

October 27<sup>th</sup>, 2021

# Expanding Access to Legal Representation: Right to Counsel & Eviction Prevention







**Lauren Lowery**

*Program Director,*

*Housing & Community Development*

National League of Cities

[lowery@nlc.org](mailto:lowery@nlc.org)

## Welcome, Overview & Introductions

# Housekeeping

- **Duration: 2:00 p.m. – 3:15 pm**

- This webinar is being recorded and the slides will be shared.

- **Technical Details:**

- Submit questions for panelists through the Q&A box and indicate who the question is for, if appropriate.
- All attendees are muted to ensure sound quality.
- If you experience any technical issues, email [leonard@nlc.org](mailto:leonard@nlc.org).

To **demonstrate the potential** of tenant right to counsel as part of a municipal eviction prevention strategy, **explore funding and roll-out** possibilities, and **share lessons learned** from cities that have implemented such policies.



- **Remarks from the White House**  
**Gene Sperling**, White House ARP Coordinator
- **Overview of Right to Counsel: Rationale & Nationwide Status**  
**John Pollock**, National Coalition for a Civil Right to Counsel
- **Recent Enactment: Baltimore, MD**  
**Mayor Brandon M. Scott**
- **City Snapshot: Denver, CO**  
**Councilmember Candi CdeBaca**
- **Results from RTC: Cleveland, OH**  
**Hazel Remesch, Esq.**, Legal Aid Society of Cleveland
- **Panel Discussion**
- **Wrap-up**



**Gene Sperling**  
*White House ARP*  
*Coordinator*



**John Pollock**  
*Coordinator*  
National Coalition for  
a Civil Right to  
Counsel



**Mayor Brandon Scott**  
Baltimore, Maryland



**Councilmember**  
**Candi CdeBaca**  
Denver, Colorado



**Hazel Remesch, Esq.**  
*Supervising Attorney*  
Legal Aid Society of  
Cleveland





**Gene Sperling**

*White House ARP Coordinator & Senior  
Advisor to the President*

## Remarks from the White House



**John Pollock**

*Coordinator*

National Coalition for a Civil Right to  
Counsel

[jpollock@publicjustice.org](mailto:jpollock@publicjustice.org)

## Overview of Right to Counsel: Rationale & Nationwide Status





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# The Eviction Right to Counsel Movement: Growth, Successes, and Future

Oct 27, 2021

# Eviction RTC justifications

1. What's potentially at stake in evictions: all basic human needs (shelter, mental/physical health, employment, child custody, school access, physical belongings, etc.)
2. Massive imbalance of representation: 81% LL / 3% T
3. Race equity
4. Legal complexity, esp. during COVID-19
5. Studies demonstrating impact of counsel (outcomes, cost savings)
6. Weight of public opinion



# Race equity and RTC



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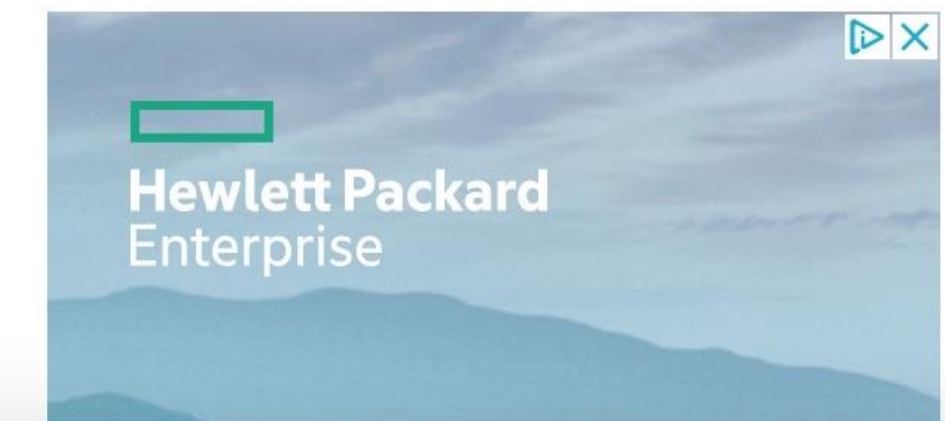
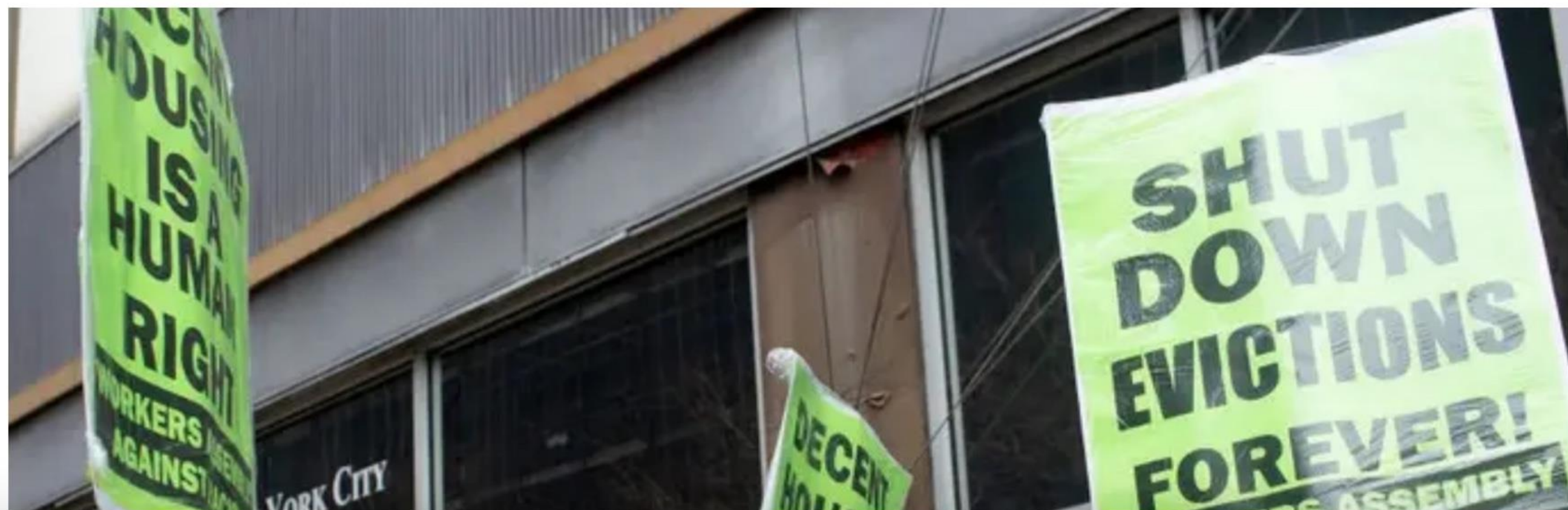
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## Women and tenants of color grapple with higher rates of eviction. Access to a lawyer can boost success rates in housing court by 70%.

