

No. 1033320  
SUPREME COURT  
OF THE STATE OF WASHINGTON

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RAJIV SANGHA,  
Respondent,

v.

JEREMY KEEN,  
Appellant,

And

RACHAEL LOMAS,  
Appellant.

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ON APPEAL FROM KING COUNTY SUPERIOR COURT  
Honorable Johanna Bender

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AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS

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### **STATEMENT OF INTEREST OF *AMICUS***

Formed in January 2004, the National Coalition for a Civil Right to Counsel (NCCRC) is an unincorporated project of the Public Justice Center that seeks to advance the recognition of a right to counsel in civil cases involving fundamental interests and basic human needs, such as shelter, safety, sustenance, health, and child custody. The NCCRC is comprised of over 600 participants and partners from 47 states, including community-based organizations, civil legal services attorneys, supporters from public interest law firms, and members of the private bar, academy, state/local bar associations, access to justice commissions, national organizations, and others.

The NCCRC supports litigation, legislation, and other advocacy strategies seeking a civil right to counsel, including amicus briefing where appropriate. In this vein, the NCCRC worked closely with the American Bar Association's Presidential Task Force on Access to Justice on its 2006 Resolution (which passed the ABA House of Delegates on a unanimous vote) that urges federal, state and territorial governments to recognize a right to counsel in certain civil cases.<sup>1</sup> Additionally, the NCCRC has

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<sup>1</sup> American Bar Association Resolution 112A (Aug. 2006), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.pdf).



participated in past litigation and legislative efforts in Washington State relating to the right to counsel for parents and children. By promoting a civil right to counsel, NCCRC works tirelessly to try to close the “justice gap” in the United States that has grown to the point where low-income Americans do not get any or enough legal help for 92% of the legal problems that have had a substantial impact on them.<sup>2</sup>

A central focus of the NCCRC’s work is advocating for the right to counsel for tenants facing eviction (hereinafter tenant right to counsel, or TRTC<sup>3</sup>). Every day, thousands of low-income tenants across the country face eviction without the assistance of legal counsel, often leading to unjust or unnecessary evictions and devastating outcomes such as homelessness, family separation, and the long-term destabilization of entire communities.<sup>4</sup> The NCCRC has an interest in the present case because central to this case is whether Appellant is denied their right to

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<sup>2</sup> Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, (April 2022), <https://justicegap.lsc.gov/resource/executive-summary>

<sup>3</sup> Throughout this brief the term tenant right to counsel, or TRTC, will be used broadly to refer to programs enacted by city ordinance or state statutes to provide counsel to tenants facing evictions. Each program is different and individually tailored to its jurisdiction, and while some of the jurisdictions may not name their programs as “right to counsel”, each program referred to as such meets the criteria for a right to counsel program as defined by the NCCRC. National Coalition for a Civil Right to Counsel, *Frequently Asked Questions: What is a Right to Counsel?* (Dec. 15, 2024, 11:55 PM), <https://civilrighttocounsel.org/about-civil-rtc/frequently-asked-questions/>

<sup>4</sup> John Pollock, *Right to Counsel for Tenants Facing Eviction: Justification, History, and Future*, 51 Fordham Urb. L.J. 1439, 1460 (2024); See also, ACLU *No Eviction Without Representation: Evictions’ Disproportionate Harms and the Promise of Right to Counsel*, [https://assets.aclu.org/live/uploads/publications/no\\_eviction\\_without\\_representation\\_research\\_brief\\_0.pdf](https://assets.aclu.org/live/uploads/publications/no_eviction_without_representation_research_brief_0.pdf).

appointed counsel under RCW 59.18.640. Washington's TRTC statute, like many other similar local ordinances and state statutes across the country, helps prevent homelessness and community destabilization by ensuring that each indigent tenant is offered counsel, an intervention with demonstrated effectiveness.<sup>5</sup>

The NCCRC is concerned that the decision of the underlying court undermines the eviction right to counsel program in the state of Washington by allowing a landlord to seek a default against a tenant who does not file an answer, a statutory interpretation that is not only untenable but that also ironically punishes the tenant for not knowing the law, a situation the TRTC law was created to address. Consequently, the NCCRC has an interest in this case to ensure that the Washington State TRTC law is effectuated.

