

# CIVIL JUSTICE, LOCAL ORGANIZATIONS, AND DEMOCRACY

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*Local organizations that lie outside of the scope of legal aid nonetheless engage legal processes. Such organizations draw on courts, lawyers, and legal problems as a basis for mobilizing and power building in racially and economically marginalized communities. They work within such communities to provide support navigating courts, obtaining legal representation, contesting unfair legal practices, and much more. These activities position local organizations as critical—yet too easily overlooked—civil legal institutions. Unlike other civil legal institutions (e.g., legal aid organizations and courts), nonlegal local organizations (e.g., tenant organizations) can operate inside and outside the formal civil legal system. Consequently, they have a distinctive vantage point and a pivotal role in developing power resources that are integral in a democratic polity. This Essay draws on in-depth qualitative interviews with tenant groups to offer an account of how local organizations engage civil legal processes and function as important institutional nodes in a larger civil legal infrastructure. By advancing knowledge of an imperative avenue through which race–class subjugated communities can exercise agency within civil legal processes, this Essay illuminates linkages between civil justice and local organizations and raises questions about how to better support tenant organizations as they undertake work that vitally enhances democracy.*

INTRODUCTION .....	1390
I. BACKGROUND .....	1393
A. The Organizational Infrastructure of the Civil Legal System .	1393
B. Housing and the Civil Legal System .....	1395
II. MECHANISMS OF ENGAGING THE CIVIL LEGAL SYSTEM—AND BEYOND.....	1399
A. Overview of Mechanisms.....	1399
B. Identifying the Ways Local Organizations Engage Civil Legal Processes .....	1399
1. Collaboration .....	1401
2. Court Support .....	1406
3. Oversight, Accountability, Awareness .....	1409
4. Interaction With Court/Government Officials.....	1412

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5. Direct Action .....	1413
III. BEYOND THE LAW .....	1415
CONCLUSION.....	1420

## INTRODUCTION

*“[E]ven if you know all your rights and you are 100% on the right side of the law, it’s not really going to matter if your landlord has four attorneys and you show up in court against them, right? Even if you get a Legal Aid lawyer, like bless them, they’re doing the Lord’s work, but you know, they’re just out gunned. So, in terms of the legal system . . . [it’s] woefully inadequate . . . .”*

— Tom, Tenant Organizer<sup>1</sup>

In the United States, the civil legal system is underfunded and overwhelmed.<sup>2</sup> There is no constitutional right to legal representation in civil courts.<sup>3</sup> Nevertheless, the Charter of the Organization of American States contains rights to civil legal aid.<sup>4</sup> Moreover, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have found that full protection of human rights requires states to guarantee adequate access to counsel and civil legal aid.<sup>5</sup> Notwithstanding such directives, in 2017, low-income Americans received limited or no legal help for more than one million eligible civil legal problems, even after

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1. Interview with Tom, Tenant Organizer, Cal. (Apr. 2021). Throughout this Essay, the identities of interviewees are protected by omitting their names, specific organizational affiliations, and other potential identifying information.

2. See Legal Servs. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 9 (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/AZD3-YLYR>] [hereinafter LSC, *The Justice Gap*] (“This ‘justice gap’—the difference between the civil legal needs of low-income Americans and the resources available to meet those needs—has stretched into a gulf. State courts across the country are overwhelmed with unrepresented litigants.”).

3. See *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 26–27 (1981) (denying a right to counsel in civil cases); cf. *Gideon v. Wainwright*, 372 U.S. 335, 342–45 (1963) (guaranteeing a right to counsel for indigent criminal defendants).

4. See Charter of the Organization of American States art. 45, opened for signature Apr. 30, 1948, 2 U.S.T. 2394, 1609 U.N.T.S. 119 (entered into force Dec. 13, 1951); see also Zachary H. Zarnow, *Obligation Ignored: Why International Law Requires the United States to Provide Adequate Civil Legal Aid, What the United States Is Doing Instead, and How Legal Empowerment Can Help*, 20 *Am. U. J. Gender Soc. Pol’y & L.* 273, 281 (2011) (highlighting that the United States is bound by the Charter of Organization of American States to provide civil legal aid).

5. See *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.129, doc. 4 ¶¶ 51–65 (2007); see also Jamila Michener, *Power From the Margins: Grassroots Mobilization and Urban Expansions of Civil Legal Rights*, 56 *Urb. Affs. Rev.* 1390, 1393 (2020) [hereinafter Michener, *Power From the Margins*].

seeking help from legal aid organizations.<sup>6</sup> The vast majority of these problems (85–97%) remained unaddressed because legal aid organizations lacked available resources.<sup>7</sup> Signaling the extent and severity of this problem, the World Justice Project’s Rule of Law Index 2021 ranked the United States 41 out of 139 countries with respect to the access and affordability of civil courts.<sup>8</sup>

As the opening epigraph suggests, even while civil legal attorneys are “doing the Lord’s work,” they contend with resource deficiencies that leave them “outgunned.”<sup>9</sup> In the face of these limitations, grassroots organizations emerge as fundamental institutions that navigate within the civil legal system and push for change outside of it.<sup>10</sup> These community-based organizations work to expand civil legal rights, provide support to people with civil legal problems, and build power within racially and economically marginalized communities.<sup>11</sup> This Essay examines the ways that local tenant organizations engage the civil legal system. Though tenant groups do not primarily focus on legal aid, the people they organize face housing problems that are marked by clear legal dimensions.<sup>12</sup> As such, tenant organizations operate in relation to courts, lawyers, and the law.<sup>13</sup>

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6. See LSC, *The Justice Gap*, *supra* note 2, at 13–14.

7. *Id.*

8. World Justice Project: Rule of Law Index 2021, at 171 (2021), <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf> [<https://perma.cc/Y3V3-XD36>].

9. Interview with Tom, *supra* note 1.

10. See Michener, *Power From the Margins*, *supra* note 5, at 1391.

11. See Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 *Yale L.J.* 552, 553–54 (2021) (noting the influence of grassroots organizations on the law); Jamila Michener & Mallory SoRelle, *Politics, Power, and Precarity: How Tenant Organizations Transform Local Political Life*, 11 *Int. Grps. & Advoc.* 209, 210 (2022) (“[C]ollective organizing among people fighting precarious and insecure housing is occurring in localities across the country. Not only does this organizing produce political opportunities for individuals, it also structures the realities of local politics.”); Michener, *Power From the Margins*, *supra* note 5, at 1414 (arguing that grassroots community organizations can expand access to the civil legal system).

12. For example, tenant organizations work with renters facing eviction, substandard housing conditions, inadequate disability accommodations, and other housing problems often adjudicated through legal processes. See, e.g., Hassan Kanu, *D.C. Renters’ Lawsuit is a Blueprint for Tenant Organizing*, *Reuters* (July 22, 2021), <https://www.reuters.com/legal/transactional/dc-renters-lawsuit-is-blueprint-tenant-organizing-2021-07-22/> (on file with the *Columbia Law Review*).

13. See Richard H. Caulfield, *Tenant Unions: Growth of a Vehicle for Change in Low-Income Housing*, 3 *U.C. Davis L. Rev.* 1, 1 (1971) (“Tenants have been organizing into unions in order to strengthen their position in relation to their landlords. . . . The common law has long been heavily weighted in favor of the landlord as opposed to the residential tenant . . . [and] [s]tate courts have long adhered to . . . the common law.”); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 *Calif. L. Rev.* 2133, 2137–40 (2007) (describing how nonlegal local organizations use the law and lawyers—often outside of the traditional legal process—to effectuate change).

This Essay demonstrates the five main mechanisms through which tenant organizations engage the civil legal system: (1) partnerships and collaborations with lawyers and legal organizations, (2) the provision of court support to tenants in need, (3) oversight of court processes, (4) interaction with court and government officials, and (5) direct action to disrupt court practices and outcomes. Identifying and understanding these mechanisms advances knowledge of an important avenue through which ordinary people within race–class subjugated communities<sup>14</sup> can exercise agency within civil legal processes that can be alienating, difficult, and disempowering.<sup>15</sup> Going beyond these five mechanisms of direct engagement with civil legal processes, tenant organizations also pick up where the civil legal system leaves off,<sup>16</sup> filling some of the gaping chasms that civil law leaves exposed,<sup>17</sup> and pushing toward structural change in policy.<sup>18</sup> In these ways, local organizations build toward new possibilities and plant seeds of transformed power dynamics in the American political economy.<sup>19</sup> Ultimately, tenant organizations participate in civil legal processes in ways that buttress democracy.<sup>20</sup>

The remainder of this Essay proceeds as follows: As background, Part I contextualizes the role of (nonlegal) local organizations in civil legal processes and posits housing as a key arena for understanding how such organizations engage the civil legal system. Part II draws on in-depth qualitative interviews to detail the five ways that local organizations work within the civil legal system and to mark the limits of their ability to do so. Part III considers the democratic implications of local organizations as key institutions operating within and beyond the civil legal structures.

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14. Professors Joe Soss and Vesla Weaver coined the phrase “race–class subjugated.” Such language recognizes that “race and class are intersecting social structures . . . that defy efforts to classify people neatly.” Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 *Ann. Rev. Pol. Sci.* 565, 567 (2017).

15. See Jamila Michener, *You Planted a Seed: Legal Problems as Power Building Possibilities*, *Law & Pol. Econ. Project* (July 15, 2020), <https://lpeproject.org/blog/you-planted-a-seed-legal-problems-as-power-building-possibilities/> [<https://perma.cc/77WD-EPT9>] [hereinafter Michener, *Legal Problems as Power Building*].

16. Caulfield, *supra* note 13, at 2 (“Tenant unions are enabling tenants to work within the common law, using the housing codes, to improve their living conditions.”).

17. See Stephen C. Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act 4–13* (1995) (explaining the limitations of federal statutes in effectuating structural change).

18. See Michener, *Power From the Margins*, *supra* note 5, at 1414 (arguing that grassroots community organizations can expand access to the civil legal system).

19. Michener, *Legal Problems as Power Building*, *supra* note 15.

20. See Michener & SoRelle, *supra* note 11, at 214 (“[T]enant organizations carve out a distinctive space in local politics by building power around the concerns of economically and racially marginalized communities.”).

