In arriving at this categorical conclusion, the court again declined to adopt *Lassiter*’s case-by-case approach.¹⁰⁶

Just as Pennsylvania case law provides categorical rights to counsel, in contravention of *Lassiter*,¹⁰⁷ Pennsylvania statutes also guarantee court-appointed counsel in specific types of proceedings.¹⁰⁸ Pennsylvania has established a categorical civil right to counsel in contexts including civil commitment,¹⁰⁹ incarceration for fees and fines,¹¹⁰ involuntary medical treatment,¹¹¹ and termination of parental rights.¹¹² Pennsylvania has discretionary or qualified rights for several additional types of proceedings.¹¹³ In effect, the Pennsylvania courts and the legislature have developed a patchwork civil right to counsel, prioritizing certain civil cases risking substantial private interests.¹¹⁴

105. *Diaz*, 191 A.3d at 862.

106. *See id.*

107. *See, e.g.*, *Corra v. Coll*, 451 A.2d 480, 488 n.11 (Pa. Super. Ct. 1982); *In re Adoption of L.J.B.*, 995 A.2d 1182, 1182 (Pa. 2010); *Diaz*, 191 A.3d at 862; *see also* *Bangs*, *supra* note 75, at 603–05.

108. *See, e.g.*, 50 PA. STAT. AND CONS. STAT. ANN. § 7304(c.2)(3) (West 2018) (requiring court-appointed counsel for a hearing on the matter of involuntary mental health treatment); 23 PA. CONS. STAT. ANN. § 2313(a.1) (West 1992) (providing parents a right to counsel in parental termination proceedings).

109. 50 PA. STAT. AND CONS. STAT. ANN. § 7304(a).

110. *Diaz*, 191 A.3d at 862.

111. 50 PA. STAT. AND CONS. STAT. ANN. § 7304(c.2)(3).

112. 23 PA. STAT. AND CONS. STAT. ANN. § 2313(a.1) (requiring appointed counsel upon request for birth parents with substantial financial hardships in involuntary termination proceedings).

113. *See, e.g.*, 42 PA. STAT. AND CONS. STAT. ANN. § 6337 (West 2012) (outlining the right of indigent accused parents to appointed counsel in abuse, neglect, and dependency proceedings); 18 PA. STAT. AND CONS. STAT. ANN. § 3206(e) (West 1992) (requiring the court to advise minors of right to counsel when seeking waiver of parental consent required for an abortion); § 7304(e)(1) (establishing the right to counsel for the subject of a civil commitment petition); 42 PA. STAT. AND CONS. STAT. ANN. § 6403(b)(3) (West 2012) (establishing the right to appointed counsel for a proceeding to commit a sexually dangerous person); 23 PA. STAT. AND CONS. STAT. ANN. § 2313(a.1) (providing counsel for a parent in involuntary termination of parental rights proceeding if hiring counsel would be a substantial financial hardship).

114. *See Pennsylvania Status Map*, *supra* note 64 (including, *e.g.*, civil forfeiture, custody disputes, and guardianship or conservatorship).

C. *Progress of the Right-to-Counsel Movement*

1. *Nationwide Efforts to Provide Civil Legal Counsel*

This state-by-state, issue-by-issue patchwork of right to counsel in civil issues has led to a “justice gap” in the United States.¹¹⁵ The Legal Services Corporation (“LSC”), the primary source of federal funding for civil legal aid organizations,¹¹⁶ reported that over 70 percent of low-income households encountered at least 1 civil legal issue in the past year but only 20 percent sought legal assistance.¹¹⁷ In 2017, LSC-funded legal services organizations fully served only about half of those who sought and qualified for their services.¹¹⁸ Legal aid organizations could have served 85 to 97 percent of the unaddressed needs if more resources were available.¹¹⁹

At a national level, the U.S. legal community responded to these dire statistics by adopting resolutions.¹²⁰ In 2006, the American Bar Association (ABA) House of Delegates unanimously approved a resolution urging all levels of government to “provide legal counsel as a matter of right at public expense to low income

115. See *Backdrop: The Access to Justice Crisis*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <https://bit.ly/35pa0te> [<https://perma.cc/88MK-ED7J>] (last visited Mar. 15, 2021); cf. *U.S. Rank on Access to Civil Justice in Rule of Law Index Drops to 99th Out of 126 Countries*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <https://bit.ly/2PllYhM> [<https://perma.cc/H4MR-YMQW>] (last visited Mar. 15, 2021) (explaining that the United States worsened by over 40 spots from 2015 to 2019 in the World Justice Project’s study of various countries’ “accessibility and affordability of civil justice”); see also Raven Lidman, *Civil Gideon as a Human Right: Is the U.S. Going to Join Step With the Rest of the Developed World?*, 15 TEMP. POL. & CIV. RTS. L. REV. 769, 774–77, 787–88 (2006) (advocating United States’s expansion of free civil legal services to indigents in accordance with foreign law developed to comply with international human rights law); see also COLUM. L. SCH. HUM. RTS. CLINIC, ACCESS TO JUSTICE: ENSURING MEANINGFUL ACCESS TO COUNSEL IN CIVIL CASES 12, 27 (2013), <https://bit.ly/2F9nE8g> [<https://perma.cc/WG8P-ENYZ>] (recommending that the United States enact legislation providing counsel in immigration proceedings and federal civil cases threatening basic human needs because federal funding of the Legal Services Corporation, the Access to Justice Initiative, and the *in forma pauperis* statute do not satisfy the United States’s obligation to the International Covenant on Civil and Political Rights).

116. Legal Servs. Corp., *Who We Are*, LEGAL SERVS. CORP., <https://bit.ly/38G0NAo> [<https://perma.cc/6XJ8-3AYX>] (last visited Mar. 15, 2020).

117. LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7 (2017), <https://bit.ly/2SQ6uEw> [<https://perma.cc/C9UH-3F8D>].

118. *Id.* at 8 (serving an estimated 1,000,000 low-income Americans).

119. *Id.*

120. See, e.g., A.B.A., RESOLUTION 112A, REP. TO THE H.D. 1 (2006), <https://bit.ly/2PR2WiB> [<https://perma.cc/4REG-F5LH>]; CONF. CHIEF JUSTS. & CONF. ST. CT. ADMINs., RESOLUTION 5: REAFFIRMING THE COMMITMENT TO MEANINGFUL ACCESS TO JUSTICE FOR ALL (2015), <https://bit.ly/3oBzVrm> [<https://perma.cc/9B3D-ZNQE>] [hereinafter C CJ/COSCA RESOLUTION].

