

HE SIMPLY PUTS YOU RIGHT OUT OF YOUR FLAT:
ADVOCACY AT THE LIMITS OF ANTI-RETALIATION LAW

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INTRODUCTION

He doesn't shoot you, oh, nothing like that.
He simply puts you right out of your flat,
Unless you come across with all you've got,
And then some more.

— Edward Laska, “The Landlord Blues.”¹

“The rent is our biggest monthly bill, and the rent is too damn high.”² The Tenant Union Federation (TUF) is ideologically grounded in this simple truth, and it correspondingly grounds this Note. Moreover, as Josh Poe contends, renting conditions constitute shared interests that can unite otherwise divided residents into solidarity across all geographical scales; these solidarities can effectively be organized as political power, and “we do that by building tenant unions.”³ Poe co-founded the Kentucky Tenant Union (KTU) with Jessica Bellamy in 2022.⁴ KTU is a founding chapter of the TUF, a “union of unions” comprising (initially and as of writing) five tenant unions

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¹ Edward Laska, *The Landlord Blues, Song Lyrics*, (Broadway Music Corporation), http://www.protestsonglyrics.net/Tenants_Housing_Homeless_Songs/Landlord-Blues.phtml [<https://perma.cc/C9FP-MMLQ>] (last visited Feb. 17, 2026).

² *About*, TENANT UNION FED'N, <https://tenantfederation.org/about> [perma.cc/4M6N-C23R] (last visited Feb. 15, 2025).

³ Josh Poe, *Tenants Unions Are How We Win in the South*, SHELTERFORCE (Sep. 1, 2023), <https://shelterforce.org/2023/09/01/tenants-unions-are-how-we-win-in-the-south> [perma.cc/N8PJ-QQYD].

⁴ Tressie McMillan Cottom, *What's Happening in Louisville Could Solve a Housing Crisis*, N.Y. TIMES (Aug. 6, 2024), <https://www.nytimes.com/2024/08/06/opinion/housing-louisville-tenants-union.html> [https://perma.cc/RG2N-FPVE]. More accurately, Poe & Bellamy founded the Louisville Tenants Union in 2022—which was renamed during this Note's editing process to better reflect the union's current strategies that seek (in part) to organize against particularly problematic landlords across their property portfolios to buildings throughout the Commonwealth. See Kentucky Tenant Union (@LouisvilleTenantsUnion), FACEBOOK (Oct. 6, 2025), <https://www.facebook.com/LouisvilleTenantsUnion/posts> [perma.cc/XK4U-G6P2].

in Kansas City, Bozeman, New Haven, Chicago, and Louisville.⁵ TUF is not the first national tenant union in the United States,⁶ but it is currently the only such organization,⁷ and it has arisen amidst renewed housing crises and corresponding conflicts between homeowners and home renters everywhere.⁸ This Note centers on the role of legal advocates as they help tenants and tenant unions navigate these conflicts and the complex relationships that comprise landlord-tenant law.

Considering the ubiquity of housing crises, the five founding member unions of TUF may well soon be joined by countless other local tenant unions across the country. Unfortunately, there is no comprehensive national body of landlord-tenant law or of tenant union law.⁹ As KTU has solidified its position advocating for tenants within buildings and across the city and the

⁵ *About*, *supra* note 2. This Note will use “tenant union,” for consistency, unless directly quoting material or referring to an organization that uses an adjacent construction such as “tenants union,” “tenant’s union,” or “tenants’ union.” It will also use “tenant union” as synecdoche for “tenant collectives,” “associations,” “organizations,” and “coalitions.” While there are distinctions for helpful definitional explanations, they do not make a difference in the context of this Note. *See, e.g.*, Greg Baltz, *Tenant Union Law*, 43 YALE L. & POL’Y REV. 1, 11–13 (2024) [hereinafter Baltz, *Tenant Union*] (providing definitional explanations). This Note’s understanding of tenant union law, and by extension, of what this Note is referring to as anti-retaliation law, starts with the work of Greg Baltz, Julie Gilgoff, Samantha Gowing, Kelly Hogue, Heather K. Way, John Whitlow, and the combined scholarship of the Law and Political Economy Blog (LPE).

⁶ *See* discussion *infra* Section II.B.2.

⁷ *See* Baltz, *Tenant Union*, *supra* note 5, at 11 n.19, 13–14. Well, this is true depending on what you consider to be a union. There are certainly non-profits and government agencies providing funding to tenant unions, as well as networks and coalitions that provide technical support, campaign support, etc., without economic or governmental strings attached, and sympathetic political parties that may be doing similar work. For the purpose of this Note—and without presuming a rigid definition or governing structure for organizations that are likely to eschew them—a national union, or a “union of unions,” is one that explicitly shares an organizing structure and/or an agenda, if flexibly. Considering the national government’s constitutional structure *vis-à-vis* a union of states, TUF’s choice of the word “federation” is appropriate. Possibly the nearest contemporary thing to another national tenant union is the National Alliance of HUD Tenants, which operates at a national scale and counts tenant unions as true members, but which is limited to a very particular (federally assisted) category of tenant. Kelly M. Hogue & Heather K. Way, *The Role of the Law in Protecting Tenant Organizing: Opportunities for Local and State Legal Reforms*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 391, 397–99 (2023).

⁸ *See* discussion *infra* Section II.A.

⁹ *See* Baltz, *Tenant Union*, *supra* note 5, at 9 (“Tenant union law is the study of the legal relationships between tenants and their unions, landlords, lenders, developers, and government. Absent an overarching legal framework outlining their corporate form, tactics, and mechanisms for scaling, tenant unions organize in the shadow of existing laws. Accordingly, there is no monolithic model of tenant organizing or tenant unionism.”); Hogue & Way, *supra* note 7, at 392–93 (“In the absence of comprehensive laws that protect tenant organizing activities, landlords...can retaliate against tenants who organize by raising their rents, harassing them, or refusing to renew their leases, among other types of mistreatment.”); Samantha Gowing, *Rent Strikes and Tenant Power: Supporting Rent Strikes in Residential Landlord-Tenant Law*, 120 MICH. L. REV. 877, 890 (2022) (“Few laws exist that recognize tenant groups as collective actors.”).

Commonwealth, it has organized within a specific legal climate.¹⁰ As TUF solidifies its own position, it will do so within a legal climate overdetermined by the particularities of each place in which it operates as well as the collection of all places in which it operates. As the many tenant unions operating across the country continue to strengthen their bargaining positions, they will necessarily do so at the expense of parties with adverse interests like landlords, building managers, financing agencies, and governmental agents.¹¹ Landlords, in particular, will continue to strike back against tenants in retaliation for their organizing activities.¹² Tenant unions, in turn, must strive to protect their members from retaliation—and to do so, movement lawyers and impact litigators must effectively navigate landlord-tenant law, anti-retaliation law, and the laws of collective association.

Retaliatory efforts by landlords and protective efforts by unions are not theoretical, and the law currently offers limited legal protection against retaliatory eviction.¹³ Legal scholars and housing experts have been analyzing the concept for over six decades¹⁴ and have frequently demonstrated that “fear of retaliation can jeopardize collective action,”¹⁵

¹⁰ See, e.g., *From the Field: Kentucky Advocates Campaign for Statewide Landlord-Tenant Law*, NAT'L LOW INCOME HOUS. COAL. (Aug. 17, 2015), <https://nlihc.org/resource/field-kentucky-advocates-campaign-statewide-landlord-tenant-law> [<https://perma.cc/P2C9-7YJZ>] (showing how KTU's advocacy work and expansion have taken place against the backdrop of Kentucky's patchwork application of the Uniform Residential Landlord Tenant Act); Sylvia Goodman, *Bill Conflicting with Louisville Anti-Housing Discrimination Law Passes Ky. House*, LOUISVILLE PUB. MEDIA (Jan. 23, 2024, at 16:58 ET), <https://www.lpm.org/news/2024-01-23/bill-conflicting-with-louisville-anti-housing-discrimination-law-passes-ky-house> [<https://perma.cc/2A4P-595S>] (showing how KTU's advocacy work and expansion have also taken place against the backdrop of legislative action seeking to limit tenant protections against landlords' efforts to discriminate against recipients who receive federal housing assistance).

¹¹ *Who We Are*, AUTONOMOUS TENANTS UNION NETWORK, <https://atun-rsia.org/who-we-are> [<https://perma.cc/6TYD-PDQ3>] (last visited Aug. 19, 2021) (“We assert that the interests of landlords and tenants are fundamentally irreconcilable, and we reject any policy that attempts to paper over this conflict.”); see Baltz, *Tenant Union*, *supra* note 5, at 13–14 (discussing parties of adverse interests); see also John Whitlow, *Toward Housing Justice: Law, Tenant Power, and the Decommmodification of Urban Property*, 27 U. PA. J. L. & SOC. CHANGE 174, 180, 187–88 (2024) [hereinafter Whitlow, *Toward Housing*] (“[T]he degree to which housing operates as an economic good versus a social good, is a function of—and indexes—the balance of forces between landlords and tenants.”).

¹² See Hogue & Way, *supra* note 7, at 392 (“In the absence of comprehensive laws that protect tenant organizing activities, landlords have many avenues to thwart these activities.”).

¹³ *Eviction*, BLACK'S LAW DICTIONARY (12th ed. 2024) (“[R]etaliatory eviction (1996) [is] [a]n eviction...commenced in response to a tenant's complaints or involvement in activities with which the landlord does not agree.”).

¹⁴ See Brian D. Casserly, *Insuring the Effectiveness of Indiana's Landlord-Tenant Laws: The Necessity of Recognizing the Doctrine of Retaliatory Eviction in Indiana*, 46 IND. L. REV. 1317, 1320–29 (2013) (providing a good baseline discussion of the historical development of retaliatory eviction in American law).

¹⁵ Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 620 (2021) [hereinafter Andrias & Sachs, *Constructing*]; see also Hogue & Way, *supra* note 7, at 407–08 (“One of the biggest barriers to tenant

thereby nullifying legal rights and stymieing social progress. Courts have long recognized that tenants should be able to exercise basic constitutional rights without fear of retaliatory eviction or other threats to the peaceful enjoyment of their homes.¹⁶ Retaliation protection clauses of statutes seeking to balance the interests of numerous parties in landlord-tenant relations exist in national, state, local, and model uniform laws.¹⁷ In contemporary legal literature, they are typically treated as pieces of a larger landlord-tenant relational puzzle.¹⁸ This Note treats them as the main focus and refers to them generally as “anti-retaliation law.”

Existing anti-retaliation law is incomplete, inconsistent, and often infirm—nonetheless, it can effectively be employed to protect tenants in their exercise of basic rights. Legal experts must be able to understand the substance, outer limits, and gaps of anti-retaliation law. It is imperative that legal advocates and movement lawyers make strong, persuasive, and ethical arguments in courtrooms that navigate, bridge, and fill those gaps. Recent scholarship has endeavored to critique the existing legal protections for tenants against retaliation, to describe the strategies by which tenants continue to organize without strong legal protections, to prescribe meaningful reform towards stronger legal protections, and to describe discrete case studies of tenant unions at work.¹⁹ However, tenant unions organize in the world as it is, and legal advocates make arguments based upon the law as it currently exists. After providing a context for the collectivist fight against poor housing conditions and feeble landlord-tenant law, this Note reviews and analyzes existing anti-retaliation law, offering persuasive authority legal analysis for advocates to press in court. Anti-retaliation law requires immediate reform to be effective in every jurisdiction; therefore, tenant union lawyers must

organizing is the risk of landlord retaliation. Landlords wield a lot of power over tenants’ lives...For low-income tenants, the fallout that they can experience from landlord retaliation—which can be as severe as losing their home and ending up homeless—makes tenant organizing a highly risky activity for those who can least afford to take on the risks.”).

¹⁶ *Edwards v. Habib*, 397 F.2d 687, 699 (D.C. Cir. 1968) (seminal retaliatory eviction case) (“But while the landlord may evict for any legal reason or for no reason at all, he is not, we hold, free to evict in retaliation for his tenant’s report of housing code violations to the authorities.”); see discussion *infra* Section II.C.1.

¹⁷ See discussion *infra* Part III.

¹⁸ See Christopher Bangs, *A Union for All: Collective Associations Outside the Workplace*, 26 GEO. J. ON POVERTY L. & POL’Y. 47, 58, 60–62 (2018); Andrias & Sachs, *Constructing*, *supra* note 15, at 560, 620–23; Gowing, *supra* note 9, at 890–91; Hogue & Way, *supra* note 7, at 392; Baltz, *Tenant Union*, *supra* note 5, at 49, 59–61. But see generally Casserly, *supra* note 14 (focusing solely on retaliation, albeit in a single jurisdiction).

¹⁹ See discussion *infra* Section II.C.2. For case studies of contemporary tenant unions at work, Baltz, *Tenant Union*, *supra* note 5; Whitlow, *Toward Housing*, *supra* note 11; Cea Weaver, *The Right to a Tenant Union and the Fight for Rent Control in New York State*, 32 POVERTY & RACE J. 3, 3 (2023); Greg Baltz & Shakeer Rahman, *Why Should Tenant Unions Look to Labor Law?*, L. & POL. ECON. PROJECT: BLOG (Sep. 6, 2023), <https://lpeproject.org/blog/why-should-tenant-unions-look-to-labor-law/> [perma.cc/9EE2-UWQG].

advance process-based arguments and movement-based strategies to advocate at the limits of anti-retaliation law.

Part II of this Note contextualizes anti-retaliation law as it pertains to unions, unionization, and the housing crisis. Part III offers a review of existing anti-retaliation law as codified by statutes, articulated in judicial opinions, and resolved in court proceedings. This is done in three steps: first, by grounding retaliation in the life experiences of three tenants, as relayed in their own stories about voicing legitimate complaints to their landlord only to be forced out of their homes; second, by asking how the law interprets various tenant actions and landlord reaction; and third, by exploring how the process can play out in courts. Part IV, in turn, offers advocacy-based solutions to the gaps in retaliation law, grounded in the best existing interpretations of common statutory provisions, while making room for the actual strategies that unions often endorse in the absence of better law and amid perduring and crushing housing crises.

I. HOUSING CRISES AND THE ROLE OF THE TENANT UNION

TUF has arisen in response to renewed housing crises everywhere.²⁰ Rising numbers of households in every city, in every state, and in developed and developing countries face bleak options.²¹ Soaring costs of housing and deteriorating wages have developed in tandem with correspondingly frequent and intense conflicts between homeowners and home-renters around the nation and the globe.²² Formal legal resolution to these conflicts can be prescribed by local, state, or national legislation, regulated by administrative agencies, and adjudicated on a case-by-case basis.²³ Most often, they are resolved informally by extralegal day-to-day bargaining between individual landlords and tenants themselves.²⁴ However, the power disparity between landlords and tenants can be significant, and where such disparity exists, collective bargaining is an effective tool for countervailing power.²⁵ The need for collective bargaining has often been met through unionization.²⁶ Unions,

²⁰ See TENANT UNION FED'N, *supra* note 8, at 1.

²¹ Steffen Wetzstein, *The Global Urban Housing Affordability Crisis*, 54 URB. STUD. 3159, 3160–61 (2017).

²² *Id.* at 3160.

²³ See discussion *infra* Section II.C.1.

²⁴ See, e.g., Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1, 39–40 (2017).

²⁵ See Whitlow, *Toward Housing*, *supra* note 11, at 188–90; John Whitlow, *Law and Countervailing Tenant Power in the Real Estate State*, L. & POL. ECON. PROJECT: BLOG (June 2, 2022) [hereinafter Whitlow, *Law*], <https://lpeproject.org/blog/law-and-countervailing-tenant-power-in-the-real-estate-state/> [perma.cc/R2BN-EXVF]; Shai Karp, *Rent Strikes as a Righteous Form of Resistance*, L. & POL. ECON. PROJECT: BLOG (Dec. 10, 2024), <https://lpeproject.org/blog/landlords-as-petty-tyrants/> [perma.cc/7NTL-SCU5]; Andrias & Sachs, *Constructing*, *supra* note 15, at 594.

²⁶ Andrias & Sachs, *Constructing*, *supra* note 15, at 566–67.

naturally, are frequently seen as a threat to those in power.²⁷ Local, state, and national governments have often assumed a role in regulating unions.²⁸ While labor law is certainly both incomplete and insufficient in its protection of professional and workplace unions, historical and legal factors have combined to give labor unions stronger protections than tenant unions.²⁹ This Part contextualizes anti-retaliation law by first discussing the political, economic, and racial dimensions of the housing crisis that landlord-tenant law is imbricated with. Then, it discusses collective organizing as a traditional strategy for contesting the power disparities that permeate such social crises. And indeed, acute and chronic housing crises may be on the verge of an implosion analogous to the labor crisis preceding the Wagner Act.

A. Housing in Crisis Everywhere

1. Writ large

“No one doubts that we face a rental housing crisis.”³⁰ Housing crises are, of course, not merely Louisvillian, American, twentieth-century phenomena³¹—although they have been intensifying for decades of neoliberal

²⁷ See, e.g., Michael Sainato, *US Union Membership Soared to 16-Year High in 2025 Despite Trump Assault*, GUARDIAN (Feb. 18, 2026, at 11:28 ET), <https://www.theguardian.com/us-news/2026/feb/18/union-membership-increase-trump-assault> [<https://perma.cc/P6T6-RK8H>] (discussing the Trump Administration’s efforts to cancel collective bargaining agreements, which provides an example of how those in power are threatened by unions).

²⁸ See discussion *infra* Section II.C.1.

²⁹ See discussion *infra* Section II.B.

³⁰ Duncan Kennedy, Karl Klare & Michael Turk, *A Wagner Act for Tenant Unions*, L. & POL. ECON. PROJECT: BLOG (June 15, 2023), <https://lpeproject.org/blog/a-wagner-act-for-tenant-unions/> [<https://perma.cc/F4AV-VD9P>]. At the same time, and while this Note uses “housing crisis” as a well-worn signifier for a familiar set of problems, it is also sensitive to the basic structural critique that “housing” is not in crisis—people are—and that housing systems work just fine for those who profit off the exploitation of this basic human right. For work offering this structural critique in a legible manner, see generally DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS* (2016); TRACY ROSENTHAL & LEONARDO VILCHIS, *ABOLISH RENT: HOW TENANTS CAN END THE HOUSING CRISIS* 10 (2024); Tracy Rosenthal, *101 Notes on the LA Tenants Union*, COMMUNE (July 19, 2019), <https://communemag.com/101-notes-on-the-la-tenants-union> [<https://perma.cc/U9SN-NBK4>]; Whitlow, *Toward Housing*, *supra* note 11, at 177; Gowing, *supra* note 9, at 888; Matthew Maniaci, *The System is Working as Intended*, MEDIUM (Jan. 21, 2022) <https://medium.com/thing-a-day/the-system-is-working-as-intended-771660428352> [<https://perma.cc/J5LB-LFSQ>].

³¹ See DEBORAH POTTS, *BROKEN CITIES: INSIDE THE GLOBAL HOUSING CRISIS* xi, 1, 4 (2020); Lily Geismer, *America Needs a New Approach on Affordable Housing. History Offers a Guide*, TIME (Mar. 25, 2024, at 10:48 ET), <https://time.com/6900050/public-housing-biden-plan-history/> [<https://perma.cc/MP73-5VJX>]; Manuel B. Aalbers, *The Great Moderation, the Great Excess and the Global Housing Crisis*, 15 INT’L J. OF HOUS. POL’Y 43, 43–44 (2015); Tom Coupe, *How Global Is the Affordable Housing Crisis?*, 14 INT’L J. OF HOUS. MKTS. & ANALYSIS 429, 429–30 (2020); Derek S. Hoff, *The Original Housing Crisis: Suburbanization, Segregation, and the State in Postwar America*, 36 REV. AM. HIST. 259, 259–66 (2008).

late-stage capitalism.³² Housing crises are not strictly urban in nature, either.³³ Yet the spatial constraints, infrastructural restraints, and population densities characteristic of urbanization do combine to make housing crises a particularly urban problem.³⁴ That problem is tripartite in nature: it is a crisis of affordability, accessibility, and habitability.³⁵ The “Global Urban Housing Affordability Crisis...reflects the accelerating trend of housing-related expenses rising faster than salary and wage increases in many urban centers around the world.”³⁶ The growing shortage of affordable housing in cities, exacerbated by rapid population growth, gentrification, zoning restrictions, insufficient investment in affordable housing development, and rising housing costs, results in many low- and middle-income families being completely priced out of urban housing markets, leading to overcrowding and homelessness.³⁷ Nationally, “average rents have more than doubled over the last two decades, while wages have plateaued for the last four.”³⁸ Those who can find and afford housing under this model all too often find themselves living in deplorable conditions—confined to small spaces, housed in deteriorating buildings, and exposed to trash buildup, insect and rodent infestations, nuisance noise and odors, leaks, mold, chemical and toxin exposure, and inadequate heat, air conditioning, and water.³⁹ Due to tensions

³² Whitlow, *Toward Housing*, *supra* note 11, at 177–81; *see also* Bruno Tinel, *The Crisis of Neoliberalism*, 2 WORLD REV. POL. ECON. 117, 127–29 (2011) (providing useful background context for neoliberalistic governance); Raquel Rolnik, *Late Neoliberalism: The Financialization of Homeownership and Housing Rights*, 37 INT’L J. OF URB. & REG’L RSCH. 1058, 1061, 1064–65 (2013) (describing neoliberalism in the housing context, specifically); Simon Springer, *Fuck Neoliberalism*, 15 ACME: INT’L J. CRITICAL GEOGRAPHIES 285, 288 (2016) (denouncing neoliberalism’s impacts writ broadly).

³³ *See Rural Housing*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/policy-priorities/rural-housing> [<https://perma.cc/X4DT-PRN7>] (last visited Feb. 1, 2026) (“Rural communities face unique challenges when dealing with the affordable housing crisis.”).

³⁴³⁴ *See* Neil Smith, *New Globalism, New Urbanism: Gentrification as Global Urban Strategy*, in THE GLOBALIZING CITIES READER 427 (2002); MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 5 (2016); Wetzstein, *supra* note 21, at 3160.

³⁵ *See infra* notes 41–44 and accompanying text (discussing aspects of the problem in a more detailed fashion).

³⁶ Wetzstein, *supra* note 21, at 3160.

³⁷ *See id.* at 3159–60, 3164–65; *The Problem*, NAT’L LOW INCOME HOUS. COAL., <https://nlihc.org/explore-issues/why-we-care/problem> [<https://perma.cc/42B5-NWYY>] (last visited May 30, 2025).

³⁸ ROSENTHAL & VILCHIS, *supra* note 30, at 14 (citing Alicia Mazzara, *Rents Have Risen More than Incomes in Nearly Every State Since 2001*, CTR. ON BUDGET & POL’Y PRIORITIES: OFF THE CHARTS (Dec. 10, 2019, at 13:15 ET), <https://www.cbpp.org/blog/rents-have-risen-more-than-incomes-in-nearly-every-state-since-2001> [<https://perma.cc/UV7F-P237>]; Drew Desilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, PEW RSCH. CTR.: SHORT READS (Aug. 7, 2018), <https://www.pewresearch.org/short-reads/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/> [<https://perma.cc/7MLV-VZEY>]).