Yoonji Han Jun 30, 2021, 8:30 AM

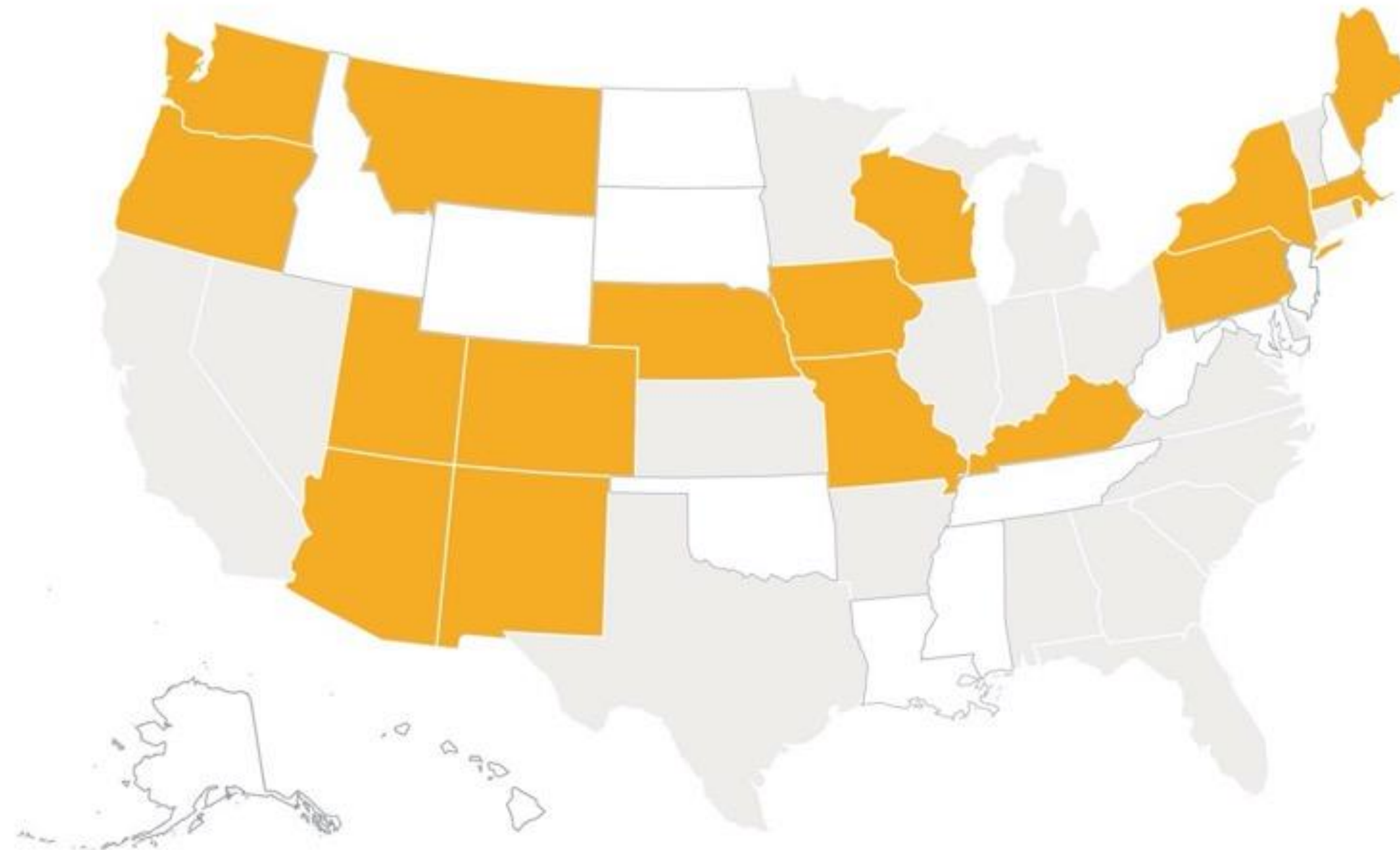




# Race and evictions

**BLACK FEMALE RENTERS WERE FILED AGAINST FOR EVICTION AT DOUBLE THE RATE OF WHITE RENTERS OR HIGHER IN 17 OF 36 STATES**

■ 2+ times rate of white filings  
■ < 2 times rate of white filings  
■ None/not enough data available



Data source: The Eviction Lab. Counties without data<sup>2</sup> were excluded from the analysis. States where all counties were excluded or where the sum of all counties' Black populations were less than 1%, are shown in white with a grey border. Five states: Delaware, Georgia, South Carolina, and Vermont filed white tenants for eviction at slightly higher rates than Black women. Ratios were rounded to the nearest tenth.

Source: ACLU report (<http://bit.ly/377R1nG>), based on Hepburn, Peter, Renee Louis, and Matthew Desmond. 2020. "Racial and Gender Disparities among Evicted Americans." *Sociological Science* 7: 649-662, <https://bit.ly/3uglfRr>.



