

NOTE

RENT STRIKES AND TENANT POWER: SUPPORTING RENT STRIKES IN RESIDENTIAL LANDLORD- TENANT LAW

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For more than a century, low-income tenants across cities in the United States have protested and organized together against unjust housing conditions. Yet landlords continue to evade accountability, leaving mold, pests, lead paint, unclean water, and innumerable other issues unaddressed. On top of habitability concerns, the past several decades of gentrification have displaced hundreds of thousands of Black and brown residents from their communities. To address these issues, legal reforms have focused on either housing-market regulation or individual rights devoid of effective enforcement mechanisms. These reforms fall short. Tenant power, not just tenant-focused housing reform, should be a concern of policymakers and legal scholars. This Note focuses specifically on rent strikes as an important organizing strategy that the law can and should better support. Legislation supporting rent strikes has the potential to offer tenants powerful tools as they organize for their communities and secure access to quality and affordable housing. This Note proposes a cluster of four legislative proposals that reflect tenants' ongoing organizing strategies and, if enacted, would enhance tenants' autonomy in their private bargaining with landlords.

TABLE OF CONTENTS

INTRODUCTION.....	878
I. CONTEXTUALIZING RENT STRIKES	883
A. <i>Rent Strikes and Racial Justice</i>	883
B. <i>The Legal Landscape for Tenant Organizing</i>	889
C. <i>Legality of Rent Withholding</i>	891

* J.D. Candidate, May 2022, University of Michigan Law School. Thank you to the members and staff of the Los Angeles Center for Community Law and Action, to Anne Orchier and Union de Vecinos, and special thanks to Gina Hong; not only for her advice on this Note but also for her mentorship in community lawyering and being accountable to organizers' visions for radical liberation. Thank you to Professors Kate Andrias and Nicolas Cornell for their guidance and feedback throughout many drafts. And thank you to the members of the *Michigan Law Review*, particularly Brian Remlinger, Mollie Krent, Katie Moe, Sofia Squatriti, and the Volume 120 Notes Office.

II.	TOWARD TENANT POWER.....	894
	A. <i>Individual Rights</i>	895
	B. <i>Housing-Market Regulation</i>	897
	C. <i>The Right to Strike</i>	898
	D. <i>Reframing Rent Strike Legislation Toward Tenant Power</i> ..	902
III.	ENVISIONING RENT STRIKE LEGISLATION	903
	A. <i>Enhancing Procedural Protections in Eviction Court</i>	904
	B. <i>Controlling the Money</i>	905
	C. <i>Creating and Enforcing a Duty to Bargain in Good Faith</i> ...	907
	D. <i>Employing Rent Withholding as a Solidarity Right</i>	909
	CONCLUSION.....	911

INTRODUCTION

1. *First of all, there is no housing crisis.*
2. *Housing is not in crisis.*
3. *Housing needs no trauma counselors.*
4. *Housing needs no lawyers. Housing needs no comrades or friends. Housing needs no representatives. Housing needs no organizers.*
5. *When we call this crisis a housing crisis, it benefits the people who design housing, who build housing, who profit from housing, not the people who live in it.*
6. *It encourages us to think in abstractions, in numbers, in interchangeable “units,” and not about people, or about power.*
7. *We don’t have a housing crisis. We have a tenants’ rights crisis.*

—Tracy Jeanne Rosenthal, 101 Notes on the LA Tenants Union¹

The Boyle Heights neighborhood in Los Angeles is a diverse neighborhood with a large Mexican population. Mariachi players still gather at the entryway to Boyle Heights, known as Mariachi Plaza, to play their music. Some of these mariachis are tenants of a building a few blocks from Mariachi Plaza. In 2016, they received a notice from their landlord that he was increasing their rent by 80 percent.² Neither the mariachis nor the other tenants in the building, many of whom had lived there for decades, could afford this steep rent hike. Suspecting their landlord increased rent to price them out, many of the

1. Tracy Jeanne Rosenthal, *101 Notes on the LA Tenants Union*, COMMUNE (July 19, 2019), <https://communemag.com/101-notes-on-the-la-tenants-union> [perma.cc/U9SN-NBK4]. Tracy Jeanne Rosenthal is a tenant organizer in Los Angeles and cofounder of the L.A. Tenants Union. *Id.*

2. Molly Lambert, *The Rent Strike That Sparked a Movement*, THELAND, <https://thelandmag.com/mariachi-plaza-rent-strike-defend-boyle-heights> [perma.cc/2PU6-UDGT].

tenants—including some who had not yet received a rent increase—decided to take action and collectively withhold their rent.³ The strike went on for months. The tenants continuously asked the landlord to meet with them to negotiate. The landlord continuously refused.⁴