³⁹ *See discussion infra* Section III.A.1; Tara Raghuvver & John Washington, *The Case for the Tenant Union*, 32 POVERTY & RACE J. 1, 15, 17 (2023); Rose Lenehan & Tara Raghuvver, *The Future of Housing Organizing: Tenant Unions*, THESE TIMES (July 23, 2024),

surrounding affordability or habitability, tenants who have ‘secured’ housing remain insecure in the face of eviction: “every minute of the day, landlords file seven evictions—totaling 3.6 million evictions a year.”⁴⁰

This is a problem. Housing is a key to reducing intergenerational poverty and increasing economic mobility—access to affordable housing reduces childhood poverty, predicts greater lifetime earnings, correlates with greater educational opportunities and health outcomes, and bolsters overall economic growth.⁴¹ Instead, cities everywhere struggle to provide adequate living conditions, thereby worsening inequality, limiting social mobility, and creating long-term economic and social challenges.⁴² It is a problem, more specifically, of capitalism: a minority of “homeowners, investors and speculators have materially benefited from these conditions,” and they do so at the expense of millions of people from more vulnerable economic backgrounds:

[R]ising numbers of people and households in both developed and developing countries face rather bleak options. Many of these people are forced to live in overcrowded or badly maintained accommodation while, for others, housing may eat up so much of their income that their food choices, healthcare needs, educational prospects and sustainable commuting options are heavily compromised. The implication for younger people can be the choice between homeownership and deciding to have children. In worst-case scenarios, people are being priced out of urban housing markets, face forced dislocation or evictions, or are left with no choice but to join the homeless people on the streets.⁴³

<https://inthesetimes.com/article/housing-crisis-tenant-unions-debt-collective/> [perma.cc/XT8P-NASA]; Karp, *supra* note 25; ROSENTHAL & VILCHIS, *supra* note 30, at 15; Abbe Will, *New Survey Finds Many Renters Are Concerned about the Impact of Home on Health*, HARV. UNIVERSITY JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (Mar. 31, 2022), <https://www.jchs.harvard.edu/blog/new-survey-finds-many-renters-are-concerned-about-impact-home-health> [https://perma.cc/2GNT-27UL]; *Trash Buildup, Rampant Rodent Problem Causes Health Concern at Newark Housing Development*, RLS MEDIA (Aug. 19, 2022, at 06:40 ET), <https://www.rlsmedia.com/article/trash-buildup-rampant-rodent-problem-causes-health-concern-newark-housing-development> [https://perma.cc/NSG2-F7M6].

⁴⁰ ROSENTHAL & VILCHIS, *supra* note 30, at 10 (citing Juan Pablo Garnham, Carl Gershenson & Matthew Desmond, *New Data Release Shows that 3.6 Million Eviction Cases Were Filed in the United States in 2018*, EVICTION LAB: BLOG (July 11, 2022), <https://evictionlab.org/new-eviction-data-2022/> [perma.cc/X96F-8BTU]).

⁴¹ *The Problem*, *supra* note 37.

⁴² Wetzstein, *supra* note 21, at 3160–62.

⁴³ *Id.* at 3160.

And while the housing crisis affects individuals of all racial and ethnic backgrounds, the crisis is not color-blind: “any meaningful critique of capitalism must, therefore, push past simplistic economic determinism and consider the...critique of racial capitalism.”⁴⁴

Racial capitalism can be defined as “the process of deriving social and economic value from the racial identity of another person.”⁴⁵ Capitalism has always been inherently racialized, and “there is no capitalism without racism.”⁴⁶ Racial hierarchies are central to the development and functioning of capitalist economies, and capitalism has historically relied on the marginalization and subjugation of racialized groups to extract labor, resources, and wealth.⁴⁷ This system creates economic inequalities and social divisions that benefit the dominant racial and economic groups while perpetuating systemic racism and economic injustice: from chattel slavery to redlining and from urban renewal to anti-integration suburbanization, racial capitalism demonstrates how racialization is not just a social problem but also a key driver of economic processes—including housing economies.⁴⁸

The historical causes of the urban housing affordability crisis unfolded through racial capitalism, and the contemporary effects of that crisis are still

⁴⁴ Jake Mace, *What I Have on My Mind: A Transformative Reframing of the Blues Epistemology*, 11 KALFOU: J. COMPAR. & REL’L ETHNIC STUD. 156, 164 (2024).

⁴⁵ Josh Poe & Jessica Bellamy, *Plantation Urbanism: Legacy, Property, and Policing in Louisville, Kentucky*, 2 RADICAL HOUS. J. 143, 144 (2020) (quoting Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2152 (2013)).

⁴⁶ Tonya Mosley & Allison Hagan, ‘An Extraordinary Moment’: Angela Davis Says Protests Recognize Long Overdue Anti-Racist Work, WBUR (June 19, 2020), <https://www.wbur.org/hereandnow/2020/06/19/angela-davis-protests-anti-racism> [perma.cc/ZC64-Z6FS] (quoting Angela Davis’s remarks on anti-racist protests).

⁴⁷ See CEDRIC ROBINSON, *BLACK MARXISM, REVISED AND UPDATED THIRD EDITION: THE MAKING OF THE BLACK RADICAL TRADITION* 9–24, 71–116 (3d ed. 2020).

⁴⁸ See generally *id.* (describing how racial hierarchies became embedded in capitalist economic structures as “racial capitalism”); Clyde Woods, *Life After Death*, 54 PRO. GEOGRAPHER 62 (2002) (discussing suburban resegregation and racially targeted disinvestment); Ruth Wilson Gilmore, *Fatal Couplings of Power and Difference: Notes on Racism and Geography*, 54 PRO. GEOGRAPHER 15 (2002) (discussing racism as “a practice of abstraction, a death-dealing displacement of difference into hierarchies that organize relations within and between the planet’s sovereign political territories.”); BLACK GEOGRAPHIES AND THE POLITICS OF PLACE (Katherine McKittrick & Clyde Woods eds., 2007) (discussing the tensions between non-black and black geographies through human geography, black studies, and the black feminist lens); George Lipsitz, *The Racialization of Space and the Spatialization of Race: Theorizing the Hidden Architecture of Landscape*, 26 LANDSCAPE J. 10 (2007) (linking racial inequity to spatial policies, including native removal, restrictive covenants, and urban renewal); Adam Bledsoe, LaToya E. Eaves & Brian Williams, *Introduction: Black Geographies in and of the United States South*, 57 SE. GEOGRAPHER 6 (2017) (linking racial exclusion to the historical development of capitalist geographies); LaToya E. Eaves, *Black Geographic Possibilities: On a Queer Black South*, 57 SE. GEOG. 80 (2017) (“[T]he lineage of legalizing discrimination in the American South, by race, sexuality, socioeconomic class, migration, and gender, remains significant for contemporary sociocultural, political, and economic relationships in the region.”); Adam Bledsoe & Willie Jamaal Wright, *The Pluralities of Black Geographies*, 51 ANTIPODE 419 (2018) (analyzing black spatial politics as a response to systemic anti-blackness embedded in capitalist and state structures).

racialized in impact.⁴⁹ Studied synecdochically through all individual and aggregate causal factors, these crises are depressingly unnecessary, artificial, predictable, and “the result of long-term capitalist projects of community degradation and marginalization.”⁵⁰ Housing markets have “long played a role in racial and class oppression”⁵¹ because they were “designed around an accumulation of capital that depends on severe inequality and, more specifically, on the subjugation of black tenants.”⁵² As contemporary urban theory and policing strategies have “laundered racial profiling as spatial profiling,”⁵³ these markets “remain crucial sites of racial subordination that view black places as surplus and black people as inherently ungeographic,”⁵⁴ and black families and other families of color are still disproportionately affected by the housing crisis.⁵⁵

This is the “material contradiction that is black housing under racial capitalism: the centrality of housing to life, safety, and welfare, and the precarity of the black home and black communities produced by the state and market institutions.”⁵⁶ People of color have been subjected to segregation, redlining, deed restrictions, discriminatory lending, and predatory lending.⁵⁷ This has resulted in hugely disparate impacts after the disaster-led acute housing crises from the Great Recession to the Global Pandemic.⁵⁸ It has led to significantly higher rates of housing instability, foreclosures, wealth loss,

⁴⁹ See Austin Dennis, *African American Housing and the Urban Crisis*, 26 VULCAN HIST. REV. 43, 43 (2022).

⁵⁰ Jake Mace, *I Got a Song I Can Sing: A Thematic Analysis of Blues Epistemologies*, 58 ANTIPODE 1, 9 (2026).

⁵¹ Gowing, *supra* note 9, at 883.

⁵² Raghuvver & Washington, *supra* note 39, at 17.

⁵³ ROSENTHAL & VILCHIS, *supra* note 30, at 49.

⁵⁴ Brandi T. Summers & Desiree Fields, *Speculative Urban Worldmaking: Meeting Financial Violence with a Politics of Collective Care*, 56 ANTIPODE 821, 825 (2022).

⁵⁵ See generally OPPORTUNITY STARTS AT HOME, RACIAL INEQUITIES IN HOUSING, [https://perma.cc/THH2-XMN9] (last visited Feb. 19, 2026) (providing a fact sheet that demonstrates racial disparities in housing).

⁵⁶ Summers & Fields, *supra* note 54, at 822.

⁵⁷ See Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOCIO. REV. 629, 629–30 (2010); *Racial Discrimination in Housing*, UNIV. OF S.F.: GLEESON LIBR.: GESCHKE CNTR., [https://library.usfca.edu/racial_discrimination_housing] [perma.cc/C5E8-ZW2N] (last visited Feb. 15, 2025) (providing articles on housing discrimination in the U.S.); OPPORTUNITY STARTS AT HOME, *supra* note 55, at 1–6; Janis Bowdler & Benjamin Harris, *Racial Differences in Economic Security: Housing*, U.S. DEP’T OF THE TREASURY (Nov. 4, 2022), [https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing] [perma.cc/VT5S-ASYX]; Whitlow, *Toward Housing*, *supra* note 11, at 181–83.

⁵⁸ See SARAH BURD-SHARPS & REBECCA RASCH, SOC. SCI. RSCH. COUNCIL & AM. C.L. UNION, IMPACT OF THE US HOUSING CRISIS ON THE RACIAL WEALTH GAP ACROSS GENERATIONS 1 (2015); Sharon Cornelissen & Alexander Hermann, *The Pandemic Aggravated Racial Inequalities in Housing Insecurity: What Can It Teach Us About Housing Amidst Crises?*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS (July 12, 2023), [https://www.jchs.harvard.edu/blog/pandemic-aggravated-racial-inequalities-housing-insecurity-what-can-it-teach-us-about-housing] [perma.cc/29ZF-7FS3]; Marika Dias, *Paradox and Possibility: Movement Lawyering During the Covid-19 Housing Crisis*, 24 CUNY L. REV. 173, 191–200 (2021).

and homelessness.⁵⁹ Black families are still subject to discriminatory evictions and disparate overall eviction numbers,⁶⁰ and Louisville, Kentucky, presents a case study of these processes at work.

2. In Louisville

Midsize and Midwestern cities like Louisville “contain many of the fault lines that created America’s housing crisis: gentrification, federal development schemes, and redlining. But Louisville also has a distinctly Southern history of racist segregation, predatory investors, and political divides that have made it difficult to produce the high-quality affordable housing its residents desperately need.”⁶¹ Racial capitalism—including race relations—in Louisville, Kentucky, was somewhat unique, relative to other Southern, Midwestern, and Northern cities.⁶² Racism in Louisville has been described as a ‘polite’ hatred: a story of courtesy and paternalism concerned, primarily, with preserving the status quo in public affairs and societal relations—including, for a time, housing policy.⁶³

Throughout the nineteenth and early twentieth centuries, Louisville largely welcomed black residents into their spaces: “black housing was interspersed with white businesses,” and white people often moved into homes previously occupied by black residents.⁶⁴ This was not due to some deep-seated antiracist animus, of course. From the perspective of white Louisville, it simply made sense for domestic servants to live near the homes

⁵⁹ See Whitlow, *Toward Housing*, *supra* note 11, at 181–83; Michela Zonta, *Racial Disparities in Home Appreciation*, CTR. FOR AM. PROGRESS (July 15, 2019), <https://www.americanprogress.org/article/racial-disparities-home-appreciation/> [perma.cc/2T9D-JKET]; Rugh & Massey, *supra* note 57, 629–34; Rashawn Ray et al., *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, BROOKINGS (Sep. 1, 2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [perma.cc/4GGT-NL6E].

⁶⁰ See Whitlow, *Toward Housing*, *supra* note 11, at 181–83; Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115, 121 (2016) (discussing discriminatory evictions in a more contemporary context); see also Cassie Chambers Armstrong & Christopher J. Ryan Jr., *Rural Renting: An Empirical Portrait of Eviction*, 93 U. CIN. L. REV. 1, 3–13 (2024) (discussing seven factors that disproportionately influence eviction, the primary factor considered being race).

⁶¹ Cottom, *supra* note 4; GEORGE C. WRIGHT, *LIFE BEHIND A VEIL: BLACKS IN LOUISVILLE, KENTUCKY, 1865–1930* (2004); TRACY E. K’MEYER, *FROM BROWN TO MEREDITH: THE LONG STRUGGLE FOR SCHOOL DESEGREGATION IN LOUISVILLE, KENTUCKY, 1954–2007* (2013); TRACY E. K’MEYER, *CIVIL RIGHTS IN THE GATEWAY TO THE SOUTH: LOUISVILLE, KENTUCKY, 1945–1980* (2009) [hereinafter K’MEYER, *CIVIL RIGHTS*]; Scott Cummings & Michael Price, *Race Relations and Public Policy in Louisville: Historical Development of an Urban Underclass*, 27 J. BLACK STUD. 615 (1997).

⁶² And Louisville is, of course, somehow simultaneously both Southern and Midwestern. For literary anthologies providing cultural imaginaries explications of life as a Louisvillian, *THE LOUISVILLE ANTHOLOGY* 11–15 (Erin Keane ed., 2020); *ONCE A CITY SAID: A LOUISVILLE POETS ANTHOLOGY* 1–5 (Joy Priest ed., 2023).

⁶³ WRIGHT, *supra* note 61, at 4–5.

⁶⁴ *Id.* at 106.

in which they labored.⁶⁵ When black residents began making progress on other legal fronts, however, the city endeavored to artificially introduce new segregationist spatial regulation.⁶⁶ Segregationist policy efforts unfolded abruptly in the late nineteenth century, were met with significant legal and political pushback by black citizens, and were then reattempted during the inter-war years of the twentieth century.⁶⁷ Once these segregation structures were firmly entrenched by *de jure* governmental discrimination, they were continually and fiercely reified *de facto* by private citizens and businesses through redlining, blockbusting, and so many other racist urban spatial formations.⁶⁸ After sustained conflict through the Civil Rights Era, white flight began to take place as it did in so many other cities, and segregation increased every decade between the Great Depression and the recessions of the 1970s—only seven other cities encountered worse rates.⁶⁹ Louisville came to be characterized by a black core and a white fringe—the effects of which we are still coping with today.⁷⁰ All of this continued to worsen as the city began to decline into a postindustrial landscape as ugly as some of the hardest-hit cities in the nation.⁷¹ Decades of housing degradation in the West End led to the manufacture of neighborhoods ripe for renewal, revitalization, and gentrification—conditions later exploited by development interests.⁷² Those development interests partnered with city governing structures keen for economic development and blind to the resulting dispossession.⁷³ Both the quality and accessibility of housing in the city (and specifically in its West End) have deteriorated by most indicators.⁷⁴ From the *Buchanan* case,⁷⁵ the

⁶⁵ *Id.* at 106–10.

⁶⁶ *Id.* at 43–76, 197–212.

⁶⁷ *Id.*

⁶⁸ Andrew Chandler, *Tearing Down “No Section 8” Signs: The Disparate Racial Impact of Source-of-Income Discrimination and the Validity of Louisville’s New Law Against It*, 60 U. LOUISVILLE L. REV. 127, 132 (2021); see also Joshua Poe, *Redlining Louisville: Racial Capitalism and Real Estate*, ROOT CAUSE RSCH. CTR. (2017) [hereinafter Poe, *Redlining*], <https://www.arcgis.com/home/item.html?id=a73ce5ba85ce4c3f80d365ab1ff89010> [perma.cc/3F2C-SGFA] (last visited Mar. 1, 2021) (offering an interactive map showing the long shadow of redlining and other racist spatial formations upon the city’s contemporary demographic patterns of marginalization and vulnerability).

⁶⁹ Cummings & Price, *supra* note 61, at 619.

⁷⁰ *Id.* at 620; see Poe, *Redlining*, *supra* note 68.

⁷¹ Cummings & Price, *supra* note 61, at 624–26.

⁷² Poe & Bellamy, *supra* note 45, at 144–46.

⁷³ *Id.* at 157–59.

⁷⁴ Cummings & Price, *supra* note 61, at 624–26; see Poe & Bellamy, *supra* note 45, 146–49.

⁷⁵ See James W. Ely, Jr., *Reflections on “Buchanan v. Warley Property Rights, and Race*, 51 VAND. L. REV. 953, 954–60 (1998) (discussing *Buchanan v. Warley*, 245 U.S. 60 (1917), in which the Supreme Court unanimously ruled that a Louisville, Kentucky ordinance prohibiting black people from living on blocks where the majority of residents were white violated the Fourteenth Amendment. This was a landmark decision in the repudiation of racial zoning laws).

Wade-Braden controversy,⁷⁶ and the Black Six⁷⁷ up through the destruction of Walnut Street⁷⁸ and, eventually, the *Meredith* case,⁷⁹ “Louisville’s discriminatory past presents an especially poignant history.”⁸⁰

Today, the city plays host to a particularly acute housing crisis.⁸¹ Louisville is one of the most economically segregated cities in the nation.⁸² This history of racial segregation has led to economic inequalities and to disparities in both housing quality and affordability.⁸³ Homelessness is endemic and has been increasing for decades, and the city saw an unprecedented increase in homelessness during the 2008 financial crisis⁸⁴ and a significant increase since the 2020 global pandemic.⁸⁵

⁷⁶ See CATHERINE FOSL, *SUBVERSIVE SOUTHERNER: ANNE BRADEN AND THE STRUGGLE FOR RACIAL JUSTICE IN THE COLD WAR SOUTH* 135–74 (2006) (describing the life of Braden, who “rejected her segregationist, privileged past to become one of the civil rights movement’s staunchest white allies,” from the Wade affair through her work in the decades after); ANNE BRADEN, *THE WALL BETWEEN* 302–06 (University of Tennessee Press 1999) (1958) (providing Braden’s firsthand accounts of her and her husband attempting to contest racial injustice by selling their home to the Wades, a black family that thereby moved into an all-white neighborhood, and the turmoil and violence the Wades experiences as they sought, simply, to exist).

⁷⁷ See Zack G. Hardin, *Black Power in River City: African American Community Activism in Louisville, Kentucky, 1967–1970* 46–48 (2014) (M.A. thesis, University of Kentucky) (on file with UKnowledge) (describing the events that initiated with a violent traffic stop, an unpunished officer, and peaceful protests that led to riots and racial violence and culminated in the unjust arrest and trial of six black men who were false accused of having incited the riots).

⁷⁸ See Gil Corsey, *Once a Booming Strip of Black Business, Walnut Street Faded From Louisville’s Memory for Failed Urban Renewal*, WDRB (Feb. 27, 2020), https://www.wdrb.com/in-depth/once-a-booming-strip-of-black-business-walnut-street-faded-from-louisvilles-memory-for-failed/article_fc600e82-580f-11ea-9ea5-638cf333c542.html [perma.cc/7ZAN-A6FM] (discussing a thriving black music, arts, and bar scene in downtown Louisville that was demolished—literally and figuratively—almost overnight in the name of urban renewal).

⁷⁹ See generally K’MEYER, *supra* note 61 (discussing the fraught history of racial redistricting in Louisville, Kentucky—including *Meredith v. Jefferson Cnty. Bd. of Educ.*, 547 U.S. 1178 (2006)—in which the Supreme Court granted certiorari to review a Louisville student assignment plan. The Court found that such race-based plans violated the Fourteenth Amendment in a decision also reviewing a Seattle plan, consolidated together as *Parents Involved in Cmty. Sch. v. Seattle Schs. Dist. No. 1*, 551 U.S. 701 (2007)).

⁸⁰ Chandler, *supra* note 68, at 131.

⁸¹ See generally COALITION FOR THE HOMELESS, *ADDRESSING URGENT NEEDS: A 2022 ANALYSIS OF HOMELESSNESS IN LOUISVILLE* (2022), <https://louisvillehomeless.org/wp-content/uploads/2022/04/Addressing-Urgent-Needs-2022-Analysis-of-Homelessness-in-Louisville.pdf> [https://perma.cc/F6J6-ADAB] (discussing the homelessness crisis in Louisville as of 2022).

⁸² Chris Wilson, *These Are the Most Economically Segregated Cities in America*, TIME (Apr. 18, 2017, at 16:30 ET), <https://time.com/4744296/economic-segregation-cities-america/> [perma.cc/4HAJ-JEUA].

⁸³ Mojeed A. Oladele, *Viability of Zoning Reform in Tackling Urban Inequality in Louisville*, 17 WORLD ACAD. SCI. ENG’G & TECH.: INT’L J. ARCHITECTURAL & ENV’T ENG’G 1, 3 (2023).

⁸⁴ COALITION FOR THE HOMELESS, *supra* note 81, at 2.

⁸⁵ Travis Breese, *Houseless Residents Say Clearings Are Not Leading to Connections*, WHAS11:FOCUS (Feb. 29, 2024, at 19:21 ET), <https://www.whas11.com/article/news/investigations/focus/homeless-houseless-louisville-camps-relocate-fischer-greenberg-kentucky/417-210e8ac6-4527-4ff2-b769-3eae7452b2b2> [perma.cc/H5HR-JMWV].

Across late spring and the summer of 2020, Louisville was feeling the weight of two [crisis] moments. Both were felt nationally and globally to varying extents: one which arose acutely which we are still navigating as of 2023, and one that smoldered slowly before flashing brightly. Both, of course, were no sudden or unpredictable crises: the seeds of their devastation were already present, and there has been no true structural change that would prevent their recurrence. The Covid-19 pandemic of 2020 was a global phenomenon that exposed systematic inequality and uneven vulnerabilities in capitalist systems from the global to the local. And the murder of Breonna Taylor by state-sanctioned violence led to waves of protests against racist policing in downtown Louisville as well as in cities across the region, nation, and globe.⁸⁶

Racial profiling, surveillance, and policing in the city are hopelessly intertwined with and motivated by housing and development interests, and this racial capitalist entanglement led directly to the death of Breonna Taylor.⁸⁷ Of course, and while racism is hugely overdetermined,⁸⁸ “the primary cause of homelessness is poverty, and the solution to homelessness is housing: affordable, safe, permanent housing throughout our city for our poorest neighbors, with personalized services for those who need support.”⁸⁹ However, “soaring prices have made being able to afford a home an issue everywhere,”⁹⁰ and the city’s “population growth is outpacing the growth of affordable housing units.”⁹¹ As of last year, Louisville is short “40,000 affordable housing units,” a problem caused by a combination of lower incomes, higher rents, and a shortage of units, which is in turn compounded by labor shortage, zoning and permit constraints, and underinvestment by local and state governments.⁹² Finally, and most crucially, this housing crisis

⁸⁶ Jake Mace, *Still Got the Blues – No Time but Here, No Place but Now: Geographies of Art and Activism in the Work of Clyde Woods*, at 148 (2023) (Ph.D. dissertation, University of Louisville) (on file with ThinkIR).

