



NEW YORK  
CITY BAR

**REPORT ON LEGISLATION BY THE  
TASK FORCE ON CIVIL RIGHT TO COUNSEL,  
HOUSING COURT COMMITTEE,  
HOUSING AND URBAN DEVELOPMENT COMMITTEE, AND  
PRO BONO AND LEGAL SERVICES COMMITTEE**

**A.7570-B  
S.6678-B**

**M. of A. Joyner  
Sen. May**

AN ACT to amend the real property actions and proceedings law and the real property law, in relation to establishing the civil right to counsel in eviction proceedings

**THIS BILL IS SUPPORTED, WITH COMMENT**

New York State Senator Rachel May has introduced S.6678 to make legal services available to all tenants facing residential eviction in New York State.<sup>1</sup> New York State Assembly Member Latoya Joyner has introduced the same bill, Assembly Bill A.7570 (the “Right to Counsel Bill” or “RTC Bill”).<sup>2</sup> The RTC Bill, which has been twice amended and is now in the “B” print, establishes a civil right to counsel in eviction proceedings by amending the current Real Property Actions and Proceedings Law and the Real Property Law.<sup>3</sup> The right to counsel would guarantee free legal representation in eviction proceedings and ready access to information about such right, to be achieved through education and outreach programs implemented by a New York State Office of Civil Justice.<sup>4</sup> To implement the right to counsel, the Office of Civil Justice would be led by a Civil Justice Coordinator, who works with both non-profit legal services organizations and community organizations to implement the programs established by the law.<sup>5</sup>

Consistent with its longstanding support for a right to counsel for tenants facing eviction in New York City (the “NYC Right to Counsel Law” or “NYC RTC Law”), the New York City Bar

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<sup>1</sup> Senate Bill S.6678-B, New York State Senate (2021-2022 Legislative Session), <https://www.nysenate.gov/legislation/bills/2021/S6678>. (All websites last visited May 24, 2022.)

<sup>2</sup> Assembly Bill A.7570-B, New York State Senate (2021-2022 Legislative Session), <https://www.nysenate.gov/legislation/bills/2021/a7570>.

<sup>3</sup> Senate Bill S.6678-B, *see supra* FN. 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

Association submits this memorandum to express its similar support for the RTC Bill, with one *caveat and comment for consideration*: after significant discussion and debate among several City Bar committees with members who work in the landlord-tenant area, we note that, for a variety of reasons, the lack of an income cap in the RTC Bill (as exists in the NYC RTC Law) raises concerns among a significant minority of committee members.<sup>6</sup> We have determined to leave this question to the legislative debate, while noting that we do not have a consensus on whether an income cap should be imposed.

At its core, however, the City Bar's support for the NYC RTC Law and, likewise, the RTC Bill stems from its firm belief that legal assistance not only levels the playing field for vulnerable tenants facing eviction proceedings, but also, it enhances the efficiency and fairness of those proceedings.

## I. INTRODUCTION

In proposing the RTC Bill, the legislature finds that there is a fundamental human right to adequate housing accommodations, which is essential to access other fundamental needs, e.g., to preserve family integrity, to gain employment or other income, or to enjoy access to healthcare, proper nutrition, and education.<sup>7</sup> The purpose of the RTC Bill is to provide all tenants in New York State with guaranteed full legal representation in covered eviction proceedings.<sup>8</sup> This Memorandum demonstrates why a statewide civil right to counsel in eviction proceedings is necessary, given the severe consequences of eviction and the need to eliminate the historical disparity in housing court proceedings between landlords and tenants. Legal representation will bring fairness to complex eviction proceedings for low-income families otherwise appearing *pro se*.