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<sup>5</sup> See generally, National Coalition for a Civil Right to Counsel, *Tenant Right to Counsel* (Dec. 15, 2024, 11:55 PM) [https://civilrighttocounsel.org/resources/organizing\\_around\\_right\\_to\\_counsel/](https://civilrighttocounsel.org/resources/organizing_around_right_to_counsel/)

## **SUMMARY OF ARGUMENT**

Across the country, millions of evictions are filed each year, and in Washington, the number of evictions filed have been at record highs.<sup>6</sup> Historically, tenants facing eviction have been at a severe disadvantage in legal proceedings: only about 4% of tenants nationwide have access to counsel, and unrepresented tenants face eviction proceedings that are often fast-paced, complex, and procedurally difficult. Landlords, by contrast, overwhelmingly have access to legal counsel (nationwide, about 83% of landlords on average), leaving tenants exposed to the risk of unfair eviction and its associated consequences.<sup>7</sup>

To counteract this inequity, states and cities across the country have legislatively enacted a tenant right to counsel in eviction proceedings (TRTC). Currently there are 24 jurisdictions across the country that have a TRTC program, and more jurisdictions are working toward and enacting legislation each year. In 2021, Washington State joined the growing ranks

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<sup>6</sup> Juan Pablo Garnham et al., *New Data Release Shows that 3.6 Million Eviction Cases Were Filed in the United States in 2018*, THE EVICTION LAB (July 11, 2022) <https://evictionlab.org/new-eviction-data-2022/>; Tim Thomas & Mia Schwinghammer, *Washington State Eviction Filings* (Oct. 10, 2024) <https://evictionresearch.net/washington/#county-table>. See also, e.g., Kathryn Reynolds & Elizabeth Burton, *Almost Half of Renter Households Feel Pressured to Leave Their Homes*, URB. INST. (Nov. 3, 2023), <https://www.urban.org/urban-wire/almost-half-renter-households-feel-pressured-leave-their-homes>.

<sup>7</sup> See, National Coalition for a Civil Right to Counsel, *Eviction representation statistics for landlords and tenants absent special intervention* (Nov. 2024) [https://civilrighttocounsel.org/wp-content/uploads/2023/11/Landlord\\_and\\_tenant\\_eviction\\_rep\\_stats\\_\\_NCCRC\\_.pdf](https://civilrighttocounsel.org/wp-content/uploads/2023/11/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf)

and became the first state to pass TRTC,<sup>8</sup> and was joined by Maryland and Connecticut that same year.<sup>9</sup> Washington State's TRTC has been crucial to providing access to the courts for tenants, and to helping prevent harm to tenants and communities across the state.

Studies have shown that these TRTC programs have been effective in counteracting the imbalance of power in eviction proceedings and lessening the harm done to individuals and communities. While the court process can be confusing and overwhelming for *pro se* litigants in other types of civil cases, the imbalance of representation in eviction cases is stark. TRTC helps tenants fully access the court system and assert their rights and defenses that they otherwise would not be able to muster. It also helps prevent the massive harm done by evictions: both the long term physical and mental health problems that are associated with eviction and homelessness and the disruption of families and communities.

For these reasons, amicus urges the court to find in favor of the appellant and reverse the lower court's decision. TRTC, as enacted in Washington State, is only effective if landlords are not allowed to circumvent it.

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<sup>8</sup> RCW 59.18.640

<sup>9</sup> Md. Real Prop. § 8-901 et seq.; Ct. Stat. § 47a-75.

## **ARGUMENT**

### **I. Jurisdictions Across the Country Have Enacted TRTC in Recognition of the Lack of an Equivalent Right at the Federal Level, the Critical Needs at Stake, and the Difficulty of Tenants Proceeding *Pro Se*.**

The U.S. Supreme Court has held that defendants have right to counsel in all types of criminal cases involving incarceration, with *Gideon v. Wainwright* in 1963 being the seminal case establishing the right to counsel in state felony cases.<sup>10</sup> The federal constitutional right to counsel in civil cases, on the other hand, is much more limited. While the Court recognized a right to counsel for quasi-criminal juvenile delinquency cases,<sup>11</sup> it declined to recognize a due process right to counsel for both termination of parental rights cases and civil contempt cases involving incarceration,<sup>12</sup> and created a presumption against the right to appointed counsel in cases where “physical liberty” – incarceration, confinement or restraint – is not at stake.<sup>13</sup> Moreover, Congress has only provided a federal right to counsel in extremely limited circumstances, such as federal foreclosure cases involving a primary residence.<sup>14</sup> This means that TRTC has been a nonstarter on the federal level.

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<sup>10</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963). See also, *Powell v. Alabama*, 287 U.S. 45 (1932), *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>11</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>12</sup> *Turner v. Rogers*, 561 U.S. 431 (2011).

<sup>13</sup> *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981).

<sup>14</sup> 18 USC 983(b)(2)(A).

States and cities across the country, however, have taken a different approach, recognizing the critical need for counsel in eviction cases and enacting TRTC laws to address it. In 2017, New York City became the first jurisdiction in the nation to provide TRTC for those facing eviction.<sup>15</sup> Since then, the movement TRTC has grown rapidly, and to date, there are seventeen cities, two counties, and five states across the country that have passed TRTC.<sup>16</sup>

By enacting TRTC, cities have recognized the immeasurable impact that evictions cause in their jurisdictions and have taken an important step toward making the process fair and accessible for all. For example, in San Francisco's ordinance, the city declared itself the first "Right to Civil Counsel City" and recognized how civil proceedings could deny its residents basic human needs.<sup>17</sup> The City of Newark, New Jersey found that an emergency exists where many of its residents are homeless or are at risk of homelessness and/or reside in uninhabitable living conditions, and further found that this emergency was created in part by frivolous and retaliatory eviction actions by landlords.<sup>18</sup> It further found that tenants lacked knowledge and awareness of their legal rights, and that

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<sup>15</sup> New York City Admin. C. § 26-1301 et seq.