## I. BACKGROUND

A. *The Organizational Infrastructure of the Civil Legal System*

A variety of organizations play primary roles in civil legal processes. Most centrally, legal aid organizations provide services to people with civil legal problems.<sup>21</sup> Though access to civil legal representation in the United States remains painfully insufficient,<sup>22</sup> the scant access that does exist is largely delivered through legal aid organizations funded by Legal Services Corporation (LSC).<sup>23</sup> Prior to the development of LSC, civil legal assistance to low-income people flowed through a hodgepodge of under-resourced and inadequate channels, including individual lawyers working on a pro bono basis, philanthropic legal aid societies, and municipal funding.<sup>24</sup> In 1974, Congress passed the Legal Services Corporation Act to create LSC, a private, nonprofit corporation tasked with ensuring equal access to justice under the law for all Americans.<sup>25</sup> LSC is the largest funder of civil legal aid for low-income Americans in the nation.<sup>26</sup> It operates as an independent nonprofit entity that distributes federal funds to “132 independent nonprofit legal aid programs with more than 800 offices.”<sup>27</sup>

LSC directs vital legal resources to low-income Americans across the country. Though LSC-funded organizations occupy a significant place in the civil legal system, they are also severely constrained by a variety of federal decrees.<sup>28</sup> For example, LSC grantees are restricted in the cases they can pursue (e.g., class action lawsuits are not permitted).<sup>29</sup> They are also limited in the clients they can take on (e.g., undocumented immigrants

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21. See generally Michael Givel, *Legal Aid to the Poor: What the National Delivery System Has and Has Not Been Doing*, 17 *St. Louis U. Pub. L. Rev.* 369, 369–75 (1998) (discussing legal aid organizations’ evolving goals and funding sources).

22. See LSC, *The Justice Gap*, supra note 2, at 6 (reporting that LSC lacks the resources to assist with a majority of low-income Americans’ civil legal problems).

23. See Legal Servs. Corp., *By the Numbers: The Data Underlying Legal Aid Programs* 11 (2020), <https://www.lsc.gov/our-impact/publications/numbers> [<https://perma.cc/8AK3-BE6G>] [hereinafter LSC, *Legal Aid Programs 2020*] (reporting that LSC provided funding grants to 132 different legal service organizations in 2020).

24. See Felice Batlan, *Women and Justice for the Poor: A History of Legal Aid, 1863–1945*, at 4–5 (2015) (describing the proliferation of legal aid organizations in the United States in the late 1800s); Gary Bellow, *Legal Aid in the United States*, 14 *Clearinghouse Rev.* 337, 337–45 (1980); Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 *Fordham Urb. L.J.* 1213, 1213–44 (2002).

25. *Legal Services Corporation Act*, Pub. L. No. 93-355, 88 Stat. 378 (1974).

26. LSC, *Legal Aid Programs 2020*, supra note 23, at 11.

27. *Who We Are*, Legal Servs. Corp., <https://www.lsc.gov/about-lsc/who-we-are> [<https://perma.cc/AJS3-F9MB>] (last visited Feb. 19, 2022).

28. See infra notes 29–31 and accompanying text.

29. William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation From the 1960’s to the 1990’s*, 17 *St. Louis U. Pub. L. Rev.* 241, 261 (1998).

are excluded except under specific conditions).<sup>30</sup> Similarly, the resources at their disposal are also minimal since congressional appropriations to LSC vary from year to year and local legal organizations must apply for funding on a competitive basis.<sup>31</sup>

Beyond LSC-funded legal aid, other kinds of legal organizations play smaller but critical roles in the civil legal system. Public interest law organizations (PILOs) use law as an instrument for social justice by providing legal representation to marginal and unrepresented interests in court or administrative agency proceedings concerning important public policy issues.<sup>32</sup> PILOs are civil society institutions with an explicitly legal focus that operate on a wide scale to catalyze change through legal structures.<sup>33</sup> PILOs help to enforce civil rights law,<sup>34</sup> use legal strategies to put otherwise neglected issues on the public agenda,<sup>35</sup> and forefend against oppression of disadvantaged minority groups.<sup>36</sup> Importantly, PILOs work alongside and sometimes within larger social movements.<sup>37</sup>

Social movement organizations (SMOs) are another distinct organizational form that can be inclusive of PILOs but also extend beyond them.<sup>38</sup> Social movements, organizations, and civil law are interconnected

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30. Amanda Baran, *The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims*, 40 *Clearinghouse Rev.* 534, 534 (2007).

31. See Quigley, *supra* note 29, at 241–61.

32. See Catherine Albiston, Su Li & Laura Beth Nielsen, *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 *Law & Soc. Inquiry* 990, 990 (2017) (noting the importance of PILOs in “providing access to justice in the United States”); Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 *N.C. L. Rev.* 1591, 1595 (2006) (suggesting that PILOs “provide legal representation to interests that historically have been unrepresented or underrepresented in the legal process”).

33. See Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 *Stan. L. Rev.* 2027, 2029 (2007) (“[P]ublic interest legal organizations . . . use law to achieve social objectives.”).

34. See Catherine Albiston, *Democracy, Civil Society, and Public Interest Law*, 2018 *Wis. L. Rev.* 187, 187 [hereinafter Albiston, *Democracy*] (“Public interest law organizations . . . have vindicated public values by enforcing civil rights laws.”).

35. *Id.* at 189.

36. *Id.* (“They also help prevent majoritarian oppression of disfavored and disadvantaged groups, such as welfare recipients, LGBT individuals, and religious and ethnic minorities.”).

37. See Catherine R. Albiston & Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 *Law & Soc. Inquiry* 62, 70 (2014) (noting “public interest law [is] . . . a legitimate and powerful means for political interests and social movements to further their goals”); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 *Calif. L. Rev.* 1879, 1922 (2007) (noting that public interest organizations “act as intermediaries between movements and the state”).

38. Albiston, *Democracy*, *supra* note 34, at 188 (suggesting that such organizations can help shape civil society through legal influence).

in manifold ways.<sup>39</sup> Social movement groups use test-case litigation to prompt legislative change, often make legal change the centerpiece of their mobilization efforts, and can help to generate the social conditions that make legal claims politically salient and legible.<sup>40</sup>

Taken together, legal aid organizations, PILOs, and SMOs are distinct (though sometimes overlapping) components of the organizational infrastructure of the civil legal system.<sup>41</sup> Yet, these do not capture the full range of organizational types in the civil legal sphere. This Essay highlights an additional organizational form: nonlegal local organizations that engage civil legal processes while working in communities where civil legal problems are a significant challenge. Such organizations are different from legal aid organizations, PILOs, and SMOs because they are not primarily focused on law<sup>42</sup> and they work within but also outside of social movements.<sup>43</sup>

This Essay highlights a specific set of nonlegal local organizations: tenant groups. Tenant organizations are distinguished by a constellation of characteristics including an emphasis on: (1) building power at the grassroots level (as opposed to legal or political advocacy within elite institutions), (2) financial autonomy from government and philanthropic sources, and (3) organizing for political change within and outside of formal legal channels.<sup>44</sup> Tenant groups are an apt example of how local organizations engage civil legal processes and to what democratic end.

#### B. *Housing and the Civil Legal System*

Tenant organizations are an instructive lens through which to examine civil legal processes because housing is a major civil legal domain. Problems with rental housing are among the most common civil legal

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39. See Paul Burstein, *Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity*, 96 *Am. J. Socio.* 1201, 1202 (1991) (discussing the use of equal employment opportunity laws in the struggle for racial and gender equality); Lauren B. Edelman, Gwendolyn Leachman & Doug McAdam, *On Law, Organizations, and Social Movements*, 6 *Ann. Rev. L. & Soc. Sci.* 653, 654 (2010) (examining the “complex interplay among social movements, organizations, and law”); Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 *Ann. Rev. L. & Soc. Sci.* 17, 17 (2006) (discussing the general legal mobilization approach that describes the relationship between law and social movements).

40. See Burstein, *supra* note 39, at 1202 (discussing how litigation is used to fight for equal opportunity employment); Edelman et al., *supra* note 39, at 657 (commenting that test-case litigation is an important tool for lobbying by movement activists); McCann, *supra* note 39, at 23 (noting that litigation is often used as a tool for political movement).

41. See *supra* notes 21–40 and accompanying text.

42. See Michener & SoRelle, *supra* note 11, at 226–30 (illustrating how tenant organizations are focused on influencing local politics).

43. *Id.* at 226–28.

44. *Id.* at 214 (identifying key characteristics of tenant organizations as “emphasizing power building over advocacy, autonomy over financial security, and deep organizing over superficial activism”).

problems.<sup>45</sup> Roughly 29% of households surveyed experienced at least one housing-related legal issue in 2017.<sup>46</sup> In 2020, contract cases made up over 41% of all civil cases.<sup>47</sup> Landlord–tenant disputes are generally one of the most common types of contract cases.<sup>48</sup> Beyond these numbers, the fundamental significance of housing as a civil legal arena stems from its pivotal role in everyday life and its predominant place in a larger political economy rife with precarity, inequity, and contestation.<sup>49</sup>

There are more than forty-four million renter households in the United States; for many of them, housing is the single largest expense.<sup>50</sup> Housing costs have been on a steep years-long incline.<sup>51</sup> Rental markets have seen a rising number of high-cost units, while low-cost units have declined.<sup>52</sup> As a result, rental prices have peaked while vacancy rates have bottomed out.<sup>53</sup> These market realities have severe repercussions in the lives of renters. In 2019, 46% of renter households (20.4 million) were cost burdened, paying in excess of 30% of their incomes toward rent and nearly a quarter of renter households (10.5 million renters) were severely cost burdened, spending more than half their incomes on housing.<sup>54</sup> People living in or near poverty were hit the hardest: More than 80% of renters

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45. See LSC, *The Justice Gap*, *supra* note 2, at 22 (noting that “common categories of civil legal problems include rental housing”).

46. *Id.*

47. CSP STAT Civil: Incoming Caseload Composition—Civil, Ct. Stat. Project, <https://www.courtstatistics.org/csp-stat-nav-cards-first-row/csp-stat-civil> [<https://perma.cc/8MML-MXVH>] (last visited Feb. 19, 2022).

48. See Nat’l Ctr. for State Cts., *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, at iii (2015), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/13376/civiljusticereport-2015.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf) [<https://perma.cc/7AJB-SHUD>] (noting that landlord–tenant cases made up 29% of contract cases between 2012 and 2013).

49. Peter Marcuse & David Madden, *In Defense of Housing: The Politics of Crisis* 5, 48 (2016) (noting that “[h]ousing inevitably raises issues about power, inequality, and justice in capitalist society”).

