

The Legal Fights Set To Define Access To Justice In 2026

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Law360 (January 2, 2026, 12:03 PM EST) -- In 2026, the fight for access to justice in the United States will be shaped by high-stakes legal and budgetary decisions affecting immigration, housing and civil rights.

The [U.S. Supreme Court](#) is set to hear a challenge to [President Donald Trump's executive order](#) seeking to restrict birthright citizenship, a case that could deny federal recognition of citizenship to certain U.S.-born children and upend long-settled constitutional law.

At the same time, [Congress](#) is moving toward sharp cuts to funding for civil legal aid, threatening the [Legal Services Corporation](#) and the [nonprofit](#) legal aid providers that represent low-income Americans in cases involving eviction, benefits and family stability.

Efforts to expand the right to counsel for tenants facing eviction continue to grow, and studies show improved court outcomes, but chronic underfunding, attorney shortages and state preemption laws are limiting their reach.

[Legal experts and advocates spoke with Law360](#) about these developments and what they signal for access to justice efforts in the year ahead, as state courts increasingly become the front line for civil rights enforcement.

The Showdown Over Birthright Citizenship

This year, [the Supreme Court will decide whether the 14th Amendment guarantees a right to U.S. citizenship to all children born on U.S. soil](#) with few exceptions, as has been the case since the amendment's ratification in 1868.

On Dec. 6, the court decided it will hear a legal challenge to an [executive order seeking to end birthright citizenship](#) that President Trump signed on his first day back in office.

Now in the hands of the justices, the case, [Trump v. Barbara](#), has the potential to drastically reshape American immigration and could have a deep impact on the fabric of society, experts say.

[The citizenship clause of the amendment says](#), "All persons born  or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

In his Jan. 20, 2025, executive order titled "Protecting the Meaning and Value of American Citizenship," Trump said that "the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States."

With the executive order, Trump promoted an interpretation of the Constitution in which the phrase "subject to the jurisdiction thereof" excludes the children of noncitizens without a permanent status in the country. This interpretation, which is at odds with the majority of scholarship on the issue, has been proposed for decades, mostly in conservative legal circles.

Under the executive order, the federal government would deny recognition of U.S. citizenship to certain children born in the United States based on their parents' immigration status at the time of birth. The order applies only when both parents lack U.S. citizenship or lawful permanent resident status, but it sweeps in two distinct categories of births.

One category covers children born to mothers who were unlawfully present in the United States at the time of

delivery, when the child's father was neither a U.S. citizen nor a lawful permanent resident. A second category applies to children whose mothers were lawfully in the country on a temporary basis, such as on a visa, but whose fathers likewise did not hold U.S. citizenship or green cards when the child was born.

In practical terms, the order directs federal agencies to treat children born under those circumstances as noncitizens, despite their U.S. birthplace. As a result, affected individuals would be unable to obtain federal documentation recognizing U.S. citizenship, including passports and Social Security numbers, even if they were issued birth certificates by state or local authorities.

Overall, at least 11 lawsuits have been filed to challenge the executive order, according to a litigation tracker run by Just Security, a digital law and policy journal housed in the Reiss Center on Law and Security at the [New York University School of Law](#).

In four of those cases, federal district courts issued nationwide preliminary injunctions last year. The Supreme Court ruled in June in one of them, [Trump v. CASA](#) ●, limiting federal courts' power to issue universal injunctions, but did not rule on the issue of birthright citizenship.

In [Trump v. Barbara](#) ●, a federal court in New Hampshire temporarily prohibited federal officials from implementing the executive order as applied to a class of infants born on or after Feb. 20, 2025.

Stephen Yale-Loehr, a retired immigration law professor at [Cornell University Law School](#), said that although the Supreme Court has been largely deferential to President Trump on most immigration issues, the birthright citizenship case might present an opportunity to distance itself from his administration's policies.

"The court wants at least one case, I think, to show that it does have some independence from President Trump by ruling against him," he said. "I think this is an example of such a case."

Funding for Legal Aid Uncertain

Funding for legal aid is one of the most pressing access to justice issues facing the country, with the legal needs of millions of people going unmet.

According to a 2022 study by the Legal Services Corporation — a nonprofit, federally funded organization established by Congress in 1974 to ensure equal access to justice by providing civil legal aid to people who can't afford lawyers — low-income Americans lack legal help for 92% of their substantial civil legal problems.

