MEDDLESOME MOLD: GROWING DISPARITY BETWEEN STATE CONSTITUTIONAL PROMISES AND REALITY

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ABSTRACT

Protections prescribed in the U.S. Constitution provide a national baseline of civil liberties that shall not be infringed upon. However, since the Constitution does not mention a right to a clean environment, the decision of whether to provide this guarantee is effectively left to the individual states. This federalist system has left our nation bereft of environmental rights, as only a handful of U.S. states have added environmental provisions to their constitutions and fewer still enacting such amendments into their bills of rights.

In 1971, Pennsylvania became the first state to amend its constitution to include an environment-focused provision within its Declaration of Rights. Similarly, in 1972, Montana included the right to a clean environment in its new constitution. In 2021, New York became the latest state to add an environmental provision to its constitution, doing so under article I—the state's bill of rights. Additional states may soon be added to this list as many are actively considering clean environment "amendment initiatives or proposals."

While trees and clean water might come to mind first when thinking of a clean environment amendment, it is vital not to overlook a clean environment within the context of the housing system. Integral to the right to a clean environment is the right to clean air, both outside and inside. Indoor air can be compromised by pollutants just the same as outdoor air, with one of the most common pollutants in both settings being mold. These state constitutional amendments provide lofty guarantees of a clean environment. But in some jurisdictions, namely Pennsylvania, they lack teeth.

Moreover, federal agencies and state statutes do not uniformly impose a duty upon landlords to notify tenants about the presence of historical or current mold. Those familiar with basic property law might suppose that

[*] J.D., Rutgers School of Law, 2026. Mom and Dad, thank you for your steadfast support of this Note and all of my academic endeavors. I love you both dearly.

the proper remedy to deal with this conflict is for tenants to rely upon the implied warranty of habitability. Yet, this doctrine is deeply flawed and ineffective at resolving the issue of requiring landlords to disclose mold presence within certain jurisdictions. This Note will provide analysis and solutions to reconcile the ever-growing disparity between constitutional promises, statutory duties, and the harrowing reality that tenants endure.

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INTRODUCTION

Welcome to your apartment! You have got a brand-new stove, refrigerator, and dishwasher. Unfortunately, the flooring is not new, but that comes with living in an older building. Everything also has a nice new coat of paint on it. After all, first impressions are so important! You also have a walk-in closet and a little balcony to enjoy the summer sunsets. Speaking of enjoying your time here, Philadelphia has so much history to offer. I recommend you check out some of the nearby sights. We have the Liberty Bell, Independence Hall, and Elfreth's Alley right around the corner! Do you have any other questions for me? Mold presence? It is interesting you should ask about that . . .

Protections prescribed in the U.S. Constitution provide a national baseline of civil liberties that shall not be infringed upon. However, since

the Constitution does not mention a right to a clean environment, the decision of whether to provide this guarantee is effectively left to the individual states.[1] This federalist system has left our nation bereft of environmental rights, with only a handful of U.S. states having added environmental provisions to their constitutions and fewer still enacting such amendments into their bills of rights.[2] The decision as to where to place the right to a clean or healthful environment within a state's constitution is essential. The right should not be relegated to an isolated location; it should be among the other essential rights that the state guarantees to its constituents.[3] Accordingly, this Note will focus on states that provide a fundamental right to a clean environment and will not discuss states that merely mention environmental protection[4] outside of their bills of rights.

In 1971, Pennsylvania became the first state to amend its constitution to include an environment-focused provision within its Declaration of Rights.[5] Similarly, in 1972, Montana included the right to a clean environment in its new constitution.[6] In article II, Montana deems this provision an "inalienable right[]."[7] Further, Montana's constitution includes article IX, which is dedicated to environmental and

1. U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

2. *See* Drew Hutchinson, *Green Amendments Gain Traction in More States Ahead of Elections*, BLOOMBERG L. (Feb. 6, 2024, at 05:30 ET), https://news.bloomberglaw.com/environment-and-energy/green-amendments-gain-traction-in-more-states-ahead-of-elections [https://perma.cc/L9VX-9CHA] (on file with Rutgers Univ. L. Rev.).

3. *See* Corinne Bell, *Every State Should Have a Right to a Healthy Environment*, NRDC (Mar. 29, 2021), https://www.nrdc.org/bio/corinne-bell/every-state-should-have-right-healthy-environment [https://perma.cc/R873-BFAR] ("Placement within the constitution itself is also important: a right to a healthy environment should sit alongside other fundamental rights.").

4. *See, e.g.*, MASS. CONST. arts. XCVII, CX (showing the provisions concerning both the rights to "clean air and water . . . and the natural scenic, historic, and esthetic qualities of their environment" and "the environmental benefits of recreational lands" are not listed under "A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts," where fundamental rights afforded to residents are listed).

5. PA. CONST. art. I, § 27. *See* Dharna Norr, *'Green Amendments': Advocates Push for Constitutional Guarantees in Face of Climate Crisis*, GUARDIAN (July 3, 2023, at 06:00 ET), https://www.theguardian.com/us-news/2023/jul/03/montana-climate-trial-green-amendments-state-constitutions [https://perma.cc/WEP9-NDYZ].

6. Lesley Clark, *Montana's Pro-Environment Constitution Goes on Trial*, E&E NEWS (June 12, 2023, at 06:13 ET), https://www.eenews.net/articles/montanas-pro-environment-constitution-goes-on-trial/ [https://perma.cc/HW7N-DXRQ] (on file with Rutgers Univ. L. Rev.) ("Enacted in 1972 . . . Montana's Constitution puts the right to a 'clean and healthful environment' at the top of the document—ahead of freedom of religion and speech.").

7. MONT. CONST. art. II, § 3.

natural resources provisions.[8] In 2021, New York became the latest state to add an environmental provision to its state constitution, doing so under article I—the state's bill of rights.[9] Additional states may soon be added to this list as many are actively considering clean environment "amendment initiatives or proposals."[10]

But the question still remains: What does this have to do with housing? While trees and clean water might come to mind first when thinking of a clean environment amendment, it is vital not to overlook a clean environment within the context of the housing system. Integral to the right to a clean environment is the right to clean air, both outside and inside. Indoor air can be compromised by pollutants just the same as outdoor air, with one of the most common pollutants in both settings being mold.[11] Research has shown mold can be a breeding ground for a plethora of health problems, such as "stuffy nose, sore throat, coughing or wheezing, burning eyes, or skin rash . . . fever or shortness of breath [and] . . . hypersensitivity pneumonitis," and has found "a potential link of early mold exposure to development of asthma in some children."[12] These state constitutional amendments provide lofty guarantees of a clean environment. But in some jurisdictions, namely Pennsylvania, they lack teeth.

Moreover, federal agencies and state statutes do not uniformly impose a duty upon landlords to notify tenants about the presence of historical or current mold.[13] This leads us to look elsewhere for effective

8. *Id.* art. IX.

9. *See* Emily Pontecorvo, *New York's New Constitutional Right to a Clean Environment Faces First Judicial Test*, GRIST (Feb. 15, 2023), https://grist.org/regulation/new-york-environmental-rights-green-amendment-first-court-test/ [https://perma.cc/GKY4-4H2H] ("In November 2021, New Yorkers overwhelmingly approved a ballot measure to amend the state constitution . . . ."); N.Y. CONST. art. I, §19.

10. Dana Drugmand, *Advocates Nationwide Push for State-Level Green Constitutional Amendments*, SIERRA (Mar. 28, 2024), https://www.sierraclub.org/sierra/advocates-nationwide-push-state-level-green-constitutional-amendments [https://perma.cc/PX7E-VBWS] (listing Arizona, California, Connecticut, Delaware, Florida, Hawai'i, Iowa, Maine, New Jersey, New Mexico, Texas, Vermont, Washington, and West Virginia as states considering a clean environment amendment).

11. *See Mold*, CTRS. FOR DISEASE CONTROL (Sep. 26, 2024), https://www.cdc.gov/mold-health/about/index.html [https://perma.cc/L8EA-VQD5].