⁸⁷ Poe & Bellamy, *supra* note 45, at 158–59.

⁸⁸ Gilmore, *supra* note 48, at 17.

⁸⁹ COALITION FOR THE HOMELESS, *supra* note 81, at 1.

⁹⁰ Molly Jett, *Report: Louisville Faces a Housing Affordability Crisis, Zoning Reform Needed*, WDRB (Dec. 12, 2024), https://www.wdrb.com/news/report-louisville-faces-a-housing-affordability-crisis-zoning-reform-needed/article_6dbd6504-b8d5-11ef-9898-6bb5dd5c5ce5.html [perma.cc/38B4-JZEQ].

⁹¹ Jonathon Gregg, *Louisville’s Population Growth Outpacing Affordable Housing*, SPECTRUM NEWS 1 (Dec. 17, 2024, at 18:30 ET), <https://spectrumnews1.com/ky/louisville/news/2024/12/17/metro-housing-report-advocates-more-middle-housing-in-louisville> [perma.cc/FD87-8NLU].

⁹² Mark Vanderhoff, *WLKY Investigates: How Louisville Developed Affordable Housing Shortage, What’s Being Done About It*, WLKY (Sep. 4, 2024, at 18:03 ET), <https://www.wlky.com/article/wlky-investigates-louisville-affordable-housing-shortage/62058440> [perma.cc/G6VF-9V8K].

combines with weak local and state protections against evictions to result in an eviction rate “that’s about double the national average” in some years.⁹³ That combination has resulted in low supply and high demand that grossly favors landlords over tenants—a political economy marked by high rents, poor living conditions, and little incentive for landlords to reverse that status quo.⁹⁴ These are the grounds upon which unions are founded.⁹⁵ The founders of KTU “believe that organizing is the answer to the nation’s housing woes,” and while “the city’s divisions across race, class and, geography mean that the Louisville Tenants Union has its work cut out for it,” they are convinced that “tenant organizing will be to the 21st century what labor organizing was to the 20th century.”⁹⁶

B. *A Union for All*

1. Labor unions

The need for collective bargaining has often been met through unionization, and the multiplicitous character of power disparities has led to the creation of professional unions, workplace unions, student unions, transportation unions, residential unions, and tenant unions.⁹⁷ Unions promote large-scale, coordinated efforts among often-marginalized groups and are a potent force in countering political inequality.⁹⁸ Unions, naturally, are frequently seen as a threat by those parties to which they are adverse, who may fear a loss of power, and who may seek to quash unionization, suppress unions, and obstruct union activities. “Labor unions are a notable form of mass-membership organizations,” which enjoy some strong legal protections and have often served as a model for other mass-membership organizations.⁹⁹

⁹³ Anne Marshall, *Evicted in Louisville*, LOUISVILLE MAG. (July, 2018), <https://www.louisville.com/evicted-in-louisville-article> [perma.cc/3DZB-GUVY].

⁹⁴ See generally DESMOND, *supra* note 34 (discussing how market conditions and housing scarcity reinforce landlord power over tenants).

⁹⁵ See generally Andrias & Sachs, *Constructing*, *supra* note 15 (discussing collective organization as a response to structural power imbalances); Whitlow, *Law*, *supra* note 25 (applying theories of countervailing power to tenant organizing).

⁹⁶ Cottom, *supra* note 4.

⁹⁷ See generally Bangs, *supra* note 18 (surveying of several types of unions and providing this section’s subtitle).

⁹⁸ See Gowing, *supra* note 9, at 880–83, 889–91; Andrias & Sachs, *Constructing*, *supra* note 15, at 551–52; Whitlow, *Law*, *supra* note 25.

⁹⁹ Gowing, *supra* note 9, at 80. See generally Bangs, *supra* note 18 (showing how different types of mass-membership organizations have drawn upon the work and ideas of labor unions).

The relationship between labor unions and tenant unions is often analogous,¹⁰⁰ but the analogy has its limitations.¹⁰¹

The roots of labor law in the United States trace back to the earliest days of the nation. “Law has regulated the work relationship in America since colonial times,” beginning as a creature of Old-World legal systems and developing through the colonial and early modern state formation periods, shaped by chattel slavery, indentured servitude, and the New-World’s slightly-less-formal guild system of master, journeymen, and apprentices.¹⁰² While legal conflicts concerning slavery and indentured servitude bent a longer arc before ripening into more just adjudication,¹⁰³ union law has roots in the in-house conflicts between masters, journeymen, and apprentices.¹⁰⁴ These conflicts were often, literally and figuratively, in-house.¹⁰⁵ A rush of

¹⁰⁰ E.g., Baltz & Rahman, *supra* note 19; Zoe Tucker, *Why Labor Unions Should Join the Housing Fight*, L. & POL. ECON. PROJECT: BLOG (Dec. 12, 2023), <https://lpeproject.org/blog/why-unions-should-join-the-housing-fight/> [perma.cc/FRQ2-X3SG]; Bangs, *supra* note 18, 69–73; Karp, *supra* note 25; Karl Klare, *A ‘Wagner Act’ for Tenants – A Law Reform Proposal to Institutionalize Countervailing Tenant Power* 3–4 (NE. UNIV. SCH. OF L. Working Paper, Paper No. 464, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4467492; Gowing, *supra* note 9, at 881; ROSENTHAL & VILCHIS, *supra* note 30, at 28–32.

¹⁰¹ Baltz & Rahman, *supra* note 19 (“But while tenant and labor organizing share a great deal, both historically and in their potential, this does not mean both need the same statutory agenda. Labor and tenancy serve different functions for capitalism. Tenants are purchasers not producers, so their ability to leverage interventions such as price controls, possessory rights, and product standards...require different legislative agendas.”).

¹⁰² DOUGLAS E. RAY, ROBERT N. STRASSFELD & ARIANA R. LEVINSON, UNDERSTANDING LABOR LAW 4 (2025) (discussing the social, political, and economic conditions during which the Wagner Act was created).

¹⁰³ See generally EDWARD E. BAPTIST, THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM (2016) (discussing how slavery is intertwined with American economic and political development); ALFRED L. BROPHY, UNIVERSITY, COURT, & SLAVE: PRO-SLAVERY THOUGHT IN SOUTHERN COLLEGES AND COURTS AND THE COMING OF THE CIVIL WAR (2016) (examining the development of pro-slavery legal thought within Southern courts and academic institutions in the antebellum period); SLAVERY & THE LAW (Paul Finkelman ed., 1997) (analyzing the relationship between race, slavery, and the law throughout history); THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619–1860 (1999) (collecting essays on the historical development of slavery within American law); MARK TUSHNET, THE AMERICAN LAW OF SLAVERY, 1810–1860: CONSIDERATIONS OF HUMANITY AND INTEREST (1981) (analyzing the legal framework governing slavery in nineteenth-century America).

¹⁰⁴ RAY, STRASSFELD & LEVINSON, *supra* note 102, at 4–5.

¹⁰⁵ It may be helpful in this context to note the distinction between professional unions and workplace unions. Both consist of a group of laborers uniting to bargain collectively with those by whom they are employed. The former consists of laborers who perform a similar job, even if they perform that job at different job sites, in different states, and/or for different companies. The latter consists of laborers who work at the same job sites or for the same company/related companies, even if they perform different sorts of labor. Compare, for example, a group of electricians who work for different companies and in different states but bargain for professional certifications that benefit all electricians, against a group of Wal-Mart employees that includes cashiers, drivers, and call center representatives who bargain for healthcare for anyone employed by the company. Early American guild system workers, practicing the same crafts in the same household, would not merit the distinction. Today, it may be a distinction without a legal difference—both are governed by the same labor laws. See RICHARD W. HURD, THE ALBERT SHANKER INST., PROFESSIONAL WORKERS, UNIONS AND ASSOCIATIONS: AFFINITIES AND ANTIPATHIES 12–16 (2000); RAY, STRASSFELD & LEVINSON, *supra* note 102, 5.

social, political, and economic changes—Enlightenment thought, revolutionary sentiments, and the Industrial and manufacturing revolutions—led to struggling artisans and resulted in journeymen organizing together in “voluntary societies to help them in their clashes with the masters over pay and conditions.”¹⁰⁶ These early conflicts often resulted in convictions for criminal conspiracy—a reflection of early legal beliefs that individual bargaining was a protected exercise in contract action, while collective bargaining was a proscribed exercise of legislative action, potentially harmful to society in limiting competition, curtailing freedom to contract, and artificially driving up wages and therefore costs.¹⁰⁷

A fundamental restructuring of the economy between the Civil War and the Great Depression toward the factory system “led to a sea-change in unionization, if not in legal philosophy.”¹⁰⁸ Workers organized themselves into trade unions, city-wide federations, and some of the first national unions, and strikes became a commonplace bargaining practice upon the dawn of the Progressive Era.¹⁰⁹ But while criminal conspiracy prosecutions were much rarer, and mere unionization less taboo, courts began to rely upon labor injunctions to militate against strikes, picketing, secondary boycotts, and other extralegal union activities.¹¹⁰ Where the judiciary remained hostile to the nascent labor movement, however, legislatures were more sympathetic to the worker.¹¹¹ Early attempts at labor legislation, like the Sherman Act, the Clayton Act, the Erdman Act, the Railway Labor Act, and the Norris-LaGuardia Act, tended to be narrow in scope and scale and tended to be partially circumvented or wholly perverted by the courts.¹¹²

Finally, with the Wagner Act, Congress signaled quite explicitly that “the era of judicial oversight of labor disputes and labor policy should end.”¹¹³ Also known as the National Labor Relations Act (NLRA), the Wagner Act was passed in 1935 upon the explicit premise of protecting the right of laborers to collectively organize.¹¹⁴ It drew upon Congress’s powers

¹⁰⁶ RAY, STRASSFELD & LEVINSON, *supra* note 102, at 5.

¹⁰⁷ *Id.* at 5–7.

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.* at 8. Early national-scale labor unions included the short-lived National Labor Union, the Knights of Labor, and the American Federation of Labor. *Id.* at 8, 11; see Gerald N. Grob, *Reform Unionism: The National Labor Union*, 14 J. ECON. HIST. 126, 133 (1954); LEON FINK, *WORKINGMEN’S DEMOCRACY: THE KNIGHTS OF LABOR AND AMERICAN POLITICS* 186 (1985); Glen A. Gildemeister, *The Founding of the American Federation of Labor*, 22 LABOR HIST. 262, 264–65 (1981).

¹¹⁰ RAY, STRASSFELD & LEVINSON, *supra* note 102, at 8–10.

¹¹¹ *Id.* at 10–12.

¹¹² *Id.*

¹¹³ *Id.* at 12. Arguably, Congress already did this with the earlier predecessor to the NLRA—the NIRA—but the NLRA was upheld by the courts, whereas the National Industrial Recovery Act of 1933 was struck down.

¹¹⁴ *Id.*

enumerated through the Commerce Clause, with the premise of restoring balance to the employer-employee relationship previously tilted too far in favor of management.¹¹⁵ Section 7 of the Act provides that “employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”¹¹⁶ Section 8 protects these rights by prohibiting ‘unfair’ management practices with the intention or effect of restricting them,¹¹⁷ and Section 10 provides the National Labor Relations Board (NLRB) with the power of judicial enforcement of other sections.¹¹⁸ Of course, the passing of the NLRA and the formation of the NLRB was not a static intertitle closing card to the story of labor law in the United States: the Act does not include every category of employer or every category of employee, additional legislation has been passed to augment or revise it, and the Act itself has been subject to frequent reinterpretation with the march of time and the dance of partisan politics.¹¹⁹ What is important is that collective action and unionization have become historically sanctioned means of ensuring more equitable collective bargaining in the face of serious power disparities in the employer-employee context. Unfortunately, no equivalent legislation has been passed in the housing context.

2. Tenant unions

In labor unions, like professional unions and workplace unions, “[W]orkers collectively bargain with management for better pay and benefits. A tenant union typically organizes renters to bargain with private and corporate landlords for ownership, fair rent, and better living conditions.”¹²⁰ Like labor unions, tenant unions are not a recent or modern phenomenon, and tenants probably “have been organizing themselves for as

¹¹⁵ *Id.* at 14.

¹¹⁶ 29 U.S.C. § 157.

¹¹⁷ *Id.* § 158.

¹¹⁸ *Id.* § 160.

¹¹⁹ See generally Stephen F. Befort, *Labor and Employment Law at the Millennium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351 (2002) (surveying the history and limitations of modern labor and employment law); Brandon R. Magner, *Whither the Wagner Act: On the Waning View of Labor Law and Leviathan*, 27 EMP. RTS. & EMP. POL’Y J. 1 (2024) (critiquing the narrowing scope and evolving interpretation of the NLRA); Bradon R. Magner, *The Biden NLRB and Industrial Democracy’s Remnants*, 82 U. PITT. L. REV. 1 (2021) (examining contemporary administrative reinterpretation of the NLRA); Raymond L. Hogler, *Labor Unions in the Trump Administration: Courts, Congress, and the National Labor Relations Board*, 32 EMP. RESPS. & RTS. J. 25 (2020) (discussing the influence of political administrations on labor law enforcement); Warren Snead, *The Supreme Court as an Agent of Policy Drift: The Case of the NLRA*, 117 AM. POL. SCI. REV. 661 (2023) (analyzing judicial reinterpretation of the NLRA throughout history).

¹²⁰ Cottom, *supra* note 4.

long as the renter-landlord binary has existed.”¹²¹ However, general legal and social histories of tenant unions are thin.¹²² The sparse legal literature on the subject is indicative of how thin tenant union law itself is.¹²³ “Student comments from the 1960s proposing to introduce collective action and collective bargaining into landlord-tenant relationships constitute most of it,” and “more modern commentary is meager.”¹²⁴ Contemporary legal scholarship, however, is beginning to address this gap.¹²⁵

Social historians have sought to document poor housing conditions and unjust and exploitive landlord-tenants relations in the United States for well over a century, and tenants have been organizing to contest those relationships for even longer.¹²⁶ Scholars have thus captured tenant organizing in their histories, but they have largely surveyed movements as a function of specific times, places, or groups rather than through comprehensive analyses.¹²⁷ Moreover, such historians tend to emphasize individualized rather than collective power¹²⁸ or to “regard tenants as passive beneficiaries of the work of philanthropists, settlement workers, and urban liberals.”¹²⁹ But tenants themselves have always been “articulate, abrasive champions” and “aggressive advocates” for better living conditions,¹³⁰ fighting to reform housing law, even as the law continued to neglect their right to do so:

¹²¹ UNIV. MINN. TWIN CITIES, TENANTS’ UNIONS 2 (2020), [perma.cc/2SL5-BM3Y].

¹²² Bangs, *supra* note 18, at 58–59.

¹²³ See generally Gowing, *supra* note 9 (discussing the limited legal protections available to tenant collective action); Hogue & Way, *supra* note 7 (examining gaps and inconsistencies in legal protections for tenant organizing).

¹²⁴ *Id.* There was a sea change in the way legal scholarship considered landlord-tenant law between roughly 1965–1980, led by law students, and oft-based upon their experience in eviction clinics. The move to analyze leases under contract law doctrine rather than under solely property law doctrine is rooted in this time period, as are our contemporary legal notions of implied warranties of habitability, collective bargaining, tenant unions, and retaliation defenses. For analysis of these historical developments, Edward J. Ashton et al., *Developments in Contemporary Landlord-Tenant Law: An Annotated Bibliography*, 26 VAND. L. REV. 689 (1973); Edward H. Rabin, *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517 (1984); Samuel P. Young, *Retaliatory Eviction—Is California Lagging Behind*, 18 HASTINGS L.J. 700 (1967); Neil B. Danberg, *Protection for Citizen Complaints to Public Authorities—Prohibition of Retaliatory Evictions: The Case of Edwards v. Habib*, 48 NEB. L. REV. 1101 (1969); James P. Cullen, *Landlord and Tenant—Retaliatory Eviction Based upon Tenant Rent Withholding as a Result of Housing Code Violations Is Unlawful and May Be Raised as a Defense in an Action by Landlord for Possession*, 18 VILL. L. REV. 1119 (1973); Jane E. Bockus, *Retaliatory Eviction in Texas—An Analysis and a Proposal*, 10 ST. MARY’S L.J. 303 (1978).

¹²⁵ For recent work on tenant union law, Bangs, *supra* note 18; Andrias & Sachs, *Constructing*, *supra* note 15; Gowing, *supra* note 9; Hogue & Way, *supra* note 7; Baltz, *Tenant Union*, *supra* note 5.

¹²⁶ Hogue & Way, *supra* note 7, at 395–405.

¹²⁷ *Id.* But see Peter Dreier, *The Tenants’ Movement in the United States*, 8 INT’L J. URB. & REG’L RSCH. 255, 256–59 (1984) (attempting to fill this gap in the 1980s).

¹²⁸ See Dreier, *supra* note 127, 256–59.

¹²⁹ Joel Schwartz, *Tenant Unions in New York City’s Low-Rent Housing, 1933–1949*, 12 J. URB. HIST. 414, 414 (1986).

¹³⁰ *Id.*

In the early 1920s and '30s, tenant organizing and militant tenant unions built the laws that we rely on to organize now. Even something as basic as the requirements that you live in habitable conditions, that you have the right to an eviction process – all of these were won with the blood and sweat of tenant-union organizing of the past.¹³¹

However, the landscape of tenant organizing has routinely shifted with changes in federal housing policies, urban development policies, and racial and social justice policies.¹³² Through the late twentieth century, tenant organizing shrank with occasional spikes.¹³³ However, “renter organizing has recently witnessed a resurgence bolstered by a growing tenant population and the urgency of rising rent burdens” in the global housing crisis.¹³⁴

Indeed, an analysis of the history of modern tenant unions in the United States seems to indicate at least five major waves, all (perhaps not coincidentally) unfolding in the aftermath of economic and housing crises: the dawn of the Progressive Era,¹³⁵ the Great Depression,¹³⁶ the Great Inflation,¹³⁷ the Great Recession,¹³⁸ and the Global Covid-19 Pandemic.¹³⁹

¹³¹ Ben Mabie, *Getting Renters Organized: An Interview with Tracy Rosenthal & Leonardo Vilchis*, JACOBIN (Oct. 10, 2024), <https://jacobin.com/2024/10/tenants-unions-housing-rent-labor> [perma.cc/46AT-76LY].

¹³² Schwartz, *supra* note 129, at 436–37.

¹³³ *Id.*

¹³⁴ UNIV. MINN. TWIN CITIES, *supra* note 121, at 2.

¹³⁵ See Hogue & Way, *supra* note 7, at 394–95.

¹³⁶ See *id.* at 395; Schwartz, *supra* note 129, 414–24; Kathryn Leonard, “We Shall Not Be Moved”: *The National Discourse of the Southern Tenant Farmers’ Union, 1934–1936*, 41 HIST. STUD. J. (2024), <https://cudenverhistoryjournal.org/2024-volume-41/we-shall-not-be-moved-the-national-discourse-of-the-southern-tenant-farmers-union-1934-1936/> [https://perma.cc/K6A5-JZP2].

¹³⁷ See Hogue & Way, *supra* note 7, at 396–99; Woody Widrow, *The Tenants Movement and Housers*, SHELTERFORCE (Nov. 1, 2005), <https://shelterforce.org/2005/11/01/the-tenants-movement-and-housers> [perma.cc/XK6M-G2Q4]; John Atlas, *The Rise and Fall of the National Tenants Union*, SHELTERFORCE (Nov. 22, 2022), <https://shelterforce.org/2022/11/22/the-rise-and-fall-of-the-national-tenants-union> [perma.cc/7DB8-PJKV]; Rebecca Burns, *A National Tenants Union Has Arrived*, THESE TIMES (Aug. 6, 2024), <https://inthesetimes.com/article/national-tenants-union-federation> [perma.cc/NJ7R-4QYP].

¹³⁸ See Hogue & Way, *supra* note 7, at 399–405; Whitlow, *Law*, *supra* note 25; Lenehan & Raghuveer, *supra* note 39.

¹³⁹ Some of the literature makes less of a distinction between organizing after the Great Recession and the Global Pandemic, noting surges in 2017–2019, for example, and, to be fair, tenant organizing has never completely ceased between any surges. See, e.g., Lillian M. Ortiz, *Tenant Power: Organizing for Rent Strikes and Landlord Negotiations*, SHELTERFORCE (July 30, 2018), <https://shelterforce.org/2018/07/30/tenant-power-organizing-for-rent-strikes-and-landlord-negotiations> [perma.cc/3SK4-6GD2] (highlighting several tenant organizing efforts across the country in the teens); Hogue & Way, *supra* note 7, at 399–405 (explaining that although pandemic relief temporarily stabilized some renters, post-pandemic inflation and rising rents amplified housing insecurities for communities of color and low-income households, while landlord-tenant relationships deteriorated); Cottom, *supra* note

Moreover, in the aftermath of the Great Depression, some of the first attempts at international tenant unions were made (such as the International League of Tenants and the International Union of Tenants), although they were in practice creatures of European states.¹⁴⁰ But across the middle of the last century, some of the first attempts at national tenant unions were made in the United States.¹⁴¹ The National Tenants' Organization (NTO) arose in the 1960s and secured significant wins before declining in the 1970s, while the National Tenants' Union (NTU) hosted a successful national conference in Cleveland in 1980 but had "fizzled out" by 1991.¹⁴² As discussed, the housing market crash of 2008 spurred renewed crises in housing and homelessness, along with an attendant wave of tenant organizing.¹⁴³ Yet, this "third wave," did not serve as much as a catalyst towards national or international tenant unions.¹⁴⁴ The current wave—profoundly impacted by Covid-19—has revived those goals much more articulately.¹⁴⁵ The TUF "is the first major tenant organizing effort with a national structure to emerge in decades," and its member unions "are collectively bargaining leases, working to put tenant organizers into elected office, and fighting successfully for laws to prevent gentrification, all in the name of establishing renters as a formidable political class."¹⁴⁶ Certainly, the tactics of contemporary tenant unions rhyme with those of yesteryear.¹⁴⁷ And they still fight for reforms under the cloud of a socio-political climate reifying the power disparities between landlords and tenants, and they march for progress under a legal umbrella providing only uneven, fluctuating, and cursory coverage.¹⁴⁸ "What is challenging," one commenter notes, "is that there's nothing for tenants like what exists for workers through the National Labor Relations Board. There is no formal

4; Burns, *supra* note 137; Steve Dubb & Tara Raghuvier, "The Rent Is Too Damn High!"—The Rise of a National Tenants' Movement, NPQ, (Dec. 13, 2023), <https://nonprofitquarterly.org/the-rent-is-too-damn-high-the-rise-of-a-national-tenants-movement> [perma.cc/NT3K-TMBH]; ROSENTHAL & VILCHIS, *supra* note 30, at 4, 57–80; Lenehan & Raghuvier, *supra* note 39; Dias, *supra* note 58, at 191–200.

