

# Law, Political Economy, and Organizing for Tenant Power

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## ABSTRACT

*From coast to coast, in communities large and small, tenants are organizing together into tenant unions to leverage their collective power. This movement is both a response and the solution to our current, but deeply rooted, housing crisis. Tenant-led housing solutions provide necessary alternatives to the predominance of supply-side “abundance” solutions that do not address the true cause of the housing crisis: the power imbalance between those who live in and those who own property. Part I explores motivations for tenant organizing: neglected maintenance, rising unaffordable rents, and unfair courts. Tenants organize to resist the subordination of housing’s use-value to its exchange-value. Current landlord-tenant law perpetuates rather than addresses this power imbalance, functioning as infrastructure for racial capitalism. Part II draws from movement organizers and lawyers to develop a power-building theory guiding legal engagement with tenant movements. This requires lawyers to abandon individual rights-focused thinking and expert-centered advocacy, instead supporting deep organizing that builds the collective power of the multiracial working class. The necessary law and policy reforms to achieve this transformation are “non-reformist”—those that strive for the mutually reinforcing aims of advancing a critique of political economy and building pathways for collective power. Part III describes the contemporary tenant power movement through experiences of tenants and organizers nationwide. It examines how organizing increases access to justice while building power, pursues ambitious goals challenging capitalist housing systems beyond existing legal frameworks, and identifies legal and policy reforms lawyers can advance alongside organized tenants.*

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#### INTRODUCTION

Brith Sholom House is a high-rise in the Wynnefield Heights neighborhood of West Philadelphia.<sup>1</sup> The building’s senior and disabled tenants chose to rent there because it was a friendly community where they could live a quiet, dignified life.<sup>2</sup> While the neighbors were nice, the landlord certainly wasn’t. Originally built by a Jewish charitable fraternity in the 1960s, by 2012 Brith Sholom came under the ownership of a corporate entity with ties to real estate investor Aron Poretz.<sup>3</sup> Through a shadowy network of hundreds of corporate entities, the Poretz family had bought over 16,000 affordable units in 21 states, making them one of the largest owners of affordable housing in the country.<sup>4</sup> As the *Philadelphia Inquirer* reported, the Poretzes grew their “empire of neglect” by purchasing older buildings, often with fraudulently-obtained mortgages, and then, instead of rehabilitating the properties, chose to stop paying for maintenance and utilities.<sup>5</sup> At Brith

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1. Samantha Melamed & Ryan W. Briggs, *Empire of Neglect*, PHILA. INQUIRER (July 16, 2024), <https://www.inquirer.com/real-estate/housing/inq2/poretz-family-apex-equity-affordable-senior-housing-conditions-20240716.html> [<https://perma.cc/V62K-CHVX>].

2. Personal communication with Savannah Mooney, Brith Sholom House tenant organizer (on file with author).

3. Sasha Rogelberg, *Brith Sholom House, Senior Housing with Jewish Roots, Declares Bankruptcy*, PHILA. JEWISH EXPONENT (Aug. 16, 2023), <https://www.jewishexponent.com/brith-sholom-house-senior-housing-with-jewish-roots-declares-bankruptcy/> [<https://perma.cc/Z88E-BS3X>]; Melamed & Briggs, *supra* note 1.

4. Melamed & Briggs, *supra* note 1.

5. *Id.*

Sholom, the landlord would rack up over 200 rental code violations between 2017 and 2024.<sup>6</sup>

Sick of having their repeated complaints to their absentee landlord left unanswered, the tenants of Brith Sholom decided to fight back. In 2019, with support from the Philadelphia Tenants Union, they organized a tenant association to coordinate rent withholding and protests.<sup>7</sup> The City of Philadelphia got involved too, revoking the landlord's rental license so they could no longer legally collect rent, and taking them to court over their failure to maintain a code-compliant fire suppression system.<sup>8</sup> Yet the city's lawsuit—ultimately settled<sup>9</sup>—and the revocation of the rental license did not stop the landlord's neglect. In fact, things continued to get worse, to the point where tenants faced a parade of horrors. Investigative journalists touring the building in 2024 filmed leaking pipes, exposed wiring, and frozen water on the floors.<sup>10</sup> *The Inquirer* reported that one tenant had chunks of ceiling fall on his head and had been so plagued by bed bugs that his health care provider prescribed him iron supplements because of the blood loss.<sup>11</sup> During a record-breaking summer heat wave, tenants reported an unreliable air conditioning system and temperatures upwards of 90 degrees in their units.<sup>12</sup>

As conditions continued to deteriorate, the threat of mass displacement grew. In October 2023, after repeated inspection failures, the Philadelphia Housing Authority stopped paying rental subsidies for Brith Sholom tenants who had housing vouchers.<sup>13</sup> Soon after, the building went into foreclosure and was scheduled for sheriff's sale.<sup>14</sup> The building was put under the receivership of a company with ties to one of its mortgage lenders, but that did not stem the accelerating decline.<sup>15</sup> Tenants also received notices from the city gas utility demanding nearly \$100,000 in arrears and warning of imminent shutoff.<sup>16</sup> And then there were the mysterious notices from unidentified "property management" warning of "inevitable building shut down."<sup>17</sup>

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6. Author analysis of City of Philadelphia Department of Licenses and Inspections Dashboard, Property History (public dataset, analysis on file with author), <https://li.phila.gov/Property-History/search?address=3939%20CONSHOCKEN%20AVE> [<https://perma.cc/V796-7PSZ>].

7. John N. Mitchell, *Protest, Ruling over Disrepair Add to Brith Sholom House's Woes*, PHILA. TRIB. (Dec. 19, 2019), [https://www.phillytrib.com/news/local\\_news/protest-ruling-over-disrepair-add-to-brith-sholom-houses-woes/article\\_051f36b6-72fc-5e0e-a11d-c90bb2b42c64.html](https://www.phillytrib.com/news/local_news/protest-ruling-over-disrepair-add-to-brith-sholom-houses-woes/article_051f36b6-72fc-5e0e-a11d-c90bb2b42c64.html) [<https://perma.cc/4NYC-EK5A>].

8. *Id.*

9. Melamed & Briggs, *supra* note 1.

10. Chad Pradelli & Cheryl Mettendorf, *Philadelphia Senior Living Facility Cited for Dozens of Violations*, 6 ABC ACTION NEWS (Feb. 27, 2024), <https://6abc.com/brith-sholom-house-wynnefield-heights-philadelphia-apartment-violations-aaron-puretz/14473245/> [<https://perma.cc/94SY-VEAV>].

11. Melamed & Briggs, *supra* note 1.

12. *See id.*; Personal communication with Savannah Mooney (on file with the author).

13. Melamed & Briggs, *supra* note 1.

14. *Id.*

15. *Id.*

16. Aaron Moselle, *Unpaid Utility Bills May Close 'Unfit' Senior Housing Complex in West Philly*, WHYY (May 1, 2024), <https://whyy.org/articles/brith-sholom-senior-housing-utility-bills-west-philadelphia/> [<https://perma.cc/9ZBF-VDZ2>].

17. Melamed & Briggs, *supra* note 1.

The tenants had to make a choice: leave Brith Sholom and try to find too-scarce affordable housing elsewhere or try to stay put. Many tenants did leave, especially those who were financially more well-off or who had received an emergency voucher from PHA.<sup>18</sup> But approximately 120 tenants stayed, some because they had no other options, but others because they would not be moved without a fight.<sup>19</sup> Some tenants suspected that, if they did move, Brith Sholom would be quickly renovated into luxury housing they could not afford.<sup>20</sup>

So, with the support of lawyers at the Public Interest Law Center and a new group of tenant organizers—this time affiliated with the Philadelphia Democratic Socialists of America (DSA)—the tenants at Brith Sholom organized to fight impending displacement. Theirs was a mammoth task, as there was no law or system in Philadelphia set up to prevent mass displacement on this scale.<sup>21</sup> Where the law was absent, tenants stepped up. They held rallies, attended city council hearings, engaged the local press, and scheduled a tour of their building so political leaders could see the conditions they had to live in.<sup>22</sup>

Eventually, after five long years of organizing, the tenants of Brith Sholom's hard work paid off. The Philadelphia Housing Authority purchased Brith Sholom for \$24 million and committed to make significant repairs and to keep the units affordable. The court overseeing the foreclosure approved the deal two weeks before the gas was set to be shut off and the building sold at a sheriff's sale.<sup>23</sup> The landlord who had let the building fall into such disrepair did not receive a cent from the sale.<sup>24</sup> Nothing quite like this had happened before in the city's history.<sup>25</sup> While the tenants had hoped that the PHA buy-out would have allowed them to stay, the level of damage to the building was so substantial that they were required to temporarily move out so that repairs could be made.<sup>26</sup> Though the tenants did ultimately have to move, they received vouchers from PHA and a right to return to Brith Sholom once it reopened.<sup>27</sup> In January 2026, the Mayor and the city's building trades unions announced a \$50 million loan to PHA to fund the rehabilitation.<sup>28</sup> Such significant public investment would not have been possible had tenants not organized.

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18. Personal communication with Savannah Mooney (on file with author).

19. *Id.*

20. *Id.*

21. Personal communication with Madison Gray, staff attorney at Public Interest Law Center (on file with author).

22. *Id.*; Melamed & Briggs, *supra* note 1.

23. Aaron Moselle, 'You Gotta Come Together': Judge Approves Selling West Philly's Brith Sholom House to PHA, *WHYY* (Aug. 26, 2024), <https://why.org/articles/philadelphia-brith-sholom-house-sale-pha/> [<https://perma.cc/M5TN-2XBP>].

24. *Id.*

25. Personal communication with Madison Gray (on file with author).

26. Jake Blumgart & Samantha Melamed, *PHA will have to relocate residents to repair Brith Sholom House*, *PHILA. INQUIRER* (Nov. 26, 2024), <https://www.inquirer.com/real-estate/housing/brith-sholom-house-pha-repairs-20241126.html> [<https://perma.cc/5YAT-V6H8>].

27. *Id.*

28. Anna Orso & Jake Blumgart, *Philadelphia building trades unions will loan \$50M to help redevelop the dilapidated Brith Sholom House*, *PHILA. INQUIRER* (Jan. 20, 2026), <https://www.inquirer.com>.

The fight for Brith Sholom is but one example of the resurgent tenant power movement, built by tenants organizing in their buildings, neighborhoods, and cities. Across the country, tenants are coming together to fight against landlord neglect, rising rents, and displacement. Lawyers, both in practice and in academia, are increasingly paying attention to the ongoing tenant organizing, looking for ways to work alongside tenants to address well-documented deficiencies in landlord-tenant law. However, when engaging with a movement for and led by the ordinary members of the multi-racial working class, lawyers must be mindful of the history of fraught relationships between lawyering and social movements. Drawing from my own experience with the tenant power movement in Philadelphia, I argue that not only is lawyer-tenant organizing collaboration a must for achieving housing justice, but such collaboration can and must be achieved without repeating the mistakes of the past. Lawyers must learn to appreciate the necessity of deep organizing and embrace the framework of non-reformist reforms to reorient how they approach the role of law in social change.

This Article proceeds in three parts. Part I seeks to answer a foundational question: why are tenants organizing? Tenants organize for many reasons: when landlords neglect maintenance to the point that their housing becomes unhealthy, as was the case in Brith Sholom; when already unaffordable rents rise further; or when a neighbor is being threatened with eviction. While the specifics vary from campaign to campaign, the heart of the fight remains the same: tenants organize to push back against attempts to subjugate housing's value as a home for housing's value as a profit-generator. Current landlord-tenant law is woefully inadequate at addressing this imbalance of power. In fact, it is designed to perpetuate housing as the infrastructure of racial capitalism.

Part II draws from a rich body of work from movement organizers and movement lawyers to sketch out a theory of power to help guide lawyers in productively and respectfully engaging with tenant movements. The theory of power I propose will require lawyers to depart from the individual rights-focused thinking that dominates the law. Engaging with the tenant movement requires abandoning the privileged space of expert legal advocacy. Instead, participants must make space for deep organizing that creates a multiracial working-class base able to leverage collective power against wealthy, entrenched interests. This does not mean that law and lawyers have no role in achieving tenant power and housing justice. The framework of non-reformist reforms can help lawyers think about how their work can build tenant power and support organizing.

Part III describes the contemporary tenant power movement, drawing primarily from the experiences and insights of tenants and tenant organizers across the country. It examines how tenant organizing increases access to justice—a chief aim of legal advocacy—in a way that builds power. Then, this Article discusses how tenant organizing sets ambitious goals beyond our existing legal rights framework by challenging the capitalist housing system at its roots. Finally, this Article explores legal and policy reforms that lawyers can partner with organized tenants to advance.

## I. HOUSING ISN'T IN CRISIS, TENANTS ARE

In their study of the 20th-century social movements of the multiracial working class, Francis Fox Piven and Richard Cloward observed that social movements do not catch fire during ordinary times.<sup>29</sup> Instead, massive movements—like the peak of industrial worker organizing during the 1930s or the Southern civil rights movement of the 1960s—emerge once everyday life becomes disrupted by large-scale socioeconomic change.<sup>30</sup> While not discounting the important work of organizing in social movement formation,<sup>31</sup> Piven and Cloward hit on a simple truth: people are more likely to join a movement challenging the status quo when they feel that the status quo is intolerable.<sup>32</sup>

The current tenant power movement is no different. Our current housing crisis drives tenant organizing. This crisis is not new, as it stems from the fundamental imbalance of power that has always existed between tenants—especially low-income and racial minority tenants—and their landlords.<sup>33</sup> This power imbalance has led to periodic crises that spurred moments of widespread, coordinated tenant struggle. These moments, in turn, shaped the progress of landlord-tenant law. The legal requirement that a landlord provide their tenants with heat in the winter, a given today, had to first be won by tens of thousands of urban tenants who went on a rent strike over 100 years ago.<sup>34</sup> In 1969, Black women living in St. Louis public housing led a rent strike that caused the federal government to adopt the standards of housing affordability that are still used today.<sup>35</sup>

The contours of the crisis that have incubated today's tenant power movement are now well-documented. It is a public health crisis borne by the failure of existing landlord-tenant law. But most fundamentally, this crisis stems from our prevailing political economy that turns basic necessities into sources of profit for the few at the expense of the many.

### A. *Housing is a Social Determinant of Health*

Housing is a social determinant of health.<sup>36</sup> People's homes can be outright toxic, such as is the case in homes with chipping lead-based

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29. See FRANCIS FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEEDED, HOW THEY FAIL* 24 (Vintage Book ed. 1979) (1977).

30. *Id.*

31. See *infra* Section II.

32. *Id.*

33. See *infra* Section I.

34. The Post-World War I tenant movement was most well documented in New York City, where individual tenant associations maintained memberships in the thousands. See generally Sara Katherine Copeland, "Down With the Landlords": *Tenant Activism in New York City, 1917–1920* (Master in City Planning Thesis, Mass. Inst. of Tech. May 18, 2000). Thousands of tenants also organized in Chicago. See *RENT STRIKE IN CHICAGO: Thousands of Families Refuse to Obey Orders to Vacate*, N.Y. TIMES, May 1, 1920, at 16.

35. Caitlin Lee & Clark Randall, *Inside the St. Louis Rent Strike of 1969*, BELT MAGAZINE (June 4, 2019), <https://beltmag.com/st-louis-rent-strike-1969/> [<https://perma.cc/D8GX-MMH6>].

36. Social determinants of health (SDOH) are "non-medical factors that affect health outcomes. They include the conditions in which people are born, grow, work, live, and age. SDOH also include the

paint.<sup>37</sup> There is no safe level of exposure to lead, and lead poisoning in childhood has lifetime negative health consequences.<sup>38</sup> Young Black children from low-income families are at the greatest risk of lead poisoning in their homes, since their homes are more likely to contain unmitigated lead hazards.<sup>39</sup>

Housing infested with mold or pests can also cause or exacerbate asthma.<sup>40</sup> Such housing disproportionately burdens low-income, Black, and Indigenous populations, especially children.<sup>41</sup> These conditions, and landlords' neglect in fixing them, can be fatal: in one tragic example, a West Philadelphia child died in 2024 from an asthma attack after her landlord refused to repair a leak and remediate mold for two years, even with notes from her pediatrician urging action.<sup>42</sup> As *The Inquirer* reported at Brith Sholom, bed bugs can drain a person of so much blood that they develop anemia.<sup>43</sup> The presence of roaches and rodents can also severely harm a person's mental health.<sup>44</sup> A lack of adequate heating or cooling can also lead to physical and mental health conditions.<sup>45</sup> Overcrowded housing can worsen sleep and mental health, elevate stress levels, and increase the risk of infectious disease and death or injury by fire.<sup>46</sup>

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broader forces and systems that shape everyday life conditions." *Social Determinants of Health*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/public-health-gateway/php/about/social-determinants-of-health.html> [<https://perma.cc/3D4B-GHPR>] (last visited Sept. 14, 2025).

37. *Quality of Housing, Healthy People 2030*, U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/quality-housing> [<https://perma.cc/RZ3-67SD>] (last visited Jan. 22, 2025) [hereinafter *Quality of Housing*].

38. *About Childhood Lead Poisoning Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 21, 2025), <http://www.cdc.gov/lead-prevention/about/index.html> [<https://perma.cc/EH75-RQRS>].

39. Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 296 (2015); see also Simisola O. Teye et al., *Exploring persistent racial/ethnic disparities in lead exposure among American children aged 1–5 years: results from NHANES 1999–2016*, 94 INT'L ARCHIVES OF OCCUPATION & ENV. HEALTH 723, 729 (2021); Mikyung Baek et al., *Neighborhood-Level Lead Paint Hazard for Children under 6: A Tool for Proactive and Equitable Intervention*, 18 INT'L J. ENV. RES. PUB. HEALTH 16 (2021) (finding that 45% of Black children under five in Franklin County, Ohio—where Columbus is located—lived in neighborhoods with a high level of lead poisoning risk factors, such as age of housing, compared to 18% of white children).

40. *Current Asthma Demographics*, AM. LUNG ASSOC., <https://www.lung.org/research/trends-in-lung-disease/asthma-trends-brief/current-demographics> [<https://perma.cc/KA3T-D336>] (last visited Jan. 22, 2025).

41. See Benfer, *supra* note 39, at 296–98.

42. Ryan W. Briggs & Samantha Melamed, *A landlord's neglect and Philly's lax oversight left a 12-year-old girl dead, mom alleges*, PHILA. INQUIRER (Dec. 2, 2024, 5:00 AM EST), <http://www.inquirer.com/real-estate/philadelphia-affordable-housing-death-help-usa-20241202.html> [<https://perma.cc/Z7XH-M7XM>]. The child's mother is currently suing the landlord, HELP USA. *Id.*

43. Melamed & Briggs, *supra* note 1.

44. See, e.g., Snehal N. Shah et al., *Housing Quality and Mental Health: the Association between Pest Infestation and Depressive Symptoms among Public Housing Residents*, 95 J. URB. HEALTH 691, 698–99 (2018) (finding a fivefold increase in the odds of depressive symptoms among tenants whose public housing was infested with roaches and mice).

45. *Quality of Housing*, *supra* note 37.

46. *Id.*

The neighborhood where housing is located can also impact health.<sup>47</sup> Residential racial segregation has deep historical roots,<sup>48</sup> and along with broad disinvestment in non-white communities, results in segregated neighborhoods<sup>49</sup> where Black and other people of color have less access to health-promoting resources such as grocery stores, job opportunities, and social services.<sup>50</sup> At the same time, a lack of political influence over land use decisions exposes certain neighborhoods to a greater level of health hazards, including airborne pollutants, heavy traffic, and industrial contaminants.<sup>51</sup>

In addition to environmental factors, housing cost and stability also have demonstrable impacts on health.<sup>52</sup> In 2023, half of all renting households were “cost-burdened,” meaning that they spent 30% or more of their income on rent.<sup>53</sup> Unsurprisingly, a higher share of Black, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, Mixed Race, and Hispanic households are cost-burdened, although nearly half of white households are also cost-burdened.<sup>54</sup> Cost-burdened and housing-unstable households are more likely to live in housing that will make them sick, have higher levels of stress, and to have less money for other essentials like health care and food.<sup>55</sup> Collectively, all of these negative consequences can take a great toll on health. A recent study of millions of evictions nationwide found that a 20% increase in the share of income a tenant spent on rent was associated with a 16% increase in premature death.<sup>56</sup> Non-payment of rent is the most common reason that tenants are evicted, and an eviction filing—regardless of outcome—was associated with a 19% increase in premature death.<sup>57</sup> This may be because merely having an eviction record can severely restrict housing opportunities and quality for years to come.<sup>58</sup> Receiving a judgment of

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47. *Id.*

48. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (Liveright, 2017).

