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Caleigh M. Harris

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EVALUATING THE PRO SE PLIGHT:
A COMPREHENSIVE REVIEW OF ACCESS TO JUSTICE
INITIATIVES IN OHIO LANDLORD-TENANT LAW

*Caleigh M. Harris**

I. INTRODUCTION

Jane Doe is a pro se tenant who is being sued for unlawful detainer, otherwise known as eviction.¹ In Hamilton County, Ohio, eviction court is generally held at 9:30 a.m. on weekdays. After calling off work for the morning, Doe gets to the courthouse on time and enters the courtroom, filled with landlords and their attorneys, and other tenants—the majority of whom are, like Doe, unrepresented. Doe has prepared her defense to this eviction, with materials that demonstrate the uninhabitable conditions she has been forced to live in despite the many attempts to contact her landlord to fix these issues. These conditions include lack of adequate heat, no running water, and broken appliances.

Doe's landlord, a business incorporated as a limited liability company, is legally required to have counsel. In America, 81% of landlords have representation, compared to only 3% of tenants.² Doe and her landlord reflect these statistics, as they stand in front of the magistrate. After establishing that all parties are present and asking the formal preliminary questions, the magistrate looks at Doe and asks, "Did you pay your rent this month?"

"No, but my landlord did not fix my heat," she begins to respond, but the gavel comes down, and she is pronounced evicted. She has a ten-day writ to leave the premises. She did not get a chance to explain why she did not—or could not—pay rent. Nor was she able, in this first cause hearing, to explain the conditions to which the landlord subjected her. After a hearing that lasted no more than a minute, Jane Doe is evicted.

This narrative is emblematic of pro se tenants' experiences facing eviction hearings every day. Many unrepresented litigants feel that the system has already been stacked against them, and rightly so. For a

* Blog Editor, *University of Cincinnati Law Review*. Thank you to the editorial team for the care and consideration they put in to polishing this piece. Additionally, the author would like to thank the volunteer team and staff at the Hamilton County Municipal Court Help Center, and specifically the Executive Director, Rob Wall, for his mentorship and guidance in teaching about housing law and access to justice.

1. *Unlawful Detainer*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/unlawful_detainer [<https://perma.cc/DGK8-HD43>] (last visited Sept. 12, 2022). The following narrative is based on the author's experience as a legal volunteer at the Hamilton County Help Center, where she assisted pro se people facing eviction and habitability claims.

2. Juan Pablo Garnham, *Eviction Diversion: Preventing Eviction Before Going to Court*, EVICTION LAB (Sept. 2, 2021), <https://evictionlab.org/eviction-diversion> [<https://perma.cc/C72J-NF2B>].

number of reasons, tenants have been excluded from the judicial process and denied justice.³ As Professor Paula A. Franzese wrote:

Once involved in the judicial system, [the tenants'] experiences in court left them with the indelible impression that there was no concern for *why* the rent was withheld and only for whether the rent owed was in hand. If rent in arrears was not remitted at the time the case was called, the tenant would be summarily evicted.⁴

In the United States, landlords typically file 3.7 million eviction cases a year.⁵ In 2016, 103,027 evictions were filed in Ohio—ultimately leading to 57,980 actual evictions.⁶ In 2016, the eviction rate in Ohio was 3.49%, which was 1.15% above the U.S. average. Cincinnati, Ohio, has a higher eviction rate than the Ohio average, at 4.7% in 2016, which is 2.36% above the U.S. average.⁷ Cincinnati also has a higher rent burden (the percentage of an individual's total monthly income goes to rent) than the rest of Ohio. While the rent burden for the average Ohio renter is 29.5%, for Cincinnati, it's 31.7%.⁸ These statistics demonstrate that Cincinnatians are spending 31.7% of their monthly income on rent. Notably, the poverty rate in Cincinnati is more than double that of the Ohio average, landing at 24.76% compared to the Ohio rate of 11.54%.⁹

This Comment explores the legal gaps in access to justice for pro se tenants, specifically focusing on eviction cases. Section II of this Comment gives an overview of Ohio landlord-tenant law and the process of an eviction proceeding. It also discusses the implications the Covid pandemic has had on eviction filings and its impact on tenants facing eviction court. Finally, Section II focuses on local ordinances that the city of Cincinnati has enacted to fight the eviction crisis. Section III argues that pro se defendants face a considerable barrier when accessing justice in eviction cases. Solutions to this barrier include implementing a civil right to counsel for eviction cases, creating mediation or self-help support by the courts, and reforming housing law. Ultimately, Section IV concludes that the system has poisonous roots, and the most comprehensive and beneficial reform would be to the affordability and quality of privately rented properties for poor communities. Legal action,

3. See *infra* Section III.

4. Franzese, *infra* note 40, at 689.

5. EVICTION LAB, <https://evictionlab.org> [<https://perma.cc/UU65-VBYB>] (last visited Sept. 12, 2022).

6. *Interactive Map on Eviction Data*, EVICTION LAB, <https://evictionlab.org/map/#/2016?geography=states&type=er&locations=39,-83.047,40.206> [<https://perma.cc/CW45-D7GE>] (last visited Sept. 12, 2022).

7. *Id.*

8. *Id.*

9. *Id.*

such as the access to civil counsel and mediation projects, should be supplemented with community-based grassroots organizations that are committed to promoting tenants' rights.

II. BACKGROUND

Knowledge of the law is a large obstacle many tenants face during the eviction process. Like many statutes, the Ohio Revised Code is gilded with legal jargon that furthers the gap in access to justice for those with lower education levels, or the inability to hire counsel.¹⁰ This Section boils the legalese of landlord-tenant law down into accessible language. Part A of this Section walks through the Ohio Revised Code relating to landlord-tenant law and eviction.¹¹ This Part also explains the implied warranty of habitability—otherwise known as the landlord's duty to provide safe and habitable premises for the tenant.¹² Next, Part B focuses on Covid, its impact on many working class and poor communities, and the measures the city of Cincinnati put in place to offset the flood of eviction complaints due to nonpayment of rent. Finally, Part C gives an overview of multiple scholars' theories of pro se representation and its effect on the legal system. This Part also explains the landmark criminal law case, *Gideon v. Wainwright*, which established a criminal defendant's right to counsel.¹³ While housing law is ostensibly civil, *Gideon* provides pertinent background in the fight for civil counsel in housing court.¹⁴

A. Ohio Landlord-Tenant Law

Ohio landlord-tenant law is governed by Ohio Revised Code § 5321.¹⁵ According to Section 5321, a rental agreement may be written or oral, as long as it establishes terms and conditions of the occupancy and use of a residence.¹⁶ Landlord-tenant law supposes certain obligations on both the tenant and landlord.¹⁷ The landlord must: (1) comply with all applicable housing codes that materially affect health and safety; (2) make repairs to ensure the premises are habitable; (3) supply running water, as well as reasonable amounts of hot water and heat for the building; and (4) enter

10. *See infra* Section III(A).