Almost a year after the initial notice of rent increase, the landlord finally agreed to negotiate a deal. Under the agreement, the tenants would pay a portion of the withheld rent and a 14 percent rent increase; the landlord conceded to enter a forty-two-month lease with the tenants and cap yearly rent increases at 5 percent.⁵ Additionally, the landlord agreed to allow the tenants to bargain collectively going forward.⁶ The Boyle Heights rent strike was a huge success for the tenants, and it has allowed the mariachis to remain in their community with access to stable and affordable housing. But the tenants did not have a strong legal basis for withholding rent, and their success was only possible because of their organizing. They avoided eviction during the rent strike through strategies such as hosting media campaigns to elicit public pressure, picketing outside the landlord's house, and withholding rent in large enough numbers to make eviction inconvenient for the landlord.⁷ The law, for the most part, was not on the tenants' side.

The driving question of this Note is: What would it look like if the law *were* on the tenants' side? What sort of broad-based, community-driven change might the law help to flourish if it better supported tenants' organizing strategies? Tenants have organized together and used strategies such as rent strikes for over a century.⁸ Yet the most common landlord-tenant legal reforms have focused on enhancing individual rights—such as the push for a right to counsel in eviction proceedings—and regulatory policies like rent control laws.⁹ Both approaches are important, but their effect will be limited

3. One of the tenants whose rent did not initially increase thought the landlord intended to divide the tenants and discourage solidarity by serving only a few with a rent increase at first: "That was his goal. He say I'm gonna divide them, gonna try to maybe get rid of six or seven and I'm gonna give another few months and then boom, there you go. That was his plan. Because he just wanted to get rid of us here, one way or the other." *Id.*

4. *Id.*

5. Elijah Chiland, *Boyle Heights Mariachis Agree to 14 Percent Rent Hike but Win New Leases Ending Months-Long Strike*, CURBED L.A. (Feb. 16, 2018, 5:46 PM), <https://la.curbed.com/2018/2/16/17018298/boyle-heights-mariachi-gentrification-rent-strike> [perma.cc/7U37-5QCQ].

6. *Id.*

7. *Id.*; Lambert, *supra* note 2.

8. See *infra* Section I.A.

9. See Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 519–40 (1984) (describing the "revolution" in landlord-tenant law in the 1970s as characterized by a sudden increase in tenants' individual rights such as the warranty of habitability and antidiscrimination laws); Brandon M. Weiss, *Progressive Property Theory and Housing Justice Campaigns*, 10 U.C. IRVINE L. REV. 251, 253–54 (2019) (describing the "most prominent" housing campaigns as those involving state regulation of the housing market, such as rent control, inclusionary zoning ordinances, and rental-housing quality-inspection programs). For an overview of the campaign for a tenant's right to counsel in New

so long as they do not build power for tenants themselves. When tenants lack political power, these reforms often force tenants to rely on lawyers to assert their rights in court and empower policymakers to select reforms on the tenants' behalf.¹⁰ Moreover, these solutions have proven to be woefully inadequate at addressing the overwhelming problems low-income tenants face, especially in gentrifying cities across the country.¹¹

This Note argues that a third approach—enhancing tenants' organizing and collective bargaining power—is crucial to reforming low-income tenants' access to quality and affordable housing. Legal systems alone will not give rise to justice. Rather, change is most likely to happen when people come together to disrupt the political status quo: in social movements, in protests, and in other forms of collective action.¹² Collective action both enhances and goes beyond individual rights and housing-market regulation. It enforces individual rights, allows tenants to gain influence in the political process, and promotes long-term movement building and community-driven change.¹³ At the heart of sustained collective action are powerful mass-membership organizations. Mass-membership organizations promote large-scale, coordinated efforts among working-class people and are a strong force in countering political inequality in the United States.¹⁴ Labor unions are a notable form of mass-membership organizations, but tenants also organize through building-specific tenants associations as well as city-wide tenants unions.¹⁵

Legal scholars are increasingly concerned with how the law can support the growth of mass-membership organizations. For instance, Professors Kate Andrias and Benjamin I. Sachs have explored how the law can facilitate the conditions necessary for poor and working-class organizations to flourish. Some of these proposals include providing avenues for obtaining resources and funding to organize, freedom from retaliation, and the meaningful opportunity to bargain collectively.¹⁶ Others have drawn comparisons between labor unions and social movements,¹⁷ as well as between labor law and other

York City and how the right to counsel can, in the right context, support tenant power, see John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 *FORDHAM URB. L.J.* 1081 (2019).

10. See *infra* Part II.

11. See *infra* Section I.A.

12. See *infra* Section I.A.; Tomiko Brown-Nagin, *Does Protest Work?*, 56 *HOW. L.J.* 721, 723 (2013).

13. See *infra* Part II.

14. Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 *YALE L.J.* 546, 551–52 (2021).

