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# THE CASE FOR A RIGHT TO COUNSEL IN HOUSING COURT

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**Jamila Michener**, *Associate Professor in the department of Government  
at Cornell University*

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July 2020



# EXECUTIVE SUMMARY

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The coronavirus pandemic has dramatically and ominously shifted the scale of the eviction crisis in the United States. Short of extensive, multipronged legislative action, estimates suggest that anywhere from 19 to 23 million renters (or 11 million renter households) are at risk of eviction between summer and fall 2020. Congress must take immediate action to address the eviction crisis by providing states and localities with the resources needed to ensure that individuals receive full legal representation in housing court.

With no constitutionally guaranteed right to representation in U.S. civil courts, roughly 90% of tenants do not have lawyers, and face striking disadvantages as they navigate complex housing courts. Guaranteeing legal representation to individuals facing eviction is one way to address the most imminent need. There is strong bipartisan support for increasing legal protections to prevent evictions: Polling by Data for Progress shows that 60% of likely voters support increased funding for legal services to prevent evictions. And 59% of likely voters support, while only 19% oppose, a right to counsel in eviction cases.

## INTRODUCTION

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The United States now faces a housing crisis of unprecedented proportions. Even before the pandemic, 25% of all renter households were considered extremely low income. Seventy-one percent of those low-income households faced severe housing cost burdens, spending more than 50% of their income on housing. These households were already on the financial brink, confronting a high-priced housing market that put rent

out of reach for many low-income Americans. Coronavirus has now pushed many of them over the edge. As a result, a massive wave of evictions threatens to displace millions of people from their homes. Evictions aggravate homelessness and poverty, harm families, imperil health, destabilize neighborhoods, and perpetuate racial inequality. States and localities urgently need federal resources to address this crisis.

Evictions operate through the force of a legal system that severely disadvantages tenants. Because there is no constitutionally guaranteed right to representation in U.S. civil courts, roughly 90% of tenants facing eviction do not have lawyers, while up to 90% of landlords do. Unrepresented tenants are at a significant disadvantage as they navigate complex housing courts that are not user friendly.

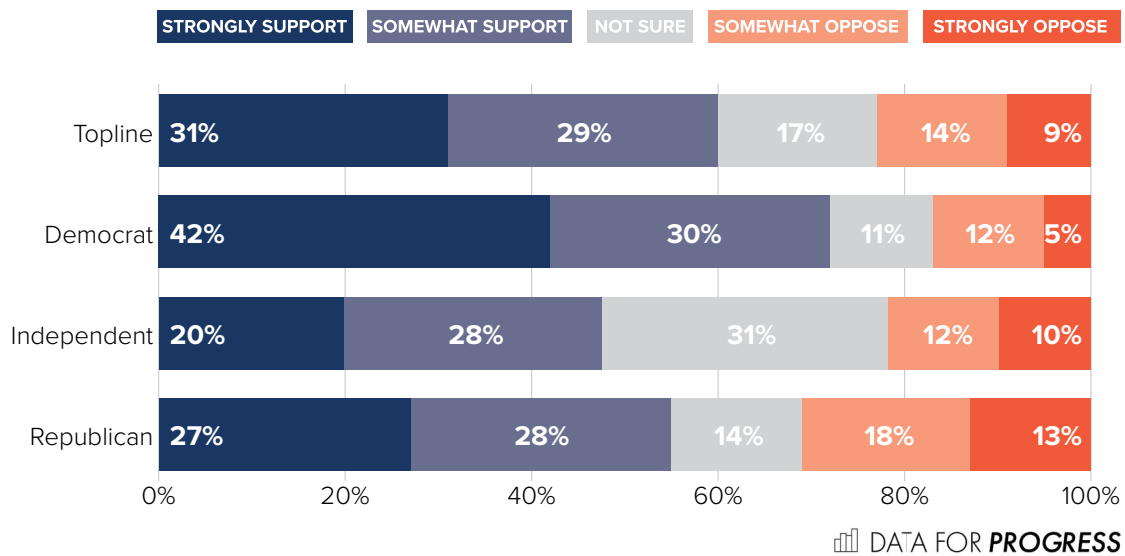
Ensuring legal representation in housing court is one way to prevent some of the destructive outcomes associated with being evicted. A growing “right to counsel” movement has brought together tenants, organizers, lawyers and legislators to advocate for this policy. Recent legislation passed in New York City, San Francisco, Newark, Philadelphia, and other cities provides significantly expanded access to legal counsel in housing court. Studies show that these policy changes have the potential to dramatically change outcomes. In New York City, for instance, 84% of households who had legal counsel were able to stay in their homes. Though these cities are unique in their own ways, most Americans support legislative action to provide individuals facing eviction with greater access to legal representation.

Polling by Data for Progress shows strong bipartisan support for increasing legal protections to prevent evictions:

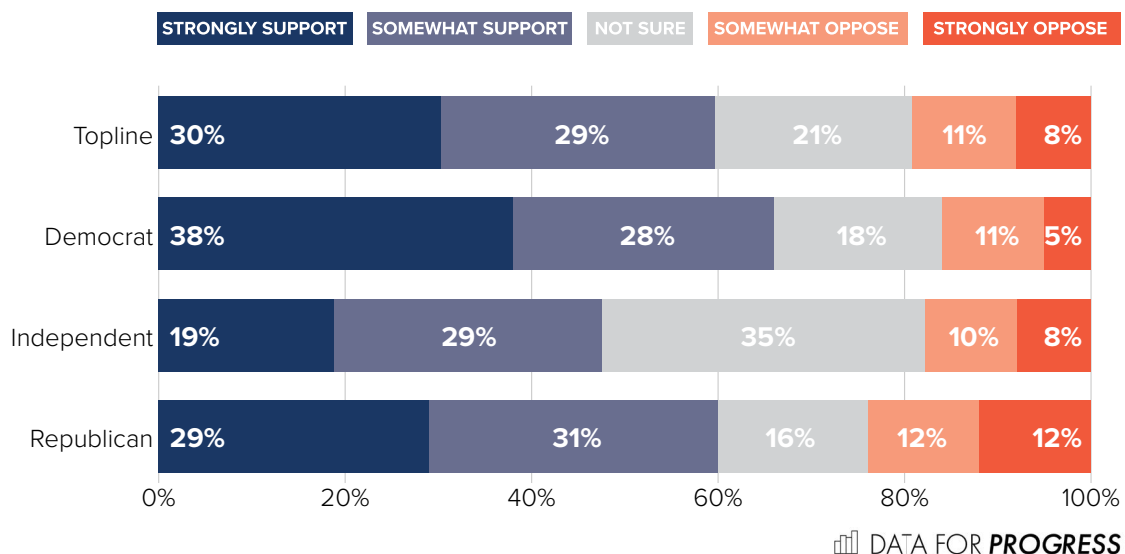
- ▶ Sixty percent of likely voters support increased funding for legal services to prevent evictions.

- ▶ Fifty-nine percent of likely voters support a right to counsel in eviction proceedings that is similar to the right that already exists in criminal cases. Only 19 percent of likely voters oppose this idea.

### Would you support or oppose increased funding for legal services to prevent evictions?



### Would you support or oppose a right to counsel in eviction proceedings, similar to the right to counsel that already exists in criminal cases?



## A WORSENING EVICTION CRISIS

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Between 2000 and 2016, an average of 3.6 million eviction cases were filed in the United States each year. As a result, 1.5 million renter households experienced eviction each year—more than the number of owner households that confronted foreclosure at the height of the great recession. Though troublingly high, these numbers actually *underestimated* the severity of the eviction problem in the United States, given known undercounts in places like California and New York and the difficulty of tracking illegal evictions that were not mediated via the courts.

In the wake of a global pandemic, the scale of the eviction crisis in the United States has been dramatically altered. With over 30 million American workers collecting unemployment benefits, many people are struggling to pay for rent and other basic needs. Short of extensive, multipronged legislative action, estimates suggest that anywhere from 19 to 23 million renters (or 11 million renter households) are at risk of eviction between summer and fall 2020.

## SWELLING HOUSING COURTS

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Because formal evictions must be handled through civil legal proceedings, more renters facing eviction translates into increased demands on courts. Housing courts were already overcrowded and underfunded before the pandemic. Now, operating under the specter of a public health threat, they are slowly reopening, sometimes in the face of substantial public pushback. A National Housing Law Project (NHLP) survey of legal aid attorneys indicates that 85%

of attorneys expect a dramatic surge in eviction cases as moratoria expire in the coming weeks and months. Given this context, civil lawyers express serious concerns about capacity, due process, and equity for racially and economically marginalized populations.

## THE PROMISE OF LEGAL COUNSEL

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Advancing a right to counsel is not unprecedented. New York City provides the best evidence in support of doing so. NYC passed “right to counsel” legislation (Intro 214-b) in 2017 that guaranteed representation in housing court to all New Yorkers living at or below 200 percent of the federal poverty line. Examining the effects of this effort demonstrates the remarkable promise of legal services in preventing evictions and protecting tenants from predatory landlords. Since the enactment of Intro 214-b (which has been only partially implemented and will not be fully rolled out until 2022), rates of legal representation for tenants in NYC housing courts have risen from 1% (in 2013) to 38% (in 2019). In this time period, evictions have dropped by 41% overall, including a 15% drop in 2019 alone. Eviction filings have dropped by 30% and default judgements by 34%. Perhaps most crucially, 84% of households who were represented by counsel remained in their homes and preserved their tenancies.

Other studies have demonstrated how powerful legal representation can be for people experiencing a housing crisis. For example, a study of California pilot programs providing a number of housing related services to low-income individuals, including full legal representation, found that tenants were more likely to retain possession of their homes, have

more days to move, and receive better financial and credit-related outcomes. Access to full legal representation also significantly increased the likelihood of settlement, with 70% of individuals in the program resolving their cases by settlement and only 5% by trial. Another study in Minnesota found that fully represented tenants won or settled 96% of cases, as compared to 62% of

unrepresented individuals. Additionally, the settlements reached by fully-represented tenants were much better, with nearly twice as many tenants allowed to stay in their homes or receive twice as much time to move. Tenants with full representation were also four times less likely to use homeless shelters.

## CONCLUSION

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Guaranteeing legal representation to people facing eviction does not solve everything. Housing instability stems from profound racial and class inequities embedded in our social, economic, and political systems. Moreover, the actual laws that tenants face once they are in court dictate and constrain what even a lawyer can do for them. All of this means that policies bolstering resources for civil legal assistance should go hand-in-hand with more transformative proposals that alter the larger political economy, changing the rules of the game that have been failing so many people for so long. Even with this bigger picture in sight, the imperative of providing resources for legal counsel is urgent. Civil legal attorneys can help to meet the most immediate and pressing need: keeping people in their homes now. More affirmatively, experiences with civil legal organizations can stabilize and support communities in ways that build power within them and plant seeds to strengthen future efforts in support of housing justice for all.

## METHODOLOGY

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From 7/17/2020 to 7/17/2020 Data for Progress conducted a survey of 1,225 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is +/- 2.8 percent