



PROTECT TENANTS, PREVENT HOMELESSNESS

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

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The National Law Center on Homelessness & Poverty is the only national organization dedicated to using the power of the law end and prevent homelessness. It works to expand access to affordable housing, meet the immediate and long-term needs of those who are homeless or at risk, and strengthen the social safety-net through policy advocacy, public education, impact litigation, and advocacy training and support.

Our vision is for an end to homelessness in America. A home for every family and individual will be the norm and not the exception; a right and not a privilege.

For more information about the Law Center and to access publications such as this report, please visit its website at nlchp.org.

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EXECUTIVE SUMMARY

While many communities across the country are working to end homelessness, too few have adopted legal protections to help renters find, and stay in, housing. This report explores the links between housing instability and homelessness as well as the laws that can reduce housing instability. While increasing the availability of affordable housing is a necessary component of ending homelessness, it may not be sufficient if low-income families and individuals are not able to access and keep stable housing. Legal protections can help increase housing stability and reduce homelessness.

The United States faces a crisis of homelessness in urban, suburban, and rural areas across the country. The leading cause is the unavailability of housing, particularly rental housing, that is affordable to low-income families and individuals. Federal funding to support affordable housing was sharply decreased in the early 1980s and has not recovered—helping to create the modern phenomenon of homelessness, with high numbers of people experiencing chronic or sporadic homelessness each year.

Currently, only 25 percent of those poor enough to be eligible for housing assistance receive it. Meanwhile, wages have stagnated or fallen, and other social safety nets have shrunk. As the overall number of low-income renters has increased over the years, the availability of affordable housing in the private market has also decreased. As recently documented in Princeton sociologist Matthew Desmond's best-selling book *Evicted: Poverty and Profit in the American City*, this has led to high rates of housing instability, evictions, and difficulty finding housing—any of which can be a proximate cause of homelessness.

Can stronger legal protections for renters help address the crisis of homelessness? While more data and research are needed, existing studies indicate that stronger renters' rights help prevent and end homelessness, and that such protections also can save money. This report recommends that local, state, and the federal government stabilize rental housing for low-income persons by strengthening renters' rights laws.

In particular, this report looks at renters' right protections that limit unnecessary evictions or rent increases, such as just-cause eviction laws, rent control laws, protections for tenants in foreclosed property, protections for tenants against nuisance ordinances, and access to counsel in eviction court. The report also examines laws that lower renters' barriers to accessing housing, such as limiting the use of eviction history or criminal history, prohibiting discrimination on the basis of housing

status, and prohibiting discrimination based on source of income.

International human rights law recognizes a fundamental human right to adequate housing, with adequacy defined by seven elements, including affordability and the legal security of tenure. The United States has signed or ratified several human rights instruments that recognize or reinforce the human right to housing. Adopting laws and policies that better protect renters can help reduce homelessness and also help our country meet international human rights standards.

Key Findings

There is not enough affordable and available housing for America's millions of low-income renters. Affordable housing is rapidly decreasing nationwide, and today there are only 35 units that are affordable and available for every 100 extremely poor renter households. This housing gap is even more severe in many of the nation's large and growing metropolitan areas.

Multiple factors contribute to the affordable housing gap, but perhaps none more so than the rapidly rising costs of rents as compared with household wages. Some of the rise in rents is attributable to increased demand in the wake of the foreclosure crisis, as millions of former homeowners moved toward the rental housing market. Indeed, rental vacancies are at historic lows across the country, and competition for vacant units is fierce. Increased gentrification in urban areas has also increased rental costs and decreased the quantity of market-rate, affordable housing.

The lack of affordable housing causes housing instability for low-income renters and leads to increased risk of eviction. Because there are too few affordable units for the people who need them, too many low-income renters are forced to spend far more than they can afford to keep roofs over their heads. Renter households that pay more than half of their total household income on housing are at a record high of over 21 million. While housing cost burdens affect renters of multiple income levels, our nation's poorest renters—which comprise 26 percent of all U.S. renter households—feel the housing burdens most acutely. Indeed, approximately 1 in 4 of these renters pays nearly 70 percent of household income toward rent and basic utilities.

Low-income renters are not always able to pay rent. Housing cost burdens leave little income for other necessities like food, medicine, child care, and transportation. Moreover, they leave cost-burdened renters with no financial cushion against emergencies or sudden interruptions in income from job loss, divorce, or other destabilizing life events. In this environment, low-income renters with high cost-burdens are at serious risk of eviction for failure to pay timely rent—sometimes with only a few days’ notice.

Even when they are able to pay rent, low-income renters risk eviction. When competition for rental housing is high and supply is limited, landlords hold the balance of power in the landlord and tenant relationship. This imbalance lowers tenants’ ability to demand decent affordable housing. It may be cheaper to simply evict a tenant complaining of faulty plumbing, for example, than to remedy the problem, and landlords may be willing to do so when there is a line of prospective tenants willing to take the complaining renter’s place. In such an imbalanced environment, renters are also vulnerable to housing displacement for unfair reasons, such as when victims of domestic violence are evicted for “too many” 911 calls, the property is foreclosed upon, the neighborhood is gentrifying, or for no reason at all.

Evictions can cause homelessness. Evictions, whether through formal court proceedings or other methods of involuntary displacement from housing, are a direct cause of homelessness—either immediately or after social safety networks are exhausted. The causal relationship between evictions and homelessness is demonstrated in a number of regional reports and at least one national study, including:

- A 2017 survey by Applied Survey Research in Santa Cruz County, California, found that 14 percent of its homeless population cited eviction as a primary cause of their homelessness.
- A 2017 report by the Institute for Children, Poverty, and Homelessness found that eviction is the second leading cause of homelessness in New York City among families with children, with as many as 33 percent of families citing eviction as the reason for their homelessness in parts of the city.
- A 2016 report by Stout Risius Ross, LLC, showed that New York City would realize a benefit of \$320 million annually from establishing a right to counsel in eviction proceedings, with a \$251 million savings from homeless shelter costs.

- In 2012, the Boston Bar Association Task Force on the Civil Right to Counsel cited a 2011 report that 45 percent of households that enter the Massachusetts shelters gave eviction as the reason they were homeless or at risk of homelessness.
- A 2010 report by Seedco found that 47 percent of families in New York City’s homeless shelters experienced eviction five years before shelter entry.
- A 2001 national study found that nearly two out of five homeless people who use homeless assistance programs came to be homeless through involuntary displacement from their housing.

Once housing is lost, low-income renters face significant barriers to accessing replacement housing. In addition to a competitive rental market where affordable units are few and far between, low-income renters must also contend with multiple housing policies that discriminate against them. Landlords may have policies that automatically exclude prospective renters with eviction records, criminal records, or a lack of recent rental history due to homelessness. These policies may apply even when the underlying events are old, wholly unrelated to the prospective renter’s ability to pay rent or abide by reasonable lease terms, or even when the record at issue is inaccurate. In addition, landlords may refuse to rent to tenants based on their source of income, such as a Section 8 voucher, or based on other prejudices. These barriers all diminish the choices of low-income renters—forcing them into worse housing at higher costs. Once a renter is trapped in this cycle, homelessness becomes more and more likely.

People of color have been particularly harmed by housing instability, discriminatory rental policies, and homelessness. Today, approximately half of all renters in this country are people of color, and these renters are disproportionately affected by housing cost burdens. Around a quarter of Black and Hispanic households spend at least half of their income on housing costs, as compared with less than 20 percent of white households. People of color also face disproportionate rates of eviction.

These factors contribute to a heavy overrepresentation of people of color in the homeless population. Even controlling for poverty, Blacks are significantly more likely to experience homelessness than white people. Indeed, Black people represent a full 39 percent of all homeless people, despite

making up only 13 percent of the general population. Hispanic people comprise 22 percent of the homeless population, but less than 18 percent of the general population. Native American people make up nearly 3 percent of the homeless population but are only 1.5 percent of the general population.

Strong renters' rights can reduce housing instability, remove barriers to housing access, and prevent homelessness.

Laws that stabilize rents, prevent unjust evictions, and prohibit discriminatory rental admission policies directly address the underlying causes of housing instability and homelessness. While more research must be done to demonstrate the full impact of these laws, some evidence of the effectiveness of renters' rights laws include:

- In 2016, a cost/benefit analysis of providing a right to counsel in eviction proceedings in New York City concluded that implementation of a right to counsel would not only reduce evictions by an estimated 77 percent when legal counsel is provided, but it would also produce a net cost savings to the city of \$320 million. The majority of the savings would come from a reduction in the need for homeless services.
- A 2010 evaluation of the Housing Help Program, a joint effort by the United Way and New York City to provide services, including legal services, to housing litigants at risk of homelessness found that providing counsel in housing cases prevented loss of housing for 91 percent of clients and also reduced homelessness
- A 2017 article in the *Journal of Planning Literature* found that source of income discrimination laws, which prohibit landlords from refusing to rent to people with housing subsidies, increased renters' likelihood of locating housing by 12 percent.
- A 2012 report by the National Low Income Housing Coalition found that the now-expired federal Protecting Tenants at Foreclosure Act, which provided protection to renters subject to eviction due to foreclosure, was successfully used by 90 percent of surveyed legal services attorneys to halt or avoid eviction of their clients.

Key Recommendations

Governments must implement policies that directly address the underlying causes of housing instability and homelessness. Indeed, preventing and ending homelessness should be major factors in governments' decision-making processes, laws, policies, and practices related to housing.

The following recommended policies represent some renters' rights laws that can help keep rental housing affordable, reduce housing instability and eviction, and prohibit discriminatory rental admission policies:

- Laws that **limit evictions without just cause** can help prevent unfair evictions.
- **Rent stabilization laws** can help to address the affordability crisis by reasonably limiting increases in rents.
- Laws that **guarantee a right to counsel** in housing cases translate directly into lower homelessness.
- Laws **preventing eviction based on foreclosure** can help to prevent unjust evictions and keep people stably housed.
- Laws **prohibiting discrimination based on a prospective renter's source of income**, such as a federal housing subsidy, can help renters gain access to and more readily afford the cost of private market rental housing.
- Laws **prohibiting housing displacement due to nuisance ordinances** can help keep tenants and their children housed.
- Laws **prohibiting discrimination against renters with eviction histories and criminal records**, or that limit dissemination of such information to prospective landlords, can help to remove barriers to housing access.
- Laws **prohibiting discrimination against homeless people** in rental housing.
- Laws **preserving existing affordable housing**, such as laws that provide renters' rights of first refusal to purchase to their homes when an owner seeks to convert property to market-rate use.

Advocates working on rental housing and those fighting homelessness should work collaboratively, along with civil rights advocates and anti-poverty advocates, to broaden and strengthen support for strong renters' rights. Coordinated or joint organizing and communication efforts that center on the needs of people who are directly affected are key. The national Housing Not Handcuffs Campaign has model policies, talking points, and other materials, and provides a hub for networking that can help in this coordinated effort. See more at housingnothandcuffs.org.

Renters' rights protections/laws appear to be critical to preventing and ending homelessness, and they can often be implemented quickly and cost-effectively. However, it is important to recognize that ending homelessness will also require a significant investment in affordable housing development from the federal, state, and local level, and an expanded social safety net.

INTRODUCTION

Homelessness is a national crisis. It is difficult to accurately measure the size of the homeless population, but the magnitude of the crisis is indicated by various data sources, including two national data sets collected by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Education (ED). HUD measures homelessness using a Point-in-Time count (PIT), which is an annual nationwide effort to count homeless people in some sheltered and unsheltered locations on a single night in January. In 2017, HUD reported that 553,742 people were counted as experiencing homelessness in the United States.¹ These numbers are considered a significant undercount of the homeless population, even for a single night.²

Data from ED uses a broader definition of homelessness to find that there were over 1.37 million homeless children in our public schools in the 2015–2016 school year—a 70 percent increase since the inception of the housing foreclosure crisis in 2007. Some of these children live among the estimated 7 million U.S. households living doubled up with friends and family. The ED numbers are also likely a significant undercount, as accurate identification of homeless students remains a challenge. While both data sets from ED and HUD vary, they only provide a subset of an even higher number of individuals and families experiencing homelessness across the country.

While homelessness affects people of all ages, races, and backgrounds, people of color are heavily overrepresented. Black people represent a full 40 percent of all homeless people despite making up only 13 percent of the general population.³ Hispanic people, who comprise 18 percent of the general population, are similarly overrepresented at 22 percent of those experiencing homelessness.⁴ Native American people make up nearly 3 percent of the homeless population but are only 1.5 percent of the general population.⁵ This may not reflect the true disparity because Black Americans and other people of color are also over-represented in the criminal justice system, and HUD's count excludes people who are in jail (but would otherwise be homeless).⁶ Data on disproportionality is incomplete because

even jurisdictions that include incarcerated persons may not disaggregate data based on race and/or ethnicity. Houston, for example, reported to HUD that it had 3,605 homeless people in a single night in 2017.⁷ The number grew by 57 percent, to 5,651, when Houston added incarcerated homeless people for its own “expanded” count.⁸

A long, inglorious history of housing and zoning policies creating racial and socioeconomic segregation has helped to lay the groundwork for the disproportionate representation of people of color among the nation's homeless population. Laws that are discriminatory or have discriminatory impact, as well as discrimination in real estate and lending—from denials of loans and exclusion from federal loan insurance programs to predatory lending practices—have resulted in neighborhood segregation along racial lines and concentrated poverty.⁹ Today, 25 percent of poor Blacks and 18 percent of poor Hispanics live in high-poverty communities as compared with only 6 percent of poor whites.¹⁰

While an accurate assessment of the complexity of the crisis of homelessness may not be available, there is proof that homelessness is worsened by a lack of protection afforded to low-income renters, many of whom are at near constant risk of housing displacement due to rapidly rising rents, declining incomes, increased competition for ever fewer affordable rental units, and a dwindling social safety net. Adding to this risk is a lack of legal protections from myriad barriers to securing new housing in the private market. This has left millions of low-income people—people of color in particular—unstably housed across the country.

This report describes how a lack of affordable rental housing and discriminatory rental admission policies create housing instability and risk of homelessness for low-income renters. The report concludes that strong renters' rights can help address housing instability and serve a critical role in the preventing and ending homelessness in America, and makes several recommendations of laws that can be passed at the federal, state, and local levels.

1 U.S. Dep't of Hous. & Urban Dev., *The 2017 Annual Homeless Assessment Report (AHAR) to Congress* (Dec. 2017), available at <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

2 Nat'l Law Ctr. on Homelessness & Poverty, *Don't Count On It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America* (2017), available at <https://www.nlchp.org/documents/HUD-PIT-report2017>.

3 U.S. Dep't of Hous. & Urban Dev., *The 2017 Annual Homeless Assessment Report (AHAR) to Congress* (Dec. 2017), available at <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>.

4 *Id.*

5 *Id.*

6 *Don't Count On It*, *supra* note 2, at 13.

7 Catherine Troisi et al., *Houston/Harris County/Fort Bend County/Montgomery County 2017 Point-in-Time Count Report*, *The Way Home and Coalition for the Homeless* (2017)

8 *Id.* at 10.

9 Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, *Am. Soc. Rev.* (2010), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4193596/>.

10 Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing at 6* (2016) [hereinafter *State of the Nation 2016*], available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_2016_state_of_the_nations_housing_lowres.pdf.

THE LINK BETWEEN RENTERS RIGHTS AND HOMELESSNESS

This report surveys current studies and research that examine the connection between legal protections for renters and homelessness. Some of the strongest evidence is from pilot studies that show a direct link between access to counsel in eviction court and reductions in homelessness, demonstrating that when renters have rights and are able to claim them through access to counsel, homelessness decreases. There is also evidence that links eviction rates to homelessness as well as evidence that discriminatory barriers to housing can make it difficult to exit homelessness. While more research is needed, this evidence, combined with research showing that eviction rates and discriminatory barriers can be reduced through legal protections, suggests that strengthening renters' rights can help reduce homelessness.

In this section, we first review the current state of housing affordability, housing instability, and evictions. Second, we review evidence that links evictions and homelessness. Third, we review discriminatory barriers to housing faced by low-income renters and how those link to homelessness. In a later section, we discuss possible policy solutions that can work to prevent homelessness through renters' rights.

The lack of affordable housing has led to increased housing instability and an eviction epidemic

A lack of adequate affordable rental housing is the primary cause of housing instability and homelessness. With fewer affordable housing units than people who need them, millions of individuals and families must pay far more than they can afford to keep roofs over their heads. This problem is particularly acute for our nation's poorest renters. There are only 35 affordable and available housing units for every 100 extremely low-income households (ELI) who need them.¹¹ This housing gap is even more severe in many of the nation's large and growing metropolitan areas.¹² In Los Angeles, California, for example, there are only 16 affordable and available units for every 100 ELI renter households.¹³ In Las Vegas, Nevada, that number drops to only 12 affordable and available homes.¹⁴ These numbers

only count households that are currently renting and therefore do not account for persons experiencing homelessness.

A recent report, *Dynamics of Homelessness in Urban America*, examined the relationship between housing costs and homelessness in the 25 largest U.S. metropolitan areas drawing on data from the U.S. Census Bureau, HUD, and the housing website Zillow.¹⁵ The study found that the relationship between homelessness and rental costs is particularly strong in New York, Los Angeles, Washington D.C., and Seattle.¹⁶ For example, the study predicted over 6,000 more people would experience homelessness in New York City if rents increased by ten percent; in Los Angeles, the increase would be over 4,000 more people.¹⁷

More low-income renters are competing for fewer market-rate affordable housing options.

The affordable housing gap worsened over the past decade. This can be attributed, in part, to a growing number of renter households following the housing market crash and foreclosure crisis that swept the nation beginning in 2007.¹⁸ Homeownership in the United States plummeted in the wake of the foreclosure crisis.¹⁹ Since 2007, over 9 million homes were lost to foreclosure, short sales, or deeds-in-lieu of foreclosure.²⁰ While foreclosures have slowed in recent years, they remain two times the national average since before the housing crash.²¹

This has led to a spike in renter households—up nearly a third since 2004.²² The growth is largely attributable to minority and foreign-born households.²³ Today, approximately half of all renters are people of color, as compared with just a quarter of our nation's homeowners.²⁴ This trend is projected to continue.²⁵

11 Nat'l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes* at 3 (Mar. 2017) [hereinafter *The Gap*], available at http://nlihc.org/sites/default/files/Gap-Report_2017_interactive.pdf. ("Extremely low-income families" are families whose incomes do not exceed the higher of the Federal poverty level or 30 percent of Area Median Income.)

12 Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing* [hereinafter *State of the Nation 2017*] (2017), available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.

13 *Id.* at 3.

14 *Id.* at 3.

15 Chris Glynn & Emily B. Fox, *Dynamics of homelessness in urban America* 1 (2017), available at <https://arxiv.org/pdf/1707.09380.pdf>.

16 *Id.* at 1.

17 *Id.* at 21.

18 *State of the Nation 2016*, *supra* note 10, at 3.

19 *Id.* at 2.

20 *Id.* at 2.

21 *Id.* at 2.

22 Joint Ctr. for Hous. Studies of Harvard Univ., *America's Rental Housing* (2017) [hereinafter *America's Rental Housing 2017*], available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_americas_rental_housing_2017.pdf.

23 *State of the Nation 2016*, *supra* note 10, at 25.

24 Zillow Group, *Finding Home as a Person of Color* (2017), <https://www.zillow.com/report/2017/highlights/finding-home-person-color/>.

25 Homes for All Campaign of Right to the City Alliance, *Rise of the Renter Nation: Solutions to the Housing Affordability Crisis* 7 (June 2014), available at http://homesforall.org/wp-content/uploads/2014/06/RISE-OF-THE-RENTER-NATION_PRINT.pdf.