12. *Id.*

13. *See, e.g.*, *Are There Federal Regulations or Standards Regarding Mold?*, EPA (July 29, 2025), https://www.epa.gov/mold/are-there-federal-regulations-or-standards-regarding-mold [https://perma.cc/S7BD-2DBD] ("Standards or Threshold Limit Values (TLVs) for airborne concentrations of mold, or mold spores, have not been set. Currently, there are no EPA regulations or standards for airborne mold contaminants."); MONT. CODE ANN. § 70-16-703 (2023); Ron Leshnower, *New York Rules Regarding Mold in Rental Properties*, NOLO, https://www.nolo.com/legal-encyclopedia/new-york-rules-regarding-mold-rental-properties.html [https://perma.cc/5CBH-QN52] (last visited Aug. 18, 2025); Ron

methods to safeguard the promises bestowed in the state constitutions. Those familiar with basic property law might suppose that the proper remedy to deal with this conflict is for tenants to rely upon the implied warranty of habitability. Yet, this doctrine is deeply flawed and ineffective at resolving the issue of requiring landlords to disclose mold presence in certain jurisdictions.[14] The remainder of this Note will provide further analysis and solutions to reconcile the ever-growing disparity between constitutional promises, statutory duties, and the harrowing reality that tenants endure.

I. STATE CONSTITUTIONAL ENVIRONMENTAL RIGHTS AMENDMENTS

A. Pennsylvania

Pennsylvania passed the nation's first environmental rights amendment in 1971 in the wake of numerous environmental tragedies and deaths resulting from deforestation, polluting industries, and unregulated coal mining.[15] The Pennsylvania House of Representatives and Senate passed House Bill 958 to abate Pennsylvania's environmental decline.[16] Not only did this bill have the legislature's support, but it was ratified by citizens by a four-to-one margin.[17] The adopted language in the Pennsylvania constitution provides:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to

Leshnower, *Pennsylvania Rules Regarding Mold in Rental Properties*, NOLO [hereinafter Leshnower, *Pennsylvania Rules*], https://www.nolo.com/legal-encyclopedia/pennsylvania-rules-regarding-mold-rental-properties.html [https://perma.cc/5DUM-D7KB] (last visited Aug. 18, 2025).

14. *See Warranty of Habitability*, PALAWHELP.ORG, https://www.palawhelp.org/resource/warranty-of-habitability [https://perma.cc/H9C7-4LCQ] (last visited Aug. 18, 2025); *see also* N.Y. REAL PROP. LAW § 235-b (McKinney 2018).

15. *See Environmental Rights Amendment*, PENNFUTURE, https://www.pennfuture.org/environmental-rights-amendment [https://perma.cc/5ZKL-S5C5] (last visited Aug. 22, 2025); *see also* Elizabeth T. Jacobs, Jeffrey L. Burgess & Mark B. Abbott, *The Donora Smog Revisited: 70 Years After the Event that Inspired the Clean Air Act*, 108 AM. J. PUB. HEALTH S85, S85–87 (2018) (providing insight into the smog tragedy in Donora, Pennsylvania and its long-term effects).

16. *See* PENNFUTURE, *supra* note 15; Franklin L. Kury, *The Environmental Amendment to the Pennsylvania Constitution: Twenty Years Later and Largely Untested*, 1 VILL. ENV'T. L. J. 123, 123 (1990).

17. Kury, *supra* note 16, at 123–24 n.2.

> come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.[18]

Litigants have referred to this amendment when faced with environmental violations. In *Robinson Township v. Commonwealth*, the plaintiffs challenged Act 13 of 2012, a statute which amended the Pennsylvania Oil and Gas Act and, in particular, permitted natural gas exploitation in the Marcellus Shale.[19] The Marcellus Shale Formation is a geological gas reservoir, and businesses harvest this gas via "hydraulic fracturing or 'fracking' (usually slick-water fracking) and horizontal drilling."[20] To quote the court, these harvesting techniques "do violence to the landscape."[21] Citizens filed a petition for review requesting a permanent injunction against Act 13, claiming it violated numerous provisions of the Pennsylvania Constitution including the environmental rights amendment under article I.[22] The court held that Act 13 was contrary to the Commonwealth's responsibility for implementing legislation that benefits the environment.[23] Thus, certain provisions of Act 13 violated the Environmental Rights Amendment, and the case was remanded.[24]

Robinson provided that the Commonwealth has negative and affirmative duties to protect natural resources, whether the actions stem from state action or "the state's failure to restrain the actions of private parties."[25] The lack of judicial guidance on what constitutes "scenic" or "esthetic" values of the environment or the scope of "public natural resources" leaves abundant room for future litigation against the government and potentially private actors.[26] The absence of language

18. PA. CONST. art. I, § 27.
19. Robinson Twp. v. Commonwealth, 83 A.3d 901, 913 (Pa. 2013).
20. *Id.* at 914.
21. *Id.*
22. *Id.* at 915–16.
23. *See id.* at 913.
24. *See id.* at 999–1000; *see also PA Supreme Court Strengthens Environmental Rights–A Historic Win for Pennsylvania's Air, Water, Land, and Health*, CLEAN AIR COUNCIL, https://cleanair.org/paenvironmentalrightswin/ [https://perma.cc/CG8X-MZCE] (last visited August 18, 2025) (explaining the importance of the decision and highlighting the court's holding that potential laws which unreasonably impair the environmental rights amendment are unconstitutional).
25. *See Robinson*, 83 A.3d at 955–57; *see also* Brigitte Meyer, *The People Have A Right: A Brief Overview of Environmental Rights Amendment Case Law*, PENNFUTURE (Mar. 25, 2024), https://www.pennfuture.org/Blog-Item-The-People-Have-A-Right-A-Brief-Overview-Of-Environmental-Rights-Amendment-Case-Law [https://perma.cc/C2X6-65EM] (situating *Robinson* in context among other environment rights cases in Pennsylvania).
26. *See* Meyer, *supra* note 25; John C. Dernbach, *The Value of Constitutional Environmental Rights and Public Trusts*, 41 PACE ENV'T L. REV. 153, 201–02 n.350 (2024)

about the required means to use the amendment to bring claims against private actors substantially limits its power.

B. Montana

The path to securing the clean environment provision within Montana's constitution was not without obstacles. During the 1972 Montana Constitutional Convention, opponents of the provision were concerned about whether adding it would open the courts to immense litigation.[27] Delegate Burkhardt eased the concern and explained that this language was merely an extension of the preamble.[28] Despite passing with the support of an overwhelming majority of the delegates, the 1972 Constitution was slimly ratified by Montana voters.[29] The new constitution was adopted with the revised "Inalienable Rights" section:

> All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.[30]

Parties have relied on this section when formulating legal arguments. In *Held v. State*, the plaintiffs alleged that Montana's reliance on fossil fuels for energy and the resultant contribution to climate change violated their constitutional rights.[31] Specifically, the plaintiffs challenged a Montana Environmental Policy Act provision (the "MEPA limitation"), "which forbids the State and its agents from

(citing Commonwealth v. Nat'l Gettysburg Battlefield Tower, Inc., 302 A.2d 886, 891–92 (Pa. Commw. Ct. 1973), *aff'd*, 311 A.2d 588 (Pa. 1973)). Dernbach explains how the court held the "first sentence is self-executing against private parties," yet it is unclear if this is precedent lawyers may rely on. *Id.* While this case has not been expressly overruled, "[n]o Pennsylvania appellate court has subsequently authorized a lawsuit against a private party based on the right to a quality environment." *Id.*

27. *See* Hallee C. Kansman, Comment, *Constitutional Teeth: Sharpening Montana's Clean and Healthful Environment Provision*, 81 MONT. L. REV. 247, 253 (2020).

28. *Id. See generally* MONT. CONST. pmbl. ("We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life . . . .").

29. Kansman, *supra* note 27, at 255 ("[T]he 1972 Montana Constitution barely passed—with 50.55 percent in favor of and 49.44 percent against the new constitution").