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.”¹²¹ This 2006 resolution declared that LSC funding was at 20 percent of what would be required to fully meet *all* legal needs of indigents, and thus its *more limited* proposal would require significantly less than a five-fold increase.¹²² In 2010, the ABA adopted a resolution creating the ABA Model Access Act for legislators to use to introduce the 2006 resolution.¹²³ The ABA additionally demonstrates its support for the right-to-counsel movement through its Access to Justice (“ATJ”) Initiative.¹²⁴ Furthermore, in 2015, the Conference of Chief Justices and Conference of State Court Administrators adopted a resolution identifying “a goal of 100 percent access to effective assistance for essential civil legal

121. A.B.A. RESOLUTION 112A, *supra* note 120, at 1. The ABA grounded its support for the right to counsel in: its own amicus curiae brief in *Lassiter* urging the U.S. Supreme Court to require appointment of counsel in parental termination proceedings, European countries’ longstanding recognition of the right, English common law’s history of appointing counsel for indigent litigants (dating back to 1495), state and federal constitutional principles of due process and equal protection, the European Court of Human Rights’ 1979 decision interpreting a “fair hearing” to require appointment of counsel at public expense for indigent litigants, and public confidence in the justice system. *Id.* at 2–10. The resolution also cited U.S. Supreme Court Justice Rutledge’s observation at a 1941 ABA meeting: “Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.” *Id.* at 15. Significantly, the Philadelphia Bar Association was among dozens of organizations to sponsor the resolution. *See id.* at 1.

122. *Id.* at 14–15 (noting that the required funding would constitute only 1.5% of the cost of all U.S. legal services, roughly the same portion as in 1980); *but cf.* Amanda Robert, *With LSC Under Threat for Third Year, ABA President Asks Congress to Increase Legal Aid Funding*, A.B.A. (Mar. 18, 2019), <https://bit.ly/35qSEMq> [<https://perma.cc/XEX4-2PNU>] (describing the ABA’s lobbying efforts against the Trump Administration’s proposal to eliminate all federal funding to LSC).

123. A.B.A., RESOLUTION 104 (REVISED), REP. TO THE H.D. (2006), <https://bit.ly/2M0rZP1> [<https://perma.cc/V5P3-AHHG>] [hereinafter A.B.A. MODEL ACCESS ACT] (setting out in the legislative findings that appointing attorneys to indigent litigants is necessary; defining the scope and eligibility for services; and creating a governing Board and State Access Fund).

124. *See Launching New ATJ Commissions*, A.B.A. (last visited Mar. 15, 2021), <https://bit.ly/3q4IUBp> [<https://perma.cc/Z56A-NYMY>] [hereinafter *ATJ Commissions*]. Through this initiative, the ABA promulgates data on civil legal aid funding sources and promotes development of state-level Access to Justice Commissions, organizations which gather key stakeholders to expand access to civil justice through coordinated planning, education, delivery system management and oversight. *See id.* Currently 36 states—but not Pennsylvania—have ATJ Commissions. *State Access to Justice Commissions: Creation, Composition, and Further Details*, A.B.A., <https://bit.ly/3eCIEIF> [<https://perma.cc/3HM2-NYW8>] (last visited Mar. 15, 2021) (listing Washington, D.C.; the Virgin Islands; and Puerto Rico in addition to the 36 states with ATJ Commissions).

needs,” urging members to lead initiatives to this end, and requesting national organizations to develop tools to further that goal.¹²⁵

2. *Pennsylvania’s Efforts to Provide Civil Legal Counsel*

Similarly, Pennsylvania has a justice gap.¹²⁶ A 2017 study found that 57.4 percent of those who sought services from a Pennsylvania Legal Aid Network (“PLAN”)-affiliated civil legal aid organization did not receive services.¹²⁷ Of those helped, 40.4 percent received only limited services or pro se assistance due to insufficient resources.¹²⁸ Pennsylvania civil legal aid organizations were able to represent only 29 percent of prospective clients who applied and qualified for services.¹²⁹

In 2016, Pennsylvania ranked 34th place in the nation for access to justice.¹³⁰ It measured fourth to last in its support of self-represented litigants;¹³¹ 32 percent below the national average for indigents’ access to attorneys; among the bottom 10 states in accommodating those with disabilities; and 2 percent below the national average in language access.¹³² Allocating funds for legal aid is a prudent fiscal investment, as demonstrated by an Interest on Lawyers Trust Accounts (“IOLTA”) report that each dollar spent on Pennsylvania legal aid has a \$12 return on investment through

125. CCI/COSCA Resolution, *supra* note 120, at 1–2.

126. See PA. INTEREST ON LAWYERS’ TR. ACCOUNTS BD. & PA. LEGAL AID NETWORK, DOCUMENTING THE JUSTICE GAP IN PENNSYLVANIA STUDY (2017), <https://bit.ly/2M5sDe2> [<https://perma.cc/X7QE-M96L>] [hereinafter PA. JUSTICE GAP].

127. *Id.* at 3 (describing that 58% were income-ineligible, 33% had a criminal not civil issue, 7% were ineligible due to funding restrictions, and 2% were ineligible based on non-citizenship).

128. *Id.* at 4.

129. *Id.*

130. PHILA. B. ASS’N’S CIVIL GIDEON & ACCESS TO JUSTICE TASK FORCE, THE 2016 JUSTICE INDEX: SELECTED BEST PRACTICES FOR IMPROVING ACCESS TO JUSTICE IN THE COURTS FOR SELF-REPRESENTED LITIGANTS 2 (2017), <https://bit.ly/2tSE8iZ> [<https://perma.cc/FCR5-B5R2>] (stating that Pennsylvania ranked near Georgia and South Carolina, far below most of its Northeastern counterparts). This report highlights Pennsylvania’s performance in the 2016 report of the National Center of Access to Justice at Fordham Law School, which ranks all 50 states and Washington, D.C. and Puerto Rico according to their implemented practices ensuring access to justice. See *id.* Examples of such practices include training and authority of judges and court staff to ensure self-represented tenants are fairly heard, authority for lawyers to provide limited scope services, best practices for court forms and fee waivers, collection of data on appointment of counsel, and recognition of the right to counsel in specific proceedings. *Id.* at 6–19.

131. *Id.* at 2 (ranking at 84% below the national average).

132. *Id.* at 2–3.

avoidance of social safety net costs and recovered federal benefits.¹³³

Pennsylvania has taken some action to remediate its access to justice issues. In response to the ABA's 2006 Resolution, the Pennsylvania Bar Association (PBA) adopted a similar resolution urging the Commonwealth to "provide legal counsel as a matter of right 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."¹³⁴ The PBA Resolution cited the expansion of specific civil rights to counsel in states across the nation.¹³⁵ Additionally, the PBA adopted a 2014 resolution supporting an ATJ Commission in Pennsylvania.¹³⁶ In 2013, the Pennsylvania Civil Legal Justice Coalition ("The Coalition") formed to (1) raise awareness of the issue, (2) demonstrate the economic and societal benefits of civil legal aid, and (3) propose solutions to address the justice gap.¹³⁷ In 2014, the Coalition held a publicized hearing before the Pennsylvania Senate Judiciary Committee.¹³⁸ The Coalition recommended the state allocate an additional \$50 million for civil legal services, create an ATJ Commission, and establish a right to counsel in civil cases in which basic human needs are threatened.¹³⁹ In 2016, the Pennsylvania Supreme Court declined to establish an ATJ Commission citing lack of a steady funding source.¹⁴⁰ In 2017, the Pennsylvania legislature made permanent one funding source to the Pennsylvania IOLTA

133. PA. INTEREST ON LAWYERS' TR. ACCOUNTS BD., ECONOMIC IMPACT OF CIVIL LEGAL AID IN PENNSYLVANIA 4, 11–15 (2020), <https://bit.ly/38roMUf> [<https://perma.cc/YCC3-UP25>].