# Race and evictions during COVID-19



Chart 2 of 10: Tenant Confidence Level in Ability to Pay Next Month's Rent by Ethnicity

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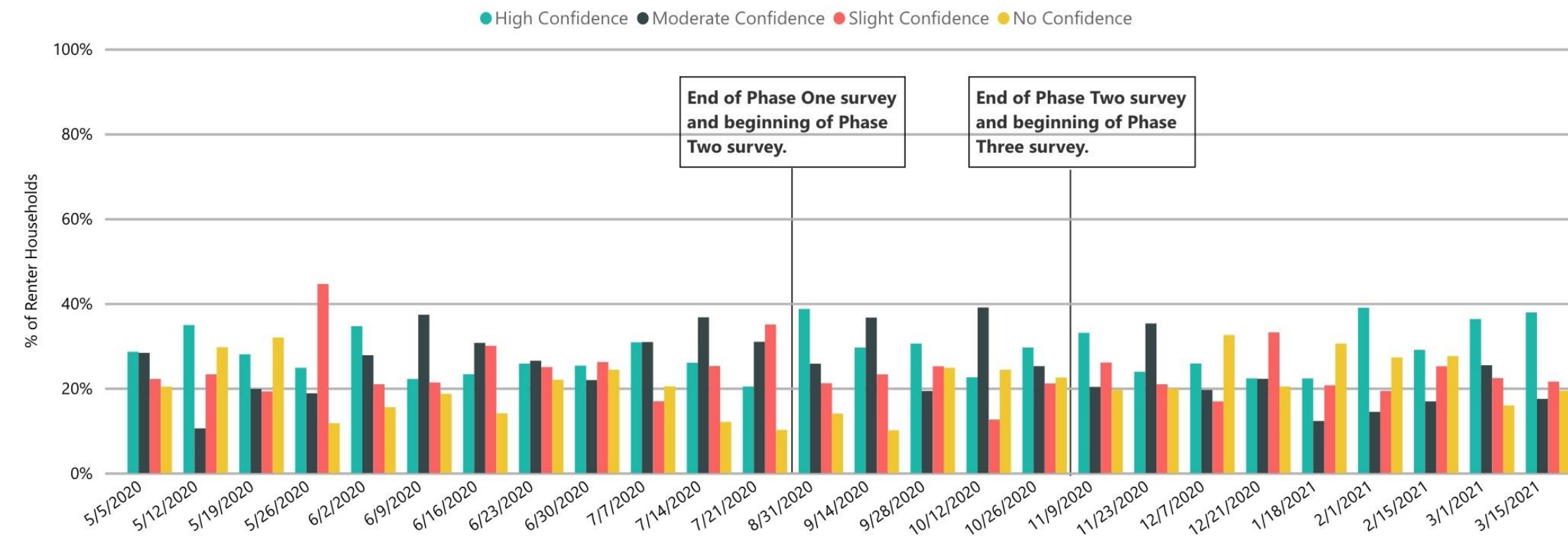


Chart 2 of 10: Tenant Confidence Level in Ability to Pay Next Month's Rent by Ethnicity

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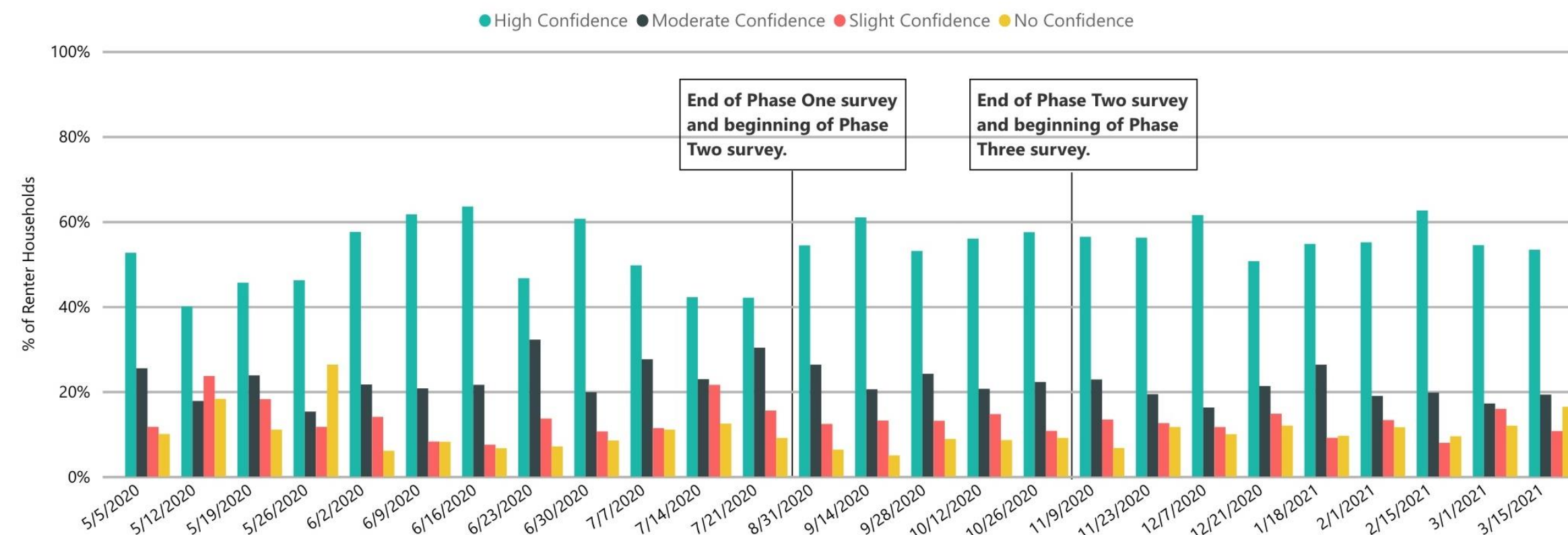
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Source: Stout interactive analysis of Census data, <https://bit.ly/evictionestimates>

# Legal issues warranting RTC

- Many defenses: warranty of habitability, procedural defects, discrimination/harassment, payments not credited, etc. (and COVID-19 adds additional defenses)
- Even where tenant must vacate, things to determine:
  - Time to vacate
  - Whether eviction will be formally entered
  - Rent arrears
- Complexity added by COVID-19: moratoria, other rental protections
- Problems with both in-person and remote hearings
- Rental assistance: getting and applying it