30. MONT. CONST. art. II, § 3.

31. Held v. State, No. CDV-2020-307, 2023 Mont. Dist. LEXIS 2, at *1 (Mont. Dist. Ct. Aug. 14, 2023).

considering the impacts of greenhouse gas (GHG) emissions or climate change in their environmental reviews."[32]

The plaintiffs utilized expert testimony to assert that "human caused fossil fuel development is harming Montana's ecosystems and hydrology."[33] Specifically, the burning of fossil fuels produces greenhouse gases, and unless the concentration of these gases is reduced, plaintiffs will be unable to live clean and healthy lives in Montana.[34] The testimonies presented evidence about how Montana's dependence on fossil fuels contributed to the plaintiffs' hardships.[35] For instance, one plaintiff experienced depression, psychological distress, and anxiety when thinking of climate change, and was forced to relocate during the summer to avoid the smoky conditions from wildfires in Montana.[36] Another plaintiff asserted she "depends on a clean and healthful environment for her physical and mental health and well-being."[37] The court found these mental health injuries stemming from climate change to be legally cognizable injuries.[38]

Moreover, the MEPA limitation was subject to strict scrutiny because it involved the "[p]laintiffs' inalienable right to a 'clean and healthful environment.'"[39] The court affirmed that not only was this right retroactive, but the language indicated Montanans have a right "to be free of [environmental harm] in the first place."[40] Ultimately, the court found in favor of the plaintiffs and stated that the plaintiffs have a constitutional right to a clean and healthful environment in which protection from climate change is included.[41]

Article IX is often mentioned contemporaneously in claims that put forth article II rights. One author contends article II is an ideology for constituents to live by, while article IX provides the means for bringing forth claims.[42] The relevant portion of article IX mandates that each person shall have a healthful environment, and the legislature shall

32. *Id.*
33. *Id.* at *21.
34. *Id.* at *29.
35. *Id.* at *58.
36. *Id.* at *70–71.
37. *Id.* at *73.
38. *Id.* at *110–11.
39. *Id.* at *119–20 ("Any statute, policy, or rule which implicates a fundamental right must be strictly scrutinized and can only survive scrutiny if the State establishes a compelling state interest and that the action is narrowly tailored to effectuate that interest.").
40. *Id.* at *123–24 (quoting Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶ 62, 477 P.3d 288, 304 (Mont. 2020)).
41. *Id.* at *129–30.
42. *See* Kansman, *supra* note 27, at 281.

enforce and provide remedies for protecting environmental systems and the degradation of natural resources.[43]

This two-fold assertion of citizens' rights to a clean environment emphasizes the right's importance to many parties within the state. Montana authorizes two types of actions against private parties using this amendment.[44] As discussed above, the actions may derive from the language granting the people's "right to a clean and healthful environment" and the provision that "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."[45] Lawsuits may also be brought against private parties when damages are not available by any common law cause of action.[46]

C. New York

New York is the latest state to add an environmental rights amendment to the state's bill of rights, and the amendment already provides a basis to bring successful litigation. The amendment, holding "[e]ach person shall have a right to clean air and water, and a healthful environment,"[47] was ratified by voters by a two-to-one margin and became effective on January 1, 2022.[48] Due to the recent passing of the amendment, New York does not have a substantial number of lawsuits from which to draw judicial predictions. However, one recent case does illustrate the judiciary's interpretation of the amendment.

In *Fresh Air for the Eastside, Inc. v. State*, the plaintiffs brought suit claiming the defendant's actions violated New York's newly enacted amendment.[49] The plaintiffs contended that the landfill at issue caused hazardous substances to be released into the air, emitted greenhouse gases, and dispersed noxious odors of garbage.[50] As such, New York's non-compliance violated the plain meaning of the constitutional provision.[51] The court held New York's compliance with the amendment was mandatory as "[c]omplying with the [c]onstitution is not optional for

43. MONT. CONST. art. IX, § 1.
44. Dernbach, *supra* note 26, at 200–01.
45. *Id.* at 200 (quoting MONT. CONST. art. IX, § 1).
46. *Id.* at 201.
47. N.Y. CONST. art. I, § 19.
48. *See* Nicholas A. Robinson, *The Dawn of Environmental Human Rights in New York*, N.Y. STATE BAR ASS'N (May 26, 2023), https://nysba.org/the-dawn-of-environmental-human-rights-in-new-york/ [https://perma.cc/2Q84-QD4P].
49. Fresh Air for the Eastside, Inc. v. State, No. E2022000699, 2022 N.Y. Slip Op. 34429(U), at 1 (N.Y. Sup. Ct. Dec. 20, 2022).
50. *Id.* at 6.
51. *Id.* at 10.

a state agency, and is thus nondiscretionary and ministerial."[52] Since the amendment is newly formed, more litigation will be required to provide insight into the nuances of the amendment.[53]

Fresh Air effectively prohibits plaintiffs from using the amendment as a constitutional footing against private parties, with certain limited exceptions.[54] Long-standing amendments with comparable language, such as the free exercise of religion, do not reference private entities and have generally been found to apply only to the government.[55] The *Fresh Air* ruling, combined with the judicial system's tendency to follow precedent, renders it unlikely that New York citizens can bring suit against private parties using the environmental amendment.[56] Therefore, subsequent sections will focus on Pennsylvania and Montana, where litigation against private actors is more feasible.

II. HEALTH CONCERNS DERIVED FROM MOLD

Mold plays a crucial role in the ecosystem, utilizing fascinating biological mechanisms. It is a microscopic organism that can be found virtually anywhere water and oxygen are present.[57] Over 100,000 different forms of mold exist, all of which are classified in the fungi family.[58] Molds are eukaryotic organisms that reproduce asexually and contain a cell wall composed of chitin.[59] When mold cells amass, they form

52. *Id.* at 16.

53. *See id.* at 19.

54. *See id.* at 12–13.

55. Scott Fein & Tyler Otterbein, *New York's New Constitutional Environmental Bill of Rights: Impact and Implications*, GOV'T L. CTR. AT ALB. L. SCH., https://www.albanylaw.edu/government-law-center/new-yorks-new-constitutional-environmental-bill-rights-impact-and [https://perma.cc/GJX2-YC7G] (last visited Aug. 17, 2025).

56. *See id.* ("However, questions remain about whether the Green Amendment will not simply be an artifact but, rather, an important tool to allow communities to seek to safeguard their environment and compel state and local governments to act to prevent environmental harms.").

57. *What are Molds?*, EPA (Feb. 4, 2025), https://www.epa.gov/mold/what-are-molds [https://perma.cc/68X9-7CBX]; *see Why Is Mold Growing in My Home?*, EPA (Sep. 25, 2025), https://www.epa.gov/mold/why-mold-growing-my-home [https://perma.cc/QX8K-9R2Z]; *Mold Allergy*, ALLERGY & ASTHMA NETWORK, https://allergyasthmanetwork.org/allergies/mold-allergy [https://perma.cc/W7Y3-XZNB] (last visited Aug. 25, 2025).

58. *See Mold Allergy*, *supra* note 57.

59. *How Does Mould Reproduce: Unveiling the Science*, NIMBUS HOMES (Oct. 2, 2023), https://www.nimbushomes.com/blog/how-does-mould-reproduce [https://perma.cc/WU36-378L]; *see also Eukaryotic vs. Prokaryotic Cells: Key Differences Explained*, ENCYC. BRITANNICA, https://www.britannica.com/video/Difference-prokaryotes-eukaryotes-cells-DNA-ribosomes-organelles-cell-structure-biology/-242203 [https://perma.cc/MF6Z-6BA2]

a mycelium, which creates spores.[60] Spores are typically invisible to the naked eye and spread through water, pollinators, air, or physical disturbance.[61] Even if the spores are inactive, they may remain allergenic for a prolonged period.[62] Mold species are generally categorized as allergenic, pathogenic, or toxigenic, with toxigenic being the most harmful.[63]

Due to mold's minimal requirements to exist, it can be pervasive in nearly any environment, whether indoors or outdoors. Outdoors, mold plays a crucial role in the natural ecosystem and is vital to the decomposition process.[64] It breaks down organic material like leaves, trees, and animal remains; these objects are typical mold growth locations.[65] The mold secretes digestive enzymes on the organic material, slowly decomposing the substrate and recycling nutrients back into the soil.[66] Inorganic materials, such as concrete or glass, do not permit mold growth directly.[67] However, if there is dirt, paint, or other select synthetics on the inorganic materials, it is habitable for mold.[68] Over time, if moisture levels and organic material remain present, mold can proliferate and cause damage to building materials such as wood and drywall.[69] The growth of mold in these materials weakens structural integrity and can lead to costly repairs.

One of the most common (and most harmful) molds, which thrives outdoors and indoors, is *Stachybotrys chartarum*, or black mold.[70] Black

(last visited Aug. 20, 2025) (explaining that eukaryotes have a nucleus and membrane-bound organelles, compared to prokaryotes which do not).

60. *How Does Mould Reproduce: Unveiling the Science*, *supra* note 59.

61. *See Mold Allergy*, *supra* note 57; *What are Molds*?, *supra* note 57.

62. *What are Molds?*, *supra* note 57.

63. *See Which Molds are Most Dangerous to my Health?*, IQAIR (May 8, 2024), https://www.iqair.com/us/newsroom/which-molds-are-most-dangerous-to-my-health? [https://perma.cc/N94M-XF48] (explaining the differences between the mold categories and the level of toxicity each poses to living organisms).