49. Amy J. Schulz et al., *Racial and Spatial Relations as Fundamental Determinants of Health in Detroit*, 80 MILBANK Q. 677, 690 (2002).

50. *Id.* at 692.

51. *Id.* at 691–92.

52. *Housing Instability, Healthy People 2030*, U.S. DEP’T OF HEALTH & HUM. SERVS., OFF. OF DISEASE PREVENTION & HEALTH PROMOTION, <https://odphp.health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability> [<https://perma.cc/92RW-GSD6>] (last visited Jan. 22, 2025) [hereinafter *Housing Instability*].

53. *Nearly Half of Renter Households Are Cost-Burdened, Proportions Differ by Race, CB24-150*, U.S. CENSUS BUREAU (Sept. 12, 2024), <https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html> [<https://perma.cc/B4YA-XAX9>].

54. *Id.*

55. *Housing Instability*, *supra* note 52.

56. The study authors were able to explore the relationship between eviction and mortality using a novel method of pairing eviction records with Census data. Nick Graetz et al., *The Impacts of Rent Burden and Eviction on Mortality in the United States, 2000-2019*, 340 SOC. SCI. & MED. (2024) at 1, 5–6.

57. *Id.* at 6.

58. *Id.*; ALEXA EISENBERG & KATE BRANTLEY, *RECORD COSTS: COLLATERAL CONSEQUENCES OF EVICTION COURT FILINGS IN PENNSYLVANIA 2* (2024), [https://www.urbanh3.com/\\_files/ugd/9d463d\\_6517025d2feb407f86473c5006da1484.pdf](https://www.urbanh3.com/_files/ugd/9d463d_6517025d2feb407f86473c5006da1484.pdf) [<https://perma.cc/YZZ6-ZQZD>] (noting that 8 in 10 participants reported that eviction filing limited their future housing opportunities, that half

eviction was associated with a 40% increase in premature death.<sup>59</sup> The implications of cost-burden and eviction on health are not restricted to adults. Evictions, which disrupt every aspect of a family's life, are associated with negative health throughout childhood, from increased premature birth and infant mortality to missed developmental milestones and worse access to health care.<sup>60</sup>

### *B. Housing Court is where Bad Things Happen to Tenants*

Tenants whose housing conditions actively harm their health and well-being have legal rights arising from two primary sources: municipal rental housing codes and the implied warranty of habitability in residential leases. While important, both legal regimes are severely inadequate in helping tenants secure safe and healthy housing. These inadequacies are not due to isolatable flaws. The reasons that tenants are not protected by the laws meant to do just that are systemic and have always been present, despite periodic attempts at reform.

As major cities grew rapidly during the Industrial Revolution, crowded, inadequate tenement housing became a defining public health issue.<sup>61</sup> Municipal rental codes were adopted in response and are intended to ensure that all rental housing meets minimal standards of adequacy.<sup>62</sup> Code enforcement is entrusted to code inspectors, who inspect buildings and issue violations for non-compliance with the rental code, and municipal lawyers, who can bring code enforcement litigation if landlords refuse to voluntarily remedy a violation.<sup>63</sup> Like other regulatory efforts that predominantly protect vulnerable members of society, rental code enforcement is severely under resourced.<sup>64</sup> For example, Philadelphia's Department

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reported periods of homelessness after eviction filing, and 43% were less willing to advocate for repairs post filings).

59. Graetz et al., *supra* note 56, at 6.

60. Bruce Ramphal et al., *Evictions and Infant and Child Health Outcomes: A Systemic Review*, 6 JAMA NETWORK OPEN e237612 (2023).

61. See, e.g., Dayna Bowen Matthew, *Health and Housing: Altruistic Medicalization of America's Affordability Crisis*, 81 L. & CONTEMP. PROBS. 161, 163–65 (2018) (describing how the medical community in East Coast cities in the mid-19th century identified poor conditions of tenement housing as an important public health concern); Margaret Garb, *Health, Morality, and Housing: The "Tenement Problem" in Chicago*, 93 AM. J. PUB. HEALTH 1420 (2003) (describing the origin of the Chicago Department of Health in late-19th century and its initial focus on tenement housing conditions).

62. For example, New York City passed its first housing law in 1867, requiring fire escapes in each building and windows in each room. Carmen Nigro, *Tenement Homes: The Outsized Legacy of New York's Notoriously Cramped Apartments*, N.Y. PUB. LIBR. (June 7, 2018), <https://www.nypl.org/blog/2018/06/07/tenement-homes-new-york-history-cramped-apartments> [<https://perma.cc/JD4N-2TPU>]. Chicago adopted its first rental code in 1880. Garb, *supra* note 61, at 1424.

63. See Marilyn L. Uzdavines, *Barking Dogs: Code Enforcement is All Bark and No Bite (Unless the Inspectors Have Assault Rifles)*, 54 WASHBURN L. J. 161, 163–68 (2014) (describing the multiple steps of the code enforcement process).

64. Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 130 (2019) ("The underenforcement of housing standards is a classic case of "underenforcement" on behalf of communities that have not been a political priority . . . poor people do not enjoy law enforcement resources in proportion to their numbers in the population." (citing Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1723 (2006) (describing the underenforcement of criminal law in poor communities)). Most code enforcement agencies have broad responsibilities

of Licenses and Inspections was long only able to inspect less than 10% of the city's nearly 300,000 privately-owned rental units.<sup>65</sup> Code enforcement is also much slower than the summary eviction process that tenants face.<sup>66</sup>

Even if municipal code enforcement was well-resourced and quick, tenants would still be disadvantaged. Inspection regimes that rely on tenants to file complaints so that enforcement actions can be taken against non-compliant landlords have long predominated among American municipalities, meaning that tenants speaking up is a necessary condition to rental code enforcement.<sup>67</sup> This can incentivize non-compliant landlords to intimidate tenants into silence.<sup>68</sup> While most jurisdictions have adopted some level of landlord anti-retaliation protections, these protections (like all tenant protections) are difficult to enforce. Even if a retaliatory landlord does not displace them, tenants in non-compliant housing legitimately fear being displaced by their government.<sup>69</sup> Since its inception, code enforcement has been a form of policing that is inextricably tied to the state's capacity for violence, most notably its ability to condemn and demolish housing deemed to be a threat to the public.<sup>70</sup> Tenants who live in housing that is at risk of

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beyond enforcing the rental code, from regulating construction, to issuing permits, to demolishing vacant buildings. *See, e.g., Department of Licenses and Inspections*, CITY OF PHILA., <https://www.phila.gov/departments/department-of-licenses-and-inspections/> [<https://perma.cc/UJ4U-TQ4A>] (describing the responsibilities of a code enforcement agency in Philadelphia).

65. PEW CHARITABLE TRS., *RENTAL CODE ENFORCEMENT IN PHILADELPHIA 4–5* (2021), <https://www.pew.org/en/research-and-analysis/reports/2021/11/rental-code-enforcement-in-philadelphia> [<https://perma.cc/44XQ-BVPU>].

66. *See, e.g., JOSEPH SCHILLING ET AL., IMPROVING PHILADELPHIA'S RENTAL REGULATORY AND HOUSING SUPPORT SYSTEMS*, URB. INST. 74–75 (2022), <https://www.urban.org/sites/default/files/2022-09/Improving%20Philadelphia%27s%20Rental%20and%20Housing%20Support%20Systems.pdf> [<https://perma.cc/SP54-BPPY>] (noting that code enforcement litigation can take many months, with a major challenge being that LLC-owned buildings require special investigative capacities to properly serve the owners). On the days that the court hears code enforcement cases, it is likely that only a fraction of the cases are against landlords.

67. Uzdevaines, *supra* note 63, at 163–64. A growing number of cities have adopted proactive rental inspection programs that require landlords to submit their rental properties to an inspection every few years in order to maintain the legal right to rent to tenants. Data has shown that such proactive programs are effective at reaching most rental properties and reducing substandard housing conditions; however, landlord opposition has been a barrier to wider adoption. SCHILLING ET AL., *supra* note 66, at 38–40.

68. *See, e.g., Eisenberg & Brantley, supra* note 58, at 2 (documenting that 43% of participant tenants reported being less willing to advocate for necessary repairs after an eviction filing for fear of retaliation); SCHILLING ET AL., *supra* note 66, at 15 (reporting that interviewed stakeholders believe that Philadelphia Latino and Asian tenants may underreport housing conditions because of fear of retaliation).

69. Sabeth, *supra* note 64, at 132–33 (observing that, since tenants cannot control the actions of inspectors and municipal lawyers, the latter may pursue relief that tenants do not want in the form of vacancy orders or demolition of the property).

70. *See* Albert J. Reiss, Jr. *Consequences of Compliance and Deterrence Models of Law Enforcement for the Exercise of Police Discretion*, 47 *LAW & CONTEMP. PROBS.* 83, 83 (1984) (noting that, in the 19th century, police departments were responsible for housing inspection, in addition to the crime control functions that they maintain to this day); Garb, *supra* note 61, at 1424 (observing that Chicago's first housing inspectors were former policemen who were given the power to enter any dwelling without a search warrant and to forcibly remove tenants from their housing).

condemnation typically do not have the resources to move elsewhere—if they could move, they would.<sup>71</sup> Therefore, they may reason that staying in housing that is severely deficient is preferable to homelessness and decline to request an inspection.<sup>72</sup>

The spread of the legal doctrine of the implied warranty of habitability, which was catalyzed by the D.C. Circuit’s 1970 decision in *Javins v. First National Realty Corp.*, has been rightfully described as a revolution in housing law.<sup>73</sup> During the 1970s, a time of mass organizing by urban tenants, the implied warranty was adopted to address the deficiencies of rental code enforcement and replace the common law rule of “caveat lessee.”<sup>74</sup> In most jurisdictions, the implied warranty is supposed to condition the tenant’s payment of rent on the landlord’s maintenance of a habitable property.<sup>75</sup> The implied warranty provides tenants with the option to 1) vacate, 2) withhold rent, 3) “repair and deduct,” or 4) sue affirmatively.<sup>76</sup> However, the first three of these options put tenants at risk of displacement, which many will want to avoid. As discussed above, many tenants living in substandard housing are unable to move, and deducting or withholding rent puts tenants at risk of their landlord filing for an eviction.<sup>77</sup> Especially in jurisdictions that do not seal eviction records, tenants may rationally choose not to risk the “scarlet E” that can negatively impact their housing stability deep into the future,<sup>78</sup> even if they have a defense under the implied warranty.

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71. See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 408–09 (2011) (describing moving out as the economically rational response to substandard housing when the tenant has the ability to do so).

72. Sabeth, *supra* note 64, at 133.

73. *Javins v. First Nat’l. Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970). Since *Javins*, the implied warranty spread by court decision and legislation to 49 states. Thomas Furlong Jr., *The Revolution Continues: Revitalizing the Implied Warranty of Habitability with Presumed General Damages*, 74 EMORY L. J. 1557, 1560–63 (2025); Super, *supra* note 71, at 398–404 (describing the various motivations for the promulgation of the implied warranty). Arkansas is the only state yet to adopt the implied warranty. Kathryn Hake, *Is Home Where Arkansas’s Heart Is?: State Adopts Unique Statutory Approach to Landlord Tort Liability and Maintains Common Law “Caveat Lessee”*, 59 ARK. L. REV. 737 (2006) (describing the historical reasons that Arkansas stands alone in its refusal to adopt the implied warranty).

74. Super, *supra* note 71, at 414 (“[A]ppellate courts and legislatures imposed the implied warranty of habitability largely to make up for the failure of housing code enforcement.”). “Caveat lessee,” also known as “caveat emptor”—which absolved landlords of any duty to provide habitable housing or make repairs—had been slowly whittled away, meaning that the implied warranty could be seen as less of an outright revolution and more of a culmination. See 15 WILLISTON ON CONTRACTS § 48:11 (using *Pugh v. Holmes*, 405 A.2d 897 (Pa. 1979) to extrapolate on courts’ reasoning for abolishing caveat emptor).

75. See WILLISTON ON CONTRACTS, *supra* note 74.

76. See, e.g., *Pugh v. Holmes*, 405 A.2d at 907–09 (describing the available remedies to a tenant under the implied warranty in Pennsylvania); *Fair v. Negley*, 390 A.2d 240 (Pa. Super. 1978) (affirming that the implied warranty can be raised affirmatively, in addition to defensively).

77. Furlong Jr., *supra* note 73, at 1566 (citing *JESSE DUKEMINIER ET AL.*, PROPERTY 523 (8th ed. 2014)).

78. Ninety percent of landlords check for previous evictions when considering renting to a tenant. Jung Hyun Choi et al., *The Real Rental Housing Crisis is on the Horizon*, URB. INST. (Mar. 11, 2022), <https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon>. Because the underlying court records are erroneous or incomplete, tenant screening products that landlords use are often overinclusive

Therefore, affirmative litigation may seem like the best option for tenants, who can beat their landlord to the courthouse. However, steep barriers prevent many tenants from affirmatively asserting the implied warranty. Most legal aid offices, already unable to meet the need for eviction defense, do not have much capacity for affirmative landlord-tenant litigation.<sup>79</sup> While tenants may prefer that the court order their landlord to make necessary repairs, the general rules of contract law severely limit the availability of specific performance as a remedy.<sup>80</sup> This leaves rent abatement as tenants' only legal leverage against their landlord. However, rent abatement may provide insufficient leverage for tenants to spur their landlord to make repairs, as was the case at Brith Sholom. Tenants have especially little leverage when the cost of repairs far exceeds the amount they can abate, or when a court only awards a partial rent abatement, as is common.<sup>81</sup>

Therefore, the implied warranty has functionally been reduced to a tool tenants can use when they are defendants in an eviction lawsuit brought by their landlord.<sup>82</sup> While not achieving the lofty expectations of the reformers who pushed for the implied warranty's adoption, the implied warranty's ability to help tenants avoid eviction, or at least some of its worst consequences, is a net positive. However, here too, the implied warranty has failed to live up to its potential. To utilize the implied warranty to their advantage, tenants must first show up in court. Across urban jurisdictions, the rate of default judgment against tenants—a consequence of the tenant failing to appear—ranges from approximately 1 in 5 to

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of which tenants they label with the “scarlet E.” Kathryn A. Sabbeth, *Erasing the “Scarlet E” of Eviction Records*, THE APPEAL (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/> [<https://perma.cc/2T5M-CXJV>]. Tenants have internalized the consequences of an eviction record. See Eisenberg & Brantley, *supra* note 58, at 2 (noting that 8 in 10 participants reported that eviction filing limited their future housing opportunities and that 43% were less willing to advocate for repairs post filings).

79. Sabbeth, *supra* note 64, at 141 (noting that non-profit organizations do take on affirmative litigation on behalf of tenants, but that they prioritize eviction defense and other more urgent categories of cases because “methodically and tenaciously pursuing affirmative relief when members of the public present emergencies can be difficult.”).

80. See, e.g., *Pugh*, 405 A.2d at 908 (“[S]ince the lease is a contract, other traditional contract remedies such as specific performance are available to enforce the implied warranty of habitability. . . . As with other contracts, however, specific performance is an equitable remedy not available as a matter of course but only in unique situations.”).

81. While rent abatement is typically calculated by determining how much a substandard condition subtracts from the tenants' use and enjoyment of the property, tenants can only abate as much rent as they are paying. Sabbeth, *supra* note 64, at 121–22 (“The rent abatement method for calculating damages reduces the likelihood of a poor tenant possessing a claim with a high dollar value, because it produces awards that are roughly proportional to class status. . . [b]ecause the rent abatement calculation is derivative of the tenant's monthly rent, it incorporates class as a factor in the award.”). This problem is compounded by the fact that judges are reluctant to award full abatement, or award tenant damages, even if there are severe habitability issues. *Id.* at 122; see also Michele Cotton, *When Judges Don't Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 72 (2015) (finding that, in a small sample of affirmative implied warranty cases filed in Baltimore, landlords walked away with 75% or more of the rent owed).

82. See Super, *supra* note 71, at 411.

1 in 2.<sup>83</sup> Default judgment is more of a symptom of the obstacles tenants face in navigating the legal system than of conscious decisions not to contest cases.<sup>84</sup> Although legal representation can ameliorate these barriers—and has been shown to significantly reduce the number of default judgments<sup>85</sup>—there remains a well-documented access to justice gap in eviction defense.<sup>86</sup>

The courts have made enforcing the implied warranty a significant burden on tenants. When a tenant withholds rent, courts have generally required that the tenant provide advance notice to their landlord and keep a sum equal to the rent due in escrow.<sup>87</sup> Such escrow requirements seek to preserve the landlord's expectations of rental income while requiring tenants to make difficult financial decisions.<sup>88</sup> Living in substandard housing can lead to new expenses for tenants, making escrowing all the more difficult.<sup>89</sup> For example, clients I have represented have had to spend the money they are required to escrow on takeout because they could not cook without gas service or because a severe roach infestation made keeping food in the kitchen impossible. Supersedeas requirements effectively cut off most tenants from appealing decisions from the summary eviction process to more formal trial courts because they must escrow their rent in full with the courts, often for months, if they want to remain in possession of the property, an

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83. David A. Hoffman & Anton Strezhnev, *Longer Trips to Court Cause Evictions*, 120 PROC. NAT'L ACAD. SCIENCES, 1 (2023) (reporting default rates in Philadelphia (40%), New York City (24%), Houston (40%), San Antonio (55%), and Chicago (8–24%)). Research in Philadelphia and Los Angeles County, where tenant default rates are 40%, shows that transportation burden could help explain high default rates. *Id.* at 1 (noting that a one-hour increase in travel time to court increased the probability of tenant default by 4–9%); Matthew Estes & Kyle Nelson, *Justice Divided, Justice Denied? The Effects of Court Rules on Eviction Outcomes in Los Angeles County* 23 (2025) (finding that tenants in Los Angeles County who lived farther away from the regional courthouse in which their eviction case was heard had higher rates of default and proposing optimizing jurisdictional maps as one of several interlocking mechanisms to reduce default rates), [https://mattestes.com/assets/papers/EstesNelson2025\\_LACountyEvictions.pdf](https://mattestes.com/assets/papers/EstesNelson2025_LACountyEvictions.pdf) [<https://perma.cc/83VF-H4R6>].

84. In Los Angeles County, Kyle Nelson found that tenants routinely attempt to resolve their eviction cases but that one mistake in following complicated legal procedures could result in a default. For example, one tenant Nelson interviewed had a default judgment because a landlord-tenant self-help center failed to tell her to file an Answer within the required timeframe. Kyle Nelson, *The Microfoundations of Bureaucratic Outcomes: Causes and Consequences of Interpretive Disjuncture in Eviction Cases*, 68 SOC. PROBS. 152, 159 (2021).

85. For example, Philadelphia's right to counsel program reduced tenant default from 41% to 1% for tenants with legal representation. DEP'T OF PLAN. & DEV., CITY OF PHILA., RIGHT TO COUNSEL ANNUAL REPORT FISCAL YEAR 2024 3, <https://www.phila.gov/media/20250204132955/Right-to-Counsel-Annual-Report-Fiscal-Year-2024.pdf> [<https://perma.cc/VPU9-FWB9>].

86. A commonly cited statistic, popularized by eviction researcher Matthew Desmond, is that “90% of landlords are represented by attorneys and 90% of tenants are not.” Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), <https://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html> [<https://perma.cc/4HS4-JSYS>]. While the exact statistics will vary across geography and time, the stark disparity Desmond highlights remains a core feature of eviction court.

87. See Super, *supra* note 71, at 443 (describing notice requirements and escrow requirements, also known as landlords' protective orders, as barriers to asserting the implied warranty as an eviction defense).

88. *Id.* at 428 (supposing that escrow requirements “suggest that landlords deserve assured collection of any rent owed as compensation for delays [in resolving their lawsuit]”).