Moreover, the majority of renter households are low-income, with 53 percent of all renter households earning less than \$35,000 annually, and 60 percent of those earning less than \$15,000 each year.²⁶

The rise of renter households has led to historically low rental vacancy rates. Nationally, the vacancy rate is around 7 percent—its lowest level in thirty years.²⁷ In many cities, the vacancy rates are even lower. In Minnesota’s Twin Cities, the vacancy rate has sunk to 2.3 percent.²⁸ In San Diego, California, the rate is similarly low at just 2 percent.²⁹ While new construction adds to the availability of rental housing, it often does little to produce new housing affordable to low-income renters, as most new units are intended for renters at the higher end of the rental market.³⁰

High demand for a limited supply of rental units has led to fierce competition in the rental market, and a consequent rise in the rents demanded by landlords. Nationally, median monthly rental costs have risen 15 percent since 2000, increasing to \$980.³¹

In some popular metro areas, the increase is considerably higher: “Median rents have risen at twice the national pace in markets with rapid population growth, such as Austin, Denver, and Seattle. And within these fast-growing metros, rents in previously low-cost neighborhoods rose nearly a percentage point faster each year than in high-cost neighborhoods.”³²

Indeed, a report by Freddie Mac documents a 60 percent drop in market-rate apartments affordable to very low-income families over just the past six years.³³

A new report by Freddie Mac documents a 60 percent drop in market-rate apartments affordable to very low-income families in just the past six years.

26 *America’s Rental Housing 2017*, *supra* note 22.

27 *State of the Nation 2017*, *supra* note 12, at 2.

28 Jim Buchta, *Apartment vacancy rates in the Twin Cities down slightly despite thousands of new units*, *Star Tribune*, Nov. 11, 2015, available at www.startribune.com/apartment-vacancy-rates-in-the-twin-cities-down-slightly-despite-thousands-of-new-units/345402542/.

29 Susan Murphy, *San Diego County Rents Rise as Vacancies Fall*, *KPBS*, Sep. 16, 2016, available at <http://www.kpbs.org/news/2016/sep/16/san-diego-county-rents-rise-vacancies-fall/>.

30 *State of the Nation 2017*, *supra* note 12, at 35.

31 *America’s Rental Housing 2017*, *supra* note 22.

32 *Id.*

33 FreddieMac Multifamily, *Rental Affordability Is Worsening*, http://www.freddie-mac.com/multifamily/pdf/rental_affordability_worsening.pdf; see also FreddieMac, *Is Renting Becoming More Affordable?* (Oct. 23, 2017), http://www.freddie-mac.com/blog/rental_housing/20171023_renting_becoming_more_affordable.html; FreddieMac, *Rental Affordability: A Gap Widening to a Chasm* (Nov. 3, 2017), http://www.freddie-mac.com/research/insight/20171103_rental_affordability.html.

As rents have risen, wages of low-income American workers have declined. From 1979 to 2013, while the hourly wages of high-wage workers rose 41 percent and those of middle-wage workers grew 6 percent, the wages of low-wage workers fell 5 percent, according to the Economic Policy Institute.³⁴ Today, over a third of renter households earn less than \$25,000 per year and household income for the nation’s poorest households is lower than what it was before the foreclosure crisis.³⁵ According to the National Low Income Housing Coalition, the hourly wage needed to afford a modest one-bedroom apartment in 2017 is \$17.14—2.4 times the federal minimum wage of \$7.25 per hour.³⁶ This means that someone earning the minimum wage would need to work 94.5 hours per week—the equivalent of over two full-time jobs—every single week of the year to afford even a one-bedroom rental home.³⁷ Indeed, there is not a single state where a full-time worker earning minimum wage can afford a one-bedroom apartment.³⁸ This problem is not likely to correct in the next decade as only one of seven occupations predicted to add the largest number of jobs by 2024 pays an adequate housing wage.³⁹

Federal housing assistance is severely underfunded.

Federal housing assistance is intended to assist renters who do not earn enough to pay for modest housing. But being income-eligible does not guarantee assistance. In fact, only 1 in 4 eligible renters receive rental assistance.⁴⁰

In the early 1980s, federal funds for housing decreased, and funding has never recovered.⁴¹ Indeed, federal housing assistance has continued to shrink even as the number of renters who qualify for assistance has risen. 159,000 fewer renters receive federal housing assistance now than received it prior to the inception of the foreclosure crisis in 2007.⁴² All of the nation’s public housing authorities that offer Housing Choice Vouchers—commonly referred to as Section 8—have years-long waiting lists, or are simply closed.⁴³ Nationally, around

34 Lawrence Mischel et al., *Wage Stagnation in Nine Charts* (Jan. 6, 2015), available at <http://www.epi.org/publication/charting-wage-stagnation/>.

35 *The Gap*, *supra* note 11, at 3.

36 Nat’l Low Income Hous. Coal., *Out of Reach 2017: The High Cost of Housing* at 1 http://nlihc.org/sites/default/files/oor/OOR_2017.pdf.

37 *Id.*

38 *Id.*

39 *Id.*

40 *State of the Nation 2016*, *supra* note 10, at 5.

41 White House, Table 5.3 - Percentage Distribution of Budget Authority by Agency: 1976-2022, <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/hist05z3.xls>.

42 *State of the Nation 2016*, *supra* note 10, at 5.

43 J. Rosie Tighe, et al., *Source of Income Discrimination and Fair Housing Policy*, 32 *J. Plan. Literature* 3-15(2017), available at <http://journals.sagepub.com/doi/pdf/10.1177/0885412216670603>.

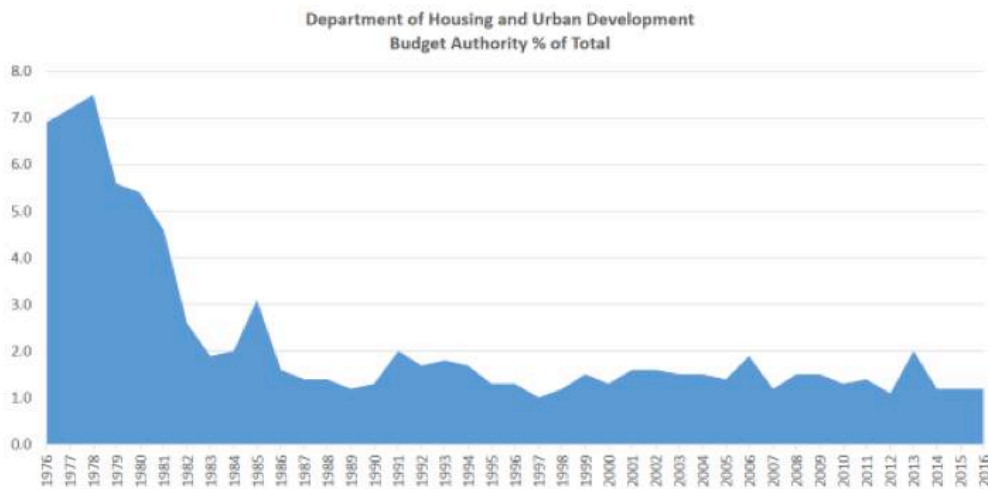


Table 5.3—Percentage Distribution of Budget Authority by Agency: 1976–2022 :<https://www.whitehouse.gov/omb/budget/Historicals>
CPI data: <http://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>

10,000 units of public housing are lost each year as a result of chronic underfunding.⁴⁴ This underfunding also threatens the housing stability of over one million US renter households residing in dilapidated public housing units.⁴⁵

Other funding streams are also lacking. Persons with disabilities, who are unable to work and are reliant on Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits, receive less than what is needed to live on—too often receiving less than it costs to rent an apartment. Indeed, in housing markets across 33 states, rents for modest one-bedroom rental units cost more than the entire monthly SSI payment.⁴⁶ In this environment, it may be impossible for a person reliant on SSDI or SSI income to afford housing.

Most low-income renters pay more for housing than they can afford.

Low-income renters who are not lucky enough to secure an affordable rental unit or obtain a rental subsidy are forced to pay more than they can afford for housing. Renters are considered housing cost-burdened when they spend more than 30 percent of their income on housing, and severely cost-burdened if housing costs exceed 50 percent of household income.

The number of renters experiencing cost-burdens is at a record

high.⁴⁷ According to the Joint Center for Housing Studies at Harvard University, the total number of cost-burdened U.S. households was 20.8 million in 2016. The number with severe burdens now stands at 11 million.⁴⁸

Our nation’s poorest renters, unsurprisingly, have felt the cost burdens most acutely. Extremely low-income (ELI) households, defined as those earning 30 percent or less of area median income, which account for 26 percent of all U.S. renter households, have the most severe housing cost burdens of any group. In 2016, a whopping 83 percent of renter households with incomes below \$15,000 had cost burdens.⁴⁹ 72 percent of these household had severe burdens,⁵⁰ and almost a quarter dedicate over 70 percent of their income to pay rent and keep the lights on.⁵¹

“It’s the worst time in 36 years to be a renter in America.”

-Alan Pyke, economic editor at ThinkProgress⁵²

44 Ctr. On Budget & Pol’y Priorities, *Chart Book: Cuts in Federal Assistance Have Exacerbated Families’ Struggles to Afford Housing* Section 2 (2016) available at <https://www.cbpp.org/research/housing/chart-book-cuts-in-federal-assistance-have-exacerbated-families-struggles-to-afford>.
45 See generally, Ctr. On Budget & Pol’y Priorities, *Policy Basics: Public Housing* (Nov. 15, 2017), <https://www.cbpp.org/research/policy-basics-public-housing>
46 Technical Assistance Collaborative, *Priced Out in 2014 2* (Jun. 2015) available at <http://www.tacinc.org/media/52012/Priced%20Out%20in%202014.pdf>.

47 *State of the Nation 2016*, supra note 10, at 31.
48 *America’s Rental Housing 2017*, supra note 22.
49 *Id.*
50 *Id.*
51 Matthew Desmond, *Unaffordable America: Poverty, housing, and eviction* 22 Institute for Research on Poverty (Mar. 2015), available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.
52 Alan Pyke, *Americans Already Spent A Shocking Amount On Rent, But It Just Got Worse*, Think Progress, Aug. 13, 2015, <https://thinkprogress.org/americans-already-spent-a-shocking-amount-on-rent-but-it-just-got-worse-df2ba23a0a6d/>.

People of color have been particularly harmed by cost burdens.

Today, approximately half of all renters in this country are people of color. In 2013, 23 percent of Black-renting families and 25 percent of Hispanic-renting families spent at least half of their income on housing.⁵³ This compares with less than 20 percent of white households.⁵⁴

People of color pay too much for housing, in part because of housing discrimination. National studies reveal that people of color are told about fewer rental units and shown fewer rental units.⁵⁵ In addition, Black and Hispanic renters are quoted higher rental prices than white renters and told less frequently that the negotiable nature of deposits and other move-in costs.⁵⁶ “Taking into account fees, deposits, and rents, apartments were more likely to cost whites slightly less in the first year of rental than Blacks might pay.”⁵⁷

With fewer options, they also are more likely to have to pay more for worse housing.⁵⁸ Data from the National Housing Survey revealed that Black people are 24 percent less likely to live in safe, adequate housing than white people.⁵⁹ Hispanic people are 12 percent less likely.⁶⁰

America is experiencing an eviction epidemic

Given the housing instability caused by housing cost burdens, it is perhaps not surprising that the United States is facing an epidemic of evictions. The two primary causes are unaffordable rents and the lack of legal protections for tenants.

“Every year in this country, people are evicted from their homes not by the tens of thousands or even the hundreds of thousands but by the millions.”

-Matthew Desmond, *Evicted: Poverty and Profit in the American City*⁶¹

Unaffordable rents lead to eviction and displacement

Cost-burdened renters have little income left for other necessities like food, medicine, child care, and transportation. Studies have shown that severely cost-burdened renters may spend as much as 41 percent less on food and healthcare than similar households without housing cost-burdens.⁶² Indeed, housing instability has been linked to increased preventable hospitalizations.⁶³ Housing cost burdens leave people at risk of homelessness if they experience an interruption in income from job loss, illness, injury, divorce, or any other destabilizing life event. Having no financial cushion against emergencies such as car repairs or a health crisis, leaves low-income, cost-burdened renters vulnerable to eviction for inability to pay their unaffordable rent.⁶⁴

53 *Id.* at 1.

54 Allison Charette et al., *Projecting Trends in Severely Cost-Burdened Renters: 2015–2025* (2015), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf

55 U.S. Dep’t of Hous. & Urban Dev., *Housing Discrimination Against Racial and Ethnic Minorities 2012 - Executive Summary* (June 2013), available at https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf.

56 U.S. Dep’t of Hous. & Urban Dev., *Housing Discrimination Against Racial And Ethnic Minorities 2012* (June 2013), available at https://www.huduser.gov/portal/publications/fairhsg/hsg_discrimination_2012.html.

57 Shaila Dewan, *Discrimination in Housing Against Nonwhites Persists Quietly, U.S. Study Finds*, N.Y. Times, June 11, 2013, <http://www.nytimes.com/2013/06/12/business/economy/discrimination-in-housing-against-nonwhites-persists-quietly-us-study-finds.html>.

58 Kusum Mundra & Amarendra Sharma, *Housing Quality Gap for Minorities and Immigrants in the U.S.: Evidence from the 2009 American Housing Survey* (Apr. 17, 2013), <http://www.ncas.rutgers.edu/sites/fasn/files/Housing-Quality-Gap-for-Minorities-and-Immigrants-in-the-US.pdf>.

59 *Id.* at 13.

60 *Id.*

61 Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

62 *The Gap*, *supra* note 11.

63 Megan Sandel & Matthew Desmond, *Investing in Housing for Health Improves Both Mission and Margin* (Oct. 31, 2017), available at <https://jamanetwork.com/journals/jama/fullarticle/2661030>.

64 Desmond, *Unaffordable America: Poverty, housing, and eviction*, *supra* note 51; *Out of Reach 2017*, *supra* note 36, at 1.

Case In Point

"I worked day and night for a non-profit organization...I was the administrator's assistant. Did that through the day and then worked another job at night; some nights turned into mornings.

"I was a server at a hall helping with guests and serving food, trying to keep the bills paid. If it was not the electric/gas/water bill due, it was the rent, which I used to pay half of at the beginning of the month, the rest at the end. Always lock in half so you can make a payment plan. It's like payment plan after payment plan until one day the nonprofit can't pay me anymore. I tried working more hours on night job, but now bills are steady slipping, lights off, 12 days rent behind, water behind, now I'm evicted."⁶⁵

--Lashonda Smith (Milwaukee, WI)

In 2013, 11 percent of Very Low-Income Renters, which are those earning 50 percent or less of area median income, had missed at least one rental payment within the previous three months, and millions more reported anticipating eviction for late or missing payments in the following two months.⁶⁶ A 2017 report from Apartment List, based on data from its 8 million users and survey data from 41,000 respondents, showed similar results with one in five renters struggling to or unable to afford their rent in the past three months.⁶⁷ Among low-income renters, the number was even higher at 27 percent.⁶⁸ For single parents, the risk of missing rent rose to 30 percent.⁶⁹

When renters cannot pay timely rent, they may be subject to eviction—sometimes with only a few days' notice.

Lack of legal protections for tenants leads to evictions and displacement

With few legal protections for renters in many jurisdictions, landlords hold most of the power in the tenant-landlord relationship, and they have little incentive to lease rental units to individuals at affordable rates when those with higher incomes are willing to pay more. Landlords for lower-cost

apartments also may have no incentive to ensure that housing is maintained at an adequate standard. Indeed, a tenant who complains about legitimate habitability concerns, such as faulty plumbing, may be asked to leave simply because it is cheaper and more expedient to replace the tenant than to fix the underlying problem.

Gentrification may also result in eviction. As neighborhoods redevelop to include modern housing, trendy shopping areas, or tourist attractions, low-income renters in historically affordable housing may be displaced in favor of new, higher income renters.

Case In Point

After Luz helped her neighbor fight her eviction, the landlord evicted Luz and her family into homelessness. Her husband found an apartment, but because it was managed by the same owners, he had to sign a paper saying that he would be evicted if Luz and her son were seen on the property. Luz and her son had to sneak in very late at night to sleep in the apartment with him and her son couldn't play outside in the daytime, which distressed him.

"When I asked the manager why they were doing this, they just said it was because they didn't want me living there anymore. We tried to give them the money for rent for the upcoming month, and the manager wouldn't take it. I felt like an unwanted dog being kicked out of its home. My son had to move and change schools in the middle of the year. We had to live in our car with our son for some time and had to put a lot of our stuff in storage. We couldn't afford most of the other apartments."

--Luz Fabio (Seattle, Washington)⁷⁰

Evictions have reached crisis levels.

While there is no comprehensive national data on evictions, and local data is largely incomplete, there are multiple data sources indicating that we are in the midst of an eviction epidemic. According to an/the Apartment List report, 3.7 million renters nationwide have experienced eviction in their lifetimes. The same study found that, of those earning less than \$30,000 per year, over 3 percent were evicted from their previous residence and 11 percent faced an eviction threat in the past year.

65 Just Shelter, <https://justshelter.org/2016/08/24/lashonda-smith/#more-2390>.

66 *The State of the Nation 2016*, *supra* note 10

67 Chris Salviati, Rental Insecurity: The Threat of Evictions to America's Renters (Oct. 20, 2017), <https://www.apartmentlist.com/rentonomics/rental-insecurity-the-threat-of-evictions-to-americas-renters/>.

68 *Id.*

69 *Id.*

70 Just Shelter, <https://justshelter.org/2016/04/01/luz-fabio/#more-2058>.

Official data on evictions underreport the problem of housing instability and displacement because they do not include informal evictions outside of the court system. An informal eviction occurs, for example, when renters move out after being served with a notice to vacate. Even when people have meritorious defenses to eviction, the legal process may be intimidating, particularly for people who cannot afford an attorney or even take time off work to go to court. In addition, people may choose to move out before an eviction action is filed to prevent an eviction record.⁷¹ To understand the scope of the eviction problem, it is important to consider those situations where tenants are forced from their homes without the formal involvement of the courts, or before the court process is complete. In Matthew Desmond's study of housing displacement in Milwaukee, Wisconsin, he found that at least 48 percent of all forced moves were informal evictions.⁷²

Poor women of color, particularly Black women, have particularly suffered as they are overwhelmingly the subjects of eviction actions as compared with other renters.⁷³ Multiple studies from cities across the country reveal the disproportionate rates of eviction faced by women of color, and often by extension, poor children of color. In a study of those facing eviction in Chicago, 72 percent of those appearing in court were Black, and 62 percent were women.⁷⁴ A study of those facing eviction in Philadelphia found that 70 percent were nonwhite women.⁷⁵ In Milwaukee, a "deeply segregated city," Black female renters are evicted at three times the rate of white women.⁷⁶ In the words of Desmond, "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."⁷⁷

Households with children may also be at greater risk of eviction. Even when controlling for poverty rate and other factors, one study found that "[i]f a tenant in eviction court lives with children, her or his odds of receiving an eviction judgment

"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."

- Matthew Desmond

almost triple."⁷⁸

Evictions and housing instability lead to homelessness

Some of the strongest evidence linking renters' legal rights and homelessness look at the costs of evictions and the cost savings of preventing evictions. Evictions, and the homelessness and other harms it causes, carry significant costs to taxpayers. A growing number of studies, many conducted within the context of evaluating the cost-effectiveness of providing a right to legal counsel in housing cases, demonstrate that preventing evictions results in millions of dollars in tax dollar savings. The studies rely on data showing that spending on homelessness decreases significantly when renters' rights are protected by counsel in eviction court.

In 2016, Stout Risius Ross, LLC (SRR), a financial advisory firm, conducted a cost/benefit analysis of New York City Council Intro 214A, a proposal to provide a right to counsel in eviction proceedings.⁷⁹ In its independent analysis, SRR concluded that providing counsel would not only reduce evictions by an estimated 77 percent; it would also produce a net cost savings to the city of \$320 million—saving \$251 million each year in reduced homeless shelter use alone.⁸⁰

SRR also estimated that the city would realize around \$9 million in annual savings from reduced medical and law enforcement costs related to the city's unsheltered homeless population, 12 percent of whom are homeless due to eviction.⁸¹

It is important to note that, while this study looked specifically at access to counsel in eviction cases, lawyers that successfully prevented evictions did so on the basis of New York City's existing renters' rights laws, demonstrating their efficacy in protecting security of tenure in rental housing.