# Eviction rep outcomes data

- MA: Tenants w/full rep 2x likelier to stay in home than those w/limited scope assistance, and paid \$0 to LLs vs. \$600+
- D.C.: Tenants w/o counsel 2x likely to be found in breach of lease and 3x more likely to be subjected to writ of possession
- Hennepin County MN: Tenants w/counsel 2x as likely to stay in their homes, get 2x as long to move if necessary, 4x less likely to use homeless shelter
- Stout reports: 90+% of tenants avoid disruptive displacement



# Avoiding unnecessary costs: national eviction cost projection

The total cost of eviction for **The United States** is **\$315,528,616,180**. This includes the following costs:

- Cost of providing emergency shelter = **\$134,761,200,000**
- Cost of providing inpatient medical care = **\$74,604,131,700**
- Cost of providing emergency room care = **\$47,883,673,600**
- Cost of providing child welfare services = **\$4,781,784,960**
- Cost of juvenile delinquency = **\$53,497,825,920**

We calculated this based on the following data you entered:

# Evictions	<b>28,000,000</b> households			
Household size	<b>2.63</b> persons per household (HH)			
Shelter costs	% needing shelter <b>25%</b>	Cost of one stay <b>\$40</b>	# of days stayed per year <b>183</b>	
Inpatient Medical Costs	Usage rate <b>23%</b>	Cost of one visit <b>\$2,517</b>	# of visits per year <b>7</b>	
Emergency Room Costs	Usage rate <b>32%</b>	Cost of one visit <b>\$2,032</b>	# of visits per year <b>4</b>	
Child Welfare Costs	Total spent <b>\$29,886,155,998</b>	% locality pays <b>100%</b>	% caused by "inadequate housing" <b>16%</b>	
Child Delinquency Costs	% HH w/children <b>48%</b>	# of children <b>1.86</b>	% committing <b>44%</b>	Cost of one act <b>\$19,455</b>

Source: University of Arizona Cost of Eviction Calculator (relying on data from Amherst Capital)



# Cost savings data: Baltimore

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EDITORIAL OPINION

## Providing lawyers to Baltimore tenants facing eviction could pay for itself | COMMENTARY

By BALTIMORE SUN EDITORIAL BOARD  
BALTIMORE SUN | MAY 19, 2020 | 4:21 PM

Twitter Facebook



Source: Stout study

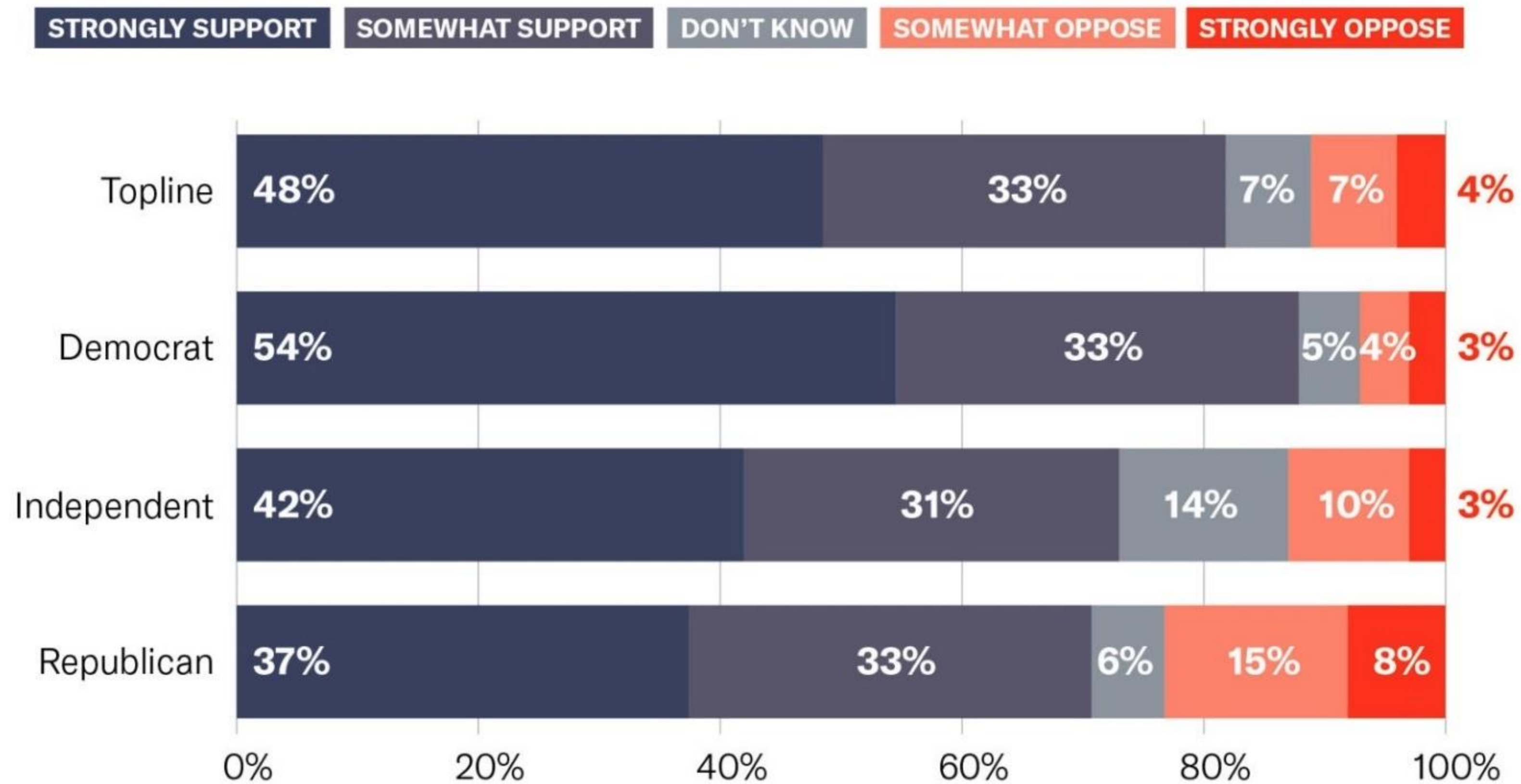


## Other reports on potential cost savings

- NYC: \$320 million net savings in avoided shelter costs and retention of affordable units
- Philadelphia: \$3.5 million investment would yield \$45 million in savings from avoided shelter and health costs
- Los Angeles: Expenditures of \$47.3 million by County and \$34.6 million by City would save approximately \$226.9 million and \$120.3 million, respectively, due to avoided costs related to shelter use, school changes, health care, and foster custody.