89. *Id.* at 427.

impossible task for tenants who cannot afford their rent but who may have legitimate habitability defenses.<sup>90</sup> These requirements have no analogies in the contract law principles from which the implied warranty is derived.<sup>91</sup> Instead, notice and escrow requirements demonstrate the law's distrust of tenants seeking to resist their landlord's claim of possession.<sup>92</sup>

Another leading reason that the implied warranty fails to protect tenants in eviction court is that most who show up to their hearings still do not have their case heard by a judge; they instead settle with their landlord.<sup>93</sup> Pro se tenants are regularly forced into contact with their landlord's attorneys, who are under no obligation to protect tenants' rights.<sup>94</sup> These interactions are often unsupervised by the courts, and tenants can feel immense pressure to settle even if they originally intended to contest their cases.<sup>95</sup> Nicole Summers characterizes many of these settlements—65% in the Boston court where she undertook a large-scale study of eviction court outcomes—as “civil probation agreements” that share three interlocking features: 1) a judgment for possession for the landlord, 2) a stay of the actual lockout on the condition that tenants meet new, often harsher, terms of tenancy for often over a year, and 3) a provision allowing landlords to swiftly proceed to lockout upon motion with the court if a tenant breaches any of the terms.<sup>96</sup> In this shadow legal system, a tenant with a right to rent abatement under the implied warranty may unknowingly waive their right to do so for long periods.<sup>97</sup>

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90. *Id.* Some supersedeas requirements are particularly onerous, such as in Tennessee, where tenants must post a bond equal to a year's worth of rent, an impossible barrier for most tenants. Kathryn Ramsey Mason, *Housing Injustice and the Summary Eviction Process: Beyond Lindsey v. Normet*, 74 OKLA. L. REV. 391, 412 (2022). Such insurmountable supersedeas requirements persist even though the Supreme Court struck down one such requirement, which required tenants to escrow double the rent owed, because it discriminatorily denied low-income litigants access to the courts. *Id.*

91. Super, *supra* note 71, at 442 (noting that “requiring the tenant to perform, or demonstrate capacity to perform, her or his covenant in order for the landlord to be liable for her or his breaches is inconsistent with true mutuality of obligations” and that “breach is defined by the nonperforming party's conduct . . . [t]he general rule in contract is that ‘notice or demand is unnecessary where the obligation to perform is absolute and unconditional.’”).

92. *Id.* at 445–46. (noting that eviction court judges routinely encourage unsupervised negotiations as a form of docket control); Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 CALIF. L. REV. 79, 82 (1997) (noting that lawyers' professional ethics prohibit landlord attorneys from giving legal advice or suggesting a course of action to unrepresented tenants).

93. See Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 860 (2023) (noting that “eviction cases overwhelmingly settle”).

94. *Id.* at 859–60.

95. Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, HARV. J. L. & GENDER 55, 79–80 (2018) (stating that “Housing Court negotiations are infamous for producing one-sided agreements through coercion and misstatements of the law . . . [l]andlords' lawyers can take advantage of the [inconvenient] timing [of eviction proceedings] to extract concessions from tenants desperate to leave.”).

96. Summers, *supra* note 93, at 870.

97. *Id.* at 853, 893 (reporting that “civil probation” settlement agreements typically have terms that last for upwards of a year).

In many eviction courts, judges do not review settlement agreements or ensure that tenants understand what they are agreeing to.<sup>98</sup>

Even when merit-worthy habitability claims are heard, a tenant may not be any better off. Eviction cases are handled in summary proceedings that are akin to “kangaroo courts” because they have been empirically shown to produce “sub-standard adjudicatory outcomes.”<sup>99</sup> A valid legal defense does not guarantee a tenant a better outcome. Even in New York City, where there are no escrow or written notice requirements,<sup>100</sup> a study by Summers found that tenants raising the implied warranty actually received rent abatements in only 2% of cases.<sup>101</sup> Although access to legal representation dramatically increases a tenant’s chance of winning a rent abatement, even represented tenants did not receive an abatement in 70% of cases.<sup>102</sup> Nor were tenants with habitability claims more likely to fare better than tenants without in other respects, such as their likelihood of avoiding unfavorable judgments or receiving more favorable repayment terms.<sup>103</sup> New York City is an outlier where judges will review settlement agreements and can require that a term requiring the landlord to make repairs be added.<sup>104</sup> However, securing such judge-ordered terms did not result in repairs actually being made in three out of every four cases.<sup>105</sup>

In jurisdictions without good cause eviction protections, landlords can effectively sidestep implied warranty defenses and evict tenants for “termination of term” (also known as lease non-renewal) or any alleged non-rent breach of lease.<sup>106</sup> Other laws intended to ensure habitability, such as rental licensing or certification requirements, suffer from many of the same enforcement problems. One study in Detroit found that 89% of landlords who filed for eviction did not have the habitability certification required by local law.<sup>107</sup> Landlords choose not to comply with the law because judges

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98. Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 146, 211 (2020).

99. Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS. L.J. 359, 396–99 (2022) (quoting Shaun Ossei-Owusu, *Kangaroo Courts*, 34 HARV. L. REV. F. 200, at 201–02 (2021)).

100. Summers, *supra* note 98, at 211.

101. *Id.* at 190.

102. *Id.* at 151.

103. *Id.*

104. *Id.* at 181.

105. *Id.* at 151.

106. With these claims, rent is not at issue; therefore, the implied warranty is moot. Common non-rent breaches I have observed while practicing in Philadelphia include nonpayment of utilities, nuisance activity, failure to allow landlord to enter to make repairs, and habitual late payment.

107. Beginning in 2021, Detroit law required all landlords to receive a Certificate of Compliance (CoC) from the Buildings, Safety, Engineering, and Environmental Department (BSEED) in order to collect rent. Tenants living in non-compliant housing were legally entitled to withhold rent and landlords were prohibited from filing for eviction for nonpayment of rent. At the time of the study, only 6% of Detroit landlords were certified. Alexa Eisenberg & Katlin Brantley, *Crisis Before the Emergency: Evictions Before and After the Onset of COVID-19* 12 (Working Paper, U. Mich. Poverty Sols., 2022), <https://www.bridgedetroit.com/wp-content/uploads/2022/06/PovertySolutions-Covid-Evictions-PolicyBrief-r2-2.pdf> [<https://perma.cc/K2D4-X9GQ>].

let them: a University of Michigan study found that, after a new court rule in Detroit required landlords to obtain a code-compliance certification to evict, nearly 90% of judge-approved lockouts were granted to non-compliant landlords.<sup>108</sup> Even when basic compliance with licensing and certification laws is enforced by the courts, as it is in Philadelphia, landlords often obtain their required paperwork only when they wish to evict a tenant. In eviction court, strict compliance with the law is expected from tenants, while landlords are given significant slack.

These outcomes are not aberrations; they are functions of the design and purpose of eviction courts. Summary eviction proceedings were developed to provide landlords a speedy alternative to cumbersome common law ejectment actions so that landlords would seek repossession of their properties through the courts instead of through “self-help,” which often turned violent.<sup>109</sup> When the implied warranty was created, it vested enforcement of tenants’ rights with courts that had traditionally served to expeditiously supervise the return of property to landlords.<sup>110</sup> Robustly enforcing the implied warranty would require these courts to invest significantly more resources and profoundly change their cultures of deference to landlords and their lawyers.<sup>111</sup> Ample evidence suggests that neither of these changes has occurred.<sup>112</sup> The inferiority of eviction courts compared with other courts is deemed justified because the legal issues of tenants are presumed to be “simple,” when in actuality, habitability claims often raise complexities of evidence and law that the summary process cannot adequately adjudicate.<sup>113</sup>

### C. *Housing is the Infrastructure of Racial Capitalism*

For tenants, eviction court serves as an “emergency room” where they attempt to preserve their basic need for healthy housing.<sup>114</sup> For landlords, on the other hand, the court serves as a mechanism to use state power to maximize their profits begotten by the commodification of that basic need.<sup>115</sup> Eviction is often

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108. *Id.*

109. Ramsey Mason, *supra* note 90, at 399; *see also* Lenair v. Campbell, 31 Pa. D. & C.3d 237, 241 (Phila. Cty. 1984) (“Upon reviewing the [Landlord Tenant Act] in its entirety, it becomes apparent that self-help eviction is not a remedy under any circumstances. . . . [T]he legislature clearly expressed its intention that the Act be the sole source of rights, remedies and procedures governing the landlord/tenant relationship.”).

110. Super, *supra* note 71, at 413–17.

111. *Id.*

112. *Id.* at 450–51.

113. Kathryn A. Sabeth, *Market-Based Law Development*, LPE PROJECT BLOG (July 21, 2021), <https://lpeproject.org/blog/market-based-law-development/> [<https://perma.cc/6YQA-5SNU>] (arguing that poor people’s interests are seen as “simple and non-legal” by legal institutions, and thus the distribution of adequate legal resources is denied to poor people because their “claims are too simple to justify them”); *see also* Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 73 VAND. L. REV. 1365, 1391 (2021) (documenting that judges and clerks presiding over eviction court in Georgia presuppose that the cases would be “simple to resolve” and “very narrow”).

114. *See* Colleen F. Shanahan et al., *The Institutional Mismatch of State Civil Courts*, 122 COLUM. L. REV. 1472, 1530 (2022).

115. *Id.* at 1518 (arguing that rampant eviction is state violence, through the state civil courts, in the age of rising inequality); Tonya L. Brito et al., *Racial Capitalism in The Civil Courts*, 122 COLUM. L. REV. 1243, 1274–76 (2022) (arguing that eviction courts extract wealth through the state violence of

conceived by both judges and scholars in terms of landlords seeking to regain possession of their properties from non-paying or neglectful tenants.<sup>116</sup> However, landlords, especially large corporate landlords who more regularly file for eviction, often use the eviction process not to regain possession, but to extract rent and additional fees from tenants.<sup>117</sup> One study estimated that for each eviction filing, a tenant's housing cost would increase by 20% due to additional fees.<sup>118</sup> Summers has found that evictions filed by corporate landlords are disproportionately likely to result in the most stiff forms of civil probation, imposing high costs on tenants for extensive periods as a condition to avoid eviction.<sup>119</sup> Eviction represents a significant transfer of resources from working-class tenants, who are disproportionately non-white, to landlords and their financial backers, who are disproportionately white.<sup>120</sup>

Because of this racialized extraction and transfer of wealth, eviction courts are a site of racial capitalism.<sup>121</sup> The term racial capitalism describes how race and other socially-constructed axes of difference support the global economic system of capitalism.<sup>122</sup> Scholars of racial capitalism trace the framework's origins to W.E.B. DuBois, who wrote extensively about the intersections between race and class struggles.<sup>123</sup> As a concept, racial capitalism seeks to challenge

dispossession, and that both processes are racialized); Larissa G. Bowman, *Eviction Abolition*, 55 *LOY. U. CHI. L. J.* 541, 553 (2024) (noting that the transfer of authority to forcibly remove tenants from landlord "self-help" to a state supervised and enforced process obscured and institutionalized the violence of eviction).

116. See, e.g., Super, *supra* note 71, at 416 (positing that "courts also can be seen as vendors of eviction services to landlords"); Sudeall & Pasciuti, *supra* note 113, at 1391 (quoting a Georgia judge as stating that they viewed eviction cases as "basically deciding who gets possession"); Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 *SOC. FORCES* 316, 318 (2020) (noting that researchers have paid less attention to how landlords use eviction for purposes other than regaining possession).

117. Leung et al., *supra* note 116, at 338.

118. *Id.* at 339. Per Desmond and colleagues' aforementioned research, such an increase in rent could translate to a 16% increase in premature death. Graetz et al., *supra* note 56, at 5.

119. Summers, *supra* note 93, at 878–89.

120. Bowman, *supra* note 115, at 584 (stating that "because of stark demographic differences in who owns and who rents, the profit and loss sides of eviction's ledger are racialized and gendered"); Kathryn A. Sabbeth et al., *Race & Profit in the Civil Courts*, *LPE PROJECT BLOG* (Jan. 25, 2023), <https://lpeproject.org/blog/race-and-profit-in-the-civil-courts/> [<https://perma.cc/9ZQA-5XS3>] (stating that eviction courts provide landlords a "cheap, and reliable mechanism for collecting assets from the racially subordinated people who appear as defendants.").

121. Sabbeth et al., *supra* note 120.

122. *Id.* at 1266 ("All workers and individuals—Black, brown, white, indigenous, Asian, and more—are targets of racial capitalism and made available for exploitation and extraction under this system. Because work and society are organized around racialized hierarchies and domination, however, not all workers and individuals receive equal treatment."); LISA LOWE, *THE INTIMACIES OF FOUR CONTINENTS*, *DUKE UNIV. PRESS* 135, 149–50 (2015) ("[T]he term *racial capitalism* captures the sense that actually existing capitalism exploits through culturally and socially constructed differences such as race, gender, region, and nationality, and is lived through those uneven formations.").

123. In his 1935 opus *Black Reconstruction*, DuBois wrote that "the emancipation of man is the emancipation of labor, and the emancipation of labor is the freeing of that basic majority of workers who are yellow, brown, and black." W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT*

prevailing notions of both race and capitalism. The former is predominantly framed in a racial liberalism that espouses anti-racism as an abstract social value without naming or challenging the root causes of racial oppression.<sup>124</sup> Similarly, prevailing notions of capitalism treat economic systems as “pure,” dealing in abstract units of labor and commodities divorced from social or political formations like race.<sup>125</sup> Racial capitalism is an important concept because, as Angela Harris helpfully analogizes, it shows us that it is “necessary to trace the work of legal institutions, principles, and structures in simultaneously establishing and securing the ‘treadmill’ of . . . capitalism and the ‘racial contract’ on which the treadmill depends.”<sup>126</sup>

Capitalism is defined by private property ownership and profit-based decision-making.<sup>127</sup> Private property and profit are at the core of the housing crisis, yet this fact is often obscured.<sup>128</sup> Tracy Rosenthal and Leonardo Vilchis, cofounders of the Los Angeles Tenants Union, aptly observe that focusing on “housing” turns political attention towards “the people who design housing, who build housing, who profit from housing, not the people who live in it. It encourages us to think about abstract, interchangeable “housing units” and not about power, or about people and the constraints that shape their lives.”<sup>129</sup> Landlords and the real estate industry have spent hundreds of millions of dollars to define the housing

DEMOCRACY IN AMERICA 1860–1880 18 (Harcourt, Brace and Company 1st ed.) (1935); *see also* JODI MELAMED, *THE SPIRIT OF NEOLIBERALISM: FROM RACIAL LIBERALISM TO NEOLIBERAL MULTICULTURALISM*, 24 SOC. TEXT 4, 9–13 (2006) (discussing Du Bois’s post-*Black Reconstruction* work, where he further honed his critique of race and capitalism). DuBois himself did not use the term “racial capitalism,” which was first popularized by anti-Apartheid and anti-colonial movements in southern Africa in the 1970s and ‘80s. Zachary Levenson & Marcel Paret, *The Three Dialectics of Racial Capitalism: From South Africa to the U.S. and Back Again*, 20 DU BOIS REV.: SOC. SCI. RES. ON RACE 333, 336 (2023).

124. MELAMED, *supra* note 123, at 2 (“In contrast to white supremacy, the liberal race paradigm recognizes racial inequality as a problem, and it secures a liberal symbolic framework for race reform centered in abstract equality, market individualism, and inclusive civic nationalism . . . official antiracisms themselves deflect and limit awareness of the logics of exploitation and domination in global capitalism.”).

125. LOWE, *supra* note 122, at 149–50 (racial capitalism “refuses the idea of a “pure” capitalism external to, or extrinsic from, the racial formation of collectivities and populations, or that capitalism’s tendency to treat labor as abstract equivalent units does not contravene its precisely calibrated exploitation of social differences and particularities.”).

126. Angela P. Harris, *Where is Race In Law and Political Economy?*, LPE PROJECT BLOG (Nov. 30, 2017), <https://lpeproject.org/blog/where-is-race-in-law-and-political-economy/> [<https://perma.cc/X8NA-YCT8>].

127. *See Capitalism*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/capitalism> [<https://perma.cc/4PX9-VF4R>] (last visited Sept. 15, 2025).

128. *See* Tara Raghuv eer & John Washington, *The Case for the Tenant Union*, 32 POVERTY & RACE (Apr. 10, 2023), <https://www.prrac.org/the-case-for-the-tenant-union-jan-mar-2023-p-r-issue/> [<https://perma.cc/U56P-VL5N>] (“Housing is the infrastructure of racial capitalism, and the landlord-tenant contradiction is where we must locate our efforts to combat it . . . the inherent conflict of interests between tenants and the individuals or institutions that own their home.”).

129. TRACY ROSENTHAL & LEONARDO VILCHIS, *ABOLISH RENT* 11 (2024).

crisis in terms of abstract units of housing and not one of exploitation and extraction from tenants.<sup>130</sup> When tenant rights legislation is introduced, landlords will claim that the increased burden will cause them to stop renting their properties, almost explicitly threatening to reduce the housing supply if tenants are given even a modest increase in legal leverage.<sup>131</sup> Another argument weaponized against tenant rights is to appeal to racial justice by centering the profit and property of Black and other minority landlords, while obscuring the fact that expanded tenant rights would disproportionately benefit Black tenants.<sup>132</sup> By focusing on a supply-side narrative of the housing crisis, the real estate industry has attempted to commodify the real suffering of the multiracial working class to secure public

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130. MAD BANKSON ET AL., WHO IS BEHIND THE CURTAIN? BREAKING DOWN TRADE ASSOCIATIONS THAT FIGHT TENANTS AND HURT HOUSING AFFORDABILITY 6 (2024), <https://files.ourfinancialsecurity.org/2024/06/Who-is-Behind-the-Curtain-Report-FINAL-1.pdf> [<https://perma.cc/4BBE-GUWD>].

131. In Philadelphia, at least, landlords and their lobbyist will make these claims no matter how modest the legislation is. *Compare Public Testimony on Bills 250044 & 250045, Before the Committee on Housing, Neighborhood Development and the Homeless*, City Council of Phila., Pa. 103-86 (Apr. 7, 2025) (public comment section) (statement of Annette Collier, President, Greater Phila. Ass'n of Realtors) (demonstrating landlords opposed relatively modest legislation to cap application fees and allow tenants to pay security deposits in installments, arguing that “these bills discourage rental market participation and availability of affordable housing units”) with *Public Testimony on Bills 250329, 250330 & 250331, Before the Committee on Housing, Neighborhood Development and the Homeless*, City Council of Phila., Pa. (June 3, 2025) (statement of Steven Chintaman, VP of Government Affairs, Pennsylvania Apartment Association, at 125-30 & Paul Cohen, General Counsel, HAPCO Philadelphia, at 131-71) (demonstrating landlords used the same talking points to oppose a much more ambitious package of legislation). Sometimes, landlords do not hide behind abstractions and make their interests very clear. *Public Testimony on Bill 110070, Before the Committee on Public Health and Human Services*, City Council of Phila., Pa. 154-56 (Nov. 30, 2011) (statement of Miriam Shapiro, a landlord) (reciting, to audience applause, a parody of a Dr. Seuss poem mocking the sponsor of a bill to increase compliance with lead paint testing and disclosure and arguing that landlords were being overburdened and would raise rents). This phenomenon is not contained to Philadelphia. *See, e.g.*, Cea Weaver & Ritti Singh, *Zohran Mamdani vs. New York Landlords*, JACOBIN (June 23, 2025), <https://jacobin.com/2025/06/mamdani-cuomo-nyc-real-estate> [<https://perma.cc/7ZLP-6V92>] (describing real estate’s obfuscation of the housing crisis as a means to dilute tenant power and secure the policies they want in the context of Zohran Mamdani’s campaign for Mayor of New York City; also noting that “some landlords are just saying the quiet part out loud: they’re voting for [Andrew] Cuomo because he’ll let them raise rents.”).

132. For example, two Philadelphia landlords filed a lawsuit attempting to stop pro-tenant legislation, arguing that expanding “good cause” eviction protections would violate the Fair Housing Act by “disproportionately burden[ing] minority landlords and the communities they serve by increasing barriers to continued operation and accelerating market exit among those least able to absorb financial shocks,” which would result in “reduced housing supply, increased rents, and displacement in minority communities.” *Amd. Compl. Floyd v. City Council of Philadelphia*, No. 260302655, (Philadelphia Co. Ct. Com. Pl., Apr. 10, 2026) ¶ 202-13.