¹⁴⁰ See *History: Promoting Tenants' Rights Since 1927*, INT'L UNION OF TENANTS, <https://www.iut.nu/about-iut/history/> [perma.cc/TL2W-QWYV] (last visited Feb. 15, 2025).

¹⁴¹ See Hogue & Way, *supra* note 7, at 394–99.

¹⁴² *Id.* at 397–98; see also Atlas, *supra* note 137 (describing the "rise and fall" of the NTU).

¹⁴³ U.S. DEP'T OF HOUS. & URB. DEV.: OFF. OF CMTY. PLAN. & DEV., THE 2008 ANNUAL HOMELESSNESS ASSESSMENT REPORT TO CONGRESS 5, 41–58 (2009) [hereinafter 2008 REPORT], <https://www.huduser.gov/portal/sites/default/files/pdf/4thHomelessAssessmentReport.pdf> [https://perma.cc/J2Z9-AYR8]; Shelby R. King, *Organized Tenants Are Baaaaack*, SHELTERFORCE (Nov. 21, 2022), <https://shelterforce.org/2022/11/21/organized-tenants-are-back/> [https://perma.cc/3CTU-YNPT].

¹⁴⁴ 2008 REPORT, *supra* note 143, at 5, 41–58; King, *supra* note 143; see discussion *infra* Section II.C.2.

¹⁴⁵ See Dubb & Raghuvier, *supra* note 139.

¹⁴⁶ Thomas Birmingham, *In the US, Tenants Are Usually on Their Own. Can a New National Tenant Union Change That?*, NATION (Dec. 4, 2024), <https://www.thenation.com/article/society/tenant-union-organizing-rent/> [perma.cc/QT83-3RQQ].

¹⁴⁷ ROSENTHAL & VILCHIS, *supra* note 30, at 5.

¹⁴⁸ *Id.*; Baltz, *Tenant Union*, *supra* note 5, at 4–13.

process by which a tenant union is recognized. And, in some ways, that is a good thing. In some ways, that's limiting."¹⁴⁹

C. Tenant Union Protections

1. What unions have

Generally, the federal government does not regulate housing.¹⁵⁰ Most laws and regulations are created at the state and local levels.¹⁵¹ However, the federal government does have the power to regulate housing that it directly creates or funds—"notably, project-based Section 8 buildings are subject to federal regulations that explicitly outline the rights and responsibilities of tenant associations."¹⁵² Such protections are robust, for both tenants and tenant unions, in relation to most states:

Federal regulations govern the creation, internal governance, and powers of these federally recognized "legitimate tenant organizations." Tenants, whether or not they have established a "legitimate tenant organization," enjoy a right to organize. After having elected "legitimate tenant organizations," building management is required to "[g]ive reasonable consideration to concerns raised by legitimate tenant organizations." If a landlord fails to maintain the property or honor tenants' organizing rights, the tenants may file an underenforced complaint with the U.S. Department of Housing and Urban Development seeking the owner's debarment from the subsidy program.¹⁵³

Tenants of non-federal housing who pay their rent with federal vouchers, however, do not have federal rights to organize, although Congress has considered passing such legislation.¹⁵⁴ To the extent that vouchers currently impose any additional restrictions on landlords, that is part of the rationale

¹⁴⁹ Dubb & Raghuveer, *supra* note 139; Baltz, *Tenant Union*, *supra* note 5, at 49–50; *see also* Gowing, *supra* note 9, at 893 ("By operating outside the formal legal infrastructure, tenant unions lack the protections and legal support afforded, for example, to labor unions—but they also remain uninhibited by government restrictions and regulations.").

¹⁵⁰ Baltz, *Tenant Union*, *supra* note 5, 4–13.

¹⁵¹ *Id.*

¹⁵² *Id.* at 30; *see also* Hogue & Way, *supra* note 7, at 405–07 (explaining how federal law governing HUD-assisted housing recognizes tenant associations and protects tenant organizing activities).

¹⁵³ Baltz, *Tenant Union*, *supra* note 5, at 23–24 (citing 24 C.F.R. §§ 245.105, .110, .135 (2024)).

¹⁵⁴ *Id.* at 41 n.175.

behind landlord refusal to accept leases with such tenants.¹⁵⁵ While landlord-tenant relationships subject to direct federal regulations enjoy some of the strongest tenant and tenant union protections in the nation, these relationships are relatively few.¹⁵⁶

The fight for a federal law similar to the Wagner Act has been and will remain difficult within our current legal structures.¹⁵⁷ Tenant unions have operated in the shadow of the law more often than not.¹⁵⁸ While unionization is often treated within state anti-retaliation law as part of enumerated lists of subclauses concerning protected activities like tenant organizing and even tenant unions *per se*, dedicated statute chapters giving serious consideration to union activities or a union's ability to act as an organizational entity are rare.¹⁵⁹ Tenants are not without protections, but most existing protections work to cover tenants acting individually rather than tenants acting collectively.¹⁶⁰ Case decisions that thoroughly treat questions of retaliation for union activities and a union's direct actions are even rarer.¹⁶¹ However, "that does not mean there is no tenant union law"¹⁶² to be gleaned from the statutes. This section, as background, discusses protections in this light, without making a distinction between individual action and collective action. The analysis section¹⁶³ carries forward this exploration of anti-retaliation law through the lens of individual tenants, while the resolution section¹⁶⁴ emphasizes what advocacy looks like on a more collective scale.

In 1972, the Uniform Law Commission (ULC) offered the Uniform Residential Landlord and Tenant Act (URLTA) as an articulation of model legislation based upon statutory reforms that had begun to take hold across

¹⁵⁵ *Id.* at 66–67. See generally Chandler, *supra* note 68 (detailing the racialized animus and impact of voucher refusal—known as “source-of-income discrimination”—and Louisville’s attempt to ban it in 2020).

¹⁵⁶ Baltz, *Tenant Union*, *supra* note 5, at 22–26.

¹⁵⁷ Kennedy, Klare & Turk, *supra* note 30; Baltz, *Tenant Union*, *supra* note 5.

¹⁵⁸ See Baltz, *Tenant Union Law*, *supra* note 5; see Greg Baltz, *Organizing in the Shadow of the Law*, L. & POL. ECON. PROJECT: BLOG (Jan. 15, 2025) [hereinafter Baltz, *Organizing*], <https://lpeproject.org/blog/organizing-in-the-shadow-of-the-law/> [perma.cc/VEM4-GS8N].

¹⁵⁹ Gowing, *supra* note 9, at 890.

¹⁶⁰ This is an important distinction. Tenants often have the general right to organize into a union; however, do tenants also have the specific rights to authorize the union to bargain on their behalf, to compel their landlord to meet and confer with the union, to be represented by the union in court proceedings defending against an eviction, enforcing a building contract, or requesting relief, or to go on rent strike with each other under legally prescribed circumstances?

¹⁶¹ But see Nina Sparling, *Tenant Group Sues Landlord, Alleging Retaliation Against Organizing Efforts*, PUBLIC’S RADIO (December 29, 2023), <https://thepublicradio.org/business/tenant-group-sues-landlord-alleging-retaliation-against-organizing-efforts/> [perma.cc/A3L6-FC2Z] (discussing tenants who are claiming retaliation for unionization).

¹⁶² Baltz, *Organizing*, *supra* note 158.

¹⁶³ See discussion *infra* Part III.

¹⁶⁴ See discussion *infra* Part IV.

many states during the preceding decades.¹⁶⁵ As a nonpartisan organization committed to enabling cooperative federalism through increasing cross-jurisdictional uniformity in statutory law, the ULC did not release a radical model law; indeed, URLTA was an attempt at striking a balance between anciently ascendant landlords' rights and (contemporaneously) recent reform progress.¹⁶⁶ "The Act adopted a number of contracts-based principles, such as the warranty of habitability, the duty to mitigate damages, unconscionability, and good faith and fair dealing. URLTA also regulated security deposits, prohibited retaliatory conduct, and prohibited landlords from retaking possession by self-help."¹⁶⁷ At least fifteen states adopted URLTA, and several others adopted key provisions and/or variations on provisions.¹⁶⁸ But in initially adopting versions of URLTA statutes, states often altered statutory language to reflect their individual legal and political climates and later revised those statutes as adjudicatory needs arose.¹⁶⁹ A 1980 law journal note, considering URLTA as officially adopted by fifteen states and partially enacted by eight at its time, noted that "no state has adopted the URLTA without amending some of its provisions."¹⁷⁰

In 2010, on the eve of URLTA's fortieth anniversary, the ULC appointed a drafting committee to update the model law based upon intra-jurisdiction inconsistencies and upon changing social and political climates.¹⁷¹ The Revised Uniform Residential Landlord and Tenant Act (RURLTA) was formally promulgated in 2015.¹⁷² According to two of the drafters, the committee shared a "desire to strike an appropriate balance between landlord and tenant interests...while specific provisions in the Act might be perceived as tenant-friendly or landlord-friendly, the goal was to strike the type of balance that might be achieved...between parties of equal bargaining power."¹⁷³ Major revisions were made in several areas, and some entirely

¹⁶⁵ Sheldon F. Kurtz & Alice M. Noble-Allgire, *The Revised Uniform Residential Landlord and Tenant Act: A Perspective from the Reporters*, 52 REAL PROP. TR. & EST. L.J. 417, 419–23 (2018) [hereinafter Kurtz & Allgire, *Revised*].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 422 (citations omitted).

¹⁶⁸ *Id.* at 423 (citations omitted).

¹⁶⁹ *See id.*

¹⁷⁰ Robert D. Mercer-Falkoff, *The Uniform Residential Landlord and Tenant Act: The Impact of Existing State Laws*, 7 J. LEGIS. 158, 159 (1980).

¹⁷¹ Kurtz & Noble-Allgire, *Revised*, *supra* note 165, at 423.

¹⁷² *Id.*

¹⁷³ *Id.* at 424.

new provisions were created.¹⁷⁴ As with URLTA, different states adopted the updates differently, and some chose not to adopt any at all.¹⁷⁵

As of the time of writing, twenty-one states have explicitly adopted R/URLTA,¹⁷⁶ and many more have adopted some of its provisions, occasionally supplementing/supplemented by the previous model codes.¹⁷⁷ In practice, state legislatures do not adopt these ‘uniform’ models uniformly.¹⁷⁸ Some states tend to favor more tenant-friendly portions, while others tend to favor more landlord-friendly portions.¹⁷⁹ Moreover, amongst state legislatures that have declined to formally adopt URLTA in any form, some have done so because its tenant protections are too strong, while others have done so because its own preexisting statutes and/or case law provide much stronger protections than URLTA has, in any form.¹⁸⁰ New York, California, and the District of Columbia have passed particularly strong protections for tenants, “including the right for tenant organizers to canvass in multifamily housing and the right to obtain information from landlords in certain circumstances.”¹⁸¹ A true state-by-state analysis of tenant protections is beyond the scope of this Note, and even the general notes below are cursory, but landlord-tenant law has been codified by statute in fifty-one states (all fifty states as well as the District of Columbia).¹⁸² Who qualifies as a tenant under these laws varies, as does what protections they are entitled to, and how they may seek remedy if their rights are violated.¹⁸³ Protections

¹⁷⁴ See Sheldon F. Kurtz & Alice M. Noble-Allgire, *What's New in the Revised Uniform Residential Landlord and Tenant Act?*, PROB. & PROP. MAG., Nov./Dec. 2016, at 18–25 [hereinafter Kurtz & Allgire, *What's New*] (discussing properties covered, security deposits, tenants involved in domestic or sexual violence, disposition of a tenant's personal property, and the death of a tenant, notice requirements, attorney's fees, and retaliatory eviction).

¹⁷⁵ See Kurtz & Noble-Allgire, *Revised*, *supra* note 165, at 422–23.

¹⁷⁶ Bangs, *supra* note 18, at 61 n.102; NAT'L CTR. FOR HEALTHY HOUS., UNIFORM LAW COMMISSION'S UNIFORM RESIDENTIAL LANDLORD-TENANT ACT 1, <https://nchh.org/resource-library/Uniform%20Law%20Commission%20-%20URLTA.pdf> [perma.cc/9TDH-JLN7] (last visited Feb. 15, 2025).

¹⁷⁷ *Research*, FREDDIE MAC MULTIFAMILY, <https://mf.freddiemac.com/research> [perma.cc/DWX9-CMQY] (last visited Jan. 11, 2026); see generally Alan J. Pollock & George A. Kokus, *Model Residential Landlord-Tenant Code—Proposed Procedural Reforms*, 25 U. MIA. L. REV. 317 (1971) (discussing its titular model code, drafted before the URLTA).

¹⁷⁸ For the purpose of this Note, the District of Columbia is referred to as a state, *i.e.*, this Note analyzes anti-retaliation law in fifty-one states. Additionally, for the remainder, “URLTA” will stand in for both the original and revised model, unless a specific distinction is being made.

¹⁷⁹ Austin Beveridge, *Renter Friendly vs. Landlord Friendly States Full Comparison*, GOLIATHDATA, <https://goliathdata.com/renter-friendly-vs-landlord-friendly-states-full-comparison> [perma.cc/LWA8-EERP] (last visited Jan. 11, 2026).

¹⁸⁰ *Id.*

¹⁸¹ Gowing, *supra* note 9, at 891.

¹⁸² TEMPLE UNIV. BEASLEY SCH. OF L.: CTR. FOR PUB. HEALTH L. RSCH., *State Landlord-Tenant Laws*, LAWATLAS (Aug. 1, 2019), <https://lawatlas.org/datasets/state-landlord-tenant-laws-1499878846> [perma.cc/9L7G-B5RU].

¹⁸³ *Id.*

related to the renting experience may be conceived of as those rights relating to tenant screening; rent, late payments, and security deposits; habitability and retaliation; pre-eviction protections (including notice and opportunity to cure lease violations); and eviction fees, right to counsel, and eviction diversion programs.¹⁸⁴

As of January 2023, thirty-one states protect hotel tenants, twenty-three protect social organizations as tenants, twenty protect tenants whose residency is a condition of employment, twenty-three protect condominium tenants, and only five protect public housing tenants.¹⁸⁵ In nineteen states, some or all residents of home parks or marinas have more formal legal rights than residents of apartment buildings.¹⁸⁶ In thirty-five states, landlords are explicitly responsible for providing habitable conditions,¹⁸⁷ in thirty-seven, they are responsible for making timely repairs,¹⁸⁸ in twenty-nine they must maintain supplied appliances,¹⁸⁹ in thirty-six they must supply running water,¹⁹⁰ and in forty they must supply heat.¹⁹¹ In terms of remedies, in thirty-five states, tenants may terminate their lease early if a landlord is failing to comply with their legal duties, in forty-seven, they may receive monetary damages, and in twenty-six, they make repairs themselves and either bill their landlord or deduct the costs from their rent (with notice).¹⁹² Victims of domestic violence may alter their leases or request a lock change in eighteen states,¹⁹³ and they may terminate their lease early in twenty-nine states.¹⁹⁴ Three states have limits on rent increases,¹⁹⁵ three states grant a right to counsel in an eviction proceeding,¹⁹⁶ seven states have laws prohibiting a landlord's use of certain information (such as a tenant's criminal history) when screening tenants,¹⁹⁷ and forty-four states require landlords to give tenants notice of rent payment defaults before the landlord can begin the eviction process.¹⁹⁸ In forty-two states, landlords are prevented from taking retaliatory actions against a tenant who asserts their rights under the law.¹⁹⁹

¹⁸⁴ *Research, supra* note 177.

¹⁸⁵ TEMPLE UNIV. BEASLEY SCH. OF L.: CTR. FOR PUB. HEALTH L. RSCH., *supra* note 182.

¹⁸⁶ Bangs, *supra* note 18, at 58.

¹⁸⁷ TEMPLE UNIV. BEASLEY SCH. OF L.: CTR. FOR PUB. HEALTH L. RSCH., *supra* note 182.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Research, supra* note 177.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ TEMPLE UNIV. BEASLEY SCH. OF L.: CTR. FOR PUB. HEALTH L. RSCH., *supra* note 182.

As a caveat, landlords not explicitly responsible for given duties, and tenants not entitled to specific rights and remedies, may still be responsible or entitled through another law.²⁰⁰ And again, this is an illustration and not an exhaustive list of duties, rights, or remedies under URLTA or under other landlord-tenant state laws. However, no state “requires the landlord to bargain with the tenants or a tenants association.”²⁰¹ Tenants both need and deserve legal reform.

2. What unions need

Tenants deserve affordable, accessible, and habitable housing. Tenants who are suffering from soaring rents, insecure leases, and deplorable living conditions deserve to organize collectively to realize more equitable bargaining power. Legal reforms have often focused on housing market regulation or individual rights, absent organizing protections and enforcement mechanisms.²⁰² “Conventional solutions to the housing crisis generally point in two directions: rental assistance for low-income families and subsidized homeownership for everyone else,” but rental assistance is underfunded, under-accessible, and often underused due to the disparity between voucher dollars and rent prices, as well as landlord discrimination against tenants on assistance.²⁰³ Families qualifying as middle-class often make too little for even subsidized homeownership and too much for rental assistance.²⁰⁴ Moreover, these landlord- and development-approved individualized solutions to a systemic crisis not only miss the mark on affordability and accessibility but also completely fail to address the deplorable living conditions to which tenants are often subjected.²⁰⁵ These ‘solutions’ overlook the importance of tenant-power organizations in creating and sustaining housing stability in the United States. Tenants represent a potent political class, making up the majority of the population in many US cities, and often experience unsafe housing conditions collectively.²⁰⁶ By building organizations, tenants can work collectively to win safer living conditions in their homes.²⁰⁷ Neighbors, in turn, can develop stronger social ties that lead to deeper civic participation and healthier overall

²⁰⁰ *Landlord-Tenant Law*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/landlord-tenant_law [perma.cc/QF5P-BRGY] (last visited Jan. 11, 2026).

²⁰¹ Gowing, *supra* note 9, at 891.

²⁰² *Id.* at 877.

²⁰³ Weaver, *supra* note 19, at 3.

²⁰⁴ *Id.* at 3–4.

²⁰⁵ *Id.* at 4.

²⁰⁶ *Id.*

²⁰⁷ See generally Bangs, *supra* note 18 (discussing the importance of collective organizing to landlord-tenant reform).

neighborhoods.²⁰⁸ Finally, tenants can create a political constituency and leverage their organization to pick (and win) political fights.²⁰⁹ To win these fights, tenant union advocates need legal reform for individual tenants and tenant unions.

Proposed reforms by both organizers and academics are varied and robust, tend to address the housing crisis, tenants' rights, and tenant unions' rights simultaneously, and are often based upon existing and workable laws in more progressive jurisdictions.²¹⁰ Organizers have pursued legal reforms that can be imagined in terms of three categories: general governmental means of protecting tenants' rights, the recognition of tenants to form tenant unions, and the recognition of a properly formed tenant union's right to act on behalf of its members.²¹¹ Proposed governmental protections include (legislatively) the expansion of rent control,²¹² anti-displacement/gentrification legislation,²¹³ policies that remove land from the speculative market,²¹⁴ introduction of good-cause only evictions,²¹⁵ the right to automatic lease renewal,²¹⁶ the right of first refusal when a housing owner seeks to sell the building,²¹⁷ state-level 'radical' leaning tenant protection clauses on a local-option buy-in model,²¹⁸ (administratively) proactive-oriented local code enforcement verification,²¹⁹ tenant rights awareness training for law enforcement,²²⁰ enforced landlord disclosure of rent rolls and property

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Whitlow, *Toward Housing*, *supra* note 11, at 190–93.

²¹¹ *Id.* at 192–93.

²¹² See Weaver, *supra* note 19; Raghuveer & Washington, *supra* note 39; Karp, *supra* note 25; Klare, *supra* note 100, 1–2; Gowing, *supra* note 9, at 897–98; Whitlow, *Toward Housing*, *supra* note 11, at 190–93.

²¹³ See Gabby Ross & Jessica Bellamy, 15–1 *How the Louisville Tenants Union Won the First Anti-Displacement Policy in the South*, NAT'L LOW INCOME HOUS. COAL. (Apr. 25, 2024), <https://nlihc.org/resource/15-1-how-louisville-tenants-union-won-first-anti-displacement-policy-south> [perma.cc/GXS3-JYST]; Citlali Pérez, *Referenda Wins Behind Them, CBA Organizers Fight On*, S. SIDE WKLY. (Apr. 26, 2024), <https://southsideweekly.com/referenda-wins-behind-them-cba-organizers-fight-on/> [perma.cc/K62L-XGPN]; Raghuveer & Washington, *supra* note 39; John Whitlow, *Moving Beyond Liberal Legal Rights: An Expansive Vision of Right to Counsel*, L. & POL. ECON. PROJECT: BLOG (Apr. 1, 2020) [hereinafter Whitlow, *Moving*], <https://lpeproject.org/blog/moving-beyond-liberal-legal-rights-an-expansive-vision-of-right-to-counsel/> [perma.cc/QFA4-SRCG].

²¹⁴ Julie Gilgoff, *Giving Tenants the First Opportunity to Purchase Their Homes*, SHELTERFORCE (July 24, 2020) [hereinafter Gilgoff, *Giving*], <https://shelterforce.org/2020/07/24/giving-tenants-the-first-opportunity-to-purchase-their-homes/> [perma.cc/6LTX-6SHF].

²¹⁵ See Weaver, *supra* note 19; Klare, *supra* note 100, at 1.

²¹⁶ See Weaver, *supra* note 19; Casserly, *supra* note 14, at 1343.

²¹⁷ See Bangs, *supra* note 18, at 59; Julie Gilgoff, *Opportunity to Purchase Policies: Preserving the Affordability of Manufactured Home Communities*, 68 VILL. L. REV. 405, 410 (2023) [hereinafter Gilgoff, *Opportunity*]; Gilgoff, *Giving*, *supra* note 214.

²¹⁸ See Weaver, *supra* note 19.

²¹⁹ See *id.*

²²⁰ Hogue & Way, *supra* note 7, at 416–17.

lists,²²¹ and (judicially) enhanced civil procedural protections in eviction proceedings.²²² Proposed protections of the rights of tenants to organize into unions include an explicit and universal recognition of the right of tenants to organize through tenant unions²²³ and a right to formal, government-backed recognition of tenant unions as legal entities when formation procedures are observed.²²⁴ Proposed protections of the rights of a tenant union to act on behalf of its members include a right to collective bargaining and the administrative enforcement of a landlord duty to bargain with collectives in good faith,²²⁵ the right of a tenant union to self-fund and collect dues,²²⁶ the right to organizing rent strikes in collective action situations,²²⁷ and the rights of a tenant union to sue a landlord on behalf of its members and to defend its members in private eviction proceedings.²²⁸

These reforms are vital and urgent if we are to ensure systemic and societal balance in landlord-tenant relations. But the creation, recognition, and enforcement of legal rights are meaningless if landlords are not absolutely precluded from visiting harm upon those who seek to exercise those rights. Legal mechanisms designed to stop a landlord from evicting, raising rent upon, or decreasing services to a tenant who exercises their rights are also less uniform and robust than desirable. But these anti-retaliation laws remain a crucial aspect of tenant and tenant union legal protections.