New York State would join an increasing number of cities and states providing tenants a right to counsel in eviction proceedings.<sup>9</sup> In August of 2017, New York City became the first jurisdiction in the United States to provide a right to counsel for tenants facing eviction by enacting into law Intro 214-b.<sup>10</sup> Since then, a growing number of cities have followed suit, including San Francisco, Cleveland, Minneapolis, Boulder and Philadelphia.<sup>11</sup> On April 22, 2021, Washington became the

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<sup>6</sup> For example, the City Bar's Cooperative and Condominium Committee believes that, in the absence of an income cap, there should be a form of carve-out for cooperatives other than Housing Development Fund Corporation cooperatives, Mitchell Lama housing, and other cooperatives with maximum income restrictions.

<sup>7</sup> *Id.*

<sup>8</sup> Senate Bill S.6678, *see supra* FN. 1.

<sup>9</sup> Abigail Savitch-Lew, *The Movement That Is Upending Landlords' Power Over Tenants*, The Appeal (June 1, 2021), <https://theappeal.org/the-right-to-counsel-movement-upending-landlords-power-over-tenants/>.

<sup>10</sup> NYC Office of Civil Justice 2018 Annual Report at 14, [https://www1.nyc.gov/assets/hra/downloads/pdf/final\\_2018\\_ojc\\_report\\_march\\_19\\_2019.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/final_2018_ojc_report_march_19_2019.pdf).

<sup>11</sup> *The Movement That Is Upending Landlords' Power Over Tenants*, *see supra* FN. 9; New York City Office of Civil Justice, *Universal Access to Legal Services A Report on Year Four of Implementation in New York City* at 2 (Fall 2021),

[https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf). For the most up to date information regarding right to counsel in other states and localities, visit National Coalition for a Civil Right to Counsel, <http://civilrighttocounsel.org/map>.

first state to provide a statewide right to counsel to low-income tenants.<sup>12</sup> Soon after, Maryland<sup>13</sup> and Connecticut<sup>14</sup> passed similar legislation in 2021. Community organizing has been a main factor driving this movement, along with the support of positive data and feedback from cities that have already adopted a right to counsel law.<sup>15</sup> In particular, the COVID-19 pandemic has forced state and city governments to evaluate and focus on rent and housing security issues, because staying at home became a common – and essential - component of preventing the spread of COVID-19.<sup>16</sup> COVID-related eviction protections, such as eviction moratoria and stop-gap measures, expired on January 15, 2022 and local courts are faced with an enormous number of evictions. The passage of the RTC Bill is timely and essential to providing necessary and long-needed protections to tenants before and during eviction proceedings.

## II. BACKGROUND

### A. Key Provisions of the RTC Bill

The RTC Bill creates a statewide civil right to counsel in eviction proceedings for any tenant facing eviction, adding a new Article 7-C to the Real Property Actions and Proceedings Law (“RPAPL”).<sup>17</sup> “Covered individuals” include any individual in a “covered proceeding” entitling counsel to tenants for any proceeding that could result in an individual losing their housing accommodation.<sup>18</sup> The RTC Bill also amends the existing RPAPL Article 7 to create more protections for tenants by imposing notice requirements on landlords and safeguards in court. Specifically, the bill amends RPAPL §§ 711.1, 711.2, and 713 to prohibit courts from hearing eviction cases or accepting the filing of eviction petitions unless the landlord’s written rent demand, any required predicate notice and the petition contain notice of the tenant’s right to counsel.<sup>19</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Maryland Is Second State With Eviction Right To Counsel*, National Coalition for a Civil Right to Counsel (May 13, 2021), [http://civilrighttocounsel.org/major\\_developments/1497](http://civilrighttocounsel.org/major_developments/1497).

<sup>14</sup> *Connecticut Is Third State With Eviction Right To Counsel*, National Coalition for a Civil Right to Counsel (June 10, 2021), [http://civilrighttocounsel.org/major\\_developments/1367](http://civilrighttocounsel.org/major_developments/1367).