11. OHIO REV. CODE ANN. § 5321 (LexisNexis 2022).

12. *See infra* Section II(A).

13. 732 U.S. 335 (1963).

14. *See infra* Section III(B).

15. OHIO REV. CODE ANN. § 5321 (LexisNexis 2022).

16. *Id.* § 5321.01(D).

17. *Id.*

only upon reasonable notice to the tenant, unless there is an emergency.¹⁸ Conversely, tenants must: (1) keep their tenancy clean, safe, and sanitary; (2) comply with applicable housing, health, and safety codes; (3) avoid the disturbance of their neighbor's "peaceful enjoyment of the premises;" and (4) refrain from allowing third parties to negligently or intentionally damage part of the premises.¹⁹

While Section 5321 provides a requisite baseline for governing the relationships between landlords and tenants, it does not insulate the relationship from additional obligations.²⁰ The rental agreement may include any other terms and conditions, so long as they are not prohibited by the Ohio Revised Code.²¹

Section 5321.03 provides that a landlord may bring an action for possession of the premises under the following conditions: (1) if the tenant has defaulted on rent; (2) if, due to a lack of reasonable care, the tenant has violated an applicable building, housing, health, or safety code; (3) the landlord's compliance with an applicable code would require work that necessarily deprives the tenant of their use of the premises; or (4) the tenant is a holdover tenant.²²

A holdover tenant is one who stays beyond the term of the lease agreement.²³ The standard twelve-month lease is generally converted to a month-to-month tenancy, if not renewed for another specified term or terminated by either party.²⁴ A month-to-month tenancy may be terminated by either party giving the other at least a thirty-day notice of termination; a week-to-week tenancy may be terminated by giving at least a seven-day notice.²⁵ Leases converted into month-to-month tenancies are valid as long as the landlord accepts even partial payment of rent for that month.²⁶

The law prescribes a strict notice requirement for a landlord who wants to reclaim the premises.²⁷ If the tenant fails to fulfill an obligation agreed upon in the rental contract, then the landlord may provide written notice of the noncompliance and communicate a termination of the rental agreement no less than thirty days after posting the notice.²⁸ If the tenant

18. *Id.* § 5321.04.

19. *Id.* § 5321.05.

20. *Id.* § 5321.06

21. *Id.*

22. *Id.* §§ 5321.03(A)(1)–(4).

23. *Id.*

24. *Id.* § 5321.

25. *Id.* §§ 5321.17(A), (B).

26. *See* Fairborn Apts. v. Herman, No. 90-CA-28, 1991 WL 10962 (Ohio Ct. App. 2d Dist. Jan. 31, 1991).

27. OHIO REV. CODE ANN. § 5321.11 (LexisNexis 2022).

28. *Id.*

does not remedy the conditions in the requisite time period, then the rental agreement ceases upon the date included in the notice.²⁹ A landlord must provide three-days' notice for the tenant to evacuate the premises before filing an eviction action in court.³⁰

While Section 5321 provides legal remedies for both landlords and tenants who breach their rental agreement, eviction cases in Hamilton County, Ohio, follow a strict process as to when one can raise these claims. Eviction proceedings are divided into two separate hearings: first and second cause.³¹ In first cause hearings, the issue is limited to the landlord's claim for taking back possession of the property and the tenant's defense.³² The second cause is a claim for monetary damages by the landlord and, if applicable, the tenant's counterclaim.³³

Tenants are legally poised to bring defenses concerning the conditions of their housing in second cause hearings. In the seminal case *Javins v. First National Realty Corporation*, the U.S. Court of Appeals for the D.C. Circuit concluded that landlords must fulfil an implied warranty of habitability, and such warranty cannot be waived by either party in the rental agreement.³⁴ In *Javins*, the landlord evicted tenants for withholding rent; the tenants proffered that the landlord had approximately 1,500 violations of the D.C. housing regulation.³⁵ The trial court evicted the tenants, and the appellate court upheld the ruling.³⁶ However, the D.C. Circuit court reversed and remanded, citing the importance of warranty in contract law and the inevitable overlap into landlord-tenant law:

The rigid doctrines of real property law have tended to inhibit the application of implied warranties to transactions involving real estate. Now, however, courts have begun to hold sellers and developers of real property responsible for the quality of their product. . . In our judgment, the old no-repair rule cannot coexist with the obligations imposed on the landlord by a typical modern housing code, and must be abandoned in favor of an implied warranty of habitability.³⁷

Ohio law codifies the *Javins* ruling in Section 5321.04 by expressing

29. *Id.*

30. *Ohio Tenant-Landlord Law: General Guidelines*, HOUS. OPPORTUNITIES MADE EQUAL, <https://www.courtclerk.org/forms/OhioTenantLandlordLaw.pdf> [<https://perma.cc/GVU9-A92J>] (last visited Sept. 11, 2022).

31. *Complaint for Eviction and Money*, HAMILTON CNTY. MUN. CT., <https://www.courtclerk.org/forms/forcibleentrywithcaresactaffidavit.pdf> [<https://perma.cc/XL6M-NNTF>] (last visited Sept.11, 2022).

32. *Id.*

33. *Id.*

34. 428 F.2d 1071 (D.C. Cir. 1970).

35. *Id.* at 1073.