<sup>16</sup> National Coalition for a Civil Right to Counsel, *Tenant Right to Counsel*, *Supra* note 5

<sup>17</sup> San Francisco Admin. Code § 58.1

<sup>18</sup> Newark Admin. Code § 19:3-0

a fear of eviction discouraged many tenants from fighting evictions or protesting against substandard housing conditions.<sup>19</sup> Similarly, the city of Minneapolis found that evictions produce lasting harm to tenants, including the ability to secure safe, stable housing, and that tenants who are represented are less likely to be evicted and more likely to maintain housing stability.<sup>20</sup> The stated intent of these cities shows how jurisdictions recognize how devastating evictions can be to individuals and communities, and the public good that can come from protecting tenants through TRTC programs.

In 2021 Washington State made history and became the first state to enact right to counsel for tenants. The law was passed in the aftermath of the COVID-19 pandemic and the economic downturn throughout Washington State. Recognizing that nonpayment of rent was the leading cause of evictions in Washington State prior to the pandemic, and that the pandemic led to a further inability for tenants to consistently pay rent, SB 5160 was passed.<sup>21</sup> Since enactment, Washington State has been a model in the national movement for tenant right to counsel, being the only

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<sup>19</sup> *Id.*

<sup>20</sup> Minneapolis Code of Ordinances § 143.10

<sup>21</sup> SB 5160 – 2021-22 (2021)

<https://app.leg.wa.gov/bills/summary?Year=2021&BillNumber=5160> (Legislative history finding that the right to counsel program was to increase tenant protections, especially during the increased economic instability during the COVID-19 pandemic)

jurisdiction with an appointment of counsel system, and one of the few statewide programs. It is crucial that this right, and the intent of the legislature to provide counsel to qualifying tenants as a critical tenant protection, is protected.

## **II. TRTC Provides Crucial Access to the Court Process for Tenants, Who Otherwise Face a Confusing System and an Imbalance of Power.**

The country's judicial system was built upon the concept of fairness and accessibility for all litigants. However, low-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems.<sup>22</sup> In the housing context, approximately 43% of low-income renter households nationwide experience at least one civil legal problem related to housing in any given year.<sup>23</sup> Despite this need, only a fraction of renters are represented, while nearly all landlords are represented.<sup>24</sup> Not only can this process be confusing and difficult to navigate for a *pro se* tenant, but tenants also face a substantial risk of mistakenly waiving their rights or prejudicing themselves.

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<sup>22</sup> Legal Services Corporation, *The Justice Gap*, *supra* note 2.

<sup>23</sup> *Id.*

<sup>24</sup> See, National Coalition for a Civil Right to Counsel, *Eviction representation statistics*, *Supra* note 7.



**a. The Eviction Process Is Typically Very Confusing and Difficult to Navigate for a *Pro Se* Tenant.**

Tenants who represent themselves in eviction cases are typically unfamiliar with court procedures, deadlines, and legal terminology. They likely do not know the proper format for filing documents, how to raise defenses, what steps they must take to avoid default, or even how to conduct themselves in court. This problem is exacerbated by the summary nature of virtually every eviction process in the country, which means that the court process will occur at an accelerated pace and in many instances with different rules. Further, most eviction courts have high dockets and are under resourced, and judges fear compromising their neutrality by providing any assistance, which means that the courts themselves are not able to adequately provide resources or guidance to *pro se* tenants.

In *Adjarkey et. al. v. Central Division of the Housing Court Department et. al*<sup>25</sup>, the Supreme Judicial Court of Massachusetts explained in depth how complicated and unbalanced an eviction proceeding is for a *pro se* tenant. The Court went into detail about the complexity and speed of eviction actions, and the disparities in legal representation between landlords and tenants. After explaining every step in the eviction process from filing through appeals, the court stated that

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<sup>25</sup> *Adjarkey et. al. v. Central Division of the Housing Court Department et. al*, 481 Mass. 830 (2019).