<sup>15</sup> *See Increasing Tenants’ Access to Counsel Has Raised Court Efficiency, Fairness, Judges Say*, New York Law Journal (Sept. 24, 2018), <https://www.law.com/newyorklawjournal/2018/09/24/increasing-tenants-access-to-counsel-has-raised-court-efficiency-fairness-judges-say/>; *The Movement That Is Upending Landlords’ Power Over Tenants*, *see supra* FN. 8.

<sup>16</sup> *Id.*

<sup>17</sup> A New York State Office of Civil Justice (the “OCJ”), led by a Civil Justice Coordinator (the “Coordinator”), will be established to plan and implement programming under this law. The Coordinator will designate qualified legal services organizations to provide full legal representation to covered individuals and work with community organizations to provide community education and organizing. The Coordinator is also required to hold a public hearing each year for each judicial department to receive recommendations and feedback about programs. Additionally, the Coordinator will be required to provide an annual financial audit of the implemented activities. Senate Bill S.6678-B, *see supra* FN. 1.

<sup>18</sup> *Id.* “Covered individual” means an individual who is a respondent in a covered proceeding. “Covered proceeding” means any proceeding to evict a tenant including a summary proceeding to seek possession for the non-payment of rent or a holdover, or any other proceeding for termination of tenancy, or any proceeding that could result in an individual losing such individual’s housing accommodation.” Sec. 800-C.

<sup>19</sup> *Id.*

Additionally, the amended RPAPL § 741 will require that landlords' petitions for eviction state the tenant's right to counsel and right to adjournment until the tenant is able to retain and consult with counsel.<sup>20</sup> The amendment to RPAPL § 745 will also require the court to orally notify a tenant of such right to counsel, adjourn the trial if the tenant wishes to retain counsel, and provide sufficient time for the tenant to do so.<sup>21</sup> Furthermore, the court may not grant eviction warrants based on a default judgment unless the landlord files an affidavit attesting that required written notice of the right to counsel has been provided to the tenant.<sup>22</sup> The failure of the court or the petitioner to comply with these notice requirements shall constitute good cause to vacate such warrant.<sup>23</sup> Lastly, the tenant's right to counsel is not waivable pursuant to the newly-added RPAPL § 235-i.<sup>24</sup>

Once passed into law, major components of the bill allow for a two-year phase-in period.<sup>25</sup>

### **B. Comparison between RTC Bill and New York City Right to Counsel Law (NYC RTC Law)**

The RTC Bill resembles the NYC RTC Law, particularly the structure of the administering agency and the role of such agency. The OCJ and the Coordinator proposed in the state bill are parallel to the NYC Office of Civil Justice (the "NYC OCJ") and the Civil Justice Coordinator under the NYC RTC Law. In addition, both the state and city Coordinators are required to (i) work with non-profit legal services organizations to provide counsel, (ii) work with non-profit community-based organizations for outreach and education programming,<sup>26</sup> (iii) hold public hearings, and (iv) produce reports (financial audits and program reviews).<sup>27</sup>

There are also significant differences between the proposed state legislation and the NYC RTC Law. For example, the state bill would cover a broader set of legal matters that could lead to eviction. In addition, and as commented earlier, the NYC RTC Law sets an income limit and provides free legal representation to those with a household income below 200 percent of the federal poverty level,<sup>28</sup> whereas the state bill has no income limits for covered individuals to receive full legal

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> The requirement for the NYC OCJ to work with non-profit community based organizations to provide education and organizing was proposed in Intro 1529, which requires the City to fund tenant organizing and outreach for tenants to learn about their right to counsel. Intro 1529 was enacted in May 2021 and went into effect 180 days after being signed into law.

Some committee members suggested that legislators and stakeholders should further discuss whether a wholly separate statewide Office of Civil Justice is necessary. However the bill progresses, legal services providers should be afforded a meaningful opportunity to chart the appropriate course of implementation and administration should the RTC Bill be enacted into law.

<sup>27</sup> Int. No. 214-b.