64. *See* NATHAN YOST, JOSEPH LSTIBUREK & TERRY BRENNAN, WHAT YOU NEED TO KNOW ABOUT MOLD 1 (2002), https://www.cityofcentralia.com/DocumentCenter/View/121/What-You-Need-to-Know-About-Mold-PDF [https://perma.cc/7QBX-JQWH].

65. *See id.*

66. *See id.*

67. *Id.*

68. *Id.*

69. *Can Mold Cause Structural Damage? What You Need to Know*, SAFE AIR (Dec. 7, 2024), https://safeairmoldtesting.com/can-mold-cause-structural-damage-what-you-need-to-know/ [https://perma.cc/4XXL-6BLT] ("The presence of mold is not just a cosmetic issue; it poses threats to property and can lead to substantial structural damage over time.").

70. *See Black Mold*, CLEVELAND CLINIC, https://my.clevelandclinic.org/health/diseases/24862-black-mold [https://perma.cc/F3J8-FKDU] (last visited Sep. 19, 2025); *Molds in the Environment*, JOHN HOPKINS MED., https://www.hopkinsmedicine.org/health/conditions-and-diseases/molds-in-the-environment [https://perma.cc/8EUT-

mold can exist in virtually any indoor space, but it is most pervasive in kitchens, bathrooms, attics, basements, and HVAC appliances because water, heat, and organic materials provide an ideal growing environment.[71] Figure 1 provides a visual of mold's invasive, yet hidden, nature inside an HVAC system.

Figure 1[72]

Black mold was first described nearly 200 years ago, and further research began after horses exhibited illness from ingesting straw contaminated by the mold.[73] Decades later, a family in Chicago complained of similar symptoms to those the horses exhibited: dermal abnormalities, fatigue, and irritated throats.[74] Scientists sampled the uninsulated cold air duct in the family's home and wood ceiling and found, yet again, *Stachybotrys chartarum*.[75] The family's experience is not unique; recent epidemiological studies have reported that "dampness and fungal (mold) problems are present in 20% to 50% of modern homes," and fungi are a causal factor "in the relationship of home dampness and respiratory complications."[76]

ABEK] (last visited Aug. 21, 2025); Berlin D. Nelson, *Stachybotrys chartarum: The Toxic Indoor Mold*, AM. PHYTOPATHOLOGICAL SOC'Y (Nov. 1, 2001), https://www.apsnet.org/edcenter/apsnetfeatures/Pages/Stachybotrys.aspx [https://perma.cc/D6DK-QRDE]; *Which Molds are Most Dangerous to my Health?*, *supra* note 63 (listing *Stachybotrys chartarum* under the toxigenic molds category).

71. *See 17 Common Places Where You Can Find Mold in Your Home*, RPF ENV'T TESTING & CONSULTING SERVS., https://www.airpf.com/places-where-mold-is-found-in-homes/ [https://perma.cc/99QU-JJ8P] (last visited Aug. 18, 2025).

72. *How to Spot Mold in Your Air Ducts*, GRAND RAPIDS DUCT CLEANING (May 20, 2024), https://www.grandrapidsductcleaning.co/blog/how-to-spot-mold-in-air-ducts [https://perma.cc/A9HT-7LFD].

73. *See* Nelson, *supra* note 70.

74. *Id.*

75. *Id.*

76. Arnoud P. Verhoeff & Harriet A. Burge, *Health Risk Assessment of Fungi in Home*

Even more worrisome is that all concentrated indoor fungi colonies likely produce allergens.[77] Up to eight percent of the population with respiratory allergy are reported to be sensitized to fungi, with four-year-olds having the highest level of sensitization.[78] Moreover, black mold is capable of producing mycotoxins, including aflatoxins, which are carcinogenic to humans.[79] While the extent of fungi's impact on allergic disease is likely undervalued based on the availability of studies and quantitative data,[80] it is readily apparent that mold adversely affects people's health.

Whether the mold exposure was acute or chronic will likely affect how much the occupant's health is impacted. Some fungi are opportunistic infectious agents, especially in the case of immunocompromised people.[81] While mold may not directly cause a person to be immunocompromised, it can impair the immune system's functioning, exacerbating existing health issues.[82] Acute mold exposure typically refers to a short-term encounter with mold spores, and symptoms usually appear soon after exposure, but delayed symptom onset is also possible.[83] Individuals may experience respiratory issues such as coughing, wheezing, and worsened asthma symptoms.[84] Other symptoms include, but are not limited to, dermatitis, eye irritation, neurological symptoms, or exacerbation of existing conditions.[85]

Environments, 78 ANNALS ALLERGY, ASTHMA, & IMMUNOLOGY 544, 544 (1997).

77. *Id.*

78. *See id.* (explaining that 42% of the four-year-old patients had sensitization to the aeroallergens, including *Cladosporium herbarum*; this declined to 10% in patients more than fifteen years old).

79. *Id.* at 545*; see also* J. W. Bennett & M. Klich, *Mycotoxins*, 16 CLINICAL MICROBIOLOGY REVS. 497, 498 (2003) ("[M]any secondary metabolites produced by bacteria and fungi . . . play a role in causing or exacerbating the plant disease . . . . All mycotoxins are low-molecular-weight natural products . . . . These metabolites constitute a toxigenically and chemically heterogeneous assemblage that . . . can cause disease and death in human beings and other vertebrates.").

80. *See* Verhoeff & Burge, *supra* note 76, at 552.

81. *Id.* at 545.

82. *See* Stephanie Kraft, Lisa Buchenauer & Tobias Polte, *Mold, Mycotoxins and a Dysregulated Immune System: A Combination of Concern?*, 22 INT'L J. MOLECULAR SCIS. 1, 3–4, 7 (2021).

83. *See Black Mold*, *supra* note 70.

84. *Id.*

85. *See* Daniel Yetman, *What is a Mold Rash?*, HEALTHLINE (July 30, 2020), https://www.healthline.com/health/mold-rash [https://perma.cc/59HF-XDNB]; *Mold and Your Health*, ILL. DEP'T PUB. HEALTH, https://www.idph.state.il.us/envhealth/factsheets/mold.htm [https://perma.cc/NN2A-4ND4] (last visited Sep. 20, 2025); James Roland, *What Are the Possible Neurological Symptoms of Mold Exposure?*, HEALTHLINE (Aug. 26, 2025), https://www.healthline.com/health/mold-and-neurological-symptoms [https://perma.cc/UVC5-76UG].

When indoor mold growth is not remediated and one is exposed to mold and the associated mycotoxins repeatedly, these symptoms compound. This can lead to ongoing or worsening health issues, particularly in sensitive individuals. Constant exposure to mold and the associated mycotoxins may lead to respiratory issues.[86] Individuals can even develop bronchitis or chronic sinusitis, in addition to persistent coughing.[87] These conditions can become debilitating, affecting daily activities and overall quality of life. Moreover, exposure to mycotoxins can suppress the immune system, making individuals susceptible to pneumonia and other transmissible illnesses.[88] Prolonged exposure to mycotoxins and mold spores is especially concerning because it can lead to more serious long-term health effects. For instance, exposure to *Stachybotrys chartarum* has been linked to neurological degradation, hemorrhaging, and irreversible damage to the liver and kidneys.[89] Thus, healthy and illness-prone individuals are at risk for adverse health effects when mold is present.

III. LANDLORD STATUTORY DUTIES TO DISCLOSE MOLD

A. Pennsylvania

Unfortunately, Pennsylvania does not have a specific statute that explicitly requires landlords to disclose mold to tenants.[90] Instead, Pennsylvania relies upon the overlap of numerous rules, including the implied warranty of habitability, to address mold in rental properties.[91] However, the implied warranty of habitability is flawed and is not the safeguard it promotes itself to be. The Commonwealth's current legal landscape could be improved if proactive steps were taken, which will be discussed in Part V.

86. Kirsten Nunez, *How Long Does it Take for Mold to Affect Your Health?*, HEALTHLINE (June 19, 2025), https://www.healthline.com/health/how-long-does-it-take-to-get-sick-from-mold-exposure [https://perma.cc/3WHT-P6UQ].

87. William J. Fisk, Ekaterina A. Eliseeva & Mark J. Mendell, *Association of Residential Dampness and Mold with Respiratory Tract Infections and Bronchitis: A Meta-Analysis*, 9 ENV'T HEALTH, no. 72, 2008, at 1, 10; Luke Curtis, Letter, *Reducing Fungal Exposure Critical for Treating Rhinosinusitis with or Without Polyps*, 14 J. ASTHMA & ALLERGY 275, 275 (2021) (listing one heading as "Mold Exposure is a Major Trigger for Sinusitis").

