

RIGHT TO COUNSEL PROPOSAL

DECEMBER 2020

**PREPARED BY:
THE FRESNO RIGHT TO COUNSEL
COALITION**

PROPOSAL SUMMARY

In response to two motions by during Fresno City Council meeting on Tuesday, October 20, 2020, directing the City Attorney, Doug Sloan, to reach out to community partners, including Central California Legal Services (CCLS), to seek a Right to Counsel proposal, the Fresno Right to Counsel Coalition submits this proposal to describe its vision for a comprehensive Right to Counsel (RTC) program in the City of Fresno¹.

RTC is proven to reduce displacement due to eviction, increase housing stability, and reduce inflows into homelessness. 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 Los Angeles and San Francisco, our vision is for the City of Fresno to establish a holistic program that includes the following²:

- a city-wide, multi-language public awareness and targeted outreach campaign,
- public education workshops and mobile clinics, in multiple languages, on tenant and landlord rights and responsibilities,
- self-help for tenants served with a notice from their landlord (e.g. 3-day notice, notice of rent increase),
- legal representation for tenants facing eviction,
- real-time/same-day legal advice and representation at the Fresno County courthouse on eviction court days,
- rent and utility assistance to mitigate eviction prior to a court hearing or as part of a stipulation agreement entered into between a tenant and landlord,
- collaboration with and leveraging of existing City prevention programs, such as Code Enforcement, Rental Housing Improvement Program, and the Housing Retention Grants,
- partner with community-based organizations to outreach to tenants who are most at risk of housing instability, and
- comprehensive annual evaluation of the RTC program by Stout Inc.

The Problem: Displacement and Homelessness

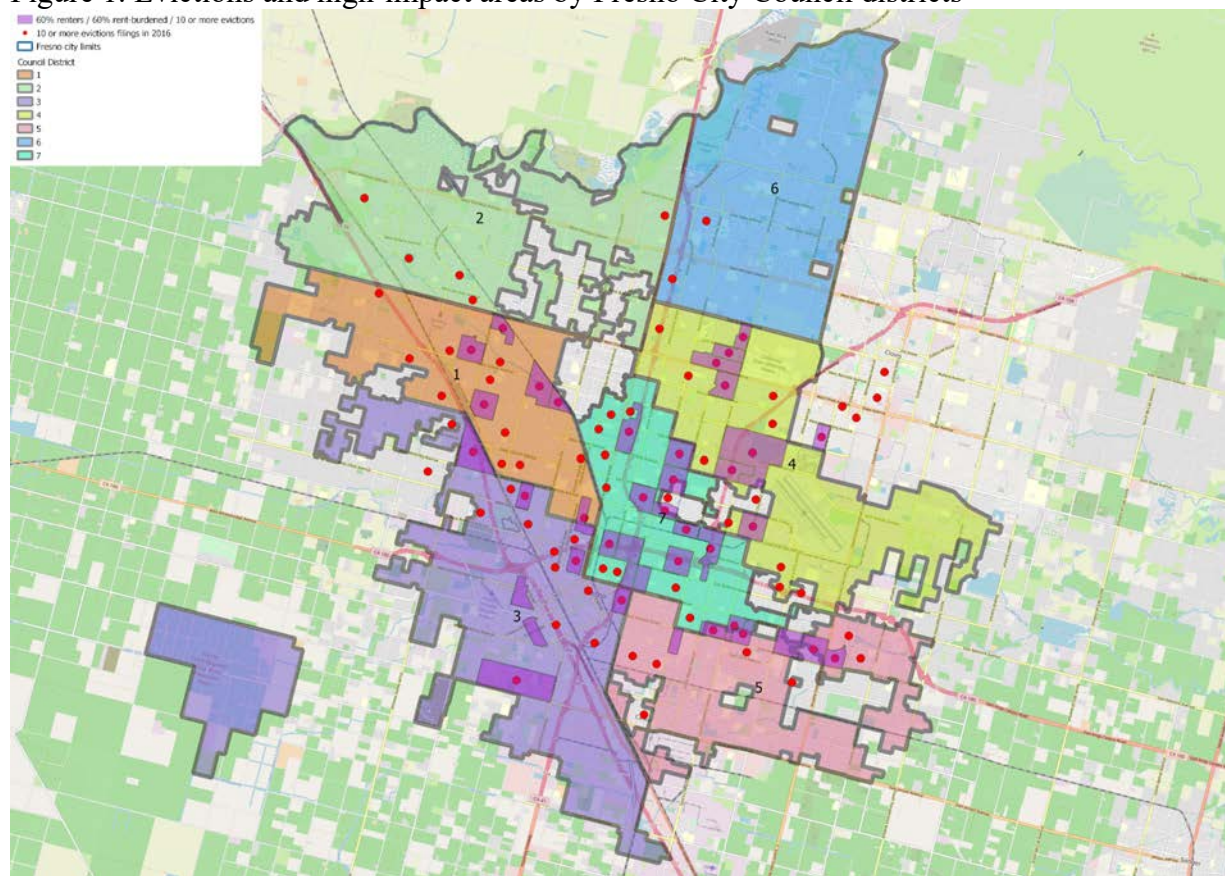
More than half of all households in Fresno are renters and the majority are paying well over 30% of their income on rent and utilities. Over the past 40+ years, the cost of living has risen but income has remained relatively flat. Fresno County has a 35 thousand-unit (or more) shortfall in affordable housing units, which means many families are trapped in unaffordable housing -- living only one unexpected life event away from an eviction. These conditions consistently lead to thousands of eviction cases annually in Fresno County with the majority of formal evictions taking place within the City of Fresno. Even after the post-recession recovery in 2019, when Fresno County experienced its lowest unemployment rate since before the recession, there were still over 3,000 unlawful detainer filings. COVID-19 has only