# Public support for RTC

Would you support or oppose establishing a right to legal counsel, meaning someone will always be represented by a lawyer, during eviction proceedings?





# Eviction RTC during COVID-19



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## Virus Lights Fire Under Eviction Right To Counsel Movement

By **Natalie Rodriguez** | August 16, 2020, 8:02 PM EDT



# Eviction RTC during COVID-19

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As eviction deadline looms, more tenants have access to legal help  
Marketplace

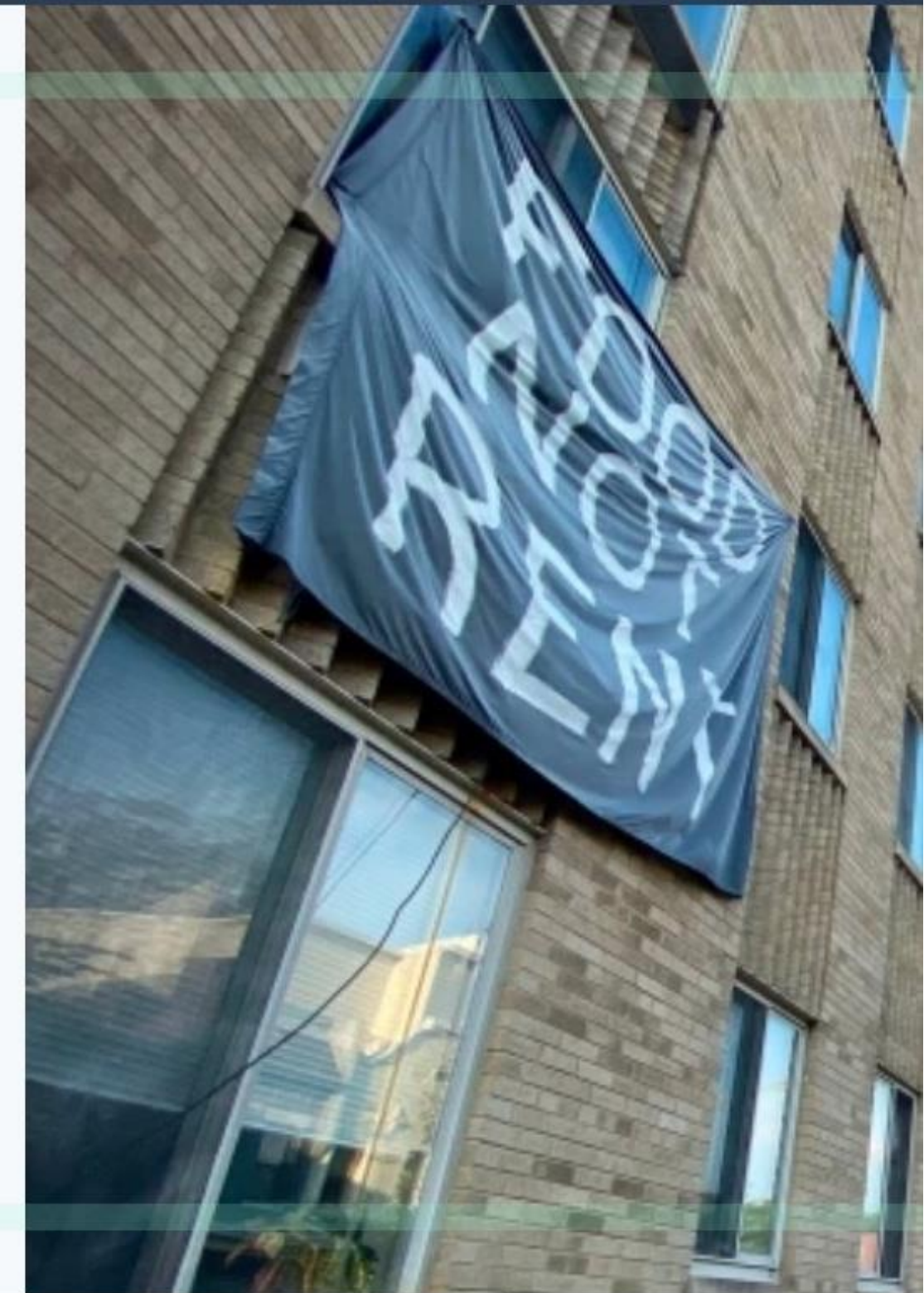
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## As eviction deadline looms, more tenants have access to legal help

Amy Scott | Jul 8, 2021

Heard on: MARKETPLACE

▶ LISTEN NOW





- **Enacted**: NYC (2017), San Francisco (2018), Newark NJ (2018), Cleveland (2019), Philadelphia (2019), Boulder (2020), Baltimore (2020), Seattle (2021), Louisville (2021), Denver (2021), Toledo (2021), Minneapolis (2021), WA State (2021), Connecticut (2021), Maryland (2021)
- **Introduced in 2021**: Delaware\*, Indiana, Massachusetts\*, Minnesota\*, Nebraska\*, New Jersey, New York, South Carolina
- **Federal**: Rep. DeLauro, Rep. Omar, Sen. Merkeley

\* = *had hearing*

# Sampling of other cities/states exploring eviction RTC

- Chattanooga
- Chicago
- Cincinnati
- Clark County NV
- Detroit
- Fresno
- Houston
- Kansas City
- La Crosse WI
- Nashville
- New Jersey
- Omaha
- Pennsylvania
- Pittsburgh
- Portland OR
- San Jose
- Santa Monica
- Virginia