88. *See* Kraft et al., *supra* note 82, at 13.

89. *See id.* at 2; D. M. Kuhn & M. A. Ghannoum, *Indoor Mold, Toxigenic Fungi, and* Stachybotrys chartarum*: Infectious Disease Perspective*, 16 CLINICAL MICROBIOLOGY REVS. 144, 158–60 (2003) (describing the neurotoxicity of mold but noting objective data for neurological compromise is lacking despite recorded subjective complaints from subjects).

90. Leshnower, *Pennsylvania Rules*, *supra* note 13.

91. *Id.*

B. Montana

Montana remains the paragon of statute-mandated disclosure to advance environmental rights and residents' health. In 2003, Montana passed the Montana Mold Disclosure Act.[92] Under the Mold Disclosure Act, in relevant part, the landlord must provide a mold disclosure statement contemporaneous with the offer for the rental of real property, and the tenant must sign to acknowledge receipt of the statement.[93] The Act provides the proper course of action if the landlord knows mold is present in the building or if mold testing has been completed:

> Whenever a seller or landlord or an agent of either has knowledge that a building has mold present, the seller, landlord, or agent of either shall, prior to or upon entry into a contract for the purchase, rent, or lease, disclose to the buyer or renter the presence of the mold. Whenever a seller or landlord knows that a building has been tested for mold, the seller or landlord, prior to or upon entry into a contract for the purchase, rent, or lease of that building, shall advise the buyer or tenant that testing has occurred and shall provide to the buyer or tenant a copy of the results of that test, if available to the seller or landlord, and evidence of any subsequent mitigation or treatment.[94]

Not only does the Act mandate broad disclosure, but it also relies on the damage that mold poses to inhabitants as justification: "Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons . . . . [They] may cause infections, particularly in individuals with suppressed immune systems . . . . [They] may cause serious and even life-threatening diseases."[95] Hence, Montana's achievement in safeguarding the health of residents is commendable and practical.

Although *Watterud v. Gilbraith*[96] involved selling real property, the case elucidates the intersection of the Mold Disclosure Act with litigation. The defendants hired Amber Uhren, a real estate agent, to sell their Billings, Montana, property.[97] Within the selling agreement with the plaintiffs, the defendants disclosed "water damage to carpet and walls

92. MONT. CODE ANN. § 70-16-703 (2023).
93. *Id.*
94. *Id.*
95. *Id.*
96. Watterud v. Gilbraith, 2015 MT 288, 358 P.3d 891 (Mont. 2015).
97. *Id.* at ¶ 5, 358 P.3d at 892.

sheetrock whole basement redone back in 2008 been fine since" [sic] and that no testing for mold was conducted.[98] This disclosure circumvented the defendant's self-completed water damage remediation.[99] The finalized agreement "affirmatively stated that seller and seller's agent made no representations or warranties about the presence or absence of mold," and that the buyer had the duty to inspect the property.[100] Upon moving in, the plaintiffs became sick from mold in the basement and brought action against Uhren for negligent misrepresentation; the plaintiffs asserted that the agent should have disclosed mold as a material fact about the property.[101]

Amber Uhren moved for summary judgment and argued that discovery duties did not exist.[102] The district court found that Uhren did not have a duty to inspect the property for mold or verify the defendant's statements, and therefore she complied with her statutory duties.[103] Ultimately, because Uhren did not know of mold and no testing was officially completed, the Montana Supreme Court held that the lower court did not err in granting summary judgment in favor of Amber Uhren.[104] Thus, the Mold Disclosure Act provides broad legal protection but is subject to limitations.

IV. SHORTCOMINGS OF THE WARRANTY OF HABITABILITY

Before delving into the shortcomings of the warranty of habitability, it is necessary to discuss the doctrine as a historical and ideal legal notion. Historically, property law remained separate from contracts and therefore was not subject to judicial interference.[105] As such, tenants remained without a legal basis to combat horrid living conditions.[106] One author explains that tenement houses in the early 1900s, housing primarily immigrants, were "[c]ramped, poorly lit, under ventilated, and usually without indoor plumbing, . . . hotbeds of vermin and disease, and were frequently swept by cholera, typhus, and tuberculosis."[107]

98. *Id.* at ¶ 6, 358 P.3d at 892–93 (grammatical errors in original quotation).
99. *See id.*
100. *Id.* at ¶ 1, 358 P.3d at 892.
101. *Id.* at ¶ 9, 12, 358 P.3d at 893.
102. *Id.* at ¶ 9, 358 P.3d at 893.
103. *Id.* at ¶ 16, 358 P.3d at 895.
104. *Id.* at ¶ 17, 358 P.3d at 895.
105. *See* Serge Martinez, *Revitalizing the Implied Warranty of Habitability*, 34 NOTRE DAME J.L. ETHICS & PUB. POL'Y 239, 241 (2020).
106. *Id.*
107. *Tenements and Toil*, LIBR. OF CONG., https://www.loc.gov/classroom-materials/immigration/italian/tenements-and-toil/ [https://perma.cc/5UHB-77JM] (last visited Aug. 17, 2025).

Implementing housing codes in large cities was fruitless as inspectors and housing departments largely did not enforce the new codes.[108] Thus, the doctrine of the warranty of habitability became prominent in the 1960s and 1970s[109] in response to the widespread substandard housing epidemic.[110]

At its core, the implied warranty of habitability is a non-waivable obligation thrust upon landlords to maintain the premises at a certain standard.[111] The warranty is an essential legal safeguard for tenants, ensuring that landlords cannot simply disregard their responsibility to maintain the property. The warranty remains operational even if the lease does not contain a provision regarding the landlord's commitments or, even more erroneously, asserts the landlord is completely absolved from responsibility.[112] Yet, the implied warranty of habitability is romanticized— "a powerful tool for tenants to force landlords to maintain premises or risk jeopardizing their claim to rent"—as the reality is far more grim.[113] As with many legal doctrines, there exist vast disparities between what the law theoretically guarantees and the practical experiences of tenants.[114]

108. *See* Martinez, *supra* note 105, at 241.

109. David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 398–99 (2011) ("On the national level, the tenants' rights revolution of the late 1960s and 1970s was unusual among law reform initiatives in that it proceeded simultaneously through case law and legislation. In some states, the courts went first in announcing a warranty of habitability.").

110. *See* Martinez, *supra* note 105, at 242.

111. *Id.* at 248–49 (listing *Javins v. First National Realty Corp.* as the first, but not last, court to "declare that there was a non-waivable implied warranty of habitability in every residential lease"); *see* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1082 (D.C. Cir. 1970).

112. Martinez, *supra* note 105, at 240.

113. *Id. See generally* Stanley A. Lockitski, Comment, *Tenant Remedies—The Implied Warranty of Fitness and Habitability*, 16 VILL. L. REV. 710 (1971) (discussing the implications of the implied warranty for tenants as compared to prior remedies). If there is a breach of the warranty of habitability, tenant remedies will vary by jurisdiction but generally include the tenant's termination of the lease, rent abatement, the tenant completing repairs and deducting the cost from the rent, or the tenant withholding rent. *See* Paula A. Franzese, Abbott Gorin & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 8 (2016). These remedies are fraught with their own limitations, exceptions, and caveats. Compare the tenant's remedy of withholding rent with nonpayment evictions, in which the landlord may evict the tenant for failure to pay rent, to understand the complications that may arise and the imbalances involved.

114. *See* Martinez, *supra* note 105, at 255–67 (discussing underuse of the implied warranty).