¹ Fresno County City Council October 20, 2020 Budget Hearing http://fresno.granicus.com/MediaPlayer.php?view_id=1&clip_id=898

² The Fresno Right to Counsel Coalition is indebted to the Los Angeles Right to Counsel Coalition for the extensive research and planning they engaged in to produce “Stemming the Flow into Homelessness: A Proposal for a Tenants’ Right to Counsel in the City of Los Angeles” (February 6, 2019). The materials shared by the LA RTC Coalition, Strategic Actions For a Just Economy (SAJE), San Francisco’s Eviction Defense Collaborative, the Right to Counsel NYC Coalition, and the National Coalition for a Civil Right to Counsel guided the development of our proposal and thus vision for Fresno’s RTC program.

exacerbated the pre-existing crisis leaving an even greater number of families, we predict over 23,000 in Fresno County alone, vulnerable to eviction³. Federal, state, and local leaders passed protections to help stabilize housing, but the protections are complex, confusing and expiring on February 1, 2020. Having an attorney in eviction court helps level the playing field. But, less than 1% of Fresno tenants have an attorney in eviction court, compared to 76% of landlords⁴. There is tremendous need, but a shortage in available services. While Fresno legal aid organizations provide an invaluable service to eligible residents, they do not have the capacity to represent everyone, even prior to COVID-19. This is due in part to limited resources, but also due to a prohibition against representing families without immigration status. In August, the 2020 Point-in-Time Count, the annual count of the region’s sheltered and unsheltered homeless individuals and families was released showing an increase of 45% (or 1,133 homeless individuals) compared to 2019. We know that at least 3,641 of our community are without shelter during the most unprecedented global health crisis in our time⁵. The map below shows that while there are areas with a higher concentration of evictions, particularly in low-income neighborhoods and neighborhoods where people of color are the majority, the eviction crisis spans the entire city.

Figure 1. Evictions and high-impact areas by Fresno City Council districts



*Note: Census block groups do not nest within district boundaries; thus, some neighborhoods are only partially in any single district.

³ *Evicted in the Central Valley*, Janine Nkosi and Amber R. Crowell, <https://bit.ly/EvictedintheCentralValley>

⁴ Janine Nkosi, Amber R. Crowell, Patience Milrod, Veronica Garibay, and Ashley Werner, “Evicted in Fresno: Facts for Housing Advocates,” (2019), <https://faithinthevalley.org/evicted-fresno/>

⁵ 2020 Point-in-Time Homeless Count (<https://www.co.fresno.ca.us/Home/Components/News/News/621/1557?backlist=%2F>).