71 Troy McMullen, *Why More Americans are Facing Eviction* (Dec. 12, 2016), available at <https://www.forbes.com/sites/troymcmullen/2016/12/12/why-more-americans-are-facing-eviction/#2f06a4251617>.

72 Desmond, *Unaffordable America: Poverty, housing, and eviction*, *supra* note 51, at 3.

73 Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 Hous. Pol'y Debate 461 (2003), <https://www.innovations.harvard.edu/sites/default/files/10950.pdf>.

74 Lisa Parsons Chadha et al., *Time to Move: The Denial of Tenants' Rights in Chicago's Eviction Court* (1996).

75 David Latham Eldridge, *The Making of a Courtroom: Landlord-Tenant Trials in Philadelphia's Municipal Court* (2001), available at <http://repository.upenn.edu/edissertations/1001>.

76 Kate Abbey-Lambertz, *How The Eviction Epidemic Is Trapping Black Women In Poverty*, Huffington Post, March 17, 2016, https://www.huffingtonpost.com/entry/eviction-matthew-desmond-book_us_56e996e3e4b065e2e3d82403.

77 Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

78 Desmond, *Unaffordable America: Poverty, housing, and eviction*, *supra* note 51.

79 Stout Risius Ross, Inc., *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A* (Mar. 16, 2016), available at http://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf.

80 *Id.*

81 *Id.*

In 2014, the John and Terry Levin Center for Public Service and Public Interest at Stanford Law School published a report, *San Francisco Right to Counsel Pilot Program Documentation Report*, analyzing the impact of an ordinance declaring San Francisco to be a right to civil counsel city.⁸² The ordinance authorized a one-year pilot program operating from October 2012 to September 2013 to increase access to free legal services for poor people in cases involving basic human needs, including in cases of eviction from housing.

The study found that tenants who were assisted by counsel in their eviction cases were more likely to avoid homelessness. Projected cost savings to the city associated with this homelessness prevention were estimated at \$1,096,200 in emergency shelter savings alone.

In 2012, the Task Force on the Civil Right to Counsel convened by the Boston Bar Association issued a report on pilot programs providing counsel in cases involving, among other things, the risk of loss of housing. Preliminary research showed that implementing targeted, full legal representation to tenants faced with eviction will prevent homelessness and save the State of Massachusetts money.⁸³ In fact, people so represented were two times more likely to retain possession of their housing.⁸⁴ The study projected that cutting evictions by only 10 percent could save the state \$8 million, with \$3 million of the net savings in emergency assistance expenditures.⁸⁵

Evictions are a direct cause of homelessness.⁸⁶

Numerous studies establish evictions as a primary cause of homelessness. The causal relationship between evictions and homelessness is demonstrated by a number of regional studies and at least one national study, including:

- The Institute for Children, Poverty, and Homelessness, a New York-based policy research organization, issued an analysis of homelessness trends in its 2017 report, *On the*

*Map: The Dynamics of Family Homelessness in New York City.*⁸⁷ The report examined patterns related to shelter entry, including top reasons why families with children seek emergency shelter. Eviction was found to be a leading driver of homelessness with 25 percent of families eligible for shelter citing it as the reason for their homelessness. Indeed, across all communities in New York City, eviction was the second most common reason for family shelter entry behind domestic violence; in 18 communities, eviction was the leading cause. In Riverdale and Pelham Parkway in the Bronx, as examples, eviction was responsible for 33 percent or more of family shelter entry. It is also estimated that 12 percent of unsheltered homeless people in New York City are homeless due to eviction.⁸⁸

- A 2017 survey by Applied Survey Research in Santa Cruz County, California, found that 14 percent of its homeless population cited eviction as a primary cause of their homelessness.⁸⁹ The survey was conducted as part of the local Point-in-Time count of homeless people as required by HUD. The count, along with collecting data on the prevalence of homelessness, collects information on individuals and families living in emergency shelters, on the streets, and in some other locations. To collect this information, Santa Cruz County worked with Applied Survey Research, a social research firm, to conduct an in-depth survey administered to hundreds of homeless people in the area. The survey included questions designed to identify the primary event that led to the respondents' homelessness, and 14 percent reported eviction as the cause.⁹⁰ In addition, 25 percent reported job loss as the reason, which presumably led to the inability to afford housing.⁹¹
- A survey by Applied Survey Research for the 2017 San Francisco Point-in-Time Count produced similar results. The survey, administered to a randomized sample of 1,104 homeless individuals, found that eviction is a leading cause of homeless.⁹² 12 percent of survey respondents cited

82 John & Terry Levin Center for Public Service and Public Interest Stanford Law School, *San Francisco Right to Civil Counsel Pilot Program Documentation Report* (May 2014), <http://sfbos.org/sites/default/files/FileCenter/Documents/49157-San%20Francisco%20Right%20to%20Civil%20Counsel%20Pilot%20Program%20Documentation%20Report.pdf>.

83 Boston Bar Assoc. Task Force on the Civil Right to Counsel, *The Importance of Representation in Eviction Cases and Homelessness Prevention* (Mar. 2012), available at www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf.

84 *Id.*

85 *Id.*

86 *Evictions: The Hidden Housing Problem*, *supra* note 73, at 468 (stating that "forced displacement frequently results in outright homelessness" and discussing other grave consequences of forced displacement).

87 Inst. for Children, Poverty & Homelessness, *On the Map: The Dynamics of Family Homelessness in New York City 2017*, www.icphusa.org/new_york_city/map-dynamics-family-homelessness-new-york-city-2017/.

88 *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, *supra* note 79.

89 Applied Survey Research, *Santa Cruz County Homeless Census & Survey 2017 Comprehensive Report (2017)*, available at <http://www.appliedsurveyresearch.org/s/2017-SantaCruzCounty-Final.pdf>.

90 *Id.*

91 *Id.*

92 Applied Survey Research, *San Francisco Homeless Count & Survey Comprehensive Report (2017)*, available at <http://hsh.sfgov.org/wp-content/uploads/2017/06/2017-SF-Point-in-Time-Count-General->

eviction as the reason for their current homelessness—the third most common reason cited.⁹³

- A 2017 survey done in partnership by the National Law Center on Homelessness & Poverty and St. Martin's University of homeless individuals in Puyallup, Washington, also found eviction to be a leading cause of homelessness. In Puyallup, a small community with no year-round emergency shelter, 30 percent of surveyed homeless adults lost housing most recently due to a rent raise or eviction.⁹⁴
- A 2011 report from the Massachusetts Interagency Council on Housing and Homelessness found that 45 percent of homeless or at-risk households cited eviction as the cause.⁹⁵ Interviews of shelter residents in the North Shore of Massachusetts, an area north of Boston, found even higher percentages of homeless people rendered so by forcible displacement from their homes. The majority of residents interviewed—a full 66 percent—were either evicted or moved out when job loss or poor health rendered them unable to pay rent.⁹⁶
- A 2010 evaluation of the Housing Help Program (HHP), a three-year pilot program by the United Way of New York City, the Civil Court of the City of New York, and the New York City Department of Homeless Services to provide targeted legal, financial, and social service interventions to housing court litigants at risk of homelessness found that HHP prevented a loss of housing for 91 percent of its clients and also reduced entry into emergency shelters.⁹⁷
- In 2009, the Law Center joined with several other organizations to survey direct service providers around the country. The survey revealed a substantial number of clients who experienced homelessness as a direct result of eviction due to the foreclosure of their rental housing.⁹⁸
- A 2001 national study, drawing on a representative national sample of people using homeless assistance programs, found that nearly 2 out of 5 homeless people who use

homeless assistance programs came to be homeless through involuntary displacement from their housing.⁹⁹

- 2001 data from emergency shelter providers in Columbus, Ohio, showed that 35.4 percent of families and 11.4 percent of individuals reported eviction as the primary or secondary reason for their homelessness.¹⁰⁰

Foreclosures on rental units also contribute to eviction and can render renters' homeless. Data from 2012 showed that approximately 40 percent of families facing eviction due to foreclosure were renters.¹⁰¹ This included three million children.¹⁰² Indeed, foreclosure is cited as one of the most common reasons given for the increase in homeless children.¹⁰³ A 2012 report by the National Low Income Housing Coalition found that the currently expired federal Protecting Tenants at Foreclosure Act, which provided protection to renters subject to eviction due to foreclosure, was successfully used by 90 percent of surveyed legal services attorneys to halt or avoid eviction of their clients.¹⁰⁴

Evictions also lead to homelessness indirectly.

Eviction is not only a direct and immediate cause of homelessness but also triggers a flood of other obstacles that can increase the risk of homelessness in the future. The scramble to find replacement housing can force people to pay more than they can afford, for substandard housing in worse neighborhoods.¹⁰⁵ An eviction on someone's record may also serve to bar her from a number of housing options for extended periods. Even some public housing authorities deny admission and assistance to tenants with histories of eviction.¹⁰⁶

Evictions may also result in job loss. In North Dakota, evicted renters are 15 percent more likely to lose their employment.¹⁰⁷

FINAL-6.21.17.pdf.

93 *Id.* at 27.

94 Coyle, E.F. (2017). *Experiencing Homelessness in Puyallup*. Saint Martin's University, Lacey, WA.

95 *The Importance of Representation in Eviction Cases and Homelessness Prevention*, *supra* note 83.

96 *Id.*

97 NYC Housing Help Program, *Homelessness Prevention Pilot Final Report* (June 2010) (finding that 47% of the families in homeless shelter were there due to eviction).

98 Nat'l Coal. for the Homeless, *Foreclosure to Homelessness 2009*, at 5, available at <http://nationalhomeless.org/advocacy/ForeclosuretoHomelessness0609.pdf>.

99 Martha R. Burt, *Homeless Families, Singles, and Others: Findings from the 1996 National Survey of Homeless Assistance Providers and Clients*, 12 J. Hous. Pol'y Debate 737–80 (2001), available at <https://doi.org/10.1080/10511482.2001.9521428>.

100 *Evictions: The Hidden Housing Problem*, *supra* note 73.

101 Nat'l Law Ctr. on Homelessness & Poverty, *Eviction (Without) Notice: Renters and the Foreclosure Crisis* (Dec. 2012), available at https://www.nlchp.org/Eviction_Without_Notice.

102 *Id.* at 6.

103 *Id.* at 13.

104 Nat'l Low Income Hous. Coal., *Renters in Foreclosure: A Fresh Look at an Ongoing Problem* (Sept. 2012), available at http://nlihc.org/sites/default/files/Renters_in_Foreclosure_2012.pdf.

105 *Unaffordable America: Poverty, housing, and eviction*, *supra* note 53.

106 D. James Greine et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 Harv. L. Rev. 901 (2013).

107 Breezy Schmidt, *North Dakota Case Study: The Eviction Mill's Fast Track to Homelessness* [hereinafter *North Dakota Case Study*], 92 N.D. L. Rev. 595 (2017).

In Milwaukee, displaced renters were 20 percent more likely to lose their jobs.¹⁰⁸ This can result from a number of factors including forced relocation away from a renter's job site or absenteeism while protecting belongings or looking for storage or housing.¹⁰⁹

Forced evictions can have a devastating impact on the lives of children and families. Research from Matthew Desmond shows that mothers who experienced a recent eviction are over twice as likely to report poor health in their children, as well as higher rates of depression.¹¹⁰ Housing instability has even been shown to lead to preventable hospitalizations.¹¹¹ Moreover, eviction can affect children's ability to succeed in school. Not only is school attendance vulnerable to interruption, "[i]t is difficult for children to concentrate at school when they have lost their clothes and toys and do not know where they will sleep that night."¹¹²

Case In Point

All six families in Dora's apartment complex were given eviction notices and had 30 days to move out. When they fought back, the landlord let them stay but increased the rent from \$1,000 per month to \$2,500.

"All of us have lived in the building for five years or more. Many of us have kids. If we have to leave, I will be forced to move outside the city because we can't afford rent anywhere else. My daughter would have to leave Boston Latin School.

"She worked so hard to get a place there, and it would break my heart to take her out. Moving would also make it difficult for my husband and me to get to work, and the time spent commuting would take us away from our children."

-Dora Sandoval (Roxbury, MA)¹¹³

Homelessness can also be a matter of life and death. Exposure to outdoor elements can threaten human survival, as tragically evidenced in the recent story of an Oregon woman who froze to death after she was evicted from senior housing over \$338 in late rent.¹¹⁴

Discriminatory barriers to housing cause and prolong homelessness

Once a low-income renter has been displaced from her housing, finding replacement housing can be exceedingly difficult. She is back in the competitive rental market where total rental vacancies may be few, and affordable rentals even fewer. Moreover, a low-income renter seeking housing may face a number of unjustifiably discriminatory rental admission policies that can bar housing access even if she finds an appropriate vacant unit.

Tenant Screening for Eviction Records and Criminal Records

Before landlords rent out their properties, they often engage in a process known as "tenant screening." The cost of the screening process is normally charged to the prospective tenant, which can itself be a barrier to housing access for low-income renters. The screening report often includes credit information, criminal history, and any history of eviction. Landlords rely upon these reports to determine whether to rent to a prospective tenant. These sources, however, do not always produce accurate or complete information.¹¹⁵ For example, such a report may include an eviction case that the tenant won or that was dismissed by the court.

Housing court records are publicly accessible, and a prospective tenant's housing court history can create serious barriers to finding housing—especially in competitive rental markets.¹¹⁶ Companies that collect housing court information and sell them to landlords often recommend turning down a tenant-based only on their housing court history.¹¹⁷ Even tenants who were faultless in the underlying case may be passed over for rentals, and sometimes these records contain inaccurate information. This can function effectively as a "blacklist" against tenants with evictions on their record.¹¹⁸

108 Desmond, *Unaffordable America: Poverty, housing, and eviction*, *supra* note 53.

109 *Id.*

110 *Id.*

111 *Investing in Housing for Health Improves Both Mission and Margin*, *supra* note 63.

112 *North Dakota Case Study*, *supra* note 107.

113 Just Shelter, <https://justshelter.org/stories/#stories-image-4>.

114 bloomsomag.com/oregon-woman-evicted-from-senior-housing-for-328-in-late-rent-freezes-to-death-in-parking-garage/

115 Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches* (Sept. 2017), <http://povertylaw.org/clearinghouse/article/blacklisting>.

116 *Id.*

117 *Id.*

118 *Id.*

Indeed, it is common for landlords to have a blanket policy denying applications of anyone with a recent history of eviction. These policies deny prospective tenant applications even where the tenant was faultless in the underlying eviction case. For example, responsible renters evicted from housing when their rental units are foreclosed upon—even when they had been paying timely rent and abiding by the terms of their lease agreements—had no ability to prevent the foreclosure that led to their eviction, yet the blemish on their rental history may serve as a bar to any future housing in the rental market. This is particularly concerning given that, according to national data from Apartment List, evictions are most common in areas hardest hit by the foreclosure crisis.¹¹⁹

Policies that deny rental applications solely on the basis of prior eviction often have a disproportionate impact on poor women of color. Tenants in Washington State filed a Fair Housing Act challenge to a landlord's blanket policy of denying all tenants with any housing court history. The lawsuit alleged that Blacks were almost four times likelier than whites to have been sued in eviction cases, with Black women being over five times more likely than white men to have been sued.

Similarly, renters with criminal records often face discrimination in access to rental units. While there may be some crimes that create a legitimate risk for landlords, blanket policies that exclude people with any criminal conviction are unjustifiably overbroad. Particularly in the current era of mass criminalization and incarceration, millions of people are excluded from housing based on convictions that are wholly unrelated to their ability to be responsible renters. Convictions for misdemeanor traffic offenses, for example, may bar a renter's access to housing despite a lack of connection between ability to drive a car and to responsibly rent a home.

Policies that discriminate against people with criminal convictions disproportionately affects poor men of color. Black and Hispanic men are incarcerated at much higher rates than their share of the general population, and are thus likelier to experience criminal records-based barriers to housing.¹²⁰ Because of this disparate impact, blanket policies that bar renters with criminal histories likely violate the Fair Housing Act.¹²¹

119 Salviati, *Rental Insecurity: The Threat of Evictions to America's Renters*, *supra* note 67.

120 U.S. Dep't of Hous. & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

121 *Id.*

Discrimination Based on Housing Status or Source of Income

A rental applicant who is currently experiencing homelessness or has done so in the past has a number of challenges in trying to find housing. According to a 2014 survey of 142 homeless individuals in the Washington, D.C., metropolitan area, over 90 percent of respondents reported that they had been discriminated against due to their housing status.¹²² It can be difficult to find decent housing without a current address or rental history, without landlord references, or credit history. People with experience of homelessness also face discrimination rooted in myths about their personal characteristics.

"If we want to put people on the path to stable housing, we must end discrimination that creates another barrier in the way of people seeking to improve their situation."

—David Grosso, District of Columbia At-Large Councilmember¹²³

For a number of people, the receipt of a Housing Choice Voucher (HCV) or Social Security Disability Insurance (SSDI) can signal a long-awaited escape from homelessness. But they can face additional discrimination when attempting to rent with these legal, and guaranteed, sources of income.

*A 2017 article in the *Journal of Planning Literature* reported that source of income discrimination laws, which prohibit landlords from refusing to rent to people with housing subsidies, increased renters' likelihood of locating housing by 12 percent.¹²⁴*

The federal Housing Choice Voucher program, commonly referred to as "Section 8" grants recipients a voucher that allows them to rent where they wish in the private market. With a housing voucher, renters are typically required to pay only 30 percent of their income toward rent, with most or all of the remaining amount subsidized through housing assistance payments made through local Public Housing Authorities.

122 Nat'l Coal. for the Homeless, *Discrimination and Economic Profiling among the Homeless of Washington, DC*. (Apr. 2014), available at <http://nationalhomeless.org/wp-content/uploads/2014/04/DiscriminationReport20141.pdf>.

123 D.C. Councilmember Wants to Make Homelessness a Protected Class, *Washington City Paper*, July 11, 2017, <https://www.washingtoncitypaper.com/news/housing-complex/blog/20867219/dc-councilmember-wants-to-make-homelessness-a-protected-class>.

124 Tighe, *Source of Income Discrimination and Fair Housing Policy*, *supra* note 43, at 8

Unfortunately, landlords are free to refuse to rent to voucher holders in the majority of the states, and many choose to refuse to rent to Section 8 voucher holders (or other recipients of government assistance) over administrative concerns or prejudice. Because HUD requires most voucher holders to locate a residence within 120 days or risk forfeiting the voucher,¹²⁵ discrimination against using this form of income to pay rent can make it difficult for voucher holders to secure housing—especially in desirable neighborhoods. In Chattanooga, Tennessee, around 66 percent of new voucher recipients ultimately lose it due to failure to locate a unit willing to accept it.¹²⁶

125 U.S. Dep't of Hous. & Urban Dev. Office of Pub. & Indian Hous., *Notice re: Section 8 Tenant-based Assistance (Enhanced and Regular Housing Choice Vouchers) For Housing Conversion Actions in Federal Fiscal Year (FY) 2000 – Policy and Processing Guidance* (Mar. 7, 2000), https://www.hud.gov/sites/documents/DOC_9072.PDF

126 Affordable Housing Online, *Source of Income Discrimination in Housing*, <https://affordablehousingonline.com/source-of-income-antidiscrimination-laws>.