36. *Id.*

37. *Id.* at 1076–77.

the obligations of a landlord in relation to the rental property.³⁸ Although the implied warranty of habitability is codified in Ohio law, this section also mandates that tenants must give requisite notice of the issue, reasonable time for the landlord to make repairs, and if the conditions are not rectified, the tenant must not withhold rent, but rather pay rent in escrow to the municipal court.³⁹ Therefore, the implied warranty of habitability does not work as a defense against nonpayment of rent for tenants facing first cause eviction. The step-specific nature of eviction proceedings requires knowledge of procedure to effectively argue one's case. Furthermore, assertion of the implied warranty of habitability depends on knowledge of such law. As a result, unrepresented litigants often never get the opportunity to assert the breach of the implied warranty in the correct time and place in court.⁴⁰

Finally, if a landlord wins on the first cause eviction, a magistrate will usually give the tenant ten days to leave the premises.⁴¹ If the tenant is not gone within ten days, then the court may authorize a bailiff to come to the premises and remove all the tenant's belongings to the street.⁴² This process is called a "set out."⁴³ In Cincinnati, the landlord has a legal obligation to make sure the tenant's property is clear from the "public right of way," within twenty-four hours.⁴⁴ Ultimately, this gives the landlord a legal right to have trash collection dispose of the tenant's items twenty-four hours after a set out.

B. The Impact of Covid on Tenants

In March 2020, the coronavirus pandemic shocked the world. In the United States, the economy all but halted, with travel, leisure, and hospitality industries stalling to "stop the spread" of the virus.⁴⁵ Nearly four months after the pandemic hit, twenty-six states reported that more than one in five households were behind on rent for July.⁴⁶ In Ohio,

38. OHIO REV. CODE ANN. § 5321.04 (LexisNexis 2022).

39. *Id.* § 5321.07.

40. Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 695 (2018).

41. OHIO REV. CODE ANN. § 5321 (LexisNexis 2022).

42. *Id.*

43. *Eviction and Trash Collection Policy*, CITY CIN., <https://www.courtclerk.org/forms/eviction%20and%20trash%20collection%20policy.pdf> [<https://perma.cc/UC4B-AZ3X>] (last visited Sept. 11, 2022).

44. *Id.*

45. *About Stop the Spread*, STOP THE SPREAD, <https://www.stopthespread.org> [<https://perma.cc/D5PJ-HP33>] (last visited Dec. 5, 2022).

46. Lauren Bauer, Kristen Broady, Wendy Edelberg & Jimmy O'Donnell, *Ten Facts About COVID-19 and the U.S. Economy*, BROOKINGS INST. (Sept. 17, 2020), <https://www.brookings.edu/research/ten-facts-about-covid-19-and-the-u-s-economy>

between 29%-36% of households either did not pay or deferred rent payments.⁴⁷

Amidst the shock to the economy and daily life, the U.S. government implemented the Coronavirus Aid, Relief, and Economic Security Act in March 2020, which imposed a 120-day eviction moratorium from rental properties that participated in federal assistance or federally backed loan programs.⁴⁸ Additionally, the Centers for Disease Control and Prevention (“CDC”) ordered the “Temporary Halt in Residential Evictions [t]o Prevent the Further Spread of COVID-19.”⁴⁹ This halt prohibited evictions for all covered persons, regardless of federal funding for properties.⁵⁰ The CDC enacted this order to prevent the congregation of multiple people in homeless shelters and promote isolation for those infected with Covid.⁵¹

The CDC moratorium prevented the eviction of persons who could prove that Covid had impacted their ability to pay rent, among other considerations.⁵² The order was originally intended to last until December 31, 2020; however, it was extended four times, ultimately, remaining in effect until July 31, 2021.⁵³ The CDC based its authority for the order on the Public Health Services Act of 1944, citing a need for regulations that would prevent the spread and transmission of communicable diseases.⁵⁴

Following the CDC’s declaration, a group of plaintiffs who owned or managed rental properties filed a lawsuit against the United States Department of Housing and Urban Development, claiming that the promulgation of the CDC eviction moratorium violated the Constitution and the Administrative Procedures Act.⁵⁵ In *Tiger Lily, L.L.C. v. United States Department of Housing and Urban Development*, the Sixth Circuit Court of Appeals held for the plaintiffs, using a textualist analysis to determine that, by the plain language of the Public Health Services Act, the government did not have the requisite authority to enforce the eviction moratorium.⁵⁶ In essence, the *Tiger Lily* decision overruled the eviction

[<https://perma.cc/H8AQ-NCXX>].

47. *Id.*

48. Pub. L. No. 116-136, 134 Stat. 281, § 4024 (2020).

49. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55, 292 (Sept. 4, 2020).

50. *Id.*

51. *Id.* at 55, 294.

52. Declaration for the Centers for Disease Control and Prevention’s Temporary Halt in Evictions to Prevent Further Spread of COVID-19, HAMILTON CNTY. CLERK CTS., <https://www.courtclerk.org/forms/CDCDECLARATION.pdf> [<https://perma.cc/E5HT-QRKH>] (last visited Sept. 11, 2022).

53. *Tiger Lily, LLC v. U.S. Dept. Hous. & Urb. Dev.*, 5 F.4th 666, 668 (6th Cir. 2021).

54. *Id.* (citing 42 U.S.C. § 264(a)).

55. *Id.* at 668-669.

56. *Id.* at 669-670.

moratorium and gave landlords the right to continue evictions within the jurisdiction of the Sixth Circuit.⁵⁷

In an effort to curtail the ongoing eviction crisis, Cincinnati City Council enacted a “Pay-to-Stay” ordinance in November 2021.⁵⁸ The ordinance amended Section 871-9 of the Cincinnati Municipal Code “to recognize the right of tenants living in residential rental properties to assert payment of past due rent as a defense in any forcible entry and detainer (eviction) action filed on the basis of nonpayment of rent.”⁵⁹ The ordinance only applies to eviction cases concerning properties within the city limits of Cincinnati; the remaining eviction actions in Hamilton County do not have the same defense available.⁶⁰ Although the ordinance was passed in November 2021, Hamilton County magistrates did not universally recognize the pay-to-stay defense until July 2022.⁶¹

C. *Pro Se Representation—The Poor Peoples’ Plight*

While strikingly different in both substance and procedure, criminal law doctrines help inform civil law arguments regarding the right to counsel. The watershed case is *Gideon v. Wainwright*, where the Supreme Court held that all indigent persons have a constitutional right to counsel in criminal proceedings through the Sixth and Fourteenth Amendments.⁶² The Sixth Amendment provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.”⁶³ Prior to 1963, the right to counsel was only recognized in federal criminal cases.⁶⁴ The *Gideon* Court held that the right to counsel is fundamental to the nation’s criminal justice system and thus fully incorporated to state criminal tribunals by the Due Process Clause of the Fourteenth Amendment.⁶⁵

Writing for the majority, Justice Black asserted, “[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer,

57. *Id.*

58. Cincinnati, Ohio, Ordinance 419-2021 (Nov. 10, 2021).

59. *Id.*

60. *Id.*

61. *Mt. Washington Holdings v. McKinney*, No. 22-CV-00630 (Hamilton Cnty. Mun. Ct. July 18, 2022). *Mt. Washington Holdings* argued that the Pay-to-Stay defense was unconstitutional under Ohio’s Home Rule Authority, which states that when local ordinances conflict with state law, the state law takes precedent. Judge Dwane Mallory found that the Pay-to-Stay law was not in conflict with an Ohio state law, and therefore, constitutional on its face, and as applied. *Id.*

62. 732 U.S. 335 (1963).

