

Nashville Eviction Right to Counsel Proposal

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Prepared By:

Legal Aid Society of Middle TN and the Cumberland,
Conexion Americas, Workers Dignity, and the Hispanic Bar
Association

Prepared at the Request of City Councilwoman Zulfat Suara

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I. SUMMARY

Right to Counsel (“RTC”) is proven to reduce displacement due to eviction, increase housing stability, and reduce inflows into homelessness. This is based on research in jurisdictions that passed RTC, meetings with key stakeholders who helped establish RTC in cities across the nation, and meetings with people who currently administer RTC programs in Washington State, Connecticut, and New York City, as well as proposals in Delaware and Fresno, California. This proposal in significant part mirrors the RTC model proposed by The Fresno Right to Counsel Coalition in Fresno, California. Our proposal is scalable to encompass more staff, more partner agencies and more resources to support residential low-income tenants as they face legal battles heightened by the COVID pandemic. Legal Aid Society of Middle TN and the Cumberland (LASMTC) and Conèxion Americas, in addition to the community-based organizations Hispanic Bar Association and Workers Dignity, collectively the Nashville Right to Counsel Coalition, propose to stand up an Eviction Right to Counsel program wherein low- and moderate-income tenants facing eviction in Metro Nashville-Davidson County, will be appointed culturally competent legal representation to ensure equity and inclusion in the legal system. Several interventions will be incorporated on the front end to help educate landlords and tenants on their legal rights and responsibilities to help reduce unnecessary litigation. We hope RTC becomes a permanent program to help for years to come. The pilot program will include:

- Outreach and education campaign
 - A city-wide, multi-language public awareness and targeted outreach campaign
 - Public education trainings and legal clinics, in multiple languages, on tenant and landlord rights and responsibilities
- Pre-filing Legal aid
 - Legal assistance for low-income tenants encountering legal issues such as being served with a notice from a landlord (e.g. 3-day notice, notice of rent increase, etc.)
 - Over-the-phone, virtual, and in-person support to answer housing-related questions and provide legal advice and support as needed.
- Direct legal representation
 - Over-the-phone, virtual, and in-person support to answer housing-related questions and provide legal advice and support as needed.
 - Legal representation in court for low and moderate-income tenants facing eviction

- Staff present at the Davidson County courthouse on eviction court days to provide legal aid and representation
- Evaluation
 - A comprehensive annual evaluation of the RTC program by Stout Inc. to determine its effectiveness and projected investment needed to ensure effective representation for any person needing legal representation.

Moreover, the aforementioned programs will be leveraged with existing Metro policies, programs, and resources, and partnerships with non-government agencies to address our housing crisis as a whole. These programs include:

- Housing Resource Diversionary Court
- Metro Action Commission
- Metro Codes
- Partnerships with community-based organizations and other nongovernment agencies for outreach to tenants who are most at risk of housing instability

Note: It is highly recommended that non-governmental organizations (NGOs) and other partner agencies are incorporated into the RTC program as funding becomes available to ensure seamless implementation in all marginalized and at-risk communities.

II. PROPOSAL

a. *Outreach & Education*

Legal Aid Society of Middle TN and the Cumberland (LASMTC) and Conèxion Americas, in addition to the community-based organizations Hispanic Bar Association and Workers Dignity, will partner in recognition of their cultural expertise and longstanding relationships in targeting low income communities, underserved communities and bicultural immigrant communities with the goal of launching a mass educational campaign which is necessary to inform tenants and landlords of their responsibilities and rights. Targeted communities are historically underrepresented communities with lower median incomes and higher shares of vulnerable populations.

The free services would educate tenants about landlord-tenant rights, legal vs. illegal evictions, and their rights and responsibilities in eviction court. Tenants would have access to free information and services, in their preferred language, to aid them before and during eviction processes. Tenants would also be provided with information and guidance on how to navigate the complicated legal court process. These services will be provided through clinics, workshops, printed and digital materials, and door-to-door outreach. A more detailed outreach and education campaign can be further developed in partnership with those agencies and organizations who will be involved. The goal is that with a proactive educational campaign, eviction filings would be reduced, and unnecessary litigation would be avoided.