Black landlords and their finances have also been deployed as red herrings in the recent debate about the pro-tenant policies advocated by Mayor Zohran Mamdani in New York City. *See, e.g.*, Howard Husock, *Mamdani’s Rent Freeze Would Sink New York Landlords*, WALL ST. J. (Aug. 29, 2025), <https://www.wsj.com/opinion/mamdani-rent-freeze-would-sink-new-york-landlords-campaign-housing-77bd45e1> (quoting “an African-American widow” who owned a 35-unit apartment complex as stating that mayoral candidate Zohran Mamdani’s proposal to “freeze” rents of rent-stabilized apartments in New York City “would make me lose my building. It would destroy me.”).

support for more development.<sup>133</sup> This is why proposals for housing “abundance” through zoning and environmental regulation reform cannot alone solve the housing crisis;<sup>134</sup> they do not address the fundamental imbalance of power at the root of the crisis.<sup>135</sup>

While the conflict between use value for tenants and exchange value for landlords has always been the core feature of the capitalist housing system, the accelerating corporatization of housing has made the contemporary housing crisis worse.<sup>136</sup> Since the 2008 housing crash, ownership of rental housing has increasingly transferred from individuals to institutional investors, a trend that accelerated further during the COVID-19 pandemic.<sup>137</sup> For example, Greystar, now the nation’s largest landlord, grew to its size by raising money from pension funds, hedge funds, and life insurance policies to purchase large apartment complexes.<sup>138</sup>

133. Rosenthal & Vilchis, *supra* note 129, at 11; Garssandra Presumey-Leblanc & Megan Sandel, *Perpetuating Commodification of Suffering: How Social Determinants of Health Framing Prolongs Historical Racial Inequities*, 3 WOMEN’S HEALTH REPORTS 281, 283 (2022) (arguing that the concept of social determinants of health has become popularized because addressing these needs can generate profit for medical and legal institutions, thus creating a “commodification of suffering”); *see also* Jeff Wasch, *Parker’s H.O.M.E. initiative: Why not invest in tenants?*, PHILA. INQUIRER (Sept. 2, 2025), <https://www.inquirer.com/opinion/commentary/philadelphia-housing-initiative-tenant-protections-20250902.html> [<https://perma.cc/LUK5-7JT6>] (critiquing Philadelphia Mayor Chelle Parker’s signature \$800 million initiative to build or preserve 30,000 units of housing because “the most bittersweet shortcoming of the initiative for tenants is that it proposes giving more than \$200 million to developers and landlords without adding any mechanisms to hold them accountable. Meanwhile, people are literally dying because of poor conditions in rental properties. And some of the worst offenders are the same property owners who benefit from city programs.”).

134. The “abundance” movement, like the older “Yes in My Backyard” movement, views the housing crisis fundamentally as a supply-side challenge, and believes that local zoning laws and state environmental regulations make constructing new housing too expensive, in large part because local zoning laws and state environmental regulations make it too easy for homeowners to oppose new developments in their neighborhoods. *See generally* EZRA KLEIN & DEREK THOMPSON, *ABUNDANCE* (2025).

135. *See, e.g.*, Rosenthal & Vilchis, *supra* note 129, at 11; Brandon Weiss, *Corporate Consolidation of Rental Housing & The Case For National Rent Stabilization*, 101 WASH. U. L. REV. 553, 567–71 (2023) (summarizing and critiquing the YIMBY movement because “neither more housing nor more cash eliminates the need for non-market-contingent tools that directly prevent rent gouging and provide other immediate anti-displacement protections for tenants.”).

136. Weiss, *supra* note 135, at 560–66. The term “corporate landlord” can include both ownership by institutional investors, like private equity firms, and by limited liability corporations. Because of the ease and incentives of forming an LLC, even small landlords have become corporate landlords. Bruce Katz & Ben Preis, *The Rental Market Has Changed for the Worse: Government Must Respond*, NOWAK METRO FIN. LAB NEWSL. (Aug. 24, 2023), <https://drexel.edu/nowak-lab/publications/newsletters/2023/rental-market/> [<https://perma.cc/837Y-UHLT>]. *But cf.* Anika Singh Lemar, *Slum Manager*, 57 CONN. L. REV. 1207, 1210 n. 1 (2025) (arguing that differentiating [large-scale corporate] owners from smaller landlords does not provide a useful taxonomy for regulators or for tenants).

137. In the wake of nearly four million foreclosures, institutional investors like Blackstone entered the single-family rental market, out-competing homeowners to purchase foreclosed homes and renting them out, including to the same people who had lost their homes to foreclosure. Heather Vogell, *When Private Equity Becomes Your Landlord*, PROPUBLICA (Feb. 7, 2022), <https://www.propublica.org/article/when-private-equity-becomes-your-landlord> [<https://perma.cc/9F42-NG7P>]; Elora Lee Raymond, *Collateral Cities*, LPE PROJECT BLOG (June 23, 2022), <https://lpeproject.org/blog/collateral-cities/> [<https://perma.cc/B3XF-XSLZ>]. New homes are also being sold in large numbers directly to landlords, increasing the total number of rental properties by more than 50%. Katz & Preis, *supra* note 136.

138. Vogell, *supra* note 137.

Nearly all large multi-unit rental properties are owned by corporations, and an increasing share of smaller multi-unit and single-family rental units are as well.<sup>139</sup> In the absence of direct regulation of rents, the only limiting factor on rent increases is competition. However, as in any industry, “the free market” breaks down and prices rise with increasing consolidation and coordination.<sup>140</sup>

Rent increases are not the only issue stemming from the corporatization of housing. “Milking” properties by charging rent while neglecting maintenance has long been a common practice in non-white neighborhoods.<sup>141</sup> The advent of limited liability corporations (LLCs) in the 1990s has increasingly allowed owners of rental housing to avoid liability from both tenants and municipal governments for the conditions of their units. In Milwaukee, Wisconsin, LLC ownership of housing was associated with neglected maintenance.<sup>142</sup> Corporate landlords have also increasingly delegated tenant-facing interactions to third-party property managers.<sup>143</sup> In Rochester, New York, researchers found that landlords who did not live in the city and hired a property manager were more likely to have code violations at their properties, especially at lower-value properties and in Black neighborhoods.<sup>144</sup>

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139. Weiss, *supra* note 135, at 560–61.

140. See, e.g., David Rivera-Kohr, *Corporate landlords drive Madison’s housing crisis, and it’s time to fight back*, TONE MADISON (Jan. 22, 2025), <https://tonemadison.com/articles/corporate-landlords-drive-madisons-housing-crisis-and-its-time-to-fight-back/> [<https://perma.cc/R8VZ-4A3D>] (“In [Madison, Wisconsin’s] unregulated rental housing market, one of the only mechanisms to keep rent prices in check (at least in theory) is competition. Corporate landlords emphasize keeping rents in pace with the ‘market value’ to remain competitive and to justify rent hikes. However, the problem is that the ‘market value’ is actually set by those same landlords that own a growing share of the rental housing market, causing the market to look less like a competition and more like an oligopoly. When corporate landlords take advantage of the market conditions by gouging tenants with higher rents, the ‘market value’ for rental units in the area increases. In turn, nearby corporate landlords raise rents to match the new market value, which raises the market value even more.”).

141. Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: “Milking” and Class Violence*, 15 FLA. ST. U. L. REV. 485, 489–92 (1987) (defining “milking” as “the decision to reduce maintenance below the level necessary to keep a building in existence as a residential unit” and describing when it is economically rational for landlords to do so). Elizabeth Korver-Glenn and colleagues theorize that racial capitalism dispossesses non-white communities of quality housing while simultaneously extracting profit from them. Elizabeth Korver-Glenn et al., *Displaced and unsafe: The legacy of settler-colonial racial capitalism in the U.S. rental market*, 4 J. RACE, ETHNICITY & THE CITY 113, 127 (2023) (finding that, when controlling for neighborhood socioeconomic status, property features, and renter demographics, renters in majority non-white neighborhoods are more likely to live in housing with unsafe and unhealthy conditions); see also Geoff Rose & Richard Harris, *The three tenures: A case of property maintenance*, 59 URB. STUD. 1926, 1936–37 (2021) (theorizing that the observed higher prevalence in code violations in Black neighborhoods may be due to landlords having a “relatively exploitive attitude towards their real estate holdings.”).

142. Adam Travis, *The Organization of Neglect: Limited Liability Companies and Housing Disinvestment*, 84 AM. SOCIO. REV. 142, 164 (2019). *But cf.* Rose & Harris, *supra* note 141, at 1940 (noting that, in Rochester, New York, LLC landlords were no more or less likely to have code violations at their properties).

143. Leung et al., *supra* note 116, at 318. An entire suite of services has evolved to enable absentee, “laptop” landlords who have little involvement with their rental properties. *Id.*; Katz & Preis, *supra* note 136. Anika Singh Lemar argues that property managers, who are primarily responsible for ensuring that rental housing complies with local rental codes, should be better regulated to improve the supply of good housing. Lemar, *supra* note 136, at 1223.

144. Rose & Harris, *supra* note 141, at 1936–37.

Even when landlords do make repairs, tenants can be put at risk if their landlord decides to pass the cost onto them through increased rent, or if the landlord decides to force them out in favor of a potential new tenant willing to pay more for the newly renovated unit.<sup>145</sup>

Neglecting maintenance is not the only way landlords filch wealth from their properties. For example, the owners of Brith Sholom secured millions of dollars in Freddie Mac-backed mortgages.<sup>146</sup> Fannie Mae and Freddie Mac, created to promote housing affordability through backing mortgages of potentially unprofitable properties, have undergirded the acquisition of rental properties across the country by institutional investor-backed landlords who aggressively seek high profit margins.<sup>147</sup> While tenants can face uncertainty and potentially lose their housing if their landlord does not pay their mortgage debts, landlords can use the foreclosure or bankruptcy process as a “cleanse by fire” and free themselves from their debts, severely lowering the stakes and potentially emboldening risky behavior.<sup>148</sup> Current tenant rights rely on rent abatement as the primary form of leverage, but landlords whose primary interest in the property is as mortgage collateral, as opposed to a source of rent income, may be less sensitive to abatement. While the real estate investors behind the neglect of Brith Sholom ultimately went to federal prison, it was not for the deplorable conditions that led to the death of several tenants, but because they committed mortgage fraud.<sup>149</sup> Justice was delivered for the banks and Freddie Mac, but there will likely never be an accounting for the immense harm to thousands of poor, Black and Brown tenants who lived in their “empire of neglect.”

## II. POWER BUILDING IS A PROCESS

How can systems of oppression and racialized exploitation be dismantled when there are wealthy, politically powerful interests that seek to perpetuate those systems? By building countervailing power.<sup>150</sup> The multiracial working class has one concrete advantage when it comes to struggles for power against those who benefit from their oppression: their superior numbers.<sup>151</sup> Yet, there has been a

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145. Super, *supra* note 71, at 422.

146. Melamed & Briggs, *supra* note 1.

147. Weiss, *supra* note 135, at 562; Vogell, *supra* note 137.

148. See Melamed & Briggs, *supra* note 1 (quoting Jack Stucker, Supervising Attorney at Regional Housing Legal Services (PA), who speculates as to the actions of Brith Sholom’s owners).

149. In fact, the mortgage that ultimately led to their downfall was on a non-residential property in Michigan. Four Real Estate Investors Sentenced in Multimillion-Dollar Loan Scheme, U.S. DEP’T OF JUST. (Apr. 1, 2025), <https://www.justice.gov/opa/pr/four-real-estate-investors-sentenced-multimillion-dollar-loan-scheme> [<https://perma.cc/48P8-NSYS>].

150. See, e.g., Jamila Michener, *Health Justice Through the Lens of Power*, 50 J. L. MED. & ETHICS 656, 658–59 (2022) (“[H]ealth outcomes and associated policies are often influenced by economic and political elites whose interests are (either explicitly or implicitly) antithetical to the aims of health justice. . . . Since historical and contemporary alignments of power have produced and perpetuated the status quo of health inequity, altering this trajectory will involve struggles for power.”).

151. See Kate Andrias & Benjamin Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 551–52 (2021) (arguing that countervailing, mass-membership organizations increase political equality by serving as a counterweight to the political influence

historic tension between lawyering and the organizing tactics necessary to build such multiracial working-class power.<sup>152</sup> Fortunately, there is a robust literature both inside and outside legal scholarship that can guide how lawyers may chart a different path. Learning from such scholarship, written by people with on-the-ground experience, is necessary for lawyers to work alongside the emergent tenant power movement.

### A. How Lawyers Think About Power

Lawyers' ability to think in terms of collective power is hindered by power's absence from mainstream legal theory.<sup>153</sup> Moreover, law has cast collective class-, gender-, and race-based pleas for justice in terms of individual rights, which privatizes social problems and social obligations.<sup>154</sup> Mainstream public interest legal advocacy, in particular, was built to take advantage of the heightened period of individual rights recognition that occurred during the mid-twentieth century.<sup>155</sup>

Take the D.C. Circuit's *Javins* opinion, written by Judge James Skelly Wright, for example. *Javins* is well-known for acknowledging a class-based power imbalance, a rarity in private law.<sup>156</sup> Judge Wright, an important figure in poverty law,<sup>157</sup> observed that the common law caveat lessee, which has its origins in feudal England, is incompatible with the modern rental housing market, where tenants pay rent for the use value of housing and must rely on their landlords to maintain that use value.<sup>158</sup> Critically, Judge Wright also recognized that tenants, especially those of the multiracial working class, have little leverage on their own to demand that their landlord

of the rich); JANE F. MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE 9 (2016) (stating that "the only concrete advantage" the working class has over elites is large numbers).

152. See *infra* Section II.B.

153. Law and Political Economy, which this article draws heavily from, argues that developments in legal scholarship have obscured the law's role in masking economic power from critique and regulation. See generally Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

154. See, e.g., Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2195 (2013) (critiquing the narrative created surrounding the extension of indigent defense rights through *Gideon v. Wainwright* and subsequent Supreme Court cases); LORETTA ROSS, SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE, UNDERSTANDING REPRODUCTIVE JUSTICE: TRANSFORMING THE PRO-CHOICE MOVEMENT, 2 (Mar. 2011) (challenging the mainstream, white middle class women-led, reproductive rights movement post-*Roe v. Wade* for its preoccupation with the "right to choose," a political conservative and market-oriented approach that leaves out the needs of women of color).

155. See, e.g., Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (reviewing the history of progressive lawyering, the development of public interest law in the model of the American Civil Liberties Union and the NAACP Legal Defense Fund, and the progressive and critical critiques of lawyering that have led to the rise of movement lawyering).

156. See Jedediah Britton-Purdy et al., *supra* note 153, at 1800.

157. In addition to *Javins*, Judge Wright also wrote the opinions in *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (interpreting the common law contract defense of unconscionability as protecting low-income consumers from exploitative contracts) and *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968) (recognizing, for the first time, retaliatory eviction as a defense to eviction).

158. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1077-78 (D.C. Cir. 1970).

meet their need for quality housing.<sup>159</sup> However, while Judge Wright wrote insightfully about the tenant struggle, *Javins* ultimately did not provide a collective form of relief—it required tenants to access relief on the individual level. As described in Part I.B., this approach has largely failed.

*Javins* is also notable for Judge Wright’s skepticism of property law.<sup>160</sup> Property rights are inherently isolating; they allow individuals to control, enjoy, and, as the Roberts Court has taken to emphasizing, exclude others.<sup>161</sup> Yet these rights are not available to everyone equally. The more property one owns, the more they can protect their property interests. When a landlord, or homeowner for that matter, falls behind on their mortgage payments or taxes, they go through foreclosure to sever their ownership interest in the property. While differing by jurisdiction, foreclosure actions generally involve more procedure and thus proceed at a slower pace than evictions, at the very least giving homeowners more time in their homes.<sup>162</sup> Tenants’ inferior possessory interest in property means that they can be excluded from their homes far more easily.<sup>163</sup> Unhoused people are even lower on the rungs of property rights, as they can be excluded from a space with virtually no procedural safeguards.<sup>164</sup>

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159. *Id.* at 1079. Over a decade later, Judge Wright admitted in a letter to Professor Edward H. Rabin:

“I was indeed influenced by the fact that, during the nationwide racial turmoil of the sixties and the unrest caused by the injustice of racially selective service in Vietnam, most of the tenants in Washington, D.C. slums were poor and black and most of the landlords were rich and white. There is no doubt in my mind that these conditions played a subconscious role in influencing my landlord and tenant decisions . . . [I] offer no apology for not following more closely the legal precedents which had cooperated in creating the conditions that I found unjust.”

Edward H. Rabin, *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 549 (1982).

160. *Javins*, 428 F.2d at 1074–76.

161. *See, e.g.*, *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) (striking down the CDC’s pandemic eviction moratorium because preventing evictions intrudes on landlords’ fundamental right to exclude tenants from their property); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 140 (2021) (striking down a California law that allowed labor organizers the right to access farms in order to reach agricultural workers as a per se taking because it interfered with agricultural employers’ fundamental right to exclude).

162. Sarah Schindler & Kellen Zale, *The Anti-Tenancy Doctrine*, 171 U. PA. L. REV. 267, 290–94 (2023). For example, in Philadelphia, foreclosures are adjudicated in the Court of Common Pleas, where Defendants have access to many procedures—such as motions, pre-trial discovery, and jury trials—that are unavailable in Municipal Court.

163. *See supra* notes 67–72 and accompanying text.

164. *See, e.g.*, Christopher Essert, *What is the Relationship Between Homelessness and the Law?* LPE PROJECT BLOG (Mar. 25, 2024), <https://lpeproject.org/blog/what-is-the-relationship-between-homelessness-and-the-law/> [https://perma.cc/VHD5-74VD] (arguing that property law creates homelessness by granting the right to control one’s space only to those who own or rent a space). The Ninth Circuit had created a form of procedural safeguards that restricted when localities could criminalize sleeping in public spaces, but the Supreme Court struck them down in *Grants Pass v. Johnson*. Mila Versteeg, Kevin Cope & Gaurav Mukherjee, *The American Right to Sleep Under Bridges*, LPE PROJECT BLOG (Apr. 1, 2024), <https://lpeproject.org/blog/the-american-right-to-sleep-under-bridges/> [https://perma.cc/L8YZ-LF5V] (describing how Ninth Circuit precedent “created a right unique in the American constitutional tradition: an effective license for homeless individuals to sleep under

While Judge Wright attempted to address the power imbalance between landlords and tenants in *Javins* by moving away from rigid property law, this potential revolution was soon stunted when, two years later, the Supreme Court in *Lindsey v. Normet* upheld the practice of subjecting tenants withholding their rent to the summary eviction process.<sup>165</sup> In *Lindsey*, the Supreme Court took the opposite approach of *Javins*, ignoring issues of unequal power and refusing to grant constitutional protection to tenants' interest in adequate housing while upholding landlords' property rights.<sup>166</sup> In a rights-based legal system, all sides can claim protection of a "right."<sup>167</sup> Therefore, supposedly universal rights must be balanced by the courts; one side's claim to rights will get them more than the other side's claim.<sup>168</sup> Despite repeated assertions that judges are not legislators, these balancing acts are inherently policy decisions.<sup>169</sup> In *Lindsey*, the Supreme Court made a policy decision to favor landlords over tenants. Two years later in *Pernell v. Southall Realty*, the Court issued hollow reassurance that "our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home."<sup>170</sup> But, the summary eviction process endorsed in *Lindsey* meant that rubber stamp justice is the only justice most tenants get. Appeals to "essential," "fundamental," and "treasured" property rights serve to make policy decisions that favor property owners seem inevitable and preordained.<sup>171</sup> But as both *Javins* and Justice

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bridges, in parks, or on other public lands"); *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520 (2024).

165. *Lindsey v. Normet*, 405 U.S. 56 (1972). For an in-depth analysis of *Lindsey*, see Ramsey Mason, *supra* note 90.

166. In her analysis of *Lindsey*, Ramsey Mason argues that the majority "reinforced the legal system's centuries-long prioritization of the landlord's right to possession above all other considerations in the landlord-tenant relationship." Ramsey Mason, *supra* note 90, at 411. Justice Douglas's dissent aptly illustrates what an alternative opinion would have been, as he, like Judge Wright in *Javins*, demonstrates a far better understanding of the landlord-tenant relationship and gives tenants' use value in housing proper weight. *Compare Lindsey*, 405 U.S. at 74 ("[T]he Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality, or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement."), *with Lindsey*, 405 U.S. at 89 (J. Douglas, dissenting) ("[W]here the right is so fundamental as the tenant's claim to his home, the requirements of due process should be more embracing.").