63. U.S. CONST. amend. VI.

64. *Gideon v. Wainwright*, 732 U.S. 335, 340 (1963).

65. *Id.* at 343–45.

cannot be assured a fair trial unless counsel is provided for him.”⁶⁶ Justice Black discussed the necessary skills to prepare an effective defense—a criminal defendant representing himself may have the “perfect” defense, but lacks the training and skill to establish his innocence in the court of law.⁶⁷ *Gideon* offers a stable backdrop for analyzing the root arguments for a civil right to counsel.

In eviction court, only 3% of tenants have legal counsel, compared to 81% of landlords.⁶⁸ Scholar Victor D. Quintanilla argues that pro se persons are not an inherent feature in the American civil justice system, but rather a socially constructed phenomenon.⁶⁹ Quintanilla conducted a series of psychological experiments that determined the presence of legal counsel in a case creates judgments about the worthiness of said case and produces stereotypes about unrepresented persons.⁷⁰ Quintanilla spent five years conducting these experiments and randomized control trials to examine the theory of the *signaling effect*: “The signaling effect of pro se status implies that, when two persons’ cases are otherwise comparable . . . in quality, and when one party has legal representation and the other does not, court officials and lawyers will think differently about and behave differently toward them.”⁷¹

Small claims courts, ones in which eviction hearings are often held, were designed with the expectation that litigants would speak directly to the court officials, without the need for professionally trained lawyers or the knowledge of the rules of evidence.⁷² Multiple studies demonstrate the gatekeeping dynamics in courtrooms across the country that effectively silence poor litigants without counsel.⁷³ The theory behind small claims court is that legal jargon will not inhibit people from raising their claims and defenses in court, though Professor Barbara Bezdek emphasizes that this idea is not inoculated from the reality of unequal power dynamics.⁷⁴ Bezdek argues that a view of law and society distinct from social and political realism is conflated with the idea that “law is a source of power and authority disconnected from other power structures in society.”⁷⁵

66. *Id.* at 344.

67. *Id.* at 345 (citing *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

68. Garnham, *supra* note 2.

69. Victor D. Quintanilla, *Doing Unrepresented Status: The Social Construction and Production of Pro Se Persons*, 69 DEPAUL L. REV. 543, 546 (2020).

70. *Id.*

71. *Id.* at 550.

72. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 535–36 (1992).

73. *Id.*; see also *infra* Section III.

74. Bezdek, *supra* note 72, at 536, 593.

75. *Id.*

In short, Ohio landlord-tenant law prescribes specific duties that both the landlord and tenant must fulfill.⁷⁶ Legal reprieve is available for either party who has been affected by the other party's failure to fulfill their duty.⁷⁷ Despite the black-letter law and protections given to tenants, they often lose their eviction cases.⁷⁸ Defenses such as the warranty of habitability must be raised in particularized ways, following the procedural rules determined by each court.⁷⁹ Furthermore, the power differences between a legally represented, incorporated landlord and an unrepresented, oftentimes poor tenant, are striking.⁸⁰ Even during the historic pandemic, landlords were pressed to avoid eviction moratoriums and rid their residences of those behind on rent, notwithstanding the cause.⁸¹

III. DISCUSSION

Many people recognize Monopoly as a household game that inspires the competitive drive inherent in the American Dream. However, the version of Monopoly known today is a sanitized version, appropriated by Hasbro in the 1930s.⁸² In 1903, Lizzie Magie created the Landlord's Game, now known as the beloved Monopoly.⁸³ Magie created a set of rules in which players were rewarded by creating and sharing wealth (the anti-monopolist set), and the antithetical rules which heightened the goal of creating monopolies and crushing opponents, aptly donned the monopolist set.⁸⁴ Magie's Landlord's Game made a point—one that became even more pervasive with the perversion of her creation into Hasbro's Monopoly.⁸⁵

While many scenarios exist in which an individual decides to become a landlord, the creation of landlords and the current rental market is pronounced by one party owning resources that the other party needs. Although far from a true monopoly, can a conglomerate of landlords really represent the fair, capitalist market? When poor tenants are stuck

76. OHIO REV. CODE. ANN. § 5321 (LexisNexis 2022).

77. *Id.*

78. Quintanilla, *supra* note 69.

79. OHIO REV. CODE. ANN. § 5321.04 (LexisNexis 2022).

80. Bezdek, *supra* note 72.

81. *See generally* Tiger Lily, LLC v. U.S. Dept. Hous. & Urb. Dev., 5 F.4th 666, 668 (6th Cir. 2021).

82. Mary Pilon, *Monopoly's Inventor: The Progressive Who Didn't Pass 'Go'*, N.Y. TIMES (Feb. 13, 2015), <https://www.nytimes.com/2015/02/15/business/behind-monopoly-an-inventor-who-didnt-pass-go.html> [<https://perma.cc/R9K3-27K6>].

83. *Id.*

84. *Id.*

85. *Id.*

in the cycle of poverty and blacklisted from accessing housing, the landlord companies resemble a monopoly as such.⁸⁶ Though a crude analogy, poor renters in today's housing economy fare much like losing players in a game of Monopoly who are stuck playing with the "monopolist" version of rules.