134. PA. B. ASS'N, RESOLUTION IN SUPPORT OF RECOGNIZING A RIGHT TO COUNSEL FOR INDIGENT INDIVIDUALS IN CERTAIN CIVIL CASES 1 (2007), <https://bit.ly/2PAickZ> [<https://perma.cc/34ZD-BGJF>].

135. *See id.* at 3.

136. *See* PA. B. ASS'N, RESOLUTION SUPPORTING THE ESTABLISHMENT OF A PENNSYLVANIA ACCESS TO JUSTICE COMMISSION (2014), <https://bit.ly/2PZz2Zt> [<https://perma.cc/29U8-P2DW>]; *see also* ALLEGHENY CTY. B. ASS'N, RESOLUTION SUPPORTING THE ESTABLISHMENT OF A PENNSYLVANIA ACCESS TO JUSTICE COMMISSION (2014), <https://bit.ly/2Z3gBqL> [<https://perma.cc/JP2G-V8JN>] (voicing support for creating an ATJ Commission in Pennsylvania); PHILA. B. ASS'N, RESOLUTION SUPPORTING THE ESTABLISHMENT OF A PENNSYLVANIA ACCESS TO JUSTICE COMMISSION (2013), <https://bit.ly/34vKMbe> [<https://perma.cc/J88Y-Q84Z>] (same).

137. PA. LEGIS. BUDGET & FIN. COMM., THE COMMONWEALTH'S ACCESS TO JUSTICE ACT 11 (2016), <https://bit.ly/36DLhl8> [<https://perma.cc/2KQS-Y2VR>] [hereinafter AJA REPORT].

138. *See id.*

139. *See id.* at 11–12.

140. *See id.* at 13.

Board: the Access to Justice Act of 2002,¹⁴¹ which levies state court filing fees to create a fund for civil legal needs of indigent Pennsylvanians.¹⁴²

In sum, Pennsylvania has made progress in fits and starts toward improved access to justice and a civil right to counsel in matters impacting some basic human needs, such as shelter.¹⁴³ However, Pennsylvania has yet to establish an ATJ Commission that could identify and address unmet civil legal needs,¹⁴⁴ including appointment of counsel in critical housing cases.

III. ANALYSIS

Pennsylvania stakeholders and policymakers should consider several options to advance the civil right to counsel for tenants in eviction proceedings, which is recognized in Philadelphia,¹⁴⁵ to a *statewide* right.¹⁴⁶ Pennsylvania's community organizers should resume their 2013 efforts to establish an ATJ Commission and urge Pennsylvania to join the other 36 U.S. states and territories that have done so.¹⁴⁷ An ATJ Commission would be pivotal in advancing a civil right to counsel for tenants in eviction proceedings.¹⁴⁸ In the absence of such a commission, Pennsylvania legislators should initiate the process by proposing legislation.¹⁴⁹ To best craft and implement the law, stakeholders should research Pennsylvania's unique challenges to instituting such a right, including its rates and geographical concentrations of poverty, rent burden, and eviction; the state's legal services delivery model; and legal access issues for rural Pennsylvanians.¹⁵⁰ Implementation methods in other jurisdictions and pilot programs could inform Pennsylvania's strategy as it

141. 42 PA. STAT. AND CONS. STAT. ANN. § 4901 et seq.

142. *See id.* § 4907 (repealed 2017).

143. *See, e.g.,* AJA REPORT, *supra* note 137, at 3–16.

144. *See id.* at 13.

145. *See* McCabe, *supra* note 3.

146. *See* PA. JUSTICE GAP, *supra* note 126, at 3–4 (documenting the unmet civil legal need in Pennsylvania); *see also* Map & Data, EVICTION LAB, <https://bit.ly/34CKMqc> [<https://perma.cc/D5QF-V7RN>] (last visited Mar. 15, 2021) [hereinafter *Eviction Map & Data*] (comparing the total number of evictions in Pennsylvania in 2016 to the total number of evictions in Philadelphia County in 2016—29,257 and 10,264 respectively); Schultheis & Rooney, *supra* note 15 (stating that affordable housing shortages plague small towns and rural areas, not just cities and suburbs).

147. *See* ATJ Commissions, *supra* note 124 (cataloguing ABA resources for establishing an ATJ Commission); *see also* *supra* note 124 and accompanying text.

148. *See, e.g.,* *infra* note 215 and accompanying text.

149. *See infra* Section III.A.

150. *See infra* Section III.B.

relates to eligibility, funding, and aspirational results.¹⁵¹ Legislating a right to counsel for tenants in eviction proceedings is a small but significant step toward increasing access to justice in the Commonwealth.¹⁵²

A. *Proposing the ABA Model Access Act*

The ABA intended the Model Access Act to be a starting point for legislators to introduce the issue of civil representation for cases addressing basic human needs.¹⁵³ As such, Pennsylvania legislators should use it to propose the civil right to counsel for tenants in eviction proceedings.¹⁵⁴ Section One of the Act sets forth legislative findings: the poor need civil legal services, existing services are insufficient to meet that need, non-lawyers are not equipped to navigate complex legal procedures, and public confidence and efficiency in the justice system require that those who cannot afford legal services be appointed counsel when their cases involve basic human needs.¹⁵⁵ By modifying key terms in this section and certain definitions in Section Two, the Model Act could be narrowed to include only eviction proceedings.¹⁵⁶ The introductory report suggests that states may choose to prioritize resources by allowing attorneys to provide limited representation and allowing unlicensed individuals to provide defined legal services in administrative proceedings under the direct supervision of a licensed lawyer.¹⁵⁷ Section Three explains that an individual's right to full legal representation attaches if (1) a basic human need, such as shelter, is at stake; (2) the person has a non-frivolous suit or a reasonable possibility of achieving a successful outcome; and (3) the household income falls at or

151. See generally N.Y.C. HUMAN RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR ONE OF IMPLEMENTATION IN NEW YORK CITY (2018), <https://on.nyc.gov/2uzzW7Y> [<https://perma.cc/W7TZ-DDKV>] [hereinafter UAC 2018 REPORT] (reporting the results from the first year of implementation of the right to counsel in NYC); NPC RESEARCH, EVALUATION OF THE SARGENT SHRIVER CIVIL RIGHT TO COUNSEL ACT (AB 590) (2017), <https://bit.ly/36va5Ls> [<https://perma.cc/S9TY-H38D>] (reporting results from the California pilot on the civil right to counsel in several types of cases, including housing).

152. See *supra* Section II.C.2.

153. A.B.A. MODEL ACCESS ACT, *supra* note 123, Report at 6.

154. See *id.* (indicating legislators can introduce in full or isolate a specific topic).

155. See *id.* Act at 1–2.

156. See *id.* Act at 1–3 (explaining the possibility of eliminating other categories of proceedings from item 2.B to include only shelter, which is defined as “a person’s or family’s access to or ability to remain in a dwelling, and the habitability of that dwelling”).

157. See *id.* Act at 4–8 (describing further that referral by a trial judge eliminates the requirement to evaluate that it is a non-frivolous suit).

below 125 percent of the federal poverty guidelines.¹⁵⁸ The Model Access Act builds in flexibility by creating a State Access Board to administer the program, define eligibility and scope of services, evaluate effectiveness, administer funding, and report to the legislature.¹⁵⁹ Furthermore, the Act creates a fund for state budget allocations with the caveat that funding the Act should not impinge on existing state revenue streams for legal services.¹⁶⁰ By proposing a version of the Model Access Act narrowed to the issue of counsel in eviction proceedings, Pennsylvania legislators would initiate necessary discussions advancing this right.