167. See DUNCAN KENNEDY, *THE CRITIQUE OF RIGHTS IN CRITICAL LEGAL STUDIES*, IN *LEFT LEGALISM/LEFT CRITIQUE* 178, 197–200 (2002) (summarizing the leftist critique of rights).

168. *Id.* Kennedy characterizes the "upshot" of rights-based legal advocacy as "when both sides are well represented . . . advocates confront the judge with two plausible but contradictory chains of rights reasoning." *Id.* at 198. As discussed in Part I.B., both sides are not well represented in the vast majority of legal contests between landlords and tenants.

169. *Id.*

170. *Pernell v. Southall Realty*, 416 U.S. 363, 385 (1974). While *Lindsey* considered broadly whether the summary eviction process met the requirements of the Due Process Clause of the Fourteenth Amendment, *Pernell* dealt with the much narrower issue of whether the Seventh Amendment's guarantee of a trial by jury, if requested, applied to landlord-tenant disputes.

171. See *Cedar Point Nursery v. Hassid*, 594 U.S. 149–50 (2021) ("[T]he right to exclude is 'one of the most treasured' rights of property ownership . . . the right to exclude is 'universally held to be a

Douglas's dissenting opinion in *Lindsey* illustrates, the Court could have chosen a different approach that counterbalanced the inherent power imbalance between landlord and tenant instead of deferring to property rights fundamentalism.<sup>172</sup> As long as the law prioritizes preserving landlords' property rights over tenant empowerment, lawyers' ability to address the landlord-tenant power imbalance will be systemically limited.<sup>173</sup>

Recognizing that rights discourse does little more than depoliticize undemocratic policy decisions by the courts, many lawyers on the left have lost faith in legal rights.<sup>174</sup> Surpassing the limitations of rights-based advocacy requires public interest lawyers to engage subordinated communities and their members in the processes by which substantive transformations in their material conditions can be achieved. Doing so requires looking to the theories and strategies of social movement organizers, who think deeply about what processes can build the power necessary for substantive change.

### *B. How Organizers Think About Power*

Labor scholar and former organizer Jane McAlevey, whose work has influenced tens of thousands of organizers worldwide,<sup>175</sup> provides a useful framework for evaluating whether a social change strategy effectively builds power.<sup>176</sup> Her framework divides strategies into three broad models: advocacy, mobilizing, and organizing.<sup>177</sup>

In the advocacy model, elites drive the strategy, do the work, and do not engage the members of the multiracial working class in a meaningful way. The theory of power articulated in Ezra Klein and Derek Thompson's best-selling book, *Abundance*, is a prime example of advocacy:

[Establishing a new political order of abundance] requires deep-pocketed donors (and political action committees) to invest in promising candidates over the long term; the establishment of think tanks and

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fundamental element of the property right," and is "one of the most essential sticks in the bundle of rights that are commonly characterized as property.")

172. *Lindsey*, 405 U.S. at 5679–90 (Douglas, J., dissenting). Unlike the majority, Justice Douglas cites Judge Wright's decision in *Javins*. *Id.* at 84.

173. See, e.g., Ramsey Mason, *supra* note 90, at 413–24 (describing how the assumptions that underlie *Lindsey* are increasingly incompatible with modern understandings of the tenant experience).

174. KENNEDY, *supra* note 167, at 197. The left critique of rights has received some pushback from critical race theorists, who find some (limited) benefit in rights-based discourse, at least as applied to the struggle for racial and civil justice. See Butler, *supra* note 154, at 2189 (briefly summarizing CRT's limited defense of rights).

175. Before her passing, McAlevey was the lead trainer for Organizing for Power (O4P), a program based on her work. 45,000 people worldwide, including myself, have participated in O4P. ORGANIZING FOR POWER, <https://organizing4power.org/> [<https://perma.cc/JJ5B-69BV>] (last visited Sept. 28, 2025).

176. See MCALEVEY, *supra* note 151, at 11–12 tbl.1.1 (providing a summary of McAlevey's framework).

177. *Id.*

policy networks to turn political ideas into actionable programs; a rising political party able to consistently win over multiple electoral constituencies; a capacity to shape political opinion both at the highest levels (the Supreme Court) and across popular print and broadcast media; and a moral perspective able to inspire voters with visions of the good life.<sup>178</sup>

The key players in Klein and Thompson's preferred strategy are political, financial, and legal elites; the only role for ordinary people is to consent to elites' actions through voting. When public interest lawyers rely on an advocacy model, they are reproducing an antagonistic dynamic between professionals and the working class.<sup>179</sup>

In the past few decades, a recognition of the advocacy model's shortcomings has led to an influx of what McAlevey calls "mobilizing," or shallow organizing.<sup>180</sup> Although this model attempts to engage non-elites, it does so while retaining elite power.<sup>181</sup> For example, the "Yes in My Backyard" (YIMBY) movement has struggled to expand its base beyond mostly white, professional-class tenants because its model sought to engage tenants without giving them any real influence on the goals and strategy of the movement.<sup>182</sup> YIMBY groups mobilize tenants to show up to public meetings and agitate for housing development.<sup>183</sup>

178. KLEIN & THOMPSON, *supra* note 134, at 220–21 (quoting GARY GERSTLE, *THE RISE AND FALL OF THE NEOLIBERAL ORDER* 167 (2022)). The abundance discourse has caught fire among liberal think tanks, donors, and media pundits, the very people that Klein and Thompson sought to influence. See Jonathan Chait, *The Coming Democratic Civil War*, *THE ATLANTIC* (May 25, 2025), <https://www.theatlantic.com/ideas/archive/2025/05/abundance-democrats-political-power/682929/> [<https://perma.cc/VP4N-27TS>] (providing an overview of the abundance discourse among elites); see also HENRY BURKE, *THE ABUNDANCE ECOSYSTEM, THE REVOLVING DOOR PROJECT* 5 (Sept. 5, 2025), <https://therevolvingdoorproject.org/wp-content/uploads/2025/09/Abundance-Ecosystem-Report.pdf> [<https://perma.cc/6ABZ-6K8A>] (providing a thorough overview of the people and institutions behind the rise of abundance).

179. *Cf.* In the late 1970s, Barbara and John Ehrenreich distinguished the "professional-managerial class" (PMC) as a distinct entity from the capitalist and working classes. They argue that progressive professional reformers have been consistently frustrated because their theory of change centered their own professional expertise and not solidarity with the working class. Barbara Ehrenreich & John Ehrenreich, *The Professional Managerial Class*, 11 *RADICAL AM.* 7, 17–24 (Apr. 1977). The Ehrenreichs also argued that, despite sharing an interest with the working class in reducing the power of the capitalist class, the PMC has an antagonistic relationship with the working class because of their role in regulating working class life in the capitalist system. Barbara Ehrenreich & John Ehrenreich, *The New Left: A Case Study in Professional Managerial Class Radicalism*, 11 *RADICAL AM.* 7, 7 (June 1977).

180. MCALEVEY, *supra* note 151, at 11 tbl. 1.1.

181. *Id.*

182. YIMBY's focus on building as much housing as possible in as many places as possible can alienate tenants who fear displacement by unfettered development in their communities. Early YIMBY activists were hostile, instead of understanding, when confronted with this opposition, severely limiting their reach into the multiracial working class. Miriam Axel-Lute, *YIMBYs: Friend, Foe, or Chaos Agent?*, *SHELTERFORCE* (Feb. 19, 2019), <https://shelterforce.org/2019/02/19/yimbys-friend-foe-or-chaos-agent/> [<https://perma.cc/8BHZ-ENMG>]; Shelby R. King, *Have the YIMBYs Evolved?*, *SHELTERFORCE* (Nov. 24, 2022), <https://shelterforce.org/2022/11/04/have-the-yimbys-evolved/> [<https://perma.cc/BMC5-6Z3P>].

183. Some YIMBYs, especially those outside of the movement's cradle in California, have positively responded to criticism from communities, though tensions can still boil over. *Id.*

However, at least in their early years, YIMBY groups' "all housing is good housing" approach did not empower tenants to shape the future of their neighborhoods by allowing them to be selective about which developments they would, and would not, mobilize to support.<sup>184</sup> Thus, YIMBY alienated tenants in multiracial working class communities who were concerned with gentrification and displacement.<sup>185</sup>

McAlevy argues mobilizing is inferior to *deep* organizing, which "places the agency for success" not in lawyers or other experts but "with a continually expanding base of ordinary people" who help define goals and choose strategies.<sup>186</sup> Organizers think about the power required to win campaigns and the power campaigns can generate.<sup>187</sup> The former is proportional to the amount required for political and economic elites to concede to the demands of a social movement.<sup>188</sup> Organizers who wish to achieve substantive transformation to the systems of racial capitalism face a high cost of concession.<sup>189</sup> Rather than mobilizing, organizing can generate sufficient power because it leverages the unique power of the multiracial working class.<sup>190</sup>

The social movements of the multiracial working class have long attempted to win concessions from the capitalist class and political elites by strategically withdrawing their participation from systems of oppression, thus causing disruptions.<sup>191</sup> Classic examples of these "negative sanctions" include labor strikes or boycotts.<sup>192</sup> But strategic non-participation is not the only way that ordinary people can disrupt systems of oppression. During the Welfare Rights Movement of the 1960s, Piven and Cloward proposed making demands of the State through mass participation in systems that could not handle such volume, thus precipitating a political crisis.<sup>193</sup> While groups that engage in deep organizing do utilize other strategies, like legislative advocacy, media campaigns, and electoral politics, these efforts are still improved by mass, inclusive organizing of a dedicated and expanding base ready to exert its collective power.<sup>194</sup>

In the organizing model, "ordinary people . . . are essential and they know it."<sup>195</sup> Because mobilizing does not engage an ever-expanding base of ordinary people in

184. *Id.*

185. *Id.*

186. MCALEVEY, *supra* note 151, at 10.

187. *Id.* at 62, 67 tbls. 2.2 & 2.3 (reviewing McAlevy's conceptions of power).

188. *Id.* at 62 tbl. 2.2.

189. Michener, *supra* note 150, at 658.

190. MCALEVEY, *supra* note 151, at 10 (arguing that contemporary social movements have been unable to replicate the success of their predecessors in the early labor and civil right movements because they prioritize advocacy and mobilizing over organizing).

191. PIVEN & CLOWARD, *supra* note 29, at 24.

192. *Id.* at 96, 183 (identifying the labor movement's ability to disrupt the economy and the southern civil rights movement's ability to disrupt the electoral system through mass defiance of the racial caste system as key to the two movements' relative success).

193. *Id.* at 275–76. For a modern example of Piven and Cloward's crisis strategy, see *infra* Section III.A.2.

194. MCALEVEY, *supra* note 151, at 20–21 (arguing that the ability to successfully undertake a massive strike is a sign of high participation organizing that challenges the root power inequality in society).

195. *Id.* at 10.

struggle, it can only win when it makes demands with low or medium concession costs.<sup>196</sup> This is the case, McAlevey argues, even when organizations engaged in mobilizing declare ambitious goals since they are unable to win sufficient enforcement mechanisms to ensure that elites follow through on their initial concessions.<sup>197</sup> As organizing collaborative Lead Local has observed, “collective power is . . . like an insurance policy to hold decision makers and systems accountable to the vision and demands of communities.”<sup>198</sup>

Unfortunately, it has been well documented that law and lawyers can interfere with deep organizing. For example, in reflecting on the tensions between NAACP Legal Defense Fund school desegregation litigators and some Black parent-leaders over the importance of total integration, Derrick Bell showed that “elite conceptions of justice are often contested by those who live the injustice most intensely every day.”<sup>199</sup> Similarly, Betty Hung recounts how organizers often view lawyers as privileging themselves and their practice, a hierarchical dynamic that can exacerbate race, gender, and class tensions.<sup>200</sup> Organizers, Hung observes, are also often concerned that involving legal strategies will develop dependency, instead of empowerment, among the people they are working with.<sup>201</sup> These critiques have inspired the development of movement lawyering as an alternative modality that attempts to forge relationships of solidarity and accountability with the organizers and members of social movement groups.<sup>202</sup> Just as movement lawyering is creating space for solidarity with social movements in legal practice, Amna Akbar, Sameer Ashar, and Jocelyn Simonson have proposed a “movement law” framework for creating such space in legal scholarship.<sup>203</sup> This framework is

196. *Id.* at 11 tbl. 1.1.

197. *Id.*

198. Aditi Vaidya et al., *Why Community Power Is Fundamental to Advancing Racial and Health Equity*, NAT'L ACAD. MED. (June 13, 2022).

199. Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821, 838 (2021); see Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 489–90 (1976) (observing that the litigators, and their funders, viewed integration as an ideal of great importance, while parent-leaders were more concerned with securing more educational resources for their children).

200. Betty Hung, *Law and Organizing from the Perspective of Organizers: Find A Shared Theory of Social Change*, 1 L. A. PUB. INT. L. J. 4, 13 (2009).

201. *Id.* at 14.

202. See, e.g., Cummings, *supra* note 155, at 1646–48 (noting a new generation of lawyers on the political left have revitalized “movement lawyering” in attempts to “surmount the perceived disjuncture between the legalism of conventional public interest law and the dynamism of emerging grassroots movements”); Hung, *supra* note 200, at 21 (proposing that “a shared theory of social change is essential for effective collaboration between organizers, lawyers, and community members . . . a prioritization of community organizing complemented by legal and other social change strategies). Movement lawyering is but one emergent alternative modality in public interest law; other similar modalities include community lawyering and rebellious lawyering. Christine Cimini & Doug Smith, *Modalities of Social Change Lawyering*, 26 LEWIS & CLARK L. REV. 1035, 1095–96 figs. 1 & 2 (2023) (comparing seven modalities of public interest lawyering, highlighting the differing dynamics between lawyers, organizers, and community members).

203. Akbar et al., *supra* note 199, at 826 (proposing “movement law” as a framework for legal scholarship in solidarity with social movements).

a needed change from legal scholarship that thinks of movements solely as a tool for achieving policy change.

### C. *The Non-Reformist Reform Revolution*

For social movements, “it’s about power, not policy.”<sup>204</sup> Therefore, lawyers must attend to how law and policy change can facilitate organizing, in addition to how organizing can facilitate policy change. The framework of non-reformist reforms can help.

Arising from a critique of liberal reformism, which reacts to the identification of the harms of the status quo by diagnosing them as abnormal and requiring technical tweaks,<sup>205</sup> left social movements have increasingly embraced “non-reformist reforms.”<sup>206</sup> Originally coined by André Gorz in the 1960s as an alternative to either liberal reformism or outright revolution, the basic formulation of non-reformist reforms features the mutually reinforcing efforts to 1) critique the prevailing political economy with the goal of radical transformation and 2) create pathways to grow organized collective power.<sup>207</sup>

Critiques of political economy are key to the non-reformist reform framework.<sup>208</sup> Racial capitalism, with its origin in the work of DuBois and South African anti-apartheid movements, has increasingly been adopted as both a critique of political economy and a theory of power among contemporary social movements. As Akbar explains:

The “promise” of the racial capitalism frame lies in how it opens sites of struggle and in turn the possibility of solidarity across those sites. By linking capitalist exploitation with racial domination, the frame requires the braiding of racial-justice with economic-justice struggles. It allows for an understanding of social change that centers not simply the “working class” and the shop floor, but a broad range of dominated and exploited classes in a diverse range of social, political, and economic settings: debtors in schools and hospitals, and incarcerated people in prisons, jails, and detention centers, for example. It breaks movements and organizations out of narrow and issue-specific struggles.<sup>209</sup>

204. Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 147 (2016).

205. See Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2519 (2023) (“Reformism telegraphs to the public that the system, institution, or set of relations it seeks to tweak are here to stay: that the problem is not structural or symptomatic but stray.”); Amna A. Akbar, *Demands For A Democratic Political Economy*, 134 HARV. L. REV. F. 90, 102 (2020) (defining a reformist campaign as one that targets one particular problem with a “logic [that] shores up the legitimacy, righteousness, and necessity” of other oppressive parts of a social system).

206. Akbar, *supra* note 205, at 2507.

207. *Id.* at 2503–04.

208. *Id.* at 2503.

209. *Id.* at 2513–14.

Josh Poe, a tenant organizer, deftly encapsulates Akbar's point when he describes his organizing experience in Kentucky:

Tenant organizing is the only space where I've seen a 75-year-old white retired truck driver stand up and make a public statement of solidarity with a trans rights campaign. That happened because of organizing. That happened because someone was self-interested and power hungry (in a good way) enough to canvass his trailer park, knock on his door, and agitate him into building power. Because through that process he realized that the people who were threatening the lives of trans people were the same people profiting from his rent increases.<sup>210</sup>

Non-reformist reforms have also gained increasing popularity among legal advocates who have lost faith in legal rights and become disillusioned with reformism.<sup>211</sup> Embracing non-reformist reforms does not mean using the framework as a litmus test when creating a policy agenda; attempting to coherently name which reforms are non-reformist is beside the point.<sup>212</sup> Instead, non-reformist reforms should be used as a tool for thinking *alongside* social movements about how to build collective power among the multiracial working class.<sup>213</sup>

The turn to non-reformist reforms among social movements is not primarily aimed at policy change; it is about power building.<sup>214</sup> Therefore, the framework can teach us to be skeptical of the ability of policy proposals, no matter how ambitious, to transform racial capitalism if they are being championed only with advocacy or mobilizing strategies. At the same time, modest interventions can still catalyze more organizing among the multiracial working class. This is not a theoretical exercise, but a reorientation of legal thinking that requires elevating the

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210. Josh Poe, *Tenant Unions Are How We Win The South*, SHELTERFORCE (Sept.1, 2023), <https://shelterforce.org/2023/09/01/tenants-unions-are-how-we-win-in-the-south/> [<https://perma.cc/E57J-KU6J>].

211. For an account of one legal scholar's articulation of why she rejects reformism in family law, see generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022).

212. See Jamelia Morgan, *Abolition in the Interstices*, LPE PROJECT BLOG (Dec. 14, 2023), <https://lpeproject.org/blog/abolition-in-the-interstices/> [<https://perma.cc/E4VW-V25Q>] (arguing that, in abolitionist contexts, non-reformist reforms can serve as a "guidepost," although theoretical questions become much less clear in the day-to-day struggles on the ground); Fanna Gamal, *What Does Critical Race Theory Teach Us About Non-Reformist Reforms?* LPE PROJECT BLOG (Nov. 29, 2023), <https://lpeproject.org/blog/crt-non-reformist-reforms/> [<https://perma.cc/3PCH-R6NE>] (cautioning against searching for "some self-evident formula" to define non-reformist reforms).

213. See Nancy Polikoff, *How Can Academic Research Support Non-Reformist Reforms*, LPE PROJECT BLOG (July 20, 2023), <https://lpeproject.org/blog/how-can-academic-research-support-non-reformist-reforms/> [<https://perma.cc/3AP6-9CQQ>] (encouraging engagement with social movement organizers on the ground in legal scholarship about non-reformist reforms); see also Gamal, *supra* note 212 (arguing that "non-reformist reforms are created through a practice of close engagement with political and economic conditions"); Akbar, *supra* note 205, at 2502 (proposing that whether a reform is non-reformist depends on how the campaign is waged).

214. Akbar, *supra* note 205, at 2506.

on-the-ground organizing that is actively building power and transforming our political economy to the forefront of our analysis.<sup>215</sup>

### III. TENANTS ARE THE ULTIMATE ARCHITECTS OF HOUSING JUSTICE

The story of Brith Sholom shows that tenant organizing can be an effective strategy for dealing with negligent landlords and health-harming housing conditions. In recent years, there has been an explosion in tenants organizing in building- or neighborhood-level associations and city-level unions.<sup>216</sup> From coastal metropolises to the rural South and everywhere in between, tenants are coming together.<sup>217</sup> Tenant unions have won significant policy changes by lobbying their elected officials. Echoing past peaks of tenant organizing, well-publicized rent strikes have been occurring across the country.<sup>218</sup> At the national level, the Autonomous Tenant Union Network (ATUN), the Democratic Socialists of America (DSA) Housing Justice Commission, and the Tenant Union Federation (TUF) have emerged as trainers, conveners, and coordinators of this nascent movement. In September 2025, TUF began an attempt to bring sectoral bargaining to the tenant movement by attempting to organize the entire profile of a multi-state corporate landlord, demonstrating the

215. Polikoff, *supra* note 213.

216. See Laura Jedeed & Shane Burley, *As an Eviction Crisis Looms, Tenant Organizing Explodes Across the Country*, TRUTHOUT (Jan. 25, 2021), <https://truthout.org/articles/as-an-eviction-crisis-looms-tenant-organizing-explodes-across-the-country/> [<https://perma.cc/XP9M-PUKA>]; Conor Dougherty, *The Rent Revolution Is Coming*, N.Y. TIMES (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html>; Fran Quigley, *Biden Rent Increase Cap Shows the Tenant Union Movement Can Win Nationally*, COMMON DREAMS (Apr. 17, 2024), <https://www.commondreams.org/opinion/biden-rent-increase-cap-tenant> [<https://perma.cc/68PV-ZVK8>]; Thomas Birmingham, *In the U.S., Tenants Are Usually on Their Own. Can a New National Tenant Union Change That?* THE NATION (Dec. 4, 2024), <https://www.thenation.com/article/society/tenant-union-organizing-rent/> [<https://perma.cc/4HAZ-PW2D>].