II. THE LIMITS OF ANTI-RETALIATION LAW

Legal protections against retaliatory actions existed in some state statutory law and case law prior to the initial promulgation of URLTA and the earliest

²²¹ Whitlow, *Toward Housing*, *supra* note 11, at 189–90.

²²² See Gowing, *supra* note 9, 904–05; Kathryn A. Sabbeth, *Who Says Evictions Should Be Efficient?*, L. & POL. ECON. PROJECT: BLOG (July 17, 2024) [hereinafter Sabbeth, *Who Says*], <https://lpeproject.org/blog/who-says-evictions-should-be-efficient/> [perma.cc/FZ54-2FA5].

²²³ Weaver, *supra* note 19; Whitlow, *Toward Housing*, *supra* note 11, at 187–90.

²²⁴ See H. Edward Hales, Jr. & Charles H. Livingston, *Tenant Unions: Their Law and Operation in the State and Nation*, 23 U. FLA. L. REV. 79, 86–87 (1970); Andrias & Sachs, *Constructing*, *supra* note 15, 583–85; Whitlow, *Toward Housing*, *supra* note 11, at 187–90.

²²⁵ See Gowing, *supra* note 9, 907–09; Whitlow, *Law*, *supra* note 25; Kennedy, Klare & Turk *supra* note 30; Volodymyr O. Bazarko, *Tenant Unions: Legal Rights of Members*, 18 CLEV.-MARSHALL L. REV. 358, 362–63 (1969); Andrias & Sachs, *Constructing*, *supra* note 15, at 625; Klare, *supra* note 100, 13–16; Whitlow, *Toward Housing*, *supra* note 11, at 187–90.

²²⁶ Bangs, *supra* note 18, 79–85.

²²⁷ See Weaver, *supra* note 19; Raghuveer & Washington, *supra* note 39; Gowing, *supra* note 9, 989–902; Karp, *supra* note 25; Andrias & Sachs, *Constructing*, *supra* note 15, 805–11; Greg Baltz, *Resurrecting the Rent Strike Law*, 26 U. PA. J.L. & SOC. CHANGE 1, 2–3 (2023) [hereinafter Baltz, *Resurrecting*]; Alysia Nicole Harris, *Rent Strikes & Beyond: Housing Strategies that Work for the South*, SCALAWAG (Apr. 9, 2020), <https://scalawagmagazine.org/2020/04/rent-strikes-coronavirus/> [perma.cc/ZX34-Q7TE].

²²⁸ See Bazarko, *supra* note 225, 361–67; Kennedy, Klare & Turk, *supra* note 30; Klare, *supra* note 100, 1; Whitlow, *Moving*, *supra* note 213.

years of its adoption in early-mover states.²²⁹ Anti-retaliation law, therefore, appears in URLTA states, quasi-URLTA states, states with stronger overall tenant protections than URLTA, and even states with weaker overall tenant protections than URLTA.²³⁰ In fact, “only six states—Idaho, Louisiana, Missouri, North Dakota, Oklahoma and Wyoming—do not have a landlord retaliation statute on their books, though retaliation has been used as a legal defense in eviction cases in Idaho.”²³¹ Most of these retaliation clauses include explicit language protecting tenants from retaliation after forming tenant unions/collective organizations, based upon a constitutional right to assembly and petition.²³² However, protections are more robust than merely allowing for unionization, and non-union-oriented protections are still crucial for the strategic execution of a wide array of union activities.²³³ Pertinence of anti-retaliation law to tenant unions will be discussed in the resolution section. This part analyzes retaliation clauses in the context of landlord-tenant relations, beginning by relaying the stories of three tenants struggling with their landlord over their living conditions, and then by examining retaliation law through the lens of their stories.

A. *The Experience of Eviction Encounters*

A lease is a contract; at a basic level, mutual consideration is present when a tenant’s offer of rent is balanced by a landlord’s offer of a habitable residence.²³⁴ The warranty of habitability, whether express or implied, depending on the jurisdiction, “ties a tenant’s obligation to pay rent to a property’s livability: an apartment free of pests and structural issues, heat that heats, lights that light, drains that drain.”²³⁵ Maintaining livable conditions is

²²⁹ See e.g., *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968) (providing an example of a pre-1972 case recognizing retaliatory eviction).

²³⁰ See UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101 cmt. (1972), <https://www.turbotenant.com/wp-content/uploads/2017/10/Uniform-Residential-Landlord-and-Tenant-Act.pdf> [<https://perma.cc/ND2B-DRMK>].

²³¹ Mary Salmonsens, *Illinois Property Managers Barred from Retaliation*, MULTIFAMILY DIVE (Sep. 10, 2024), <https://www.multifamilydive.com/news/illinois-property-managers-barred-from-retaliation-law-regulation/726615/> [perma.cc/TE7E-G3GQ].

²³² See, e.g., CAL. CIV. CODE § 1942.5(d) (West 2021); N.Y. REAL PROP. LAW § 223-b(c) (McKinney 2019); MASS. GEN. LAWS ANN. ch. 186, § 18 (West 2025).

²³³ Andrias & Sachs, *Constructing supra* note 15, 781 (“Enacting laws designed to facilitate social-movement organizing generally requires social-movement organizations already influential enough to secure the enactment of those laws. Thus, the relationship between law and social-movement organizing by the poor and working class is plagued by a chicken-and-egg problem: Organizing-enabling laws may often be needed to facilitate social movements, but social movements are needed to enact organizing-enabling laws.”).

²³⁴ For analysis of the contract theory of landlord-tenant law, see Ashton et al., *supra* note 124; Rabin, *supra* note 124; Casserly, *supra* note 14.

²³⁵ ROSENTHAL & VILCHIS, *supra* note 30, at 68.

not kindness but legal duty.²³⁶ When tenants stand up and demand that landlords uphold their end of the bargain, petty landlords choose to retaliate rather than to perform in far too many cases. The experiences of Zuri, Bastian, and Javi illustrate the outcomes of three such cases.²³⁷

1. Zuri

Zuri was thirty-one and “mad at the world,” but she had just begun a new relationship about which she was incredibly excited. Shortly into that relationship, she became unexpectedly pregnant, and both partners chose to move away from their current living situations and, out of desperation, into a very small apartment neither relished but that made the most sense in terms of location, cost, and move-in availability. A few weeks into that living arrangement, a larger apartment in the same complex became available, and she made a unit-change request to her landlord. She ended up having to pay a second, concurrent security deposit and sign an extended lease, but it seemed worth it to her. Two months in, they noticed an increasingly spongy texture on the already-textured popcorn ceiling in the bathroom.

It began quickly to grow and to darken: it was mold, they realized, and potentially the infamous “black mold.” They notified the landlord about the situation, and their landlord came over the very next day and painted over the mold.²³⁸ This did not kill the mold, and it continued to grow and to spread. She looked up some information about mold on the National Institutes of Health website and presented her landlord with a fact sheet: painting over some molds can be dangerous because it becomes harder to see the mold and correctly gauge the extent of growth, while spores are still constantly released into the air regardless. Despite continuing to ask her landlord for help with the situation, he just told Zuri that “he had done his duty.”

²³⁶ For analysis of this duty under the contract theory of landlord-tenant law, see Ashton et al., *supra* note 124; Rabin, *supra* note 124; Casserly, *supra* note 14.

²³⁷ The experiences these tenants have had and which they want to share were offered to the author as elaboration of stories initially relayed at KTU meetings. The names of these tenants have been changed. By relaying these personal narratives, this Note hopes to illustrate and humanize the individual experience of retaliation. The specificity of the lived and embodied experience is not generalizable and is not intended to be, but the broad scenarios these individuals speak to are, sadly, not rare. See *infra* notes 244–49 and accompanying text.

²³⁸ Mold is a common hardship for tenants—and, unfortunately, simply painting over the problem is a common solution offered by landlords. See, e.g., Thomas Birmingham, *As Corporate Landlords Spread, a Mold Epidemic Takes Root*, *THESE TIMES* (Oct. 23, 2024), <https://inthesetimes.com/article/mold-landlords-tenants-rights-housing-health-crisis-city-government> [perma.cc/SUV7-9H4W]; Keely McCormick, *Section 8 Resident Claims She’s Been Living with Mold, and Her Landlords Won’t Help*, *KTLV 10* (Dec. 18, 2020, at 20:12 ET), <https://ktvl.com/news/local/section-8-resident-claims-shes-been-living-with-mold-and-her-landlords-wont-help-12-19-2020> [perma.cc/EQ3Q-PTFT]; Lindsey Holden, *Paso Robles Couple Says Landlord Covered Up Unhealthy Mold Problem. So They Sued*, *TRIBUNE* (Oct. 5, 2020, at 18:53 ET), <https://www.sanluisobispo.com/news/local/article245960610.html> [perma.cc/MA27-C778].

Zuri stopped paying rent—it just did not seem fair to keep paying rent when the landlord was not addressing her problem. Additionally, she was so worried about her living situation, given that a baby was on the way. The landlord took her to court and won. Zuri tried to tell the judge about her living situation, but the judge cut her off, telling her that “if you’re not paying rent, then you don’t have a right to possession, and possession is absolutely the only question at issue here today.” When she tried to protest anyway, the judge simply told her that there were “ways to go about that situation and ways not to.” Zuri owed rent; she and her partner were evicted.²³⁹ She knows that other tenants in that apartment complex were struggling with similar issues. She wishes they had communicated more about it. She swore not to make the same mistakes again.

2. Bastian

Bastian is a law student in his late twenties. He graduated with an undergraduate degree on a ‘traditional’ timeline and then took a few years off to go into the workforce before taking his LSAT and filing some applications. The school he chose required an interstate relocation, and he moved in with three future classmates he had never met. That first winter, as he prepared for his first set of law school finals, he and his roommates noticed the tell-tale signs that they were involuntarily cohabiting with a rodent.

They called the landlord. She went out to the property, walked around their home, and advised them that rodents are “a fairly common occurrence” in their neighborhood during the cold months. And she did take care of it for the first two winters. She set up and paid for pest control appointments for their house once a month for about four months every year, and she never returned to the property in the years that followed. The third winter, the rodent situation returned. This time, they reached out to her to no avail: she told them that the rats could only be in the home because the tenants were

²³⁹ Even in states with legal protections against retaliatory eviction, this is not an uncommon outcome. Navigating the legal process for withholding rent is difficult for many tenants. And too many judges make their decision based upon unpaid rent alone, without considering habitability. Tenant unions may have the resources to better make these arguments in court. See Armstrong & Ryan, Jr., *supra* note 60, at 14; Alejandra Cancino & Maya Dukmasova, *Tenants’ Right to Withhold Rent Becomes Landlords’ Weapon*, INJUSTICE WATCH (Aug. 7, 2024), <https://www.injusticewatch.org/project/tenant-trap/2024/withhold-rent-tenant-rights/> [perma.cc/6MQ9-DH8W]; Steve Neavling, *Detroit Tenants Evicted for Withholding Rent as Judges Ignore Housing Code, Advocates Say*, DETROIT METRO TIMES (Feb. 14, 2025), <https://www.metrotimes.com/news/detroit-tenants-evicted-for-withholding-rent-as-judges-ignore-housing-code-advocates-say-38585621> [perma.cc/9SH3-9LVX]; Nahlah Abdur-Rahman, *Tenants Face Eviction from Detroit Apartment After Withholding Rent over Housing Conditions*, BLACK ENTER. (Feb. 17, 2025), <https://www.blackenterprise.com/tenants-face-eviction-from-detroit-apartment-after-withholding-rent-over-housing-conditions/> [perma.cc/5MFD-P4KK].

“dirty” in the way they lived.²⁴⁰ She told them that she had previously paid for pest control “as a courtesy, and this courtesy was at an end.” She could set up an appointment for their house, but only if they agreed to pay for it. They could not afford that service as students, though, and their rodent problem progressed into an infestation.

Bastian had been through his property courses, and while he certainly was not an attorney, he knew more about how to handle the legal situation than the average tenant. He filed a complaint with a municipal code enforcement agency. An agent from the city came out to the property, investigated the situation, filled out a form citing the landlord as responsible, and mailed her a notice of her duty to cure the situation under the law. The landlord complied with the notice and set Bastian up with a pest control appointment. Three months later, she mailed him a notice that he was in violation of his lease due to modifications that he had made to her property, which she had noticed when she visited it that first winter. She considered the lease to be terminated on those grounds, and she had also been talking to someone who was interested in buying her property for non-residential use. Bastian and his roommates had the choice of moving out or signing a new lease at an increased rent.²⁴¹ Instead, they applied for an attorney with their local Legal Services Corporation entity and asserted retaliation as a defense.²⁴² The judge ruled that their complaint to code enforcement was protected, and that termination of their lease for a violation which had previously gone ignored was prohibited. However, she also ruled that the landlord’s mixed motivation to sell the property for a higher profit was legitimate, and she granted the

²⁴⁰ Again, infestation by rodents as well as by insects is a frequent tenant complaint—and shirking responsibility for pest control is too frequently a landlord’s reaction. See, e.g., Devyn-Marshall Brown, *There’s a Mouse in My House*, CHI. READER (Oct. 18, 2023), <https://chicagoreader.com/news/mouse-in-my-house/> [perma.cc/TSSN-BMVX]; *Tenants Speak Out Against Rat and Bug-infested Apartments*, ANNANDALE TODAY (Sep. 20, 2021), <https://annandaletoday.com/tenants-speak-out-against-rat-and-bug/> [perma.cc/A9W3-4Y7Q].

²⁴¹ Exercising one’s right to complain about the living conditions in a rented property often provokes the ire of the property owner. While retaliation by outright eviction is certainly common, many landlords also choose to couch their retaliation in terms tenants may not understand are also precluded by the law, like selective enforcement of existing lease provisions, nonrenewal of the lease, rent increases, conversion of the property into a use that forecloses upon the existing tenancy, and other informal evictions. See Anna Coon, *Portland Rent Board Finds Landlord Retaliated Against Tenant After Complaint*, 13 WGME (May 23, 2024, at 22:48 ET), <https://wgme.com/news/local/story/portland-rent-board-considers-tenants-claim-landlord-retaliating-against-him-control-eviction-sawyer-street-city-maine> [perma.cc/65QS-XHR9]; Deric Rush, *SC Tenants Claim Retaliation from Landlord After Speaking with WIS About Health, Safety Concerns*, WIS 10 (Dec. 5, 2024, at 22:13 ET), <https://www.wistv.com/2024/12/06/sc-tenants-claim-retaliation-landlord-after-speaking-with-wis-about-health-safety-concerns/> [perma.cc/SN6E-MZ98]; Sabiha Zainulbhai & Nora Daly, *Informal Evictions: Measuring Displacement Outside the Courtroom*, NEW AM. (Jan. 20, 2022), <https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom/> [perma.cc/U9LX-VPLA].

²⁴² The Legal Services Corporation is the United States’ largest funder of civil legal aid for low-income Americans. Services offered differ across different local chapters. See James J. Sandman, *The Role of the Legal Services Corporation in Improving Access to Justice*, 148 DAEDALUS 113, 113 (2019).

landlord's action for possession.²⁴³ They moved out on short notice and were forced to part with many of their belongings in the process.

3. Javi

Javi was a rock star in high school: pretty well-liked both by the popular kids and by those closer to the margins, and an outstanding student-athlete. Eyeing a potential career as a professional athlete, he chose to put college off for a while, move out of state, and focus on training. During that time, though, he was introduced to a substance that slowly began to destroy his good habits and good progress, and he ended up coming back home after his “fourth or fifth serious incident on a binge.” He rented a house from Ron, a former high school friend and teammate, and things were going well for a while with his training and with his life, even though he struggled to find work and ended up getting a couple of months behind on his rent. After finally securing a decent job, he and Ron worked out a verbal agreement together: Javi would keep paying rent forward every month, and every month, he would pay a little bit more of the back rent. They acted this agreement out for a few consecutive months.

One November, the heat went out. Javi tried getting Ron to fix the heat, but he refused. Ron left a few space heaters in the house, and he thought those should be enough for Javi.²⁴⁴ But Javi paid for utilities, and his power bill was getting completely out of hand. Plus, the space heaters still left Javi feeling dangerously cold most nights.

After two months of failing to get Ron to do anything about the heat, Javi finally paid a repair technician around mid-January and then began asking Ron to reimburse him. After two to three months of cajoling, Javi took Ron

²⁴³ *Id.* § 901(b)(3). URLTA uses the phrase “action for possession,” which means that defining such an action could be a threshold question. But there is no meaningful difference between an “action for possession,” “suit for removal,” “notice to vacate,” and “eviction notice” in a URLTA analysis. In some states, an “action for possession” and a “suit/prosecution for removal” point to a civil process initiated by a landlord, while an “eviction” points towards a court order that is one possible result of such civil proceedings. Some states hold the latter two signals (removal and eviction) synonymously as outcomes, in contrast with the former (possession) as the process. Some conflate all three in their language. However, no state makes distinctions between these phrases within its anti-retaliation sections. This Note uses “eviction” throughout it.

²⁴⁴ This story also describes an experience shared by many. In too many cases, landlords react to a broken furnace system by refusing or delaying repair costs and simply handing their tenant a space heater. In fact, more than once, a landlord has been charged with manslaughter or with negligent homicide after their tenants died in fires started by these small appliances. Using them as a cheap fix is not only ineffective, inefficient, inequitable, and lazy—it’s dangerous. *See, e.g.,* John Annese, *Brooklyn Landlord Gets 6 Months in Jail After Fatal Space Heater Blaze in ‘Absolute Disaster’ Apartment Building*, YAHOO! NEWS (Sep. 27, 2022, at 13:22 ET), <https://www.yahoo.com/news/brooklyn-landlord-gets-6-months-172200048.html> [perma.cc/5G55-HNAR]; Press Release, The Brooklyn District Attorney’s Office, Flatbush Landlord Indicted for Manslaughter in Connection with Fatal Fire That Left One Dead (May 13, 2021), <http://www.brooklynnda.org/2021/05/13/flatbush-landlord-indicted-for-manslaughter-in-connection-with-fatal-fire-that-left-one-dead/> [https://perma.cc/FW2C-FGXR].

to small claims court and won. Almost immediately, Ron served him with a seven-day notice to vacate.²⁴⁵ Although Javi had been keeping up with his payment plan for months, he still owed back rent. He did not feel like he “was going to win this one” and he just went ahead and vacated. He couch-surfed for a while, he spiraled mentally, emotionally, and physically, and his substance-abuse problems ended up returning pretty quickly. He is doing better now, although he still occasionally experiences conflict and precarity in his housing. He is a member of a tenant union now. He wishes he had been previously.

Zuri, Bastian, and Javi have all experienced conflict with their landlords; in fact, two of them communicated that they had experienced conflict with multiple landlords. Under URLTA, landlord retaliation in response to these conflicts is prohibited by Article 9.²⁴⁶ Section 901(a) describes prohibited motivations, while Section 901(b) describes prohibited actions.²⁴⁷ Section 901(c) describes instances that limit liability for retaliation.²⁴⁸ Section 902 describes a tenant’s remedies for retaliatory conduct,²⁴⁹ Section 903 describes the procedural establishment of a presumption of retaliatory motivation,²⁵⁰ and Section 904 describes a landlord’s remedies for bad faith actions brought under Article 9.²⁵¹ While Sections 902 and 904 are irrelevant to the scope of this Note, Section 903 is an important aspect of anti-retaliation law. Zuri, Bastian, and Javi all tried to stand up for themselves by exercising a legally protected right, whether or not they internally framed it at the time. And all three of their landlords retaliated against them. Depending on the state in which they were living and the judge in front of whom they appeared, they may or may not have had any remedy under landlord-tenant law.

²⁴⁵ Tenants who take their landlords to court are routinely subject to retaliation, and the specter of that outcome, paired with the unlikelihood of successful lawsuits, combines to deter tenants from availing themselves of the court system as a proactive option in the face of poor housing. See Gabby Hart, *Woman Says Westland Pine Village Apartments Kicking Her Out, Claims Retaliation*, 3 NEWS (Apr. 16, 2019, at 11:22 ET), <https://news3lv.com/news/local/woman-says-westland-pine-village-apartments-kicking-her-out-claims-retaliation> [perma.cc/V9XK-7ZRD]; Cindy Hernandez, *Pilsen Tenants Sue Landlord, Allege Retaliation, Lack of Repairs*, CHI. SUN TIMES (May 30, 2024, at 22:43 ET), <https://chicago.suntimes.com/news/2024/05/30/frustrated-tenants-file-suit-against-landlord-alleging-retaliation-lack-of-repairs> [perma.cc/8389-6WP8]; Alejandra Cancino & Maya Dukmasova, *Few Wins for Tenants Suing Landlords*, INJUSTICE WATCH (Aug. 7, 2024), <https://www.injusticewatch.org/project/tenant-trap/2024/tenant-class-action-lawsuits/> [perma.cc/CF7E-D5PW].

²⁴⁶ REVISED UNIFORM RESIDENTIAL LANDLORD & TENANT ACT art. 9 (NAT’L CONF. COMM’RS. ON UNIF. STATE L.).

²⁴⁷ *Id.* § 901(a)–(b).

²⁴⁸ *Id.* § 901(c).

²⁴⁹ *Id.* § 902.

²⁵⁰ *Id.* § 903.

²⁵¹ *Id.* § 904.

B. The Substance of Eviction Protections

The question of what remedies are available to Zuri, Bastian, Javi, and so many other tenants unfolds in three inquiries: Are the party's actions justified? Are their landlord's reactions unlawful? How does each party go about answering those questions in court? This section addresses the first two questions *vis-à-vis* URLTA as model law; the subsequent section considers the third *vis-à-vis* state statutes as actually enacted law.

1. What tenant conduct is protected from retaliation?

Tenants have many rights and remedies under URLTA and other sources of landlord-tenant law.²⁵² Like all citizens, tenants also have rights and liberties under myriad other sources of law, from the Constitution to local ordinances.²⁵³ Under URLTA Section 901(a), a tenant is protected from actions taken by a landlord for the purpose of retaliating against them because they: (1) complained to a government agency about a code violation; (2) complained to a government agency about discrimination; (3) complained to a government agency about a lease violation; (4) organized or became a member of a tenant union; (5) attempted to exercise a right or remedy under the law or under their lease; or (6) pursued an action against their landlord or testified against their landlord.²⁵⁴ Zuri, Bastian, and Javi all had legal claims against their landlord under URLTA. Their landlords had a duty to maintain premises in habitable condition, and they all gave notice to their landlords and attempted to seek remedy for the landlords' violations of those duties.²⁵⁵

Zuri lived in a state of worry and anxiety about her expected baby and the mold in her bathroom. She and her partner spent sleepless nights worrying whether she was going to regret bringing a baby into the world in those conditions and whether she had a real choice in the matter. URLTA Section 302 covers a landlord's duty to maintain premises in a habitable condition.²⁵⁶ This duty required that her "landlord...ensure that the premises...have reasonable measures in place...to prevent exposure to unsafe levels of...toxic mold."²⁵⁷ After notifying her landlord of the issue and not receiving an adequate solution, she had the right to continue her lease and to withhold rent for the period of noncompliance beginning on the date she gave

²⁵² *Union*, *supra* note 5; *Hogue & Way*, *supra* note 7; *Research*, *supra* note 177.