50. Drew DeSilver, *As National Eviction Ban Expires, a Look at Who Rents and Owns in the U.S.*, *Pew Rsch. Ctr.* (Aug. 2, 2021), <https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/> [<https://perma.cc/GX9X-55E2>]; see also *Pew Charitable Trs., Household Expenditures and Income: Balancing Family Finances in Today’s Economy* 5 (2016), [https://www.pewtrusts.org//media/assets/2016/03/household\\_expenditures\\_and\\_income.pdf](https://www.pewtrusts.org//media/assets/2016/03/household_expenditures_and_income.pdf) [<https://perma.cc/N6WC-JN7J>] (noting that housing obligations accounted for the largest share of household pretax income).

51. See *Joint Ctr. for Hous. Stud. of Harv. Univ., The State of the Nation’s Housing 2021*, at 4 (2021), [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_State\\_Nations\\_Housing\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf) [<https://perma.cc/EXE7-XTP6>] (noting that despite ten years of growth and low unemployment rates, the share of renter households with cost burdens remained close to the 2011 high).

52. *Id.* at 26.

53. *Id.* at 26–27.

54. *Id.* at 4.



earning less than \$25,000 were cost burdened in 2019.<sup>55</sup> People of color were also disproportionately affected: 54% of Black renters and 52% of Latino renters were cost burdened in 2019, compared to 42% of white renters.<sup>56</sup> The pandemic brought the precarity and volatility of the rental housing market into even sharper relief: Nearly a quarter of renters earning less than \$25,000 fell behind on rent in the year following March 2020, including 29% of Black renters, 21% of Latino renters, and 11% of white renters.<sup>57</sup>

The scarcity and cost of housing inhibits tenants from exiting predatory, substandard, or otherwise adverse housing conditions.<sup>58</sup> Such circumstances reflect a political economy marked by unequal “relationships of power” between those who profit from housing (landlords, speculators, investors, etc.) and those who rely on it for their survival (tenants).<sup>59</sup> At the same time, housing can foster solidarity and collective action. Tenants are a recognizable class of people who are relatively easy to locate and regularly come into contact with one another.<sup>60</sup> Tenancy creates opportunities to develop social bonds and communicate grievances, while it embeds people in specific places where they can be found by groups seeking to mobilize and organize them.<sup>61</sup> This renders residential spaces sites for “organizing citizenship, . . . solidarities, and politics.”<sup>62</sup>

Given this context, it is not surprising that local organizations get involved in processes of obtaining, retaining, protecting, and securing housing with tenants. For example, one body of research has examined the role of nonprofit advocacy organizations.<sup>63</sup> Another focus of scholar-

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55. *Id.*

56. *Id.*

57. *Id.*

58. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. Pol. Econ.* 416, 416–24 (1956).

59. Marcuse & Madden, *supra* note 49, at 89 (“Housing preeminently creates and reinforces connections between people, communities, and institutions, and thus it ultimately creates relationships of power.”).

60. See *id.* at 12 (“[H]ousing structures the way that individuals interact with others, with communities, and with wider collectives. Where and how one lives decisively shapes the treatment one receives by the state and can facilitate relations with other citizens and with social movements.”).

61. See Michener & SoRelle, *supra* note 11, at 212.

62. Marcuse & Madden, *supra* note 49, at 12.

63. See David J. Erickson, *Community Capitalism: How Housing Advocates, the Private Sector, and Government Forged New Low-Income Housing Policy*, 18 *J. Pol. Hist.* 167, 168–95 (2006) (tracing “the history of how the federal government began to use decentralized funding tools to finance local networks of nonprofits and private businesses to build housing for low-income tenants”); Anaid Yerena, *Strategic Action for Affordable Housing: How Advocacy Organizations Accomplish Policy Change*, *J. Plan. & Rsch.*, Sept. 2019, at 1 (describing how “advocacy organizations (AOs) have grown to play a prominent role in coming up with proposals to address the lack of affordable housing and become more adept at navigating between sectors”); Anaid Yerena, *The Impact of Advocacy Organizations on Low-Income Housing Policy in U.S. Cities*, 51 *Urb. Affs. Rev.* 843, 844

ship has been on the organized activities of residents within public housing.<sup>64</sup> Yet other literature studies tenant organizations.<sup>65</sup> This Essay picks up on the latter corpus by bringing knowledge about the activities of tenant organizations to bear on understanding civil legal processes.

Civil legal institutions are profoundly affected by the political economy of housing detailed in this section. For example, civil courts see increasing caseloads and overflowing dockets when tight housing markets create conditions that spike evictions or when policy decisions circumscribe such possibilities (i.e., eviction moratoria).<sup>66</sup> Similarly, legal aid organizations have increased capacity when Congress appropriates more funds to LSC, and they may see increased demand when states or localities expand civil legal rights (e.g., right to counsel).<sup>67</sup> Civil legal institutions must deal with and respond to changing political, economic, and policy contexts.<sup>68</sup> Yet, they have limited levers to directly influence those contexts.<sup>69</sup> Tenant organizations set their sights on systems change, often with

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(2015) (discussing how advocacy organizations address affordable housing needs through social mobilization).

64. See Roberta M. Feldman & Susan Stall, *The Dignity of Resistance: Women Residents' Activism in Chicago Public Housing* 3 (2004) (illustrating the struggles of tenants in South Side, Chicago); Amy L. Howard, *More Than Shelter: Activism and Community in San Francisco Public Housing*, at xix (2014) (investigating how "groups of low-income residents refashioned federal housing, rebuked stigmas, and fought for a modicum of control to create homes for themselves and their families"); Akira Drake Rodriguez, *Diverging Space for Deviants: The Politics of Atlanta's Public Housing* 3 (2021) (examining the role of public housing tenant associations in Atlanta); Rhonda Y. Williams, *The Politics of Public Housing: Black Women's Struggles Against Urban Inequality* 8 (2004) (examining "the texture and changing nature of poor black women's activist experiences"); Danya E. Keene, "We Need to Have a Meeting": Public Housing Demolition and Collective Agency in Atlanta, Georgia, 26 *Hous. Pol'y Debate* 210, 211–12 (2016) ("[U]sing in-depth interviews to examine accounts of civic engagement and tenant activism among former public housing residents in Atlanta.").

65. See, e.g., Stella Capek & John I. Gilderbloom, *Community Versus Commodity: Tenants and the American City* 6–8 (1992); Ronald Lawson, *The Tenant Movement in New York City: 1904–1984*, at 1–2 (1986); Peter Marcuse, *The Rise of Tenant Organizations*, in *Housing Urban America* 51, 51–56 (Jon Pynoos, Robert Schafer & Chester W. Hartman eds., 2d ed. 1980); Peter Dreier, *The Status of Tenants in the United States*, 30 *Soc. Probs.* 179, 179–81 (1982); Peter Dreier, *The Tenants' Movement in the United States*, 8 *Int'l J. Urb. & Reg'l Rsch.* 255 (1984); Michener & SoRelle, *supra* note 11, at 211–13; Anne B. Shlay & Robert R. Faulkner, *The Building of a Tenants Protest Organization: An Ethnography of a Tenants Union*, 12 *Urb. Life* 445, 445–48 (1984).

66. See, e.g., Kelsy Kershaw, *Evictions Ramp Up in States as Pandemic Moratoriums Come to an End*, NBC News (Jan. 12, 2022), <https://www.nbcnews.com/news/us-news/evictions-ramp-states-pandemic-moratoriums-come-end-rcna11953> [<https://perma.cc/3EFQ-XM5X>].

67. See, e.g., Marco Poggio, *Eviction Crisis Will Put NYC's Right to Counsel to the Test*, Law360 (Aug. 22, 2021), <https://www.law360.com/articles/1407852/eviction-crisis-will-put-nyc-s-right-to-counsel-to-the-test> [<https://perma.cc/26HW-QZ9F>].

68. See *supra* notes 66–67.

69. PILOs are an exception insofar as they focus on effecting policy change. See *supra* notes 34–36.

a particular emphasis on the local level.<sup>70</sup> But while pursuing such change, they encounter people who are traversing civil courts and Legal Aid offices: people being threatened with the loss of their homes, harassed by their landlords, refused disability accommodations, relegated to substandard living conditions, and much more.<sup>71</sup> Though tenant organizations aim to build collective power for large scale change, they cannot ignore the tangible legal needs of the tenants they work with. As a result, they become involved in civil legal processes.<sup>72</sup> This makes them critical yet easily overlooked civil legal institutions. To support that claim, Part II delineates and illustrates the precise mechanisms through which tenant organizations engage civil legal processes.

## II. MECHANISMS OF ENGAGING THE CIVIL LEGAL SYSTEM—AND BEYOND

### A. *Overview of Mechanisms*

The subsequent sections of this Essay underscore and elaborate on five mechanisms by which tenant organizations engage civil legal processes: (1) by collaborating with legal aid organizations, (2) by providing court support to tenants facing eviction or other legal problems, (3) by observing and collecting data on court processes to provide oversight and accountability, (4) by interacting with court officials (e.g., judges) and law enforcement officials (e.g., sheriffs who enforce evictions) to influence their decisions, and (5) by taking direct action to disrupt court practices and outcomes.

### B. *Identifying the Ways Local Organizations Engage Civil Legal Processes*

The five mechanisms described in this Essay were identified through extensive in-depth interviews with people from tenant organizations around the country. This “bottom-up” approach to generating knowledge privileges the voices of people and organizations in race–class subjugated

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70. The proximate setting of contestation over housing is local. In the larger scheme of U.S. federalism, housing policy is historically the prerogative of local actors. States sometimes use their power to place constraints on localities (e.g., preemption of local rent control laws) and the federal government offers “people-based” housing resources to support low-income denizens (e.g., the Housing Choice Voucher Program), but many of the most consequential decisions about housing are local. See Jessica Trounstine, *Segregation by Design: Local Politics and Inequality in American Cities* 3–5 (2018); Prentiss Dantzer, *Exclusionary Zoning: State and Local Reactions to the Mount Laurel Doctrine*, 48 *Urb. Law.* 653, 653–73 (2016); John Kincaid, *From Cooperation to Coercion in American Federalism: Housing, Fragmentation, and Preemption, 1780–1992*, 9 *J.L. & Pol.* 333, 333 (1992).