<sup>28</sup> Intro 1104 (not passed yet) proposes to raise the income eligibility limit to 400% FPL.

representation.<sup>29</sup> Further, unlike the NYC RTC Law, the RTC Bill contains notice requirements to ensure tenants are aware of their right to legal representation. There are no notice requirements in the NYC RTC Law.<sup>30</sup> Although in practice (pursuant to administrative orders during the pandemic), the NYC OCJ sends letters informing tenants of their right to counsel; the Housing Court sends tenants notices about their right to counsel; and judges make oral announcements of such right, these actions are not required by statute.<sup>31</sup> In our view, providing early notice of counsel and securing counsel for tenants early in the proceeding leads to a more efficient process, less burden on court staff, and more opportunity to avoid eviction and achieve a fair negotiated settlement, especially in nonpayment proceedings. In other words, the proceeding becomes more transactional and less litigious.

### III. ANALYSIS

#### A. Effect of Right to Counsel on Eviction Proceeding Outcomes

The right to counsel in New York City has permitted tenants to assert their legal rights and remain in their homes, and has improved the fair administration of justice in these cases overall. A study conducted by the NYC OCJ reveals that pre-pandemic, in 2019 alone, eviction filings dropped 20 percent and evictions dropped 15 percent.<sup>32</sup> Additionally, because tenant representation helps resolve many procedural and substantive issues early in an eviction proceeding, requests by tenants to bring their cases back to the NYC Housing Court calendar on an emergency basis dropped by 38 percent between 2013 and 2019.<sup>33</sup> Overall, the study shows that 84 percent of tenants with legal representation were able to keep their homes.<sup>34</sup> A follow up study shows that the number went up to 86 percent in 2020.<sup>35</sup> In the fiscal year of 2020, the number of households in termination of tenancy proceedings that received NYC OCJ's legal services increased by 35 percent compared to FY2019.<sup>36</sup> Furthermore, the number of households receiving legal services from NYC OCJ's legal services providers in FY2020 reflected a 74 percent increase compared to FY2017, before implementation of the NYC RTC Law.<sup>37</sup> A statewide right to counsel law could likewise make legal representation

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<sup>29</sup> Senate Bill S.6678-B, *see supra* FN. 1.

<sup>30</sup> Under NYC Court rules, the Housing Court must send a postcard notice when a landlord files a case, but this notice does not inform the tenant of their right to counsel. *See* 22 NYCRR § 208.42.

<sup>31</sup> *See, e.g., NYC Office of Civil Justice 2020 Annual Report* at 5, [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2020.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2020.pdf).

<sup>32</sup> Senate Bill S.6678-B, *see supra* FN. 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *NYC Office of Civil Justice 2020 Annual Report* at 11, *see supra* FN. 31.

<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.* at 6.

available to all eligible tenants in the state and promote their housing security and greater court efficiency and resolution of disputes.

## **B. The Many Obstacles of Tenants Facing Eviction**

People of color suffer a disparate impact from eviction proceedings. Black and brown people are respondents in numbers that greatly exceed their proportion of the general New York population.<sup>38</sup> In addition to the general difficulties presented in a legal proceeding, language and education barriers further increase the likelihood that a tenant will ignore eviction notices and/or be evicted. Other obstacles include losing hours of work which would provide for rent payment and other necessities, including child care assistance, being afraid because of the lack of immigration status, etc. This further discourages tenants from showing up, making it even harder for tenants to fight their cases without representation. Such barriers also prevent tenants from receiving information about their right to counsel and related resources. Even in New York City, where the NYC RTC Law has made free legal representation available to eligible tenants, most tenants currently are not sufficiently aware of their rights; some tenants choose to self-evict rather than appear in court due to not knowing their rights or being afraid that their undocumented status will lead to deportation.<sup>39</sup> Thus, many eligible tenants are not able to take advantage of their right to counsel.