This Section argues for system-wide reform in Ohio's landlord-tenant law. Part A paints an image of the typical tenant facing eviction and the consequences of having one's name filed on an eviction complaint. Subsequently, Part B analyzes the so-called "civil *Gideon*," a movement to impute the right to counsel found in *Gideon v. Wainwright* to civil matters.⁸⁷ This Part further emphasizes the need for systemic reform, ultimately concluding that the right to counsel is not a long-term solution for the disparities in eviction court. Next, Part C discusses alternative assistance programs, such as mediation, negotiation, and help centers. Finally, Part D reiterates the role power plays amongst poor individuals in legal outcomes. Additionally, extrajudicial solutions to the housing crisis will be addressed as a viable and necessary option.

A. *The Profile of Eviction*

Much research has been conducted on the lasting effects of eviction and the profile of evicted persons—that is, who gets evicted and why. Notably, accounts of housing court and eviction proceedings are remarkably consistent amongst those who experience the process.⁸⁸ Housing is a central aspect in Americans' lives, notwithstanding socioeconomic status. Housing determines the quality of education one's children will receive and access to public transportation, food, health care, and other social services provided by the government.⁸⁹ Yet, inadequate housing and rent burden is disproportionately shouldered by poor Americans, who are more likely to get evicted than middle- or upper-class Americans.⁹⁰ Almost all defendants in eviction proceedings are poor and cannot afford legal representation.⁹¹ Poverty acts as an obstacle in court in more ways than one: functional illiteracy and/or legal illiteracy may impede a person's ability to understand the law, legal jargon, or procedures.⁹² Additionally, one's poor health, and the inability to take

86. See *infra* Section II(A).

87. 732 U.S. 335 (1963).

88. Russell Engler, *Connecting Self-Representation to Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 37, 47 (2010).

89. See generally Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 *ANN. REV. L. & SOC. SCI.* 15 (2015).

90. *Id.*

91. Bezdek, *supra* note 72, at 540.

92. *Id.* at 536.

time off from hourly work or find child care can greatly limit a person's opportunity or ability to learn and understand the legal defenses to evictions.⁹³

Nationwide, evictions are susceptible to the same racialized and gendered analysis as other social phenomena.⁹⁴ Black and Hispanic women are more likely to be evicted than white women or men.⁹⁵ Single mothers and households with children are especially susceptible to an eviction judgment, almost three times more likely to get evicted than adult-only households.⁹⁶ Studies have shown that evictions have lasting effects on mothers' mental health, constituting a traumatic life event.⁹⁷ The act of being evicted creates material hardship outside of just housing, as it expands to other material aspects of one's wealth.⁹⁸ Furthermore, evictions are kept on record and reviewed by housing authorities when determining applications for rental vouchers; this leads to many evicted persons getting systematically denied access to public housing and other government help due to their eviction status.⁹⁹

The practice of denied access is called "tenant blacklisting," a process by which tenant reporting agencies document which tenants have been named in an eviction proceeding, regardless of the outcome or context.¹⁰⁰ This process has a chilling effect on habitability claims, making it more likely that poor tenants suffer through uninhabitable living conditions in exchange for shelter and the avoidance of such blacklists.¹⁰¹ Tenants who are blacklisted face denial of housing opportunities, are stigmatized as bad tenants, and are excluded from fair housing practices.¹⁰² These tenants are blacklisted notwithstanding the outcome at trial, merits of the defense, or whether they were legally entitled to sue the landlord.¹⁰³ In sum, these tenants are blacklisted at an indiscriminate rate and shunned from participating in the rental market, only furthering the housing

93. *Id.*

94. *See generally* Desmond & Bell, *supra* note 89.

95. *Id.* at 25.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* Rental vouchers provide financial aid to low-income individuals who rent from private, non-government entities.

100. Franzese, *supra* note 40, at 663 (citing Robert R. Stauffer, *Tenant Blacklisting: Tenant Screening Services and the Right to Privacy*, 24 HARV. J. ON LEGIS. 239, 240-46 (1987); Gary Williams, *Can Government Limit Tenant Blacklisting?*, 24 SW. U. L. REV. 1077, 1082-83 (1995)).

101. *Id.* at 689. "Without exception, tenants spoke of how the scarcity of affordable rental dwellings and the fear of being evicted prompted them to tolerate deplorable living conditions to avoid being viewed as troublemakers." *Id.*

102. *Id.* at 663.

103. *Id.* at 688.

crisis.¹⁰⁴

As *Javins* held, and Ohio law codified, all renters are entitled to a habitable and safe premises, yet the legal procedure is not intuitive to most people.¹⁰⁵ When a landlord allows conditions on the premises to deplete, tenants must give thirty days' notice of those conditions and then deposit rent in escrow with the court if the landlord has not fixed the complaints.¹⁰⁶ If a tenant withholds some or all the rent and avoids the escrow process, they are subjected to an eviction despite their viable defense of the breach of warranty of habitability.¹⁰⁷

Rent escrow is required to ensure that tenants are not asserting uninhabitability to simply avoid paying rent.¹⁰⁸ This strict requirement, however, is too authoritarian in housing courts. Justice is not achieved when judges are not afforded the discretion to understand *why* a tenant withheld rent. Furthermore, the requirement does not evaluate rent abatement as a viable option, which would allow tenants to keep a portion of their rent out of escrow and use that amount to make their own repairs on the property.¹⁰⁹ The strict compliance to the law of rent escrow does not ensure a just and equitable result between tenants and landlords because it leaves tenants either homeless (from eviction proceedings) or living in deplorable conditions. Some scholars argue that eviction statutes should be amended and allow tenants living in subsidized housing not only to put rent in abatement, but also allow for government subsidies to repair housing conditions.¹¹⁰

B. A New Hope? Analyzing Civil Gideon as an Answer

Undoubtedly, pro se litigants have more difficulty navigating the web of legal procedure and substantive law than those who have the assistance of counsel.¹¹¹ Although statistics vary, represented tenants are anywhere from three to nineteen times more likely to win in an eviction proceeding than pro se tenants.¹¹² With an attorney, a tenant can expect better results by more frequently avoiding negative judgments and default appearances,

104. *Id.*

105. OHIO REV. CODE ANN. § 5321.07 (LexisNexis 2022).

106. *Id.*

107. *Id.* § 5321.

108. Paula A. Franzese, Abbot Gorin & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 35 (2016).

109. *Id.* at 36.

110. *Id.*

111. See generally Robin M. White, *Increasing Substantive Fairness and Mitigating Social Costs in Eviction Proceedings: Instituting a Civil Right to Counsel for Indigent Tenants in Pennsylvania*, 125 DICK. L. REV. 795 (2021).