POLICY PROPOSALS: RENTERS' RIGHTS TO REDUCE HOMELESSNESS

In the current housing market, low-income households without subsidized housing face an impossible situation- one that appears to be increasing homelessness. These individuals and families earn too little money to afford market housing and are competing with too many others in the same situation. Their lack of power in the marketplace puts them at the mercy of landlords, and the result is housing instability, inadequate or unhealthy housing conditions, cycles of evictions, and difficulty finding new housing. Stronger legal protections for renters can help correct that imbalance and increase housing stability—in turn preventing homelessness and all of its societal costs.

This section discusses some of the policies that can be enacted at the federal, state, and/or local levels to directly address this imbalance and lead to greater housing stability and fewer experiences with homelessness.

As detailed above, evictions cause homelessness and create further economic and health problems for those who are subject to them. For all of these reasons, it is critical for communities to enact policies that prevent unnecessary evictions. Indeed, preventing and ending homelessness should be major factors in governments' decision-making processes, laws, policies, and practices related to housing.

The recommended policies below represent some renters' rights laws that can help to keep rental housing affordable, reduce housing instability and eviction, and prohibit discriminatory rental admission policies. The Law Center invited experts from around the country to submit articles on these recommended policies.

- Laws that **limit evictions without just cause**.
- **Rent stabilization laws** can help to address the affordability crisis by reasonably limiting increases in rents.
- Laws **guaranteeing a right to counsel** in housing cases can help ensure that the rights of tenants are enforced.
- Laws **preventing eviction based on foreclosure**, incidents related to domestic violence, or no cause at all can help to prevent unjust evictions and keep people stably housed.¹²⁷
- Laws **prohibiting discrimination based on a prospective renter's source of income**, such as a federal housing

subsidy, can help keep housing affordable for renters by allowing them to more readily afford the cost of private market rental housing.

- Laws **prohibiting housing displacement due to nuisance ordinances**.
- Laws **prohibiting discrimination against renters with eviction histories and criminal records**, or that limit dissemination of such information to prospective landlords, can help to remove barriers to housing access.
- Laws **prohibiting discrimination against homeless people** in rental housing.

¹²⁷ There are additional state and local laws that provide additional protections for renters who are survivors of domestic violence not discussed in this report. See e.g., Nat'l Hous. Law Project, *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium* (Dec. 2016), <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>.

Stabilize Housing by Preventing Unnecessary Evictions

Critical to preventing homelessness is preventing evictions in the first place. Adopting the law and policy recommendations discussed by experts below can help tenants keep their housing.

Just Cause Evictions and Rent Control

Aimee Inglis, Tenants Together (tenantstogether.org)

Background

Neighborhoods across the United States are being gentrified, displacing low-income tenants en masse and destabilizing housing markets by increasing rents. This process is expedited when landlords are able to evict low-income tenants without good cause. Without limitations on rent increases or no cause evictions, landlords are free to raise rents however much they want and evict good tenants for no reason at all.

In gentrifying neighborhoods, building additional housing tends to increase prices, even as it increases supply. Instead of making market-rate homes more affordable over time, gentrification leads developers to buy and turn available housing into higher-end units that do not benefit low-income tenants.¹²⁸ A single new high-cost building (or other development) can increase demand amongst higher-income groups for housing in that neighborhood. These groups, over time, are able to outbid current residents on all types of housing, from older single-family homes to apartments.

While gentrification causes numerous problems including the dispersal of long-standing communities, it also increases costs for low-income residents who either have to pay more in order to stay in the same place or potentially experience the cost of moving to a distant neighborhood with higher daily transportation costs. Gentrification also reduces productivity, as competition for limited housing pushes tenants and job-seekers away from centers of economic activity.¹²⁹

Policy Proposal: Just Cause Eviction Laws and Rent Control

In order to stem the tide of rising rental costs and eviction of low-income tenants, states and localities should adopt just cause eviction and rent control policies. While these are two distinct protections, they often complement each other and provide critical protections to tenants who need stability when their communities are undergoing rapid gentrification. These

128 Pamela M. Blumenthal et. al, *Strategies for Increasing Housing Supply in High-Cost Cities* at 3 (Aug. 2016), available at https://www.urban.org/sites/default/files/publication/83656/2000907-strategies-for-increasing-housing-supply-in-high-cost-cities-dc-case-study_1.pdf (citations omitted).

129 *Id.* at 2 (citations omitted).

protective provisions prevent sudden evictions, protect tenants in short-term leases, hinder rapid rent increases, and stabilize communities by decreasing turnover rates.¹³⁰

Rent control or stabilization establishes reasonable *annual increases*, meaning landlords cannot raise rents more than a small, reasonable percentage each year, typically based on a percentage of Consumer Price Index/inflation. Rent stabilization laws like those in California can prevent rent gouging and displacement while still allowing for a fair return on investments.¹³¹

Studies show rent control provides tenants with housing stability. Modern rent control laws have no negative impacts on the quality and quantity of rental units. Rent control does not increase rent overall and does not distort the rental market.¹³² On the contrary, eliminating rent control can lead to a dramatic increase in the costs of all housing, including formerly rent controlled and uncontrolled units.¹³³ A 2011 study found that more housing was built *after* rent control was enacted.¹³⁴ Accordingly, the boom and bust cycles of local housing construction are driven by the overall health of the economy, not rent control.

Just cause eviction laws require landlords to give a reason for evicting tenants. Just cause eviction laws have been shown to motivate landlords to increase and improve maintenance of rental housing and to stabilize rental markets.¹³⁵ Just cause eviction laws have been enacted in the form of state statutes or local ordinances. When the tenant is not at fault for being evicted, some just cause ordinances require landlords to cover the tenant's relocation costs.¹³⁶ In these jurisdictions, landlords

130 PolicyLink, *Equitable Development Toolkit: Just Cause Eviction Controls* [hereinafter *Equitable Development Toolkit*] (Mar. 2002), at 6, available at <http://www.policylink.org/sites/default/files/just-cause-eviction-controls.pdf>.

131 Richard Arnott, *Time for Revisionism on Rent Control?* 9 J. Econ. Pers. 99 (1995), available at <https://www.aeaweb.org/articles/pdf/doi/10.1257/jep.9.1.99>.

132 See e.g., Eric Fischer, *Employment, construction, and the cost of San Francisco apartments*, *Experimental Geography*, <http://experimental-geography.blogspot.com/2016/05/employment-construction-and-cost-of-san.html> (accessed through <http://observer.com/2016/05/a-guy-just-transcribed-30-years-of-for-rent-ads/>).

133 See e.g., David H. Autor et al., *Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts*, 122 J. Pol. Econ. 661 (2014), available at <https://economics.mit.edu/files/9760>.

134 See generally, Hugh Grant, *An Analysis of Manitoba's Rent Regulation Program and the Impact on the Rental Housing Market* (Jan. 31, 2011).

135 Gilderbloom, et. al. *Thirty years of rent control: A survey of New Jersey cities* (Apr. 2007), available at https://www.researchgate.net/publication/229489080_Thirty_years_of_rent_control_A_survey_of_New_Jersey_cities; see also Fischer, *supra* note 132 (Housing cost trends over the years).

136 Jessica Floum, *Portland Landlords Must Pay Relocation Costs To Evict Tenants Without Cause*, *The Oregonian*, Feb. 2, 2017, http://www.oregonlive.com/politics/index.ssf/2017/02/portland_landlords_must_pay_re.html; see e.g., City and County of San Francisco Rent Board,

may be required to provide relocation assistance to each authorized occupant of the household being evicted. Just cause laws in most jurisdictions allow for landlords to evict tenants for numerous reasons including criminal activity, violation of house rules, refusal to allow landlord on the premises, excessive disruptions of others' quiet enjoyment, damage of property, and failure to pay rent.¹³⁷

The efficacy of each just cause eviction policy differs based on the types of housing units that are protected, the tenant's rights when faced with eviction, and the legal process for eviction.¹³⁸ These provisions are particularly helpful for tenants with month-to-month leases, low-income individuals and families, people of color, persons with disabilities, elderly persons, and those living in housing that have been foreclosed.

Just cause for eviction ordinances in 19 California cities, including Los Angeles, Oakland, San Francisco and East Palo Alto, protect countless low-income tenants from displacement.¹³⁹ In East Palo Alto, for example, Community Legal Services of East Palo Alto (CLSEPA) tracked their caseload over an eight-month test period in 2014 and found that the just cause eviction ordinance has had the effect of increasing the number of tenants who were able to avoid eviction and stay in their homes.¹⁴⁰

Advocacy Tips and Resources

Rent control and just cause eviction protections are generally met with a lot of hostility and false information, so dispelling myths may be necessary.

Myth: Rent control will inhibit new development.

Fact: Cities with rent control in California have some of the highest rates of development in the state.¹⁴¹

Myth: Rent control costs money.

Fact: Programs are funded through a small per unit fee on landlords.¹⁴²

Myth: Just cause eviction laws make it harder for landlords to evict bad tenants.

Fact: Just cause eviction laws allow eviction for nonpayment of rent or tenant misconduct.

Before beginning advocacy, check first to make sure your state or local jurisdiction does not have laws that undermine tenant protections or prevent you from enacting laws that strengthen renters' rights. In California, for example, the effectiveness of rent control laws are restricted by other state laws. In many states, rent control is banned at the state level.

Housing is a human right. Our laws need to start to treat it as such, instead of as a simple consumer good. Just cause eviction laws and rent control can help shift things in the right direction.

Section 37.9C Tenants Rights To Relocation For No-Fault Evictions, <http://sfrb.org/section-379c-tenants-rights-relocation-no-fault-evictions>.

137 *Equitable Development Toolkit*, *supra* note 130, at 2-3.

138 *See id.*

139 *Id.* at 6; *see generally* Urban Habitat, *Strengthening Communities Through Rent Control and Just-Cause Evictions: Case Studies from Berkeley, Santa Monica, and Richmond* (Jan. 2018), http://urbanhabitat.org/sites/default/files/UH%202018%20Strengthening%20Communities%20Through%20Rent%20Control_0.pdf; Stephen Barton, *Review of the City of East Palo Alto Rent Stabilization Program* (Jan. 28, 2015), <https://www.ci.east-palo-alto.ca.us/DocumentCenter/View/2049>; Stephen Barton, *Benefits of Rent Stabilization: A Brief Overview* (Feb. 28, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/101065>.

140 Management Partners, *Rent Control and Just Cause Eviction: Review of Programs* (June 2017), available at <https://fremont.gov/RentResearchReport> ("Over the test period CLSEPA obtained "pay and stay" settlements (where the tenant agrees to a rent increase and is not evicted) for 70% of cases in East Palo Alto. However, in all other San Mateo County [where there are no just-cause for eviction ordinances,] cities pay and stay settlements were achieved in only 14% of cases.").

141 Haas Institute, *Rent Control: The Key to Neighborhood Stabilization?*, <http://haasinstitute.berkeley.edu/rent-control-key-neighborhood-stabilization> ("When we looked at housing production numbers from 2007 to 2013, the six cities that had rent control in the Bay Area actually produced more housing units per capita than cities without rent control."); Stephen Barton, *Benefits of Rent Stabilization: A Brief Overview* (Feb. 28, 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/CommitteeMeetingDocument/101065>, ("In the San Francisco Bay Area construction of multi-family housing is substantially higher in cities with rent stabilization than in cities without it.").

142 *See e.g.*, Tenants Together, *Communities Thrive with Rent Control* at 2, 6, https://actionnetwork.org/user_files/user_files/000/004/357/original/Complete_Rent_Control_toolkit_final.pdf (the cost of administering the program can be funded through a small per unit fee paid by landlords or passed on to tenants).

Right to Legal Representation in Eviction Cases

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(civilrighttocounsel.org)

Background

In most housing courts around the country, very few renters appear with counsel, whereas landlords are virtually always represented. For instance, until recently only 1 percent of tenants in New York City had a lawyer, compared to 99 percent of landlords.¹⁴³ As a result, many tenants with meritorious defenses to evictions lose their homes because they do not know how to assert such defenses. Additionally, when unrepresented tenants square off against the landlord's attorney, the judge often finds the landlord's attorney to be more credible. Vulnerable tenants, such as the elderly and those with disabilities, may not be provided the necessary time to relocate and ensure their belongings do not wind up on the street. Finally, the systemic and massive imbalance of representation, when combined with the sizable eviction dockets, has caused a culture shift in the courts: it is considered normal for tenants to be shunted en masse into the hallway with the landlords' attorneys in order to be pressured into an inequitable settlement instead of having a full and fair hearing before the judge.

The line between eviction and homelessness is plain: substantial numbers of individuals and families live in homeless shelters as the direct consequence of an eviction.¹⁴⁴

Policy Proposal: Legal Representation for Tenants Facing Eviction

Providing tenants with legal representation to help avoid an eviction and the risk of subsequent homelessness makes a significant difference in a variety of ways. First and foremost, lawyers can ensure the eviction is lawful and that any defenses to the eviction are effectively asserted. Second, by having a lawyer as the landlords do, tenants can overcome the "credibility" gap described above. Third, even where a tenant lacks a defense to the eviction, there are many things a lawyer can do to secure relief for the client that may help prevent homelessness, such as: a) negotiate effectively for the extra time needed to secure alternative housing and avoid gap homelessness; b) negotiate a settlement whereby the eviction will not appear on the tenant's

Even where a tenant lacks a defense to an eviction, there are many things a lawyer can do to help. They can:

- Negotiate extra time to move out
- Negotiate a settlement whereby the eviction will not appear on the tenant's record
- Help the tenant apply for public housing or rental subsidies

record (which helps significantly in finding new housing); and c) help the tenant apply for public housing or rental subsidies. Fourth, if landlords know that tenants will be routinely represented (as opposed to occasionally, as is the present case), they may not choose to file unlawful evictions in the first place.

Numerous studies have shown that the presence of counsel has a substantial impact on outcomes for eviction cases. For instance, a recent study in Massachusetts found that tenants with full representation were twice as likely to retain possession even when compared to those who received limited legal assistance.¹⁴⁵

The Pro Bono and Legal Services Committee of the New York City Bar Association commissioned a similar cost/benefit analysis related to a proposal to provide a right to counsel in eviction proceedings. The report concluded that implementation of a right to counsel would not only reduce evictions by an estimated 77 percent when legal counsel is provided, but would also produce a net cost savings to the city of \$320 million. This evidence helped lead to the first law in the nation establishing a right to counsel in eviction cases. In August 2017, New York City Mayor Bill de Blasio signed Intro 214-b into law, which guarantees counsel for all eviction defendants at or below 200 percent of the federal poverty level.¹⁴⁶ Additionally, 2017 saw the passage and/or introduction of other legislation to expand housing representation, such as D.C.'s Expanding

143 NYC Office of Civil Justice, *2016 Annual Report* (June 2016), available at http://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf.

144 See e.g., NYC Housing Help Program, *Homelessness Prevention Pilot Final Report* (June 2010), available at https://www.nycourts.gov/ip/nyaj/pdfs/HHP_Seedco_rpt.pdf (finding that 47% of the families in homeless shelter were there due to eviction).

145 Boston Bar Association Task Force on Expanding the Civil Right to Counsel, *The Importance of Representation in Eviction Cases and Homelessness Prevention* (March 2012), available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>; see also Carroll Seron, et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 Law & Soc'y Rev. 419 (2001) (finding 77 percent reduction in number of cases resulting in warrant of eviction); New York State Department of Social Services, *The Homelessness Prevention Program: Outcomes and Effectiveness* (1990), available at <http://legalaidresearch.org/wp-content/uploads/NYS-Dept-social-services-Homelessness-Prevention-program-1990.pdf> (concluding that Homelessness Prevention Program prevented "an estimated 797 spells of homelessness").

146 Nat'l Coalition for a Civil Right to Counsel, *NYC is First Place in Country to Provide Right to Counsel to Tenants in Housing Court* (Aug. 11, 2017), http://civilrighttocounsel.org/major_developments/894.

Access to Justice Act,¹⁴⁷ Philadelphia's hearings on and funding of eviction counsel,¹⁴⁸ and bills in Massachusetts to provide a right to counsel in housing cases.¹⁴⁹ And most recently, a voter-driven initiative to provide a right to counsel for all eviction cases in San Francisco qualified to be placed on the June 2018 ballot.¹⁵⁰

Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires that State Parties undertake "to guarantee . . . [t]he right to equal treatment before the tribunals and all other organs administering justice." In paragraph 23 of its 2014 Concluding Observations on the United States, the CERD Committee:

reiterate[d] its concern at the lack of a generally recognized right to counsel in civil proceedings (para.22), which disproportionately affects indigent persons belonging to racial and ethnic minorities, and hinders their seeking an effective remedy in matters such as evictions ...¹⁵¹

The Committee also recommended that the United States "allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions"¹⁵² Additionally, the interpretive body of the International Covenant on Civil and Political Rights (ICCPR) issued General Comment No. 32, which explains that Article 14 of the ICCPR focuses on the right to equality before courts and tribunals and to a fair trial. In discussing the right to counsel in this context, the Comment stated that "[s]tates are encouraged to provide free legal aid in [non-criminal cases], for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so."¹⁵³ Finally, the U.N. Special Rapporteur on Extreme Poverty and Human Rights has observed that "Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest tenancy

disputes [and] eviction decisions"; and that "free legal aid should not only be provided in criminal matters, but also in civil matters when individuals do not have sufficient resources to pay for legal assistance and, without such assistance, they are prevented from asserting their rights."¹⁵⁴

The right to counsel in civil matters is firmly established in Europe. The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), ratified by forty-nine countries of Europe, provides that "everyone is entitled to a fair and public hearing" to determine civil rights and obligations.¹⁵⁵ In 1979, the European Court of Human Rights ruled in *Airey v. Ireland* that to satisfy the requirements of fairness, governments may be required to provide free legal counsel to low income clients.¹⁵⁶ Consistent with this mandate, many countries, including Italy, Spain, Portugal and the Netherlands have statutes that explicitly mandate the right to counsel for indigent litigants in civil proceedings.¹⁵⁷ Two-thirds of the countries in the Council of Europe recognize a right to counsel in civil cases, including housing.

Advocacy Tips & Resources

There is no question that Intro 214-b in New York City benefited from a confluence of several things: 1) the appointment of a long-time legal services lawyer as Commissioner of the New York City Human Resources Administration; 2) the election of a progressive Mayor who ran on a platform of ending homelessness within the City (and who later may have seen the right to counsel as a way to stake out a progressive national leadership position in response to the Trump Administration); 3) a grassroots, tenant-led effort that collaborated effectively with the legal aid community;¹⁵⁸ 4) a report by an independent financial services company stating that Intro 214-b would save the City \$320 million every year;¹⁵⁹ 5) the release of a report by the NYC Office of Civil Justice showing that the City's initial investment of \$53 million in eviction defense resulted in a 24 percent decrease in evictions; and 6) the continued rise of homelessness after the Mayor took office (which was covered heavily by the media). Critical allies included the City Comptroller, the Chief Judge of the New York Court System, borough presidents, the City Bar Association, and constituency groups such as AARP.

147 Nat'l Coalition for a Civil Right to Counsel, *D.C. Enacts Expanding Access To Justice Act Of 2017* (July 12, 2017), http://civilrighttocounsel.org/major_developments/1031.

148 Nat'l Coalition for a Civil Right to Counsel, *Philly City Council funds expanded counsel for tenants* (June 29, 2017), http://civilrighttocounsel.org/major_developments/1034.

149 MA HB 968, <https://legiscan.com/MA/bill/H968/2017>, and MA SB 831, <https://legiscan.com/MA/bill/S831/2017>.

150 San Francisco Right to Counsel Committee, <http://www.sfrighttocounsel.com/>.

151 Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America, CERD/C/USA/CO/7-9 CERD ¶ 23 (Aug. 2014).

152 *Id.*

153 United Nations, Human Rights Committee, General Comment No. 32 (90th sess. 2007) CCPR/C/GC/32, para. 10, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gcart14.doc>.

154 Report of the Rapporteur on Extreme Poverty and Human Rights, A/67/278 ¶¶ 61, 62 (Aug. 9, 2012).

155 Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, P 1, Nov. 4, 1950, 213 U.N.T.S. 221.