We must invest in proactive measures to stabilize families' homes before they become homeless, especially during an unprecedented public health crisis. Evictions during a global pandemic put the health and safety of tenants, and the wider community, in even greater harm. An examination of states that lifted eviction moratoriums (27) versus states who maintained them revealed an increase of approx. 433,700 COVID-19 infections and 10,700 death nationwide⁶. The best way to prevent homelessness is to keep people in their current housing; and one of the most effective ways to do that is through a Right to Counsel that intervenes before families are evicted. Civil Right to Counsel ensures that every eligible tenant has a right to an attorney when their housing is at stake. If the City of Fresno establishes a comprehensive Right to Counsel program, then thousands of households will have a better chance of stabilizing their homes during the coronavirus pandemic.

Benefits of Right to Counsel

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 homelessness⁷." Cost-benefit analyses conducted by Stout for New York⁸ (\$320 million), Los Angeles⁹ (\$370 million for the county and city combined), Philadelphia¹⁰ (\$45.2 million), and Baltimore¹¹ (\$17.5 million) reveal significant returns on investment. 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 a Right to Counsel program:

- The education costs, juvenile justice costs, and child welfare costs associated with children experiencing homelessness;
- The negative impact of eviction on tenants' 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

⁶ Leifheit, Kathryn M. and Linton, Sabriya L. and Raifman, Julia and Schwartz, Gabriel and Benfer, Emily and Zimmerman, Frederick J and Pollack, Craig, Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality (November 30, 2020). Available at SSRN: <https://ssrn.com/abstract=3739576> or <http://dx.doi.org/10.2139/ssrn.3739576>

⁷ 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>

⁸ 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://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf

⁹ 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-Cities-States/Los%20Angeles%20Eviction%20RTC%20Report_12-10-19.pdf

¹⁰ 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 [Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants](https://www.philabar.org/wp-content/uploads/2018/11/Economic-Return-on-Investment-of-Providing-Counsel-in-Philadelphia-Eviction-Cases-for-Low-Income-Tenants.pdf)

¹¹ 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/>

- A reduction, over time, of the number of eviction cases, filed, resulting in improved use of Fresno County court resources

There are promising opportunities to fund a comprehensive citywide RTC by leveraging federal pass-through funds (CRF and CDBG-CV) and state dollars¹². We urge the City to review the following resources to learn about possible funding streams for RTC, including JGP Grants Matrix, the NLADA/JGP COVID-19 Updates Funding Chart, and on NLADA’s Civil Legal Aid Federal Funding Resources website¹³. The Coalition is dedicated to working alongside the City to help develop funding opportunities for a comprehensive citywide RTC.

Potential Interventions

The full range of potential interventions, as outlined below, describes a comprehensive Right to Counsel 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 the City and taxpayers costs associated with displacement. All outreach, clinics, materials, and services must be created in multi-language and language interpreters provided.

Summary of Potential Interventions

Tenant Experience	Interventions
Tenants Impacted by COVID-19	<p>Targeted Public Education Campaign</p> <ul style="list-style-type: none"> • Engage in targeted outreach efforts based on “high-impact” maps. • Contactless literature drops in multi-family apartment complexes, <ul style="list-style-type: none"> ◦ Also, in parking lots of retail & grocery stores, medical facilities, church food banks, etc. • Mobile pop-up 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. • The coalition and city create a video, in multiple languages, explaining how to access the Housing Retentions Grant along with an explanation of RTC.
Tenant Moves In	<p>Proactive Public Education Campaign</p> <ul style="list-style-type: none"> • Landlord provides tenants with rights and responsibilities info and is required to post in the common areas of the building and in the unit. • Fresno Code Enforcement (RHIA) provides KYR & RTC information, in multiple languages, to tenants as a part of the proactive inspection process.
Tenancy at Risk	<p>Targeted Outreach & Education</p> <ul style="list-style-type: none"> • Conduct targeted outreach in high-impact areas (canvassing with KYR

¹² Civil Legal Aid Funding in the Time of COVID-19: Karlee M. Naylor, Anna C. deDufour, and Karen A. Lash. September 2020. Management Innovation Excellence for Legal Aid Journal.

https://mielegalaid.org/system/files/dl/MIE_JOURNAL_Summer_2020_web2.pdf#page=5

¹³ See JGP Grants Matrix, <https://www.american.edu/spa/jpo/toolkit/module-2.cfm>; the NLADA/JGP COVID-19 Updates Funding Chart, <http://www.nlada.org/COVID-19>, first bullet under Leadership, Management, and Delivery); and NLADA’s Civil Legal Aid Federal Funding Resources, <https://legalaidresources.org>.