“The complexity of a summary process eviction is exacerbated by the web of applicable statutes and rules. . . [A] litigant must consider a variety of other rules and statutes in order to comprehend the full scope of the process.” *Id.* The Court also highlighted the expedited timeline of eviction cases and recognized how little room for error there is for a defendant:

A defendant facing eviction is required to understand, in the time between compressed deadlines, the meaning of a notice to quit; the filing requirements for an answer, including those relating to defenses and counterclaims; the method for requesting and providing discovery; the workings of a trial or mediation; and the options available after a judgment has issued. *Id.*

The challenges contemplated by *Adjarney* are not unique to Massachusetts, but typical of eviction proceedings nationwide. Most states have summary proceedings in place for evictions, which means that within a compressed timeline, tenants are required to learn about the court procedure, understand what defenses they might have, file an answer or any other procedurally required papers, gather documents and evidence to support their case, and then go to court and represent themselves.<sup>26</sup> Even assuming they pass all of these hurdles, the day of housing court can be similarly overwhelming. Many jurisdictions have large dockets where numerous cases are being heard at the same time, and studies have shown

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<sup>26</sup> See, Andrew Scherer, The Case Against Summary Eviction Proceedings: Process as Racism and Oppression, 53 Seton Hall L. Rev. 1, 48 (2022) (highlighting the lightning fast pace of summary proceedings at the cost of the procedural protections that are expected in civil cases).

that an individual tenant might only be in front of a judge for a matter of a few minutes before their case is decided.<sup>27</sup> Landlords or their attorneys will often be working on several cases at once and will have only minutes to talk to each tenant about possible settlements. *Pro se* tenants are forced to make a life altering decision in a matter of minutes, while trying to understand legal jargon and what other options might be available to them within the court system. This confusing nature underscores how critical it is for tenants to receive counsel.

**b. *Pro se* Tenants Are More Likely to Prejudice Themselves and Forfeit Rights Than Represented Tenants.**

Without TRTC, *pro se* tenants unfamiliar with the process are risking forfeiture of their rights and home. One of the most dangerous pitfalls for unrepresented tenants is the pressure to file an answer to the eviction complaint without first consulting an attorney, and many of those who lack counsel fail to even file an answer. For instance, one study in Philadelphia found that nearly 60 percent of cases were lost by default and that represented tenants were 90 percent less likely to lose by default.<sup>28</sup> In

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<sup>27</sup> Chicago-Kent College of Law, *No Time for Justice: A Study of Chicago's Eviction Court* (2003) <https://lcbh.org/resources/no-time-for-justice-a-study-of-chicagos-eviction-court/> (finding that eviction hearings lasted an average of 1 minute and 44 seconds).

<sup>28</sup> Stout, *Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants*, 7 n.4 (Nov. 13, 2018), [https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report\\_11-13-18.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/Philadelphia%20Evictions%20Report_11-13-18.pdf).

many jurisdictions, tenants are required to file an answer within a very short timeframe, often within 5 to 10 days after receiving an eviction notice.<sup>29</sup> If a tenant misses this deadline, they may forfeit their right to contest the eviction, and a default judgment may be entered against them.

Even assuming tenants understand what they must do to preserve their rights, the rush to meet this deadline often leads tenants to file an answer or otherwise appear without fully understanding the legal implications or the best course of action. For instance, a Baltimore study found that “50 percent of surveyed renter-defendants knew virtually nothing about how to defend their case” but at the same time “nearly 80 percent of surveyed renters were living amidst serious housing defects at the time they appeared at Rent Court”, indicating they had a potentially viable defense to the eviction.<sup>30</sup> Indeed, studies repeatedly demonstrate that the majority of tenants receiving services through right to counsel programs experience at least one complex case criteria (such as defective conditions, oral leases, public or subsidized housing, discrimination, mental health challenges), which suggests that an answer drafted *pro se*

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<sup>29</sup> See generally, Legal Services Corp. *Eviction Laws Database* (Dec. 17, 2024) <https://lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>

<sup>30</sup> Public Justice Center, *How Renters are Processed in the Baltimore City Rent Court*, (Dec. 2015) [https://publicjustice.org/wp-content/uploads/2019/09/JUSTICE\\_DIVERTED\\_PJC\\_DEC15.pdf](https://publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf).

will prove woefully inadequate in capturing the legal issues at hand.<sup>31</sup>

Even if the tenant does manage to raise a cognizable legal defense, research demonstrates that they are far less likely to be successful without counsel.<sup>32</sup>

In fact, it has been shown that renters with access to legal counsel are more likely to reach a settlement agreement than those without counsel, and specifically a more favorable settlement agreement. A study in Washington for example, found that "...about half (52.2%) of tenants who had legal counsel received some form of settlement or stipulation compared to just 14.3% of tenants without representation."<sup>33</sup> These results are typical of other studies across the country, suggesting that represented tenants are more likely to understand the process and reach a mutually beneficial agreement with their landlord when represented by counsel.<sup>34</sup>