b. *Pre-Filing Legal Aid*

Having to deal with the nebulous legal system is difficult for anyone, let alone for tenants who do not have the time, resources, or language proficiency. The goal of having a comprehensive pre-litigation intervention will help to alleviate the cost and impact of any trials,

help with keeping communities stable, and improve the tenant/landlord relationship. This programmatic piece will include over-the-phone, virtual, and in-person support to answer housing-related questions and provide legal advice and support as needed. For instance, this may come in the form of providing a template letter to respond to an illegal rent increase, responding to a legal document (other than an eviction filing) or mediation services to help reach common solutions before litigation is filed. During this phase, it would be most beneficial to ensure the availability of financial and housing resources to address the most prevalent eviction issues.

c. *Direct Legal Representation*

When pre-litigation interventions are unsuccessful or the tenant learns about RTC after litigation has already begun, an RTC attorney would provide full legal representation in eviction actions. Legal representation would include, but not be limited to: answer preparation, unlawful detainer representation, negotiation and post-judgment motions. Legal advice and litigation services would also be made available in “real-time” at the courthouse on days when eviction court is in session. During this phase, it would be most beneficial for Metro to implement a centralized Housing Court for all residential housing cases, to maximize the proficiency of trained judges and court personnel and to make the best use of limited attorney resources that would otherwise be spread indiscriminately among multiple courtrooms, judges, dates and times.

d. *Evaluation*

LASMTC strongly encourages Metropolitan Nashville-Davidson County (“Metro”) to contract with Stout Risius Ross, LLC (“Stout”) to conduct a comprehensive evaluation of Metro’s program in year one. Stout conducted extensive research on the eviction process, rent burden, housing instability, racial bias, and the economic impact of evictions in many of the communities that now enjoy an RTC. Most notably, Stout conducted comprehensive cost-benefit reports for New York, Baltimore, Philadelphia, Los Angeles and Delaware.¹ The estimated cost of the *Cost-Benefit Analysis of Providing a Right to Counsel to Tenants in Eviction Proceedings: Los Angeles* was \$50,000. We recommend that RTC providers and Metro work with Stout to develop qualitative and quantitative data collection methodology.

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¹ Stout: Eviction Right to Counsel Resource Center. A compilation of resources related to the eviction process, housing instability, racial bias, the impacts and economic costs of eviction, and legislation and other resources related to a right to counsel for tenants facing eviction <https://www.stout.com/en/services/transformational-change-consulting/eviction-right-to-counsel-resources>

III. BUDGET

The two-year budget for the RTC is \$3,000,000. This includes a Year 1 budget of \$1,530,376 and a Year 2 budget of \$1,469,624. The following is a summary of costs. Details are available.

Table 1 – 2 Year Consolidated Budget

Metro Right to Counsel			
	Year 1	Year 2	Total
Personnel	\$ 1,079,847	\$ 1,118,749	\$ 2,198,596
Non-personnel	\$ 316,859	\$ 218,700	\$ 535,559
Indirect	\$ 133,671	\$ 132,175	\$ 265,845
Total	\$ 1,530,376	\$ 1,469,624	\$ 3,000,000

IV. NEED AND BENEFITS

According to a recent study conducted by the Red Door Collective, in 2019, there were 11,471 Detainer Warrants filed. A Detainer Warrant is the legal document that informs a tenant or renter of their upcoming court eviction proceeding. Of the 11,471 detainer warrants filed in 2019, 90 percent of landlords had legal representation.² Yet available data shows that on average, only 3 percent of tenants have legal representation when facing eviction proceedings.³ Having a lawyer in critical civil cases can make the difference between keeping a home or losing it, obtaining protection from domestic violence or suffering injury, having sufficient food or going hungry, keeping a family together versus having it split apart, or maintaining your liberty versus being incarcerated.

² [2] Red Door Collective, Nashville Eviction Report, August 2021, <https://reddoorcollective.org/reports/RDC-Nashville-Eviction-Report-Aug-2021.pdf>

³ National Coalition for a Right to Counsel, Eviction Representation Statistics for Landlords and Tenants absent special intervention, November 2, 2021, http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats_NCCRC_.pdf

But the ultimate consequences of losing these types of civil cases extend beyond these immediate effects. When people lose their homes or children, or experience domestic violence that they cannot stop, they often have problems with school and employment, experience psychological problems, and are forced to use publicly-financed medical care, shelter and benefits systems. Thus, not only does losing the case affect them in multiple ways, but all of society bears the cost in a way that is significantly more expensive than paying for counsel in the first place. Moreover, families of color, families headed by women, children and the elderly suffer these consequences disproportionately, likely widening the gap in housing affordability.