B. *Modifying the Model Access Act to Accommodate Pennsylvania's Unique Context*

1. *Pennsylvania Statistics*

Legislators negotiating modifications to the Model Access Act should consider key statistics about Pennsylvania's demographic and housing situation.¹⁶¹ The median income in Pennsylvania is \$56,951 for a household and \$31,476 for an individual.¹⁶² Pennsylvania has 285,837 families or 1,623,537 individuals below the federal poverty guidelines.¹⁶³ The total number of renter-occupied units in Pennsylvania is 1,551,082, with a median gross rent of \$885 per month.¹⁶⁴ Bringing together income and gross rent data, the U.S. Census Bureau estimates that just over 38 percent of Pennsylvanians spend 35 percent or more of their household income on rent.¹⁶⁵ In 2018, Pennsylvania had an estimated homeless popula-

158. *Id.* Act at 8.

159. *See id.* Act at 8–11 (commenting that states may alternatively task an independent body to administer the public legal aid system).

160. *See id.* Act at 11–12.

161. *See* NYU FURMAN CTR., IMPLEMENTING NEW YORK CITY'S UNIVERSAL ACCESS TO COUNSEL PROGRAM: LESSONS FOR OTHER JURISDICTIONS 8 (2018), <https://bit.ly/2FoyOG8> [<https://perma.cc/5JKY-SA94>].

162. PA. ST. DATA CTR., PENNSYLVANIA ABSTRACT: A STATISTICAL FACT BOOK, tbl. 4-27 (2019) (showing wide variability from county to county). The lowest, Forest County, had a median household income of \$37,106, compared with the highest, Chester County, at \$92,417. *Id.* Philadelphia County, the most populous Pennsylvania county, has a median household income of \$40,649. *Id.*

163. *Id.* at tbl. 4-33. Philadelphia County, in which the right to counsel for tenants in eviction proceedings is already law, accounts for less than 22 percent of Pennsylvania families in poverty. *See id.* (counting 62,126 impoverished families in Philadelphia).

164. *Id.* at tbl. 1-42 (showing that Philadelphia County has just over 18%, or 282,585, of the total renter-occupied units in the state and that the gross rent ranges from a low of \$547 in Elk County to \$1,256 in Chester County).

165. U.S. CENSUS BUREAU, COMPARATIVE HOUSING CHARACTERISTICS: 2017 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES (2017), <https://bit.ly/>

tion of 13,512.¹⁶⁶ Eviction data from 2016 revealed that Pennsylvania courts issued 29,257 eviction judgments, averaging 80 per day, originating from a total of 87,898 eviction filings.¹⁶⁷ To contextualize these numbers within the scale of the NYC right-to-counsel program, NYC saw 209,995 eviction petitions filed in fiscal year 2019, and its courts issued 81,297 eviction warrants.¹⁶⁸

2. Structures in Pennsylvania for Legal Services Delivery

When instituting a civil right to counsel for tenants in eviction proceedings, one necessary consideration is how the program will be situated within Pennsylvania's existing framework of legal services delivery. Unlike many states with a unified statewide system, Pennsylvania's legal aid organizations maintain a relative amount of local control in allocating services and spending funds.¹⁶⁹

PLAN administers funding for nine regional legal aid programs that assist eligible tenants in all Pennsylvania counties.¹⁷⁰ These regional legal services organizations often coordinate county-level pro bono services of the private bar.¹⁷¹ In addition to administering funds, PLAN contracts with legal services organizations, evaluates performance, coordinates resources, helps maintain online self-help resources, fosters new programs, acts as a liaison to the judiciary, and advocates for administrative and legislative policy improvements.¹⁷² PLAN distributes funds to its organizations by

3qPomNe [<https://perma.cc/PY5Z-2RPK>] (tracking roughly with the U.S. average of 40.4% paying 35% or more of household income in rent).

166. U.S. DEP'T OF HOUS. & URB. DEV., OFF. OF CMTY. PLAN. & DEV., 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 14 (2018), <https://bit.ly/3s5Dx6S> [<https://perma.cc/3DBT-36BB>] (falling within the range of 25–49 per 10,000, along with 20 other states and the District of Columbia).

167. *Eviction Map & Data*, *supra* note 146 (ranging from 1 annual eviction in Forest and Cameron Counties to 10,264 annual evictions in Philadelphia County).

168. N.Y.C. HUM. RESS. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR TWO OF IMPLEMENTATION IN NEW YORK CITY, 8–9 (2019), <https://on.nyc.gov/307n9VY> [<https://perma.cc/R344-HDZA>] [hereinafter UAC 2019 REPORT].

169. See Samuel W. Milkes, *How Pennsylvania's Legal Aid System Is Organized*, PA. LAW. 41 (Jan./Feb. 2009), <https://bit.ly/307L6wn> [<https://perma.cc/9CWG-KADS>].

170. See *Overview of PLAN Network*, PA. LEGAL AID NETWORK (last visited Mar. 15, 2021), <https://bit.ly/35DhCaI> [<https://perma.cc/C7XB-K74S>]. In addition to the regional programs, six PLAN-network programs serve specific groups or specialize in specific legal topics. *Id.* Legal aid programs independent of the PLAN network supplement legal services delivery in the state. Milkes, *supra* note 169, at 43.

171. See Milkes, *supra* note 169, at 42.

172. See *Overview of PLAN Network*, *supra* note 170; *About the PLAN Network*, PA. LEGAL AID NETWORK, <https://bit.ly/3vszVxq> [<https://perma.cc/Z8SJ-ULSL>] (last visited Mar. 15, 2021).

contracting with the Pennsylvania IOLTA Board, which administers court-directed programs, oversees grants, and tracks trust account compliance.¹⁷³ IOLTA grants funds to regional and specialized legal aid organizations, pro bono initiatives through the PBA, Pennsylvania law school clinical and internship programs, and the Loan Repayment Assistance Program (“LRAP”) through the Pennsylvania Bar Foundation.¹⁷⁴

To effectively implement the right to counsel, key stakeholders—such as PLAN, Pennsylvania IOLTA Board, PBA pro bono-related committees, and Pennsylvania law schools—should collaborate and represent their own interests in and contributions to the right-to-counsel project.¹⁷⁵ Consistent with the ABA Model Access Act, Pennsylvania legislators should refrain from commingling or diminishing existing sources of legal services funding in implementing the right to counsel for tenants in eviction proceedings.¹⁷⁶ However, effective implementation of the right-to-counsel program depends on these key stakeholders’ expertise and administrative experience.¹⁷⁷ As in the NYC model, the PLAN-affiliated, regional legal services programs might contract with the state to represent tenants in eviction proceedings.¹⁷⁸ Law schools might consider creating specific housing clinics independently or in collaboration with the regional legal services programs.¹⁷⁹ The PBA’s pro bono-related committees might consider delivering specialized landlord-tenant law training to pro bono attorneys.¹⁸⁰ Regardless of each organization’s role, these entities would ideally buy in and administer the state-funded right-to-counsel program for Pennsylvania tenants facing eviction.