In its budget proposal for fiscal year 2026, which ends on Sept. 30, the White House called for eliminating the LSC, which provides funding to 131 independent nonprofit legal aid organizations in every state, the [District of Columbia](#), and U.S. territories for issues like housing, wages and benefits.

Congress declined to follow the White House's proposal to shut down the LSC, but the organization is now facing a reduction in federal funding. While the [U.S. Senate Appropriations Committee](#) approved a \$6 million increase in July, the House Appropriations Committee passed legislation that would decrease the LSC's funding by 46% from its current level — earmarking \$300 million. The current funding will remain flat through January, but cuts are coming.

In a call with Law360, LSC President Ronald S. Flagg said the current budget environment presents significant challenges for civil legal aid. At the same time, at a time when federal agencies are eliminated altogether or their budgets are slashed, actions by Congress signal that there is bipartisan support for the LSC and the need for funding civil legal aid overall.

"Flat funding in this environment can be viewed as a win when many federally funded institutions saw deep cuts or were eliminated entirely," Flagg said. "That said, flat funding still leaves enormous unmet need."

About half of people seeking assistance from legal aid organizations are turned away because of lack of funding, Flagg said.

If the House's proposed budget cut, which would take LSC's funding back to 1999 levels, is signed into law, an estimated 2.9 million more Americans would be left without legal help each year, according to the organization.

"As all of these budget negotiations are going forward, legal service organizations across the country have already seen reduced revenues and staffing layoffs at the same time as demand for their services are surging for help with housing, and family, and safety, and economic stability," Flagg said. "In that setting of economic pressure, actually, investment in legal aid is one of the highest value investments communities can make."

Studies conducted by the LSC estimate that each dollar invested in civil legal aid results in \$7 in economic returns by reducing homelessness and the need for emergency services and shelters, and by preserving employment.

"It's all very much dependent on our continuing to make investments in civil legal aid, which is why the current debate over the federal budget, and in particular the legal funding for LSC, remains so important," Flagg said.

Right to Counsel's Expansion and Challenges

A nationwide movement to expand the right to an attorney in civil legal matters will continue to gain new ground in 2026, opening avenues for thousands of Americans who struggle on issues directly impacting their lives, in particular tenant-landlord disputes.

John Pollock, the coordinator of National Coalition for a Civil Right to Counsel, told Law360 that right-to-counsel, or RTC, for tenants facing eviction has continued to expand geographically in 2025, with Los Angeles adopting tenant right to counsel and Bozeman, Montana, joining the list, bringing the total to 27 jurisdictions.

Reports published in 2025 showed both the impact and the challenges involved in expanding the right to a lawyer. Some of the challenges have to do with implementation, which often lags behind the legislative timelines lawmakers set when passing RTC laws.

One of the studies, which looked at RTC programs for tenants implemented between 2017 and 2024, show that, on average, RTC programs became operational more than six months after passage, with much longer delays in large jurisdictions or those that phased programs in gradually.

In practice, many programs could not serve all eligible tenants, even where laws promised universal coverage. Legal aid providers often lacked sufficient staff, leading to waitlists, triage systems or limited-scope representation that fell short of full counsel representation. The study also identified chronic underfunding and attorney shortages as the most serious obstacles to effective RTC implementation.

But the same study also showed evidence that, when implemented well, RTC is able to improve the legal system as a whole and lead to better outcomes for litigants. For example, the study found that in jurisdictions where RTC was meaningfully integrated, default eviction orders against tenants decreased, tenant protections like habitability laws were enforced more consistently and there was a shift away from "eviction mill" court practices that litigants and attorneys have lamented for years.

Pollock said the availability of counsel "is changing the game." RTC laws created streamlined processes to access attorneys.

"Before right to counsel, a lot of tenants were lost in the maze of trying to get legal assistance," he said.

Courts in jurisdictions that have RTC laws began to change the way they behaved towards tenants, informing them about their right to a lawyer and shifting the culture of tenant courts from one where evictions were often

rubber-stamped by judges to one where they are litigated. Issues like needed repairs in the home appear more routinely where RTC exists, compared to the past, Pollock said.

The studies found that legal representation can help reduce harm, even when eviction occurs. Lawyers can help tenants address those issues in court where they can ask courts to order landlords to make repairs or mitigate them. Attorneys can also help tenants negotiate extra time to move when an eviction order is issued and avoid getting eviction records. These outcomes reduced trauma, family disruption and risk of homelessness, the studies show.