112. *Id.* at 802.

obtaining better settlement negotiations, and winning more at trial.¹¹³ Even so, the presence of an attorney deserves a nuanced analysis to determine its true usefulness in housing court reform.

Currently, those who cannot afford representation have the option of publicly funded legal services like Legal Aid or volunteer attorneys fulfilling pro bono hours.¹¹⁴ However, services like these are not available to all tenants who might benefit from them, due to sheer demand.¹¹⁵ Most legal aid services only accept those whose income is less than 125-200% the federal poverty limit.¹¹⁶ As such, many moderate-income Americans are denied pro bono lawyers and cannot afford to pay for their own legal service.¹¹⁷ Due to the high demand and lack of resources, more than 50% of people who seek civil legal help are turned away.¹¹⁸ The Legal Aid Society of Greater Cincinnati reports that they receive 21,000 requests for aid each year, and, unfortunately, do not have enough advocates to fulfill this demand.¹¹⁹

Some cities have implemented the civil *Gideon*—a right to counsel for indigent persons in civil cases.¹²⁰ In Cleveland, Ohio, the right to counsel in eviction proceedings launched in July 2020.¹²¹ A report detailing the results of Cleveland's program cited that, in 2021, 93% of clients avoided eviction judgment or an involuntary move.¹²² The report also claimed the right to counsel program saved the city approximately 1.8 million dollars by avoiding social safety net costs and out-of-home foster care placements.¹²³

113. *Id.*; see also Engler, *supra* note 88, at 49 (stating that tenants fare better at every stage of a proceeding with an attorney).

114. Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 557, 560 (1988).

115. *Id.*

116. *What is Legal Aid?*, LEGAL SERVICES CORP., <https://www.lsc.gov/about-lsc/what-legal-aid> [<https://perma.cc/9TTK-DM8D>] (last visited Dec. 5, 2022).

117. *Id.*

118. *Id.*

119. *Frequently Asked Questions*, LEGAL AID SOC'Y GREATER CIN., <https://lascinti.org/get-help/frequently-asked-questions> [<https://perma.cc/6SHX-GRDG>] (last visited Sept. 11, 2022).

120. *Civil Right to Counsel*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/ [<https://perma.cc/HEC8-Q3KT>] (last visited Dec. 8, 2022).

121. *Stout's Independent Evaluation of Cleveland's Eviction Right to Counsel: Key Findings*, STOUT (Jan. 31, 2022) [hereinafter *Stout's Independent Evaluation*], https://freeevictionhelpresults.org/wp-content/uploads/2022/01/Stouts-2021-Independent-Evaluation-of-RTC-C-Key-Findings_1.31.22.pdf [<https://perma.cc/EWD5-L7WU>]. Cities such as New York City, San Francisco, and Newark have also implemented the civil right to counsel, thanks to the efforts of tenant organizing groups. See *Tenant Right to Counsel*, NAT'L COAL. FOR CIV. RT. TO COUNSEL, http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [<https://perma.cc/GFT8-E6XX>] (last visited Sept. 11, 2022).

122. *Stout's Independent Evaluation*, *supra* note 121, at 3.

123. *Id.* at 12.

Using *Gideon* as a guiding-light, many have theorized that a civil right to counsel is not only possible, but a right guaranteed by the U.S. and state constitutions.¹²⁴ Essentially, the arguments maintain that under the Due Process Clause of the Fifth and Fourteenth Amendments, indigent people have a right to civil counsel. Attorney Andrew Scherer explains:

The most compelling argument for recognizing a right to counsel for tenants faced with eviction is that, as a matter of due process of law, a tenant should not have to defend a legal proceeding that can result in the loss of his home without the availability of counsel. The notion that the constitutional right to due process of law should encompass a right to representation by counsel when faced with the loss of something as crucial as one's home is a notion that Americans would accept intuitively.¹²⁵

He explains that when balancing competing interests, the magnitude of property interests for the tenant (e.g., deprivation of the home), the risk of error in a pro se proceeding, and the governmental interest in justice and evading homelessness lead to only one logical answer: the right to counsel in housing court.¹²⁶

Additionally, in 2006, the American Bar Association introduced the Model Access Act ("Model Act") for legislatures to create civil right to counsel in specific arenas.¹²⁷ The Model Act creates a right to counsel if (1) a basic human need is at risk; (2) the person has a non-frivolous suit; and (3) the household income is less than 125% of the federal poverty guidelines.¹²⁸ The Model Act was created after legislative findings reported a necessity for poor litigants to access legal services and have help in navigating the complex legal procedures on their own.¹²⁹ Shelter, and the access to housing is included as a "basic human need" for the purposes of the Model Act.¹³⁰

At first blush, the civil right to counsel seems legally plausible and socially beneficial. However, a civil right to counsel may be a short-term solution to an insidious and resilient problem. Although some cities cite a return investment on implementing civil *Gideon*,¹³¹ such a right to

124. See generally Scherer, *supra* note 114.

125. *Id.* at 562.

126. *Id.* at 588 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976) as the seminal authority for due process analysis). In *Mathews*, the Supreme Court created a framework for balancing due process claims: the private interests affected by the government's actions, the risk of erroneous deprivation/the value of additional procedures, and the government's interest in each factual scenario. *Mathews*, 424 U.S. at 349.

127. White, *supra* note 111, at 816 (citing A.B.A., RESOLUTION 104 (REVISED), REP. TO THE H.D. (2006), <https://bit.ly/2M0rZP1> [<https://perma.cc/V5P3-AHHG>]).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 802-03.

counsel would pose significant cost to the government.¹³² The government would have to provide funds for attorneys who take on this civil *Gideon* role, much like the government compensates public defenders.¹³³ Although the government would have a higher cost up front, imposing a civil *Gideon* would likely lower costs for other governmental social programs, like the study in Cleveland reported.¹³⁴

Like the short-term increased cost on the government, the right to counsel would similarly increase litigation costs for landlords.¹³⁵ Currently, landlords dedicate very few resources to eviction cases because the odds are strongly in favor of the landlord to prevail, regardless of the quality of the lawyer, the evidence, or the existence of a viable defense for the tenant.¹³⁶ However, a mass increase in represented tenants would likely cause landlords to reevaluate their legal practices.¹³⁷ This change in housing law practice would impose extra costs on landlords and their legal teams.¹³⁸ Consequently, landlords would shift these extra costs onto tenants by raising rent or other fees, which would create a further problem in the housing market.¹³⁹

Obtaining counsel is but one factor in the outcome of a case; key issues such as substantive law, complex procedures, the individual actors within the system (e.g., judges, landlords, and the landlords' attorneys), and the overall function of the legal forum must also be analyzed.¹⁴⁰ Ultimately, imposing a civil *Gideon* for tenants would absolutely aid in the access to justice for many indigent tenants. But this costly and complicated fix would work only as a bandage—covering the wound for a time but not truly healing the root issue. Long term, landlords would be expected to adapt and “regain control” of the housing adjudication system.¹⁴¹ Civil *Gideon* is a worthwhile and viable option for many localities, but additional research and policy work on the root issue of landlord-tenant legal conflict is necessary to understand the full picture in the fight for accessible justice.