156 *Airey v. Ireland*, 2 Eur.H.R.Rep. 305 (1979-80) at P 24-26.

157 Lua Kamál Yuille, *No One's Perfect (Not Even Close): Reevaluating Access to Justice in United States and Western Europe*, 42 Colum. J. TransNat'L L. 863 (2004).

158 Right to Counsel Coalition of NYC, <http://www.righttocounselnyc.org/>.

159 Ross, *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, *supra* note 79.

Protections for Tenants in Foreclosed Properties

Elayne Weiss, National Low Income Housing Coalition (nlihc.org)

Background

Inappropriate lending, falling home prices, and high unemployment have led to a very high number of foreclosures across the U.S. in the past ten years. However, the impact of these foreclosures is not limited to homeowners; renters lose their homes every day when the owner of the home they are renting goes into foreclosure. In fact, one in five properties in the foreclosure process is likely to be a rental.¹⁶⁰ Further, research from the National Low Income Housing Coalition (NLIHC) concludes that, since these properties often contain more than one unit, and many owner-occupied properties also house renters, roughly 40 percent of the families facing eviction as a result of the foreclosure crisis were renters.¹⁶¹ These families often have no idea that their landlord has fallen behind on mortgage payments, and they have usually continued to pay their rent even as their landlord has failed to pay the mortgage.

Unlike homeowners, who have some indication that a foreclosure is coming, renters are often caught entirely off guard. As might be expected, very low-income families and low-income and minority communities bear the brunt of rental foreclosures. Analysis from NLIHC shows that for four states in New England, the census tracts with the lowest percentage of white individuals and the highest percentage of households that are under the poverty line have the highest foreclosure rates.¹⁶² Multi-family foreclosures, which more often than not impact at least some renters, also occur in these high-poverty, high-minority census tracts.

Policy Proposal: the federal Protecting Tenants at Foreclosure Act (PTFA) or state/local equivalents

Prior to May 2009, protections for renters in foreclosed properties varied from state to state, and in most states, tenants had few protections. The National Law Center on Homelessness & Poverty (Law Center) and NLIHC issued a joint report on the foreclosure and eviction laws in each state and the District of Columbia.¹⁶³ Recognizing the hardships experienced by tenants

in foreclosed properties, Congress acted in early 2009 to provide a basic set of rights for such tenants. Before the enactment of Protecting Tenants at Foreclosure Act in May 2009, it was legal in most states for tenants to be required to vacate a foreclosed rental property with only a few days' notice.

On May 20, 2009, President Obama signed PTFA into law.¹⁶⁴ The PTFA was extended and clarified in the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁶⁵ However, the law expired on December 31, 2014.

Under the PTFA, most tenants had the right to remain in their home for the remainder of their lease, or at least 90 days. Tenants with Section 8 Housing Choice Voucher assistance had additional protections, which allowed them to retain their Section 8 lease and required the successor in interest to assume the housing assistance payment contract associated with that lease. The PTFA applied to all foreclosures on all residential properties; traditional one-unit single-family homes were covered, as were multi-unit properties. The law applied in cases of both judicial and nonjudicial foreclosures. Tenants with lease rights of any kind, including month-to-month leases or leases terminable at will, were protected as long as the tenancy was in effect as of the date of transfer of title at foreclosure.

The PTFA applied in all states but did not override more protective state laws. The PTFA specifically provided that it did not affect "any [s]tate or local law that provides longer time periods or other additional protections for tenants."¹⁶⁶

With the expiration of federal protections on December 31, 2014, however, state and local law now comprise the only protections available for renters living in foreclosed properties.

At the time of writing, during the 115th Congress, Representative Keith Ellison (D-MN) and Senator Richard Blumenthal (D-CT) introduced legislation (H.R. 915/S. 325) to renew the PTFA and make the law permanent. At the end of 2017, the Senate Banking Committee passed the "Economic Growth, Regulatory Relief and Consumer Protection Act" (S. 2155) that included provisions that would restore the PTFA permanently (which NLIHC does not support due to other provisions within the bill). It remains to be seen whether restoring the PTFA permanently will be approved by the full Senate and House of Representatives.

NLIHC urges Congress to support, resume, and extend the PTFA protections for renters facing foreclosure by passing H.R. 915 and S.325.

¹⁶⁰ Elayne Weiss, *Protecting Tenants at Foreclosure* (2017), http://nlihc.org/sites/default/files/AG-2017/2017AG_Ch06-S05_Protecting-Tenants-at-Foreclosure.pdf.

¹⁶¹ *Renters in Foreclosure*, *supra* note 104.

¹⁶² *Id.*

¹⁶³ Nat'l Law Ctr. on Homelessness & Poverty & Nat'l Low Income Hous. Coal., *Without Just Cause: A 50 State Review of the (Lack of) Rights of Tenants in Foreclosure* (2009), available at https://www.nlchp.org/content/pubs/Without_Just_Cause1.pdf.

¹⁶⁴ Public Law 111-22, division A, title VII.

¹⁶⁵ Public Law 111-203, section 1484.

¹⁶⁶ Elayne Weiss, *Protecting Tenants at Foreclosure* (2017), *supra* note 160.

Advocacy Tips & Resources

Beginning in late 2014, in anticipation of the expiration of the federal PTFA, the Law Center joined with Florida-based renters' and consumers' advocates to lobby for new state-level protections of renters in foreclosed properties. The advocates, located throughout Florida, shared local data and stories demonstrating the need for a uniform state law response to the problem of rental home foreclosures in diverse housing markets. The Law Center helped connect these advocates with successful lobbying campaigns in other states, which provided assistance in crafting legislative advocacy and communications strategies. These tactics, along with strong local leadership, broad-based support from statewide and regional legal aid organizations, and a willingness to negotiate resulted in longer notice requirements before tenants in foreclosed properties may be required to move. The bill, HB 779, was signed into law on June 2, 2015.

Advocates are encouraged to work to pass local and state bills that protect renters in foreclosed properties, including legislation modeled after the PTFA.

Passing such protections in more states and localities will require working with a variety of housing stakeholders, including banks and real estate professionals. The National Housing Law Project has compiled California state laws and local ordinances protecting tenants in foreclosed properties, and the Law Center has a list of state laws enacted to protect the rights of tenants in foreclosure since the PTFA.¹⁶⁷

¹⁶⁷ Nat'l Hous. Law Project, *California State Laws Protecting Tenants in Foreclosed Properties*, <https://www.nhlp.org/wp-content/uploads/2018/01/1-2017.09.01-California-State-Law-Protections-for-Tenants-in-Foreclosed-Properties.pdf>; Nat'l Hous. Law Project, *California Jurisdictions with Local Ordinances Protecting Tenants in Foreclosed Properties* (Sept. 2017), <https://www.nhlp.org/wp-content/uploads/2018/01/2-2017.09.05-California-Local-Protections-for-Tenants-in-Foreclosed-Properties.pdf>; Nat'l Law Ctr. on Homelessness & Poverty, *Eviction (Without) Notice: Renters and the Foreclosure Crisis* (Dec. 2012), https://www.nlchp.org/Eviction_Without_Notice (updates forthcoming)).

Stopping Evictions Caused by Nuisance Ordinances

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Background

Across the country, thousands of municipalities have adopted local nuisance ordinances that severely undermine the rights of renters. These ordinances, also known as crime-free or disorderly house laws, impose penalties based on calls for police service or criminal activity occurring at a property without regard to whether the resident or caller needed emergency assistance or was the victim of the alleged crime. They typically require the landlord to abate the nuisance or face steep fines, loss of rental permits, property closure, or criminal consequences.¹⁶⁸ Eviction of the entire household is the most commonly deployed means of nuisance abatement.¹⁶⁹

Because calling 911 can trigger the ordinance, these laws threaten the housing of victims of crime and people who need emergency aid and chill them from accessing police services. They are especially likely to harm survivors of domestic violence who may seek protection from repeated acts of abuse.¹⁷⁰ Landlords end up removing victims of domestic violence and other crimes from their homes, even when the perpetrator did not live at the property.

Research conducted on Milwaukee, Wisconsin's ordinance concluded that calls about domestic violence were the third most common reason for a nuisance citation.¹⁷¹ In 83 percent of cases where landlords received a citation, they evicted or threatened to evict victims if they called police again.¹⁷² A study of two upstate New York ordinances similarly concluded that domestic violence made up the largest category of incidents resulting in nuisance enforcement, frequently leading to eviction.¹⁷³

168 ACLU Women's Rights Project & the Soc. Sci. Research Council, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* 3 (2015) [hereinafter *Silenced*], <https://www.aclu.org/report/silenced-how-nuisance-ordinances-punish-crime-victims-new-york>; Emily Werth, Sargent Shriver Nat. Ctr. on Poverty Law, *The Cost of Being "Crime Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 4 (2013), <http://povertylaw.org/files/docs/cost-of-being-crime-free.pdf>.

169 Werth, *supra* note 168, at 8, 19 n.72.

170 *Silenced*, *supra* note 168, at 4; Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIOLOGICAL REV. 117, 121 (2013); Gretchen Arnold & Megan Slusser, *Silencing Women's Voices: Nuisance Property Laws and Battered Women*, 40(4) LAW AND SOC. INQUIRY 908 (2015); Gretchen Arnold, *From Victim to Offender: How Nuisance Property Laws Affect Battered Women*, J. INTERPERSONAL VIOLENCE 1 (2016).

171 Desmond & Valdez, *supra* note 170, at 130.

172 *Id.* at 133.

173 *Silenced*, *supra* note 168, at 2.

In addition, nuisance ordinances jeopardize the housing of people of color and persons living with disabilities. The Milwaukee study showed that a tenant living in a majority-Black neighborhood was three times more likely to receive a nuisance citation compared to a tenant in a majority-White neighborhood who also had violated the ordinance.¹⁷⁴ Advocates and researchers likewise have documented the disparate impact of these ordinances on people of color and people with disabilities in Illinois, Missouri, and Ohio.¹⁷⁵

Story

Lakisha Briggs, a resident of Norristown, Pennsylvania, was assaulted by her boyfriend and told by a police officer that more 911 calls would lead to her eviction.¹⁷⁶ At that time, the local ordinance penalized landlords and tenants when the police responded to three instances of disorderly behavior, including domestic violence, within four months. Lakisha stopped reaching out for protection, and the violence escalated. She did not even call 911 when she was stabbed, but her neighbor did. The city pressured the landlord to evict Lakisha and her young daughter for violating the ordinance.

In 2013, represented by the ACLU, Lakisha filed a federal lawsuit against the city. Her case garnered significant media attention on the dire consequences of nuisance ordinances.¹⁷⁷ This led to an outpouring of public opposition to the ordinance from state and federal lawmakers.¹⁷⁸ In September 2014, the parties settled the suit, with full repeal of the law by Norristown and \$495,000 in damages and attorneys' fees to Lakisha.¹⁷⁹ A couple of months later, Pennsylvania enacted a state law following

174 Desmond & Valdez, *supra* note 170, at 125.

175 Compl., *HOPE Fair Hous. Ctr. v. City of Peoria*, No. 1:17-cv-01360 (C.D. Ill. Aug. 10, 2017), ECF 1; Compl., *Metro. St. Louis Equal Hous. and Opportunity Council v. City of Maplewood*, No. 4:17-cv-00886 (E.D. Mo. Mar. 13, 2017), ECF 1; Joseph Mead et al., *Who Is A Nuisance? Criminal Activity Nuisance Ordinances in Ohio* (2017).

176 *Briggs v. Borough of Norristown*, 2:13-cv-02191-ED (E.D. Pa. 2014), available at <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al>.

177 See, e.g., Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES (Aug. 16, 2013), available at <http://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html>.

178 See, e.g., Carl Rotenberg, *ACLU sues Norristown over landlord ordinance*, TIMES HERALD (Apr. 25, 2013), available at <http://www.timesherald.com/article/JR/20130425/NEWS01/13042976>; Letter from Sen. Robert P. Casey, Jr. to U.S. Dep't of Justice (July 19, 2013), available at <https://www.casey.senate.gov/newsroom/releases/casey-to-feds-victims-of-domestic-violence-should-not-be-targeted-for-eviction>.

179 See Release and Settlement Agreement, *Briggs v. Borough of Norristown*, *supra* note 176.

advocacy from the Pennsylvania Coalition Against Domestic Violence, ACLU, and others that preempts similar ordinances.¹⁸⁰ This work in Norristown also fueled advocacy the ACLU led at the federal level, resulting in guidance from the U.S. Department of Housing and Urban Development on the serious Fair Housing Act problems with local nuisance and crime-free laws.¹⁸¹

Policy Proposal: Get Rid of Nuisance Laws

The simplest policy solution is for municipalities to refrain from adopting local nuisance laws in the first place, or to repeal those on the books. Many municipalities have chosen to rescind these laws once they understood the impact on community trust, housing stability, and law enforcement effectiveness.

Some municipalities have taken a narrower approach by including an exception for domestic violence victims. In our experience, these exceptions are ineffective. Even in cities with a domestic violence exception, domestic violence victims still are punished. It may not be evident to officials assessing the situation that the calls or criminal activity involved domestic violence, as domestic violence often is characterized as other offenses, including noise, property damage, or disorderly conduct. In addition, in cases involving self-defense, victims of long-term abuse may be labeled as perpetrators. Moreover, it is vital for community safety that all people who need emergency assistance can access it.

For these reasons, advocates have supported state legislation that guarantees the right of all people to seek emergency aid without fear of penalty from nuisance ordinances. The ACLU and its partners successfully supported legislation in Iowa and Pennsylvania that preempt local laws that impose penalties on tenants and landlords because they sought emergency services.¹⁸² Similar protections exist in Minnesota and Indiana.¹⁸³

The United States has signed but not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 14(2) of CEDAW states that “Parties shall ... ensure to such women the right: ... To enjoy adequate

living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Local nuisance ordinances that lead to evictions disproportionately affect women of color who are victims of domestic violence and/or sexual assault. A 2015 report of the CEDAW working group noted concerns about how the United States addresses gender-based violence and women victims of multiple forms of discrimination.¹⁸⁴ In particular, the report “pointed out that victims of domestic violence were often among the homeless, either because they had been evicted as a result of the violence or because they had fled from their violent partner.”¹⁸⁵ The report urged the United States to ratify CEDAW to confirm the U.S. commitment to provide all women with rights and protections guaranteed under CEDAW.

Advocacy Tips & Resources

Effective advocacy to challenge local nuisance ordinances should combine coalition-building and public education, policy advocacy, and litigation.

Confronting local nuisance ordinances presents a unique opportunity to build coalitions. The issue often unites landlords and tenants, as both face unfair punishment under these laws. Law enforcement in many communities will support repeal of these laws, as they undermine the willingness of community members to report crime and divert police resources toward enforcing the nuisance law. Advocates for housing justice, domestic violence survivors, racial equity, disability rights, and civil liberties can build partnerships, given the myriad ways these ordinances damage communities.

A key first step that coalitions can take is educating stakeholders about these ordinances. In many communities, few people are aware that these ordinances exist until they are caught up in their enforcement. Identifying ordinances in a jurisdiction, learning about their implementation, and informing people of their effects are important measures that can fuel advocacy on the local and state levels to address nuisance laws.

Furthermore, litigation can be a strategic tool to fight these ordinances. The ACLU and others have brought lawsuits challenging these ordinances based on violations of the First Amendment right to petition the government, due process

¹⁸⁰ 53 Pa. Cons. Stat. Ann. § 304.

¹⁸¹ U.S. Dep’t of Hous. & Urban Dev., *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services*, (Sept. 13, 2016), <https://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf>.

¹⁸² Iowa Code §§ 562.27A & 562B.25A(3); 53 Pa. Cons. Stat. Ann. § 304 (provides protections for any resident, tenant, or landlord who faces penalty under a local ordinance because police or emergency services responded to abuse, crime, or an emergency at a property, as well as authorizing remedies in court against any municipality that violates these protections).

¹⁸³ Minn. Stat. § 504B.205; Ind. Code Ann. § 32-31-9-14.

¹⁸⁴ Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America (Aug. 4, 2016), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/172/75/PDF/G1617275.pdf?OpenElement>.

¹⁸⁵ *Id.*

and equal protection guarantees, the Fair Housing Act, and the Violence Against Women Act. Cases in Arizona and Pennsylvania resulted in repeal of the challenged ordinances, along with significant compensation and attorneys' fees.¹⁸⁶ A New York appellate court struck down a local nuisance ordinance because it could punish people who reached out to the police, in violation of the First Amendment.¹⁸⁷

The ACLU has worked to challenge nuisance ordinances in over a dozen states. We are happy to provide support and collaborate with others engaging in this work in their communities.

186 Release and Settlement Agreement, *Briggs v. Borough of Norristown*, *supra* note 176; Release and Settlement Agreement, *Markham v. City of Surprise*, 2:15-cv-01696-SRB (D. Ariz. Mar. 16, 2016), *available at* <https://www.aclu.org/cases/nancy-markham-v-city-surprise>.

187 Op. and Order, Bd. of Trs. of the Vill. of Groton v. Pirro, 152 A.D.3d 149, 58 N.Y.S.3d 614 (3d Dep't June 15, 2017), *available at* <https://www.aclu.org/cases/board-trustees-village-groton-v-pirro?redirect=cases/groton-v-pirro>.

Removing Barriers to Rental Housing

Equally important to preventing homelessness is adopting laws and policies that remove barriers to obtaining rental housing, as discussed by experts below.

Eviction Record Expungement

Eric Dunn, Virginia Poverty Law Center (vplc.org)

Background

When a residential landlord files an eviction lawsuit to remove a tenant, the court information becomes public and will generally be available to “consumer reporting agencies,” such as tenant background check companies. This means when a tenant who has been sued for eviction later applies for rental housing somewhere else, and the new landlord orders a screening report about that person, the background check company will find the court record and produce a report showing that the tenant has been sued for eviction. About 90 percent of landlords use tenant-screening reports in deciding whether to accept applicants, and 85 percent of landlords review eviction records.¹⁸⁸

Rental housing providers often disfavor applicants with eviction case records. Many deny any admission to any prospective tenant whose screening report reveals an eviction suit, regardless of the circumstances or even the outcome of the case. As the founder of On-Site Manager, Inc., one of the nation’s largest tenant-screening companies, once told the *New York Times*: “It is the policy of 99 percent of our customers in New York to flat out reject anybody with a landlord-tenant record, no matter what the reason is and no matter what the outcome is, because if their dispute has escalated to going to court, an owner will view them as a pain.”¹⁸⁹ A more recent nationwide survey of landlords revealed that “eviction history [is] the second-most important factor in making a leasing decision, right after income and employment history.”¹⁹⁰

Case in Point

Beatrice left her job just before the 2008 financial crisis and was unable to find another job. She was evicted into homelessness. She now has a full-time job but has found her housing choices limited because of her eviction record.

“I work with homeless families trying to find housing, and because of my eviction, I am in the same situation that they are in. Even though I am single, 59, and make over \$50,000, I am forced to live in an apartment where I don’t feel safe. I can only dream of getting into a nice gated community. Because of my eviction, I can’t even get into a senior apartment. I have two degrees, 30 years of work and rental history, but I am made to feel like a criminal. This is not how I thought I would end up in my late 50’s.” --Beatrice M. Hogg (Sacramento, California)¹⁹¹

Eviction itself, of course, is often a direct, proximate, and final cause of homelessness. But when housing providers deny admission to rental housing because an applicant was evicted from previous residence weeks or months or even years later, then the *record* of that eviction becomes a formidable barrier to leaving homelessness.