Looking ahead to 2026, Pollock said uncertainties over the federal budget are concerning. He warned that potential cuts to Medicaid, expiration of healthcare subsidies under Obamacare and cuts to rent assistance programs funded by the [U.S. Department of Housing and Urban Development](#) could trigger cascading effects.

"They're going to cause health problems. But health problems don't stay health problems, they lead to housing problems, they lead to employment problems, they lead to child custody problems, and all of those then ripple and flow into the civil justice system," Pollock said.

Pollock described state preemption — the use of state law to bar cities and counties from enacting, or even considering, local ordinances in certain policy areas — as another threat to access to justice people will face in 2026.

In the housing context, preemption means states could pass legislation that prohibits municipalities from adopting measures such as right-to-counsel laws, rent regulations, eviction protections or other landlord-tenant reforms, even where local officials and voters support them.

Pollock said conservative states are increasingly using preemption not just to strike down specific policies but to remove local authority altogether. He pointed to Texas and Florida, which in 2024 enacted laws preempting the entire field of landlord-tenant regulation, effectively preventing cities from passing any new tenant-protective measures regardless of local conditions.

"We view this as an attack on democracy," Pollock said. "The cities are closest to the people in them and know best what their residents need, and the states are just disallowing them from doing that."

State Courts' Trends in Civil Rights

As the federal government pulls back from enforcing civil rights protections across the executive, legislative and judicial branches, state courts and state constitutions have increasingly emerged as the front line for civil rights litigation, said Kasia Szymborski Wolfkot, a senior counsel in the Brennan Center's Judiciary Program.

Szymborski Wolfkot said a broad federal retrenchment has pushed civil rights advocates to turn to state courts and state Legislatures to vindicate rights that once found protection in federal law. In response, she said, states have begun "filling the gap."

That has included interpreting state constitutions more expansively, creating new causes of action and developing remedies that go beyond what is currently available in federal courts. As a result, Szymborski Wolfkot said, state constitutional law has become an increasingly important battleground for civil rights enforcement — one that will likely see important developments in 2026.

Outrage over aggressive immigration enforcement has prompted state lawmakers in immigration-friendly states to consider new accountability mechanisms for federal agents.

Currently, most states lack remedies for violations of state constitutional rights equivalent to those available under Section 1983 of Title 42 of the U.S. Code, the federal civil rights statute, which allows plaintiffs to seek damages against state officials.

But that landscape is changing, Szymborski Wolfkot said.

The Illinois Legislature, for example, recently passed the "Illinois Bivens Act," a law that would allow individuals to sue federal officials for constitutional violations during civil immigration enforcement activities and expand remedies for violations of state constitutional rights. Gov. J.B. Pritzker signed the legislation into law on Dec. 9.

Similar proposals are being considered in other states, including New York, where immigration enforcement has increased dramatically since the beginning of the second Trump administration.

"They've really started to introduce and think about introducing some legislation that gives people private causes of action," Szymborski Wolfkot said. "This is exciting, because while they may be focused on ICE enforcement, it also allows for a cause of action for violations of the state constitution."

In another growing trend, more states are passing laws barring immigration enforcement in sensitive locations, such as courthouses, schools and hospitals.

Szymborski Wolfkot said that, after the federal government rescinded internal limits on immigration arrests in these places, states like New York stepped in with their own protections. She said additional states are now adopting similar restrictions, framing them as civil rights measures designed to ensure that people can safely access courts, education and medical care without fear of arrest.

State courts are also at the forefront of legal challenges involving the rights of transgender persons.

Following the U.S. Supreme Court's decision in June in [United States v. Skrmetti](#) ● upholding Tennessee's ban on gender-affirming care for minors, trans rights litigation is increasingly moving to state courts, Szymborski Wolfkot said. Montana's Supreme Court struck down a similar ban under its state constitution's privacy protections, and challenges are pending in state courts in Ohio and North Dakota.

Szymborski said "healthcare freedom" constitutional amendments, originally adopted to limit the [Affordable Care Act](#), are being used by litigators as tools to challenge restrictions on gender-affirming care and abortion.

"I think that this is going to push a lot of trans rights litigation to state courts under state constitutions," she said.