Moreover, evictions often lead to homelessness because of the severe shortage of affordable housing in the current market. Evictions and homelessness can cause devastating effects on individuals and families, including physical and mental health issues and failure to keep employment and education. Furthermore, increased engagement with the criminal justice system often due to homeless status offenses (such as vagrancy, trespassing, etc.) is another consequence of evictions and homelessness.<sup>40</sup> Having a criminal record can make it difficult to obtain employment and thus afford housing, which could lead to increased dependence on entitlement programs. Providing free legal representation to covered individuals and increasing public awareness of right to counsel in eviction proceedings could save public funds that would otherwise be spent on addressing the severe consequences of evictions and homelessness.

## **C. A Right Offers More Protections to Tenants than Funding Alone**

Although there have been funding programs focused on covering attorney fees and other litigation expenses for tenants in eviction proceedings, such programs are controlled by the providers of the funding, who are the true “gatekeepers” for such access to legal assistance.<sup>41</sup> Before the passage of the RTC Law, when the City of New York was the primary funder of legal assistance to low-

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<sup>38</sup> *Id.*

<sup>39</sup> Meena Venkataramanan & Juan Pablo Garnham, *Undocumented immigrants behind on their rent are self-evicting across Texas*, The Texas Tribune (July 22, 2020), <https://www.texastribune.org/2020/07/22/evictions-texas-undocumented-immigrants/>.

<sup>40</sup> Burton B, Pollio DE, North CS. A longitudinal study of housing status and crime in a homeless population. *Ann Clin Psychiatry*. 2018 Nov;30(4):280-288. PMID: 30372505.

<sup>41</sup> Andrew Scherer, *Why A Right: The Right to Counsel And The Ecology of Housing Justice*, Impact Center for Public Interest Law. Book 17 (2016).

income tenants, the City had discretion in whether to continue the funding.<sup>42</sup> As of 2017, when the NYC RTC Law was adopted, the City of New York became required to make counsel available.

A right to counsel confers an entitlement, which gives the right-holders a remedy when the right is violated and allows them to enforce that remedy in a “court of justice.” When legal assistance becomes a governmentally-recognized-and-provided “right,” a “court of justice,” and not the city or the provider becomes the gatekeeper.<sup>43</sup> Instead of relying on the provider’s discretion, the right-holders, here the tenants, can compel the government to fund legal assistance in eviction proceedings. This is a fundamental shift of power to people who previously lacked it. Considering the long-term imbalance in resources, power, influence, and access to counsel in eviction proceedings, a right to counsel fosters equal treatment and helps the rights-holders regain dignity and respect.<sup>44</sup>

#### **D. Eviction Crisis Due to the Covid-19 Emergency**

Since the COVID-19 emergency began in early 2020, New York has experienced an eviction crisis of unfathomable proportions. Renters, especially people of color, are disproportionately likely to be exposed to the risk of COVID-19 due to their occupations and industries.<sup>45</sup> Vulnerability to COVID-19 directly contributes to loss of jobs for the impacted renters. An estimated 1.2 million renter households in New York State have at least one household member who has lost their job due to COVID-19.<sup>46</sup> By April 2020, 32 percent of Black adults and 41 percent of Latinx adults had lost their jobs as a result of the pandemic, compared with only 24 percent of white adults.<sup>47</sup> For Asian Americans, the unemployment rate was 11 percent, compared to 3 percent during the previous year.<sup>48</sup> The result of losses in earnings are also significant - the July 15th Census Bureau data shows that almost half (46 percent) of all renting households in the state were not able to pay rent and were at risk of eviction.<sup>49</sup> This eviction crisis has led to a surge of the need for rental assistance in New York State in the midst of the COVID-19 emergency.<sup>50</sup>

Although some COVID-related relief exists for tenants facing evictions, many tenants are still struggling and in need of legal assistance to avoid eviction as the U.S. continues to gradually reopen

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Ingrid Gould Ellen, *Impacts of COVID-19 on New York Renters and the Housing Stock* at 2, NYU Furman Center, [https://www.newyorkfed.org/medialibrary/media/outreach-and-education/Event\\_0625-2020\\_Ellen-NYU%20Furman](https://www.newyorkfed.org/medialibrary/media/outreach-and-education/Event_0625-2020_Ellen-NYU%20Furman).