15. See *supra* Section I.B. For examples of other mass-membership organizations, see *About ASGA*, AM. STUDENT GOV'T ASS'N, <https://asgahome.com/about-asga> [perma.cc/A87F-4T3A] (student association); *History*, INDUS. AREAS FOUND., <https://www.industrialareasfoundation.org/history> [perma.cc/XBR5-BRZC] (coalition of community organizations).

16. See generally Andrias & Sachs, *supra* note 14.

17. See, e.g., Charles B. Craver, *The Impact of Labor Unions on Worker Rights and on Other Social Movements*, 26 *A.B.A. J. LAB. & EMP. L.* 267 (2011).

sectors where mass-membership organizations are prevalent.¹⁸ Christopher Bangs has even proposed potential statutory frameworks that would support tenant organizing, including laws to protect individual tenants' right to organize without retaliation and tenants unions' right to self-fund.¹⁹

This Note adds to this developing literature by focusing on how legal reforms can enhance an important element of tenants' collective bargaining power: the rent strike.²⁰ Rent strikes take place when tenants decide to collectively stop paying rent. Such strikes are only one tool in the larger bargaining strategy. Because they are risky for tenants and expose tenants to a heightened threat of eviction, rent strikes typically follow extensive attempts to bargain with the landlord and otherwise protest the issues the tenants are facing.

Rent strikes are often frowned upon for being too radical and for going around, rather than through, the legal system.²¹ However, strikes not only enhance tenants' collective bargaining rights but also enable them to resist oppression. The current landlord-tenant structure plays a key role in systemic oppression and cycles of wealth disparities in the United States. In other areas of the law—namely, labor law—legal reformers have supported collective bargaining power as a means of disrupting systemic oppression. The National Labor Relations Act's key ambition was to address the imbalance of bargaining power between employers and employees.²² When workers strike, they gain bargaining power by withholding something of value from their employer—their labor—without being fired.²³ Policymakers and lawyers advocating for policy change today should similarly aim to ensure tenants have the power to withhold the value they provide to landlords—their rent—without an unchecked risk of eviction.

This Note recommends a cluster of four legal reforms that can support rent strikes. In doing so, it seeks to follow a movement law methodology, which calls for grounding legal scholarship “in solidarity, accountability, and

18. See Christopher Bangs, Note, *A Union for All: Collective Associations Outside the Workplace*, 26 GEO. J. ON POVERTY L. & POL'Y 47 (2018).

19. *Id.* at 74–87.

20. Other aspects of tenants' collective bargaining—such as the possibilities for scaling up bargaining units—are important to consider but outside the scope of this Note. Cf. KATE ANDRIAS & BRISHEN ROGERS, ROOSEVELT INST., *REBUILDING WORKER VOICE IN TODAY'S ECONOMY* 6–7 (2018), <https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Rebuilding-Worker-Voice-201808.pdf> [perma.cc/4QCR-HNN4] (discussing sectoral bargaining as a means for scaling up bargaining units in labor law).

21. See, e.g., *Mayor Opposes New York Rent Strike*, REAL EST. WKLY. (Apr. 17, 2020), <https://rew-online.com/mayor-opposes-new-york-rent-strike> [perma.cc/EWN5-KQW7].

22. 29 U.S.C. § 151.

23. Unfortunately, this is not to say that the NLRA has been successful at protecting workers' right to withhold their labor without being fired. Employers can permanently replace striking workers or threaten to replace them to break up the strike. Permanent replacement is “one of the most devastating antiunion tactics used by American employers,” and its legality is a widely criticized part of labor law. John Logan, *Permanent Replacements and the End of Labor's “Only True Weapon,”* 74 INT'L LAB. & WORKING-CLASS HIST. 171, 171 (2008).

engagement with grassroots organizing and left social movements.”²⁴ The purpose of this Note is not to challenge modes of tenant organizing, nor is it to lay out what makes for an effective bargaining strategy.²⁵ Rather, this Note is motivated by a strategy tenants are already using—rent strikes—and an interest in how the law can better support that strategy.²⁶ Part I provides a brief history of the role rent strikes have played in movements for racial justice, as well as background on the legality of tenant organizing and rent withholding. Part II explores the shortcomings of the major landlord-tenant reforms, arguing that rent-strike legislation would support not only tenants’ legal right to organize but also their ability to build collective power. Part III offers four proposed policy changes to support rent strikes, which focus on strengthening tenant autonomy and organizing.

24. Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821, 821 (2021).

25. For an example of such an approach, see Bo Bengtsson, *Tenants’ Dilemma—on Collective Action in Housing*, 13 HOUS. STUD. 99 (1998).

