

**TO:** Senate Judicial Proceedings Committee

**FROM:** Stephen H. Sachs

**DATE:** January 26, 2021

**SUBJECT:** Senate Bill 154 - Landlord and Tenant – Eviction Action – Right to Counsel

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The right to be heard in court, is meaningless if you do not also have the right to competent counsel. Lawyers are necessities, not mere luxuries for those who can afford one, in the cases which affect basic needs.

A home is a basic need.

In *Gideon v. Wainwright*, 372 U.S. 355 (1963), the Supreme Court held that the Due Process clause of the Fourteenth Amendment, by its incorporation of the Sixth Amendment, required the appointment of counsel for indigent criminal defendants in state courts. As Justice Hugo Black's opinion asserts:

“Even the intelligent and educated layman has small and sometimes no skill in the science of the law... He lacks both the skill and knowledge adequately to prepare his defense... He requires the guiding hand of counsel at every step in the proceeding against him.”<sup>1</sup>

The plaintiff in that case, Clarence Earl Gideon, created an enduring moment in our constitutional history when he handwrote a petition to the U.S. Supreme Court arguing that he should have had court appointed counsel when he was on trial for petty larceny. After a lengthy court process and a second trial Mr. Gideon got his lawyer and was acquitted. The lesson learned, lawyers make a difference.

I have long been a vocal advocate for the right to counsel in civil trials in Maryland. I think Maryland's Constitution, has been as well. One need not look past the Articles found in the Declaration of Rights, which some argue, mandate appointment of counsel for impoverished civil litigants. Advocates stress this is particularly apparent in those cases where an individual's basic needs and fundamental rights are being disputed. For example, Article 19 of the Maryland Declaration of Rights declares:

“That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.”

In our society, which is eager to litigate any and all matters, what good is *access* to a convoluted court proceeding if it is not also assisted by the guidance of counsel.

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<sup>1</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963) (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)).

I, and many others, would assert that housing is a basic human right. The burden of proof ought to be high for one to deprive another individual of a place to live.

In 2006, the House of Delegates of the American Bar Association unanimously adopted a resolution supporting the right to counsel for low income people in civil cases regarding basic needs.<sup>2</sup> The General Assembly should follow their lead and establish a Civil Gideon for eviction cases.

I urge the committee to give a favorable report to Senate Bill 154.

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<sup>2</sup> See American Bar Association Task Force on Access to Civil Justice, *ABA Resolution on Right to Counsel*, 15 TEMP. POL. & CIV. RTS. L. REV. 507, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.pdf).