Even though most evictions relate to tenants’ financial circumstances, landlords do tend to treat eviction records differently than other financially related characteristics. For instance, an applicant who has more collection items or delinquent accounts than a landlord allows will typically be approved upon paying off those collection items. An applicant who earns enough wages to meet the landlord’s required income-to-rent ratio (typically 5:2 or 3:1) will almost certainly not be denied admission for having been unemployed months or years ago. Yet eviction records linger—an old case may still cause an applicant to be rejected up to seven years later—and potentially even longer if a judgment was entered.¹⁹²

188 See Collatz, Andrea, “Landlord Survey: Optimism In Renting Your Property,” *Transunion SmartMove* (June 6, 2017), available at <https://www.mysmartmove.com/SmartMove/blog/transunion-landlord-survey-summary.page> (last visited Aug. 29, 2017).

189 Teri Kush Rogers, “Only the Strongest Survive,” *N.Y. Times*, Nov. 26, 2006, available at: <http://www.nytimes.com/2006/11/26/realestate/26cov.html?mcubz=0>.

190 See Andrea Collatz, “Landlord Survey: Optimism In Renting Your Property,” *Transunion SmartMove* (June 6, 2017), available at <https://www.mysmartmove.com/SmartMove/blog/transunion-landlord-survey-summary.page>.

191 Just Shelter, <https://justshelter.org/2016/03/24/beatrice-m-hogg-sacramento-ca/#more-1987>.

192 See 15 U.S.C. § 1681c(a)(2).

Case In Point

Cassie's landlord attempted to evict her without cause. Cassie responded that she would move out and the eviction would not be necessary, and the landlord agreed not to file. However, the landlord continued to send threatening emails and filed the lawsuit behind her back. Although the judge saw the emails and vacated the eviction, the eviction still affects Cassie's credit, and now she needs a letter from her lawyer explaining her low credit score to find an apartment.

"But unfortunately even if you get an eviction vacated, it is still on your credit report which is needed to rent most properties. Now to apply for an apartment, I will need a letter from my attorney about how this eviction was vacated in court." --Cassie Bohannon (Seattle, Washington)¹⁹³

eviction filings is potentially discriminatory and may even be a violation of the Fair Housing Act.¹⁹⁶

- Perhaps most significantly, most eviction lawsuits are based on non-payment of rent. This should not be surprising, for all the reasons described earlier in this report. Non-payment evictions are most often a function of low wages and the lack of affordable housing—not on the tenant's irresponsibility or bad intent. But if a person's financial standing has improved—whether through the acquisition of stable employment, an award of public benefits, a housing choice voucher, or other new resources—then a person's failure to meet the financial obligations of a past, cost-burdened tenancy is likely not predictive of that person's ability to perform in a new (potentially non-, or at least less-, cost-burdened tenancy).

Policy Proposal

Reliance on eviction records without additional context means some lower-income individuals and families are denied housing because they are (or were) low-income, not because of irresponsibility, malfeasance, or a character flaw. This barrier means that once someone has experienced an eviction, she will likely have fewer choices and be forced to pay more for a worse unit—making her more likely to face eviction again. It can become a self-fulfilling prophecy.

Some states have begun to permit the expungement of eviction records in certain circumstances. In Washington, tenants who show good cause can obtain "order for limited dissemination" that prohibit screening companies from sharing their eviction case records with landlords.¹⁹⁷ California denies public access to eviction case records within the first 60 days after filing, and permanently if the landlord does not prevail.¹⁹⁸ Minnesota allows some eviction records to be expunged in certain circumstances.¹⁹⁹ Oregon prohibits landlords from denying admission based on dismissed eviction suits or cases more than five years old.²⁰⁰

Eviction records are an especially unreliable way to predict a tenant's future performance.

- Eviction lawsuits are usually filed against every adult member of a household—not just the specific person who may have done whatever it was that prompted the eviction suit. This means a person can acquire an eviction case record based entirely on another person's conduct—including a person who would not be joining the new household where the applicant is seeking to rent.
- Eviction records generally show just that a case was filed, not how it was resolved. A tenant could have an eviction record even after successfully winning against an illegal eviction. A record typically represents a landlord's allegation that a person violated a prior rental agreement—not a judicial determination that such a violation actually occurred. And eviction cases are seldom decided on the merits; rather, most cases are resolved either by default or by settlement.¹⁹⁴ Furthermore, there is evidence that landlords are more likely to file eviction against women of color, particularly in certain urban areas.¹⁹⁵ Reliance on

193 Just Shelter, <https://justshelter.org/2016/04/01/cassie-bohannon/#more-2056>.

194 See, e.g., Matthew Desmond, *Evicted: Poverty and Profit in the American City*, 358 (2016).

195 See Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Foundation *How Housing Matters* (March 2014), available at https://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_

[Alarming_Rates.pdf](#).

196 For an analogous analysis, see *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, *supra* note 120, at 4.

197 See Rev. Code of Wash., § 59.18.367.

198 See California Assembly Bill 2819 of 2016.

199 See Minn. Statutes, § 484.014.

200 See Oregon Rev. Statutes, § 90.303(1).

Advocacy Tips & Resources

These promising enactments provide good models for other states to follow but may be politically unrealistic in some states. Another avenue that advocates are beginning to pursue is litigation. Research is beginning to emerge that shows African-American women are disproportionately represented among eviction defendants, particularly in lower-income urban areas.²⁰¹ The emergence of this critical demographic research could enable advocates to pursue effective litigation strategies against landlords who categorically exclude eviction defendants using the existing federal Fair Housing Act.

The first case of this kind was filed in 2017 in Seattle, Washington, where (the plaintiffs allege) Black women are more than five-times more likely than white men to be sued for unlawful detainer (i.e., eviction).²⁰² For this reason, they contend that a landlord policy of automatically denying any applicant with an eviction record disproportionately excludes Black women—which makes the policy unlawful under the Fair Housing Act unless “necessary to achieve one or more substantial, legitimate, nondiscriminatory interests” of the landlord.²⁰³ While avoiding problem tenants is likely a substantial, legitimate interest, the plaintiffs contend that rejecting all applicants with past eviction suits is not necessary to achieve that interest because the landlord could evaluate such applicants on a case-by-case basis instead.²⁰⁴ If successful, this is a strategy advocates can potentially replicate across the country, especially as more demographic data becomes available for analysis.

Where possible, advocates should strive to ensure that eviction remains a one-time crisis—a setback that occurs, ends, and is moved on from. Until then, non-payment evictions can become a step on the path to homelessness.

201 See Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, *supra* note 195.

202 See generally, Complaint, *Smith v. Wasatch Property Management, Inc.*, 2:17-cv-00501 (W.D. Wash. Mar. 30, 2017).

203 24 C.F.R. § 100.500(b)(1)(i).

204 See 24 C.F.R. § 100.500(b)(1)(ii).

Limiting Use of Criminal Records

Marie Claire Tran-Leung, Sargent Shriver National Center on Poverty Law (povertylaw.org)

Background

In the United States, as many as one out of three people have a criminal record.²⁰⁵ In 2016 alone, more than 640,000 people left state and federal prisons, and millions more were processed by local jails.²⁰⁶ For many low-income renters, having a criminal record often poses a significant barrier to obtaining safe, decent, and affordable housing.²⁰⁷ In a 2015 survey of formerly incarcerated individuals, nearly four out of five reported being denied or determined ineligible for housing because of their criminal history.²⁰⁸ It comes as little surprise, then, that for men who have been incarcerated, their risk of homelessness is four times the risk for those who have never been incarcerated.²⁰⁹

These policies also make a return to the criminal justice system more likely because homelessness increases the risk of incarceration, and vice versa. A person in jail is seven to eleven times more likely to have recently experienced homelessness than someone in the general population.²¹⁰ Similarly, a survey of women in the Cook County Jail in 2004 found that half of the women were either living in unstable housing or experiencing homelessness prior to their incarceration.²¹¹ In the absence of evidence that such policies improve public safety,²¹² policies that perpetuate this revolving cycle of incarceration and homelessness are difficult to justify.

205 The Sentencing Project, *Americans with Criminal Records 1*, <http://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-CriminalRecords-Poverty-and-Opportunity-Profile.pdf>.

206 Press Release, Peter Wagner & Bernadette Dauby, *Mass Incarceration: The Whole Pie 2017* (Mar. 14, 2017), <https://www.prisonpolicy.org/reports/pie2017.html>.

207 For a discussion of criminal records barriers in federally subsidized housing, see Marie Claire Tran-Leung, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing* (2015), <http://www.povertylaw.org/files/docs/WDMD-final.pdf>.

208 Saneta deVuono-Powell et al., *Who Pays? The True Cost of Incarceration on Families 27* (Sept. 2015), <http://whopaysreport.org/who-pays-full-report/>.

209 Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40 Soc. Sci. Res. 1196, 1203 (2011).

210 Greg A. Greenberg & Robert A. Rosenheck, *Jail Incarceration, Homelessness and Mental Health: A National Study*, 59 Psychiatric Servs. 170, 175 (2008), <http://ps.psychiatryonline.org/doi/pdf/10.1176/ps.2008.59.2.170>.

211 Seijeoung Kim et al., *Risk Factors for Homelessness and Sex Trade Among Incarcerated Women: A Structural Equation Model*, 12 J. Int'l Women's Studies 128, 129 (2011), <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1088&context=jiws>.

212 See Merf Ehman & Anna Reosti, *Tenant Screening in an Era of Mass Incarceration: A Criminal Record is No Crystal Ball*, NYU J. Legislation & Public Policy Quorum 19 (2015).

The unfettered use of criminal records in housing is also problematic because it amplifies the racial disparities that run rampant in the criminal justice system. In 2014, for example, while African-Americans accounted for 12 percent of the general population in the United States, they represented 36 percent of the prison population. In contrast, non-Hispanic whites, who comprised more than 60 percent of the general population, represented only one-third of the prison population.²¹³ Housing policies that rely on criminal records, therefore, continue those disparities from the justice system to the housing market.

Policy Proposal: Individualized Assessment

To counteract the overbroad practice of criminal records screening, housing providers must abandon blanket bans that categorically disqualify individuals based on their criminal records. These bans come in different forms (*i.e.*, bans on all criminal history vs. bans on felonies only), but the result is the same: their exclusions rely on the four corners of a background check and little else.²¹⁴

Instead, the central component of a sound screening policy should be individualized assessments of the applicants. These individualized assessments should consider the circumstances of any underlying criminal activity and whether those circumstances weaken the relevance of the criminal record, such as how long ago it took place and whether the conduct was serious in nature. Other factors to consider are whether the criminal activity arose from the applicant's status as a person with a disability or a survivor of domestic violence, dating violence, sexual assault or stalking. The individualized assessment should also consider other factors that would outweigh the importance of the criminal record, such as the applicant's history of education, employment, substance abuse treatment, or community involvement since leaving the criminal justice system. In general, certain types of records should be off-limits, including records of arrests that did not ultimately result in a conviction, juvenile records, and sealed or expunged records. Finally, housing providers should make their criminal records policies transparent to give applicants adequate notice and to prevent them from self-selecting themselves out of the application process.

213 U.S. Dep't of Hous. & Urban Dev., Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions 3-4 (2016), [hereinafter HUD Fair Housing Guidance] https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf.

214 For a more in-depth discussion of the problem of overbroad criminal history bans in federally subsidized housing, see Marie Claire Tran-Leung, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing* (2015), <http://www.povertylaw.org/files/docs/WDMD-final.pdf>.

This emphasis on an individualized assessment over blanket bans has been adopted by a variety of jurisdictions. Most prominently, HUD has stated that housing providers should incorporate individualized assessments into their screening policies to comply with the Fair Housing Act.²¹⁵ Although some states have taken steps to create protections for people with criminal records,²¹⁶ most of the more protective policies have originated at the local level. The last five years have seen just as many local ordinances passed to increase access to housing for people with criminal records: Newark, New Jersey (2012);²¹⁷ San Francisco, California (2014);²¹⁸ Richmond, California (2016);²¹⁹ Washington, D.C (2016),²²⁰ and Seattle, Washington (2017).²²¹ Most of these ordinances include provisions that:

1. Prohibit certain housing providers from considering arrest records, juvenile records, and sealed or expunged records;
2. Set time limits on inquiries into a person's criminal history;
3. Require housing providers to conduct individualized assessments of applicants using multiple factors, such as the nature, severity, and recency of the criminal activity;
4. Install procedural safeguards to add transparency to the decision-making process, such as delaying consideration of criminal history information until after the applicant receives a conditional offer of housing (*i.e.*, "ban the box").

Of these cities, Seattle stands out as the most progressive because it prohibits landlords from relying on any criminal record, even if a person has been released recently. An exception is made for people who have been convicted of sex offenses, but even in these cases, the landlord must provide a legitimate business justification for denying the application.²²²

Advocacy Tips & Resources

Recent legislative campaigns have benefited greatly from the inclusion and leadership of directly impacted individuals. This is especially true when the goal is increasing housing access for people with criminal records, since misguided fear and myths about criminality can overpower rational discussions about public safety and family reunification. Involving people with criminal records both ensures that the legislation responds directly to the challenges they are facing and compels opponents to respond to lived experiences rather than stereotypes. Examples of successful campaigns led by directly impacted individuals include Seattle, San Francisco, and Richmond).

²¹⁵ See HUD Fair Housing Guidance, *supra* note 213, at 7.

²¹⁶ See Or. Rev. Stat. § 90.303 (2016) (state law limiting the types of criminal activity that landlords may consider when screening applicants); California Fair Employment & Housing Council, Proposed Text of Housing Regulations Regarding Discriminatory Effect, Discriminatory Land Use Practices, and Use of Criminal History Information 6-10 (2017), <https://www.dfeh.ca.gov/files/2017/02/Text-HoueRegDiscriminatoryEffectLandUsePracticesandCriminalHistory.pdf> (proposed state regulation that would govern criminal records screening in housing).

²¹⁷ Newark, N.J. Muni Code, tit. 2, §§ 31-1 to 31-9 (2016).

²¹⁸ S.F., Cal., Police Code, art. 49, § 4906 (2016) ("Procedures for Considering Arrests and Convictions and Related Information in Employment and Housing Decisions").

²¹⁹ Richmond, Cal., Ordinance 20-16 N.S. (Dec. 20, 2016), <http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/7690>.

²²⁰ Washington, D.C., Bill 21-706 (Dec. 21, 2016), <http://lims.dccouncil.us/Download/35646/B21-0706-Engrossment.pdf>.

²²¹ Seattle, Wash., Ordinance 125393 (Aug. 23, 2017), <http://seattle.legistar.com/View.ashx?M=F&ID=5387389&GUID=6AA5DDAE-8BAE-4444-8C17-62C2B3533CA3>.

²²² *Id.*

Source of Income Discrimination

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Background

Source of income discrimination occurs when a landlord denies housing to an applicant because of the type of lawful income the applicant plans to use to pay for the housing. Of particular concern is when landlords deny applicants who will pay for the housing with a Section 8 Housing Choice Voucher, Social Security Disability Insurance, or other income or housing benefits from the government.

Only about one in four eligible low-income families is able to obtain a Section 8 Housing Choice Voucher, and receiving one of these vouchers is an important step toward long-term housing stability. Families with a voucher generally pay 30-40 percent of their monthly income toward rent, and the administering local public housing agency (PHA) pays the remainder of the rent directly to the landlord. To be eligible for the program, housing units must pass inspection, and also have gross rents below the “payment standard” for the area. Once someone receives a Housing Choice Voucher, she is required to find an apartment within the time limit given by the PHA (at least 60 days) or risk forfeiting the subsidy.

But receiving a Housing Choice Voucher is only the first step; families have to overcome other barriers to using their voucher, especially in low poverty neighborhoods. The biggest barrier is the low “fair market rent” level used by many PHAs that tend to restrict vouchers to poor neighborhoods, but discrimination by landlords who refuse to take Section 8, regardless of the rent level, is also a serious barrier. This type of “source of income discrimination” can also affect families receiving other types of federal or state assistance.

Discrimination against families with a Housing Choice Voucher is systemic but can be a particular problem in “hot” rental markets, with rising rents and low vacancy rates. Landlords discriminate against voucher holders because they prefer to rent to higher-earning tenants. If a family is not able to use their voucher to find an apartment that will pass inspection before the voucher expires, they risk losing the voucher and going to the end of the waiting list—increasing their vulnerability to homelessness. Further compounding this problem is the unwillingness of some insurance companies to issue policies to landlords who accept voucher-holding tenants.²²³

²²³ See e.g., Jean M. Zachariasiewicz, *Not Worth the Risk: The Legal Consequences of the Refusal to Insure Properties with Section 8 Tenants*

In many areas, source of income discrimination has a disproportionately severe effect on groups already likely to face discrimination on the basis of characteristics protected by the Fair Housing Act, such as race and disability. Because of this, patterns of source of income discrimination can also reinforce patterns of residential segregation.

Policy Proposal: Prohibit Source of Income Discrimination and Provide Incentives

In response to the problem of Section 8 discrimination (and discrimination against families with other types of government assistance), twelve states and dozens of cities and towns have adopted laws prohibiting housing discrimination against families because of their lawful source of income. In addition, three states provide incentives to promote the acceptance of housing choice vouchers. These laws protect households who rely on legal sources of income such as housing choice vouchers or public benefits to pay their rent—preventing landlords from denying, evicting, or treating them unfairly on these bases. These protections are promising and show an evolving recognition of the benefits of Source of Income (SOI) laws. The Poverty & Race Research Action Council keeps an annually updated list of all the states and localities that maintain these laws—this comprehensive summary is posted on our website as “Appendix B” and can be accessed at <http://www.prrac.org/pdf/AppendixB.pdf>. You can scan the table of contents to see if your state or city has adopted a source of income discrimination law—and get some ideas for pushing for a source of income discrimination law in your area. Furthermore, property owners participating in the federal Low-Income Housing Tax Credits program and other certain types of federally assisted housing that already prohibit discrimination against voucher holders provide additional protections to tenants in these properties.

Success Story

New York City has a source-of-income anti-discrimination law that protects recipients of housing assistance, including New York’s Living in Communities (LINC) Rental Assistance Program (the LINC Program) which is designed to move people from homeless shelters to stable housing. A participant in the LINC program named Sandra worked with a local fair housing group, the Fair Housing Justice Center, to successfully challenge a landlord who refused to rent to her because she was using housing assistance. This landlord owned over 350 rental units and had repeatedly stated that he would not rent to subsidized housing program participants. Sandra and her lawyers filed a complaint and obtained a favorable settlement agreement that required the landlord and property manager to take non-

(Nov. 2014), <http://www.relmanlaw.com/docs/ZachariasiewiczArticle.pdf>.

discrimination measures and provide financial damages. This not only helped Sandra leave homelessness but also sent a clear message to landlords and renters about the rights of voucher holders.

Discrimination Based on Housing Status

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Background

Potential renters who are experiencing homelessness, or who have experienced it in the past, face multiple barriers to getting rehoused. But the most maddeningly ironic might be when someone is denied housing *because* they are currently, or formerly homeless. Yet such discrimination is a major problem, with homeless people experiencing discrimination in seeking housing, employment, or even public benefits.

In a 2014 survey of homeless individuals in the Washington, D.C., metropolitan area, over 90 percent of respondents reported that they had been discriminated against due to their housing status—even in accessing the very housing that they need to escape homelessness.²²⁴ This type of discrimination does not exist in a vacuum, and it frequently overlaps and intersects with other types of prohibited discrimination; homelessness disproportionately affects people of color, people with disabilities, victims of domestic violence, and people who identify as LGBTQ. People exiting homelessness are also more likely to pay rent with a housing choice voucher or disability benefits, the use of which—as described above—also may face discrimination.

Individuals who have experienced or are currently experiencing homelessness are at a higher risk of continued housing instability because landlords and property managers usually require housing applicants to list their current residence or address and provide references, which homeless individuals are often unable to meet.

Policy Proposal: Outlaw Discrimination on the Basis of Housing Status

The Fair Housing Act, at the federal level, and equivalent laws at the state and local levels, protect people from discrimination that is based on a protected characteristic. It may be legal to exclude all rental applicants wearing red shoes, but it is not legal to exclude all people of Filipino origin. To help address the discrimination based on housing status, legislators can add “housing status” to the list of protected classes in their fair housing legislation.