217. While the examples used in this section all come from tenant unions in urban areas, rural tenants are also organizing. See Sylvia Goodman, *Renters burn lease violations as tenants union seeks to expand in Kentucky*, LOUISVILLE PUB. MEDIA (July 23, 2025), <https://www.lpm.org/news/2025-07-23/renters-burn-lease-violations-as-tenants-union-seeks-to-expand-in-kentucky> [<https://perma.cc/6ZFU-32H4>] (describing the Louisville Tenant Union's expansion efforts into rural Kentucky).

218. In the past two years, rent strikes have made the news in Chicago, Kansas City, Los Angeles, and New York City. Rebecca Burns, *Two Tenant Unions, One Rent Strike*, IN THESE TIMES (May 16, 2025), <https://inthesetimes.com/article/chicago-rent-strike-tenants-unions-gentrification> [<https://perma.cc/MZH8-22CU>] (describing a two-building rent strike against Concord Capital coordinated by the All-Chicago Tenant Alliance); Ryan Sorrell, *VICTORY OVER SLUMLORDS: After 248 Days, KC Tenants Wins Largest Rent Strike in KC History*, THE KANSAS CITY DEF. (June 5, 2025), <https://kansascitydefender.com/justice/victory-over-slumlords-after-248-days-kc-tenants-wins-largest-rent-strike-in-kc-history/> [<https://perma.cc/Z79L-NT32>] (reporting on the success of the largest rent strike in Kansas City history, where tenants secured a collectively bargained lease); Phoenix Tso, *Chinatown tenants just won a major victory after refusing to pay rent for almost 5 years*, L.A. PUB. PRESS (July 7, 2025), <https://lapublicpress.org/2025/07/chinatown-tenants-won-victory-refusing-rent/> [<https://perma.cc/L4P8-DEZF>] (reporting that 18 tenant households in Los Angeles ended their five year rent strike after securing a deal on rental arrears); Alecia Reid, *Pushed to the brink, New Yorkers threaten rent strike against unresponsive landlord*, CBS NEWS (Jan. 31, 2025), <https://www.cbsnews.com/newyork/news/brooklyn-rent-strike-nyc-worst-landlord-list/> [<https://perma.cc/QQN8-FGPS>] (reporting on a rent strike in Brooklyn against one of the “100 worst landlords” in New York City).

growing capacity of the movement.<sup>219</sup> So far, TUF-backed tenant unions supported by a majority of building tenants have been formed in eight Capital Realty Group-owned properties in Detroit, Kansas City, Louisville, and New Haven, representing over 1,000 units of housing.<sup>220</sup>

Tenant unions are pitching a broad tent. Locals of UNITE-HERE, SEIU, UAW, and other labor unions have supported tenant organizing, recognizing that housing is a huge concern for their members and that the struggle against landlords and the struggle against workplace management are connected.<sup>221</sup> For example, in Minneapolis, labor locals and tenant unions came together to support a rent control measure in 2023 and, in 2026, attempted to organize the largest rent strike in 100 years to push for an eviction moratorium to protect tenants who were unable to pay their rent due to the Trump Administration's deadly immigration enforcement surge in their communities.<sup>222</sup> Tenant unions also routinely welcome low-income homeowners, whom they nickname "bank tenants," because they recognize that just like renters, homeowners can struggle to afford rising housing costs and are at risk of displacement by foreclosure.<sup>223</sup> Several tenant unions also organize people experiencing homelessness,

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219. Rebecca Burns & Thomas Birmingham, *As Tenants Organize, Landlords Embrace Old-School Union-Busting*, IN THESE TIMES (Dec. 9, 2025), <https://inthesetimes.com/article/tenants-union-busting-landlord-capital-realty> [<https://perma.cc/Z8B2-ED7G>].

220. *Id.*

221. Zoe Tucker, *Why Labor Unions Should Join the Housing Fight*, LPE PROJECT BLOG (Dec. 12, 2023), <https://lpeproject.org/blog/why-unions-should-join-the-housing-fight/> [<https://perma.cc/997H-JX3V>] (arguing that labor unions can build power by working with tenant organizing projects to advocate for tenant protections); see also Mathilde Lind Gustavussen, *Tenants Are Forcing Bay Area Landlords to the Bargaining Table*, JACOBIN (Apr. 12, 2024), <https://jacobin.com/2024/04/berkeley-tenants-union-at-home-organizing> [<https://perma.cc/WJ9S-SXAB>] (describing the support from union locals for the adoption of "Union At Home" legislation in Berkeley, CA); Kyle Stokes, *After a surprise setback, what's Minneapolis rent control supporters' next move?*, MINNPOST (July 3, 2023), <https://www.minnpost.com/metro/2023/07/after-a-surprise-setback-whats-minneapolis-rent-control-supporters-next-move/> [<https://perma.cc/NAM6-KKEJ>] (describing union locals' involvement with organizer tenants and faith groups in the "Home to Stay" coalition advocating for rent control in Minneapolis, MN).

222. Stokes, *supra* note 221; Rebecca Burns & Sarah Lazare, *Terrorized by ICE, Unable to Pay Rent, Minnesotans Are Getting Ready for a Rent Strike*, IN THESE TIMES (Feb. 19, 2026), <https://inthesetimes.com/article/ice-minnesota-rent-strike-twin-cities-labor-unions>. Twin Cities Tenants, the coordinator of the proposed rent strike, planned on obtaining 10,000 strike pledges, but ultimately voted against authorizing a strike due to insufficient support. Dustin Nelson, *Twin Cities Tenants vote against rent strike, but say emergency facing renters hasn't changed*, BRING ME THE NEWS (Mar. 3, 2026), <https://bringmethenews.com/minnesota-news/twin-cities-tenants-vote-against-rent-strike-but-say-emergency-facing-renters-hasnt-changed>. While a 10,000-strong rent strike did not materialize, Twin City Tenants' attempt showcases the growing power and ambition of the tenant movement.

223. See, e.g., Tressi McMillan Cottom, *What's Happening in Louisville Could Solve a Housing Crisis*, N.Y. TIMES (Aug. 6, 2024), <https://www.nytimes.com/2024/08/06/opinion/housing-louisville-tenants-union.html> [<https://perma.cc/66B3-MSFJ>] (quoting Louisville Tenant Union cofounder and strategist Jessica Bellamy, "if you have a mortgage, then you still have a landlord. That can be a hard pill for Black homeowners to swallow until "they realize their housing costs are going up but their income isn't."). Homeowners become bank tenants in a more literal sense after their homes are foreclosed and they lose ownership. City Life/Vida Urbana (CLVU) in Boston emphasizes that "foreclosure is not the end of the struggle, but rather the beginning of phase two." See STEVEN MEACHAM, ORGANIZING AGAINST THE ECONOMIC CRISIS BY CREATING A BANK TENANT ASSOCIATION IN FORGING A NEW HOUSING POLICY: OPPORTUNITY IN THE WAKE OF CRISIS, NAT'L CTR. FOR SUBURBAN STUD., 59–63

refusing “the dehumanizing division that ejects unhoused people from our analyses as soon as they are pushed from their homes.”<sup>224</sup> The movement has even had some success rallying small landlords who are not interested in maximizing the exchange value of their properties to the tenants’ cause.<sup>225</sup>

This Article describes the contemporary tenant power movement by drawing on a wide sample of tenant organizing campaigns. By attending to the theories, strategies, and experiences drawn from the own words of tenants and tenant organizers, my goal is to inspire more lawyers to appreciate their local tenant union and seek ways to engage with them in ways that build, not frustrate, collective power.

### A. *Tenant Organizing Improves Access to Justice*

#### 1. From Knowing Your Rights to Expanding Them

Access to justice, the extent to which “a person facing a legal issue has timely and affordable access to the level of legal help they need to get a fair outcome on the merits of their legal issue,”<sup>226</sup> and the gap in that access among low-income civil litigants has become an important area of concern for the legal profession over the past decade.<sup>227</sup> According to the Legal Services Corporation, more than 90% of low-income

(2010), [https://www.hofstra.edu/pdf/academics/css/ncss\\_housing\\_crisis.pdf](https://www.hofstra.edu/pdf/academics/css/ncss_housing_crisis.pdf) [<https://perma.cc/BGX2-L89S>]. For CLVU, that phase two consists of organizing against the banks in the same way that they would organize against a landlord. *Id.*

224. Rosenthal & Vilchis, *supra* note 129, at 12. Unhoused tenants often borrow language from landlord-tenant law to draw attention to the fact that they have fewer rights than housed tenants. For example, they characterize attempts to displace them from either encampments or temporary housing as “eviction,” even though they are offered none of the same procedural protections as housed tenants, and refer to themselves as tenants to highlight how they are asked to sign “participant agreements” that state that “no tenancy is created.” *Id.*; see also Tracy Rosenthal, *Inside LA’s Homeless Industrial Complex*, NEW REPUB. (May 19, 2022), <https://newrepublic.com/article/166383/los-angeles-echo-park-homeless-industrial-complex> [<https://perma.cc/J5VS-EDZA>] (identifying the use of “participant” as disconnecting unhoused tenants from tenant rights and producing a new, rightless legal environment); After Echo Park Lake Research Collective, *Continuum of Carcerality: How Liberal Urbanism Governs Homelessness*, 4 RADICAL HOUS. J. 71, 90–91 (2022) (containing unhoused tenant Benito Flores’s line-by-line response to a “Participant Temporary User Agreement,” “asserting a continuum of rights that are denied in this carceral contract of liberal urbanism.”).

225. See, e.g., Ryan Thomas, *Opinion: Philly landlords should embrace new legislation, not fight it*, CITY & STATE PA (May 29, 2025), <https://www.cityandstatepa.com/opinion/2025/05/opinion-philly-landlords-should-embrace-new-legislation-not-fight-it/405666/> [<https://perma.cc/52WE-ZR2W>] (supporting legislation championed by Renters United Philadelphia, stating that “I am fortunate to have a rental property as an additional source of income, but many of my neighbors are not so lucky. I care about my community and my city, and I want everyone to feel as stable as I do. That’s why I believe that landlords should support all of our neighbors by advocating for tenant protections.”).

226. Bob Graves, *Access to Justice—What Art Thou?*, CHI. BAR FOUND., <https://chicagobarfoundation.org/observations/access-to-justice-what-art-thou/> [<https://perma.cc/H23X-Y8DQ>] (last visited Sept. 16, 2025).

227. *Access to Justice Movement in the US: Overview*, CONSORTIUM FOR THE NAT’L EQUAL JUST. LIBR., <https://legalaidhistory.org/current-overview/atj-movement/> [<https://perma.cc/AY5P-ULCV>] (last visited Sept. 16, 2025) (“[W]ithin the last fifteen years, a broad access to justice movement has emerged at the state level, including state supreme courts, access to justice commissions, bar associations, self-help centers, technology initiatives and researchers on delivery of legal services. This movement seeks to provide access to courts and other adjudicatory bodies to achieve equal justice for all.”).

Americans do not receive enough legal help to resolve their housing needs.<sup>228</sup>

Tenant organizing improves access to justice through a variety of strategies, including by educating tenants about their legal rights. For example, Renters United Philadelphia (RUP) hosts monthly Renters Rights Clinics where tenants in their target community can gather in a communal space, receive a brief but comprehensive presentation on tenant rights, and then opt in to having a 15-minute consult with volunteer lawyers and law students who can further educate them on their legal rights, answer their questions, and refer them to legal aid and other resources.<sup>229</sup> In 2017, Stomp Out Slumlords in Washington, D.C. (SOS-DC) began organizing weekly anti-eviction canvases where volunteers go directly to the doors of tenants facing eviction to remind them (or sometimes inform them for the first time) of their upcoming hearing, provide them with information on their rights, and encourage them to show up to court.<sup>230</sup> Early data showed that tenants reached by the canvases were nearly twice as likely to show up to court and were less likely to be evicted.<sup>231</sup> Another way to connect with tenants facing eviction is to meet them at court, like the New York City Right to Counsel Coalition's Court Watch program.<sup>232</sup> Some other tenant unions operate solidarity hotlines where organized tenants can increase access to justice among their peers.<sup>233</sup>

Beyond increasing access to justice through fostering engagement with existing legal institutions, tenant organizing projects are active in pursuing policy change that can help close the justice gap. The nation's first right to counsel in eviction proceedings was won in large part due to the efforts of organized tenants in New York City.<sup>234</sup> Similarly, existing groups of organized tenants in San Francisco and New Haven successfully championed ordinances that made these the first cities to legally recognize tenant associations and give them a way of exerting power through administrative agencies that adjudicate claims for rent abatements.<sup>235</sup> In San Francisco, the landmark "Union at Home" ordinance provides tenant associations with a list of rights, most notably the right to "meet and

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228. 2022 *Justice Gap*, fig. 4H, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-4-seeking-and-receiving-legal-help/> [<https://perma.cc/E5FX-TE2F>] (last visited Sept. 16, 2025).

229. Personal communication with Madison Gray, staff attorney at Public Interest Law Center. RUP's clinics were inspired by the weekly meetings hosted by City Life/Vida Urbana in Boston, which has been organizing tenants since the 1970s.

230. METRO DC DEMOCRATIC SOCIALISTS OF AM., STOMP OUT SLUMLORDS: A REPORT TO THE SHAREHOLDERS, 3–4 (Apr. 2018), <https://www.stompoutslumlords.org/wp-content/uploads/2019/02/April-Update.pdf> [<https://perma.cc/36X2-RQAD>].

231. *Id.* at 4; Shirin Sinnar, *Flooding the Courts: Mass Defense Strategies for Systemic Reform*, 21 STAN. J.C.R. & C.L. 148, 175 (2025).

232. *Court Watch*, NYC RIGHT TO COUNS. COAL., <https://www.righttocounselnyc.org/courtwatch> (last visited Jan. 23, 2025).

233. See, e.g., *Solidarity Line*, KC TENANTS, <https://kctenants.org/solidarity-line> [<https://perma.cc/NT8D-UHWL>] (last visited Sept. 28, 2025); *Tenant Solidarity Hotline*, PASADENA TENANTS UNION, <https://pasadenatenantsunion.org/resources.html> [<https://perma.cc/BP26-JLGZ>] (last visited Jan. 23, 2025).

234. *About Us*, NYC RIGHT TO COUNS. COAL., <https://www.righttocounselnyc.org/aboutus> (last visited Jan. 23, 2025) (“[W]e are a coalition that is rooted in tenant organizing.”).

235. Gustavussen, *supra* note 221; Thomas Breen, *Tenants Union Law Wins Final Approval*, NEW HAVEN INDEP. (Sept. 7, 2022.), [https://www.newhavenindependent.org/article/tenants\\_union\\_law\\_approved](https://www.newhavenindependent.org/article/tenants_union_law_approved)

confer” with landlords, and allows associations to file a petition for a rent reduction on behalf of all their members with the city’s Rent Board if those rights are not respected.<sup>236</sup> While not going as far as to allow tenant associations to file actions on behalf of their members, New Haven’s ordinance allows recognized associations to designate a representative who can request and participate in investigations of the city’s Fair Rent Commission, including investigations into excessive rent increases and unhealthy housing conditions.<sup>237</sup>

## 2. Non-Reformist Access to Justice

While tenant organizing can increase access to justice through multiple strategies, closing the civil justice gap is often not the explicit or primary goal.<sup>238</sup> Though they acknowledge the benefit that rights education can have for individual tenants, tenant organizing views these efforts as a means to broader ends.<sup>239</sup> For example, attendees are encouraged throughout RUP’s monthly clinics to join the organization’s direct action and political work.<sup>240</sup> Volunteer lawyers and law students are instructed to encourage tenants to consider organizing in addition to their legal options.<sup>241</sup> Additionally, every tenant who receives a legal consultation receives a follow-up call from a RUP organizer about getting involved.<sup>242</sup>

Tenant organizers’ engagement with law and lawyers is informed by their critiques of the insufficiency of tenant legal rights and the role law plays in perpetuating tenant subordination under racial capitalism.<sup>243</sup> So, why do tenant organizing projects encourage engagement with a legal system that is fundamentally antagonistic to tenants? The answer is more than simply because not engaging with the legal system is a worse option. SOS-DC’s anti-eviction canvases began as an effort to

[<https://perma.cc/8M3K-UVMR>]. The ordinances were codified as S.F. ADMIN. CODE §§ 49A.1-6; NEW HAVEN, CONN. CODE § 12 $\frac{3}{4}$ -9.

236. S.F. ADMIN. CODE § 49A.5.

237. NEW HAVEN, CONN. CODE §§ 12 $\frac{3}{4}$ -4, 9.

238. Jamila Michener, *Civil Justice, Local Organizing, and Democracy*, 122 COLUM. L. REV. 1389, 1416 (2022) (observing that “even as tenant organizations committed energy to working within the legal system to help tenants in the short term, they understood that more liberatory goals would require transforming, imploding, or transcending the civil legal system altogether.”).

239. *Id.*

240. Personal communication with Madison Gray (on file with the author).

241. *Id.*

242. *Id.*

243. See, e.g., METRO D.C. DEMOCRATIC SOCIALISTS OF AM., STOMP OUT SLUMLORDS, AN ANTI-EVICTION OPERATIONS MANUAL 4–5 (Oct. 2017), <https://www.stompoutslumlords.org/wp-content/uploads/2019/02/Anti-Eviction-Operations-Manual-10.17.pdf> [<https://perma.cc/VHT6-SJCB>] (providing an overview of SOS-DC’s critique of the legal system); Rosenthal & Vilchis, *supra* note 129, at 67 (critiquing legal aid for “responding to the conflict between landlords and tenants as casework for individual clients, the outcome of which is prescribed in advance by current tenant law). But compare Jamila Michener, *Legal Aid and Social Policy: Managing a Political Economy of Scarcity*, 706 THE ANNALS OF THE AM. ACAD. POLI. & SOC. SCI. 137, v (2023) (proposing that both civil legal aid and tenant unions respond to failures in social policy by both helping tenants articulate their social needs as legal problems and then helping them access available resources), with Points of Unity, *Autonomous Tenants Union Network*, <https://atun-rsia.org/joinatun> [<https://perma.cc/7RYF-GUNA>] (last visited Jan. 23, 2025) (ATUN members agree that they are not service organizations).

effect structural change.<sup>244</sup> The architects of the canvas strategy, a legal aid lawyer and a tenant organizer, suspected that if they increased the number of tenants who came to court and demanded a trial, the court would not be able to handle the increased case volume.<sup>245</sup> Borrowing from Piven and Cloward’s theory of organizing for political crisis, SOS-DC sought to impose a negative sanction both on landlords, whose cost to evict tenants would skyrocket if tenants vigorously defended themselves, and the broader system that produced evictions by overwhelming the eviction court, their chosen “choke point.”<sup>246</sup> While the anti-eviction canvases did not ultimately produce the intended negative sanction and political crisis, they still supported SOS-DC’s work by identifying leads and training new volunteers in the work of deep organizing.<sup>247</sup>

Similarly, in New York City, the Right to Counsel Coalition (“the Coalition”), which was rooted in tenant organizing, pursued its policy objective in a non-reformist manner.<sup>248</sup> According to John Whitlow, the Coalition articulated an expansive vision of the right to counsel that went beyond procedural due process concerns for individual tenants and situated the policy within the broader fight against racial capitalism.<sup>249</sup> The Coalition, Whitlow argues, saw the right to counsel as

... more than a means to protect tenants from eviction, although that is important. It is a tool to help subordinated people articulate a collective narrative of their systematic mistreatment by a legal system that favors landlords, in a political economy dominated by real estate.<sup>250</sup>

Critically, the Coalition’s political-economy-informed view of the right to counsel helped ensure that, after the policy was won, organized tenants did not disband.<sup>251</sup> Instead, the right to counsel inspired more tenant organizing and provided a framework for tenants to see their individual struggles with eviction and

244. AN ANTI-EVICTION OPERATIONS MANUAL, *supra* note 243, at 4.

245. *Id.* at 5–6.