71. See Michener, *Power From the Margins*, *supra* note 5, at 1398–407 (citing examples).

72. Michener & SoRelle, *supra* note 11, at 229–30 (describing tenant groups shutting down eviction court).

communities.<sup>73</sup> To stress the imperative of “centering the voices of those at the margins,”<sup>74</sup> the following sections of this Essay quote tenant organizers at length in their own words.<sup>75</sup> Instead of attempting to be a “voice for the voiceless” by paraphrasing the sentiments of tenant organizers, this Essay leverages the voice that tenants already have by directly conveying their statements.<sup>76</sup> This general method is consistent with a vision of drawing on the knowledge of people and organizations with lived experiences in an effort to “shape problem solving around community knowledge.”<sup>77</sup>

The interview quotes referenced in the pages to follow are based on in-depth conversations with forty-six people from thirty-eight tenant organizations spread across twenty-one states and thirty-three localities.<sup>78</sup> Interview participants were selected via a multi-step process that began with identifying a wide range of tenant organizations through systematic searches across several platforms (Facebook, Twitter, GuideStar, Google) using the words “tenant” and “renter.” After finding a baseline set of organizations (approximately fifty), a virtual snowball technique led to additional organizations.<sup>79</sup> Upon identifying and contacting 134 tenant organizations across the country, interviews were conducted with members of thirty-eight organizations.<sup>80</sup> This means that 30% of identified organizations were part of the final pool of participants.<sup>81</sup>

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73. Jamila Michener, Mallory SoRelle & Chloe Thurston, *From the Margins to the Center: A Bottom-Up Approach to Welfare State Scholarship*, 20 *Persps. on Pol.* 154, 155–57 (2020).

74. *Id.* at 161.

75. *Infra* sections II.B.1–.5.

76. See Tyler Huckabee, *The Trouble With Being a ‘Voice for the Voiceless’*, (Apr. 27, 2021), <https://relevantmagazine.com/current/stop-being-voice-voiceless/> [<https://perma.cc/QBJ9-RNEA>].

77. Gerald P. Lopez, *Shaping Community Problem Solving Around Community Knowledge*, 79 *N.Y.U. L. Rev.* 59, 59 (2004).

78. The states spanned a wide geographic range including the Northeast, Southeast, Northwest, Southwest, Midwest, and Mid-Atlantic. Similarly, the localities in the study were heterogeneous, ranging from big cities like New York, Los Angeles, Philadelphia, and Chicago to mid-sized cities like Oakland, to smaller cities, counties, and localities. Most of the organizations were in urban areas, but a handful (approximately six) were in areas with significant rural populations.

79. This involved reviewing organizations’ websites and social media for any mention of additional organizations. For an explanation (and evaluation) of this technique, see Mario Luis Small, *‘How Many Cases Do I Need?’: On Science and the Logic of Case Selection in Field-Based Research*, 10 *Ethnography* 5, 14 (2009).

80. The list of identified organizations is not complete in its coverage, but it is wide-ranging and thorough. Since tenant organizations are oriented toward building power, many of them want to be found. This gives them an incentive to be visible on the internet and on social media. It is likely that many tenant organizations doing discernable work in local communities were sufficiently visible to be identified via our systematic sweep of a wide variety of platforms.

81. While these numbers may sound low from a sampling-based statistical perspective, they are sufficient for in-depth qualitative research. This research is based on case study

The interviews occurred via Zoom or over the phone, whichever method the participants preferred—the vast majority opted for Zoom—and lasted an average of fifty-six minutes.<sup>82</sup> They were semi-structured and based on a short interview guide that left leeway so that conversations could unfold organically. Interviewees were asked about organizational origins, activities, structure, and challenges. Most importantly for the purposes of this Essay, interviewees were asked how their tenant organizations engaged with legal and political systems. All interviews were recorded and transcribed. The transcripts were then uploaded into a web-based, qualitative software program called Dedoose,<sup>83</sup> which facilitated several rounds of systematic coding.<sup>84</sup>

Coding the qualitative interviews revealed five mechanisms through which tenant organizations participated in civil legal processes. The rest of this Part draws directly on the interviews to elaborate on and explore the core logics of each of these mechanisms.

1. *Collaboration.* — One of the most common responses that tenant organizations gave when asked about their relationship(s) to the civil legal system was to highlight collaborations with legal aid organizations. While legal scholars have considered the relevance and role of collaboration from the vantage point of lawyers engaging in “collaborative lawyering,” these conversations with tenant organizations surfaced the significance of collaboration from the vantage point of tenants living in race–class subjugated communities.<sup>85</sup> For example, Ali, a tenant leader in a large

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logic as opposed to sampling logic. See Small, *supra* note 79, at 11–15, 25 (“Sampling logic is superior when asking descriptive questions about a population; case study logic is probably more effective when asking how or why questions about processes unknown before the start of the study.”). The goal was not to get a “representative sample” of tenant organizations; the aim was to get a range of organizational cases. *Id.* at 13 (“For many questions of interest to interview-based researchers in the social sciences, sampling for range is more effective.”). A key indicator that there were enough interviews was reaching the point of saturation—where additional cases did not reveal new information. *Id.* at 25.

82. Most interviews were with one participant, but sometimes multiple organization members would join the Zoom call (up to four at one time). Moreover, some people would refer other members of their organization to speak to us, so on numerous occasions different people from the same organization were interviewed separately.

83. Dedoose allows for comprehensive and systematic coding to identify main themes and catalogue interview excerpts. See Features, Dedoose, <https://www.dedoose.com/home/features> [<https://perma.cc/3XJT-G4UG>] (last visited Mar. 14, 2022).

84. The first round of coding was based on an original list of very broad codes drawn from the main questions asked in the interviews. These codes included things like: “origins” (how organizations began), “activities” (what organizations did), “challenges” (what difficulties organizations faced), “political context” (how organizations understood and responded to the political system), and “organizational structure” (how organizations described their own structures). Subsequent rounds of coding included selective coding that attended specifically to any mention of law, courts, and the legal system. All the coding for this project was done by a single researcher, so intercoder reliability was not a concern.

85. See Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 *Clinical L. Rev.* 541, 544 (2006) (noting that collaborative lawyering is “an approach to prac-

southern city noted the following about the role of legal aid when her group was putting together guidelines to help tenants who were being evicted:

We had like [City] Legal Aid to help us with the legal jargon of it and all of that. So, they would tell us you can't put that in there. You can say this, but you can't say that. That's illegal. We can't say this, you know, all of that.<sup>86</sup>

To stay on the right side of the law, tenant organizations must toe the line between offering help to people with civil legal problems and offering legal advice—the latter is restricted.<sup>87</sup> Collaboration with legal aid helped them to find the proper balance. Aria, a tenant organizer from Texas toed a similar line and recognized some of the complexities in her organizations' collaboration with legal aid:

So [the Legal Aid] connection is very tricky, of course, because of all the rules they have to follow and all the [federal] money they get. And so our first connection with Legal Aid was just a legal aid lawyer who just cares and he would do like a couple talks about you know, like what's happening with the eviction crisis, like explaining certain state programs. He did that as like a private citizen. He couldn't really attach Legal Aid's name to it. And then, there's one specific court in [a big city] county that almost a third of evictions go through, because it's a court with a lot of low income areas and Legal Aid actually has an office at the Court building . . . [T]hey're there every day, setting up, and so I had a lot of contact with them in the sense that I was like going with tenants to court and shoving them into the Legal Aid room being like "I'm sure this person qualifies please help them because I can't give them the legal advice . . ."<sup>88</sup>

Notwithstanding the legally proscribed limits of LSC-funded attorneys (e.g., there are substantial restrictions concerning how they can practice law),<sup>89</sup> community organizations found consistent and wide-ranging ways of collaborating with them. For example, in addition to the courthouse lawyering described in the quote above, Aria further explains the involve-

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tice in which lawyers work collaboratively with lower-income, working-class, and of-color clients and communities in joint efforts to make social change").

86. Interview with Ali, Tenant Organizer, large southern city (Jan. 2020). Again, specific locations are sometimes masked to protect the confidentiality of research interviewees.

87. Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 *Stan. J. C.R. & C.L.* 283, 287 (2020) (noting that "legal advice in the U.S. is an activity typically restricted to licensed lawyers engaged in a lawyer-client relationship with the recipient of that advice"); see also Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 *Fordham L. Rev.* 2587, 2587–88 (2014) (providing the "first comprehensive overview of [unauthorized practice of law] enforcement practices since . . . 1981").

88. Interview with Aria, Tenant Organizer, Tex. (May 2021).

89. For details on the limitations of attorneys federally funded through LSC, see Omnibus Consolidated Recessions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321.

ment of Legal Aid in tenant-organization meetings and eviction defense training events:

So they were kind of hands off for a while but we started working with a Legal Aid community liaison and so he would come to a few of our meetings and explain “this is how we’re able to work with you. Like we can do educational events, but it has to be several other organizations, it can’t look like we’re favoring you with your socialist leaning.” And so next weekend they’re going to do an eviction event training for us and teach organizers how to represent tenants in eviction court.<sup>90</sup>

Aria’s organization built a deeper and more multifaceted collaboration with Legal Aid over time, with both parties remaining cognizant of the constraints of their work together. Sometimes, however, legal aid attorneys are more strident in their support—this is contextually contingent—and are willing to collaborate in ways that enable tenant organizations to pursue new and potentially risky strategies. For example, a large (hundreds of members) tenant union on the West Coast was looking for ways to make progress in pushing landlords to address substandard housing conditions.<sup>91</sup> Tenant organizers from the union noted that landlords would often refuse to repair or improve units, leaving housing conditions barely habitable (if at all).<sup>92</sup> At the same time, courts were very slow to address the problem, leaving tenants languishing in unlivable circumstances for long periods.<sup>93</sup> Juan, a tenant organizer, described it this way:

This question of habitability, particularly in [this city] where disinvestment is a necessary part of speculation . . . . [I]t takes so fucking long for the city and the courts to rectify a habitability situation . . . . [M]eanwhile [tenants] have to live in those situations . . . . [A]t what point will we get to the point where to be a tenants association means to collectively pool your money, stop

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90. Interview with Aria, *supra* note 88.

91. Notes of Meeting with Tenant, large West Coast city (Feb. 2021). See generally Elinor Chisholm, Philipa Howden-Chapman & Geoff Fougere, *Tenants’ Responses to Substandard Housing: Hidden and Invisible Power and the Failure of Rental Housing Regulation*, 37 *Hous. Theory & Soc’y* 139 (2020) (exploring the power dynamic between landlords and tenants, which makes it difficult for tenants to report unsafe and unhealthy housing conditions).

92. See Interview with Juan, Tenant Organizer, large West Coast city (Feb. 2021); Interview with Tanya, Tenant Organizer, large West Coast city (Feb. 2021). For more on habitability as a key issue facing tenants and motivating tenant organizing, see Julian Francis Park, *Tenant Organizing When Rising Rent Isn’t the (Main) Issue*, Shelterforce (Jan. 22, 2020), <https://shelterforce.org/2020/01/22/tenant-organizing-when-rising-rent-isnt-the-main-issue/> [https://perma.cc/S9EN-29QS].