There is growing evidence that providing counsel not only makes outcomes more accurate and just, but may actually [help the states save money](#). A 2014 Economic Impact Study of Legal Assistance Programs in Tennessee revealed that there is a \$11.21 impact per dollar of program funding. The right to counsel can also be an [excellent tool for fighting poverty](#).⁴ Those same legal services programs created \$188.6 million in benefits and savings for clients.⁵ Judge Rachel Bell, founder of Metro’s L.E.G.A.C.Y. Housing Resource Diversionary Court, and Judge Lynda Jones, founder of Metro’s Homeless Court have long advocated for the systemic change a RTC will provide to the community.

Unfortunately, most low-income people facing serious civil legal problems in America cannot afford legal representation. LASMTC and Workers Dignity, among others, have worked diligently with available staff to meet the needs of Davidson County however; the resources are not nearly enough. About 80% of the legal needs of low-income and marginalized communities go unmet. And while pro bono services from the private bar have grown in recent decades, they cannot begin to fill the void needed for an organized concerted effort to address illegal and unfair evictions exacerbated by the pandemic.

A recent study conducted on San Francisco’s RTC program noted, “there is strong evidence that increasing access to legal aid is one of the most successful and cost-effective interventions to reducing homelessness.”⁶ Cost-benefit analyses

⁴ Clearing house Review, Journal of Poverty and Law Policy, Close the Racial Wealth Gap, Volume 45, Numbers 3-4, July-August 2011,

http://civilrighttocounsel.org/uploaded_files/6/CRTC_and_antipoverty_agenda_Pollock_and_Gardner_.pdf

⁵ Economic Impact of Civil Legal Aid Organizations in Tennessee, March 2015,

https://www.justiceforalltn.com/sites/default/files/2015-TN-Final%20Report%20Package_Consolidated%20Statewide_3-18-2015.pdf

⁶ Jona Boçari, “Life, Liberty and the Pursuit of Happiness When Evicted: Lessons from San Francisco’s Implementation of Tenant Right to Counsel” Independent Research March 2, 2020

<https://uncjourney.unc.edu/files/2020/05/UNC-JOURney-piece-FINISHED-REDACTED.pdf>

conducted by Stout for New York⁷ (\$320 million), Los Angeles⁸ (\$370 million for the county and city combined), Philadelphia⁹ (\$45.2 million), and Baltimore¹⁰ (\$17.5 million) reveal significant returns on investment. More specifically Stout found that, for every dollar the State of Delaware invests in providing free representation to eligible tenants through a right to counsel, the state may reduce social safety net responses to disruptive displacement by at least \$2.76. Stout's estimated return per dollar invested to Baltimore in a right to counsel in Baltimore was at least \$3.06, and the return per dollar invested to Maryland was at least \$3.18 for a total return per dollar invested of at least \$6.24.¹¹

In addition to the more quantifiable and reliable revenue savings that are included in the figures above, the following additional areas are where cities and counties can expect to reduce expenditures through investments in an RTC program:

- The education costs, juvenile justice costs, and child welfare costs associated with children experiencing homelessness and housing instability;
- The negative impact of eviction on a tenant's credit score, ability to find new housing, and the potential loss of a subsidized housing voucher;
- The cost of providing public benefits when jobs are lost due to eviction or the eviction process;
- Certain additional costs associated with homelessness, such as other law enforcement and incarceration costs;
- The cost of family, community, and neighborhood instability;
- Preservation of financial and personal assets;
- The costs to the City of enforcing rent laws and regulations that could be avoided; and
- A reduction, over time, of the number of eviction cases filed, resulting in improved use of the Davidson County court resources.