# Enacted RTC metrics of success

- NYC:
  - 86% of represented tenants remain in their homes
  - Filings down 30%
  - Defaults down 34%
- San Francisco:
  - Filing rate decreased by 10% from 2018 to 2019
  - 67% of tenants w/full rep able to stay in their homes
- Cleveland:
  - 93% of those represented avoided eviction or involuntary move
  - 83% seeking additional time to move were able to get it



# Judicial support for NYC RTC

**New York Law Journal**

NOT FOR REPRINT

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Page printed from: <https://www.law.com/newyorklawjournal/2018/09/24/increasing-tenants-access-to-counsel-has-raised-court-efficiency-fairness-judges-say/>

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## **Increasing Tenants' Access to Counsel Has Raised Court Efficiency, Fairness, Judges Say**

# Federal funding info

- Full info at <https://bit.ly/fedfundingRTC>
- Summary:
  - Emergency Rental Assistance Program (ERAP) and Fiscal Recovery Fund (FRF) explicitly authorize tenant rep as allowable use
  - Dozens of cities, counties, and states have already allocated \$\$



# Nationwide COVID-19 funding of tenant rep / RTC

## CARES Act funding

\* = funding used for right to counsel

\*\* = funding used for universal representation

Alaska (\$200k ESG), Atlanta (\$150k CDBG-CV), Baltimore (\$2.5 million CDVG-CV), Bucks County PA (\$50k CDBG-CV in 2020, \$97,500 CDBG-CV in 2021), Chicago (\$500k CRF, \$500k CDBG), Cincinnati (\$4k CDBG-CV); Chester County PA (\$67,500 CDBG-CV); Clark County NV (\$400k CRF), Cleveland (\$700k CDBG-CV), Columbus OH (\$250k CRF), Colorado (\$350k CRF), Colorado Springs (\$150k CDBG-CV), Delaware (\$100k CDBG from New Castle County, \$50k CDBG-CV from Sussex County, and \$750k CDBG-CV/\$250k ESG from Delaware State Housing Authority for 2021), Detroit (\$2.2 million CDBG-CV), Dothan AL (\$50k CDBG-CV), Illinois (\$225k CDBG-CV, \$170k supplemental OAA Title III-B funding), Kansas City (\$120k CRF), Lawrence MA (\$397k CDBG-CV), Los Angeles (\$3 million CDBG-V), Massachusetts (\$8.6 million CRF; part of Eviction Diversion Initiative), Michigan (\$4 million CRF, \$2.25 million ESG), Montana (\$400k CRF), Montgomery County PA (\$67,500 CDBG-CV), Nevada (\$400k CRF), New Bedford MA (\$95k CDBG-CV); New Jersey (\$1.3 million CDBG-CV), New York State (\$25 million CRF), Orange County NC (\$42,950 CRF for 1/2 of atty salary) Pennsylvania (\$8 million CRF or cases, outreach, necessary costs; some used for non-eviction cases), Pima County AZ (\$2 million CRF), Phoenix (\$850k CRF), Providence (\$50k CDBG-CV), Rhode Island (\$1.3 million CDBG-CV), Rochester New York\*\* (\$460k ESG), San Mateo County (\$1 million CDBG), Santa Ana CA (\$250k ESG), Texas (\$4.2 million CRF as part of Eviction Diversion Program through TX Supreme Court, \$500k ESG), Toledo (\$100k CDBG), Vermont (\$550k CRF), Washington State (\$800k CRF), Wilmington NC (\$880k CDBG-CV), Worcester MA (up to \$100k ESG).

## Emergency Rental Assistance Program (ERAP 1 and 2)

\* = funding used for right to counsel

\*\* = funding used for universal representation

Cincinnati (\$500k), Columbus OH (\$624k), Cuyahoga County OH (\$1 million for all suburbs outside Cleveland), Fresno (\$750k), Kansas (fee-for-service model, but \$2 million theoretically appropriated), Long Beach CA (\$900k), Louisville\* (\$400k), Maine (\$412k) Michigan (\$7 million), Missouri (\$1.079 million), New Hampshire (\$250k), Oklahoma (\$2.6 million), Rhode Island\*\* (\$500k), San Diego (\$15 million), Sonoma County CA (\$1.4 million), Texas (\$20 million), Virginia (\$2.5 million), Wyoming (\$1 million)

## Fiscal Recovery Fund (FRF)

\* = funding used for right to counsel

\*\* = funding used for universal representation

Chattanooga (\$500k), Maricopa County AZ (\$2.6 million), California (\$80 million over 3 years), Cook County IL (\$3.5 million), Connecticut\* (\$20 million over 2 years), Detroit (\$1 million), Harris County TX (\$1 million), Milwaukee County\*\* (\$900,000 in 2021, \$1.8 million in 2022), Portland OR\*\* (\$1.7 million), Tennessee (\$5.6 million)

## Emergency Rental Assistance Program (ERAP) or Fiscal Recovery Fund (FRF) [specific pot unclear]

Charlottesville (\$360k), Denver (\$2.7 million), Indianapolis (\$800-900k), Lake Worth FL (\$50k), Toledo (\$250k/year for 5 years), Virginia (\$2.5 million), Winston-Salem NC (\$100k)