A. Ambiguity of Standards

The ambiguity of standards in the context of the warranty of habitability may arise due to unclear or vague regulations about what constitutes a *habitable* living condition. This ambiguity can result in tenants facing uncertainty about their rights. In some cases, what one party may view as a minor issue, another might regard as a breach of the warranty, complicating enforcement and the resolution of habitability disputes. For instance, in Pennsylvania, the warranty covers "serious problems."[115] Breaches have been found when properties are without heat in the winter, have a malfunctioning sewage system, or contain other issues that fundamentally incapacitate the "implied promise that leased premises are fit for habitation."[116]

Deaktor v. Sutton[117] illustrates the complex interplay of standards and facts. The appellees, the Sutton family, leased a property from appellants, the Deaktor family, in 2016.[118] The appellees informed the appellants that Ms. Sutton and their daughter both suffered from asthma.[119] The appellants stated there were no issues with the air quality of the apartment, although they knew or should have known this statement was false due to leaking windows, rotting wood, and the fact that they painted over the wood to mask damage.[120] Due to work constraints, Ms. Sutton was unable to inspect the property before leasing.[121] After moving in, Ms. Sutton and her daughter's asthma symptoms worsened and a subsequent mold test showed black mold in the air samples.[122]

On appeal, the appellees claimed the lower court erred in holding the appellants not liable for breach of the implied warranty of habitability.[123] The appellees maintained that the warranty was breached because of the persistent water leaks and black mold.[124] The court disagreed with the appellees.[125] The court cited the Pennsylvania Supreme Court case *Pugh v. Holmes* for its statement of the law that the premises must be safe and sanitary (albeit not "perfect" or "aesthetically pleasing"), and the

115. *Warranty of Habitability*, *supra* note 14.
116. *See* Franzese et al., *supra* note 113, at 7–8.
117. Deaktor v. Sutton, No. 1548 WDA 2019, 2020 WL 7353809 (Pa. Super. Ct. Dec. 15, 2020) (unpublished table decision).
118. *Id.* at *1.
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.* at *14.
124. *Id.*
125. *Id.*

question of breach must be determined on a case-by-case basis.[126] Here, because only one person—the daughter—exhibited extreme symptoms in response to the mold, the trial court did not err in finding that "the seriousness and effect of the water infiltration did not make the premises unfit for habitation."[127]

While *Deaktor* provides some clarification, it also raises additional questions. For instance, if all three members of the Sutton family had exhibited severe symptoms, would that be sufficient to demonstrate that the premises were not sanitary? Would two out of three members be enough? What if the judge himself, or close loved ones, suffered from extreme asthma? While these questions might be answered in future litigation, the judiciary's current lack of bright-line rules remains a cornerstone of the ambiguity of the warranty of habitability.

B. Delays in Repairs and Maintenance

When considering the broader implications of delayed repairs and maintenance, it becomes evident that the ramifications extend beyond mere inconvenience to tenants. The emotional, physical, and financial toll of living in substandard conditions often remains unaccounted for in legal discussions surrounding habitability. It is imperative to recognize that the delay in addressing such issues can adversely affect tenants' overall well-being.

Once a tenant finds what they believe to be an uninhabitable condition, another series of formalities must be followed. Primarily, landlords must receive a written notice of the need for repair.[128] Tenants ought to review their lease agreement to determine how notices are to be communicated to the landlord.[129] Landlords who use an electronic system benefit their tenants by having a near-instant notification system. However, landlords who require notices to be mailed harm their tenants further. In 2023, the average time for the U.S. Postal Service to deliver mail nationwide was two and a half days.[130] This lapse effectively forces tenants to live in an uninhabitable environment for sixty hours or more to begin the notification process. Next, tenants must give the landlord a

126. *Id.* (quoting Pugh v. Holmes, 405 A.2d 897, 905–06 (Pa. 1979)).

127. *Id.* at *15.

128. Melissa Grant, *Implied Warranty of Habitability Law: What Should I Do If an Uninhabitable Condition Exists?*, LEGALMATCH (June 5, 2025), https://www.legalmatch.com/law-library/article/implied-warranty-of-habitability-lawyers.html [https://perma.cc/UE8B-NMXL].

129. *Id.*

130. *USPS Average Delivery Time Holds Steady at 2.5 Days*, USPS (July 28, 2023), https://about.usps.com/newsroom/national-releases/2023/0728-usps-average-delivery-time-holds-steady-at-2-5-days.htm [https://perma.cc/NS4Q-WZ9J].

reasonable opportunity to correct the condition and establish that the landlord failed to do so.[131] As discussed above, what qualifies as "uninhabitable" or "serious" is often ambiguous. This same logic can be extended to what qualifies as a "reasonable" opportunity to cure defects.

Case law in Pennsylvania lacks straightforward definitions for a "reasonable" time to fix habitability concerns. In *Pugh v. Holmes*, the Pennsylvania Supreme Court discussed the requirements to assert a breach of the implied warranty of habitability.[132] The court's determination of what a material breach is rested on the amorphous, case-by-case basis standard; relevant factors included the seriousness and duration of the housing defect.[133] Holmes alleged she provided the landlord with notice to repair a broken door lock and waited a reasonable time for the landlord to repair it before remedying the issue herself.[134] Notably, the court's opinion does not specify when Holmes provided notice of the broken lock and when she repaired the lock herself. The lack of factual background in *Pugh* increases the difficulty of discerning guidelines for a reasonable response time for landlords.

Overall, determinations of what constitutes a "reasonable time" are deduced from the specific circumstances of each case, including the impact on the tenant's life, health, or safety and the time required to remedy the condition.[135]

As will be discussed in the next Section, landlords have vast resources to obtain legal representation. Legal representation, in conjunction with a vague standard of a "reasonable" response time, allows crafty lawyers to argue that a landlord's response time was proper given the circumstances at hand. For instance, lawyers can assert that mold is not an immediate threat to tenant safety. Analogizing mold to a cosmetic issue, such as peeling paint, and differentiating it from an immediate safety issue, such as a gas leak, is likely to be persuasive. If a judge buys this argument, a lawyer can then coax the judge into accepting that the landlord's delayed response in fixing the issue was reasonable.

Words are persuasive, but lived experiences should not be cast to the wayside. It is important to remember that to a tenant, what is "reasonable" is likely to be substantially shorter than what a landlord,

131. *See What You Need to Know About Repair and Service Rights*, LEGAL AID SOC'Y (Aug. 12, 2025), https://legalaidnyc.org/get-help/housing-problems/what-you-need-to-know-about-repair-and-service-rights [https://perma.cc/5BYA-V38Z].

132. *See* Pugh v. Holmes, 405 A.2d 897, 906–07 (Pa. 1979).

133. *See id.* at 905–06.

134. *See id.* at 907–08.

135. *See, e.g.*, Echeverria v. Holley, 142 A.3d 29, 34–36 (Pa. Super. Ct. 2016); Kuriger v. Cramer, 498 A.2d 1331, 1336–37 (Pa. Super. Ct. 1985).

lawyer, or judge who does not have to face the issues daily would consider reasonable. Living in a space riddled with hazards leaves little opportunity for the issues to leave the forefront of one's mind, especially when one's health is on the line. As such, the challenge of delays in repairs and maintenance underscores systemic issues within landlord-tenant relationships that necessitate urgent attention.

C. Disproportionate Adverse Impact on Minority Populations

Minority populations face unique challenges in asserting their rights and ensuring that their living conditions meet the necessary standards. In the majority of states, small-claims courts with general jurisdiction address nonpayment evictions.[136] Data suggests that, in just ten states, landlords collectively filed over one million evictions between August 2024 to August 2025.[137] Of these evictions, over half of the tenants were women; this count is disproportionately comprised of Black and Latinx women.[138] The exorbitant number of yearly evictions forces judges to resolve cases quickly to retain the limited judicial resources available.[139] A study conducted by the Chicago-Kent College of Law in 2003 discovered that "eviction cases in Cook County averaged one minute and forty-four seconds—a dramatic drop from the (still very brief) three-minute average in their own 1996 study."[140] With such a short case duration, courts cannot possibly have adequate compliance with legal rules or apply the rules to the facts at hand.

In addition to the general procedural faults of the legal system, minority populations face further hurdles. First, minority populations often face higher rates of poverty, which can compound the effects of poor housing conditions.[141] Tenants may struggle to pay rent—increasing the

136. Martinez, *supra* note 105, at 260.

137. *Eviction Filings for All Sites*, EVICTION LAB (Aug. 1, 2025), https://evictionlab.org/eviction-tracking/ [https://perma.cc/S4YM-3MFG].

138. *Id. See generally Who Are Today's Landlords?*, JUNE HOMES (Jan. 19, 2023) https://junehomes.com/blog/2023/01/19/who-are-todays-landlords/ [https://perma.cc/2PT2-JC2W] (discussing landlord demographics, including listing the average landlord as being a white male in his late forties with a bachelor's degree).