224 Nat’l Coalition for the Homeless, *Discrimination and Economic Profiling among the Homeless of Washington, DC* (Apr. 2014), available at <http://nationalhomeless.org/wp-content/uploads/2014/04/DiscriminationReport20141.pdf>.

One legislative vehicle is a stand-alone piece of legislation that prohibits discrimination of homeless persons. For example, Washington, D.C., introduced a bill that would amend the D.C. Human Rights Act, include homelessness as a protected trait and prohibit discrimination because of someone’s housing status.²²⁵

Another option is to build housing status nondiscrimination laws into a homeless bill of rights, a broader bill to protect homeless people from various forms of discrimination.

In the employment context, some have proposed “banning the address,” similar to “banning the box,” both of which are usually unrelated to someone’s job qualification. Several jurisdictions have passed “ban-the-box” policies in an effort to reduce barriers to employment for people with criminal records. Ban-the-address could prevent employers from discriminating against people experiencing homelessness.²²⁶ If such an approach proves useful in the employment context, it could also be explored for rental applications.

Advocacy Tips & Resources

Enacting a law protecting people from discrimination based on housing status can improve the lives of homeless people by removing barriers to obtaining rental housing. There are multiple approaches to passing such a bill, offering advocates some degree of flexibility to tailor it based on the needs of the community.

Developing a strategic plan with a strong coalition of local partners and including people who are currently experiencing homelessness and those that have experienced it in the past, is important. It is also important to ensure that homeless people are able to enforce the law through judicial and/or administrative enforcement mechanisms.²²⁷

225 Michael A. Stoops Anti-Discrimination Amendment Act of 2017, <http://www.davidgrosso.org/grosso-analysis/2017/7/11/michael-a-stoops-anti-discrimination-amendment-act-of-2017>.

226 See e.g., Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment* (Aug. 24, 2016), available at https://law.yale.edu/system/files/area/workshop/leo/leo16_starr.pdf.

227 See generally, Nat’l Law Ctr. on Homelessness & Poverty, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation*, available at https://www.nlchp.org/documents/Wrongs_to_Rights_HBOR.

Saving Affordable Homes

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Background

Existing affordable housing is rapidly decreasing nationwide. For every new affordable home that is built, two affordable homes are lost due to poor physical conditions or conversion to more expensive housing. This can lead to homelessness for low-income renters and further limits the availability of affordable homes that low-income renters can move to. Public housing properties and other federally supported affordable housing properties are at risk in a variety of different ways.

First, the physical conditions of public housing properties, owned and operated by the government, put the housing stability of over 1 million households at risk.²²⁸ Because Congress has not adequately funded public housing for decades, public housing units nationwide need over \$49 billion in repairs and approximately 10,000 units are lost each year because they are no longer habitable.²²⁹ Additionally, Congress has not provided federal funds to build any new public housing units since the mid-1990s.²³⁰ HUD's Rental Assistance Demonstration (RAD) program seeks to preserve a limited number of these public housing units by converting them to other federal housing assistance (project-based rental assistance or project-based vouchers),²³¹ but this process can often be tumultuous and disruptive of renters' lives. In order to ensure that all current public housing renters have the right to remain in their homes after RAD conversions, significant protections are built into the RAD program (i.e. rents cannot exceed 30% of the renter's income, renters have the right to remain at the property after the RAD conversion, and rent increases must be phased in over 3 or 5 years).²³²

Second, the structure of other federally supported affordable housing, privately owned by for-profit and nonprofit owners, creates certain long-term affordability risks.²³³ In fact, nearly 1-in-10 publicly supported affordable homes that are owned and managed by for-profit and non-profit owners are at risk of losing their affordability in the next 5 years.²³⁴ These include homes created with federally subsidized mortgages and project-based rental assistance contracts provided by HUD and USDA Rural Development (RD). These also include newer properties that received allocations under the federally funded but state-administered Low Income Housing Tax Credit (LIHTC) program. These developments are threatened by a variety of factors, including:

Prepayment of Government-Subsidized Mortgages

In the 1960s, the federal government began providing federally guaranteed loans to private owners through a mortgage and regulatory agreement with terms and conditions for specified lengths of time (i.e. 40 years).²³⁵ A mortgage prepayment occurs when an owner fully repays the loan before the mortgage's originally scheduled end date.²³⁶ A mortgage prepayment can create significant challenges for renters because the prepayment terminates the restrictions contained in the regulatory agreement. This means that the property will lose its affordability restrictions and the owner can increase tenants' rent to the market rate, which most low-income families and seniors cannot afford.

To protect residents, HUD is authorized to provide Enhanced Vouchers to renters who wish to remain in their home.²³⁷ The owner is also subject to certain federal notice requirements.²³⁸ Occasionally, there may be other

228 Picture of Subsidized Households, U.S. DEPT. OF HOUS. & URBAN DEV., <https://www.huduser.gov/portal/datasets/assths.html>.

229 Abt Associates, Inc., *Capital Needs in the Public Housing Program: Revised Final Report*, Nov. 24, 2010, available at https://www.hud.gov/sites/documents/PH_CAPITAL_NEEDS.PDF.

230 Center on Budget and Policy Priorities, *Policy Basics: Public Housing*, Nov. 15, 2017, <https://www.cbpp.org/research/policy-basics-public-housing>.

231 *Consolidated and Further Continuing Appropriations Act of 2012*, Pub. L. 112-55 (Nov. 18, 2011), as amended.

232 *Consolidated and Further Continuing Appropriations Act of 2012*, Pub. L. 112-55 (Nov. 18, 2011), as amended; *Rental Assistance Demonstration – Final Implementation*, HUD Notice PIH 2012-32 (REV-3), available at http://radresource.net/sources/public/rad_notice_rev3_final.docx; *Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions*, HUD Notice 2016-17, available at http://radresource.net/sources/public/RAD%20Relocation%20Notice_11.10.16.pdf. For more information about RAD tenants' rights, see National Housing Law Project, *Don't Get RAD-dled: 30 Minute Trainings for Tenant Advocates on What You Need to Know about the Rental Assistance Demonstration*, <https://www.nhlp.org/webinars/dont-get-rad-dled-30-minute-trainings-tenant-advocates-need-know-rental-assistance-demonstration-rad/>.

233 See, e.g., Alexander von Hoffman, *To Preserve Affordable Housing In The United States: A Policy History*, April 7, 2016, available at <http://www.jchs.harvard.edu/research/publications/preserve-affordable-housing-united-states-policy-history>; National Housing Trust, *What is Preservation?*, <http://www.nationalhousingtrust.org/what-preservation/>.

234 Public and Affordable Housing Research Corporation & National Low Income Housing Coalition, *2017 Preservation Profiles*, National Housing Preservation Database, <http://preservationdatabase.org/reports/2017-preservation-profiles/>.

235 See, e.g., 42 U.S.C. § 1437f; 12 U.S.C. § 1715z-1; 12 U.S.C. § 1715l(d)(5); 42 U.S.C. § 1485. See also Alexander von Hoffman, *To Preserve Affordable Housing In The United States: A Policy History*, April 7, 2016, available at <http://www.jchs.harvard.edu/research/publications/preserve-affordable-housing-united-states-policy-history>.

236 See, e.g., *Multifamily Asset Management and Project Servicing*, HUD Handbook 4350.1, U.S. DEPT. OF HOUS. & URBAN DEV., available at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.1.

237 42 U.S.C. § 1437f(t).

238 Pub. L. No. 105-276 (Oct. 21, 1998).

restrictions from additional federal,²³⁹ state, or local assistance provided to renters at the property.

Mortgage Maturity

When a government-subsidized mortgage reaches its originally scheduled end date, the mortgage “matures.” Most HUD and RD mortgages are for 40 or 50 years, although some are for 30 years.²⁴⁰ When a loan is fully repaid according to its original amortization schedule, the mortgage and accompanying regulatory agreement end. This means that the property loses its affordability restrictions and the owner can raise renters’ rents to the market rate. If there are no other contractual restrictions or applicable legislation, the owner is free to convert the property to market-rate use.

HUD is authorized to provide assistance, through Housing Choice Vouchers or Enhanced Vouchers, to renters residing in these properties in low-vacancy areas who would otherwise pay more than 30% of their income for rent.²⁴¹ Unlike mortgage prepayments, federal law does not guarantee any prior written notice when the affordability restrictions expire. Some renters may have additional protections under state/local notice or rent control laws.

HUD Project-Based Section 8 Contract “Opt-Outs”

In addition to federally insured mortgages, HUD also provides rental assistance through “project-based Section 8” contracts with private owners. Each time the term of the contract ends (usually 15 or 20 years), the owner can choose whether to renew or to “opt-out” of the contract. An opt-out will cause renters to lose their current rental assistance.

If the owner refuses to renew the contract, federal law requires an owner to give a one-year written notice to current renters and HUD of its intention to opt-out of the contract.²⁴² Owners who fail to

give renters proper notice may either renew the contract for up to one year, or permit renters to remain while paying the same amount of rent until one year after proper notice is served.²⁴³ Where this rental assistance is not renewed, most renters can receive Enhanced Vouchers to enable them to remain in their homes.²⁴⁴

HUD Project-Based Section 8 Contract Terminations or Foreclosure

If a property is in poor physical condition, the owner has seriously violated the project-based Section 8 contract, and/or the owner defaults on its mortgage, HUD may decide to terminate the contract or foreclose the property. These actions can result in the loss of the property, a new landlord, and/or higher rents for low-income renters.

Congress requires HUD to maintain any project-based Section 8 contract and minimize renter displacement, as long as the property is not physically obsolete.²⁴⁵ If the property is physically obsolete, HUD can transfer the project-based Section 8 contract and affordability restrictions to another property.²⁴⁶ HUD must notify and consult tenants during this process.²⁴⁷

Policy Proposals:

While advocates should be sure that the above rights and responsibilities are enforced, the following state and local policies can also support preservation of existing affordable housing:

- Tenant Opportunity to Purchase Act. State and local governments can enact preservation purchase laws that

239 12 U.S.C. § 1715z-15.

240 See, e.g., 42 U.S.C. § 1437f; 12 U.S.C. § 1701q; 12 U.S.C. § 1701; 42 U.S.C. § 1485. See also Alexander von Hoffman, *To Preserve Affordable Housing In The United States: A Policy History*, April 7, 2016, available at <http://www.jchs.harvard.edu/research/publications/preserve-affordable-housing-united-states-policy-history>.

241 *Funding Availability for Set-Aside Tenant-Protection Vouchers – Fiscal Year 2017 Funding*, HUD Notice PIH 2018-02, U.S. DEPT. OF HOUS. & URBAN DEV., Feb. 8, 2018, available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/18-01hsgn.pdf>.

242 42 U.S.C. § 1437f(c)(8)(A). See also *HUD Section 8 Renewal Policy Guidebook*, U.S. DEPT. OF HOUS. & URBAN DEV., July 28, 2017, available at https://www.hud.gov/sites/documents/508FIN_CONSOL_GUIDE6_8_17.PDF.

243 42 U.S.C. § 1437f(c)(8)(B).

244 42 U.S.C. § 1437f(t). See also *Section 8: Enhanced Vouchers*, U.S. DEPT. OF HOUS. & URBAN DEV., https://www.hud.gov/sites/documents/ENHANCED_VOUCERS_ENG.PDF.

245 *Consolidated Appropriations Act of 2017*, Pub. L. No. 115-31, §§ 215 & 223 (May 5, 2017).

246 42 U.S.C. § 1437f(bb); *Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937*, HUD Notice 2015-03, available at <https://www.hud.gov/sites/documents/15-03HSGN.PDF>; 24 C.F.R. § 401.480; *Frequently Asked Questions on Transferring Budget Authority under Section 8(bb)(1)*, Feb. 18, 2016, available at http://nlihc.org/sites/default/files/8bb_FAQ.pdf.

247 42 U.S.C. § 1437f(bb); *Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937*, HUD Notice 2015-03, available at <https://www.hud.gov/sites/documents/15-03HSGN.PDF>; 24 C.F.R. § 401.480; *Frequently Asked Questions on Transferring Budget Authority under Section 8(bb)(1)*, Feb. 18, 2016, available at http://nlihc.org/sites/default/files/8bb_FAQ.pdf.

provide rights of first refusal or rights to purchase to tenants or tenant-supported organizations when an owner seeks to convert property to market-rate use.²⁴⁸ These laws support preservation by favoring purchasers who commit to preserving the property as affordable. State and local purchase opportunity laws can vary, depending on what kinds of affordable properties are covered, triggering events, and which entities can take advantage of the purchase opportunity. Existing state and local laws usually address at least prepayment of mortgages on HUD- or RD-subsidized properties, as well as properties with expiring project-based Section 8 contracts or contract terminations.²⁴⁹ In addition to covering these HUD and RD properties, other state and local laws also cover properties with expiring rent restrictions under the LIHTC program.²⁵⁰

- **Preservation Compacts.** Another important part of saving existing affordable housing is collaboration and data-sharing. In places like Chicago, Los Angeles, Portland, Colorado, and Washington, D.C., there are multi-sector working groups (often called “preservation compacts”) who meet regularly with HUD officials, state and local government representatives, and local developers and nonprofit organizations.²⁵¹ These groups collaborate to identify at-risk affordable housing properties,

brainstorm and coordinate preservation strategies, and engage in other related policy advocacy.

- **Improved Local Data.** In addition to the National Housing Preservation Database,²⁵² several states and localities have developed searchable databases of affordable housing properties in their communities and when their affordability restrictions will expire.²⁵³ These databases support the work of preservation working groups and others to target resources and preservation efforts at certain at-risk properties.
- **Improved State and Local Notice Laws.** Because the loss of affordable housing will displace low-income renters, adequate written notice to renters may help prevent homelessness, even when their homes cannot be preserved. Some states and localities have adopted additional notice requirements beyond what federal law provides.²⁵⁴ These laws can also require notice to entities like public housing authorities and local governments who may have the desire and means to purchase and preserve the property.

248 See, e.g., MD. ANN. CODE, HOUS. & COMM. DEV. § 7-102; R.I. GEN. LAWS § 34-45-4(5) and 34-45-7; D.C. STAT. § 42-2851.03 and 42.2851.02(6); DENVER MUN. CODE § 27-46 (definitions of “federal” and “local” preservation projects); PORTLAND CITY CODE § 30.01.030 (definitions of “federal” and “local” preservation projects); SAN FRANCISCO ADMIN. CODE § 60.4(a) and (y). See also *Notice and Purchase Opportunity Laws*, PREZCAT, http://www.prezcat.org/catalog-search?keys=&combine=&field_catalog_tags_tid%5B%5D=88&created=&changed=&between_date_filter%5Bvalue%5D%5Bdate%5D=&field_start_date_value%5Bvalue%5D%5Bdate%5D=&field_end_date_value%5Bvalue%5D%5Bdate%5D=&items_per_page=15.

249 See, e.g., MD. ANN. CODE, HOUS. & COMM. DEV. § 7-102; ME. REV. STAT., Title 30-A, §§ 4972 and 4973; R.I. GEN. LAWS § 34-45-4(5) and 34-45-7; D.C. STAT. § 42-2851.03 and 42.2851.02(6); DENVER MUN. CODE § 27-46 (definitions of “federal” and “local” preservation projects); PORTLAND CITY CODE § 30.01.030 (definitions of “federal” and “local” preservation projects); SAN FRANCISCO ADMIN. CODE § 60.4(a) and (y). See also *Notice and Purchase Opportunity Laws*, PREZCAT, http://www.prezcat.org/catalog-search?keys=&combine=&field_catalog_tags_tid%5B%5D=88&created=&changed=&between_date_filter%5Bvalue%5D%5Bdate%5D=&field_start_date_value%5Bvalue%5D%5Bdate%5D=&field_end_date_value%5Bvalue%5D%5Bdate%5D=&items_per_page=15.

250 See, e.g., 310 ILL. COMP. STAT. § 60/4; CAL. GOVT. CODE § 65863.11(a) (incorporating definition of “assisted housing development” in § 65863.10(a)(3)); NYC ADMIN. CODE § 26-801. Compare TEX. GOVT. CODE ANN. §§ 2306.185(f) & 2306.853 (notice requirements for prepayments and opt-outs, but not LIHTC properties with expiring use restrictions); TEX. GOVT. CODE ANN. §§ 2306.6702(a)(5) & 2306.803 (developments with expiring LIHTC restrictions considered “at risk” for purposes of allocating future credits and other resources).

251 See *Models for Affordable Housing Preservation*, U.S. DEPT. OF HOUS. & URBAN DEV., <https://www.huduser.gov/portal/periodicals/em/summer13/highlight3.html>; *Policy and Program Coordination*, National Housing Trust, <http://www.nationalhousingtrust.org/policy-and-program-coordination>.

252 Public and Affordable Housing Research Corporation & National Low Income Housing Coalition, National Housing Preservation Database, <http://preservationdatabase.org/reports/2017-preservation-profiles/>.

253 DC Preservation Catalog Online, <http://www.neighborhoodinfodc.org/dcpreservationcatalog/>; Affordable Housing Database, Ohio Preservation Compact, <http://www.ohiopreservationcompact.org/housingdatabase.aspx>; Preservation Database, Preserve Oregon Housing, <http://www.preserveoregonhousing.org/database.php>.

254 See, e.g., COLO. REV. STAT. § 24-32-718 (state database for notices of termination); CONN. GEN. STAT. §8-68c (one-year notice for prepayments and terminations to tenants and state and local governments); WASH. REV. CODE § 59.28.040 (one-year notice for prepayments and expirations to tenants, PHA and state and local governments); MINN. STAT. § 504B.255 (one-year notice to tenants for prepayments or Section 8 terminations); MINN. STAT. § 471.9997 (requiring tenant impact statement to local government at least twelve months prior to intended prepayment or termination).

HUMAN RIGHTS & RENTERS' RIGHTS

International human rights provide a helpful framework for understanding where the United States could, and perhaps should, go to protect the rights of renters. In 1948, the U.S. was an international leader in promoting the human right to housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that “everyone has the right to an adequate standard of living... including the right to housing.”²⁵⁵ The following year, the 1949 Federal Housing Act stated a *goal* of “a decent home and suitable living arrangement for every American family.”²⁵⁶

The United States signed the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1979, recognizing the human right to housing, but the Senate has not yet ratified that treaty.²⁵⁷ Under international law, countries that sign a treaty are obligated to refrain from actions that would defeat the “object and purpose” of that treaty, even before ratification.²⁵⁸

The U.N. Committee on Economic, Social, and Cultural Rights, made up of leading global experts mandated to implement the ICESCR, defines the human right to housing to include seven elements.²⁵⁹

- (1) **Security of Tenure:** Everyone needs legal protection against forced eviction and harassment—including renters, homeowners, and persons in emergency circumstances (experiencing homelessness)—as well as for access to legal counsel.²⁶⁰
- (2) **Availability of Services, Materials, and Infrastructure:** adequate housing includes access to sanitation and

emergency services, plumbing and electricity, etc.²⁶¹

- (3) **Affordability:** Housing costs should not force people to choose between paying rent and paying for other basic needs (food, health, etc.).²⁶²
- (4) **Habitability:** Housing must provide adequate space to protect against internal dangers (overcrowding) and external ones (weather, insects, hazards like lead, etc.).²⁶³
- (5) **Accessibility:** Accessibility of housing means physically accessible (for those facing disabilities, for example) and practically accessible (no discriminatory barriers for marginalized groups).²⁶⁴
- (6) **Location:** Housing is more than four walls and a roof, but must exist in an environment with access to jobs, medical care, schools, etc., as well as not be threatened by pollution.²⁶⁵
- (7) **Cultural Adequacy:** Housing and land use must respect the cultural traditions of inhabitants.²⁶⁶

255 Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt. 1, art. 25(1), U.N. Doc. A/810 (1948).