<sup>46</sup> *Id.* at 4.

<sup>47</sup> Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, The Center for American Progress, <https://www.americanprogress.org/issues/poverty/reports/2020/10/30/492606/pandemic-exacerbated-housing-instability-renters-color/>.

<sup>48</sup> *Id.*

<sup>49</sup> Senate Bill S.6678, *see supra* FN. 1.

<sup>50</sup> *Impacts of COVID-19 on New York Renters and the Housing Stock* at 7, *see supra* FN. 45.

and discontinue COVID relief measures.<sup>51</sup> In addition to making legal representation available to eligible tenants, access to such programs and public awareness to encourage participation in such programs are necessary to ensure that more tenants utilize their right to counsel. For example, the NYC OCJ launched the City’s Tenant Resource Portal, providing comprehensive and up-to-date information about free public and private resources to New York City tenants facing eviction.<sup>52</sup> The constantly changing legal and operational landscape due to the pandemic and the end of the eviction moratorium makes tenants’ ready access to information about current legal developments and court and agency operations key to the success of implementing the right to counsel law.

To ensure that legal assistance is available to tenants facing eviction, the NYC OCJ also collaborated with legal services partners to set up a housing legal hotline to provide live phone-based legal advice and assistance.<sup>53</sup> In addition, the NYC OCJ identified and reached out by mail to approximately 14,000 households with outstanding eviction warrants in 2020 and no legal representation, informing them of the availability of free legal assistance.<sup>54</sup> The passage of Local Law 53 (introduced as Intro 1529) further expanded community outreach by funding trusted organizers to help community members learn about their rights. This allows tenants who do not have access to technology or who are not proficient in English to be reached in more personalized ways. Targeted outreach would ensure that tenants facing eviction are aware of their rights and are more likely to utilize the designed programs.

We have learned in New York City the importance of providing tenants with notice of their right to counsel and the means to access that right and truly benefit from it. As COVID-19 and affordable housing shortages continue to present extraordinary housing challenges to those most vulnerable, the passage of the RTC Bill is imperative to help tenants facing eviction get the legal assistance they need in order to assert their legal rights and stay in their homes safely, wherever in New York State they call “home.”

#### **IV. CONCLUSION**

As is well documented and understood in 2022, the effects of COVID-19 have perpetuated historical inequities related to housing in New York State and there has been a disparate impact on people of color and certain vulnerable populations. Statewide legislation is required to address the housing crisis magnified by the pandemic. Tenants facing eviction from their homes should be provided with adequate legal assistance and should be educated about their rights before a case arises.

The RTC Bill provides that right by providing free legal assistance to tenants in covered eviction proceedings and creates an administrative agency to plan and implement community education and outreach programs. The success of NYC’s RTC Law can lead the way. Throughout the state, tenants will be able to take advantage of legal services in a case that would otherwise overwhelm a *pro se* litigant and burden the court. Represented tenants will be more likely to remain

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<sup>51</sup> See, e.g., *COVID-19 – Impact on Housing in New York State*, Legal Aid Society, <https://www.lasnny.org/lifelines/covid-19-impact-on-housing-in-new-york-state/>.

<sup>52</sup> *NYC Office of Civil Justice 2020 Annual Report* at 3, see *supra* FN. 31.

<sup>53</sup> *Id.* at 4.

<sup>54</sup> *Id.* at 5.



in their homes and, with counsel on both sides, the case will be more likely to achieve a negotiated resolution. The RTC Bill helps “level the playing field” between tenants and landlords prior to the commencement of eviction proceedings and will deter illegal and unnecessary eviction proceedings. Consequently, tenants will feel encouraged and empowered enough to fight for their homes and will less often face the crippling effects of homelessness and displacement.<sup>55</sup>

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