139. Martinez, *supra* note 105, at 260.

140. *Id.* at 261 (citing LAWYERS' COMM. FOR BETTER HOUS., NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT 14 (2003), https://lcbh.org/sites/default /files/resources/2003-lcbh-chicago-eviction-court-study.pdf [https://perma.cc/SP89-BHBZ]). The author provides a sample script dealing with a tenant facing eviction for nonpayment to elucidate the rapid and biased nature of the proceedings. *See id.* In the script, the judge asks the landlord six questions about monetary damages and then asks the tenant if the information is accurate before finding judgment in favor of the landlord. *Id.*

141. *See* John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019*, U.S. CENSUS BUREAU (Sep. 15, 2020), https://www.census.gov

risk of nonpayment eviction—or relocate, leaving them trapped in substandard housing. Low-income tenants may also have fewer options to move out or seek better housing because affordable housing in desirable areas may be scarce.[142]

In areas undergoing gentrification, landlords may allow properties to deteriorate to encourage tenant displacement in favor of wealthier tenants.[143] Minority populations, especially in urban areas, are disproportionately affected by gentrification, often being pushed out of their communities due to rising rents and worsening housing conditions.[144] Hence, landlords are less likely to maintain adequate living conditions for minority populations, leading to larger cyclical issues, including gentrification and displacement.

Next, impoverished individuals may face language barriers that hinder their ability to understand and navigate housing laws.[145] This can make it difficult for non-English speakers to report habitability violations or advocate for themselves. In fact, districts with high levels of immigrants file fewer housing complaints compared to other neighborhoods.[146] However, these same residents are more likely to experience unsafe living conditions.[147] One reason for this may be the format of the documents themselves. For one, American legal documents

/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html [https://perma.cc/MS2F-L537] (explaining that in 2019, the poverty rates for Black, Hispanic, and White individuals were 18.8%, 15.7%, and 7.3%, respectively).

142. U.S. DEP'T HOUS. & URB. DEV., DISPLACEMENT OF LOWER-INCOME FAMILIES IN URBAN AREAS REPORT 4–5 (2018), https://www.huduser.gov/portal/sites/default/files/pdf/displacementreport.pdf [https://perma.cc/84J5-5LUD] ("As housing costs rise and the affordable housing stock falls, the options for poor households diminishes, severely limiting their residential mobility.").

143. *See Gentrification and Neighborhood Revitalization: What's the Difference?*, NAT'L LOW INCOME HOUS. COAL. (Apr. 5, 2019), https://nlihc.org/resource/gentrification-and-neighborhood-revitalization-whats-difference [https://perma.cc/R7HT-NWUU].

144. *See id.*; JASON RICHARDSON, BRUCE MITCHELL & JUAN FRANCO, SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES 4 (2019), https://ncrc.org/wp-content/uploads/2019/03/NCRC-Research-Gentrification-FINAL.pdf [https://perma.cc/DYK9-DRNS].

145. *See* Jung Hyun Choi, Amalie Zinn & Laurie Goodman, *The Homebuying Process is Complicated Enough. Language Barriers Pose Additional Challenges*, URB. INST.: URB. WIRE (May 14, 2024), https://www.urban.org/urban-wire/homebuying-process-complicated-enough-language-barriers-pose-additional-challenges [https://perma.cc/CM8H-8L9R] ("Using a regression analysis, we estimate that removing language barriers would increase the number of [limited English proficient] homeowners by nearly 300,000.").

146. *See* CUNY CTR. FOR URB. RSCH. ET AL., LIVING IN ISOLATION: HOW LANGUAGE BARRIERS SHUT IMMIGRANT NEW YORKERS OUT OF CRITICAL CITY HOUSING SERVICE 5 (2007), https://www.gc.cuny.edu/sites/default/files/2021-05/CUR-Living-in-Isolation-2007.pdf [https://perma.cc/9FBF-K5FG].

147. *See id.*

tend to be available only in English, which can be troublesome for non-English speakers to decipher. But also, these documents contain legalese, which may be confusing even to native English speakers.[148]

The lack of systematic support for low-income, minority tenants is made crystal clear when it comes to formal hearings. Without access to money or government support, tenants are left with pro se representation as the only viable option for eviction proceedings.[149] Pro se representation raises its own issues involving the warranty of habitability. Most importantly, the warranty of habitability is not known to the majority of tenants.[150] Ignorance about the existence of housing protections renders the doctrine automatically useless. Even if tenants know of its existence, knowledge of how to apply it to the tenant's situation and articulate the facts in front of a judge is required. Most of these tenants are "not sophisticated actors or particularly knowledgeable about law"[151] and do not receive formal education about how to assert the doctrine.[152] Again, the typical tenant in these horrid circumstances is a poor woman of color who lacks advanced education.[153] A person with these characteristics in a fast-paced, biased system faces many systemic barriers to success in her eviction case.

Even if a pro se litigant is aware of judicial procedures, they may not feel empowered to speak.[154] Speaking in a courtroom is a daunting task, but for a tenant to counter the landlord's assertions in a courtroom is another:

> To respond to the landlord's narrative of "the tenant is shirking rent and it is the court's job to evict her" a tenant needs to be able to articulate the counternarrative that "the landlord is obligated to maintain the dwelling but has not; therefore, the rent should be reduced accordingly, and it is the court's job to enforce that."

148. Anne Trafton, *MIT Study Explains Why Laws are Written in an Incomprehensible Style*, MIT NEWS (Aug. 19, 2024), https://news.mit.edu/2024/mit-study-explains-laws-incomprehensible-writing-style-0819 [https://perma.cc/KB9T-2BX6] (explaining that "the convoluted language of legalese acts to convey a sense of authority" and "researchers found that legalese also makes documents more difficult for lawyers to understand.").

149. *See* MATTHEW DESMOND, UNAFFORDABLE AMERICA: POVERTY, HOUSING, AND EVICTION 1, 5 (Fast Focus Pol'y Briefs No. 22-2015) ("Owing to cutbacks to legal aid to the poor, in many housing courts around the country 90 percent of landlords have attorneys, and 90 percent of tenants do not.").

150. Martinez, *supra* note 105, at 264.

151. *Id.*

152. *See* Franzese et al., *supra* note 113, at 2.

153. *See* Martinez, *supra* note 105, at 264.

154. *Id.* at 265.

> Unsurprisingly, most tenants are not able to tell that story in the courtroom.[155]

Pro se tenants often do not know what the acceptable boundaries of speech are in the courtroom.[156] While they might have a right to speak, the content of the speech may be disorganized, irrelevant, or limited by English-speaking capabilities.[157] As one author poignantly articulates, "[f]ew tenants inform the court of the landlord's lapses. The handful who do attempt to press their own substantive rights are effectively not heard."[158]

Thus, when it comes to the shortcomings of the warranty of habitability in court, it is often minority populations that bear the brunt. Impoverished women of racial minorities resort to pro se representation and fail due to cultural and systemic obstacles. Weaknesses in the doctrine prey on the power imbalance of landlord-tenant relationships and enable unsafe living conditions for some of the most vulnerable populations.

V. PROPOSED SOLUTIONS

The lack of statutory mold disclosure requirements and the faults in the warranty of habitability jeopardize people's health, rendering the constitutional right to a healthy environment mere words on paper. Given this, remedies need to be enacted for the betterment of society. The public interest in improving health and cash flow in housing benefits not only tenants but landlords as well. On one hand, tenants receive knowledge about the mold presence in their property, allowing them to make informed decisions. On the other hand, landlords do not have to fret about having rent withheld or undergoing litigation.

The first step to resolve the disparity seen in Pennsylvania is clear: just follow Montana's precedent.[159] Pennsylvania ought to enact a similar Mold Disclosure Act in which landlords are required to disclose information of mold presence and/or mold test results to a tenant. However, I would argue that there should be further duties imposed on the landlord or their representative agent. Given the pervasive and

155. *Id.*
156. *See id.*
157. *See id.*
158. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process,* 20 HOFSTRA L. REV. 533, 535 (1992).
159. *See* discussion *supra* Section IV.B.

harmful nature of mold,[160] especially *Stachybotrys chartarum,* the legislature in both jurisdictions ought to mandate mold testing as a prerequisite to a landlord's renting to a tenant. As we have seen in *Watterud,* the injured party did not receive compensation because of semantics in the Mold Disclosure Act.[161] Imposing an additional duty would ensure the safety of tenants and prevent frivolous dismissals.