26. To ask how laws can support organizing strategies is, from the start, a limited approach. For example, this Note recognizes that housing is a human right; the laws of the United States, however, do not. See Maria Massimo, Note, *Housing as a Right in the United States: Mitigating the Affordable Housing Crisis Using an International Human Rights Law Approach*, 62 B.C. L. REV. 273, 276 (2021). Those who cannot pay rent are thus typically denied the right to decent housing. *Id.* at 289–90. While proposals to lower striking tenants’ risk of eviction are in solidarity with the tenants’ rent-strike strategy, they certainly fall short of overhauling the affronts to human dignity that are widespread displacement and homelessness in the United States. See *infra* text accompanying notes 44–51; Benjamin Schneider, *CityLab University: Understanding Homelessness in America*, BLOOMBERG CITYLAB (July 6, 2020, 10:29 PM), <https://www.bloomberg.com/news/features/2020-07-06/why-is-homelessness-such-a-problem-in-u-s-cities> [perma.cc/S69M-F87Q]; Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQUIRY 796 (2016). True accountability to tenant organizing requires alignment with tenants’ visions for radically altered power structures and land rights. See, e.g., *Black Land & Liberation Initiative*, MOVEMENT GENERATION, <https://movementgeneration.org/our-work/movementbuilding-2/black-land-and-liberation-initiative> [perma.cc/GZ3J-TAFX]; see also *infra* note 65. See generally Sara Safransky, *Rethinking Land Struggle in the Postindustrial City*, 49 ANTIPODE 1079 (2017) (using ethnographical methodology to examine racialized land dispossession in Detroit through the lens of ongoing struggles for liberation and decolonization). Rent strikes are part of this broader liberatory movement, and this Note takes the position that the law can support the movement by removing barriers to rent strikes and community organizing.

I. CONTEXTUALIZING RENT STRIKES

9. *A tenant can be harassed, evicted, displaced, broke, undocumented, fed up, or organized. A tenant can be in kindergarten, can be a teacher, or a teacher on strike.*

10. *A tenant can be incarcerated or houseless.*

11. *In LATU we define a tenant as more than a renter. A tenant is anyone who doesn't control their own housing.*

—Tracy Jeanne Rosenthal, 101 Notes on the LA Tenants Union²⁷

The housing market has long played a role in racial and class oppression in American history. Low-income tenants are especially vulnerable to abuse and mistreatment because they lack control over their housing and thus the ability to change their circumstances when issues arise. When tenants organize, they strive to reclaim control over the safety and affordability of their communities. This Part discusses the role rent strikes have played in historic and ongoing movements for racial justice. It then provides background on the existing legal structures for tenant organizing and rent withholding. Although rent-strike legislation would require a significant departure from the landlord-tenant status quo, the existing legal framework provides a foundation upon which to build greater protections for rent strikes.

A. *Rent Strikes and Racial Justice*

Historically, rent strikes have served as a major tool in the broader movement against housing discrimination and racial injustice. Housing was a central issue in the civil rights movement.²⁸ Following World War II, as white people fled to the suburbs, racial minorities made up an increasing majority of inner-city populations.²⁹ Burdened by racist federal housing policies,³⁰ residents of city centers faced a shrinking tax base, fewer job opportunities, and

27. Rosenthal, *supra* note 1. This Note uses a narrower definition of a residential “tenant” (that is, someone who lives in a housing unit and has possessory rights but not ownership rights as to that unit) that does not encompass those who are incarcerated or houseless. However, this broader definition of “tenant” is important to understanding tenant organizing and the harms perpetuated by an unjust housing market.

28. See Leonard S. Rubinowitz, *The Chicago Freedom Movement and the Federal Fair Housing Act*, in *THE CHICAGO FREEDOM MOVEMENT: MARTIN LUTHER KING JR. AND CIVIL RIGHTS ACTIVISM IN THE NORTH* 115 (Mary Lou Finley, Bernard LaFayette Jr., James R. Ralph Jr. & Pam Smith eds., 2016).

29. Robert A. Solomon, *Building a Segregated City: How We All Worked Together*, 16 ST. LOUIS U. PUB. L. REV. 265, 265 (1997).