²⁵³ *E.g.*, LOUISVILLE-JEFFERSON CNTY., KY., LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT tit. XV, ch. 156 (2025).

²⁵⁴ REVISED UNIFORM RESIDENTIAL LANDLORD & TENANT ACT § 901(a) (NAT'L CONF. COMM'RS. ON UNIF. STATE L.).

²⁵⁵ *Id.* at §§ 302(a), 401.

²⁵⁶ *See* § 302.

²⁵⁷ *Id.* § 302(a)(7).

notice.²⁵⁸ Under Section 901, her actions were covered because she attempted to exercise a right or remedy under the law, specifically, the right to withhold rent.²⁵⁹

Bastian struggled with a rodent infestation in his home. He and his roommates had become accustomed to, without ever becoming comfortable with, rodent droppings on the floors, chewed-through food containers, constant scurrying noises at night, and an occasional jump-scare sighting, including three instances of “wildly enthusiastic rat sex in the wee hours.” His landlord had a duty to “ensure that the premises...ha[d] reasonable measures in place to control the presence of rodents.”²⁶⁰ Under Section 901, his actions were covered because he complained to a government agency about a code violation.²⁶¹

Javi was waking up freezing in the middle of every night, paying heating bills that were “through-the-roof” and beyond his ability to pay, and spending his own income to fix his landlord’s heating unit. His landlord, Ron, had a duty to “ensure that the premises...have adequate ventilation and heating facilities that conform to law and are maintained in good working order.”²⁶² He had the right to make repairs and deduct the cost from the rent, and/or to obtain equitable relief.²⁶³ Under Section 901, his actions were covered both because he attempted to exercise a right or remedy under the law (the right to make repairs) and because he pursued an action against his landlord.²⁶⁴ Adjudication of Section 901(a) is straightforward. However, there are limits to a landlord’s liability for retaliating against even such protected conduct, dependent upon context and upon the nature of the conduct prohibited.²⁶⁵ To wit, Zuri’s claim would fail under any reading of Section 901(b), and in practice, did. Her landlord’s conduct did not constitute prohibited retaliation for reasons discussed in the next section.

2. What landlord conduct is prohibited as retaliation?

While landlords have traditionally enjoyed a robust set of rights under property law, these rights have been curtailed over time by contract law.²⁶⁶ Their right to dispose of their property in any fashion they wish remains for good cause and often for no cause, but they may be estopped under landlord-

²⁵⁸ *Id.* § 402(a)(2)(A); *see* § 408 (discussing specific guidelines).

²⁵⁹ *Id.* § 901(a)(5).

²⁶⁰ *Id.* § 302(a)(7).

²⁶¹ *Id.* § 901(a)(1).

²⁶² *Id.* § 302(a)(5).

²⁶³ *Id.* § 402(a)(2)(C)–(D); *see id.* § 406 (discussing specific guidelines).

²⁶⁴ *Id.* § 901(a)(5)–(6).

²⁶⁵ *See id.* § 901(c).

²⁶⁶ *See* Armstrong & Ryan, Jr., *supra* note 60, at 17.

tenant law from initiating an action for possession for certain bad causes.²⁶⁷ Under URLTA Section 901(b), a landlord is prohibited from taking action against a tenant for the purpose of retaliating against any conduct arising under Section 901(a) by: (1) increasing rent or fees; (2) decreasing services, increasing the tenant's obligations, imposing different rules on, or selectively enforcing the landlord's rules against, the tenant or immediate family member, or otherwise materially altering the terms of the lease; (3) bringing an action for possession on a ground other than nonpayment of rent; (4) refusing to renew a tenancy for a fixed term under a lease containing a renewal option that is exercisable by the tenant without negotiation with the landlord, for any period after the lease would otherwise terminate; (5) terminating a periodic tenancy; or by (6) committing a criminal act against the tenant, immediate family member, or guest.²⁶⁸ Only the conduct of Bastian's landlord and Javi's landlord falls within the scope of Section 901(b).

In Zuri's case, her landlord was prohibited from evicting her on a ground other than nonpayment of rent, and she had withheld rent. Unfortunately, the results of such cases are typically as open-and-shut as her judge implied. While she does have a right to withhold rent as a remedy under Section 408, this right is conditioned upon specific guidelines for its exercise.²⁶⁹ And although nonpayment of rent is enumerated as curing an otherwise prohibited action under one subsection of Section 901, withholding rent is listed as an affirmative defense to such an action in Section 408, which is cited as conditional by that subsection of Section 901.²⁷⁰ Within the text of Section 408, the tenant must not only comply with notice requirements under URLTA but must additionally raise the landlord's breach of duty as a defense.²⁷¹ Should the tenant not know to preserve this defense and/or not seek able counsel, they lose the right to this case.²⁷² If such a defense is raised, the tenant must pay their unpaid rent and all additionally ripening rent into an escrow account until such time as the proceedings are adjudicated.²⁷³ In Zuri's case, she did not know how to raise that defense in front of the judge. Had she done so, she still did not have the prerequisite legal knowledge to set aside rent money or to place it into an escrow account proactively, and accumulating the funds to do so would have been far too high a bar, financially. Statutes that preclude judges from granting default judgments to landlords who assert nonpayment without further inquiry would have

²⁶⁷ § 901(a); *see, e.g.*, *Edwards v. Habib*, 397 F.2d 687, 701–02 (D.C. Cir. 1968).

²⁶⁸ *Id.* § 901(b).

²⁶⁹ *Id.* § 408; *see id.* § 401 (requiring notice).

²⁷⁰ *Id.* §§ 408(h), 901(a)(5).

²⁷¹ *Id.* § 408(a).

²⁷² *Id.*

²⁷³ *Id.* § 408(b).

protected Zuri. Statutes that direct judges to make an affirmative inquiry about inhabitability conditions and the potential for retaliatory motives, rather than placing the burden on the tenant, would have protected her. And statutes that either eliminate escrow requirements in the adjudication of retaliation claims or require them only upon a judge's orders after an initial hearing would have protected her.

In Bastian's case, his landlord was prohibited from selectively enforcing lease provisions against him²⁷⁴ and from increasing rent.²⁷⁵ While Bastian had modified his home by installing a shelving unit when he moved in, his landlord had the opportunity to see that unit when she visited his home during his first winter at the residence. She had therefore waived the right to terminate or alter his lease on that ground after two rental periods under Article 6.²⁷⁶ Even had she not waived that right, choosing after two years to bring a claim on the issue is selective enforcement of that lease violation.²⁷⁷ Attempting to raise his rent on that basis is clearly retaliatory conduct. But is she liable for retaliatory conduct? It depends on the jurisdiction. The text of Section 901 provides that a landlord may not engage in specified conduct if the landlord's purpose is to retaliate against a tenant.²⁷⁸ However, in the comment to the section, the drafters explain that they intentionally left the word "purpose" ambiguous:

Section 901(a) prohibits a landlord from engaging in certain conduct if the "landlord's purpose" is to retaliate against the tenant who engaged in conduct described in subsection (b). The word "purpose" is not preceded by an adjective that would establish a quantum standard for the landlord's purpose. Whether Section 901(a) applies only when the retaliation is the "only purpose," "a substantial or dominant purpose," or merely "a purpose" is a decision for the courts to decide.²⁷⁹

Bastian's landlord also stated a second purpose: termination of the lease because she had a potential buyer for the property. Whether Bastian is entitled to a remedy is a matter for the courts, should he choose to seek it. Statutes that clearly prohibit selective enforcement of lease provisions, especially after constructive waiver thereof, would have protected Bastian. He would have been protected much more strongly by statutes that prohibit

²⁷⁴ *Id.* § 901(b)(2).

²⁷⁵ *Id.* § 901(b)(1).

²⁷⁶ *Id.* § 602(a).

²⁷⁷ *See id.* § 901(b)(2).

²⁷⁸ *Id.* § 901(a).

²⁷⁹ *Id.* cmt.

any eviction motivated by retaliation, rather than excusing landlords who claim mixed motives.

In Javi's case, his landlord was prohibited from evicting him on a ground other than nonpayment of rent. His landlord's notice to vacate may be presumed to be in retaliation for Javi having taken him to small claims court over the repair bill for the heating unit. As in Zuri's case, Javi owed rent. Since Javi did not fight the notice to vacate, postulating potential outcomes would be an exercise in counterfactuals. It is enough to note that Ron would have had a colorable claim that Javi "owed" him rent, while Javi would have had a colorable claim that he was not currently "in nonpayment of rent," since he and Ron had an oral agreement that had been acted upon periodically. Moreover, Section 901(c) removes liability from a landlord's otherwise violative conduct if (among other factors), the tenant owed rent at the time the action was initiated.²⁸⁰ Even if Ron's actions were adjudged retaliatory under Section 901(b), Javi may still have been left unable to seek an effective remedy. As in Zuri's case, statutes that preclude judges from allowing nonpayment claims to defeat retaliation claims without further inquiry into habitability would have protected Javi.

These cases are subject to procedural and substantive questions. Section 903 describes the procedural establishment of a presumption of retaliatory motivation and is an important aspect of anti-retaliation law.²⁸¹ Section 903(a) provides that evidence that a tenant engaged in conduct described in Section 901(a) within six months before the landlord's alleged retaliatory conduct creates a rebuttable presumption that the purpose of the landlord's conduct was retaliation.²⁸² Section 903(b) eliminates such a presumption in the case that a landlord's Section 901(b) action came chronologically prior to a tenant's Section 901(a) action, and Section 903(c) eliminates such a presumption in the case that a landlord shows by a preponderance of the evidence that their Section 901(b) action was justifiable and would have been undertaken regardless of a tenant's Section 901(a) action.²⁸³ In all three cases, provisions based upon Section 901, as written, would have failed to restore any balance of power between these tenants and their landlords. But questions of law—such as whether a presumption has been established, how it may be rebutted, what evidence is required in various contexts, and issues of timing—are subject to greater variance, and even silence, in state courts. They are often resolved as questions of fact in eviction proceedings.

²⁸⁰ *Id.* § 901(c)(3).

²⁸¹ *See id.* § 903.

²⁸² *Id.* § 903(a).

²⁸³ *Id.* § 903(b)–(c).

C. The Procedure of Eviction Hearings

It becomes important, then, to examine how anti-retaliation law sections based upon URLTA have been adopted and revised in individual states, as well as how landlord-tenant disputes arising under these provisions have played out in court. Movement lawyers and tenant attorneys may have more room to breathe with procedural arguments than substantive ones due to the combination of greater intra-state variation and due to the complete silence of some states. While these silences are still limiting, leaving tenants unprotected, they also provide attorneys with greater room to make arguments based upon persuasive authority from more progressive states. It is worth pointing out, however, that many states have no pre-trial procedures whatsoever: no discovery, depositions, or motion practice.²⁸⁴ This is because eviction proceedings are intended to sweep through the process of kicking tenants out and “restor[e] possession of property back to landlords as swiftly as possible.”²⁸⁵ Any procedural arguments must all be made at trial, either off the cuff or, if applicable, preserved at trial and expounded upon at appeal. Statutes should be written to allow for a pre-trial process. Although discovery may be necessary only rarely in eviction proceedings,²⁸⁶ it may be beneficial in eviction cases involving retaliation claims. Pre-trial motion practice should be available as standard.

²⁸⁴ Armstrong & Ryan, Jr., *supra* note 60, at 15.

²⁸⁵ *Id.*; see also Sabbeth, *Who Says*, *supra* note 222 (making a thoughtful argument concerning this problem: In the criminal law context, experts and laypeople alike understand both intuitively and empirically that added procedural mechanisms are there precisely to protect the more powerful—e.g., police, prosecutors, and judges—from the less powerful—e.g., the accused. In the civil law context, reformers argue that this dense procedural labyrinth serves merely to confuse the less powerful and creates time, money, and knowledge obstacles between them and the exercise of their rights. Landlord-tenant law, Sabbeth argues, may appear akin to the latter but is, in fact, precisely the former); *Policies, Laws, and Rules to Mitigate Evictions*, EVICTION INNOVATION, <https://evictioninnovation.org/innovations/policy/perma.cc/EZ2S-RPFQ> (last visited Apr. 3, 2025) (offering a critical and incredibly detailed look at this phenomenon in the context of a policy proposal to increase procedural due process in eviction proceedings); Baltz, *Tenant Union*, *supra* note 5, at 8 (treating this issue under the heading of “access-to-justice scholarship” and further suggesting the next four sources of information on the subject); Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 402 (2022) [hereinafter Sabbeth, *Eviction Courts*] (arguing that eviction courts enforce the hierarchical relations between landlords and tenants); Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY. L. & POL’Y 97, 135 (2019) [hereinafter Sabbeth, *(Under)Enforcement*] (illustrating how tenants can use the law as a sword rather than a shield to alter power relations); Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 153 (2020) [hereinafter Summers, *The Limits*] (demonstrating the operationalization gap between tenants with meritorious warranty of habitability claims and tenants who actually received a rent abatement); Nicole Summers, *Civil Probation*, 75 STAN. L. REV. 847, 888 (2023) [hereinafter Summers, *Civil Probation*] (detailing a shadow legal system with separate procedural and substantive rules for eviction proceedings established through settlements).

²⁸⁶ See Sabbeth, *Eviction Courts*, *supra* note 285, at 379 (“Yet eviction court rules often do not permit discovery or else require a special request and judicial permission for it. Even when statutes technically permit it, the short timeline between service and trial can make discovery impractical or impossible to complete.”).

At trial, tenant union lawyers must consider and be able to navigate the following four questions.

1. What is the nexus between protected and prohibited conduct?

As of the writing of this Note, thirty states devote a full section of their landlord-tenant law chapters to retaliation law.²⁸⁷ A few states have bare minimum language on the matter or even avoid the word entirely, although not necessarily in a way that settles the matter.²⁸⁸ Indeed, in some states, there is explicitly no remedy for even the most egregious of landlord duty failures but to break a lease early.²⁸⁹ Most states that have enacted anti-retaliation laws use language to the effect that a landlord may not engage in prohibited conduct “after the tenant has” engaged in conduct.²⁹⁰ Some prohibit retaliation “because the tenant has” engaged in conduct,²⁹¹ “after he [sic] had knowledge that” the tenant had engaged in conduct,²⁹² “in response to the tenant” engaging in conduct.²⁹³ Some prohibit retaliation “if” the tenant engages in conduct,²⁹⁴ “in retaliation for” the tenant engaging in conduct,²⁹⁵ or against a tenant “who has” engaged in conduct.²⁹⁶ Still others prohibit conduct if the landlord acts as “primarily as a penalty/retribution for” the tenant’s actions,²⁹⁷ “as a reprisal for the tenant’s” actions,²⁹⁸ or, finally, if a landlord notices certain actions when “such notice is not based upon a breach of the terms of the lease.”²⁹⁹ As discussed, Section 901(a) prohibits a landlord from engaging in certain conduct if the “landlord’s purpose” is to retaliate

²⁸⁷ See Ann O’Connell, *State Laws Prohibiting Landlord Retaliation*, NOLO (Jan. 16, 2026), <https://www.nolo.com/legal-encyclopedia/state-laws-prohibiting-landlord-retaliation.html> [<https://perma.cc/UG3Y-2RWZ>] (providing a list of state laws that prohibit landlord retaliation, including the following states that devote a full section of their landlord-tenant law chapters to retaliation law).

²⁸⁸ See, e.g., *id.* (example state statutes). Courts, however, can still perceive tenants’ rights (or create them, depending on one’s perspective) in case law. See, e.g., *Capone v. Kenny*, 646 So. 2d 510, 512–13 (La. Ct. App. 4th 1994) (finding that the tenant’s “abuse of rights” defense should have been considered, but that the tenant failed to show “egregious” abuse); *Bldg. Monitoring Sys., Inc. v. Paxton*, 905 P.2d 1215, 1219 (Utah 1995) (holding that legislative intent to protect habitability required courts to hear retaliation defenses); *Murphy v. Smallridge*, 468 S.E.2d 167, 172 (W. Va. 1996) (holding in favor of retaliation as affirmative cause of action against landlord).

²⁸⁹ See, e.g., ARK. CODE ANN. § 18-17-502(d)(2)(A) (LEXIS through 2025 Reg. Sess.).

²⁹⁰ See, e.g., HAW. REV. STAT. § 521-74 (LEXIS through 2025 Reg. Sess.); O’Connell, *supra* note 287 (providing a full list of state statutes related to retaliation laws, including those using language that prohibits a landlord from engaging in prohibited conduct after the tenant has engaged in conduct).

²⁹¹ See, e.g., ALA. CODE § 35-9A-501(a) (LexisNexis, LEXIS through 2025 Reg. Sess.).

²⁹² VA. CODE ANN. § 55.1-1258(A) (LEXIS through 2025 Reg. Sess.).

²⁹³ COLO. REV. STAT. § 38-12-509(1)(a) (LEXIS through 2025 1st Reg. Sess.).

²⁹⁴ NEV. REV. STAT. ANN. § 118A.510(1) (LexisNexis, LEXIS through 2025 Reg. Sess.).

²⁹⁵ E.g., N.H. REV. STAT. ANN. § 540:13-a (LexisNexis, LEXIS through 2025 ch. 107 of Reg. Sess.).

²⁹⁶ VT. STAT. ANN. tit. 9, § 4465(a) (LEXIS through 2025–2026 Act 73 & M-5 of Reg. Sess.).

²⁹⁷ MICH. COMP. LAWS SERV. § 600.5720(1) (LexisNexis, LEXIS through 2026 Act 6 of Reg. Legis. Sess.).

²⁹⁸ N.J. REV. STAT. ANN. § 2A:42-10.10 (West, Westlaw through L. 2025, c. 235 & J.R. No. 13).

²⁹⁹ S.D. CODIFIED LAWS § 43-32-27 (LEXIS through 2025 1st Spec. Sess.).

against the tenant who engaged in conduct but leaves the word “purpose” intentionally vague.³⁰⁰ Must this be a substantial purpose? A primary purpose? A sole purpose? Or merely any purpose? In nearly all states surveyed, a retaliation claim may be either a defense or an affirmative action if it is enumerated at all.³⁰¹ Statutes should devote independent, clearly written sections of landlord-tenant law to an explanation of anti-retaliation law. Statutes should be written to prohibit any retaliatory purpose, should prohibit mixed motive claims, and should delineate clear remedies for breach, whether raised as an affirmative defense or independent action.

2. What is the impact of time and timing?

Most states have followed RURLTA’s shortened six-month time period during which a landlord’s prohibited actions are presumed retaliatory,³⁰² while some remain to protect tenants for one year³⁰³ and a few require only ninety days.³⁰⁴ One state has no expiration period; the presumption may remain in place in perpetuity unless rebutted.³⁰⁵ Although most statutes are silent on the matter, some state statutes specify that a landlord may rebut the assumption of retaliation with a fair showing that they had initiated an otherwise prohibited action before a tenant noticed the landlord took a protected action.³⁰⁶ For example, some case law indicates that a landlord may have to be actually or constructively aware that that a tenant has exercised a right prior to their initiation of an adverse action in order for the presumption to attach, i.e., if a landlord has no reason to have known that an individual tenant has unionized, there is some chance that a landlord might use that

³⁰⁰ See discussion *supra* Section III.B.2.

³⁰¹ *E.g.*, ALA. CODE § 35-9A-501(b) (LEXIS through 2025 Reg. Sess.); VA. CODE ANN. § 55.1-1258(B) (LEXIS through 2025 Reg. Sess.); *see, e.g.*, *Aweeka v. Bonds*, 97 Cal. Rptr. 650, 652 (Cal. Ct. App. 1971) (“We can discern no rational basis for allowing such a substantive defense while denying an affirmative cause of action. It would be unfair and unreasonable to require a tenant, subjected to a retaliatory rent increase by the landlord, to wait and raise the matter as a defense only, after he [*sic*] is confronted with an unlawful detainer action and a possible lien on his [*sic*] personal property.”). *But see, e.g.*, FLA. STAT. § 83.64 (LEXIS through 2025 Reg. Sess.).

³⁰² *E.g.*, MONT. CODE ANN. § 70-24-431 (LEXIS through 2025 Reg. Sess.); N.H. REV. STAT. ANN. § 540:13-b (LexisNexis, LEXIS through ch. 17 of 2025 Reg. Sess.).

³⁰³ *E.g.*, KY. REV. STAT. ANN. § 383.705(2) (LexisNexis, LEXIS through 2025 Reg. Sess.); N.Y. REAL PROP. LAW § 223-b(5) (Consol., LEXIS through 2026 chs. 1–2).

³⁰⁴ *E.g.*, WASH. REV. CODE § 59.18.250 (LexisNexis, LEXIS through 2025 Reg. Sess.).

³⁰⁵ N.J. REV. STAT. § 2A:42-10.12 (West, Westlaw through L. 2025, c. 176 & J.R. No. 12); *see also* Hogue & Way, *supra* note 7, at 417–18 (calling for universal adoption of this form of the law). *But cf.* FLA. STAT. ANN. § 83.64 (LEXIS through 2025 Reg. Sess.) (codifying anti-retaliation law as an independent section of their “landlord and tenant” chapter, however, based upon the generally weaker tenant protections in these codes and in their case law, the failure to mention expiration date here is unlikely to indicate lack thereof).

³⁰⁶ *E.g.*, KY. REV. STAT. ANN. § 383.705(2) (LexisNexis, LEXIS through 2025 Reg. Sess.); N.C. GEN. STAT. § 42-37.1(c)(5) (LEXIS, 2025 Reg. Sess.).

argument to rebut a presumption.³⁰⁷ And in at least one case, a court has ruled that a tenant must show at least some indication of causation, i.e., that their landlord would not have initiated the adverse action “but for” the tenant’s exercise of a right.³⁰⁸ Moreover, retaliation presumptions may be rebutted by showing that the landlord’s actions were first noticed prior to the tenant’s exercise of a right.³⁰⁹ And the retaliatory nature of adverse actions may not legally matter if the tenant’s lease naturally expires during the period otherwise protected against retaliation.³¹⁰ If a landlord takes prohibited action after a tenant takes a protected action, and both time and timing are satisfied, then a presumption of retaliation will *per se* attach in most states.³¹¹ Statutes should be written to preserve a presumption of retaliation for a full year after a tenant’s protected conduct or for the entirety of the lease term, whichever is later. Retaliatory conduct should be prohibited for lease non-renewal as surely as lease termination if the lease would otherwise ordinarily have renewed at the end of the lease term. The presumption of retaliation should attach in tenant union cases as soon as a building formally declares its intent to unionize. And tenants should never have the burden of showing causation.

3. What is necessary to establish a presumption?

Once retaliation is fairly raised by a tenant, there (normally) exists a presumption that adverse actions are retaliatory.³¹² In other words, if tenants have raised retaliation by showing a sequential (not necessarily causal) chain between their exercise of rights and their landlord’s initiation of adverse actions, then the finder of fact shall presume that adverse actions are retaliatory and thus illegitimate, unless a landlord shows evidence to the contrary.³¹³ Presumption standards are also treated differently in different

³⁰⁷ *E.g.*, *Trelawney 657 v. Strimling*, No. AP-22-12, 2022 Me. Super. LEXIS 24, (Me. Super. Ct. July 5, 2022) (discussing, more specifically, how a tenant had previously been active in a union but had mostly become inactive, and the court ruled that the landlord has no reason to know about or to be motivated by the union activities).