246. *Id.* at 6.

247. In 2019, SOS-DC pivoted strategy to focus on organizing tenant associations, while the eviction canvases continued in a supporting role. One reason for this pivot was organization capacity; SOS-DC was only able to canvas 10% of tenants facing eviction, too few to create noticeable changes in the court. Another reason was that SOS-DC volunteers found that “tenants they met were more motivated to demand that landlords address housing quality or safety problems in their own buildings rather than in an ‘abstract goal of preventing eviction in general.’” Sinnar, *supra* note 231, at 175–78. SOS-DC anti-eviction canvases continue to occur. *SOS Anti-Eviction Canvas January 24, 2026*, ACTION NETWORK, [actionnetwork.org/events/sos-anti-eviction-canvas-january-24-2026](https://actionnetwork.org/events/sos-anti-eviction-canvas-january-24-2026) [https://perma.cc/HXN7-UZDW] (last visited Jan. 15, 2026).

248. See John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City’s Affordable Housing Crisis*, 46 *FORDHAM URB. L.J.* 1081 (2019) (exploring non-reformist legal rights using the New York City’s right to counsel as an example).

249. *Id.* at 1129.

250. *Id.*

251. *Id.* at 1130.

unhealthy housing as part of a collective power struggle against a biased system.<sup>252</sup> For example, three years after New York City implemented the right to counsel in 2019, there was a sustained effort by organized tenants, supported in part by the Coalition, to improve the city's rent stabilization laws.<sup>253</sup> The Coalition, now over a decade old, is actively involved in several projects, including its Court Watch program, which is its attempt both to help tenants assert their hard-fought legal right and to put public pressure on judges to ensure that those assertions are successful.<sup>254</sup> The Coalition also contributes to campaigns to implement the right to counsel at the state level and to achieve a robust policy agenda to “make NYC eviction free.”<sup>255</sup> Despite the growth of its policy agenda, the Coalition remains rooted in the principle that “tenants, as a class, are the ultimate architects of an eviction free world.”<sup>256</sup>

Likewise, the goal of “Union at Home” policies is not simply to formalize new legal regimes but to encourage the organizing of even more tenants.<sup>257</sup> As a lead organizer in San Francisco put it, the ordinance is “meant to help tenants think about how to build power, and this law gets us on more equal terms with the landlord. It doesn't do the work for us, but it creates the footing for us to have a stronger position.”<sup>258</sup> Although these policies are still young, there is already some evidence of their hoped-for impact. In the year after San Francisco's ordinance was passed, 50 new tenant associations representing 1,000 housing units were formed.<sup>259</sup>

## B. How Tenant Unions Take on Racial Capitalism

### 1. The Rent Strike

When a tenant appears before eviction court, they cannot contest the root cause of their housing needs: the capitalist housing system itself. Housing has two types of value, one for tenants and the other for landlords. The “use value” of housing for tenants is all the ways that quality, stable, and affordable housing is beneficial for health and well-being.<sup>260</sup> The “exchange value” of housing, on the other hand, is the monetary value the landlord receives from the housing as real estate.<sup>261</sup> In our capitalist system, housing's use value is subordinated in the name

252. *Id.* at 1129.

253. *Id.* at 1130.

254. *Court Watch*, *supra* note 232.

255. *Housing Courts Must Change! Campaign*, NYC RIGHT TO COUNS. COAL., <https://www.righttocounselnyc.org/hcmc> (last visited Jan. 23, 2025); *Making NY Eviction Free*, NYC RIGHT TO COUNS. COAL., [https://www.righttocounselnyc.org/making\\_ny\\_eviction\\_free](https://www.righttocounselnyc.org/making_ny_eviction_free) (last visited Jan. 23, 2025).

256. *About Us*, NYC RIGHT TO COUNS. COAL., *supra* note 234.

257. *See* Gustavussen, *supra* note 221; Breen, *supra* note 235.

258. Gustavussen, *supra* note 221.

259. *Id.*

260. DAVID MADDEN & PETER MARCUSE, IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS 17–18 (2016); *see also* G. William Domhoff, *Power at the Local Level: Growth Coalition Theory*, WHO RULES AMERICA? (Apr. 2005), [https://whorulesamerica.ucsc.edu/local/growth\\_coalition\\_theory.html](https://whorulesamerica.ucsc.edu/local/growth_coalition_theory.html) [<https://perma.cc/98PX-8MEJ>] (theorizing that the conflict over use/exchange value of land and buildings between “place entrepreneurs” and residents is the base political conflict at the local level).

261. MADDEN & MARCUSE, *supra* note 260, at 17–18.

of exchange value.<sup>262</sup> Tenant organizing addresses this subordination of housing's value as home, also known as commodification, head-on.

As a sanction against the degradation of their use value, organized tenants seek to reduce the exchange value a landlord can milk from their property.<sup>263</sup> While laws meant to protect tenants can also serve as a sanction, tenant organizing relies on the power of tenants, not the courts or the State.<sup>264</sup> One common way tenants have sanctioned their landlords, dating back over a century, is to go on a rent strike.<sup>265</sup>

Like the early labor strikes and the student anti-segregation sit-ins, striking tenants and their organizers do not seek permission from the law to sanction their landlords.<sup>266</sup> However, they do exploit the law to enhance their power.<sup>267</sup> Tenants hope that, because evictions proceed at an individual level, landlords will fold if faced with the prospect of having to spend the time and money to evict multiple tenants who will actively defend themselves.<sup>268</sup> While rent strikers do sometimes take advantage of the implied warranty's limited authorization of rent withholding, receiving rent abatement from the court is not the primary goal.<sup>269</sup> Instead, like workers, tenants on rent strike seek to pressure their landlord into coming to the table for collective bargaining over a wide range of demands.<sup>270</sup> Also, like

262. *Id.*

263. Rosenthal & Vilchis, *supra* note 129, at 58 (stating that rent strikes reveal the “parasitic role of landlords”); Greg Baltz, *Tenant Union Law*, 43 *YALE L. & POL’Y REV.* 1, 63 (2024) (stating that, by withholding payment while retaining possession, rent strikes can deny landlords’ income and use that pressure to win concessions).

264. Rosenthal & Vilchis, *supra* note 129, at 67 (observing that, in the procedural arenas of the courts and elections, tenants “are victims, passive objects of political intervention, rather than political agents themselves”).

265. *See generally* Madden & Marcuse, *supra* note 260, at 106–09, 154–57 (discussing the long history of rent strikes both globally and in New York City specifically).

266. Rosenthal & Vilchis, *supra* note 129, at 58 (explaining that the countervailing power of rent strikes “can be exerted without recourse to government representatives or city officials and without changes in the law”); Baltz, *supra* note 263, at 7 (observing that the rent strike tactic is “both informed by, but also rejects, the presently available legal outcomes”).

267. *See, e.g.*, Baltz, *supra* note 263, at 63 (“[W]ithin the eviction proceeding, tenant unions may creatively utilize the court for their needs.”).

268. Samantha Gowing, *Note: Rent Strikes and Tenant Power: Supporting Rent Strikes in Residential Landlord-Tenant Law*, 120 *MICH. L. REV.* 877, 893 (2022); *see also* Rosenthal & Vilchis, *supra* note 129, at 71, 74 (describing how the Los Mariachis de Union de Vecinos in Boyle Heights, Los Angeles talked about the eviction process as ripe with opportunities to stall for time for building political pressure through a rent strike). *But cf.* Baltz, *supra* note 263, at 64–65 (describing the legal barriers facing tenants seeking to rent strike).

269. Gowing, *supra* note 268, at 893 (noting that “in some circumstances, rent strikes are legal under rent-withholding laws” but that “rent strikes can be successful even when the landlord has the legal right to evict the tenant for withholding rent”). *But cf.* Baltz, *supra* note 263, at 64–65 (noting that “the rent strike is not as easily deployed” in jurisdictions that require tenants to post rental arrears as bond or bring affirmative litigation in order to bring claims under the implied warranty).

270. *See, e.g.*, Baltz, *supra* note 263, at 63 (noting that rent strikes produce pressure to gain concessions through negotiation); Gowing, *supra* note 268, at 884, 893 (noting that rent strikes allow tenants to control the terms by which their housing issues are addressed and are usually employed after previous negotiation attempts have failed); *see also* Gustavussen, *supra* note 221 (stating that a tenant association in San Francisco successfully bargained for “improved language access, transparency of

workers, rent strikers often take actions beyond withholding rent to build political and social pressure for their demands.<sup>271</sup> Furthermore, when the law does not provide a remedy for tenants' grievances, such as when landlords raise rent to take advantage of gentrification, the rent strike is still an option.<sup>272</sup>

Nor is a rent strike just self-help. As one tenant organizer put it, "a rent strike is the difference between not paying rent from a place of desperation versus strategically and collectively withholding rent from a place of power."<sup>273</sup> While addressing tenants' grievances is important, rent strikes have broader aims. Rosenthal and Vilchis of the L.A. Tenants Union (LATU) explain that,

[E]ach rent strike builds new competencies, from collective decision-making to escalation tactics, to negotiation techniques. Each rent strike produces long-term relationship, shaped by the experience of collective struggle. Each rent strike both tests and builds [tenants'] capacity. Each rent strike develops the power of tenants as political subjects. *A bridge between the utopian future we want and the practical capacities we need to get there, each rent strike is a step forward.*<sup>274</sup>

Tenants often initially join a tenant association because of their individual problems, because their rent is going to increase beyond their means, or because they are sick of the rats and roaches.<sup>275</sup> But, with political education from their fellow tenants and organizers, they can be moved to expand their horizons.<sup>276</sup> One of Piven and Cloward's quintessential insights is that "people experience deprivation and oppression within a concrete setting, not as the end product of large and abstract processes, and it is concrete experience that molds their discontent into

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maintenance contracts, firing of a building manager, resolving of code and maintenance issues, lowering of monthly rents, and a 90% rent refund for all tenants from those dates totaling more than \$1 million across the two buildings"); Sorrell, *supra* note 218 (reporting that associations organized by Kansas City Tenant Union ended their eight month rent strike when they reached an agreement with their landlord that included caps on future rents, comprehensive pest extermination and HVAC repairs, and reopening of parking garage and community room, both with firm deadlines, and assurances that tenants who organized would not face retaliation).

271. One common tenant organizing tactic is impugning the public reputation of their landlords. See, e.g., Rosenthal & Vilchis, *supra* note 129, at 75–77 (describing the actions taken by Los Mariachis tenants, including engaging with the press, mass social media campaigns, and canvassing in their landlord's own neighborhood).

272. Gowing, *supra* note 268, at 893; see also Rosenthal & Vilchis, *supra* note 129, at 59–80 (describing the Los Mariachis rent strike, which began after tenant received notices of steep rent increases).

273. Aaron Fernando, *Could This Rolling Rent Strike Make The Feds Protect Tenants?* SHELTERFORCE (Oct. 4, 2024), <https://shelterforce.org/2024/10/04/could-this-rolling-rent-strike-make-the-feds-protect-tenants/> [https://perma.cc/82GS-KQDJ].

274. Rosenthal & Vilchis, *supra* note 129, at 59 (emphasis added).

275. *Id.* at 91–92; Jamila Michener & Mallory SoRelle, *Politics, power, and precarity: how tenant organizations transform local political life*, 11 INT. GROUPS & ADVOC. 209, 218–21 (2022).

276. *Id.*

specific grievances against specific targets.<sup>277</sup> Tenant organizers work to help tenants draw connections between their concrete experiences and their upstream causes.<sup>278</sup> For example, the Kansas City Tenant Union organized a rent strike in October 2024 that targeted two buildings with Fannie Mae mortgages.<sup>279</sup> These strikes were part of a broader national effort, the first of its kind, by the newly formed Tenant Union Federation to target the Federal Housing Finance Agency (FHFA), which regulates the mortgages of buildings that house 16 million tenants.<sup>280</sup> KCTU and TUF's goal was to demand that the FHFA require an annual rent cap as a condition of all such mortgages.<sup>281</sup> Naming the inaction of the FHFA as an upstream cause of tenants' grievances, KCTU and TUF turned the abstract into the concrete.

## 2. The Struggle for Decommodification

As Rosenthal and Vilchis observe, rent strikes build the capacity for self-determination.<sup>282</sup> For example, SOS-DC organizers helped five tenant associations, which they had organized during a pandemic rent strike campaign, exercise their rights under the District of Columbia's Tenant Opportunity to Purchase Act (TOPA).<sup>283</sup> TOPA, won by organized DC tenants in 1980, provides tenants the right of first refusal when their landlord wishes to sell their building.<sup>284</sup> Tenants can purchase their building and form a co-operative, partner with a non-profit developer, or negotiate terms with a for-profit developer.<sup>285</sup> However, to do so, tenants must first band together in a legally-recognized entity, negotiate with the landlord and any developers, and eventually vote on the final offer.<sup>286</sup> Deadlines

277. PIVEN & CLOWARD, *supra* note 29, at 20.

278. Michener & SoRelle, *supra* note 275, at 221 (reporting that interviewed tenant union members "with experience [of housing insecurity] but without larger economic frameworks for making sense of that experience learned a lot through exposure to the ideas that are circulated in tenant organizations. Before too long, people with otherwise little exposure to politics (formal or informal) were calling each other comrades, talking about the failures of capitalism, and power mapping their local political structures.").

279. Fernando, *supra* note 273.

280. *Id.*

281. *Id.*

282. See Rosenthal & Vilchis, *supra* note 129, at 59.

283. METRO D.C. DEMOCRATIC SOCIALISTS OF AM., ORGANIZING AFTER CRISIS: HOW TO KEEP GOING—AND KEEP WINNING, 18 (Aug. 2023), [https://www.stompoutslumlords.org/wp-content/uploads/2024/03/2023-report-rev\\_web.pdf](https://www.stompoutslumlords.org/wp-content/uploads/2024/03/2023-report-rev_web.pdf) [<https://perma.cc/2SHU-MKRN>] [hereinafter ORGANIZING AFTER CRISIS].

284. *Id.*; RENTAL HOUSING CONVERSION AND SALE ACT OF 1980, D.C. LAW 3-86, D.C. CODE §§ 42-3401.01-05.13. In September 2025, the D.C. City Council passed legislation to exempt newer buildings from TOPA, a significant blow to the law. However, because of tireless advocacy from SOS-DC and its allies, the legislation was less harmful than the original proposal by Mayor Muriel Bowser. Jenna Lee, *RENTAL Act passes D.C. Council amid dissent from housing, tenant rights advocates*, STREET SENSE MEDIA (Sept. 29, 2025), <https://streetsensemedia.org/article/rental-act-passes-dc-council/> [<https://perma.cc/H4BF-VZWW>].

285. *Id.*

286. ORGANIZING AFTER CRISIS, *supra* note 283, at 22.

are attached to each of these steps, and developers can seek to buy tenants out.<sup>287</sup> Because the tenants had already been organized by SOS-DC for the rent strike, they were better able to successfully exercise their TOPA rights.<sup>288</sup> For example, the mostly undocumented Latino tenants at La Unión Buena Vista, with financial support from the Local Initiatives Support Corporation and the National Housing Trust Fund, were able to organize and acquire their building, preventing rent increases and making needed repairs.<sup>289</sup>

The tenants of Brith Sholom and La Unión Buena Vista were able to organize to decommodify their housing. The complete and lasting expropriation of housing from the private market, often referred to as “social housing,” is a goal common across the tenant power movement.<sup>290</sup> This is often achieved by transferring property ownership to a co-op (like La Unión Bella Vista), a government entity (like Brith Sholom), or a community land trust (CLT).<sup>291</sup> Ownership transfer does not end the need for tenant organizing, as tenants must stay together either to make demands of their new landlords or take on the management and maintenance functions of the landlord.<sup>292</sup> Social housing means that the people who live in

287. *Id.*

288. *See id.* at 22–23.

289. *Id.* at 24–25; *NHT Helps La Unión Buena Vista Tenants Association Take Their First Steps in the TOPA Process*, NAT'L HOUS. TR. (Oct. 30, 2022), <https://nationalhousingtrust.org/news/nht-helps-la-union-buena-vista-tenants-association-take-their-first-steps-topa-process> [<https://perma.cc/MW2X-EPB5>]; *La Union Buena Vista Apartments*, LOC. INITIATIVE SUPPORT CORP. (Jan. 1, 2023), <https://www.lisc.org/our-resources/resource/la-union-buena-vista-apartments/> [<https://perma.cc/YT4W-4LTW>]. Acquiring their building as a co-op has not been the end of the challenges Buena Vista tenants have faced, showing that TOPA is helpful but not sufficient intervention; ORGANIZING AFTER CRISIS, *supra* note 283, at 24–25.

290. John Whitlow, *Towards Housing Justice: Law, Tenant Power, and the Decommodification of Urban Property*, 27 U. PA. J. L. & SOC. CHANGE 174, 193 (2024) (“[S]ocial housing is the legal-policy framework that most closely reflects a vision of housing in which the latter’s value as real estate asset has been subsumed by its value as home.”). There has been a recent increase in interest in social housing among progressives and leftists engaged in housing work. *Id.* at 194. For example, the DSA Housing Justice Commission (HJC) identifies social housing as the future they seek to build with tenant organizing. The HJC defines social housing as adhering to four principles: 1) redistribution from landowners, 2) democratic control, 3) sustainability and high quality, and 4) universal access. Housing Justice Commission, *Statement on Organizing for Social Housing*, DSA HOUS. JUST. COMM. (Jan. 24, 2025), <https://housing.dsasusa.org/socialhousing/> [<https://perma.cc/PT67-HHL6>].

291. CLTs typically own the land under a property in perpetuity, while tenants can decide whether to own the building or continue to rent. Aviva Stahl, *Community Land Trusts Are Standing Up to New York City’s Worst Landlords*, NATION (Sept. 10, 2025), <https://www.thenation.com/article/politics/community-land-trust-new-york-city-topa-copa-housing/#> [<https://perma.cc/226B-Z8C3>].

292. When tenants own and manage their own buildings, conflicts inevitably arise. One such conflict is between tenants who want to take advantage of their new ownership to maximize the property’s exchange value. *See, e.g., id.*; ORGANIZING AFTER CRISIS, *supra* note 283. While this article is focused on tenant organizing in the private housing market, there is a long history of tenant organizing in public housing, since, unfortunately, government landlords can also be slumlords. Lemar, *supra* note 136, at 1213. Organizing in public housing presents its own unique challenges. *See, e.g.,* Elizabeth Gyori, *Commodifying Public Housing: New York City’s Use Of The Rental Assistance Demonstration (Rad) Program As Neoliberal Political Project*, LEGAL RATIONALITY AND NORMATIVE THEORY, 48 N.Y. U. REV. L. SOC. CHANGE 1, 68–72 (2025) (describing the challenges organizing tenants of the New York City Housing Authority (NYCHA)).

housing can decide for themselves how to maximize their use value.<sup>293</sup> By seeking to “abolish rent,” as Rosenthal and Vilchis do, tenants and their allies call upon the contemporary abolitionist framework to agitate for decommodification as a racial justice issue.<sup>294</sup>

City Life/La Vida Urbana (CLVU), one of the oldest continuously operating tenant unions, has had success decommodifying hundreds of units of housing in Boston.<sup>295</sup> CLVU operates under a comprehensive organizing strategy, called “the sword, the shield, and the offer,” that has been adopted by the tenant power movement more broadly.<sup>296</sup> According to CLVU:

*the sword* represents the power of community organizing for dignified and affordable housing, *the shield* represents our collaboration with legal services partners who help tenants assert their legal rights when faced with eviction, and then we have *the offer*. The offer can take many forms based on the organizing goals of the tenants, but in some cases, the offer is the sale of the property to a nonprofit organization that agrees to affordably rent the unit to the tenants living inside.<sup>297</sup>

CLVU’s sword, shield, and offer strategy makes it clear that tenants are in the driver’s seat and that the goal of the lawyer in the movement is to support tenants’ goals for the control of their housing.