30. LANCE FREEMAN, *A HAVEN AND A HELL: THE GHETTO IN BLACK AMERICA* 72 (2019) (describing how the “federal government’s enormous influence and resources” were invested into discriminatory policies such as redlining that brought about the “federally sanctioned ghetto”).

deplorable housing conditions.³¹ By the 1960s, segregation had been outlawed and the numbers of Black voters and elected officials had increased, but inner-city housing conditions only worsened.³² Within the context of the nationwide civil rights and Black Power movements, Black tenants began taking on smaller-scale rent-strike actions to achieve local and more immediate relief.³³ Throughout the 1960s and 1970s, rent strikes were common across the country.³⁴

The strikes not only served as a concrete method of addressing terrible living conditions and unaffordable rents; they also allowed the tenants to have control over the terms by which these issues were addressed. In the St. Louis rent strike of 1969, for example, tenants went on strike and successfully negotiated specific demands: rents capped at 25 percent of a tenant's income, improved pest control, better security measures, and more Black representation on the housing authority's board of commissioners.³⁵ The striking tenants in St. Louis were predominantly Black women who drew influence from the Black Power and Women Power movements.³⁶ A key tenet of Women Power was the belief that "if the Negro in America is to strive toward developing a meaningful self-identification, then this fundamental concept of 'self-help' projects becomes increasingly important in this complex realm of social revolution."³⁷ Rent strikes like the one in St. Louis provided tenants with a "self-help" method of improving their community, thus bringing to bear the tenants' value of self-determination.³⁸

Today, racism and inhumane living conditions continue to pervade the rental housing market. Unaddressed mold issues in public housing are causing children to develop asthma at increasing rates.³⁹ A prominent New York City landlord has an average of 2,877 open code violations in each of his fifteen apartment complexes, including for rodent infestation, mold, heat outages,

31. *Id.* at 4, 138.

32. *Id.* at 133–34.

33. Michael Karp, *The St. Louis Rent Strike of 1969: Transforming Black Activism and American Low-Income Housing*, 40 J. URB. HIST. 648, 650 (2014); John C. Fossum, *Rent Withholding and the Improvement of Substandard Housing*, 53 CALIF. L. REV. 304, 323 (1965) ("[T]he existing civil rights groups have supplied many of the leaders of the [rent] strikes as well as the inspirational impetus of a dynamic cause.").

34. Karp, *supra* note 33; see, e.g., Sarah Judson, "We're Walking Proud and Talking Loud Because We're the New Black Joes!": *Community Leadership and Tenants Rights in Asheville's 1968 Rent Strike*, 46 J. URB. HIST. 816 (2020); Brown-Nagin, *supra* note 12, at 736–38.

35. Karp, *supra* note 33, at 652–57.

36. *Id.* at 653.

37. *Id.*

38. See *id.*

39. Molly Parker, *Inside Public Housing Where Cockroaches Drop from the Wall and Kids Are Getting Sick*, PROPUBLICA (Dec. 12, 2019, 9:00 AM), <https://www.propublica.org/article/inside-public-housing-where-cockroaches-drop-from-the-wall-and-kids-are-getting-sick> [perma.cc/QHV2-ZNB2].

and lead paint.⁴⁰ Reports from across the country tell similar stories about the status of low-income rental housing.⁴¹ Racial minorities are at a greater risk of facing these issues: due to historical and ongoing discrimination, Black, Native American, and Latino renters are more likely to be low-income than white renters.⁴² And among low-income renters, Black renters are most likely to spend more than 50 percent of their income on rent.⁴³

At the same time, gentrification has added a new and daunting layer to the challenges low-income tenants face. Gentrification is a neighborhood-level process of colonization, in which predominantly white, privileged classes appropriate urban space and culture while forcing out existing communities.⁴⁴ Its main features include “housing dislocation and loss, distended social networks, ‘improved’ local services out of sync with local needs and displacement.”⁴⁵ City governments often couch their plans for gentrification in terms like “neighborhood revitalization,” suggesting that gentrification benefits communities.⁴⁶ Unlike actual community development, however, gentrification fails to invest in the *people* already present in a community. Instead, the

40. Alex Williamson, *Tenants Withhold Rent from City’s Worst Landlord*, BKLYNER (Sept. 8, 2020), <https://bklyner.com/tenants-withhold-rent-from-citys-worst-landlord> [perma.cc/U5MZ-SQFX].

41. See, e.g., Alexa Mills & Andrew Giambrone, *Life Is Hell for Tenants of Giant D.C. Slumlord Sanford Capital*, WASH. CITY PAPER (Feb. 2, 2017), <https://washingtoncitypaper.com/article/192384/life-is-hell-for-tenants-of-giant-dc-slumlord-sanford-capital> [perma.cc/ZLY8-XMNA]; MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 76 (2016) (“Between 2009 and 2011, nearly half of all renters in Milwaukee experienced a serious and lasting housing problem. . . . Yet the average rent was the same, whether an apartment had housing problems or did not.”).

42. ANDREW AURAND ET AL., NAT’L LOW INCOME HOUS. COAL., *THE GAP: A SHORTAGE OF AFFORDABLE HOMES* 2 (2021), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf [perma.cc/V9ME-HJRT].

43. *Id.* at 7.