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<sup>31</sup> See e.g., Stout, *Connecticut Eviction Right to Counsel Annual Independent Evaluation* (2022) [https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-ct-rtc\\_final\\_2022-12-30-clean.pdf](https://www.stout.com/-/media/pdf/evictions/stout-2022-independent-evaluation-ct-rtc_final_2022-12-30-clean.pdf) (finding that "[i]n all 439 (100%) closed CT-RTC cases where the client received extensive service, clients were experiencing at least 1 complex case criteria, and in 83% of closed CT-RTC cases, clients were experiencing multiple complex case criteria."); see also Stout, *Cleveland Eviction Right to Counsel Annual Independent Evaluation* (Jan. 31, 2022) <https://www.stout.com/-/media/pdf/evictions/2021-cleveland-eviction-rtc-annual-independent-evaluation-clean.pdf>

<sup>32</sup> See, Julian R. Birnbaum et al., *Chicago's Eviction Court: A Tenant's Court of No Resort*, 17 Urban L. Ann. 93, 115 (Jan. 1979); See also, Public Justice Center, *How Renters are Processed*, supra note 30.

<sup>33</sup> Tara Cookson et al., Seattle Women's Comm'n and the Hous. Justice Project of the King Cty. Bar Ass'n, *Losing Home: The Human Cost of Eviction in Seattle* (Sept. 2018)

<sup>34</sup> NPC Research, *Report to the California State Legislature for the Sargent Shriver Civil Counsel Act Evaluation* (June 2020) "Two thirds (67%) of full representation cases were settled, as opposed to one third (34%) of comparison cases."

Further, tenants who had access to legal counsel were able to get a more favorable settlement agreement than those without.<sup>35</sup>

TRTC provides a crucial role in helping tenants navigate the court process. However, it is illogical and unjust to have a TRTC program yet interpret the law in such a way that tenants can forfeit that right simply because they do not know how to navigate the complex eviction process on their own. The premise of TRTC programs is that tenants should have the opportunity to fully understand their legal rights and defenses *before* making decisions that could significantly affect their lives. Allowing tenants to prejudice their own case by failing to file or prematurely filing an answer or notice of appearance inadvertently waiving critical defenses, or making other irreversible legal missteps contradicts the purpose of TRTC and places tenants in an untenable position.

**c. Evictions Can Be Irreversibly Harmful and Violent to Tenants, Disrupt Communities, And Have a Large Economic Burden on Society.**

It cannot be overstated how critical housing stability is for an individual's health and mental well-being, as well as for the community at large. Evictions damage physical and mental health, disrupt education,

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<sup>35</sup> Jessica Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 Geo. J. on Poverty L. & Pol'y 453 (2011) (finding that even when legal services were able to help litigants raise potentially meritorious defenses, results for tenants did not improve).

cause job loss and homelessness and dislodge people from community and stability.<sup>36</sup> Evictions have been linked to a host of health effects, such as increased emergency room visits, mortality from substance abuse, increased incidence of high blood pressure, heart disease, respiratory illnesses, sexually transmitted infections, and exacerbation of HIV/AIDS.<sup>37</sup> Evictions can also have a devastating effect on mental health. A study in Seattle found that approximately 37% of survey respondents who had experienced evictions reported feeling stressed, around 8% experienced increased or new depression, anxiety, or insomnia, and 5% developed a heart condition they believed connected to their housing instability.<sup>38</sup>

Similarly, eviction frequently results in financial hardship, as individuals and families lose their homes, face relocation costs, and often struggle to find affordable housing. For example, just being named in an eviction, regardless of the outcome, can cause tenants to be placed on blacklists that impact future renting opportunities.<sup>39</sup> And if a family

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<sup>36</sup> Andrew Scherer, *Stop the Violence: A Taxonomy of Measures to Abolish Evictions*, 51 Fordham Urb. L. J. 1329, 1343 (2024).

<sup>37</sup> *Id.*

<sup>38</sup> Tara Cookson et al., *Losing Home supra* note 33.

<sup>39</sup> Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 Fordham Urb. L.J. 661 (2018); Rudy Kleysteuber, *Note, Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1363 (2007).

becomes homeless because of an eviction, the economic hardship is magnified.<sup>40</sup>

When families are displaced, entire communities are destabilized. Schools lose students, local businesses lose customers, and neighborhoods face a decline in social capital. The loss of stable housing can disrupt community networks and erode the social fabric that supports collective well-being.<sup>41</sup> Additionally, homelessness often leads to significant strain on shelter systems and social services. Independent studies have found that spending on TRTC drastically saves jurisdictions money by reducing the costs of negative externalities of eviction, such as homelessness, emergency medical care, foster custody of children, and unemployment.<sup>42</sup>

The effects of evictions on the community are especially dire for communities of color. Studies have shown that evictions

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<sup>40</sup> See generally, Robert Collinson et al., *Eviction and Poverty in American Cities*, 139 Quarterly J. of Econ. 57 (2023) (finding that an eviction order increases homelessness and hospital visits and reduces earnings, durable goods consumption, and access to credit in the first two years, and in the longer run, eviction increases indebtedness and reduces credit scores).