132. Rachel Kleinman, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 FORDHAM URB. L.J. 1507, 1520 (2004).

133. *Id.*

134. *Stout's Independent Evaluation*, *supra* note 121

135. Engler, *supra* note 88, at 91.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Engler, *supra* note 88, at 73–74.

141. *Id.*

*C. Pro Se Support:
Mediation, Negotiation, and Assistance Programs*

Other mechanisms besides appointed counsel exist to help pro se persons learn the law and assert viable defenses in housing court. Among these include pro se clinics, self-help centers, informational hotlines, and mediation outside the courtroom. While helping just one tenant remain in their home is deemed a success for these programs, but one tenant's case is not sufficient to disrupt the unequal and clear power dynamic between the represented landlords and the (usually) poor tenant.¹⁴² Pure information can help individual tenants to assert rights, but intimidation and silencing effects continue to overtake tenants during eviction proceedings.¹⁴³

In Cincinnati, the Clerk of Courts, Municipal Court, County Commission, and the University of Cincinnati College of Law partnered to establish Hamilton County Municipal Court Help Center (hereinafter the "Help Center") in September 2017.¹⁴⁴ According to its website, the Help Center's mission is to "increase access to justice by providing self-represented people with education, information and limited legal advice to help them become better equipped to understand their legal issues and navigate the court system."¹⁴⁵ Undoubtedly, the Help Center's inception has supported pro se individuals in learning the applicable law and guiding them in their fight for justice.¹⁴⁶ Due to its nature of offering limited legal advice, the Help Center employs only a small number of barred attorneys, thus alleviating the issue of attorney demand that a civil *Gideon* would create.¹⁴⁷ The Help Center creates a space for questions and open discussions, as well as informational packets on both substantive and procedural law.¹⁴⁸

Statistics vary on the measurable success of assistance programs in the housing area.¹⁴⁹ Generally, these programs are viewed as helpful but nevertheless lackluster when it comes to actual results in court.¹⁵⁰ Despite teaching people their rights and the law, results are usually much better in

142. See generally Erica L. Fox, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOT. L. REV. 85 (1996).

143. *Id.*

144. *About*, HAMILTON CNTY., OHIO MUN. CT. HELP CTR., <https://cincyhelpcenter.org/about> [<https://perma.cc/RMF6-KLE2>] (last visited Sept. 11, 2022).

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Engler, *supra* note 88, at 67.

150. *Id.* Additionally, many of the tenants who come to the Help Center in Cincinnati are guided there *after* they have been to eviction court and a judgement has been made. Thus, the help is often retroactive and not about the actual eviction defenses.

housing court when the tenant obtains counsel.¹⁵¹ This can most likely be attributed to a lawyer's skill and familiarity with the forum.¹⁵² For programs such as phone hotlines, people are more likely to view their experience favorably if they are white, speak English, and have at least an eighth-grade education.¹⁵³

This assessment is unsurprising; conventional wisdom and the discussion in Part A demonstrate that these characteristics track with the qualities of people who are less likely to be evicted. To be sure, help programs should not be delegitimized simply because some people are more likely to fare better than others. However, this stratification is a reflection of access to justice in general: people of color—very often Black or Latinx people—and those with lower education levels are statistically more likely to be evicted, notwithstanding the intervening assistance programs offered to them.¹⁵⁴ From this truth, one can conclude that assistance programs, such as help centers and hotlines, are simply bandages for a much deeper systemic issue. The good that they do must not be discounted, but rather qualified with the undeniable reality that social ills continue to plague where (and with whom) their help does the most.¹⁵⁵

Mediation and negotiation are other alternatives to guide equitable decisions in eviction proceedings. The St. Louis Mediation Project, developed by the Washington University School of Law Civil Rights and Mediation Clinic, has documented significant success in housing court.¹⁵⁶ The Mediation Project reports that mediated housing agreements result in “better” results for all parties involved.¹⁵⁷ Mediation, unlike strictly judicial proceedings, creates a space of listening and collaboration between parties.¹⁵⁸ Mediators often hear information that can be functionally irrelevant in a courtroom setting, such as the “feelings, concerns, and the history of the relationship” between parties.¹⁵⁹ Like the Help Center, mediation programs may be court-funded and housed in the court to facilitate dispute resolution and decrease the case load for

151. *Id.* One study found that “while 15% of tenants retained possession after pro se instruction alone, when attorneys subsequently assisted the tenant in court-based mediation under limited representation agreements, the figure jumped to 58%.” *Id.* at 67-68.

152. *See* Fox, *supra* note 142.

153. Engler, *supra* note 88, at 71.

154. *See infra* Section III(A).

155. *See generally* Fox, *supra* note 142.

156. Karen Tokarz, Samuel Hoff Stragand, Michael Geigerman & Wolf Smith, *Addressing the Eviction Crisis and Housing Instability Through Mediation*, 63 WASH. U. J.L. & POL'Y 243 (2020).

157. *Id.* at 254.