	<p>info), visit high-risk buildings, mobile clinics.</p> <ul style="list-style-type: none"> • Direct tenants to RTC clinics and legal services that can provide on-sight interpreters, if needed. • Build relationships with tenants to ensure they get what is needed to remain housed. • Connect tenants with RHIA, HRP, and other prevention programs. • Refer tenants to relevant non-RTC supportive services to address underlying economic inequities.
Tenant Seeks Help	<p>Connect Tenant to Appropriate Interventions</p> <ul style="list-style-type: none"> • 311 referral, 211 referral, and partner referral. • Tenant goes to a local clinic for advice from an RTC attorney.
Tenant Receives Notice of Legal Action	<p>Assist Tenant with Legal Process</p> <ul style="list-style-type: none"> • Tenant goes to RTC clinic, law office, or courthouse. • Tenant assessed for rental assistance. • RTC attorney negotiates with the landlord to resolve problems and avoid eviction.
Tenant Goes to Court	<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 and law clerks are present before and during eviction court to provide advice 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.

Description of Potential Interventions

Universal availability with an emphasis on outreach in low-income neighborhoods: Ideally, the Right to Counsel would be available to all tenants and we expect that lower-income families and those affected by COVID19 would use these services more.

Education and outreach: Education and outreach is an important part of RTC. Tenants would have access to free information and services, in their preferred language, to aid them before and during eviction processes. The free services would educate tenants about landlord-tenant rights, legal vs. illegal evictions, and their rights and responsibilities in eviction court. Tenants would also be provided with information and guidance on how to navigate the complicated legal court process. The goal is that if tenants have access to information and free services, eviction filings would be reduced and unnecessary litigation would be avoided. Public education will also help landlords better understand their responsibilities.

Partner with community benefit organizations: We believe it's important to partner with grassroots organizations who work alongside diverse tenant communities, minority groups, and those who are disabled. The program interventions would include targeted tenant outreach and community engagement by working with local service providers and CBO's to outreach to tenants who are most at risk of housing instability and provide them with tenants' rights information and connect them to services.

Pre-Litigation Interventions: The goal of having a comprehensive pre-litigation intervention plan will help to alleviate the cost of any trials, help with keeping communities stable, and improve the tenant/landlord relationship. By providing both landlords and tenants information on their rights and responsibilities, continuing the housing retention program, connecting tenants to local services and resources, and intervening if there are habitability or harassment issues.

Lawyers conduct regularly scheduled clinics: To educate tenants on their rights and how to apply them, clinics would be the place for them. Clinics would be located in neighborhoods where there is a high number of at-risk tenants and offered in tenants preferred language or interpreters would be available if needed. After tenants participate in the scheduled meetings conducted by lawyers, tenants have the opportunity to schedule appointments anytime they would like if they need any assistance or even counseling.

Collaboration with Code Enforcement to conduct tenancy risk assessments: Inspectors could refer tenants living in non-compliant buildings to Right to Counsel. Ideally, Right to Counsel attorneys could receive referrals from the Code Enforcement Division, which includes the Anti-Slum Enforcement Team, and rental housing inspectors, specifically in units and buildings that have been prioritized for more frequent inspections because of histories of noncompliance. Non-compliant buildings are more likely to be buildings where low-income tenants can be isolated, more likely to be subjected to harassment and, where landlords are more likely trying to illegally force out low-income tenants so they can flip the building in a sale. In this way, Code Enforcement staff would be addressing the building conditions and Right to Counsel staff would be addressing the tenants' needs. When Code Enforcement officers conduct proactive inspections, they will go door to door giving literature on RTC and KYR. They will share RTC contact information, phone and email. RTC will also serve as a referral service to connect tenants to any other local resources and/or services tenants need, including the Housing Retention Grant.