93. See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 *Calif. L. Rev.* 389, 389 (2011) (“[A] set of obscure yet powerful doctrines deem these tenants unworthy to claim the [implied warranty of habitability] protection. Moreover, reformers left implementation to courts with neither the resources nor the inclination to transform landlord–tenant relations.”).

paying your landlord and invest in the habitability . . . [?] [T]he city is not going to do it for us, the local [tenant union] is going to do it for us.<sup>94</sup>

One way tenants might fight habitability deficiencies is by withholding rent. However, withholding rent poses a significant risk.<sup>95</sup> If a tenant withholds rent and uses that money to make repairs, they could be evicted for failure to pay and lose their home as well as the funds they invested in fixing what was broken.<sup>96</sup> But a collective withholding strategy was one potential pathway to mitigating that risk. Tanya, another tenant organizer from the same union, explained it this way:

Landlords hate it when you do your own repairs, they get really angry . . . . [E]ach of us have tried individually to do that in the past and our landlord gets really angry and [aggressive] but this is the first time we're trying to do it collectively, how do we overcome that fear together by working together? We have the legal right to make certain repairs and deduct them from our rent. The reason we haven't done that isn't because we don't know our rights it's because we haven't been organized before and we've been scared to do it.<sup>97</sup>

Most crucially, collective action was not the only thing necessary for taking this potentially perilous step to confront habitability issues. Collaboration with Legal Aid was also required for informing the substance and strategy underlying collective action strategies. For example, Tanya stressed this point as she talked about how her landlord removed all but one washing machine from her large apartment building. She and other tenants in the building were planning to pool their resources to buy additional washing machines and then deduct the costs from their rent payments. Tanya believed that such steps were justified because:

[Having so few washing machines for the building] is illegal and it's really tough during COVID. Everyone has been sick and they don't want to go out to wash their laundry . . . . [W]e have a lawyer who is willing to argue the case for that in court . . . . [W]e are no longer waiting for permission . . . . [W]e are building the confidence and trust to take risks.<sup>98</sup>

Juan echoed similar sentiments, saying:

[T]his is the first time we're talking about doing this collectively. We know we have the legal right to make certain repairs and deduct rent. And one reason we haven't done it is because of fear. And we don't really know how this is going to play out in court. We have an attorney who said he would argue it—and it's up to us whether we're going to take this risk. One of things we're

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94. Interview with Juan, *supra* note 92.

95. See Super, *supra* note 93, at 389 (“[D]eliberately withholding rent to challenge a landlord’s failure to repair is not viable for many tenants in ill-maintained dwellings . . .”).

96. *Id.*

97. Interview with Tanya, *supra* note 92.

98. *Id.*



talking about is laundry machines: there's one in the building and it's always broken, and there used to be more, but they took them away—which is illegal. For most of the pandemic, everyone has been sick. The idea we have to go out and do laundry while we're sick because the landlord is cheap is insane.<sup>99</sup>

As tenant organizers, Juan and Tanya decided on a strategy of collective risk in collaboration with a lawyer who appraised them of that risk, while also offering to represent them in court as a means of risk mitigation. In this case, Juan and Tanya approached a Legal Aid attorney for help and received enough support to embolden them to take a different strategy. Absent the support of Legal Aid, the avenue of collective action that they pursued might have been untenably risky or entirely out of reach. In this way, collaboration with Legal Aid facilitated collective action by giving tenants legal backing as they considered, managed, and confronted the risks of withholding rent to rectify habitability violations.

At times, Legal Aid initiates collaborations with tenant organizations. When civil legal attorneys exhaust their ability to help tenants using legal tools, they sometimes turn to local tenant organizations to pass the baton so that organizations can help through alternative means. Aria, the tenant organizer in Texas quoted earlier, described precisely such a situation:

[T]he complex that's going to be demolished, legal aid is actually the one who contacted us about that one. Because [the lawyer] said there's only so much [they] can do, they need a tenant association to ask for more time and for more money, because you know the lease termination bonus is only 350 and because there's a lot of people at that complex with low credit or a felony . . . 350 will not even be a fraction of the security deposit required elsewhere, and then you have two weeks to find it, you know.<sup>100</sup>

In this way, although “the lawyer is not the protagonist” in the sense that community organizations remain central, autonomous actors, lawyers do engage in reciprocal and collaborative relationships with local tenant unions, opening up space for them to act in ways they might not otherwise have acted.<sup>101</sup>

Relatedly, many interviewees emphasized how lawyers and tenant unions worked together through community lawyering arrangements.<sup>102</sup> Under such conditions, lawyers follow instead of leading. So, instead of

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99. Interview with Juan, *supra* note 92.

100. Interview with Aria, *supra* note 88.

101. See Gordon, *supra* note 13, at 2133 (“Attorneys appear as supporting players rather than main characters . . . . These lawyers . . . open up spaces for community voice and action . . . .”).

102. See Angelo N. Ancheta, *Community Lawyering*, 81 *Calif. L. Rev.* 1363, 1366 (1993) (exploring “the idea of community lawyering” within the Asian Pacific American community); Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 *Loy. J. Pub. Int. L.* 375, 376 (2013) (highlighting the varied descriptions of community lawyering).

going to a tenant union and telling them what needs to be done, community lawyering brings lawyers into deep connection with tenants and deploys them to follow the lead of tenants.<sup>103</sup> A tenant organizer from a large organization in Massachusetts described it in these terms:

[W]e work with standard legal services entities and also legal services that are connected with universities . . . . But, those lawyers have developed a practice they refer to as “Community Lawyering.” So, not only are they kind of on the right side of the issue, they’re representing the tenant not the real estate corporation, but they’re representing the tenant in a way that’s making the tenant a protagonist in their own drama. So, they’re saying, “look . . . I’m the lawyer and I’m here to advise you about your legal rights and maybe even represent you, in some cases. But, mainly I am deferring to the tenant association, I’m deferring to the members . . . . I’m deferring to the organizers to let us know what you want us to do.” And so, the law students are taught to not only bring their game because they’re [law students] . . . but to bring their good, bring their humility to working with our members and with organizers who are former members. And that is a profound thing which keeps getting renewed every year . . . .<sup>104</sup>

Collaboration between Legal Aid and tenant organizations takes numerous forms: advising on language in a document for tenants, enabling new organizing strategies, alerting tenant groups to problems they were not aware of, and community lawyering. Legal Aid works with tenant organizations in ways that leverage their complementary but distinct roles in relation to the civil legal system.<sup>105</sup> As the interviews quoted in this section show, such arrangements facilitate deeper engagement of tenant organizations with civil legal processes, allowing such organizations to collaborate with lawyers to help tenant group members with legal problems that they do not have the legal expertise to handle alone.

2. *Court Support.* — A second common mechanism that tenant organizations described as a pathway for engaging civil legal processes was court support. Courtrooms are confusing, alienating, and demoralizing places for many tenants.<sup>106</sup> Tenant organizations support their members (and would-be members) by helping them navigate courts and providing emotional, material, and informational resources along the way.<sup>107</sup> For example, Audra, a tenant organizer in Wisconsin observed the following:

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103. See Gordon, *supra* note 13, at 2137 (explaining that, in community lawyering, a lawyer’s role is not to “elbow the community group protagonist aside” but rather “to figure out how legal tactics could bolster and protect the group’s efforts to carry out the larger strategy”).

104. Interview with Tenant Organizer, Mass. (Apr. 2021).

105. See *supra* note 104 and accompanying text.

106. See Michener, *Power From the Margins*, *supra* note 5, at 10.

107. See, e.g., Mark H. Anbinder, *Ithaca Tenants Union Hopes to “Pack the Court” for Eviction Hearings Thursday*, 14850.com (Dec. 1, 2021), <https://www.14850.com/120122716>

We don't have like a lawyer in our organization, but we do have a legal advocate, and we do provide advocacy, which sometimes is just showing up to court which is on Zoom now. But sometimes just like having an advocate there from [the tenant union] can be beneficial. So, we've been doing that. And then we sometimes refer out to Legal Aid society which can provide income based legal help. And then there was a recent one that we helped a gentleman with through Legal Aid Society . . . . [W]e can refer out when needed.<sup>108</sup>

Audra points out two resources that the tenant union offered to support members in court: (1) the emotional support that comes with simply having someone present and (2) the tangible support of a referral to legal services.<sup>109</sup> Similarly, an organizer in Kentucky coupled different forms of court support, not just for members of the tenant organization but also for whomever organizers encountered in court:

In the fall I started going to eviction court. And what we would do was sit in on the court processing and wait outside the courtroom for tenants to come outside, where we would, you know, talk to them and the first thing we would do was offer to help them apply for rental assistance. The two—first, the statewide fund, and then, the [local] fund—that were available. And then we would also get their contact information, so we could follow up with them and see how they were navigating that whole process. And then also just giving them our contact information so that, in case they were having a housing emergency, they could contact us or in case they needed more resources or more help down the line. And also just kind of working with tenants, where people would tell us their stories if they were going through a really stressful time. And we would kind of see where we could potentially have an “in” to go and assist further.<sup>110</sup>

In this example, court support involves at least three components: (1) connecting tenants to options for financial assistance, (2) emotional support, and (3) bringing tenants into the fold of the tenant organization so that they could receive follow-up help and potentially be brought into tenant organizing work.

Going even further, sometimes tenant organizations offer support strategically. For instance, some organizations prioritized supporting tenants facing particularly egregious landlords. An organizer from Ohio offered this context:

The landlord we're dealing with right now, he's kind of like a national problem, I would say, he operates under, I mean, I couldn't even count all the LLCs he works through . . . . He had

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tenants-eviction-2112/ [https://perma.cc/K2BJ-LWSQ] (providing an example of how a tenants union supported renters facing eviction).