The legislature could mirror aspects of Philadelphia's current requirements regarding lead inspection. The updated law on lead certification requires that beginning in October 2020, "landlords operating rental properties in eleven Philadelphia zip codes—regardless [of] whether they will be renting to children under seven—will be required to obtain a lead-free or lead-safe certification in order to A) execute a new or renewed lease or B) receive a new or renewed rental license."[162] This update recognizes the importance of a healthy environment, especially given the harmful effects that lead can have on human development.[163] If this same system was implemented for mold, landlords would likely push back against this new requirement and categorize it as another pricey step. However, the cost of mold testing is comparable to lead paint testing. One Philadelphia inspection service charges $450.00 minimum for the lead-free certificate; a Philadelphia mold company charges $350.00 for a visual mold check with two air samples.[164] Also, mold is a destructive agent to building structures, and it is less costly to have mold remediated than to reconstruct portions of a property.[165] Thus, arguing that mold testing is too costly is a nonstarter; people's health and the potential for decreasing attorney and construction fees clearly outweigh the initial small sum required.

160. *See generally* Kuhn & Ghannoum, *supra* note 89 (describing mold, and particularly *Stachybotrys chartarum*, from the perspective of infectious disease doctors).

161. *See* Watterud v. Gilbraith, 2015 MT 288, ¶ 17, 358 P.3d 891, 895 (Mont. 2015) (awarding no damages because the real estate agent did not owe a duty to the plaintiffs to discover and disclose adverse material facts about the property to them, including the presence of mold and the fact that defendants attempted to remediate water damage themselves).

162. *What Philadelphia Residents and Landlords Need to Know About the New Lead Safety Bill*, CITY COUNCIL PHILA., https://phlcouncil.com/leadcert/ [https://perma.cc/72YY-7R8S] (last visited Aug. 18, 2025) (noting that buildings built after February 1978 are exempt from this requirement); *see* PHILA., PA., HEALTH CODE § 6-803(3)(A) (2025) (effective Oct. 1, 2020).

163. *See What Philadelphia Residents and Landlords Need to Know About the New Lead Safety Bill* , *supra* note 162.

164. *Pricing*, LEAD TESTING SERV., LLC, https://www.leadtesting servicesphila.com/pricing [https://perma.cc/C6KM-AG2V] (last visited Aug. 18, 2025); *Pricing*, PHILLY MOLD INSPECTION, https://www.phillymoldinspection.com/pricing/ [https://perma.cc/DQ53-3Y2L] (last visited Aug. 21, 2025).

165. *See Can Mold Cause Structural Damage? What You Need to Know* , *supra* note 69.

Another, albeit improbable, solution to the disparity in protections between Montana and Pennsylvania could be resolved by Pennsylvania passing an amendment to its constitution. Mirroring Montana's article IX language would require significant legal action.[166] The Pennsylvania constitutional amendment process is tenfold, involving two introductions; two passages; two publications; a general election; a scheduled vote; a prepared ballot; and finally, ratification by Pennsylvania citizens to codify the proposed amendment.[167] The chances of this occurring are slim. In approximately the last sixty years, since "Pennsylvania's current constitution went into effect, voters rejected only six of forty-nine proposed amendments that reached them."[168] It is helpful to compare this data to the fact that over seventy proposed constitutional changes were made in a two-year session.[169] If this rate of proposed amendments were consistent over the past sixty years, less than three percent of the proposed amendments would have been ratified. Due to the lengthy processes and poor success rate, this course of action is a possible, but not recommended, solution.

One author proposes another train of thought: revitalize the implied warranty of habitability, especially for low-income tenants.[170] Providing representation for tenants would increase holdings in favor of the tenants, as lawyers are experts in the legal system and can advocate for their clients.[171] Due process is one justification for this change.[172] Scholars previously argued that "the property interest was so strong that due process could not be adequately protected without access to counsel

166. *See Pennsylvania Constitutional Amendment Process*, ACLU PA., https://www.aclupa.org/sites/default/files/field_documents/pa_constitutional_amendment_process.pdf [https://perma.cc/5KQF-6UWF] (last visited Aug. 21, 2025). *See generally* MONT. CONST. art. IX (enumerating Montanans' rights as they relate to the environment and natural resources).

167. *Pennsylvania Constitutional Amendment Process* , *supra* note 166.

168. Danielle Ohl, *A Complete Guide and Amendment Tracker for Proposed Changes to Pennsylvania's Constitution*, SPOTLIGHT PA, https://www.spotlightpa.org/news/2022/01/pennsylvania-constitution-amendments-tracker-complete-guide/ [https://perma.cc/2AGP-28YM] (last visited Aug. 17, 2025).

169. *See id.*

170. Martinez, *supra* note 105, at 267.

171. *See id.*; *see also* Carroll Seron, Martin Frankel & Gregg Van Ryzin, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment,* 35 L. & SOC'Y REV. 419, 429 (2001) ("Represented tenants are much less likely to have a final judgment and order of eviction against them and more likely to benefit from a stipulation requiring a rent abatement or repair to their apartment . . . . these differences in outcomes can be attributed solely to the presence of legal counsel . . . .").

172. *See* Martinez, *supra* note 105, at 268.

in an eviction proceeding."[173] However, the U.S. Supreme Court's judgment in *Turner v. Rogers* axed this idea federally.[174] When the holding is applied to eviction, the Court's reasoning insinuates that an interest in retaining a rental property is insufficient to require counsel under due process.[175]

Of course, federalism permits states to enact their own protections in spite of the *Turner* ruling.[176] States are free to grant additional protections to their residents, including guaranteeing representation in eviction hearings.[177] While this option would offer low-income tenants an opportunity to retain their housing, I believe this action is unlikely to be enacted nationally. Additional judicial resources are unlikely to be effectively donated to low-income individuals without government aid. Lawyers are highly specialized in their craft and must be paid in order to maintain supply and demand. Pro bono work, while admirable, is not sustainable and cannot be relied upon to make a living. Moreover, this remedial measure fails to fix the root cause of some evictions: unsafe living conditions. Offering representation in eviction hearings is a reactive measure, and the legislature ought to focus on proactive measures to save resources and improve constituents' health.

CONCLUSION

As we have seen, federalism permits states to enact protections not granted to their constituents by the Federal Constitution.[178] Residents in Pennsylvania, New York, and Montana are granted rights to a healthful environment and clean air.[179] Such rights are listed among the other essential rights, indicating their importance.[180] However, Pennsylvania and Montana differ regarding the explicit statutory duties landlords possess to disclose mold and mold testing within rental properties.[181] Montana is the paragon of disclosure, while Pennsylvania does not

173. *Id.* (quoting Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings* 23 HARV. C.R.-C.L. L. REV. 557, 562 (1988)).

174. *See id.* at 268–69. *See generally* Turner v. Rogers, 564 U.S. 431 (2011) (failing to recognize the right to counsel in civil cases, holding that procedural due process requirements negate the need for an automatic right to counsel).

175. *See* Martinez, *supra* note 105, at 269.

176. *See id.*

177. *Id.*

178. *See supra* notes 1–10 and accompanying text.

179. *See* discussion *supra* Part I.

180. *See* discussion *supra* Part I.

181. *See* discussion *supra* Part III.

mention mold as a required disclosure.[182] This disparity is deeply concerning because of the abundance of mold and its effects on health. Mold can survive and spread with extremely limited resources, and can wreak havoc on people's respiratory tract and exacerbate existing illnesses.[183]

While Pennsylvania relies heavily on the implied warranty of habitability to safeguard residents, the doctrine is deeply flawed. For one, the ambiguity of what is deemed "habitable" allows the trier of fact to make arbitrary distinctions.[184] As discussed, a Pennsylvania court held that one person's extreme reaction to mold does not make a property uninhabitable.[185] Hopefully, future case law will provide additional clarification as to bright-line rules.

Similarly, the legal language provides landlords with a relaxed standard for acceptable timelines to respond to tenants' requests.[186] As such, delays in repairs and maintenance leave tenants living in uninhabitable conditions for extended periods of time. Finally, the warranty of habitability treats low-income residents as second-class citizens. The rapid hearing turnover, in conjunction with low-income tenants' inability to afford representation or adequately understand the legal process, sets them up for failure.[187] Impoverished pro se litigants are often not knowledgeable about the warranty of habitability, or if they are, may not feel empowered to speak at hearings.[188] Pennsylvania can, and should, do better by its citizens. Fulfilling the currently empty words of its constitution for rental tenants is the first step.

182. *See* discussion *supra* Part III.
183. *See* discussion *supra* Part II.
184. *See* discussion *supra* Part IV.
185. *See supra* notes 117–27 and accompanying text.
186. *See supra* notes 132–35 and accompanying text.
187. *See* discussion *supra* Part IV.
188. *See* discussion *supra* Part IV.