Fresno Housing Authority offices, community meetings, and caseworkers could provide Right to Counsel brochures and refer tenants to Right to Counsel: Fresno Housing Authority is an important partner because they support approximately 50,000 residents throughout the county who live in Housing Authority-owned homes or who utilize a Housing Choice Voucher. With the low number of affordable housing options in Fresno, families who lose these homes/vouchers have a higher rate of finding themselves experiencing homelessness. Fresno Housing Authority is regularly engaging and supporting low-income people to meet their economic and educational goals. Ideally, the Fresno Housing Authority would be able to work with Right to Counsel to pass on information about Right to Counsel.

Landlords give each tenant "Know Your Rights and Responsibilities" and RTC information and post at the building: Landlords would be required to post at their buildings and give every tenant a "Know Your Rights" factsheet and a Right to Counsel brochure. For new tenants, the landlord would provide Know Your Rights information when tenant's sign their original lease. Right to Counsel providers would be authorized to post and hand out a Know Your Rights and Right to Counsel materials at all rental units throughout the city. To ensure the requirement to provide tenants with a notice is fully implemented, the Coalition requests that Fresno Code Enforcement, and possibly the Rental Housing Improvement program, would work to ensure that landlords are compliant with RTC. We also suggest that landlords submit a signed document to the department of

planning and development annually, stating that their tenants have received and have been reminded and informed throughout the year.

Rental Assistance: While funds may be/are limited, the Fresno Right to Counsel Coalition suggests Rental Assistance in order to maintain tenant/landlord relationships during a time of potential evictions or past-due rent. RTC should coordinate with the Housing Retention Program and other rental assistance programs.

Litigation Interventions: To prevent homelessness and keep tenants in their current housing interventions would be conducted before and after the landlord initiates legal action. When pre-litigation interventions are unsuccessful or the tenant learns about Right to Counsel after litigation has already begun, if the tenant is eligible, a Right to Counsel attorney would provide full legal representation in eviction actions. Legal representation would include answer preparation, unlawful detainer representation, and post-judgment motions. Legal advice and litigation services would be made available in “real-time” at the courthouse on days when eviction court is in session.

Evaluation, Data Collection, and Information Sharing: The Coalition strongly encourages the City of Fresno to contract with Stout Risius Ross, LLC (“Stout”) to conduct a comprehensive evaluation of Fresno’s RTC program in year one. Stout conducted extensive research on the eviction process, rent burden, housing instability, racial bias, and the economic impact of evictions on local economies. Most notably, Stout conducted comprehensive cost-benefit reports for New York, Baltimore, Philadelphia, and Los Angeles¹⁴. The estimated cost of the *Cost-Benefit Analysis of Providing a Right to Counsel to Tenants in Eviction Proceedings: Los Angeles* was \$5,000. We recommend that Right to Counsel providers and the City work with Stout to develop qualitative and quantitative data collection methodology. Data collection would consist of focus groups, survey research, structured and unstructured interviews, observations, analysis of court records, etc. Among the essential information to gather from Right to Counsel providers, includes case and tenancy characteristics, sociodemographic information about tenant-defendants, and information on tenants’ residential histories.

Community Advisory Committee: The Fresno Right to Counsel Coalition recommends that the Right to Counsel program have a community advisory committee that would enable feedback from clients and the community and ensure adoption of best practices and accountability.

Fresno Right to Counsel Coalition

This proposal was prepared by the Fresno Right to Counsel Coalition-- a coalition of renters, Fresno State students and professors, researchers, policy advocates, and community organizers who care about our community. 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.

¹⁴ 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/transformative-change-consulting/eviction-right-to-counsel-resources>

Fresno Right to Counsel Coalition

The Fresno Right to Counsel Coalition is a group of renters, Fresno State students and professors, researchers, policy advocates, and community organizers who care about our community. 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.

For more information contact:

Alexandra Alvarado, Community Organizer,
Faith in the Valley, Fresno
alexandra@faithinthevalley.org
<https://faithinthevalley.org>

Ivanka Saunders, Policy Coordinator,
Leadership Counsel for Justice and Accountability
(805) 680-7210
isaunders@leadershipcounsel.org
<https://leadershipcounsel.org>