173. See PA. IOLTA Bd., ANNUAL REPORT: FUNDING THE PROMISE OF JUSTICE FOR ALL 6–7 (2018), <https://bit.ly/35JQYgF> [<https://perma.cc/M38E-U7PF>].

174. See *id.* at 13–14.

175. See *ATJ Commissions*, *supra* note 124 (describing the need for collaboration of stakeholders in forming ATJ Commissions).

176. See A.B.A. MODEL ACCESS ACT, *supra* note 123, Act at 2.

177. See *infra* note 232 and accompanying text.

178. *Infra* Section III.C.3.

179. See, e.g., *Clinic Offerings*, TEMP. U. BEASLEY SCH. L. (last visited Mar. 15, 2021), <https://bit.ly/2RydoMM> [<https://perma.cc/Y2JK-LKE4>] (describing Temple University’s Beasley School of Law’s external clinic in Housing Mediation). This clinic appears to be the only Pennsylvania law school clinic dedicated to housing issues.

180. See, e.g., Claire Pastore, *Gideon is My Co-Pilot: The Promise of Civil Right to Counsel Pilot Programs*, 17 UDC/DCSL L. REV. 75, 84–86 (2014) (illustrating the San Francisco pilot project’s recruitment and training of pro bono attorneys).

3. *Access to Justice Challenges in Rural Communities*¹⁸¹

Although Pennsylvania's population has been trending toward urban environments,¹⁸² 20.8 percent of its residents, or over 2.6 million people, still lived in rural Pennsylvania in 2017.¹⁸³ The challenge of providing legal services to remote residents is well documented.¹⁸⁴ The shortage of attorneys in rural Pennsylvania counties is not as severe as in some western states,¹⁸⁵ but Pennsylvania's rural geography is a distinct challenge for delivering legal services.¹⁸⁶ Despite evidence that, on a national average, rural attorneys perform more pro bono and "low bono" services than their urban counterparts, the shortage of attorneys in rural contexts impedes access to justice in rural communities.¹⁸⁷ Using the existing infrastructure of regional legal services organizations is a starting point for ensuring access to counsel for rural tenants facing eviction, but additional offices may become necessary depending on the demand.

C. *Learning Best Practices: Takeaways from Pilot Programs and Right-to-Counsel Jurisdictions*

In implementing a right to counsel for tenants in eviction proceedings, Pennsylvania legislators should build on the successes and

181. A thorough discussion of the rural access to justice issue is beyond the scope of this Comment, but it would be remiss not to acknowledge the issue's impact on this Comment's proposal.

182. See PA. ST. DATA CTR., *supra* note 162, at tbl.1-06.

183. *Id.*

184. See, e.g., Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Access to Justice*, 13 HARV. L. & POL'Y REV. 15, 115–26 (2018) (citing a disproportionate shortage of legal aid funding; the impact of race on legal access; the shortage of attorneys in rural communities; and inconsistent access to transportation, cell phone service, and internet services); Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, A.B.A. (July 1, 2014), <https://bit.ly/2G8bUDx> [<https://perma.cc/FWP2-3XCW>] (describing the efforts of law schools and states to incentivize lawyers to practice in rural contexts and to support those already in rural practice); April Simpson, *Wanted: Lawyers for Rural America*, PEW CHARITABLE TRS. (June 26, 2019), <https://bit.ly/3aszoRS> [<https://perma.cc/9FLR-TWM3>] (describing expensive delays in routine legal matters, issues with broadband internet access, and the burden of extensive travel time).

185. See Simpson, *supra* note 184 (stating that 12 of Nebraska's 93 counties and 3 of North Dakota's 53 counties have zero practicing attorneys).

186. See *Pennsylvania Legal Aid Network Providers in PA*, PA. LEGAL AID NETWORK (last visited Mar. 15, 2021), <https://bit.ly/37gO5Fu> [<https://perma.cc/KX74-35DQ>] (showing that at least five legal aid offices serve three or more counties).

187. See Pruitt et al., *supra* note 184, at 140–42.

lessons learned from other jurisdictions.¹⁸⁸ Existing right-to-counsel programs reveal the variety of mechanisms for providing counsel, the effect of appointed counsel, costs and savings, tenants' valuation of the right, impact on courts, and alternative legal solutions.¹⁸⁹ This section examines the results of California's Sargent Shriver Civil Counsel pilot project, which was the earliest U.S. pilot that provided significant data on the impact of providing counsel for various civil proceedings; Massachusetts's housing pilot, the results of which undergird its pending legislation for statewide right to counsel for tenants in eviction proceedings; and NYC's 2017 implementation, as the first U.S. jurisdiction to provide counsel to tenants as a right.¹⁹⁰

1. *California's Sargent Shriver Civil Counsel Pilot*

In 2009, California passed the Sargent Shriver Civil Counsel Act,¹⁹¹ allocating \$9.5 million annually to fund 7 pilot projects providing legal services in critical civil cases, including housing, child custody, and family guardianship.¹⁹² Legal aid organizations and local courts coordinated each pilot's implementation.¹⁹³ Eligible tenants could earn no more than 200 percent of the federal poverty guidelines.¹⁹⁴ With Shriver funding set to expire in 2017, California

188. See *infra* Section III.C. For example, a recent article proposes that jurisdictions legislating a right to counsel in eviction should ensure that it attaches upon receipt of the notice terminating tenancy, it attaches to administrative housing assistance termination hearings, and it should more expansively protect tenants' rights to safe and healthy housing. Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 99–108 (2020).

189. See, e.g., BOS. B. ASS'N TASK FORCE ON EXPANDING THE CIVIL RIGHT TO COUNSEL, GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS 9 (2008), <https://bit.ly/2R5hZWg> [<https://perma.cc/4D4R-RE89>] [hereinafter BBA 2008].

190. See *infra* Section III.C.

191. CAL. GOV'T CODE § 68651 (West 2011).

192. See ADMIN. OFFICE OF THE COURTS, FACT SHEET: SARGENT SHRIVER CIVIL COUNSEL ACT (AB 590) (Aug. 2012), <https://bit.ly/39PKU9i> [<https://perma.cc/4DK8-4MVR>] [hereinafter SHRIVER FACT SHEET]. In 2019, the legislature nearly doubled the Shriver funding. Assemb. B. 330, Session Year 2019 (Cal. 2019).

193. See SHRIVER FACT SHEET, *supra* note 192, at 1; see also 2017 SHRIVER COMM. REPORT, *supra* note 48, at 8–9 (listing several court-based services implemented: expanded mediation and self-help services, institution of Settlement Masters, new court staff positions, and coordination with housing inspectors).