³⁰⁸ *See Elk Creek Mgmt. Co. v. Gilbert*, 303 P.3d 929, 936 (Or. 2013) (discussing how tenants were not required to prove that their protected act of complaining caused the landlord actual or perceived injury or that the landlord intended to cause them injury in return—but, causation was a factual question requiring the tenants to prove that the landlord would not have evicted them but for their protected activity, or that the protected activity was a material and substantial factor among multiple causes).

³⁰⁹ *Id.*

³¹⁰ *E.g.*, *Frenchtown Villa v. Meadors*, 324 N.W.2d 133, 136 (Mich. Ct. App. 1st 1982) (holding that the defense of retaliatory eviction does not extend to summary proceedings instituted at the expiration of a fixed-term lease). *But see Van Buren Apartments v. Adams*, 701 P.2d 583, 584 (Ariz. Ct. App. 1984) (deciding that expiration of lease term was not a bar to retaliation defenses).

³¹¹ *See, e.g., Van Buren Apartments*, 701 P.2d at 584.

³¹² *E.g.*, *Gofman v. Alemida*, No. NBSP046592, 2006 Conn. Super. LEXIS 2869, at *5 (Conn. Super. Ct. Sep. 22, 2006) (ruling in favor of tenant because landlord’s arguments for several legitimate alternative reasons for evicting were not well-evidenced).

³¹³ *Id.*

states. In just a few states, there is no mention at all of presumption,³¹⁴ leaving the matter entirely to the courts.³¹⁵ In most states, the establishment of a presumption means that the tenant explicitly does not have to prove that their exercise of a right was the only or motivating purpose of a landlord's retaliatory action: retaliation is presumed.³¹⁶ "Presumption" means that the trier of fact must find the existence of the fact presumed, unless and until evidence is introduced that would support a finding of its nonexistence.³¹⁷ If not explicitly designed otherwise by statute, the evidentiary standard upon the tenant is typically deemed credible or sufficient.³¹⁸ Indeed, in some states, a landlord would have to offer a preponderance of such evidence³¹⁹ or even clear and convincing evidence.³²⁰ However, in some states, tenants must provide at least some evidence:³²¹ in at least one state, unfortunately, a tenant must show a preponderance of evidence to establish the presumption,³²² and in another, the question is at least partially dependent upon whether retaliation is brought as a defense or as an affirmative action.³²³ Regardless, the issue must typically be raised and preserved by a tenant, and it will not be assumed by a court even if constructively presented by evidence thereof.³²⁴ Moreover, the issue must be timely raised—typically, within the time period that would be protected.³²⁵ Statutes should be written such that retaliation is automatically presumed whenever a landlord's conduct comes subsequent to a tenant's conduct. A credible fact of retaliation should then be

³¹⁴ *E.g.*, ALA. CODE § 35-9A-501(b) (LexisNexis, LEXIS through 2025 Reg. Sess.); FLA. STAT. ANN. § 83.64 (LEXIS through 2025 Reg. Sess.).

³¹⁵ In Alabama, unfortunately, tenants must prove retaliation by presenting evidence; not only that they have exercised a right that the state protects against discrimination, but that the right was exercised for good cause, i.e., if a tenant exercises their right to complaint, then they must show evidence about that which they were complaining. *See, e.g.*, *Leeth v. J & J Props.*, 69 So. 3d 176, 177 (Ala. Civ. App. 2010) (discussing how a tenant complained about mold, their landlord brought eviction action, the tenant raised retaliation as both defense and counter-claim, their landlord requested summary judgment, and the tenant failed to provide evidence of the mold itself).

³¹⁶ *E.g.*, COLO. REV. STAT. § 38-12-509(1.7) (LEXIS through 2025 Reg. Sess.).

³¹⁷ *E.g.*, KY. REV. STAT. ANN. § 383.705(2) (LexisNexis, LEXIS through 2025 Reg. Sess.).

³¹⁸ *E.g.*, *Gofman v. Alemida*, No. NBSP046592, 2006 Conn. Super. LEXIS 2869, at *4 (Conn. Super. Ct. Sep. 22, 2006).

³¹⁹ *E.g.*, MICH. COMP. LAWS § 600.5720(2) (LexisNexis, LEXIS through 2026 Act 2 of Reg. Legis. Sess.); N.Y. REAL PROP. LAW § 223-b(5)(c) (Consol., LEXIS through 2026 chs. 1–2).

³²⁰ *E.g.*, KY. REV. STAT. ANN. § 383.705(2) (LexisNexis, LEXIS through 2025 Reg. Sess.).

³²¹ *E.g.*, WASH. REV. CODE § 59.18.250 (LexisNexis, LEXIS through 2025 Reg. Sess.).

³²² *Weishaar v. Strimbu*, 601 N.E.2d 587, 592 (Ohio Ct. App. 1991) (averring that the party asserting a claim has the burden of proving it). After it is established, though, the preponderance standard cuts back the other way. *See Karas v. Floyd*, 440 N.E.2d 563, 566 (Ohio Ct. App. 1981).

³²³ *E.g.*, *Houle v. Quenneville*, 787 A.2d 1258, (Vt. 2001) (explaining, further, that the decision to so-shift the burden of proof lies at the discretion of the finder of fact).

³²⁴ *E.g.*, *Shrago v. Burke*, Nos. 2014AP2462, 2015AP572, 2016 Wis. App. LEXIS 342, at *12 (Wis. Ct. App. June 2, 2016).

³²⁵ *See, e.g.*, *White Cliffs at Dover v. Bulman*, 855 A.2d 437, 441 (N.H. 2004). *But see* MICH. COMP. LAWS § 600.5720(2) (LexisNexis, LEXIS through 2026 Act 2 of Reg. Legis. Sess.) (enacting unusual procedure in which, if a tenant claims retaliation after the time period expiration, then the presumption/rebuttal evidentiary standards simply flip).

presumed, without further burden upon the tenant, unless rebutted by clear and convincing evidence. More crucially, the fact should be presumed after a credible presentation of evidence tending to show tenant complaints about habitability, rather than placing the burden upon a non-attorney to formally raise a retaliation claim.

4. What is necessary to rebut a presumption?

Once fairly evidenced and established, the presumption of retaliation can, of course, be rebutted by a landlord, but the burden of proof is on the landlord.³²⁶ And rebuttal arguments cannot be treated as evidence unless the tenant has an opportunity to cross-examine the landlord on these statements or to provide rebuttal testimony to them.³²⁷ Moreover, if a landlord fails to rebut the presumption, then once established, typically, retaliation is a complete defense, and eviction cannot be prosecuted at a later date.³²⁸ While landlords can rebut the presumption in several ways, the presumption typically is automatically overcome by a showing that the tenant owes rent.³²⁹ In the few states that do not establish owed or defaulted rent as a rebuttal,³³⁰ courts often assume the availability of that argument on their own.³³¹ “Most eviction cases are initiated for nonpayment of rent, and few legal defenses exist for such cases. The nature of eviction court, too, may play a role; housing courts have been criticized as ‘eviction mills’ where unrepresented tenants are ‘not given a meaningful chance to argue their cases.’”³³² Indeed, a dismissal of retaliation claims due to arrearage rent is a frequent outcome of retaliation claims.³³³

Although rare, the fact that a tenant owes rent can be neutralized as a defense against presumption if the tenant can prove a valid reason for non-

³²⁶ *E.g.*, *Walters v. Demmings*, No. C4-01-2, 2001 Minn. App. LEXIS 655, at *7 (Minn. Ct. App. June 12, 2001). *But see* *Youssef v. United Mgmt. Co.*, 683 A.2d 152, 155 (D.C. 1996) (ruling that the standard upon landlord to rebut presumption was “clear & convincing” rather than “credible”).

³²⁷ *E.g.*, *Walters*, 2001 Minn. App. LEXIS 655, at *7.

³²⁸ *E.g.*, *Kendig v. Kendall Constr. Co.*, 317 So. 2d 138, 139 (Fla. Dist. Ct. App. 1975).

³²⁹ *E.g.*, ALA. CODE § 35-9A-501(c)(1) (LexisNexis, LEXIS through 2025 Reg. Sess.); KY. REV. STAT. ANN. § 383.705(3)(b) (LexisNexis, LEXIS through 2025 Reg. Sess.); WASH. REV. CODE § 59.18.250 (LexisNexis, LEXIS through 2025 Reg. Sess.).

³³⁰ *E.g.*, COLO. REV. STAT. § 38-12-509 (LEXIS through 2025 1st Reg. Sess.); N.Y. REAL PROP. LAW § 223-b (Consol., LEXIS through 2026 chs. 1–2).

³³¹ *See, e.g.*, *Di Fiore v. Booker*, No. 108946, 2020 Ohio App. LEXIS 3188, at *12 (Ohio Ct. App. June 4, 2020).

³³² *Armstrong & Ryan, Jr.*, *supra* note 60, at 14.

³³³ *Id.*; *see also* *DeNardo v. Corneloup*, 163 P.3d 956, 957 (Alaska 2007) (illustrating a court’s reliance upon delinquent rent as automatically dispositive).

payment, because the landlord failed to comply with their obligations.³³⁴ This is sometimes a higher evidentiary bar than a landlord's rebuttal of presumption.³³⁵ In many states, a tenant who has appealed to their landlord to remedy a problem with their residence may, after giving proper notice of their intention to do so, "repair and deduct," i.e., pay for the work out-of-pocket, send an itemized bill for reasonably priced work to their landlords, and then withhold the cost from their next rent payment.³³⁶ In such cases, this partial payment is not considered "owed rent" in the context of a presumption rebuttal, but tenants will typically have to deposit the difference into escrow with the court pending an order, or risk losing that protection.³³⁷

In one state, judges have the express discretion to require tenants accused of nonpayment to post all back rent as a bond before the court hears any uninhabitability claims.³³⁸ In one case, a tenant was also able to neutralize a non-payment argument for rebuttal by showing that their income was government-based and that the government's late transmission of public assistance was the cause of their late transmission of rent payment.³³⁹ Additionally, a landlord often cannot decline to accept a legitimate rent payment.³⁴⁰ And a tenant's obligation to pay fines, fees, charges, or other monies or services should not be conflated with an obligation to pay rent for the narrow purpose of rebutting claims.³⁴¹

Statutes should be written to preclude judges from granting default judgments to landlords who assert nonpayment without further inquiry into habitability conditions and the potential for retaliatory purposes. The mere fact of arrears, without further inquiry by the trier of fact, should never be dispositive. This defeats the spirit and often the letter of landlord-tenant law. Judges must perform, at a minimum, the simple task of asking tenants whether they have failed to pay rent or refused to pay rent, and why. And for anti-retaliation law to have any serious consequence, tenants cannot be expected to have proactively and successfully navigated through the escrow process, or to be forced to pay arrearage rent before their claims may be argued in court.

Besides non-payment of rent, landlords can (depending on the state)

³³⁴ See e.g., *Klobocista v. Zappia*, No. HDSP141135, 2007 Conn. Super. LEXIS 1008, at *10–11 (Conn. Super. Ct. Apr. 27, 2007). But see D.C. CODE § 42-3505.02(b)(3) (LEXIS through Jan. 1, 2026) (expressly prohibiting retaliation against a tenant who legally withholds rent after providing reasonable notice of a violation of housing regulations).

³³⁵ See e.g., *Klobocista*, 2007 Conn. Super. LEXIS 1008, at *8.

³³⁶ Gowing, *supra* note 9, at 891–93.

³³⁷ Baltz, *Tenant Union*, *supra* note 5, at 64; Gowing, *supra* note 9, at 892.

³³⁸ E.g., *Kohner Props. v. Johnson*, 553 S.W.3d 280, 285 (Mo. 2018); see also Baltz, *Tenant Union*, *supra* note 5, at 17 (describing this mechanism in action).

³³⁹ *Serna v. Gutierrez*, 297 P.3d 1238 (N.M. Ct. App. 2013).

³⁴⁰ See, e.g., *Gillespie v. Chelsea on the Square Apartments*, No. 2006-11-410, 2008 Del. C.P. LEXIS 41, at *6–7 (Del. Ct. Com. Pl. Sep. 4, 2008).

³⁴¹ E.g., *Lockett v. Blue Ocean Bristol*, 132 A.3d 257, 268 (Md. App. Ct. 2016).

typically rebut a retaliation presumption in several ways, such as showing that they are choosing to use a site differently,³⁴² to withdraw a building from the residential market,³⁴³ choosing to allow a foreclosure based upon conditions to stand unchallenged,³⁴⁴ or accept demolition over repairs.³⁴⁵ In other cases, landlords successfully rebutted a presumption of retaliation by arguing that a claim for personal injury damages was not based upon a right or remedy granted under the landlord-tenant law³⁴⁶ and that regular code enforcement certification was an affirmative rebuttal of the presumption on the grounds of retaliation for code violation.³⁴⁷ Moreover, in many states, a landlord can raise rent or increase fees after a tenant exercises a right, and they can still effectively rebut a presumption if they can make an argument that they were going to do it anyway, or that it is commensurate with property taxes, desired improvements, fair market values, or the rent of their other tenants.³⁴⁸ But an effective rebuttal of presumption, if properly evidenced, is not a balancing test.³⁴⁹ Such a rebuttal disallows retaliation claims even if the greater body of evidence shows that retaliation is a clear motive.³⁵⁰ Statutes should be written to prohibit retaliatory conduct wherever a retaliatory purpose exists, regardless of additional purpose. All too often, and in every state, landlord-tenant law is doing the work to protect retaliatory conduct rather than to prevent it.

It is worth noting that evictions can be among the most impactful and even traumatic events in a person's life. Adults under threat of eviction experience psychological distress, suicidal ideation, high blood pressure, child maltreatment, depression, and mental health hospitalizations.³⁵¹ Infants and children experience higher rates of low birthweight and respiratory problems, more emergency department visits, higher annual healthcare costs, poorer school performance, and, as they grow, lower earnings, fewer work hours, and less educational attainment later in life.³⁵² Evictions are linked to job loss, increased risk of homelessness, and general poverty, and having an eviction

³⁴² HAW. REV. STAT. § 521-74(b) (LEXIS through 2025 Reg. Sess.); *see also* Mulholland v. Poole, 866 A.2d 122, 124 (Me. 2005) (offering one judge's rationale behind adopting persuasive authority here).

³⁴³ *E.g.*, Drouet v. Superior Court, 73 P.3d 1185, 1196 (Cal. 2003).

³⁴⁴ *E.g.*, *id.*

³⁴⁵ *E.g.*, KAN. STAT. ANN. § 58-2572(d)(3) (LEXIS through Jan. 1, 2026); TENN. CODE ANN. § 66-28-514(b)(1)(C) (LEXIS through 2025 Reg. Sess.).

³⁴⁶ *E.g.*, Helfrich v. Valdez Motel Corp., 207 P.3d 552, 554 (Alaska 2009).

³⁴⁷ *E.g.*, GA. CODE ANN. § 44-7-24(f) (LEXIS through 2025 Reg. Sess.).

³⁴⁸ *E.g.*, ALA. CODE § 35-9A-501(b) (LexisNexis, LEXIS through 2025 Reg. Sess.); HAW. REV. STAT. § 521-74 (LEXIS through 2025 Reg. Sess.); KAN. STAT. ANN. § 58-2572(c) (LEXIS through Jan. 1, 2026); WASH. REV. CODE § 59.18.250 (LexisNexis, LEXIS through 2025 Reg. Sess.).

³⁴⁹ *E.g.*, Perreault v. Parker, 490 A.2d 203, 205 (Me. 1985). *But see* FLA. STAT. § 83.64(3) (LEXIS through 2025 Reg. Sess.) (providing landlords may defeat retaliation claims merely by showing "good cause/faith" for their actions).

³⁵⁰ *E.g.*, King v. Berindoague, 928 A.2d 693, 697 (D.C. 2007).

³⁵¹ Armstrong & Ryan, Jr., *supra* note 60, at 1-3.

³⁵² *Id.*

order on your record often remains discoverable throughout your entire life, severely limiting future housing opportunities.³⁵³ The stakes are incredibly high. And statistically, notably, the mere presence of an attorney at a tenant's side drastically increases their chances of success during eviction proceedings.³⁵⁴ Legal advocacy is vital and goes hand-in-glove with union organizing.

III. MOVEMENT LAWYERING FOR A NATIONAL TENANT UNION

As noted at the outset, tenant unions organize in the world as it is, and legal advocates make arguments based upon the law as it currently exists. However, when there is a gulf between union organizing strategies and the law as it currently exists,³⁵⁵ legal advocates must necessarily endeavor to bridge that gap, as best they can, while neither compromising their professional ethics at the threshold of the union hall nor sacrificing their personal ethics at the altar of the law. As an advocate for individual tenants, the role of the attorney is to fight zealously for their client in the courtroom, an arena from which the union often is barred, without undermining the union's collective objectives. As an advocate for the tenant union as an organization, the role of the lawyer is conversely to represent the collective without losing sight of the dire ramifications of an eviction order. Additionally, they need not make the countervailing power of the union legible to the prevailing power of the courts. Rather, their role is to understand that extralegal actions may be a crucial part of organizing, and to develop a legal strategy that best enables and shields that organizing strategy.³⁵⁶

This Note looks for ways an attorney can leverage the law as it currently exists to support tenants and tenant unions. However, it will not dignify structural problems in the law: the next section will begin with a narrow, targeted set of reforms that are necessary in landlord-tenant law. After that, this Note will propose strategies founded in procedural law that movement lawyers can look to exploit in eviction hearings immediately, without waiting for the world to change, and this Note will propose a strategy founded in work done by labor unions that tenant unions might similarly find useful.

³⁵³ *Id.*

³⁵⁴ *Id.* at 6–7, 23–24.

³⁵⁵ Schwartz, *supra* note 129, at 436–37.

³⁵⁶ See Greg Baltz, *All Power to the Tenants*, L. & POL. ECON. PROJECT: BLOG (Oct. 08, 2024) [hereinafter Baltz, *All Power*], <https://lpeproject.org/blog/all-power-to-the-tenants/> [perma.cc/YGK9-K22N]; ROSENTHAL & VILCHIS, *supra* note 30, at 74.

A. Substantial Law and Statutory Reforms

Landlord-tenant retaliation statutory reform is both vital and urgent.³⁵⁷ Lawmakers can, with moderate reform, do better to balance the legal relationships between landlords and tenants. And while this Note endorses every legal reform surveyed above,³⁵⁸ it refuses to frame them as lofty or imaginative, and it stands in solidarity with those organizing for those goals, this Note also recognizes that even mild statutory reform can still help tenants here and now as they struggle against their landlords and a stacked deck. Both the model code and derivative state statutes need to provide stronger protections for tenants, who are vulnerable in their position *vis-à-vis* their landlords, who are fundamentally more empowered legally, politically, and economically. Every state should have a clear section covering retaliation law in its landlord-tenant law code chapters. These sections should protect a wide variety of tenant conduct and should universally protect the right to join a tenant union.³⁵⁹ They should capture lease nonrenewal and selective or retroactive enforcement of a lease provision as prohibited conduct. They should specify that any prohibited landlord conduct should be presumed retaliatory if occurring after a landlord has constructive or actual notice of a tenant's good faith exercise of a protected right. That presumption should not require any showing of evidence by the tenant outside credibility and should not require any test for "degree" of purpose, motivation, or cause. Rather, the burden of evidence should always be placed on the landlord's rebuttal or presumption. Anything less allows landlords to simply falsify and invent multiple purposes under which they can escape liability. Moreover, the mere fact, in isolation, that a tenant owes rent should never be permitted by legislatures or courts to defeat or rebut an otherwise established presumption, unless a landlord can show a preponderance of evidence that a tenant only exercised a right after being given clear notice of pending action for default. Tenants are not attorneys. While they know that paying rent for an uninhabitable domicile is unfair, unjust, and unconscionable, they should not be expected to know the legal nuances of how, when, and upon which grounds to withhold rent. Put plainly, anti-retaliation law should both cover all retaliation and be based solely upon retaliation: a clear nexus in time, space, and logic between protected tenant conduct and prohibited landlord

³⁵⁷ See Gilgoff, *Opportunity*, *supra* note 217, at 460; Bangs, *supra* note 18, at 5–6.

³⁵⁸ See discussion *supra* Section II.C.2.

³⁵⁹ At minimum, "a comprehensive retaliation protection law for tenant organizing would ideally include the following components: (1) coverage of a broad range of protected tenant organizing activities; (2) coverage of a broad range of prohibited retaliatory actions by the landlord; (3) a presumption that a landlord has retaliated against a tenant when the retaliation occurs within six months of the protected organizing activity, with a high burden of proof for landlords to rebut that presumption; and (4) strong penalties for noncompliance." Twelve months is a more appropriate baseline. Hogue & Way, *supra* note 7, at 414.

conduct should be the test. This is *ad minimum*—anything less creates “protective” codes that fail to protect. Anything less is empty law.

B. Procedural Law and Evidentiary Arguments

While such reforms are crucial, tenant advocates must also navigate the law as it exists to effectively represent their clients in eviction proceedings. And while they need to be able to utilize as persuasive precedent the best forms of URLTA statutory interpretations currently available, the landlord-tenant law simply is not always on their side.³⁶⁰ However, creative attorneys can also find success leveraging existing law in a novel manner, and they may be able to take advantage of procedural mechanisms more readily than doctrinal provisions.

Perhaps the most intriguing procedural protections are already embedded in the case law surrounding retaliation claims concerning the negation of rebuttal of presumption.³⁶¹ In states with anti-retaliation laws, landlords are legally prohibited from taking adverse actions against their tenants after the tenant has exercised a right connected to that landlord-tenant relationship.³⁶² These actions typically include eviction and rent increases. If the landlord takes such an action after the exercise of a protected right, courts will presume that the action is illegal—although a landlord may rebut that presumption by providing evidence of a justified alternative reason for taking the action.³⁶³ Finally, if the landlord provides such evidence, the tenant may provide evidence to negate the rebuttal of presumption of retaliation.³⁶⁴ At such a procedural point, the action will typically proceed, based upon the evidence offered by each side.³⁶⁵ All too often, a landlord will rebut the presumption of retaliation by a simple showing of arrearage payments.³⁶⁶ Worse still, this too often operates as a complete rebuttal, with judges electing to end all proceedings and issuing an order in favor of the landlord, without room for further argument by the tenant.³⁶⁷ Under URLTA and in most states, this is unlawful. The tenant lawfully has room to provide further evidence to negate the rebuttal. And in cases where judges properly consider such evidence, most commonly, a tenant will negate this rebuttal by showing

³⁶⁰ See discussion *supra* Part III; Robert Rubenstein, Edward Zaremba & Hannah Gavin, *Landlord-Tenant Law: Foundational Knowledge for an Evolving Practice Area*, 74 Syracuse L. Rev. 741, 744 (2024).

³⁶¹ See discussion *supra* Section III.C.4.

³⁶² See discussion *supra* Section III.C.3.

³⁶³ See discussion *supra* Section III.C.4.

³⁶⁴ See discussion *supra* Section III.C.4.