44. Rowland Atkinson & Gary Bridge, *Introduction*, in *GENTRIFICATION IN A GLOBAL CONTEXT* 1, 2 (Rowland Atkinson & Gary Bridge eds., 2005). Although the term “gentrification” is used in many contexts today, it was first coined by British sociologist Ruth Glass to describe working-class Londoner’s displacement from the city by middle-class newcomers. JASON RICHARDSON, BRUCE MITCHELL & JUAN FRANCO, NAT’L CMTY. REINVESTMENT COAL., *SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES* 8 (2019), <https://ncrc.org/gentrification> [perma.cc/P2XE-ET6Y]. Some scholars debate whether displacement is an inherent element of gentrification. *E.g., id.* at 10–11. This Note uses gentrification to refer to instances in which the process of urban development either displaces or threatens to displace the predominantly minority communities present in a city—acknowledging that when a community is not displaced due to gentrification, it is often attributable to the community’s resistance and organizing rather than to the developers’ investment in low-income communities of color. See, e.g., Kathe Newman & Elvin K. Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 *URB. STUD.* 23, 23, 50 (2006) (documenting the “sophisticated and creative array of methods used to resist displacement”).

45. Atkinson & Bridge, *supra* note 44, at 2.

46. See Barrett A. Lee, Daphne Spain & Debra J. Umberson, *Neighborhood Revitalization and Racial Change: The Case of Washington, D.C.*, 22 *DEMOGRAPHY* 581, 581 (1985). While this

city “revitalizes” the urban *environment*, partnering with private developers to bring in upscale apartments and “beautification” initiatives.⁴⁷ In the meantime, skyrocketing rent prices and increased policing⁴⁸ disrupt and displace existing communities.⁴⁹ In recent decades, 135,000 people of color have been pushed out of major cities across the country.⁵⁰

Gentrification destroys value that cannot be quantified based on a developer’s estimated market rate of a piece of land. In Boyle Heights, Los Angeles, the community reclaimed a blighted lot in 1999 and turned it into a community garden.⁵¹ After nearly twenty years of the garden providing the community with a safe space to gather and a source of healthy, local food, the landowner chose to lease the land to a developer.⁵² “They couldn’t see what we were doing The value we create,” said Irene Peña, director of the garden.⁵³

Note focuses on the role of cities in both causing and fighting the dispossession of homes and communities from people of color, the federal government has also played a role in gentrification. See, e.g., Derek Hyra, *Commentary: Causes and Consequences of Gentrification and the Future of Equitable Development Policy*, 18 CITYSCAPE, no. 3, 2016, at 171, 172 (discussing the HOPE VI program’s use of billions of federal dollars to demolish public housing near central business districts).

47. See Georgia Alexandri, *Reading Between the Lines: Gentrification Tendencies and Issues of Urban Fear in the Midst of Athens’ Crisis*, 52 URB. STUD. 1631, 1643 (2015).

48. The increased policing that accompanies gentrification has put the safety of communities of color at greater risk. Research shows that as property values increase, so do arrests, injuries, and killings of people of color at the hands of police. See Brenden Beck, *The Role of Police in Gentrification*, APPEAL (Aug. 4, 2020), <https://theappeal.org/the-role-of-police-igentrification-breonna-taylor> [perma.cc/ZQQ7-ST4V]. After Breonna Taylor was killed by police when they raided her home in the middle of the night, her family’s lawyers filed a lawsuit against the City of Louisville. The lawyers allege in part that the raid of Taylor’s home was “part of a broader effort to evict residents who were impeding the city’s Vision Russell redevelopment initiative.” *Id.*

49. For more perspectives on gentrification as colonization, see Jean-Paul D. Addie & James C. Fraser, *After Gentrification: Social Mix, Settler Colonialism, and Cruel Optimism in the Transformation of Neighbourhood Space*, 51 ANTIPODE 1369 (2019) and Stefan Kipfer, *Fanon and Space: Colonization, Urbanization, and Liberation from the Colonial to the Global City*, 25 ENV’T & PLAN. D: SOC’Y & SPACE 701 (2007).

50. RICHARDSON ET AL., *supra* note 44, at 4. From 2000 to 2013, “[m]ore than 20,000 [B]lack residents of Washington, D.C., nearly 15,000 in New York City and 12,000 in Philadelphia” were forced to leave gentrifying neighborhoods. *Id.* at 20. Displacement resulting from urban development is occurring not just in the United States. The Red Cross reports that fifteen million people across the globe are displaced each year due to development projects. INT’L FED’N OF RED CROSS & RED CRESCENT SOC’YS, WORLD DISASTERS REPORT 14 (2012), <https://reliefweb.int/sites/reliefweb.int/files/resources/1216800-WDR%2B2012-EN-LR.pdf> [perma.cc/MH3Z-ZHXC].