194. See 2017 SHRIVER COMM. REPORT, *supra* note 48, at 23. Beyond this basic eligibility requirement, the legal services organization prioritized the need for counsel, based on factors including: case complexity; legal representation of opposing party; availability of alternative solutions; access issues relating to language, literacy, and disability; potential to reduce social services costs; merits of the case;

made the Shriver pilot projects permanent in June 2016.¹⁹⁵ Between 2015 and 2019, Shriver provided full representation or limited scope legal assistance to 19,460 low-income tenants, impacting 55,970 household members.¹⁹⁶

The Shriver housing pilots demonstrate that counsel helps tenants achieve positive results and creates court efficiencies.¹⁹⁷ Shriver clients defaulted three times less frequently than pro se tenants.¹⁹⁸ Shriver-represented tenants also settled their cases outside of court at nearly twice the rate of pro se tenants.¹⁹⁹ Such settlements not only increased the rate at which tenants retained possession²⁰⁰ but also decreased the rate of forcible eviction to just three percent.²⁰¹ Attorneys facilitate settlement by managing tenants' expectations for the case.²⁰² Shriver-represented cases went to trial at about one-fifth of the rate of pro se cases.²⁰³ Fewer represented tenants had to pay money judgments,²⁰⁴ and they were more likely to obtain credit protections—such as sealing the eviction record, obtaining neutral references, or prohibiting a report to credit agencies.²⁰⁵ Additionally, the average Shriver-represented tenant was afforded nearly two weeks longer than the average pro se tenant to vacate the home.²⁰⁶ These financial and credit benefits

and severity of consequences without representation. See SHRIVER FACT SHEET, *supra* note 192, at 3.

195. See ALAN HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 55 (2018), <https://bit.ly/39yq1zv> [<https://perma.cc/73HH-BY9J>].

196. See SHRIVER CIVIL COUNSEL ACT IMPLEMENTATION COMM., JUDICIAL COUNCIL REPORT TO THE LEGISLATURE: SARGENT SHRIVER CIVIL COUNSEL ACT, Attachment A at 14 (June 2020), <https://bit.ly/3eaudZb> [<https://perma.cc/RV33-AADN>] [hereinafter 2020 SHRIVER COMM. REPORT] (describing that 44% of Shriver clients received unbundled legal services and 56% received full representation). Shriver clients were disproportionately female, people of color, and rent-burdened. See *id.* (describing Shriver clients as 62% female, 73% people of color, and 61% spending over half their income on rent).

197. See *id.* Attachment A at 48–50.

198. See *id.* Attachment A at 21 (comparing the 8% default rate of represented tenants to the 26% default rate of self-represented tenants).

199. *Id.* Attachment A at 23 (comparing 67% settlement rate of represented tenants with 34% settlement rate of self-represented tenants).

200. *Id.* Attachment A at 24 (comparing 5% rate of Shriver-represented tenants retaining possession with 1% of self-represented tenants).

201. *Id.* Attachment A at 49.

202. See *id.* at 4 (“Balanced representation facilitates settlement of cases that should settle and trial of those that should be tried.”).

203. *Id.* Attachment A at III (comparing the 3% trial rate of Shriver-represented tenants with the 14% trial rate of self-represented tenants).

204. *Id.* Attachment A at 25 (showing benefit in categories of back-owed rent, holdover damages, and landlord’s attorney fees).

205. *Id.* Attachment A at 27.

206. 2020 SHRIVER COMM. REPORT, *supra* note 196, Attachment A at 24.

likely account for the greater long-term housing stability of Shriver-represented tenants compared with that of pro se tenants.²⁰⁷ Negotiated settlement terms increased tenants' satisfaction with the process.²⁰⁸ Representation increased the courts' efficiency by eliminating frivolous suits, focusing hearings to relevant matters, and diverting cases away from trial through settlement.²⁰⁹ Mandatory pre-trial settlement conferences led to emotional and financial efficiencies for the parties and resulted in settlement 70 percent of the time.²¹⁰

The Shriver study demonstrates the value of counsel for tenants.²¹¹ Perhaps the most significant takeaway from the Shriver pilot is the collaboration of legal services and the courts in instituting key changes to enhance the effect of counsel. Shriver pilot courts implemented creative solutions such as mandating settlement conferences and coordinating with code enforcement officers to obtain a neutral assessment of habitability issues.²¹² Shriver demonstrates that negotiated settlements including such terms as sealed eviction records, additional time to move, and reduced financial burdens are effective in promoting long-term housing stability for tenants.²¹³ Shriver demonstrates a more moderate approach in that counsel is appointed only upon favorable exercise of discretion in weighing factors for appointment.²¹⁴ In developing a right to counsel, Pennsylvania should consider these key takeaways from the Shriver pilot program.

2. *Massachusetts Housing Pilot*

In response to the ABA's 2006 resolution, Massachusetts's ATJ Commission, the Boston Bar Association, and the Massachusetts Bar Association commissioned a Task Force, which instituted a three-year, nine million dollar set of pilot projects in housing, family, immigration, and juvenile law.²¹⁵ The housing pilot targeted specific subsets of income-qualified tenants facing eviction where (1) the mental disability of a household member directly impacted

207. *Id.* Attachment A at 33 (reporting that one year later, 71% of Shriver-represented tenants were settled in a new rental unit instead of living with friends or family or being homeless, whereas 43% of self-represented tenants settled into new rental units).

208. *Id.* Attachment A at 28–29.

209. *See id.* Attachment A at 44.

210. *Id.* Attachment A at 17, 44.

211. *Supra* notes 197–210 and accompanying text.

212. *See* 2020 SHRIVER COMM. REPORT, *supra* note 196, Attachment A at 17.

213. *Supra* notes 204–07.

214. *Supra* note 194.

215. BBA 2008, *supra* note 189, at 2.

the eviction; (2) the cases involved criminal conduct; or (3) the judge concluded that substantial justice requires appointment of counsel.²¹⁶ Harvard professors established randomized studies at the Quincy District Court and the Northeast Housing Court, comparing results of full representation with control groups.²¹⁷

Both studies demonstrated the value of tenant representation.²¹⁸ The District Court study demonstrated substantial success in that two-thirds of represented tenants retained residence, whereas only one-third of pro se tenants retained residence.²¹⁹ Moreover, courts awarded almost five times as much money in damages and cancellation of past due rent for represented tenants as for pro se tenants.²²⁰ The study further confirmed generally understood aspects of eviction proceedings: asymmetrical representation favors landlords,²²¹ unrepresented tenants struggle to raise

216. BOS. B. ASS'N TASK FORCE ON EXPANDING THE CIV. RIGHT TO COUNSEL, THE IMPORTANCE OF REPRESENTATION IN EVICTION CASES AND HOMELESSNESS PREVENTION 9 (2012), <https://bit.ly/306BYs0> [<https://perma.cc/9X9E-E782>] [hereinafter BBA 2012]. The study lists factors for judicial discretion:

(a) factors relating to a tenant's vulnerability, such as disability, domestic violence, education, language, culture and age; (b) factors relating to the landlord, such as whether the landlord controls a large or small number of units, whether the landlord is legally sophisticated, whether the landlord is represented by counsel, and whether the landlord lives in the building; (c) the affordability of the unit for the tenant, including whether the unit is in public or subsidized housing; (d) whether there appears to be cognizable defenses or counterclaims in the proceeding; (e) whether the loss of shelter might jeopardize other basic needs of the tenant, such as safety, sustenance, health or child custody; and (f) other indicia of power imbalances between the parties.

Id. The study additionally offered representation to qualifying landlords whose shelter was at stake in the proceeding, but no such requests were submitted. *See id.* at 31–32.

217. *See id.* at 1–2.