**Mayor Brandon Scott**  
Baltimore, Maryland

## **Recent Enactment: Baltimore, MD**



# Recent Enactment: Baltimore, MD







**Councilmember Candi CdeBaca**  
Denver, Colorado

## **City Snapshot: Denver, CO**









**Hazel Remesch, Esq.**  
*Supervising Attorney*  
Legal Aid Society of Cleveland

## **Results from RTC: Cleveland, OH**









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*Coordinator*  
National Coalition for a  
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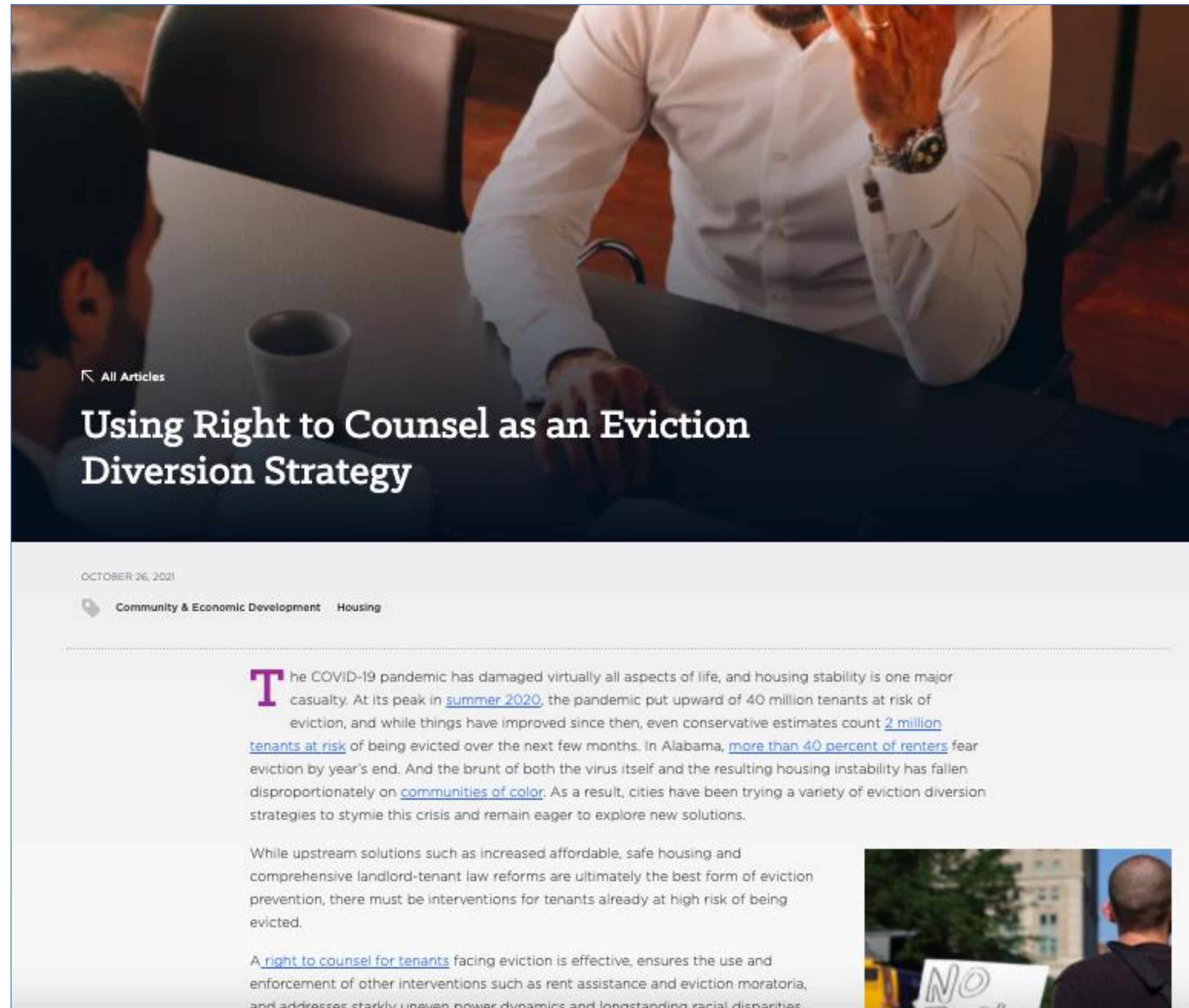
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National League of Cities

[lowery@nlc.org](mailto:lowery@nlc.org)

## Wrap-up & Closing






# Explore Enacted RTC Legislation



## THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION: ENACTED LEGISLATION

<div>  <b>RIGHT TO COUNSEL FOR TENANTS: ENACTED LEGISLATION, QUICK REFERENCE GUIDE</b> </div>						
City / State	Eligibility requirements?	Admin. hearings?	Affirmative proceedings?	Appeals?	Implemented? (Phase in / roll out?)	Funding source
<a href="#">New York City, NY</a> (2017)	Income, for full legal rep (200% or less FPL)	Yes	No	Yes	Fully implemented across entire city	General revenue
<a href="#">San Francisco, CA</a> (2018)	No	Yes	No	Not specified	Fully implemented across entire city and county	General revenue
<a href="#">Newark, NJ</a> (2018)	Income (200% or less FPL)	Yes	No	No (except rent control board decisions)	By 4/1/19, no phase in specified	General revenue
<a href="#">Cleveland, OH</a> (2019)	Income (100% or less FPL) + 1 child	No	No	Not specified	Fully implemented across entire city	General revenue + private
<a href="#">Philadelphia, PA</a> (2019)	Income (200% or less FPL)	Yes	Yes (specified proceedings)	Yes	TBD managing director	General revenue + private
<a href="#">Boulder, CO</a> (2020)	No	Yes	No	Yes	Fully implemented across entire city	Rental license excise tax raised to \$75
<a href="#">Baltimore, MD</a> (2020)	No (but low-income priority)	Yes	Yes (specified proceedings)	Yes	Phase in over 4 years	General revenue
<a href="#">Seattle, WA</a> (2021)	Indigency (unable to pay counsel costs)	No	No	Not specified	Not specified	General revenue
<a href="#">Louisville, KY</a> (2021)	Income (125% or less FPL) + 1 child	No	No	Not specified	Not specified	Federal funding (ERAP)
<a href="#">Denver, CO</a> (2021)	Income (80% or less of AMI)	Yes	No (but "functional equivalent" of eviction)	Yes	Not specified	Federal funding (ARPA)
<a href="#">Toledo, OH</a> (2021)	Income (200% or less FPL)	No	No	Yes	Phase in over 5 years	Federal funding (ARPA)
<a href="#">Minneapolis, MN</a> (2021)	No (program director can change)	Yes (program director can change)	No	Yes (program director can change)	TBD by program director + designated org.)	Not yet determined
<a href="#">Washington</a> (2021)	Indigency (200% or less of FPL or receiving pub. assistance)	No	No	Not specified	Within 12 mo. of enactment	General revenue
<a href="#">Maryland</a> (2021)	Income (50% or less of state's area median income)	Yes	No	Yes	Not specified	Not yet determined
<a href="#">Connecticut</a> (2021)	Income (80% or less of state's area median income)	Yes	No	Not specified	Phase in priorities, no deadline	Federal funding (FRF)