51. Yxta Maya Murray, *The Takings Clause of Boyle Heights*, 43 N.Y.U. REV. L. & SOC. CHANGE 109, 133 (2019).

52. See *id.* at 133–34.

53. *Id.* at 133.

In planting the herbs that we did, we created a cultural practice. . . . [C]ultural traditions are very empowering for immigrant families that feel disconnected to their roots. And when you have that empowerment, that can feed into the health practices of the community, too. Everything strengthens everything else.

. . . And then, they just forced us out.⁵⁴

The consequences of this disruption—“the loss and grief of a neighbourhood abandoned, the bulldozing of a home, the erasing of memories or the shattering of lives”—create lasting trauma for the people of color forced out of their communities.⁵⁵

In response to gentrification, rent strikes have returned as a popular organizing strategy.⁵⁶ While rent strikes continue to enforce the right to habitable living conditions, they have also become a form of protest for tenants faced with rising rent prices to assert their “right to stay put.”⁵⁷ As the threat of displacement grows to severe levels in American cities, tenants have been willing to engage in riskier organizing tactics. From 2016 to 2018, tenants in Los Angeles, Washington, D.C., New York City, San Francisco, Minneapolis, and other cities held rent strikes to bargain for better conditions and affordable

54. *Id.* at 135.

55. Libby Porter, *Possessory Politics and the Conceit of Procedure: Exposing the Cost of Rights Under Conditions of Dispossession*, 13 *PLAN. THEORY* 387, 397 (2014). For a detailed account of the lasting trauma that stem from gentrification and displacement, see MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (New Village Press, 2d ed. 2016) (2004).

56. Rachel Kaufman, *Rent Strikes Heating Up Nationwide, Say Tenant Organizers*, *NEXT CITY* (June 11, 2018), <https://nextcity.org/daily/entry/rent-strikes-heating-up-nationwide-say-tenant-organizers> [perma.cc/N56E-4UFE].

57. See Dominic T. Moulden, Gregory D. Squires & Aristotle Theresa, Opinion, *The Right to Stay Put*, *WASH. POST* (Sept. 21, 2018), https://www.washingtonpost.com/opinions/the-right-to-stay-put/2018/09/21/395cc5d8-b90f-11e8-94eb-3bd52dfe917b_story.html [perma.cc/UXE5-V6FY]. See generally Chester Hartman, *The Right to Stay Put*, in *LAND REFORM, AMERICAN STYLE* 302 (Charles C. Geisler & Frank J. Popper eds., 1984) (establishing the principle that low-income residents of an area have a right to “stay put” and resist displacement despite increasing demand from wealthier newcomers).

rents.⁵⁸ The COVID-19 pandemic further exacerbated the affordable housing crisis, and 2020 saw some of the largest rent strikes in U.S. history.⁵⁹

For tenants fighting to stay in their communities, rent strikes are not just about fixing issues with their housing; they are about fighting for control over their own housing.⁶⁰ “I’ve realized that we should all have control of our homes,” said Timothy Brown, a Minneapolis tenant who went on strike in 2018.⁶¹ “My community and I deserve to stay in our homes. We also deserve to have a say in what happens with our homes.”⁶² The power imbalance between landlord and tenant perpetuates cycles of power and wealth disparities that continue to oppress people of color in the United States.⁶³ Through their powerful tenant organizing, community organizers are able to “critique the legal, social, and political structures around them” and experiment with political work that “enlarge[s] the idea of what is possible.”⁶⁴ Policymakers and lawyers advocating for change should follow the lead of tenant organizers,

58. Rob Kuznia, *Los Angeles Tenants Increasingly Engaging in Rent Strikes amid Housing Crisis*, WASH. POST (June 2, 2018), https://www.washingtonpost.com/national/los-angeles-tenants-increasingly-engaging-in-rent-strikes-amid-housing-crisis/2018/06/02/6b91c340-65af-11e8-a768-ed043e33f1dc_story.html [perma.cc/FKG9-35CK]; Marissa J. Lang, *Rent Strikes Grow in Popularity Among Tenants as Gentrification Drives Up Rents in Cities Like D.C.*, WASH. POST (June 9, 2018), https://www.washingtonpost.com/local/rent-strikes-grow-in-popularity-among-tenants-as-gentrification-drives-up-rents-in-cities-like-dc/2018/06/09/f953e0ca-6517-11e8-a768-ed043e33f1dc_story.html [perma.cc/AV2R-3L3E]; *Grand Concourse Tenants Launch Rent Strike Protesting Conditions in Historic Building*, LEGAL SERVS. NYC (Feb. 2, 2016), <https://www.legalservicesnyc.org/news-and-events/press-room/978-grand-concourse-tenants-launch-rent-strike-protesting-conditions-in-historic-building> [perma.cc/N5GP-DMP3]; Joe Kukura, *Midtown Tenants Fight City Hall to Avoid Demolition*, SF WKLY. (Apr. 27, 2018, 6:57 PM), <https://www.sfweekly.com/news/midtown-tenants-fight-city-hall-to-avoid-demolition> [perma.cc/2BJT-SAVG]; Michelle Bruch, *Renters Go On Strike*, SW. J. (Mar. 7, 2018, 10:12 AM), <https://www.southwestjournal.com/news/2018/03/renters-go-on-strike> [perma.cc/6E9X-F5C3]; subMedia, *This Is Parkdale*, YOUTUBE (Nov. 3, 2017), <https://youtu.be/cCHAKCxDPjg>.