108. Interview with Audra, Tenant Organizer, Wis. (Mar. 2021).

109. *Id.*

110. Interview with Tenant Organizers, Ky. (Mar. 2021).

150 or more properties in [another city], and they were all put into receivership, basically taken away from him because he was just neglecting the buildings, and you know, the city just didn't want to deal with that. And one of his tenants reach[ed] out to us, and he basically had tried to set up a deal with her where, you know, she would work on the apartment and—because it was just in bad shape and it needed to pass inspection for Section Eight, she did a bunch of work on it, and then, when she was done, he refused to give her compensation, and then he went to evict her and somehow—I don't know how it happened—he got a favor from the court to get all her stuff set out early, and . . . this past Monday, we went to the courthouse with her because she's finally she filed a countersuit. But we just got a continuance on Monday for the case, and after that, we can, we had a like a demonstration outside the courthouse, and we're just going to keep supporting her there at the courts.<sup>111</sup>

Depending on the state context, court support can be an especially critical and strong form of intervention. Aria, the organizer from Texas, explained why Texas legal structures made court support a central part of the work of her tenant organization:

The way it works in Texas is you . . . don't have to be a lawyer to represent a tenant in an eviction hearing . . . . And then they don't make it easy at all . . . . I went to an eviction hearing yesterday with the tenant and the judge . . . . [I]t's just another world like it's so hard to understand what's going on. So we are sort of trying to help break down that process for people, because I mean, I'm nine months in, and I still have a hard time explaining . . . this new complex that I was at on Monday and up until that point like I hadn't known the difference between a notice to vacate and the lease termination notice but they're like two separate documents and you know there's like such a specific order for evicting someone. So trying to explain that, even in English and then there's tenants that English is not their first language.<sup>112</sup>

Altogether, tenant organizations articulated the logic of court support in at least four ways. First, the courtroom presence of tenant organizations was symbolically and emotionally meaningful. An organizer in Michigan underscored this by noting that “the way the law is right now, it definitely weighs in favor of landlords . . . but even if you don't have the law behind you, you still have the community and the sense of right and wrong behind you.”<sup>113</sup> The implication here is that even in the face of laws that favor landlords, the support of tenant organizations was meaningful to those navigating civil legal processes.

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111. Interview with Tenant Organizer, Ohio (Apr. 2021).

112. Interview with Aria, *supra* note 88.

113. Interview with Tenant Organizer, Mich. (Jan. 2021).

Second, having a supporter in court could also have instrumental value in terms of attempts to influence legal processes. For example, the same Michigan tenant organizer quoted above noted that “what’s really powerful is to pack the courtroom, not only does that send a message to the judge but it sends a tremendous message of support to the folks who are facing eviction.”<sup>114</sup>

Third, court support was viewed as a form of solidaristic mutual aid. Again drawing on Michigan as an example, organizers there exhorted tenants to “be available and present for folks faced with this awful possibility [of eviction].”<sup>115</sup> They encouraged members of the tenant union to show “radical hospitality.”<sup>116</sup> These sentiments aligned with many organizers’ recognition of mutual aid as a “form of political participation in which people take responsibility for caring for one another and changing political conditions.”<sup>117</sup>

Finally, court support was an organizing tool used to bring new people into tenant groups. Organizers made this clear by continually noting that courthouses were fertile ground for identifying people with legal problems and inviting them into the ranks of tenant members.<sup>118</sup> For example, organizers in one Kentucky tenants union describe how they made decisions about where to canvas for new group members: “[We] look on the court dockets to find people’s addresses . . . [T]hat’s one of the ways that we find people’s addresses. We’ll look where all the evictions have been and we’ll be, like, okay, we’re going to hit those neighborhoods.”<sup>119</sup>

As the examples offered in this section make clear, the logic of tenant organizations providing court support was motivated by ends ranging from symbolism to instrumental calculation to solidaristic aid to organizational expansion. For these and other reasons, tenant organizations invested time in legal processes despite being nonlegal organizations aimed at building power largely outside of legal systems.<sup>120</sup>

3. *Oversight, Accountability, Awareness.* — A less common but still notable mechanism through which tenant organizations engaged civil legal processes was by taking on an oversight role by heightening awareness of court activities and thus creating conditions for accountability. Accountability is a primary concern with judicial institutions.<sup>121</sup> Civil soci-

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114. *Id.*

115. *Id.*

116. *Id.*

117. Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 38 *Soc. Text* 131, 136 (2020).

118. See *supra* note 110 and accompanying text.

119. Interview with Tenant Organizers, Ky., *supra* note 110.

120. See Michener & SoRelle, *supra* note 11, at 228.

121. See James L. Gibson, *Judicial Institutions*, in *The Oxford Handbook of Political Institutions* 514, 523–29 (R.A.W. Rhodes, Sarah A. Binder & Bert A. Rockman eds., 2006) (noting that accountability is crucial attribute of many judicial institutions).

ety organizations can play a role in processes of judicial accountability.<sup>122</sup> Many tenant organizations interviewed noted that they learned much about court practices while offering court support and collaborating with Legal Aid. Such knowledge equipped them to act in an oversight capacity, generating information useful for shaping public awareness of court processes. For example, two organizers from Kentucky laid out the rationale of oversight this way:

[R]ight now, eviction court in [our] county is online, so [C] and I were going in person and now like, we have a team of [C] and . . . three other people . . . who are observing online every week . . . . [T]he data for evictions in [our] county isn't publicly available, like is true in a lot of places. And they're not responsive to open records requests. So we've been the only source of public information about what's happening in eviction court. So, like, we started tracking data about how many evictions there are per day, how many judgments, how many are for failure to appear, that sort of stuff, and publishing it on our website. And that's the only way that the news knows what numbers to report. That's the only way that anyone in the public is tracking what's actually going on with eviction court . . . . [O]ne thing that I think we've been really successful about is we've impacted the local narrative around evictions pretty strongly. And one thing that we try to emphasize is that, like, you know, a lot of the times, like when—when a lot of the times in smaller towns, smaller cities and mid-sized cities . . . that space is kind of held by kind of professional service-based organizations, rather than, like, grassroots tenant organizing spaces. And, like, you get a very different narrative depending on who is influencing that narrative.<sup>123</sup>

Organizers in Kentucky thus viewed courtroom data collection as oversight because collecting, compiling, and publicizing court patterns could produce information useful for heightening the transparency of otherwise neglected civil legal proceedings and raising public/media awareness of evictions. What's more is that tenant organizers like those from Kentucky believed that the collection and dissemination of data contributed to a distinct narrative.<sup>124</sup> Indeed, Kentucky organizers were so con-

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122. See generally Victoria Malkin, *Community Courts and the Process of Accountability: Consensus and Conflict at the Red Hook Community Justice Center*, 40 *Am. Crim. L. Rev.* 1573 (2003) (exploring the community court model by observing the development of the Red Hook Community Justice Center to extrapolate lessons for improving community courts).

123. Interview with Tenant Organizers, Ky., *supra* note 110.

124. See Manissa M. Maharawal & Erin McElroy, *The Anti-Eviction Mapping Project: Counter Mapping and Oral History Toward Bay Area Housing Justice*, 108 *Annals Am. Ass'n Geographers* 380, 384 (2018) (noting that journalists' "media interviews tended to reduce [tenants] stories to simple narratives about victimhood and loss, producing tenants as subjects of processes happening to them, rather than as actors who are intentionally contesting, resisting, and thereby also shaping such processes"); *id.* (noting that the Anti-Eviction Mapping Project, a data collecting organization/political collective sought to "counter such

vinced of the value of data collection that they were exploring alliances to make the practice possible long term:

We have recently had a meeting with an ally at another nonprofit that wants to help us, or has the vision of developing sort of a long term way . . . a long term court observation. So . . . we've kind of been collecting data as we can, just on a volunteer basis, like the data that we list on the website has a "greater-than" symbol next to it just because . . . many more evictions have taken place than we've been able to record based on just our own capacity, not being able to show up every single day, and also because of difficulties that aren't specifically our issue, so in accessibility with the courts. And so we have been trying to think of a way to make a sort of a long-term way to collect all that data. And so we've kind of been working with other allies to see if we can make that a thing.<sup>125</sup>

Beyond Kentucky, other tenant organizations were similarly pushing to improve data collection practices for the purposes of generating knowledge of civil legal processes so that tenant groups and other relevant actors could have evidence to support their claims. For example, Aria from Texas noted this:

[W]e started out wanting to jump straight into the eviction defense but we found out that eviction data is very hard to get a hold of in [this city] and when we finally got to talk to the county judge's office about it they said it's a technological issue. Like they don't have a system, they don't even know what's on the docket . . . [E]ach court maintains their own docket and they'll post it on the wall each day, but unless you physically go to the court, you don't know who's going to be evicted that day . . . [S]o that's definitely a goal of mine is to get the county judge to have a better handle [on] what's going on in his courts and be able to pull the eviction data and have the evidence to really prove what you already know is happening, you know. And we have eviction data from January 2020 until April 2021 but that took months to get and it was kind of like a private firm that did all the heavy lifting to find it because you have to harass the courts, which I don't feel bad about, but you know that's a lot of time and energy.<sup>126</sup>

As the examples throughout this section demonstrate, tenant organizations understood data collection as a mechanism for oversight insofar as organizational data production and dissemination heightened awareness of civil legal problems, contributed to public narratives, and provided evidence necessary to push for change.

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representations, cocreating and fomenting collective political analyses while building resistance").

125. Interview with Tenant Organizers, Ky., *supra* note 110.

126. Interview with Aria, *supra* note 88.

4. *Interaction With Court/Government Officials.* — The fourth mechanism identified through organizational interviews was formal interactions with political actors who play important roles in the civil legal processes. These interactions exemplify the ways civil legal organizations affect change within the legal system. Ali, the tenant organizer from a large southern city quoted earlier, described meeting with court officials in her county:

We've met with the court mediators and then we met with the chief magistrate judge of [the county] to talk about [evictions] . . . . It was very contentious . . . . I don't say that in a very aggressive like verbally contentious way. I mean the relationship of not understanding what this movement of housing justice is all about, which could have been very confusing to her. So, we came in there with people [telling us to ask] . . . so we came in there first asking, and at the end of the thing, we were like okay, when we go back and have our second meeting, there have to be some demands. But anyway, her staff was very accommodating to us and they were willing to answer the questions that we had and a lot of the questions were around all these different other entities that are involved with the whole process of eviction, you know, all the city codes, all the town codes, all the state codes that we would really have to get changed before we could even talk about changing what happens in eviction court. So, I want to say that after that meeting though, there were some options open and I think that she was a little bit more . . . open minded about this whole process. So, we had to really talk to them and open their eyes and put the real personal impact on what is this system and what eviction really means for families . . . [W]e have to put the real impact of it at the doorsteps of what happens and how do we change what happens.<sup>127</sup>

As this example demonstrates, interactions with court officials were meant to inform, educate, and influence those officials—all with an eye toward highlighting the concrete realities of legal processes in the lives of tenants.