⁷ Stout report on The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings. Presented for: Pro Bono and Legal Services Committee of the New York City Bar Association Under Intro 214-A, March 16, 2016, <https://cdn2.hubspot.net/hubfs/4408380/PDF/Cost-Benefit-Impact-Studies/SRR%20Report%20-%20Eviction%20Right%20to%20Counsel%20%203%2016%2016.pdf>

⁸ Stout report on Cost-Benefit Analysis of Providing a Right to Counsel to Tenants in Eviction Proceedings Prepared for: The Los Angeles Right to Counsel Coalition, December 10, 2019 https://info.stout.com/hubfs/PDF/Eviction-Reports-Articles-CitiesStates/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf

⁹ Stout report on Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants Prepared for: The Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force, November 13, 2018 <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>

¹⁰ Stout report on The Economic Impact of an Eviction Right to Counsel in Baltimore City. Prepared for: The Public Justice Center May 8, 2020 <https://bmorerentersunited.org/rtc/stoutreport/>

¹¹ "The Economic Impact of an Eviction Right to Counsel in Baltimore City." Stout Risius Ross. May 2020

V. POTENTIAL INTERVENTIONS

The full range of potential interventions, as outlined below, describes a robust but not comprehensive RTC program. A comprehensive, full-scope program made available to all eligible tenants is the most effective approach to keep families in their homes while saving Metro and taxpayers costs associated with displacement. Such programs would include financial and programmatic partnerships with nonprofits such as the Nashville Conflict Resolution Center to assist with mediation services, P.A.T.H. to assist with outreach and education, and immigrant community groups to ensure trusted expertise in all multicultural communities. At minimum, outreach, clinics, materials, and services must be created in multiple languages with language interpreters provided at every stage.

Table 2. Summary of Potential Interventions

Tenant Experience	Interventions
Tenants Impacted by Housing Insecurity	<ul style="list-style-type: none"> • Targeted Public Education Campaign • Engage in targeted outreach efforts based on “high-impact” maps. • Literature drops in multi-family apartment complexes; Also, in parking lots of retail & grocery stores, medical facilities, church food banks, etc. • Legal and Know-Your-Rights clinics with language interpreters in places in high impact areas where renters are continuing to use services. • Radio, television, and print as part of the public awareness campaign. • RTC and Metro create a video, in multiple languages, explaining how to access Metro Action Commission (MAC) services along with an explanation of RTC. • RTC language and contact information included on eviction notices.
Tenant Moves In	<ul style="list-style-type: none"> • Proactive Public Education Campaign • Landlord provides tenants with rights and responsibilities info and is required to post in the common areas of the building and in the unit. • Metro Codes Enforcement provides MAC & RTC contact information, in multiple languages, to tenants as a part of the proactive inspection process.

<p>Tenancy at Risk</p>	<ul style="list-style-type: none"> • Targeted Outreach & Education • Conduct targeted outreach in high-impact areas (canvassing with RTC info), visit high-risk buildings, legal clinics. • Direct tenants to RTC clinics and legal services that can provide on-site interpreters, if needed. • Build relationships with tenants to ensure they get what is needed to remain housed. • Connect tenants with MAC, Rooftops, Urban Housing Solutions and other prevention programs. • Refer tenants to relevant non-RTC supportive services to address underlying economic inequities.
<p>Tenant Seeks Help</p>	<ul style="list-style-type: none"> • Connect Tenant to Appropriate Interventions • HUB Nashville referral, 211 referral, and partner referral. • Tenant goes to a local LASMTC clinic (or calls hotline) for information from an RTC staff member or advice from an RTC attorney.
<p>Tenant Receives Notice of Legal Action</p>	<ul style="list-style-type: none"> • Assist Tenant with Legal Process • Tenant attends RTC clinic or goes to courthouse. • Tenant assessed for rental assistance. RTC attorney and/or staff negotiates with the landlord to resolve problems and avoid eviction
<p>Tenant Goes to Court</p>	<p>Represent Tenant in Unlawful Detainer</p> <ul style="list-style-type: none"> • RTC attorney provides tenant with full-scope representation, from answers through settlement or trial. • RTC attorneys, Legal Navigators, intake staff and law clerks are present before and during eviction court to provide advice, guidance and representation. • Where appropriate, RTC attorney files post-trial motions. • Where appropriate, RTC helps tenants to soft landing in other housing that would be more stable.