<sup>41</sup> See generally, Rilwan Babajide et al., *Effects of Eviction on Individuals and Communities in Middlesex County* (May 12, 2016) [https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/2016\\_EvictionStudyFinalDraft.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/2016_EvictionStudyFinalDraft.pdf) (finding that evictions can harm entire communities);

<sup>42</sup> John Pollock, *Right to Counsel for Tenants Facing Eviction*, *supra* note 4.



disproportionately effect people of color, specifically black women.<sup>43</sup> In 2020, it was found that in the state of Washington “more women are evicted than men, and in the state’s two most populous counties, eviction rates among black and Latinx adults are almost seven times higher than for white adults.”<sup>44</sup> These results show how important it is to protect communities from the harmful effects of eviction, especially communities of color, and TRTC is one important piece of the puzzle.

**d. TRTC Addresses the Disparity Between Landlord and Tenant Representation in Eviction Cases, and the Underlying Power Difference Between Tenants and Landlords, Which Otherwise Fundamentally Undermines the Fairness of these Proceedings.**

Landlords are often represented by attorneys who are experienced in navigating the complex legal and procedural nuances of eviction cases, while tenants—especially low-income tenants—are frequently unrepresented and lack the legal knowledge to defend themselves effectively.

For many years, it was reported that only 10% of tenants, compared to 90% of landlords, were represented in eviction cases. However, the

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<sup>43</sup> Cleo Bluthenthal, *The Disproportionate Burden of Eviction on Black Women*, American Progress (Aug. 14, 2023) <https://www.americanprogress.org/article/the-disproportionate-burden-of-eviction-on-black-women/>

<sup>44</sup> Kim Eckart, *UW Study Reveals Gender, Racial Disparities in Evictions*, UW News (Feb. 10, 2020) <https://www.washington.edu/news/2020/02/10/uw-study-reveals-gender-racial-disparities-in-evictions/>

NCCRC conducted an analysis of available tenant and landlord representation reports from several dozen jurisdictions and found that the statistics are even more dire. Our data puts the tenant representation figure at a mere 4% and the landlord representation rate at 83%.<sup>45</sup> Landlords' attorneys are well versed in the nuances of eviction law and are familiar with court procedures, deadlines, and strategies for effectively prosecuting eviction cases. And even unrepresented landlords are often “repeat players” who have a familiarity with the court proceedings and relationships with court personnel.<sup>46</sup> Landlords often rely on the expertise of property management firms or corporate entities that understand the eviction process, even when attorneys are not directly involved. Furthermore, landlords may have multiple cases at once, giving them the leverage of routine and familiarity with the process. All of this provides landlords with a significant advantage in the courtroom.

On the other hand, studies have shown that tenants who are unrepresented in eviction cases are at a substantial disadvantage: they are

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<sup>45</sup> National Coalition on a Civil Right to Counsel, *Eviction Representation Statistics*, *supra* note 7.

<sup>46</sup> Vamsi A. Damerla, *The Right to Counsel in Eviction Proceedings: A Fundamental Rights Approach*, Columbia Human Rights Law Review Online (May 5, 2022) <https://hrlr.law.columbia.edu/hrlr-online/the-right-to-counsel-in-eviction-proceedings-a-fundamental-rights-approach/>

more likely to lose their cases,<sup>47</sup> face eviction,<sup>48</sup> and suffer the severe consequences of displacement,<sup>49</sup> such as homelessness and economic instability. In many jurisdictions, tenants are unaware of their rights and the complexities of eviction law, making them vulnerable to unfavorable outcomes even if they have a valid defense.

This disparity undermines the principle of fairness in the judicial process and perpetuates a system where tenants, who often have the most to lose, face severe obstacles to defending their rights. In this context, the importance of TRTC programs cannot be overstated, as they offer tenants

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<sup>47</sup>See, Chester Hartman and David Robinson, *Eviction: The Hidden Housing Problem*, 14, 4 Hous. Pol’y Debate 461 (2003) (In Berkeley (CA), 20.4 percent of tenants, as opposed to 83.4 percent of landlords, were represented, with represented tenants 10 times more likely than unrepresented ones to win (Hall 1991)." at p. 477); Child Poverty Action Lab, *Dallas Court Observation Project* (Summer 2022 Findings) [https://static1.squarespace.com/static/5b7d91deaa49a1b03df31527/t/6349cce3b5ad8a5fb3f8df8a/1665780966228/CPAL\\_DallasCourtObservationProject\\_Summer2022.pdf](https://static1.squarespace.com/static/5b7d91deaa49a1b03df31527/t/6349cce3b5ad8a5fb3f8df8a/1665780966228/CPAL_DallasCourtObservationProject_Summer2022.pdf) (Across all observed cases, the judge ruled in favor of the landlord in 79% of the cases when a defendant did not have legal representation. When tenants had legal representation, cases were decided in favor of the landlord just 10% of the time.)