Going further, organizers sought to make moral pleas in exerting pressure on officials, pointing beyond the details of legal doctrine to implore officials to deploy their power differently. For example, Ali also relayed meeting with the sheriff deputy who handles evictions: “We also wanted to change the way they evicted. The mamas were out. You can't put them out in inclement weather, whether it's cold or whether it's raining . . . so we also met with the sheriff deputy.”<sup>128</sup> It's notable that Ali's claim here is not about the bounds of the law but about the fundamental ethics of putting mothers outside during inclement weather.

Finally, it's also worth noting that tenant organizations sometimes met with political officials not directly related to the court or law enforcement

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127. Interview with Ali, *supra* note 86.

128. *Id.*



systems to address housing issues more broadly. Anyone with leverage over housing is a potential target. For example, one tenant group in a mid-sized midwestern city had regular meetings with mayoral candidates and ultimately the mayor. They convinced “both mayoral candidates in the end, to come to one of the worst apartment complexes in the city and sit with tenants in their home and make commitments to like be in solidarity with them” and they later “had the mayor on his first night in office sleep over in that same apartment complex.”<sup>129</sup> In this way, tenant organizations worked outside of civil legal processes in an effort to affect systemic changes that were germane to civil legal outcomes but not specific to processes that happened within courtrooms. Taken together, the different ways of and reasons for engaging political officials elaborated in this section speak to the versatility, adaptability, and creativity of tenant organizations as they responded to civil legal realities.

5. *Direct Action.* — Nonviolent direct action was the fifth mechanism that tenant organizations used to engage the civil legal system. Direct action involves participatory tactics that push beyond traditional modes of advocacy and political engagement (e.g., voting, lobbying, signing a petition, talking to a politician, doing media campaigns) by deploying the disruptive power of people in nonviolent efforts to challenge injustice and demand change.<sup>130</sup> Examples of direct action include protests, rallies, sit-ins, boycotts, strikes, and more.<sup>131</sup> Direct action is intentionally contentious: It relies on both legal and illegal “methods of noncooperation, obstruction or defiance.”<sup>132</sup> Direct action leverages “people power” to “exert pressure on governments or other powerful institutions.”<sup>133</sup> Nearly all tenant organizations used direct action as a tactic. It is notable that tenant groups mobilized this way in relation to courts and legal processes because these groups are nonlegal organizations with aims that revolve around building tenant power, not changing legal structures.<sup>134</sup> The fundamental emphasis of tenant organizations was not on reforming or improving legal processes per se, it was on advancing policies and political transformations that enable access to affordable, quality housing.<sup>135</sup> Still, because eviction is a legal process mitigated through courts<sup>136</sup> and other housing problems similarly have legal dimensions, tenant organizations

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129. Interview with Tenant Organizers, mid-sized midwestern city (Mar. 2021).

130. See George Lakey, *How We Win: A Guide to Nonviolent Direct Action Campaigning* ix (2018).

131. *Id.*

132. April Carter, *Direct Action and Democracy Today* 1 (2005).

133. *Id.* at 3, 9.

134. See Michener & SoRelle, *supra* note 11, at 219–20 (explaining that many tenant organizers were motivated by “viewpoints about power relations and social class”).

135. *Id.*

136. On some of the legal dimensions of eviction, see Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 *Soc. Forces* 316, 319–20, 323, 331 (2021).

had to orient themselves toward the law in order to be responsive to the realities of their members. For instance, an organizer in Michigan talked about being “out in front of the courthouse protesting evictions.”<sup>137</sup> Similarly, an organizer in Massachusetts described how they:

Constantly hark back to this demonstration we had on March 12th last year [2020] in front of the housing court where we demanded that the housing court be closed . . . . [T]he housing court is cheek to jowl people squeezed into rooms. And most of the people squeezed into those rooms are people of color and are putting themselves at huge danger of COVID. So, two days later they did close down the housing court. And so, then we looked for a moratorium law which we worked with various officials to get passed, and we passed what we think are the strongest moratorium law [sic] in the country.<sup>138</sup>

In these and other ways, tenant organizations targeted courts when they perceived them as a salient and central source of harm to tenants.

Organizations were creative and innovative, making both courthouses and government buildings the targets of anti-eviction direct action. Phil, an organizer in a large southern city described what his group did this way:

Some of our more militant members were like “we just got [to] shut it down . . . . [W]hat other strategy do we have, the federal government’s not coming to help us.” . . . [T]hat was also when the \$600 a week unemployment bonus was going to end so we chose late July in part because we were responding to eviction court reopening and seeing nearly 100 people being evicted every day for the first week . . . . [T]here were two components [to our action] one street theater piece to demonstrate what was going on, we wanted the media seeing us ripping the assholes of our city and state officials and actually laying out why they are responsible for any deaths to come, for anything that comes from these evictions, because they have the power to stop things . . . . [S]o basically folks said let’s do a street theater piece and afterwards let’s just pretend like we’re doing some artsy fartsy street theater piece, and then we’ll immediately go and lock up. So after we did a street theater piece people immediately went to all the entrances to chain themselves to the gates to prevent anyone from going in . . . . [W]e did that before eviction court opened . . . . [I]t was perfect timing and then basically people are chained . . . . [T]he mayor did not want something rowdy because everything that happened with George Floyd . . . so she was just like don’t mess with them, don’t mess with them, and so, we were able also shut down City Hall . . . . [P]eople went and blocked the entrance to City Hall, so we shut down the entire city government that day.<sup>139</sup>

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137. Interview with Tenant Organizer, Mich. (Apr. 2021).

138. Interview with Tenant Organizer, Mass., *supra* note 104.

139. Interview with Phil, Tenant Organizer, large southern city (May 2021).

Phil's organization was creative (using street theatre as a way of masking their intentions to shut down the court) and strategically savvy (timing their action well so that they blocked the building before court hearings began). They also believed that these tactics were effective. On this latter score, Phil detailed a shift in power as a result of the action:

We definitely heard less things from tenants about landlords just being A-holes. I think a lot more landlords were willing to negotiate . . . . [I]t also had an impact we believe on illegal evictions . . . because [landlords] were like wait there's this group of crazy people who are willing to do that and they got away with it. I think it had an impact on discourse about how people think about housing. Also, the judges became more open . . . . [T]here was an election for an eviction court seat . . . [and] they were all pandering to us, they were pandering out of their asses . . . . [S]o that was an interesting power switch, where now we know the judges are actively aware of what we're doing and what we're putting out into the universe.<sup>140</sup>

The tenant organizers that were interviewed offered many examples of direct action, drawing a connection between that activity and their attempts to influence civil legal processes. A wide array of popular media accounts also corroborates the use of this tactic.<sup>141</sup> Generally, the goal of such direct action was to slow down or entirely halt court processes so that evictions could not occur.<sup>142</sup> It was also to draw media attention to court processes.<sup>143</sup> These goals centered on mitigating a direct harm tenants faced (displacement through eviction) and were thus most proximately about helping tenants, not fixing courts. At the same time, because courts and law were perceived as part of the problem, tenant groups intentionally and strategically engaged civil legal processes through direct action.

### III. BEYOND THE LAW

Examples laid out in this Essay thus far point to how tenant organizations work within the civil legal system (e.g., by providing court support), alongside civil legal actors (e.g., by collaborating with Legal Aid attorneys), and even in opposition to civil legal practices (e.g., through protest and

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140. *Id.*

141. Media coverage of tenant groups disrupting courts abounds. For just a few examples, see David Brand, Bronx Tenant Group Considers 'Eviction Blockades' as Court Filings Mount, *City Limits* (Feb. 24, 2022), <https://citylimits.org/2022/02/24/bronx-tenant-group-considers-eviction-blockades-as-court-filings-mount/> [<https://perma.cc/R8AD-TAR5>]; Michelle Conlin, 'This is Not Justice.' Tenant Activists Upend U.S. Eviction Courts, *Reuters* (Feb. 8, 2021), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112> [<https://perma.cc/UR35-EL7B>]; Louis Hansen, South Bay Protesters Block Courthouse, Rally Against Evictions, *Mercury News* (Jan. 27, 2021), <https://www.mercurynews.com/2021/01/27/protesters-block-courthouse-rally-against-evictions/> [<https://perma.cc/WD3B-M8ZK>] (last updated Jan. 28, 2021); Park, *supra* note 92.

142. Brand, *supra* note 141.

143. *Id.*

other forms of direct action). It is also important to flag that tenant organizations worked squarely, and often primarily, outside the immediate purview of the civil legal system. Indeed, most of the tenant organizations that were interviewed had very little faith in the civil legal system and did not view it as a promising locus of deeper change for tenants. Cynical views of civil law were common. 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.

Tom, a tenant organizer from California, expressed precisely this perspective:

Our tenant [legal] counseling is really like, it's designed to be like a backdoor into actual organizing. So, it's not that we tell people don't get a lawyer or don't go to court. But, really, the role of that interaction is to highlight the deficiencies in the system. It shows people that even if you're right, even if you know all your rights and you are 100% on the right side of the law, it's not really going to matter if your landlord has four attorneys and you show up in court against them, right? Even if you get a Legal Aid lawyer, like bless them, they're doing the Lord's work, but you know, they're just out gunned. So, in terms of the legal system, we have done a couple direct actions at the courthouse . . . . [W]e want to offer people like court support . . . but . . . you know, San Francisco, you look up tenant attorney in San Francisco, you've got like 150 hits, because they've had rent control since 1978. So, there's a whole history of lawyers like learning about the tenant laws, and defending tenants here. There is no such thing [here]. There literally are no tenant attorneys and we have one legal aid organization . . . . So, if you're looking for an attorney and you don't have any money, really, we tell people organizing is your best option and we don't even mean that in terms of like our own ideology, we mean that literally like if you call legal services, nine times out of ten you're not getting a call back because they got 1200 calls that day. So, that's sort of our, that's our relationship, I'd say, to the legal system. Woefully inadequate and uh, we've tried battling it from the outside, and again, we've just been humiliated and disappointed every single time.<sup>144</sup>

A broad orientation toward systemic change combined with an acute awareness of the deficiencies of civil legal processes pushed Tom to focus on organizing as the "best option." He was convinced that a legal approach simply would not suffice given the realities of the context, and he surmised that only building power would be effective for achieving substantial change in the conditions tenants faced.

Many organizers perceived a tension between these options. They preferred to focus on organizing and power building, even while recognizing the need to engage civil legal processes, and they struggled to find a

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144. Interview with Tom, *supra* note 1.

balance that prioritized the former despite the immediacy and urgency of the latter.