218. Unlike the study at the District Court, the study at the Housing Court showed no appreciable difference in case outcomes with both groups retaining possession in one-third of cases, which is well above the state average for possession. *Id.* at 18. In effect, the control group tenants already received legal services through the Housing Court's Lawyer for the Day initiative, in which attorneys provided mediation and settlement assistance for unrepresented tenants. *Id.* at 18–20.

219. *Id.* at 15.

220. *Id.* The average financial benefits equated to 9.5 months of rent. *Id.* at 15.

221. *See id.* at 3 (finding that two-thirds of landlords are represented, whereas only 6–10% percent of tenants are represented).

valid defenses,²²² eviction cases frequently default or settle,²²³ and tenants rarely retain possession.²²⁴

Based on these studies' results, tenant representation would actualize both quantifiable and unquantifiable benefits. The increased rate of tenant retention would result in fewer people displaced from their homes and seeking emergency shelter.²²⁵ The 2012 program report illustrates potential savings by calculating the cost of providing targeted legal representation, the number of tenants whose displacement counsel would prevent, and the costs saved when the expected percentage of would-be evicted tenants do not require emergency shelter.²²⁶ This estimate does not include other financial savings, such as recovered attorneys' fees and savings in education and healthcare.²²⁷ Furthermore, aggregate societal benefits accrue for tenants who lost possession but whose attorney negotiated additional time or money that enabled them to weather the transition more favorably.²²⁸ While impact on court administration was mixed,²²⁹ judges observed a substantially positive impact on the culture and standards of integrity for the eviction process.²³⁰

Given these observed benefits of tenant representation, Pennsylvania should aspire to achieve financial savings in emergency shelter expenditures and other corollary social expenses and promote substantive fairness in the civil justice system.²³¹ This pilot also highlights the significance of the collaboration of the state's ATJ Commission with the state and local bar associations.²³² That the Housing Court pilot produced no appreciable difference in re-

222. *See id.*

223. *See id.* at 7.

224. *See id.* at 7 (finding that landlords gain possession in 78% of cases, whereas tenants gain possession in only 2% of cases, and the remaining 20% of cases are dismissed, which generally results in the tenant losing possession).

225. *See supra* note 219.

226. *See* BBA 2012, *supra* note 216, app. A at 6–7 (estimating the cost of statewide targeted representation to be \$2.8 million, the annual emergency shelter costs avoided to be \$6.5 million, and the net savings for the state to be over \$3 million).

227. *See id.* app. A at 4 (citing a study reporting healthcare costs for homeless to be nearly five times more expensive than for housed individuals and a study reporting increased education costs for homeless students in the form of special education and grades repeated).

228. *See id.* at 16–17.

229. *See id.* at 17–18 (stating that project cases took 45 days longer to resolve and increased staff workload but involved fewer court appearances and contested rulings).

230. *See id.*

231. *See supra* notes 225–30 and accompanying text.

232. *See supra* note 215.

sults between those tenants receiving full representation and limited representation raises the need for additional research and consideration of what form of legal assistance is sufficient.²³³

3. *New York City*

In August of 2017, Mayor de Blasio enacted the Universal Access to Counsel (“UAC”) program providing legal services to income-qualified tenants facing eviction and public housing authority termination of tenancy proceedings.²³⁴ The UAC will be implemented over the course of five years, with full implementation by 2022.²³⁵ Whereas the Administration spent \$6 million on tenant legal services programs in 2013, it tracks to spend \$128 million in fiscal year 2020 and \$166 million when fully implemented to serve an estimated 400,000 New Yorkers annually.²³⁶ To provide services, UAC contracts with local legal service providers.²³⁷

Since its 2017 implementation, the UAC program has experienced remarkable results. In fiscal year 2019, the UAC served 41,094 households and 105,045 individuals, which represents a 24 percent increase over 2018 service and a 74 percent increase over 2017 pre-UAC service.²³⁸ Whereas the citywide rate of tenant representation was only 1 percent in 2013, the 2019 rate was over 32 percent.²³⁹ Eighty-four percent of represented households retained possession in 2019.²⁴⁰ This rate for public housing administrative proceedings was 97.4 percent of households.²⁴¹ In 2013, city marshals evicted nearly 29,000 residences, which decreased to approximately 20,000 households in 2018.²⁴² Furthermore, the number of

233. *See supra* note 217.

234. *See* NYU FURMAN CTR., *supra* note 161, at 2 (qualifying individuals for services if gross household income does not exceed 200% of the federal poverty guidelines).

235. *See id.* (implementing in year one 15 zip codes and subsequently adding zip codes each year).

236. UAC 2019 REPORT, *supra* note 168, at 1.

237. *See* UAC 2018 REPORT, *supra* note 151, at 8 (listing UA’s legal services partners).

238. UAC 2019 REPORT, *supra* note 168, at 2–3. This Comment focuses on the 2019 rather than the 2020 report, which was substantially affected by COVID-19 impacts on NYC in the early months of the pandemic. *See* N.Y.C. HUMAN RES. ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR THREE OF IMPLEMENTATION IN NEW YORK CITY 3–5 (2020), <https://on.nyc.gov/35rcUQd> [<https://on.nyc.gov/35rcUQd>] (describing COVID-19’s impact on NYC housing court).

239. UAC 2019 REPORT, *supra* note 168, at 4 (indicating the percentage of tenant representation within the 20 implemented zip codes is 62%).

240. *Id.* at 6.

241. *Id.* at 32.

242. *Id.* at 6.

eviction filings decreased six percent between 2018 and 2019.²⁴³ These results are especially significant in NYC where gentrification has contributed to the affordable housing crisis and exacerbated the rate of evictions.²⁴⁴

NYC adopted various procedures to facilitate the UAC implementation. The City's Office of Civil Justice contracts only with non-profit organizations to provide legal services.²⁴⁵ The courts assign eviction cases from UAC-covered zip codes to specific judges, and UAC attorneys set up interview rooms near those courtrooms.²⁴⁶ Clerks' offices refer pro se tenants in UAC-covered zip codes to UAC attorneys and provide them an informational flyer.²⁴⁷ When unrepresented tenants from UAC-covered zip codes appear in court or submit stipulations or consent orders, judges verify the tenants are aware of the program and explain the value of counsel.²⁴⁸ The Right to Counsel NYC Coalition, a community advocacy organization, proactively educates the community about the UAC program and the benefit of counsel through educational campaigns via various media, meetings, and door-knocking campaigns.²⁴⁹

D. *Practical Implications for Pennsylvania*

Given the data from other jurisdictions, as applied in Pennsylvania's unique context, several points emerge for implementing the right to counsel for tenants in eviction proceedings in Pennsylvania.²⁵⁰ First, the benefits are persuasive. A right-to-counsel program for tenants in eviction proceedings can help vulnerable residents stay in their homes or be afforded more time to move, protect their credit and save them money in judgments, secure more stable long-term housing, and improve their perception of justice in

243. *Id.* at 8.

244. See *Fact Sheet After One Year of Implementation in New York City*, MASS. RIGHT TO COUNS. COAL. (last visited Mar. 15, 2021), <https://bit.ly/2SSVF4Q> [<https://perma.cc/G86R-6NM6>] (showing that nearly half of evicted households possessed the home for over six years, and 38% possessed the home for more than ten years).