<sup>48</sup> See, Michael T. Cassidy and Janet Currie, Nat’l Bureau of Econ. Research, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City’s Universal Access Program* (March 2022) (Representation decreased the probability that there is a judgment with possession (on the order of 62 percent). p. 31)

<sup>49</sup> Stout, *The Estimated Economic Impact of Access to Counsel in Evictions in Chattanooga and Hamilton County*: Prepared for Cmty. Foundation of Greater Chattanooga (Mar. 19, 2024) <https://www.stout.com/-/media/pdf/evictions/economic-impact-eviction-access-counsel-chattanooga-hamilton-county.pdf> ("...represented tenant households avoid the high likelihood of disruptive displacement in an estimated 96% cases<sup>23</sup> (approximately 765 of the approximately 797 tenant households that would be represented in an eviction access to counsel program), and unrepresented tenant households avoid disruptive displacement in an estimated 25% percent of cases (approximately 189 unrepresented tenant households).")

the opportunity to level the playing field and ensure that they can meaningfully participate in their legal defense.

**e. TRTC Programs are Effective in Helping Tenants Successfully Navigate the Judicial Process and Protecting Tenants and Communities From the Harms of Eviction.**

In contrast to the complications that *pro se* tenants face in understanding the legal system and asserting their rights in eviction proceedings, TRTC programs have proven to be successful in helping tenants access the court. By connecting with and providing representation as early as possible, these programs make sure that tenants can understand the process and meaningfully participate.

One of the most telling statistics is how TRTC can affect the default and filing rates. In New York City for example, which has the oldest TRTC program in the country, data shows that after implementation of right to counsel began, “[t]enant representation also reduces the probability that a judgment is reached because the tenant ‘failed to answer’ the petition or ‘failed to appear’ in court.”<sup>50</sup> Similarly, in Philadelphia, it was found that “RTC zip codes had better court outcomes for tenants: lower rates of default judgments in favor of the landlord (15%

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<sup>50</sup> Michael T. Cassidy and Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court* *supra* note 48.

compared to over 22% and 23%)..."<sup>51</sup> These numbers show how TRTC can increase tenant participation in the court process and reduce the number of tenants who must face such a process.

Additionally, studies show that tenants with counsel are more likely to understand and assert defenses.<sup>52</sup> Eviction proceedings are generally governed by a variety of state laws and procedures as well as federal protections and even local codes and ordinances. Tenants might have a defense that they would never know about without speaking to an attorney. Defenses such as procedural defects, warranty of habitability claims, or discrimination are particularly difficult for a *pro se* tenant to recognize and understand, represented tenants are much more likely to file an answer asserting their defenses.<sup>53</sup> This highlights the critical role that legal counsel plays in preventing eviction and keeping tenants housed. Additionally, while unrepresented tenants *might* be able to raise a defense

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<sup>51</sup> Reinvestment Fund, *Implementing Right to Counsel in Philadelphia: An Evaluation of the Program's 2022 Rollout* (June 2023) [https://www.reinvestment.com/wp-content/uploads/2023/06/ReinvestmentFund\\_PHL-Right-toCounsel-June2023.pdf](https://www.reinvestment.com/wp-content/uploads/2023/06/ReinvestmentFund_PHL-Right-toCounsel-June2023.pdf)

<sup>52</sup> Public Justice Center, *How Renters are Processed*, *supra* note 30.

<sup>53</sup> Robert Goodspeed, et al., *Michigan Evictions: Trends, Data Sources, and Neighborhood Determinants*, p. 24 (Ann Arbor, MI: University of Michigan Poverty Solutions, May 2020) (A study of landlord-tenant cases in Washtenaw County, Michigan demonstrated that "tenants with representation were much more likely to file an answer asserting their defenses. Two-thirds of the nine tenants with attorneys filed an answer, compared to *none* of the self-represented tenants...").

in some situations, those claims routinely fail, compared to when tenants have counsel.<sup>54</sup>

Thus, TRTC programs serve a crucial role in access to justice for tenants facing eviction. By ensuring representation for qualifying tenants, jurisdictions can help ensure that tenants have the opportunity to fully navigate the legal process and assert their rights. But this process only works if tenants receive counsel before the damage is done. In the present case, the appellant was denied this representation, ironically because of a lack of familiarity with the rules and court process – the very thing that Washington’s TRTC law is aimed to prevent.

TRTC has also been shown to be an effective tool to counteract the devastating impacts of eviction both to individuals and the community. Represented tenants are much more likely to be able to stay in their homes. In New York City, six years into the TRTC program 84% of represented tenants remain in their homes.<sup>55</sup> Following passage of the TRTC program in Boulder 63% of tenants avoided eviction, which

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<sup>54</sup> Jessica Steinberg, *In Pursuit of Justice?* *Supra* note 35.