³⁶⁵ See discussion *supra* Section III.C.4.

³⁶⁶ Armstrong & Ryan, Jr., *supra* note 60, at 14.

³⁶⁷ *Id.* at 14–15.

compelling evidence of uninhabitability.³⁶⁸ “Most commonly” is by no means common, however, and “uninhabitability” in this context is routinely determined by the judge’s own sensibilities: both discretion and bias can play a significant role.³⁶⁹

Tenant unions often combat deep-rooted and static uninhabitability problems with rent strikes, which is “the prototypical tenant union tactic, with tenants refusing to pay rent while maintaining possession of their homes to exert leverage against their landlord in negotiations.”³⁷⁰ Rent strikes enhance collective bargaining power and enable tenants to contest, resist, and overcome oppression.³⁷¹ At the same time, rent strikes, by definition, provide a landlord with straightforward evidence of arrearage with which to dodge retaliation claims.³⁷² “On its face, such a rent strike may seem difficult to justify,”³⁷³ given that it is presumptively an unlawful breach of contract. However, they are essential due to the extreme power imbalance between landlords and tenants; tenants must be able to lawfully strike to combat appalling living conditions, just as workers must be able to lawfully strike to combat appalling working conditions. Moreover, they continue to be a valuable tool for tenant unions regardless of whether the law has acknowledged their propriety.³⁷⁴ They deny important resources to landlords, and by doing so, they bring the landlord to the bargaining table and make collective power immediately visible to individual tenants.³⁷⁵ Academics and

³⁶⁸ See discussion *supra* Section III.C.4.

³⁶⁹ Gowing, *supra* note 9, at 896.

³⁷⁰ Baltz, *Tenant Union*, *supra* note 5, at 13; see generally Gowing, *supra* note 9, (providing a good history of rent strikes as an organizing strategy).

³⁷¹ Gowing, *supra* note 9, at 881. Gowing grounds her tenant power note in strategies that may better enable rent strikes, arguing that the law and lawyers should strive to complement existing tenant strategies rather than attempt to impose their own strategies. The potential mechanisms she explores include (1) making eviction procedures costlier for landlords; (2) giving tenants more control over lawfully withheld rent; (3) enforcing good faith bargaining duties; and (4) allowing tenants to withhold rent in solidarity. This section on procedural arguments may exist in the space between her first two proposals, while IV.C. complements and extends her second.

³⁷² Baltz, *Tenant Union*, *supra* note 5, at 60. Baltz considers rent strikes and anti-retaliation law both separately and together in this article. Generally, he prefers entitlement to lease renewal over protection from retaliation as a basis for possessory rights. I do not disagree, but anti-retaliation laws are more common. Specifically, he argues against anti-retaliation law in relation to rent strikes because the strike itself does provide non-retaliation grounds for eviction, and because courts cannot allow for continued possession without rent payments absent a ‘clearly defined mechanism for resolution.’ This section can be seen as engaging with that particular complaint.

³⁷³ Karp, *supra* note 25.

³⁷⁴ See *id.*; Weaver, *supra* note 19; Raghuveer & Washington, *supra* note 39; Gowing, *supra* note 9, 891–902; Andrias & Sachs, *Constructing*, *supra* note 15, 805–12; Harris, *supra* note 227; ROSENTHAL & VILCHIS, *supra* note 30, at 58–59; Aaron Fernando, *Could This Rolling Rent Strike Make the Feds Protect Tenants?*, SHELTERFORCE (Oct. 4, 2024), <https://shelterforce.org/2024/10/04/could-this-rolling-rent-strike-make-the-feds-protect-tenants/> [perma.cc/R9RL-XNFT]; Roshan Abraham, *Time’s Running Out. Striking Kansas City Tenants Want the Government to Act*, SHELTERFORCE (Jan. 9, 2025), <https://shelterforce.org/2025/01/09/times-running-out-striking-kansas-city-tenants-want-the-government-to-act/> [perma.cc/77PJ-WPK3].

³⁷⁵ Harris, *supra* note 227.

organizers alike enjoy telling the stories of powerful tenant organizing in places like Stella Wright Homes³⁷⁶ or Boyle Heights,³⁷⁷ where tenants went on strike and won, despite never having the law on their side. Landlords were forced to the table because ordinary tenants chose simply to keep strategically breaking the law. But these successes are not guaranteed, so tenants may face serious legal consequences when they make these decisions. It is important to understand, then, that tenants only commit to such a risky endeavor “on the heels of years of organizing against their landlords’ neglect.”³⁷⁸ Therein, though, lies a logical conclusion that tenant union advocates may be able to argue to make rent strikes more legible to eviction judges.

A group of tenants would not take such a risk if habitability conditions were not deplorable.³⁷⁹ Rent strikes “tend to be court-reliant strategies,”³⁸⁰ and tenant union advocates must make the causal link between rent strikes and housing conditions clear to the courts. When tenants band together and refuse to pay rent to their landlord, they are taking an extreme risk, one with legal, political, social, and housing implications.³⁸¹ They risk losing their homes, and they risk the burden of a record stamped with eviction proceedings.³⁸² This is a risk unlikely to be taken lightly or without strong motivation. Therefore, the very existence of a collective rent strike should be admissible as *prima facie* evidence of poor living conditions throughout the building whose tenants are so striking. Where statutory language is ambiguous on the matter, an advocate’s most persuasive arguments might combine with an organizer’s most deplorable buildings to make good law in the courtroom. Some states even have existing mechanisms available to courts to hear rent strike cases consolidated,³⁸³ and advocates should attempt to push for these procedural mechanisms wherever they are not explicitly precluded. To be sure, that evidence should not be offered as proof that an eviction proceeding is unlawful. It should be offered as credible (not clear and convincing) evidence to negate a rebuttal of the presumption of

³⁷⁶ See generally Harris David, *The Settlement of the Newark Public Housing Rent Strike: The Tenants Take Control*, 10 CLEARINGHOUSE REV. 103 (1976) (discussing the rent striking tenants at Stella Wright in 1973); Ari Ahmad McCaskill, *African American Women and Tenant Management of Public Housing: A Case Study of Stella Wright Homes* (2022) (M.A. thesis, Eastern Michigan University), <https://commons.emich.edu/cgi/viewcontent.cgi?article=2520&context=theses> [https://perma.cc/WYK3-K5AP] (discussing the Stella Wright Rent Strike).

³⁷⁷ Gowing, *supra* note 9, 878–79, 906–11.

³⁷⁸ Karp, *supra* note 25; accord Gowing, *supra* note 9, at 893.

³⁷⁹ See, e.g., Karp, *supra* note 25 (“The strike, which is larger in scale and scope than any seen since peaks in tenant action in the 1920s–30s and 1960s, comes on the heels of years of organizing against their landlords’ neglect.”).

³⁸⁰ Baltz, *Tenant Union*, *supra* note 5, at 63.

³⁸¹ *Id.* at 63–65.

³⁸² *Id.* at 66, 80.

³⁸³ See, e.g., N.Y. CITY CIV. CT. ACT LAW § 110(b) (McKinney 2023); see also Baltz, *Tenant Union*, *supra* note 5, at 7 (calling for broad adoption of this mechanism).

retaliation that is based exclusively on failure to pay rent. That is, judges should not view a rent strike as the dispositive justification for summarily granting eviction orders. Rather, building-level rent strikes are a form of collective community action positively crying out for argument and evidence of building conditions. Therefore, from there, an action should proceed with arguments from each side concerning whether the underlying action is retaliatory in nature.

C. Movement Law—Fighting Funds

Collective action rent strikes also animate this last proposal, which is less a legal solution than a collectivist administrative solution that the unions could pursue. While union organizing is often initiated as intensely localized and particularized, many unions “pursue strategies uniting organized tenants across portfolios, cities, states, or even the whole country.”³⁸⁴ Always, the union's role is to represent and advocate for its members and to provide some security for them against the repercussions that inhere in the process. Rent strikes are a form of direct action (imperfectly) analogous to labor strikes. In each case, the collective denial of resources (performance of labor or payment of rent) to an organization (company management or property management) may serve to force them into weaker bargaining positions—although this denial can seriously impact strikers (through termination/permanent replacement or eviction) if their union is not strong enough to protect them. Well, how do labor unions protect their members during a labor strike? In many ways, obviously, depending on the union, the company, the workers, and the industry. One intriguing method is the strike fund. When workers go on strike, companies do not pay them. Individual working-class folks, with more bills than savings, cannot always sustain this situation for as long as management can.³⁸⁵ But when such a worker is a member of a union that has “amassed large strike funds, it can force employers to take the threat of a strike seriously because it signals that workers can stay off the job longer. That can help unions win more of their demands during contract negotiations.”³⁸⁶ Comparably, tenant unions may wish to institute and operate rent strike funds.

If a group of tenants residing in an uninhabitable building repeatedly complain to their landlords about poor living conditions to no avail, they may appeal to their tenant union for assistance. Exhausting other negotiated (landlord) or enforced (municipal) remedies for their members without

³⁸⁴ Baltz, *Tenant Union*, *supra* note 5, at 7.

³⁸⁵ Raymond Gibney, Jr., *What Are Strike Funds? A Labour-Management Relations Expert in the U.S. Explains*, TALENT CAN. (Sep. 15, 2023), <https://www.talentcanada.ca/what-are-strike-funds-a-labour-management-relations-expert-in-the-u-s-explains/> [perma.cc/ZD6S-XZB6].

³⁸⁶ *Id.*

success, the union may either direct or grant a rent strike on a building level. Whether initiated by renter/member application or by union/board direction, such a strike would have to be formally sanctioned at both the building level (likely a supermajority) and the organizational level (likely a simple majority). At the advent of such an official strike, the union would draw upon a fund, maintained for that direct purpose, to deposit the collected sum of rent payments for all tenants residing in the building into escrow with the local court system. Escrow accounts are “one of the main ways policymakers signal their desire to control” striking tenants.³⁸⁷ Collective funding would invert that impetus by validating the cause in the eyes of a judge while taking the pressure off the actual strikers. Whether such a strike was successful in terms of negotiated outcomes or not, the renter/members would not be expected to repay that month’s rent to the union. This would diffuse and thereby reduce the liability of rent strikes, allocating the financial burden across the wider union body, if the eviction risks remained necessarily with the building’s tenants. Such a strike fund could also effectively enable and support rent strikes on a larger scale if the union sanctioned collective action against a landlord with a large property portfolio. Landlords, both local and absentee, may own several or even hundreds of poorly kept residential properties, and a broad-based rent strike against such a landlord could be hugely effective. In the labor context, creating a strike fund shows that “in a way far more concrete than any picket sign, that we mean business and we’re preparing to strike.”³⁸⁸ Large, absentee landlords would read much the same message.

In the past, some local tenant unions and tenant collectives have explored rent strike funds on an *ad hoc* and *in momento* basis through crowd-sourced funding.³⁸⁹ There does not yet appear to be structures or proposals in place for a more systematic and continuous fund. While a rent strike fund would initially be supported by member dues, an effective union could steadily

³⁸⁷ Gowing, *supra* note 9, at 905 (Gowing argues for giving tenants more control over the lawful rent withholding process by allowing tenants to create and use escrow accounts to withhold rent at will rather than in strictly delineated stages in an eviction process controlled by the landlord, and by allowing the eventually payout and division of funds put into escrow to be subject to bargaining agreements. However, she notes that escrow requirements ultimately still undermine rent strikes by requiring tenants to front money they may not have. A rent strike fund may be valuable in that light).

³⁸⁸ *The Value of a Strike Fund*, ASS’N OF FLIGHT ATTENDANTS–CWA, AFL-CIO, <https://web.archive.org/web/20180313214600/http://unitedafa.org/contract/negotiations/strike/value/default.aspx> [<https://perma.cc/MG79-4FZA>] (last visited April 1, 2025).

³⁸⁹ See ALL-CHI. TENANT ALL., *Rent Strike Fund*, GOFUNDME (Feb. 26, 2025), <https://www.gofundme.com/f/strike-fund-allchicago-tenant-alliance> [perma.cc/DCZ8-KP37]; PHILA. TENANTS UNION, *Rent Strike Fund*, CHUFFED, <https://chuffed.org/project/rent-strike-fund> [<https://perma.cc/GPR5-D9DZ>] (last visited Apr. 7, 2026); RENT STRIKE ATX, *ATX Rent Strike Fund*, FUNDRAZR (Apr. 1, 2020, at 10:45 ET), https://fundrazr.com/81dvVd?ref=ab_1Fi30O8AsSo1Fi30O8AsSo [perma.cc/54MR-S33E]; RENT STRIKE, *Rent Is Everyone’s Problem*, FIRE FUND, <https://www.firefund.net/rweekender> [perma.cc/FJ8H-SYRG] (last visited Apr. 1, 2025).

augment internal financing with external support from non-profit and advocacy groups. Moreover, tenant unions may be able to petition local governments to support a rent fund to provide coverage for tenants of buildings intertwined with metro housing departments and tenant unions. Louisville Metro Housing Authority (LMHA), for example, “owns and manages nearly 3,600 public-housing units. According to the Louisville Apartment Association, LMHA is Louisville’s largest landlord. They’re also a frequent evictor.”³⁹⁰ A classic (non-escrow) rent strike is unlikely to be successful because a city has greater resources to retain non-revenue units while evicting strikers.³⁹¹ A strike backed by rent strike funds would allow tenants the breathing room to make political, legal, and emotional arguments both in the courts and in public discourse while staving off eviction for non-payment. Such governmental agencies may be well-served by privately initiated enforcement mechanisms to help keep in check property managers who mismanage buildings occupied by government-assisted tenants. By analogy, a national tenant union federation may be able to petition Congress to support a rent fund providing coverage to buildings imbricated with HUD or bankrolled by the Federal Housing Finance Agency (FHFA). Experts have called for a national labor strike fund to be established, which can draw dues from member unions, solicit private donations, and seek out government funds.³⁹² So, too, could the TUF explore a national rent strike fund.

TUF is, at the moment of writing, supporting its member union, Kansas City Tenants (KCT) in that region’s longest-lasting rent strike.³⁹³ KCT is calling for, amongst other demands, a FHFA policy change through which “the federally backed loans their landlords depend on [will] be conditioned upon protections for tenants living in the properties that receive this publicly supported financing.”³⁹⁴ In this more classically modeled rent strike, tenants simply are not paying their rent to anyone.³⁹⁵ This gives union members power, because property managers and finance agencies rely upon rent payments and are especially reliant upon the combined rent payments of an organized tenant collective. It also exposes these tenants and their union to risk; if their demands are met before they are evicted, they will win. If not, they will have little legal recourse because their arrearage has not been

³⁹⁰ Marshall, *supra* note 93.

³⁹¹ Baltz, *Organizing*, *supra* note 158.

³⁹² Hamilton Nolan, *We Need a Big National Strike Fund*, THESE TIMES: LABOR (July 27, 2021), <https://inthesetimes.com/article/national-strike-fund-frito-lay-miners-nurses-labor-unions> [perma.cc/REQ5-A5CG].

³⁹³ Celisa Calacal, *Kansas City’s Longest-Ever Rent Strike Could Stretch into the New Year: ‘This is an epidemic,’* KCUR (Dec. 20, 2024, at 04:00 CT), <https://www.kcur.org/housing-development-section/2024-12-20/kansas-citys-longest-ever-rent-strike-could-stretch-into-the-new-year-this-is-an-epidemic> [perma.cc/75TW-JHK8]; Fernando, *supra* note 374; Abraham, *supra* note 374.

³⁹⁴ Fernando, *supra* note 374.

³⁹⁵ *Id.*

placed in escrow with the courts.³⁹⁶ However, depositing rent payments into escrow may be a complicated and foreign legal process for the average tenant. Doing so in the context of a large-scale strike creates a logistically complex role that a tenant union lawyer may be well-suited to play. Tracy Rosenthal and Leonardo Vilchis, co-founders of the LA Tenants Union, explain that “rent strikes stop the flow of cash to our landlords and reveal *their* dependence on *us*.”³⁹⁷ Accordingly, Tara Raghuvver, co-founder of Kansas City Tenants, notes that a rent strike can be the difference between failing to pay rent out of desperation and refusing to pay rent out of a place of empowerment.³⁹⁸ A strike fund can serve as an administrative tool for the union that dovetails neatly with its goals. And it is a tool that complements the work of tenant union lawyers as they harness the procedural law mechanisms of the courts as a vehicle for advancing the arguments of their clients who may find themselves facing a stacked deck of legal cards shuffled by unfriendly judges.

IV. CONCLUSION

There is a well-known court exchange between a judge and a law school student who was doing clinic work.³⁹⁹ The student was fighting hard, and against precedent, to advocate for a client at an eviction hearing. The student was arguing that the client’s living conditions (rat infestation, water seepage, mold, etc.) constituted uninhabitability, justifying non-payment of rent, and was arguing that the eviction proceedings were retaliatory.⁴⁰⁰ The judge reportedly became incredibly irate, and declared:

Now, why am I so irritable and harsh about this whole proceeding? And you’re probably correct that I’m not as kind to you as I might be, because I don’t want to listen to rats. I don’t want to listen to seepage...I don’t want to hear about hot water, and I don’t want to hear about garbage. You know I try to be patient, but I do wish that...now...I have studied some of this stuff and I resent bitterly [law students] coming in with the same defenses day in and day out.⁴⁰¹

This was 1978, and such arguments were not yet well-received. In the late

³⁹⁶ See discussion *supra* Section III.B.4.

³⁹⁷ ROSENTHAL & VILCHIS, *supra* note 30, at 58.

³⁹⁸ Fernando, *supra* note 374.

³⁹⁹ See generally *In re Albano*, 384 A.2d 144 (N.J. 1978) (discussing potential disciplinary actions against the judge after that hearing); James A. Hughes, *Retaliatory Eviction*, 102 MIL. L. REV. 143 (1983) (relying on a quote from the hearing as epigraphical material).

⁴⁰⁰ Hughes, *supra* note 399, at 143.

⁴⁰¹ *Id.*

1960s, young law students were beginning the revolutionary process of imagining a different world—one can glimpse these radical legal imaginaries developing across their scholarship and see the impact of their transformative imagination on the way we think about property, housing, habitability, and landlord-tenant law today. Anti-retaliation law, too, has made incredible progress. While not yet universal, it is certainly standard and familiar. It has become so because tenants, tenant unions, and tenant advocates continued to show up, to press their arguments, to annoy a few judges, to inspire more, and to eventually make better law.

Anti-retaliation law requires immediate reform to be effective in every jurisdiction; therefore, tenant union lawyers must advance process-based arguments and movement-based strategies to advocate at the limits of anti-retaliation law. While lawyers may often take a rather *ad hoc* and *ex post facto* role in supporting social movements, “attorneys are already integrated into tenant organizing because building-based campaigns depend on tenants maintaining possession, a question landlords often seek to resolve in court.”⁴⁰²

However, “the courtroom is ancillary—victory depends on the meetings, community building, and out-of-court strategies [union] members develop together.”⁴⁰³ Tenant union laws alone could never be sufficient, even if they were stronger. Rather, movement work will always be vital, as liberal “reform” is no substitute for leadership development and membership organizing.⁴⁰⁴ Moreover, “the relationship between law and social-movement organizing by the poor and working class is plagued by a chicken-and-egg problem: enacting laws designed to facilitate social-movement organizing generally requires social-movement organizations already influential enough to secure the enactment of those laws.”⁴⁰⁵ It is up to the tenants and the tenant unions to claim their own rights, even when those rights are illegible to the courts.⁴⁰⁶ But “if it is the case that our involvement as lawyers or law students

⁴⁰² Baltz, *All Power*, *supra* note 356. Baltz is drawing off analysis offered by Rosenthal and Vilchis through the lens and mic of a lawyer speaking to lawyers. See ROSENTHAL & VILCHIS, *supra* note 30, at 108–09. Baltz’s thoughts pertain to the monograph generally but particularly relevant is a passage found on pages 108 and 109 that puts their thoughts on the empowering role of tenant-as-organizer into conversation with Paul Freire’s concept of a liberatory, participatory, popular education: “We see no reason to shy away from the designation of ‘outside agitator’ to name those pulled from the ranks of the downwardly mobile middle class or even upper-class traitors. Solidarity is a shared stake in liberation for us all. At the same time, a pedagogical organizer—pulled from any background—must have the humility to support the leadership of our base. Rather than paid professionals or activists bringing the ‘good news’ to the poor and working class, conscripting their participation into campaigns with predetermined goals, organizing must be a process of listening, problem posing, and facilitating self-driven activity.”

⁴⁰³ Baltz, *All Power*, *supra* note 356; accord ROSENTHAL & VILCHIS *supra* note 30, at 108–09.

⁴⁰⁴ See Baltz, *Organizing*, *supra* note 158; Hogue & Way, *supra* note 7, at 426; Gowing, *supra* note 9, at 909.

⁴⁰⁵ Kate Andrias & Benjamin I. Sachs, *The Chicken-and-Egg of Law and Organizing: Enacting Policy for Power-Building*, 124 COLUM. L. REV. 777, 781 (2024).

⁴⁰⁶ See Baltz, *Organizing*, *supra* note 158; Whitlow, *Moving*, *supra* note 213.

is both inevitable and auxiliary, we must know our role, and perform it well, with full appreciation that we have a separate function from the organizer.”⁴⁰⁷

We do still have a purpose. It is no less lofty a role than that of advocate: we must strive to make the best arguments we can for tenants and tenant unions in the courtroom, allowing tenants and tenant unions to continue to advocate for themselves in their homes, in their communities, in their meeting halls, and in their streets. While advocates are still beholden to the law, even where it is desperately in need of reform, we can still advocate for our clients’ interests by taking advantage of court procedures to advance arguments in the courtrooms with such frequency that they cease to be novel.

This Note contextualized the rising national tenant movement both in the crisis moment driving it and the legal environment it must necessarily organize within. It reviewed existing tenant-landlord law and proposed reforms, and it critiqued anti-retaliation law, both as modeled and as enacted, framing that discussion through the personal stories of tenants whom anti-retaliation law has failed. Finally, it emphasized that, in this severely limited context, attorneys may have stronger procedural arguments to make than they do substantive ones, and it discussed potential strategies that legal advocates may advance to normalize their clients’ interests and organizing activities.

Ultimately, the rigid distinction between lawyer and organizer in a social movement is a false dichotomy. While these roles must be distinguishable, certainly, the relationship between them should be co-constitutive rather than mutually exclusive. As advocates, our bar licenses are not the only way we can show up for the union. In movement work, everyone must be a leader, and everyone has a role, whether to provide legal support, food support, communications support, childcare support, recruitment support, research support, or transportation support. Without teams in place to provide these services, tenants will miss meetings: those without access to personal vehicles or public transit can’t show up, and those without access to child supervision or meals can’t show up. Legal support may require more specially trained skills, but it is no more vital to the union than rides or babysitting. We belong within the union, not just alongside it – and, after all, many of us are also tenants. Or, as Josh Poe puts it: “Everyone doesn’t have a job, but everyone needs a house.”⁴⁰⁸

⁴⁰⁷ Baltz, *All Power*, *supra* note 356; accord ROSENTHAL & VILCHIS, *supra* note 30, at 108–09.

⁴⁰⁸ Cottom, *supra* note 4.