Visit [bit.ly/evictionRTClaws](https://bit.ly/evictionRTClaws) for examples of enacted legislation and ordinance language





## FEDERAL FUNDING TO SUPPORT STATE/LOCAL TENANT RIGHT TO COUNSEL EFFORTS

*Last modified 10/12/21*

Since 2017, ten cities and three states<sup>1</sup> have enacted the right to counsel for tenants facing eviction, and [eight additional states](#) introduced legislation in 2021 to establish such a right to counsel at the state level. However, while the movement is surging, some lawmakers hesitate to move forward without knowing how to fund it. The federal response to COVID-19 provides states and localities with a broad array of new federal funding that can contribute to right-to-counsel laws for multiple years, long enough for the right to become institutionalized and easier to support financially in the future. **The time is now to use available federal funds to enact a right to counsel for tenants facing eviction in order to protect families, advance race equity, and bring housing stability to millions of families. For more information on the rationale for doing this, please see our [2-pager on using ERAP for legal services \(PDF\)](#) as well as our article in The Appeal, [Federal Funding Charts the Path for Local Right-to-Counsel Efforts](#).**

The table below outlines the parameters of the federal funding available to states and local governments, *but each program should be reviewed for full details, uses, and restrictions*. We also strongly encourage you to review:

- Justice in Government’s [Funding Matrix: American Rescue Plan Act of 2021 \(ARP\) Programs that can Support Civil Access to Justice](#) (Updated April 9, 2021)
- The NCCRC’s list of [legal aid programs that have used federal funds to expand tenant legal representation](#)
- NCCRC, NHLP, and NLIHC webinar: [Federal Funding for Tenant Right to Counsel](#) (April 13, 2021)
- Karlee M. Naylor, Anna C. deDufour, and Karen A. Lash, [Civil Legal Aid Funding in the Time of COVID-19](#), Management Information Exchange Journal (Summer 2020)
- [NCSHA Administration of the Federal Emergency Rental Assistance Program: Considerations for State Agencies](#) (March 12, 2021)
- [NCSHA Emergency Rental Assistance Program Comparison](#) (a side-by-side of ERAP 1 and ERAP 2)

Program and Funding Source	Amount	Deadline <sup>2</sup>	Allowable Use for Legal Services	Additional Notes and Resources
<b>Coronavirus Relief Fund (CRF)</b>  Located in: <a href="#">CARES Act</a>	\$150 billion (view the <a href="#">specific allocations to state and local governments</a> )  Administered by the U.S. Department of the Treasury	May only be used to cover costs incurred <a href="#">between March 1, 2021 and Dec. 31, 2021</a> (Consolidated Appropriations Act of 2021 extended original deadline of Dec. 31, 2020)	Payments can cover <i>only</i> those costs that are:  1. necessary expenditures incurred due to the public health emergency with respect to COVID-19; 2. not accounted for in the most recently approved government budget as of the date of enactment of this section; and 3. incurred between March 1, 2020 and December 31, 2021.  <b>The <a href="#">U.S. Department of the Treasury’s Guidance</a> provides non-exclusive examples of eligible expenditures, and it includes “Any other COVID–19-related expenses reasonably necessary to the function of government that satisfy the Fund’s eligibility criteria.” Dozens of jurisdictions have <a href="#">used CRF funding for legal services</a>.</b>	National Conference of State Legislatures, <a href="#">Map of State Actions on CRF Funds</a>
<b>Community Development Block Grant (CDBG-CV)</b>  Located in: <a href="#">CARES Act</a>	\$5 billion to states, metropolitan cities, urban counties, and insular areas (view the <a href="#">specific allocations</a> )  Administered by HUD, Office of Community Planning and Development (CPD)	A grantee must expend all funds within a <a href="#">6-year Period of Performance</a> <sup>3</sup>  80% of the funds must be spent by the end of year 3	70% of a grant must be expended for activities that benefit low- and moderate-income persons by providing housing, a permanent job, a public service, or access to new or improved infrastructure. 30% can be used to eliminate slum or blighted conditions, or to address another urgent need for which there is no other funding.  <b>According to <a href="#">Chapter 2 of HUD’s Guide to National Objectives and Eligible Activities for State CDBG Programs</a>, one eligible use of CDBG funds is “Legal services (including ... landlord/tenant matters”). Additionally, a number of jurisdictions have <a href="#">used CDBG-CV funding for tenant representation / right to counsel</a>.</b>	HUD’s Notice of CDBG-CV Program Rules, Waivers, and <a href="#">Alternative Requirements</a>  <a href="#">HUD’s CDBG-CV Notice FAQs</a>

<sup>2</sup> Unless noted otherwise, the “deadline” is the date through which the funds provided to the grantee remain available or by when they must be expended.

<sup>3</sup> [HUD’s Notice of CDBG-CV Program Rules, Waivers, and Alternative Requirements](#), III.B.7 (addressing Period of Performance).

# Keep the Conversation Going!

- **Share** what you learned today with colleagues and your city team
- **Sign-up** for the NLC e-newsletters to receive updates and COVID-19 response information
- **Submit** what your city is doing to NLC's COVID-19 local action tracker
- **Complete** the follow-up survey to let us know what you thought of today's webinar and what other topics would be of interest for cities responding to the pandemic.



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# QUESTIONS? GET IN TOUCH.

**Lauren Lowery**

*Program Director, Housing & Community Development*

National League of Cities

[lowery@nlc.org](mailto:lowery@nlc.org)

**John Pollock**

*Coordinator*

National Coalition for a Civil Right to Counsel

[jpollock@publicjustice.org](mailto:jpollock@publicjustice.org)



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