245. See NYU FURMAN CTR., *supra* note 159, at 7.

246. See *id.* at 7–8.

247. See *id.* at 8, 12.

248. See *id.* at 14–16.

249. See *id.* at 6–7, 12; RIGHT TO COUNS. NYC COAL., *supra* note 5. The Coalition recently released a documentary on its campaign for the right to counsel in evictions. *RTC Documentary*, RIGHT TO COUNS. NYC COAL., <http://bit.ly/3s9MVG1> [<https://perma.cc/C47A-QQSK>] (last visited Mar. 15, 2021).

250. *Supra* Sections III.B–C.

the courts.²⁵¹ In a broader context, this right to counsel can increase community stability and save public expenditures on emergency housing, healthcare, and education.²⁵² Courts will likely see a decrease in eviction filings and eviction trials.²⁵³ When parties are represented, judges can play their intended role rather than serve a tenuous position as both counsel and advocate.²⁵⁴

Second, community organizers play an important role in initiating the right to counsel.²⁵⁵ Because Pennsylvania does not have an ATJ Commission, a consortium of stakeholders that would otherwise unite in that capacity—such as representatives from PLAN and other legal aid organizations, state and local bar associations, courts, law schools, and interested community organizations—could raise awareness of state legislators.²⁵⁶ Commissioning a study of the program's return on investment in Pennsylvania would help draw interest for the project.²⁵⁷

Third, state legislators should propose a housing-focused version of the Model Access Act to start the conversation about how to best implement such a program in Pennsylvania.²⁵⁸ The law would ensure that income-qualified tenants (*e.g.*, earning 125 percent or less than the federal poverty guidelines) are guaranteed full representation in court, a right attaching upon service of the Notice to Quit.²⁵⁹ The legislation would create a Board, made up of the above-mentioned stakeholders.²⁶⁰ The Board, ultimately accountable to the legislature, could design program standards and reporting.²⁶¹ The Board could contract with the PLAN-affiliated regional

251. *Supra* Section III.C.

252. *See supra* Section III.C.2.

253. *See supra* Sections III.C.1., C.3.

254. *See* note 41 and accompanying text.

255. *See, e.g.*, MASS. RIGHT TO COUNS. COAL., *supra* note 5 (campaigning as a community coalition for a civil right to counsel in eviction proceedings); RIGHT TO COUNSEL N.Y.C. COAL., *supra* note 5 (cataloguing resources developed by the coalition during NYC's campaign for a civil right to counsel in eviction proceedings).

256. *See ATJ Commissions, supra* note 124 (describing key stakeholders in forming ATJ Commission).

257. *See, e.g.*, STOUT RISIUS ROSS, *supra* note 18. *See* additional Stout cost-benefit studies on their website. *Eviction Right to Counsel Resource Center*, STOUT RISIUS ROSS, <https://bit.ly/2XDKYEB> [<https://perma.cc/25XV-G7TE>] (last visited Mar. 15, 2021).

258. *See supra* Section III.A.

259. *See* A.B.A. MODEL ACCESS ACT, *supra* note 123, Act at 8 (setting the income limit at 125% of federal poverty guidelines).

260. *See id.* at 8–11.

261. *Id.* In implementing standards and reporting, the Board should avoid the pitfalls of the public defender system in Pennsylvania, which is the only state that does not fund its county-level public defense and subsequently has lax reporting requirements and variable standards of service county to county. Katie Meyer,

legal services organizations to provide counsel, in order to capitalize on the existing legal services infrastructure in Pennsylvania.²⁶² Utilizing existing infrastructure would not resolve the above-identified rural access to justice challenge, but the Board might open additional offices or create efficiencies as the program evolves.²⁶³ As recommended in the Model Access Act, this stream of funding should not be commingled with existing funding sources for legal services.²⁶⁴ The legal services organizations could hire attorneys based on the contracted funding from the Board.²⁶⁵ Legal services attorneys could be supplemented by law school clinics and pro bono attorneys.²⁶⁶ Based on the scale and geography of the program, the Board should consider implementing the program in phases, perhaps by one regional legal services organization at a time.²⁶⁷

Finally, collaboration between the court and legal services providers is key in implementation.²⁶⁸ To increase tenants' awareness of the right, tenants should likely be advised of the right on the Notice to Quit form.²⁶⁹ Several checkpoints can ensure tenants exercise their rights.²⁷⁰ Tenants arriving in court unrepresented could be advised of their right and referred to legal services, permitted to proceed unrepresented only by knowingly waiving the right on record.²⁷¹ Physical presence of legal services attorneys in the courthouse, as employed in NYC, would facilitate the referral process where practicable.²⁷²

Beyond the scope of implementing a right to counsel for tenants in eviction proceedings, this research highlights important considerations about housing court administration that could help improve access to justice and more substantively fair outcomes.²⁷³ The Board could propose key changes in court administration, such as the requirement of a pre-trial settlement conference in eviction

Despite Outlier Status, Pa. Lawmakers Don't Make Public Defense a Priority, WHYY (Oct. 2, 2018), <https://bit.ly/37vj2FW> [<https://perma.cc/P42R-5APE>].

262. See *supra* Section III.B.2.

263. See *supra* Section III.B.3.

264. See A.B.A. MODEL ACCESS ACT, *supra* note 123, Act at 11–12.

265. See, e.g., UAC 2018 REPORT, *supra* note 151, at 8.

266. See *supra* Section III.B.2.

267. See *supra* Section III.B.1.

268. See, e.g., *supra* Section III.C.1.

269. See, e.g., UAC 2019 REPORT, *supra* note 168, at 6–7.

270. See *supra* Section III.C.3.

271. See *supra* Section III.C.3.

272. See *supra* Section III.C.3.

273. See *supra* Section III.C.1.

cases and coordinating with housing code officers for independent investigation of habitability issues.²⁷⁴

IV. CONCLUSION

While the research demonstrates the right to counsel for tenants in eviction proceedings can be effectively implemented in many different ways, several key considerations should guide Pennsylvania policymakers and lawmakers.²⁷⁵ Pennsylvania stands to gain substantial benefits in stabilizing housing for its vulnerable and rent-burdened communities, avoiding the public collateral costs of eviction, and increasing substantive fairness in its courts.²⁷⁶ Community organizers and interested stakeholders are invaluable in raising awareness of the issue and contributing their unique expertise.²⁷⁷ By proposing a version of the Model Access Act, Pennsylvania legislators can initiate a conversation about how to best structure and implement the program to optimally use the existing legal services infrastructure.²⁷⁸ Finally, legal services providers must work closely with the courts to ensure tenants are timely advised of this right and exercise it effectively.²⁷⁹

In implementing this right, Pennsylvania will be a frontrunner in a national movement.²⁸⁰ Pennsylvania has the benefit of learning from localities that have implemented this policy²⁸¹ that is supported by sociological data and grounded in a solid legal foundation.²⁸² While the right by no means cures Pennsylvania's social justice ills, it represents an important step forward in improving access to justice in the Commonwealth.²⁸³

274. *See supra* Section III.C.1.

275. *See supra* Section III.C, D.

276. *See supra* Section III.D.

277. *See supra* Section III.D.

278. *See supra* Section III.D.

279. *See supra* Section III.D.

280. *See supra* Part I.

281. *See supra* Section III.C.

282. *See supra* Parts I–II.

283. *See supra* note 152 and accompanying text.