256 The Housing Act of 1949 (Title V of P.L. 81-171).

257 See Int'l Covenant on Econ., Soc. & Cultural Rights, opened for signature Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976); Ratification/Signature Status of the International Covenant on Economic, Social and Cultural Rights, available at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_3.html. Under the U.S. Constitution, the President signs treaties, and the Senate must ratify them by a 2/3 vote. See U.S. CONST. Art. II, Sec. 2.

258 Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

259 See General Comment 4, The Right to Adequate Housing (6th sess., 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003) (hereinafter “General Comment 4”).

260 *Id.* at ¶ 8(a). (“All persons should possess legal protection against forced eviction, harassment and other threats. States are therefore required to take immediate measures to confer legal security of tenure for those lacking such protection, following genuine consultation with affected persons and groups.”).

261 *Id.* at ¶ 8(b). (“All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”).

262 *Id.* at ¶ 8(c). (“All costs associated with housing should be at a level sufficient to ensure that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants have to be protected from unreasonable rent levels”).

263 *Id.* at ¶ 8(d). (Adequate housing implies that inhabitants are provided with adequate space, and protected from the elements and other threats to health such as structural hazards and disease. Physical safety of the occupants must be guaranteed.)

264 *Id.* at ¶ 8(e) (“Adequate housing must be accessible to those entitled to it. Disadvantaged groups such as the elderly, children, physically disabled persons, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be assured of some degree of priority consideration in the housing sphere.”)

265 *Id.* at ¶ 8(f). (“Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”)

266 *Id.* at ¶ 8(g). (“The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”)

Human rights standards require that countries take progressive steps to respect, protect, and fulfill the right, to the maximum of the country's available resources, in a non-discriminatory manner.²⁶⁷ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all, free of charge. But it does require much more than the U.S. is doing now, and more than a mere provision of emergency shelter—it requires affirmative steps to be taken to ensure fully adequate housing, based on all the criteria outlined above.

Human rights law does not compel specific renters' rights ordinances to be passed in any given community, but it does provide a rights-based framework to understand which ordinances or guarantees might be most helpful. This section will describe some of the standards to which governments are responsible for, and how the renters' protections described elsewhere in this report could be used to meet those obligations.

Human rights law gives governments the affirmative responsibility to ensure a right to housing.

Under international law, governments must “not simply to ensure that they do not explicitly violate rights, but also to ensure that the rules under which they operate and their actions are consistent with the realization of the right to adequate housing.”²⁶⁸

The right to adequate housing is further reinforced and recognized by other relevant human rights instruments. These include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁶⁹ ratified by the U.S.; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁷⁰ the Convention on the Rights of

the Child,²⁷¹ and the Convention on the Rights of Persons with Disabilities,²⁷² all signed, but not yet ratified by the U.S.; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,²⁷³ not signed by the U.S. and other regional human rights instruments to which the U.S. is not a party, such as the 1996 Revised European Social Charter,²⁷⁴ and the European Convention on Human Rights.²⁷⁵

In 2015, the U.S. also signed on to the U.N. Sustainable Development Goals, including goal 11 on Sustainable Cities and Communities pledging to make cities inclusive, resilient, safe and sustainable.²⁷⁶ And in October 2016, the U.S. signed on to the New Urban Agenda, the outcome report of the U.N. Habitat III conference.²⁷⁷ The signatories “commit to promote national,

in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

- 271 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. Article 27(3): “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”
- 272 Int'l Convention on the Protection and Promotion of the Rights & Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008. Article 28: “States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”
- 273 Int'l Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003. Article 43(1)(d): Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: ... Access to housing, including social housing schemes, and protection against exploitation in respect of rents.”
- 274 Revised European Social Charter, Article 31: With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources.
- 275 European Convention on Human Rights (ECHR), Article 8: “Everyone has the right to respect for ... his home ... There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.
- 276 G.A. Res. 70/1, *Transforming Our World: 2030 Agenda for Sustainable Development* (Sept. 25, 2015), available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E; Sustainable Development Knowledge Platform, Sustainable Development Goal 11, available at <https://sustainabledevelopment.un.org/sdg11>.
- 277 *UN conference agrees new urban development agenda creating sustainable, equitable cities for all*, UN Sustainable Development

267 *Id.*

268 U.N. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, U.N. Doc. A/HRC/34/51 (2017).

269 Int'l Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969. Article 5(e)(iii): “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (iii) The right to housing”. U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994).

270 Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981. Art. 14(2): “States Parties shall take all appropriate measures to eliminate discrimination against women

sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders, in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.²⁷⁸

In short, while these international treaties and declarations have varying degrees of legal effect in U.S. courts, these documents at a minimum demonstrate our professed values as Americans. We can use these commitments to guide domestic efforts to pass stronger housing protections in our communities.

Human rights law requires that housing costs be affordable

The Committee on Economic, Social, and Cultural Rights defines affordability in housing as follows:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.²⁷⁹

Yet in the U.S., as discussed in depth earlier in this report, housing has become increasingly unaffordable as wages have failed to keep pace with the rents. The affordability prong of the right to adequate housing puts the ultimate responsibility for ensuring affordability on government, at all levels. While federal housing subsidies have been dramatically cut back (and should be reinstated), state and local governments have also failed in their duties to address rental costs in their jurisdictions. Rent regulation is explicitly set forth in the above prong as a means of meeting that responsibility.

Human rights law requires security of tenure, including procedural protections, and the right to counsel to make effective use of those protections, before an eviction

Legal security of tenure refers to a tenant's guarantee of legal protection against forced eviction, harassment, and other threats.²⁸⁰ According to the Committee on Economic, Social, and Cultural Rights:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment, and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.²⁸¹

Again, as described throughout this report, the U.S. is currently failing to guarantee the legal security of tenure for most renters. In a few cities and states, landlords are limited to evictions for just cause, but in many, renters can be evicted for no cause whatsoever,²⁸² including the foreclosure of their landlord due to no fault of their own.²⁸³ Even where legal protections exist, often they can be circumvented by informal eviction measures or landlords bank on the lack of legal knowledge and legal

Blog (Oct. 20, 2016), <http://www.un.org/sustainabledevelopment/blog/2016/10/un-conference-agrees-new-urban-development-agenda-creating-sustainable-equitable-cities-for-all/>; Outcome document of the United Nations Conference on Human Settlements (Habitat III), Quito Declaration on Sustainable Cities and Human Settlements for All, Quito, October 17-20, 2016, ¶ 31, 33, 108 (2016) (hereinafter "New Urban Agenda"), <https://www2.habitat3.org/bitcache/97ced11dcecf85d41f74043195e5472836f6291?vid=588897&disposition=inline&op=view>.

²⁷⁸ *Id.* at ¶ 31.

²⁷⁹ See General Comment 4, The Right to Adequate Housing (6th sess., 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

²⁸⁰ *See id.*

²⁸¹ *Id.*

²⁸² See Community Alliance of Tenants, *Campaigns: What is Just Cause Eviction?* <http://oregoncat.org/what-we-do/campaigns/>. ("Only a few states, such as New Jersey and New Hampshire, have Just Cause eviction statutes. Many cities also have Just Cause eviction statutes such as in California: San Francisco, Oakland, Berkeley, Glendale, Hayward, Los Angeles, Santa Monica, West Hollywood, Beverly Hills, San Diego, Palm Springs... Other Cities: Seattle and Chicago. Most rent controlled cities also require Just Cause evictions..")

²⁸³ See *Eviction Without Notice*, *supra* note 101, at 6; *Renters in Foreclosure: A Fresh Look at an Ongoing Problem*, *supra* note 104.

assistance to tenants to make these protections moot.²⁸⁴

Under the human rights framework, “forced evictions” are expressly forbidden. Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”²⁸⁵ Thus, evictions are not entirely forbidden, but they are only allowable where adequate procedural protections are in place, and adequate access to legal counsel to ensure them.

In this case, the right to access to counsel is a necessary requirement of human rights law. The Committee on Economic, Social, and Cultural Rights has noted that ensuring effective judicial remedies (including by providing access to counsel) for the right to adequate housing is an immediate obligation of States, since there cannot be a right without a remedy to protect it.²⁸⁶ This justice gap produced by lack of access to counsel is particularly stark when compared to other countries. The World Justice Project’s Rule of Law Index, which measures experience of the rule of law through 100,000 individual and 2,400 expert surveys in countries around the globe, routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system. The 2016 Rule of Law Index placed the United States 94th overall out of 113 countries on accessibility and affordability of civil justice, dropping 30 places since the previous year, and below every

country in Europe, and many in the rest of the world.²⁸⁷

In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. The following procedural protections should be applied in relation to forced evictions:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in a reasonable time to all those affected;
- (d) especially where groups of people are involved, that government officials or their representatives be present during an eviction;
- (e) that all persons carrying out the eviction be properly identified;
- (f) that evictions do not take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies;
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.²⁸⁸

The African Commission of Human and Peoples’ Rights, which has a mandate to protect and promote human and peoples’ rights and to interpret the African Charter on Human and Peoples’ Rights, has interpreted the Charter to implicitly include the right to housing. In the case *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, where it decided on the violation of the right to housing in connection with exploitation of oil fields and the consequent displacement of the Ogoni people, the Commission has underlined that “forced evictions are extremely traumatic” and stated that they increase the levels of homelessness.²⁸⁹

284 See DESMOND, *supra*, note 61, at 4. (“These days, housing courts swell, forcing commissioners to settle cases in hallways or makeshift offices crammed with old desks and broken file cabinets—an most tenants don’t even show up....But there are other ways, cheaper and quicker ways, for landlords to remove a family than through court order. Some landlords pay tenants a couple hundred dollars to leave by the end of the week. Some take off the front door. Nearly half of all forced moves experienced by renting families in Milwaukee are “informal evictions” that take place in the shadow of the law....”)

285 *General Comment No. 7: The right to adequate housing (Art.11.1)*, *supra* note #.

286 See U.N. Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 9, Domestic Application of the Covenant*, ¶ 2-3, E/C.12/1998/24 (1998); see also, Human Rights Comm., *General Comment 13*, art. 14 (21st sess., 1984) ¶ 8, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1, at 14 (1994); *General Recommendation No. 31: Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, U.N. Comm. on the Elimination of Racial Discrimination, 60th Sess., Supp. No. 18, at 103 ¶ C(17)(b), U.N. Doc. A/60/18 (2005). *General Recommendation No. 29: Discrimination Based on Descent*, U.N. Comm. on the Elimination of Racial Discrimination, 61st Sess., at 111 ¶ 5(u), U.N. Doc. A/57/18 (2002), reprinted in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 223 (2003).

287 See World Justice Project, *WJP Rule of Law Index (2016)*, <http://data.worldjusticeproject.org/#index/USA>; see also, Nat’l Coal. for a Civil Right to Counsel, *U.S. rank on access to civil justice in Rule of Law Index drops to 94th out of 113 countries*, (Oct. 27, 2016), http://civilrighttocounsel.org/major_developments/217.

288 U.N. Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22.

289 155/96, *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, 15th Annual Activity Report of the ACHPR (2002); 10 IHRR 282 (2003) (SERAC), para 63.

Human Rights Law Limits Evictions Leading to Homelessness

International law limits evictions that lead to homelessness, stating that evictions “should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”²⁹⁰

Human rights systems recognize that evictions leading to homelessness can have a devastating impact on the lives of children and families.²⁹¹ This can violate not only one’s civil right to respect for one’s home and right to adequate housing,²⁹² but also undermine a number of other fundamental human rights, including the rights to life, health, education, security of person, privacy, protection of the home and family, and the freedom from cruel and inhuman treatment.²⁹³

There is no doubt that evictions are the proximate cause of hundreds of thousands of cases of homelessness each year. Renters’ rights such as adequate notice, just cause, and prohibition on “nuisance” evictions, particularly those due to domestic violence, and access to counsel to enforce them, are steps communities can take to prevent evictions from leading to homelessness.

In deciding on the violation of Article 8 of the European Convention on Human Rights, the European Court of Human Rights has taken into consideration the risk of homelessness following an eviction as one of the factor to balance in determining whether the eviction was proportionate. In *Tuleshov and Others v. Russia*, the Court discusses the threat of homelessness in the analysis of the proportionality of the eviction, concluding that the threat of expulsion and the uncertainty about receiving substitute housing made the forced eviction disproportionate to the aim it pursued.²⁹⁴ In *Yordanova and Others v. Bulgaria*, the court considered that the removal was not proportionate (and therefore violated Article 8) because of the lack of alternative housing, among other factors.²⁹⁵

290 *General Comment No. 7, supra* note 261.

291 U.N. Habitat, *Global Report on Human Settlements - Planning Sustainable Cities*, at 262 (2007).

292 Adélaïde Remiche et al. v. Bulgaria: The Influence of the Social Right to Adequate Housing on the Interpretation of the Civil Right to Respect for One’s Home, *Hum. Rts. L. Rev.* 12(4): 787-800 (2012).

293 B. Scholz, ‘Crushed homes, crushed lives’, *Habitat Debate* 8(4): 14–1 (2002)5; U.N. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, U.N. Doc. A/HRC/31/54 (2015).

294 *Tuleshov and Others v. Russia*, Application No 32718/02, Judgment, 24 May 2007, para 53.

295 *Yordanova and Others v. Bulgaria*, Application No 25446/06, Merits and

Human rights law prohibits racial and other forms of discrimination in housing

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), recognizes the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law in the enjoyment of the right to housing. In General Comment 14, the Committee on the Elimination of Racial Discrimination (CERD) clarified that to determine “whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”²⁹⁶

The CERD, in its 2014 review of the U.S., urged the government “to intensify its efforts to eliminate discrimination in access to housing . . . based on race, color, ethnicity, or national origin” by ensuring “the availability of affordable and adequate housing for all,” implementing federal laws that help address and combat discrimination, and “[u]ndertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors.”²⁹⁷

As noted elsewhere in this report, homelessness disproportionately affects people of color. Similarly, people of color constitute a disproportionate percentage of individuals who are rent-burdened, living in substandard housing, and have eviction or criminal records. Prohibitions on nuisance ordinances, on discrimination based on eviction or criminal records, and on discrimination based on housing status or source of income are all policies that would help to remedy these historical and structural problems.

Human rights law can inform federal, state, and local tenant advocacy efforts

These standards and human rights instruments provide a strong alternative framework to U.S. federal, state, and municipal law, and practitioners can use human rights theories and standards to help improve security of tenure and other tenant protections under domestic law. Governments must take all appropriate measures to ensure adequate alternative housing and consider all feasible alternatives to end and prevent forced evictions and homelessness, including considering the threat of homelessness

Just Satisfaction, 24 April 2012, para 126.

296 Comm. on the Elimination of Racial Discrimination, General Recommendation 14, Definition of Racial Discrimination, para. 114, U.N. Doc A/48/18 (1994), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 203, U.N. Doc. HRI\GEN\1\Rev.6.

297 U.N. Int’l Convention on the Elimination of All Forms of Racial Discrimination (Sept. 2014), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspzOI9YwTXeABruAM8pBAK1Q%2fDZ6XAqlyobgts1zwIHPkQhsSqMrVxuS6brQbHYpDYGXBUCCX1bgRtTg3HaweAr5PBs9soaesD5KdByekI9OS>.

as a major factor in its decision-making processes, laws, policies, and practices.²⁹⁸

Federal and state courts, as well as executive agencies, have looked to international law to inform their interpretation of their own constitutions and statutes. At the federal level, Justice Kennedy dedicated a full quarter of the decision in *Roper v. Simmons* to discussion of human rights law and how it confirms our own evolving standards of decency under the Eighth Amendment.²⁹⁹ The Department of Justice signaled their approval of a proposed Seattle ordinance regulating evictions from homeless encampments by noting it was consistent with both our constitutional and human rights obligations.³⁰⁰ HUD has recognized the relevance of human rights law in interpreting its obligations both with respect to the criminalization of homelessness and in interpreting the Violence Against Women Act.³⁰¹ State courts have cited international human rights law in expansive interpretations of their own constitutional obligations as well.³⁰²

Human rights advocacy is an important complement to traditional forms of civil rights organizing and advocacy that can help to improve the conditions of the most marginalized in our society.³⁰³ The Law Center issued a report card in late 2016 on the progress of the federal government in meeting the right to housing, holding our government accountable to the seven elements of adequate housing described above.³⁰⁴ State and local organizations can adopt similar formats to hold their own governments accountable and inject a rights-based framework into the local policy conversation.

298 U.N. Habitat, *Global Report on Human Settlements - Planning Sustainable Cities* 143 (2009); see also 1998: U.N. Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, Feb. 11, 1998, principle 8.2: "At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to ... Basic shelter and housing"; Office of the High Commissioner for Human Rights, *The Right to Adequate Housing* (Art.11.1): Forced Evictions, CESCR General Comment No. 7, May 20, 1997, para 14; Special Rapporteur on Right of Housing, *Basic Principles and Guidelines on Development-Based Evictions and Displacement* (2007), para 43; see also Office of the High Commissioner for Human Rights, *The Right to Adequate Housing* (Art.11.1): Forced Evictions, CESCR General Comment No. 7, May 20, 1997, para 16.

299 *Roper v. Simmons*, 125 S.Ct. 1183 (2005).

300 Letter from Lisa Foster, Director, Office for Access to Justice, U.S. Dept. of Justice, to Seattle City Councilors, (Oct.13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

301 U.S. Dept. of Hous. & Urban Dev., *Alternatives to Criminalizing Homelessness*, (2015), <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness>; Preamble, Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs, 81 Fed. Reg. 80724, 80726 (Nov. 16, 2016) ("This final rule reflects the Federal government's recognition that all people have a right to live their lives safely. On September 9, 2014, in Presidential Proclamation 9164 – Twentieth Anniversary of the Violence Against Women Act, and on September 30, 2014, in Presidential Proclamation 9181—National Domestic Violence Awareness Month, 2014, President Obama discussed the "basic human right to be free from violence and abuse." The implementation of the policies laid out in this rule will help to enforce this basic human right").

302 See Opportunity Agenda and Program on Human Rights & Global Economic at Northeastern University School of Law, *Human Rights in State Courts* (2014), http://opportunityagenda.org/human_rights_state_courts_2014.

303 See Nat'l Law Ctr. on Homelessness & Poverty, *Human Rights to Human Reality: A 10-Step Guide to Strategic Human Rights Advocacy* (2014), available at https://www.nlchp.org/documents/Human_Rights_to_Human_Reality.

304 See Nat'l Law Ctr. on Homelessness & Poverty, *Grading the U.S. Response to Homelessness: The 2016 Human Right to Housing Report Card* (2016), available at https://www.nlchp.org/documents/Right_to_Housing_Report_Card_2016.

CONCLUSION

As a lack of affordable rental housing fuels a nationwide homelessness crisis, communities working to end homelessness should adopt legal protections that make it easier for renters to find, and stay in, affordable and decent housing. Strong renters' rights can help prevent and end homelessness by promoting housing affordability, limiting housing displacement through eviction, and prohibiting discriminatory barriers to new housing access.

Strong renters' rights can also save communities millions of dollars in reduced use of high-cost systems, including emergency shelter, and also preserve the health and general welfare of millions of low-income individuals and families. Moreover, robust renter protections can help reduce the discriminatory impact of housing policies on communities of color.

Governments at the local, state, and federal levels should take concrete steps to prevent and end homelessness from a human rights-based framework by enacting laws and policies that protect low-income renters from housing loss and discrimination in housing access. It is critical for these entities to adopt policies that help tenants keep their housing, such as laws that limit evictions without just cause, laws that stabilize rents, laws that guarantee right to legal counsel in housing court, laws that protect tenants living in foreclosed properties, and laws that provide constructive alternatives to nuisance ordinances. Equally important is to enact laws and policies that remove barriers to rental housing, such as laws that prohibit discrimination against tenants based on their source of income, housing status, and criminal and eviction records. Advocates working on housing and homelessness issues should work collaboratively to broaden and strengthen support for strong renters' rights.



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