158. *See generally id.*

159. *Id.* at 254-55.

magistrates.¹⁶⁰

Negotiations or mediations that take place between the landlord's attorney and the pro se tenant are regularly stifled by inevitable power imbalance.¹⁶¹ Ostensibly, negotiations empower parties to step into the role of decision maker, rather than relying on an outsider, like a judge.¹⁶² Theoretically, this dynamic produces a self-interested advocate.¹⁶³ The primary goals of negotiation are protecting legal rights, producing agreed-upon solutions, and efficient conflict resolution.¹⁶⁴ In praxis, however, the typical tenant has a hard time legitimizing their interests and capitalizing on the capacity to pursue such interests, essentially diminishing their self-agency.¹⁶⁵ Silence, on behalf of the tenant, is a common behavior that impedes them from asserting their interests.¹⁶⁶ When faced with adversaries in a legal setting, tenants are likely to hedge their speech to make it less powerful or legitimate.¹⁶⁷ Furthermore, the tenant might accept a pre-determined role as the "bad guy" in the proceedings.¹⁶⁸ This occurs when the powerful actor (such as the landlord or judge) assigns the role of wrongdoer based on rent nonpayment, and the tenant does not have the opportunity or confidence to fight back against that assignment.¹⁶⁹ These findings reflect a vast power disparity between parties, much like the one seen in the courtroom during eviction hearings.¹⁷⁰

D. The Importance of Power

Access to justice in housing is incredibly dependent on resource distribution.¹⁷¹ Housing is treated as a negotiable commodity in the economy.¹⁷² Wealth is the linchpin to this social stratification, as it

160. *Id.* at 253.

161. *See* Fox, *supra* note 142.

162. *Id.* at 85–86.

163. *Id.*

164. *Id.*

165. *Id.* at 94.

166. *Id.* at 98–101.

167. *Id.*

168. *Id.* at 102–04.

169. *Id.* at 102–03.

170. *See* Engler, *supra* note 88, at 78.

Where the law favors landlords, . . . that source of power will be stacked against tenants . . . Where the procedural rules are complex, those familiar with the forum or with representation will better navigate the system, while those unfamiliar and unrepresented will be tripped up. Where judges favor one category of litigants, such as landlords or employers, that dynamic provides a third source of power.

Id.

171. *Id.* at 92.

172. Scherer, *supra* note 114, at 559.

determines the quality of housing, its location, the desirability of the neighborhood, and the habitability of one's home.¹⁷³ The previous sections debate the pros and cons of common proposed solutions for pro se litigants. While positive outcomes in any single case is desirable, long term and effective change should be the goal for the housing community. Knowledge and expertise are key in achieving favorable outcomes in eviction cases.¹⁷⁴ Even with viable habitability defenses, complex procedural guidelines create unbending obstacles for pro se tenants to succeed in court.¹⁷⁵ The combination of an intimidating forum, an inaccessibility of knowledge and legal training, and the seeming divide of social class in landlord-tenant cases succumb to a bleak reality for pro se tenants. How can there be justice for all when access to justice depends on one's means?

The current organization of landlord-tenant law in Ohio creates a gap in just outcomes between different groups of people: namely, between landlords and their tenants, businessowners and working-class people, the rich and the poor, the educated and uneducated. Legal solutions to address this justice gap are viable and will prevent the harmful consequences of eviction for some, but as this Comment has demonstrated, not all solutions are equal for long-term success.

Outside of purely legal solutions, Cincinnati has made considerable strides in housing advocacy. For example, the Greater Cincinnati Homeless Coalition (the "Coalition"), a social action agency committed to eradicating homelessness in the area,¹⁷⁶ offers social services to community members, collaboration with local officials, and education to the community about the root causes of homelessness.¹⁷⁷ Additionally, the Coalition has created an Affordable Housing Trust Fund to help alleviate the pressure many low-income families experience with rising housing costs.¹⁷⁸ The Coalition promotes the organization of tenants to collaborate and assert their rights against landlords who are violating housing codes.¹⁷⁹ Community-based action organizations provide a shift in power dynamics. Together, tenants can yield power and assert their rights to live in habitable conditions. This type of grass-roots movement is a valuable addition to legal action for tenants' rights.

173. *Id.*

174. *Id.* at 79.

175. *See* Fox, *supra* note 142.

176. *About*, GREATER CIN. HOMELESS COAL., <https://cincihomeless.org/about/aboutus> [https://perma.cc/3W7P-R9BE] (last visited Sept. 11, 2022).

177. *Id.*

178. *Id.*

179. *Id.*

IV. CONCLUSION

In an adversarial legal system, true justice can only ever be achieved when both sides have equitable opportunities to plead their case. Poor tenants are systematically denied the opportunity to have equal standing in housing court. Consequences of a landlord filing an eviction complaint—even if that complaint were illegal¹⁸⁰—follow the tenant by remaining on their record and infringing on their ability to apply to creditors or receive housing aid.¹⁸¹ In addition to legal consequences, the personal impact of eviction is tremendous, as it uproots one's entire home and family, forcing them to either find a new place to live within a few days, or become homeless.¹⁸²

Several answers exist to this problem, but all of them seem to fall just short of being a long-term, viable solution. The civil right to counsel has been successful in many cities across the United States.¹⁸³ And, both judicial and legislative options exist for implementing a civil *Gideon* in eviction court.¹⁸⁴ Nevertheless, implementing a civil right to counsel in eviction cases would likely shift the landlord's increased cost of litigation onto tenants, thus exaggerating the crisis in affordability and accessibility to housing in Cincinnati.¹⁸⁵ The Help Center in Hamilton County already provides a comprehensive alternative to civil *Gideon* in that legal guidance for substantive and procedural law is available to pro se parties, but is limited by practical implications that affect tenants once they are on their own and face-to-face with opposing counsel and the magistrate.¹⁸⁶

Housing rights advocates, local lawmakers, and tenants should work together to create more equitable solutions to the problems inherent in eviction court. Part of the problem is a lack of education about tenant's rights, but another piece of the puzzle is much more complex and doesn't have a clear answer. Landlords generally yield more power over a tenant in both their business relationship and their legal relationship. This power dynamic creates an invisible barrier that prevents tenants from accessing true justice. Hopefully, this Comment will work as a helpful guide for addressing many of the issues in housing court and aid in the comprehensive reform of housing policy in Ohio.

180. OHIO REV. CODE ANN. §§ 5321.02(A)(1)–(3) (LexisNexis 2022) makes it illegal for a landlord to retaliate against a tenant because the tenant filed a habitability claim, complained directly to the landlord about conditions, or joined a tenants' union.

181. See generally Franzese et al., *supra* note 108.

182. See generally Desmond & Bell, *supra* note 89.

183. See Stout's *Independent Evaluation*, *supra* note 121, at 3.

184. See *supra* Section II(B).

185. See *supra* Section II(B).

186. See *supra* Section II(C).

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