Aria, the organizer from Texas, conveyed it this way:

Evictions are happening, at like a crazy speed . . . . [The court] was scheduling thirty to seventy eviction hearings a day, like just steamrolling through them, you know, so there's this huge need . . . this really emergency crisis happening, and then you know also this side of it, of trying to build people power so it's kind of like this play between the two . . . . I've kind of struggled to bring the eviction defense side of it along with the organizing but you really can't have one without the other because tenants have so few rights in Texas that even with a lawyer, you can get thrown out . . . . [Y]ou really do have to have outside pressure on a complex to stop evicting people . . . .<sup>145</sup>

This push-and-pull was one of the most common ways that tenant organizations framed the relationship between power building and legal work. A tenant organizer in Ohio conveyed it this way:

[W]e're not spending all our time at the courts because we don't really think that's where liberation is actually going to happen, but also, I mean, we got to realize that the courts do exist, and people are going to be there and people need help there, so you know, if a tenant wants our help . . . our support is, I would say unconditional, you know? We're not going to say, we're not going to go to the court with you because we don't think it's worth it, or that's not what's going to be effective . . . . [A]t the end of the day, we want to keep people in their homes, and we're not going to do that without engaging with the courts in some way because that's just how things are right now.<sup>146</sup>

An organizer from a large West Coast tenant union echoed these comments, asserting that:

We are at our strongest when we can do things ourselves, when we are not focused on some other mediator like the courts to do things for us . . . . [N]obody wants to be in a pathetic, supplicant position . . . . We've been talking for years and years about working with politicians and the courts versus doing everything else but tenants facing evictions have to deal with the courts . . . . [S]o we have to figure out a way to synthesize these things . . . . [H]ow do we make it so that once you're in a position where you have to deal with the court and the lawyers, we're doing it on our terms . . . . [H]ow do we get to the point where it's not just the schematic either/or . . . . [H]ow can we synthesize those?<sup>147</sup>

Balancing such practical perspectives, organizations also took special care to ensure that legal prerogatives did not take over or dominate their

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145. Interview with Aria, Tenant Organizer, Tex., *supra* note 88.

146. Interview with Tenant Organizer, Ohio, *supra* note 111.

147. Interview with Juan, *supra* note 92.

organizational agendas. For example, a group in Philadelphia that works directly with lawyers nonetheless remained sensitive to the risk of placing organizing on the back burner:

We have been really careful around like legal work to make sure it doesn't lead in our organizing. Once a month we do these renters rights clinics, which are like a chance for people to like meet one-on-one with a lawyer, like in a private Zoom breakout room and you know, we really see the law as like a tactic as another tactic to us and the organizing. And we haven't been jumping it, we've been pretty timid around like bringing out lawsuits . . . . [W]e try to think about how do we collectivize the legal process as much as possible, so it's not so expert driven by the lawyer. And [the lawyer] is in most of our meetings, but like we try not to let her speak too much we try not to let her facilitate too much—especially when we have new members and new meetings with lots of people—we really make sure not to emphasize the legal aspects, the legal tactics too much. Because, you know, often we will ask people “what do you think it's going to take [this corporate landlord] to change” [and] maybe about a third of the time, people say “I don't know, maybe a lawsuit” which could be true, but that's not our theory of how political power is built. So we don't go down that road . . . . [W]e have a whole power analysis, like a whole strategy chart that we use or we map, who has the power to get us what we want, and you know the politicians are on there, because they have influence over our targets . . . . And we've met with a couple city council people to get them to put pressure on landlords and it's worked to get some concessions and keep the pressure on.<sup>148</sup>

Similarly, a tenant organizer in Michigan suggested that:

Although paralegal work is useful and it kind of helps with the immediate problems up front, I think the choice to move to tenant organizing was to do a longer structural build of tenant power in the area. And so, uh, that's I think, that's why we're trying to do that transition away from that. I still think that we will still try to do things like that like . . . a little bit of paralegal work. We still have that committee going on. But, also, we'll still do things like, if some bad things happen at a courthouse, we'll still do protests and stuff like that. But, uh, I see us moving more in that direction of building power through organizing.<sup>149</sup>

At the heart of tenant organizations' desire to move beyond the legal system, even as they are constrained in their ability to do so, is an abiding belief that such systems are engines of racial and class oppression that cannot be readily reformed. Tanvee, a tenant organizer from a midwestern city, explained her journey to realizing this:

We were trying to move them by writing letters lobbying people doing vigils—blah blah blah. [I]t didn't work. And we had to sit

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148. Interview with Tenant Organizer, Pa. (Apr. 2021).

149. Interview with Tenant Organizer, Mich., *supra* note 137.

with ourselves . . . and be like, we can either keep doing this shit and it's not going to work or we can figure out how to shut the system down because our goal right—we had to really meditate on this—like our goal was not to win an eviction moratorium, our goal was to end evictions and a moratorium would have been a great way to get there but they weren't going to let us have it right, so we had to figure out another way to do that . . . . So folks I think in our base have become radicalized in the last year around the fact that, like these existing power structures are oppressive, were designed to be, it's not like a broken system, it's working, it's a system working as it was designed to and it's our job to either change it or if we can't change it shut it down.<sup>150</sup>

Aria offered resonant comments, contemplating a strategy of disruptive protest in the vein seminally proposed by social activists Frances Fox Piven and Richard Cloward, two scholars who famously strategized about forcing change by overwhelming welfare institutions with beneficiary claims.<sup>151</sup>

One thing that evictions during a pandemic make you realize is that policy and the legal system is the only protection that tenants have by themselves . . . and because that's hard to navigate and hard to understand—it's actually very hard to win [in] court—[so] there's definitely an aspiration of like having the people power to block lawyers from getting into a courthouse, that would be amazing. Like to really throw a wrench in the system and really make it difficult to evict people. Like we've talked about you know, like if all the people that had an eviction hearing on that they actually showed up they wouldn't be able to have court . . . so like even just one day of everybody showing up, that could change how that court [and] how that judge does his docket . . . . I believe in power, and . . . in pressuring someone with so much more power just by sheer coming together like there's all of these policies in play that just is a thumb just pressing down on them . . . . [T]his is the power dynamic that people don't realize is going on.<sup>152</sup>

The tenant organizers interviewed believed that civil legal systems involved power imbalances that did not favor tenants. As a result, they were not content to engage civil legal processes on their own terms—such terms would leave tenants wanting. Instead, tenant organizers looked beyond courts, even as they carefully managed how to operate within and alongside them in order to meet the needs of tenants while building power to upend existing power imbalances.

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150. Interview with Tanvee, Tenant Organizer, midwestern city (Mar. 2021).

151. See Frances Fox Piven & Richard Cloward, *The Weight of the Poor: A Strategy to End Poverty*, *Nation* (Mar. 8, 2010), <https://www.thenation.com/article/archive/weight-poor-strategy-end-poverty/> (on file with the *Columbia Law Review*) (reprinting a 1966 article by the authors).

152. Interview with Aria, *supra* note 88.

## CONCLUSION

Local organizations working within race–class subjugated communities are an important aspect of the American democracy.<sup>153</sup> Such organizations are essential components of civil society.<sup>154</sup> Tenant organizations, in particular, act as a crucial power resource, fostering a more inclusive polity that incorporates the voices of marginalized groups.<sup>155</sup> This Essay argues that the work of tenant organizations intersects with the operation of civil legal institutions because such groups take part in civil legal processes. The preceding pages elucidate five key mechanisms through which tenant organizations engage civil legal actors or institutions. Calling attention to the interplay between tenant organizations and civil legal processes underscores another important way that these organizations buttress democratic citizenship<sup>156</sup> and provide some level of relief to tenants struggling to navigate a profoundly unequal and exclusionary civil legal system.

Acknowledging tenant organizations as civil legal institutions has important implications. Other vital civil legal institutions like courts and legal aid organizations are funded (if inadequately) and supported (legislatively) by federal, state, and local governments. Tenant organizations plug the gaps of those institutions with no equivalent support. While government funding is not the only, nor necessarily the best, way to support tenant organizations,<sup>157</sup> these groups' central role as institutional players in the civil legal system does warrant consideration of what forms of support (e.g., legal, financial) are useful for reinforcing their work. Given the importance of voice and power, specific policy proscriptions are not an appropriate step forward without directly relevant input from tenant organizations. Federal, state, and local governments would do well to invite (interested and willing) tenant organizations to the table to discuss ways to support the vital work they do for democracy. Perhaps creating a legal basis for growing the power of tenant organizations through a national tenant bill of rights would provide legal momentum and ease their work.<sup>158</sup> Perhaps the conferral of collective bargaining rights would

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153. See Hahrie Han, Elizabeth McKenna & Michelle Oyakawa, *Prisms of the People: Power and Organizing in Twenty-First-Century America* 2 (2021).

154. *Id.*

155. Michener & SoRelle, *supra* note 11, at 213–14.

156. See Jennifer Sigafoos & James Organ, 'What About the Poor People's Rights?': The Dismantling of Social Citizenship through Access to Justice and Welfare Reform Policy, 48 *J.L. & Soc'y* 362, 362 (2021); Hilary Sommerlad, Some Reflections on the Relationship Between Citizenship, Access to Justice, and the Reform of Legal Aid, 31 *J.L. & Soc'y* 345, 345 (2004).

157. See Michener & SoRelle, *supra* note 11, at 222 (noting that tenant organizations value financial independence and take "great care to protect their autonomy, prioritizing it even over resources that might afford them greater capacity").

158. For more on the possibility of a national tenants bill of rights, see Nia Johnson, *Hear Us: A National Tenants' Bill of Rights Is Foundational for Race Equity*, *Next City* (Nov.



best position tenant organizations to build power.<sup>159</sup> There are certainly other strategies that tenant organizations could lay out. Regardless of the specifics, it is imperative to name tenant organizations as pivotal civil legal actors, to acknowledge their democratic benefits, and to forge a path forward that strengthens their place in the polity.

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18, 2021), <https://nextcity.org/urbanist-news/hear-us-a-national-tenants-bill-of-rights-is-foundational-for-race-equity> [<https://perma.cc/69ZX-EFN7>].

159. For an example of conferral of collective bargaining power for tenants, see Sarah Klearman, The S.F. Board of Supervisors Just Passed Unprecedented Protections for Tenants' Unions, *S.F. Bus. Times* (Feb. 16, 2022), <https://www.bizjournals.com/sanfrancisco/news/2022/02/16/peskin-tenant-organizations-rights.html> [<https://perma.cc/DMG9-4YQW>].