### C. How Law Can Support Tenant Organizing

Examples abound, from Brith Sholom to the NYC Right to Counsel Coalition, of legal advocates and organized tenants successfully coming together. Beyond representing tenants in court, lawyers and tenants can partner to pursue needed law and policy reform that further builds tenant power. Kate Andrias and Benjamin Sachs identify six ways that the law can facilitate the organization of tenant unions and other mass-member formations of the multiracial working class.<sup>298</sup>

First, to provide a “frame” to encourage organizing, the law can grant tenants a broad, explicit right to organize and exert power.<sup>299</sup> San Francisco’s “Union at

293. Housing Justice Commission, *supra* note 290.

294. Rosenthal & Vilchis, *supra* note 129, at 32; *see also* Bowman, *supra* note 115, at 545 (“Eviction abolition is as necessary for Black liberation and the end of white supremacy as dismantling prisons and defunding the police.”). Both Larissa Bowman and Andrew Scherer have recently brought “eviction abolition” into legal scholarship. *See generally* Bowman, *supra* note 115; Andrew Scherer, *Stop the Violence: A Taxonomy of Measures to Abolish Evictions*, 51 *FORDHAM URB. L. J.* 1329 (2024).

295. *See, e.g.*, Gabriela Cartagena, *When We Fight We Win: Historic Affordable Housing Victory in East Boston*, CITY LIFE VIDA URBANA (Oct. 14, 2022), [https://www.clvu.org/when\\_we\\_fight\\_we\\_win\\_eastboston](https://www.clvu.org/when_we_fight_we_win_eastboston) (describing CLVU’s seven year effort to decommodify 114 units of housing across 36 properties).

296. *Id.*

297. *Id.*

298. Andrias & Sachs, *supra* note 151, at 560.

299. *Id.* at 593–94 (proposing that explicit legal rights can serve as “convincing diagnoses” of social problems to help facilitate organizing).

Home” ordinance and the District of Columbia’s TOPA offer examples of such framing rights. It is critical that such policies vest power directly with tenants, who should be able to dictate their housing’s ownership by majority decision. This can be achieved either by directly vesting a legal right with tenants, as in D.C.’s TOPA, or requiring a third-party, such as a non-profit community land trust (CLT), to secure consent from a majority of tenants before they can exercise a purchase option, as in the case of San Francisco’s Community Opportunity to Purchase Act (COPA).<sup>300</sup> Housing non-profits play an important role in housing justice—for example, Chicago’s highly successful Troubled Buildings Initiative has preserved over 17,000 units of deteriorating housing by placing them in the care of non-profit receivers<sup>301</sup>—but these non-profits must be kept accountable to tenants.<sup>302</sup> Even without a formal legal framework like TOPA/COPA, representing the interests of tenants living in neglected buildings that are in the process of changing ownership in foreclosure and bankruptcy proceedings can help tenants exercise some choice over the future of their housing. In New York City, municipal lawyers and the state Attorney General’s Office recently attempted to intervene on behalf of a tenant association fighting to delay the sale of their housing from one slumlord to another.<sup>303</sup> While the sale was ultimately approved by the bankruptcy court, tenants were able to win some repair commitments from their new landlord and, more importantly, set an example of how government can ally with tenant movements.<sup>304</sup>

Second, the law can provide resources that can facilitate tenant organizing. Providing financial resources for tenant co-ops, non-profits, or public entities to acquire and rehabilitate housing, as Philadelphia did for Brith Sholom, enables tenants to effectively organize to determine the ownership of their housing. In recent years,

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300. San Francisco’s COPA vests purchase options in qualifying non-profits, not tenants. However, the city’s Small Sites Program provides financing for non-profits seeking to acquire housing through COPA if 80% of tenants consent to the non-profit’s ownership of their housing through signing a new lease. Padmini Raghunath, *How it’s Working: Laws That Help Tenants and Nonprofits Buy Buildings*, SHELTERFORCE (Sept. 7, 2023), <https://shelterforce.org/2023/09/07/how-its-working-laws-that-help-tenants-and-nonprofits-buy-buildings/> [<https://perma.cc/7KV9-PU5D>]; *Small Site Program Guidelines*, S.F. MAYOR’S OFF. OF HOUS. AND CMTY. DEV. (Nov. 4, 2022), [https://media.api.sf.gov/documents/Small\\_Sites\\_Program\\_Guidelines.pdf](https://media.api.sf.gov/documents/Small_Sites_Program_Guidelines.pdf) [<https://perma.cc/9HGJ-HLMC>].

301. Like TOPA/COPA, TBI seeks to address code non-compliant rental housing by transferring ownership. However, the program vests power in municipal attorneys and non-profits, not tenants. *Chicago, Illinois: The City’s Troubled Building Initiative Renovates and Preserves Deteriorating Apartments*, HUD USER, [https://www.huduser.gov/portal/casestudies/study-043018.html?WT.mc\\_id=june0518&WT.tsrc=Email](https://www.huduser.gov/portal/casestudies/study-043018.html?WT.mc_id=june0518&WT.tsrc=Email) [<https://perma.cc/H8FR-AZNR>] (last visited Jan. 24, 2025) (describing the TBI program and its impact).

302. The main limitation of TOPA/COPA legislation is that housing is only opened up to decommodification when the existing owner decides to sell. *Tenant/Community Opportunity to Purchase*, POLICYLINK, <https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/topa-copa> (last visited Sept. 17, 2025). TBI does not have the same limitation, so similar programs that include a legal right for tenants to initiate and guide receivership could represent a new front in tenant power policy.

303. New York City had standing to intervene in the bankruptcy as a creditor of nearly \$13 million in unpaid code violation fines. Alex N. Press, *What New York Tenants Are Building Beyond the Courtroom*, JACOBIN (Feb. 3, 2026), <https://jacobin.com/2026/02/nyc-tenant-organizing-pinnacle-mamdani> [<https://perma.cc/REZ5-2QM7>].

304. *Id.*

Montgomery County, Maryland and the City of Seattle have established or expanded public developers to acquire and build new social housing.<sup>305</sup> In California, legislation to create a statewide social housing developer has gained the support of both tenant unions and YIMBY groups.<sup>306</sup>

Information can be another vital resource for organizing.<sup>307</sup> Because of the rise of LLC landlords, the people who benefit from putting profits above tenants' health and wellbeing can operate with greater anonymity. It is impossible to show up to a landlord's home or office to protest and pressure them to come to the bargaining table if tenants don't know who their landlord is. Governments can establish public rental registries, that include landlords' information, thus allowing tenants and their organizers to better hold landlords accountable.<sup>308</sup>

Third, the law can guarantee access to space for tenant organizing.<sup>309</sup> A right to organize means little if landlords can prevent tenant associations from knocking on doors, posting flyers, and convening meetings in common spaces.<sup>310</sup> Importantly, such protections should allow tenants to invite non-resident organizers into their buildings to assist with organizing activities.<sup>311</sup> Legal organizations can also serve as institutional spaces for tenant organizing. For example, Building and Strengthening Tenant Action (BASTA) in Austin is housed in the office of Texas RioGrande Legal Aid.<sup>312</sup>

305. Conor Dougherty, *This Is Public Housing. Just Don't Call It That*, N.Y. TIMES (Aug. 25, 2023), <https://www.nytimes.com/2023/08/25/business/affordable-housing-montgomery-county.html> [<https://perma.cc/V6HF-YCZY>] (describing the history and purpose of Montgomery County's Housing Opportunities Commission and Housing Production Fund). The Seattle Social Housing Developer was approved by voters through an initiative and was later funded by a payroll tax established by a second voter-approved initiative. *Seattle Voters Approve Ballot Initiative to Fund Social Housing Developer*, NAT'L LOW INCOME HOUS. COAL. (Feb. 18, 2025), <https://nlihc.org/resource/seattle-voters-approve-ballot-initiative-fund-social-housing-developer> [<https://perma.cc/B33R-UYV3>].

306. King, *supra* note 182.

307. Andrias & Sachs, *supra* note 151, at 610.

308. Brian Mykulyn & Elora Raymond, *When Landlords Hide Behind LLCs*, SHELTERFORCE (Aug. 23, 2022), <https://shelterforce.org/2022/08/23/when-landlords-hide-behind-llcs/> [<https://perma.cc/373Y-DWB4>]; see also *Exploring rental registries across U.S. localities*, HOUS. SOLS. LAB (Aug. 21, 2024), <https://localhousingsolutions.org/housing-policy-case-studies/exploring-rental-registries-across-u-s-localities/> [<https://perma.cc/9N7E-LMUB>] (reviewing several examples of new and long-standing local rental registries).

309. Andrias & Sachs, *supra* note 151, at 613–14.

310. Under common law, tenants do not have the legal right to flyer or post posters, though California, the District of Columbia, and New York have legislated such rights. Baltz, *supra* note 263, at 78.

311. Kelly Hogue & Heather K. Way, *The Role of the Law in Protecting Tenant Organizing: Opportunities for Local and State Legal Reforms*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 391, 419 (2023). In some jurisdictions, including Austin and Seattle, third-party organizers can only enter a building if they are invited or accompanied by a tenant. AUSTIN CODE § 4-14-125; SEATTLE CITY CODE § 22.206.180.G In others, like East Palo Alto, CA and Philadelphia, organizers do not have such restrictions. E. PALO ALTO CODE § 14.02.050(B); PHILA. CODE § 9-816 (effective November 1, 2026).

312. Our Story, BUILDING AND STRENGTHENING TENANT ACTION—AUSTIN, <https://bastaustin.org/en/story> [<https://perma.cc/5PY8-HHD2>] (last visited Feb. 22, 2025). However, legal organizations should be respectful of the possibility that tenants may wish to adopt an autonomous model of tenant organizing that eschews organizational and financial entanglement with nonprofits. Such posture is required for membership in ATUN. See Points of Unity, *supra* note 243.

Fourth, localities and states can improve retaliation and good cause protections.<sup>313</sup> Such protections should cover the full range of retaliatory behavior, not just eviction. As Rosenthal and Vilchis recount, community gardens have become favored targets of landlord retaliation in Los Angeles.<sup>314</sup> Similarly, in Brith Sholom, community spaces, including lounges and laundry rooms, were closed off once tenants started organizing.<sup>315</sup> These forms of retaliation can significantly degrade tenants' quality of life and housing stability while also suppressing organizing through intimidation; therefore, they must be regulated.<sup>316</sup> As tenants build more power, landlords will respond in kind with more retaliation. For example, Capital Realty Group, the target of TUF's multistate organizing, has hired a union-busting law firm to import employer tactics like surveillance and counter-campaigns.<sup>317</sup> Strong anti-retaliation laws and robust legal representation by non-profit law firms is necessary to protect tenant organizing from escalating retaliation, because, unlike labor unions, tenant unions will likely not have the financial resources to retain counsel in the private market.<sup>318</sup> Anti-retaliation laws should also provide for mechanisms like statutory damages and fee shifting that increase both the cost of violation for landlords and access to justice for tenants.<sup>319</sup> Furthermore, recognizing the structural disadvantages individual tenants face in state civil courts, tenants should be able to seek relief collectively in more friendly administrative forums.<sup>320</sup>

As discussed above, tenant organizing's ability to address individuals' immediate housing needs is an important condition for building power. Laws like "Union at Home" and TOPA create frameworks for meeting those needs collectively, adding an important tool to existing individual rights that organizers encourage tenants to pursue through clinics and other access to justice efforts detailed above. Lastly, the law can provide a framework for protected acts of disruption, most notably the National Labor Relations Act's protection of worker

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313. Andrias & Sachs, *supra* note 151, at 622 (arguing that these policies can remove barriers to participation in organizing).

314. Rosenthal & Vilchis, *supra* note 129, at 117.

315. Personal communication with Savannah Mooney (on file with the author).

316. For example, Los Angeles's Tenant Anti-Harassment Ordinance (TAHO) regulates a wide range of landlord action beyond just eviction. L.A. CAL. CODE § 45.30 (2021).

317. Burns & Birmingham, *supra* note 219. For example, in New Haven, two rival tenant associations, one organized by the Connecticut Tenant Union and one presumably organized by management, submitted rival petitions and faced off at a press conference. *Id.*

318. On the other hand, only the largest corporate landlords, like Capital Realty, may have the resources to hire the most experienced union-busting firms. However, landlords, at least in urban areas, have access to a robust network of law firms and membership associations that are likely to adapt to serve landlords' tenant union busting needs.

319. See generally Sabbeth, *supra* note 64 (discussing how the law undervalues tenants' habitability claims, thus reducing access to justice in the private market). For example, Philadelphia's ordinance prohibiting self-help evictions includes a private right of action with both fee-shifting and statutory damages of \$2,000 per violation. PHILA. CODE § 9-1605.

320. For example, San Francisco and New Haven's "Union at Home" ordinances allow tenant associations to access administrative agencies instead of courts for relief. S.F. ADMIN. CODE § 49A.5; NEW HAVEN, CONN. CODE §§ 12 $\frac{3}{4}$ -4, 9.

strikes.<sup>321</sup> San Francisco’s “Union at Home” ordinance provides the most analogous protections to labor, allowing tenants to collectively withhold rent if their landlord does not bargain in good faith.<sup>322</sup> While not explicitly contemplating tenants organized in a rent strike, Maryland’s 2024 Tenant Safety Act provides tenants with a rebuttable presumption of entitlement to rent abatement and allows multiple tenants to join in an affirmative suit, where they can recover attorney’s fees.<sup>323</sup> The Act thus provides more legal protections for striking tenants.<sup>324</sup>

All of these policy changes can and should be pursued as non-reformist reforms with an emphasis on building tenant power. Applying McAlevey’s principles of deep organizing, tenants should be involved in, and ultimately determine, the policies to be pursued and the strategies to win. For example, Renters United Philadelphia launched a “Safe, Healthy Homes” campaign to champion a package of policy proposals chosen by tenants with actions planned by a tenant-led organizing committee.<sup>325</sup> Lawyers can have an important and productive role in supporting these campaigns. They can help tenants understand and draft law, provide expert testimony before government bodies, and, if tenant leaders face retaliation for standing up, use their legal skills to provide a shield to protect and preserve the organizing. While embracing the tenant power movement requires lawyers to let go of the privileged place they have had in inferior advocacy and mobilizing models, there is still plenty they can contribute to the movement’s success.

## CONCLUSION

On November 4th, 2025, democratic socialist Zohran Mamdani, a former housing counselor, was elected mayor of New York City.<sup>326</sup> Mamdani campaigned

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321. *NLRA and the Right to Strike*, NAT’L LABOR RELATIONS BOARD, <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/nlra-and-the-right-to-strike> [<https://perma.cc/3UV7-8JVR>] (last visited Jan. 24, 2025).

322. S.F. ADMIN. CODE § 49A.5.

323. H.D. 1117, 2024 Leg., 446th Sess. (Md. 2024).

324. The Act would have been even more helpful for tenants if a provision to cap the amount the courts could require a tenant to escrow at 50% of the rent required by the lease had not been stricken from the final bill. *Id.* Ultimately, rent escrow requirements should be eliminated entirely. Gowing, *supra* note 268, at 905 (arguing that escrow requirements can inhibit rent strikes); *see also* Super, *supra* note 71, at 443–46 (arguing that escrow requirements only serve as means of docket size control and should be eliminated).

325. Personal communication with Cara Tratner, RUP organizer (on file with the author); Personal communication with Cade Underwood, Legislative and Policy Director for Philadelphia City Councilmember At-Large Nicolas O’Rourke (on file with the author). The campaign was ultimately successful, with all three bills passing with minimal concessions despite fierce landlord opposition. *See* Michaelle Bond, *Landlords tried to stop bills to protect renters. City Council just passed them almost unanimously*, PHILA. INQUIRER (April 23, 2026), <https://www.inquirer.com/real-estate/housing/philadelphia-renter-protections-council-passed-safe-healthy-homes-20260423.html> [<https://perma.cc/CMA6-R63R>].

326. Joe Anuta, *Zohran Mamdani wins NYC mayoral race*, POLITICO (Nov. 4, 2025, 9:37 PM), <https://www.politico.com/news/2025/11/04/zohran-mamdani-wins-mayor-new-york-city-00634476/>; John Tarelton, *Home Foreclosure Specialist Aims to Take Fight For Housing & Racial Justice from Astoria to Albany*, INDEPENDENT (June 19, 2020), <https://independent.org/2020/06/home-foreclosure-specialist-aims-to-take-the-fight-for-housing-racial-justice-from-astoria-to-albany> [<https://perma.cc/QN5U-2J3X>] (describing how

on instituting a “rent freeze” on the city’s two million existing rent-stabilized units, tripling the production of new rent-stabilized units, and robust rental code enforcement.<sup>327</sup> While his main opponent, Andrew Cuomo, received millions of dollars from the real estate industry, Mamdani drew support from organized tenants.<sup>328</sup> In Seattle, Katie Wilson, another democratic socialist and co-founder of the pro-tenant Transit Riders Union, defeated the incumbent mayor, who had opposed a tax to fund the city’s social housing developer.<sup>329</sup> That same month in Los Angeles, the organizing work of LATU and its allies paved the way for the first expansion of the city’s rent control law in 40 years.<sup>330</sup> These victories demonstrate the transformative potential of the collective power of the working-class tenants who bear the most severe consequences of the housing crisis; tenant organizing is how to build that power.

The response to these victories also highlights the need for tenant power. Opining on Mayor Mamdani’s nomination of Cea Weaver, a long-time tenant organizer, to the newly reconstituted Office to Protect Tenants, the *Washington Post* published a scathing editorial arguing that New Yorkers would soon “suffer from unserious housing policy.”<sup>331</sup> To the *Post* editorial board, and many other prominent pundits, “serious” housing policy is policy that focuses solely on increasing housing supply and, as Rosenthal and Vilchis so aptly point out, lining the pockets of landlords and the real estate industry.<sup>332</sup> The abundance/YIMBY perspective has the resources to dominate the conversation, but that resource advantage can only be countered by fierce organizing.

The struggle of tenancy is a common experience, even among lawyers. The stress of cobbling together rent every month for an apartment that is too small for your needs, the shock and disgust after discovering a rat infestation, the frustration of having a former landlord illegally withhold your security deposit after you put your back into cleaning before you moved out—these are the disempowering experiences that are the seeds of tenant power. Go to any meeting or action hosted

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Mamdani’s work as a housing counselor working with immigrant homeowners facing foreclosure inspired him to run for the State Assembly).

327. Platform, ZOHAN FOR NEW YORK CITY, <https://www.zohranformyc.com/platform> [https://perma.cc/92WS-MX3N] (last visited Nov. 15, 2025).

328. See, e.g., Cea Weaver & Ritti Singh, *Zohran Mamdani vs. New York Landlords*, JACOBIN (June 23, 2025), <https://jacobin.com/2025/06/mamdani-cuomo-nyc-real-estate> [https://perma.cc/2NBH-PSUW]; Tara Raghuvier, *How New York’s Tenants Won*, *The New York Review of Books*, N.Y. REV. BOOKS (July 22, 2025), <https://www.nybooks.com/online/2025/07/22/how-new-yorks-tenants-won/> [https://perma.cc/LE3R-JAYY].

329. Julia Conley, *Progressive Challenger Katie Wilson Elected Mayor of Seattle*, COMMON DREAMS (Nov. 13, 2025), <https://www.commondreams.org/news/katie-wilson-seattle-mayor> [https://perma.cc/JWP7-9RED].

330. David Wagner, *LA reforms rent control for first time in 40 years, lowering rent hikes for most tenants*, LAIST (Nov. 12, 2025), <https://laist.com/news/housing-homelessness/los-angeles-city-rent-control-stabilization-vote-three-percent-increase-housing-landlord-tenant> [https://perma.cc/8QZM-N8CE].

331. Editorial Board, *Mamdani’s new tenant advocate wants to seize private property*, WASH. POST (updated Jan. 6, 2026), <https://www.washingtonpost.com/opinions/2026/01/06/mamdani-weaver-mayor-nyc-housing/>.

332. Rosenthal & Vilchis, *supra* note 129, at 11.

by a tenant union, and you can see how those seeds are nurtured. Rosenthal and Vilchis put it well: “a [tenant] union forges solidarity and collective identity by maintaining a culture that opposes dominant values . . . against the sense of loss and depression that comes with the violence of gentrification, a union cultivates pride and dignity. Against individuation, mutuality.”<sup>333</sup> Participating in the power struggle helps tenants collectively assert the control denied to them over their living conditions. Lawyers can support tenants in their struggle and redefine the relationship between law and social movements.

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333. *Id.* at 112.