Table 3. Summary of Potential Immigrant Community Interventions/Outcomes

Strategy	Interventions
Targeted community outreach and public education	<ul style="list-style-type: none"> • Engage in targeted outreach efforts in areas with high density of working-class immigrants • Deep canvassing of apartment complexes in such areas with the goal of engaging in face to face interaction with the tenants, distributing Know-Your-Rights (KYR) literature, getting tenant's contact information, and assessing dynamics. • Organize tenant meetings within apartment complexes to offer KYR training and encourage tenants to collectively decide the needs and priorities of the community. • Develop neighborhood clinics based on the needs expressed by community members (MAC services clinics, legal clinics, etc.). • Radio, television, and print as part of the public awareness campaign. • Develop popular education materials using LASMTC literature, adapted to the cultural and literacy needs of the community. Most Popular Languages may include Spanish, Arabic, Creole, Maya K'iche, Maya Q'eqchi, Maya Achí, and Nahuatl.
Leadership Development	<ul style="list-style-type: none"> • Create leadership ladders to develop new tenants to become KYR trainers and represent their apartment complex. • Leaders will communicate any immediate needs to organizers and will be responsible for organizing events and recruiting their neighbors to participate.
Bilingual hotline	<ul style="list-style-type: none"> • Use bilingual hotline to encourage residents to report issues at their apartment complex or legal needs related to tenant rights. • Use hotline to assess areas where there is a high need for intervention and collect data on the specific issues affecting low-income tenants.
Legal Representation	<ul style="list-style-type: none"> • Legal representation coordinated by the Hispanic Bar Association to capitalize on the special expertise of indigenous advocates in immigrant communities. • Coordination between the Hispanic Bar Association and Workers Dignity to provide advice and counsel regarding specific legal issues in order to be most sensitive to the cultural mores of certain ethnic populations.

VI. ELIGIBILITY

In a perfect world, RTC would be available to any person expressing a need for legal representation. With the limited resources contained in this proposal however, RTC would only be available to tenants who meet low-income and ALICE guidelines. ALICE, an acronym for **A**sset **L**imited, **I**ncome **C**onstrained, **E**mployed, is a way of defining and understanding the struggles of households that earn above Federal Poverty Level, but not enough to afford a bare-bones household budget. ALICE is your child care worker, the cashier at your supermarket, the gas attendant, the salesperson at your big box store, your waitress, a home health aide, or an office clerk. ALICE cannot always pay the bills, has little or nothing in savings, and is forced to make tough choices. One unexpected car repair or medical bill can push these financially strapped families over the edge. For purposes of the RTC, ALICE represents up to 400% of the Federal Poverty Level.¹² In 2018, of the 121 million households in the U.S., 42% (51 million) could not afford basic necessities of housing, child care, food, transportation, health care, a smartphone plan and taxes and fit the low-income, ALICE demographic:

- 16 million households (13%) were in poverty, meaning they earned below the Federal Poverty Level (FPL)
- 35 million households (29%) – more than double the number in poverty – were ALICE, meaning they earned above Federal Poverty Level but less than the cost of living in their county.¹³

VII. CONCLUSION

There are promising opportunities to fund a comprehensive Metro-wide RTC by leveraging federal pass-through funds like the American Rescue Plan. We urge Metro to review the Justice in Government Project's toolkit, which was created to help government policymakers "improve the quality and efficiency of government programs, increase access to justice, and achieve policy outcomes and priorities." The toolkit contains the following: a series of modules on funding civil legal aid, a grants matrix, and a funding FAQs with state examples related to civil legal aid and funding opportunities.¹⁴

¹² <https://www.unitedforalice.org/>

¹³ United for ALICE, On Uneven Ground, ALICE and Financial Hardship in the U.S., 2020 National Report, Dec. 2020, <https://www.unitedforalice.org/national-overview>

¹⁴ The JGP Grants-Matrix-At-A-Glance provides a clear picture of State-Administered Federal Funds that can Support Legal Aid_

Nashville Right to Counsel Coalition

The Nashville Right to Counsel Coalition is an alliance of Legal Aid Society of Middle TN and the Cumberlands, Conexión Americas, the community-based Hispanic Bar Association and Workers Dignity. We came together at the request of Metro City Councilwoman, Zulfat Suara, for the specific purpose standing up within the Metro Nashville-Davidson County community, an Eviction Right to Counsel. Each organization previously working independently toward the same goal of housing stability and Right to Counsel have now created an alliance for the benefit of the communities we serve. We recognize the alliance is not complete and will necessarily grow to include additional stakeholders and partners who are like minded in the quest for an eviction Right to Counsel. We believe that a Right to Counsel must be included as an essential element to combat homelessness benefitting thousands of vulnerable renters, especially small children, and the elderly. Housing is a fundamental human need, and we believe that everyone should have a safe, healthy, and deeply affordable place to call home. We are committed to working alongside elected representatives to develop and implement a comprehensive citywide Right to Counsel.

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