<sup>55</sup> New York City Office of Civil Justice, *Universal Access to Legal Services: A Report on Year Six of Implementation in New York City* (2023) [https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2023.pdf](https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2023.pdf)

represented a 26% increase from the pre-filing rates.<sup>56</sup> Similarly, in Kansas City, within the first year of passing a TRTC law approximately 86 percent of represented tenants were able to avoid eviction.<sup>57</sup>

Washington State's TRTC program has similarly reported high levels of success for represented tenants. For instance, recently released data found that 56% of cases resulted in tenants remaining in their home, while 81% of closed cases resulted in permanent housing being secured for the tenant.<sup>58</sup> These numbers show just how critical an effective TRTC program is in protecting tenants and communities.

Even when tenants are not able to stay in their home, tenant goals related to housing stability are more often achieved when they are represented by counsel. For example, in an annual study of the Connecticut TRTC program, it was found that of the 82% of clients that wanted to prevent an involuntary move or move on their own terms, 71% achieved that goal and of the 80% that sought to avoid an eviction on their

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<sup>56</sup> City of Boulder, *2021 Eviction Prevention and Rental Assistance Services Annual Report* (2021) <https://boulder.colorado.gov/media/7099/download?inline=>

<sup>57</sup> Candace Ladd, *The State of Eviction 2023*, Heartland Center for Jobs and Freedom (2023) <https://static1.squarespace.com/static/56214c93e4b0126253f97afd/t/65007a3ce95bcc009b78004b/1694530122501/The+State+of+Eviction+2023.pdf>

<sup>58</sup> Washington State Office of Civil Legal Aid, *Tenant Right to Counsel Program Overview* (2024) <https://civilrighttocounsel.org/wp-content/uploads/2024/10/WA-State-FY24-RTC-achievements-OCLA.pdf>

record, 76% achieved that goal.<sup>59</sup> In a study of Cleveland's TRTC program, 92% of clients who had the goal to secure additional time to move were able to do so.<sup>60</sup> In Philadelphia, a study found that unrepresented tenants face case outcomes that can result in disruptive displacement 78% of the time, while represented tenants can avoid this disruptive displacement 95% of the time.<sup>61</sup>

Beyond these results for individuals, TRTC has a major benefit to the communities in which it is enacted. To start, in several jurisdictions prior to the pandemic, eviction filings decreased substantially after enactment of TRTC programs. This is "likely due to the deterrence of illegal, frivolous, or rash filings."<sup>62</sup> The knowledge that tenants will be represented dissuades bad behavior on the part of petitioners, and therefore helps protect families and communities.

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<sup>59</sup> Stout, *Connecticut Annual Evaluation*, *supra* note 31.

<sup>60</sup> Stout, *Cleveland Annual Evaluation*, *supra* note 31.

<sup>61</sup> Stout, *Philadelphia Study*, *supra* note 28 (Stout uses the phrase 'disruptive displacement' to capture outcomes of cases beyond 'winning' and 'losing.' For example, there may be circumstances where tenants did not have a formal eviction warrant executed against them and therefore were not displaced but have still experienced disruption in their lives because of the eviction filing, such as entering a negotiated settlement with unrealistic payment terms resulting in additional financial strain. Additionally, there may be circumstances where a tenant loses possession of their home but was granted an extra 30 days to vacate. In this situation, disruptive displacement may have been avoided because of the additional time to find alternative, suitable housing.)

<sup>62</sup> John Pollock, *Right to Counsel for Tenants Facing Eviction*, *supra* note 4.



With more tenants represented and avoiding eviction, TRTC programs also help decrease the burden on other social safety nets. For example, New York City study found that that Medicare hospitalization charges fall as a result of the TRTC policy implementation.<sup>63</sup> Similarly, TRTC policies help reduce the cost of emergency shelters, inpatient medical care, emergency room care, child welfare services, and juvenile delinquency.<sup>64</sup>

These savings are indicators of just how powerful TRTC can be in helping preserve communities. The state of Washington considered these benefits when passing the Washington RTC law. However, these measures are only effective if the right the program provides cannot be nullified and each eligible tenant has a fair opportunity to connect with an attorney and be represented.

## **CONCLUSION**

Washington's TRTC law, like many similar laws around the country, is a highly effective tool in providing access to the court and limiting the harmful effects of eviction. TRTC programs have been shown to help tenants navigate a complex legal system and assert their rights.

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<sup>63</sup> Wanling Su, *Why Protect Renters? Empirical Evidence from New York City* (Sept. 2021)

<sup>64</sup> John Pollock, *Right to Counsel for Tenants Facing Eviction*, *supra* note 4.

They have also shown the ability to reduce both individual and community harms related to eviction, and help jurisdictions save money. However, TRTC is only meaningful if tenants are able to effectively access that right. Thus, the decision of the lower court should be reversed and the Appellant should be afforded their right to access counsel at the trial level.

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