59. See Natasha Lennard, *With Millions Unable to Pay for Housing Next Month, Organizers Plan the Largest Rent Strike in Nearly a Century*, INTERCEPT (Apr. 25, 2020, 7:00 AM), <https://theintercept.com/2020/04/25/coronavirus-rent-strike-may> [perma.cc/E6XF-RZDZ]; Daniel Boguslaw, *Rent Strike Nation*, NEW REPUBLIC: SOLD/SHORT (Mar. 30, 2020), <https://newrepublic.com/article/157081/rent-strike-nation-coronavirus> [perma.cc/3HBF-59Z6].

60. Elizabeth K. Johnson, *Metes and Bounds—Collective Tenant Action: Should the Rent Strike Be Institutionalized?*, 46 L.A. BAR BULL. 138, 163 (1971).

61. Timothy Brown, *Despite Win Against Landlord, Minneapolis Tenants Still Face Eviction*, SHELTERFORCE (July 11, 2018), <https://shelterforce.org/2018/07/11/despite-win-against-landlord-minneapolis-tenants-still-face-eviction> [perma.cc/WRS2-YEZ4].

62. *Id.*

63. See *infra* Section II.C.

64. Akbar et al., *supra* note 24, at 840 (quoting LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 37 (2002)).

questioning the choice to value property ownership over the health of communities⁶⁵ and imagining not only new policies but also alternative structures of power that the law can help bring about.⁶⁶

B. *The Legal Landscape for Tenant Organizing*

Throughout this long and vibrant organizing history, the law has played only a small role in tenant organizing. Tenants organize at the building level, across neighborhoods and cities, and through national networks. The Autonomous Tenants Union Network (ATUN), a collaborative of twenty-six tenants unions, defines a tenants union as “a group of tenants who have a strategy for building tenant power beyond one particular building or complex.”⁶⁷ These tenants unions are not incorporated as nonprofits or otherwise registered with a state agency, and they are funded primarily by membership fees rather than grants or government funding.⁶⁸ Internally, some tenants unions employ a leadership strategy of “horizontalism.”⁶⁹ The L.A. Tenants Union defines horizontalism as a strategy for “collectivity, collective decision-making, and accountability,” one which encourages “transformative participation” from members rather than limiting decisionmaking to a small group of higher-ups.⁷⁰ These features differentiate horizontalist tenants unions from

65. Progressive property theorists have provided a new way to consider the value system underlying property law. Progressive property theory argues that property law should be rooted in the promotion of human flourishing, the ability of each person to access necessary resources, and the development of communities free from exploitation. See Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer & Laura S. Underkuffler, *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2009). For an analysis of progressive property theory as applied to housing-reform movements, see Weiss, *supra* note 9, at 262.

66. Building alternative structures of power is about more than redistributing *who* has power. It involves new ways of conceptualizing and structuring power. Organizers often make the distinction between “dominant power” and “relational power.” CTR. FOR CMTY. ENGAGEMENT & SERV. LEARNING, UNIV. OF DENVER, COMMUNITY ORGANIZING HANDBOOK 27 (3d ed. 2014), https://www.du.edu/ccesl/media/documents/ccesl_handbook_third_edition_print_protected.pdf [perma.cc/655Y-F3JN]. “[D]ominant power is a zero-sum game where power is used *over* others in a one directional way.” *Id.* On the other hand, “relational power is built through social influence and the collective power of people coming together to work *with* one another.” *Id.* The following Section briefly discusses how tenants unions have adopted nonhierarchical leadership structures, illustrating a nondominant power structure in practice.

67. *Join ATUN*, AUTONOMOUS TENANTS UNION NETWORK, <https://atun-rsia.org/joinatun> [perma.cc/9A5-L7FB]; see also *Who We Are*, AUTONOMOUS TENANTS UNION NETWORK, <https://atun-rsia.org/who-we-are> [perma.cc/6TYD-PDQ3]; *Tenants Unions in North America*, AUTONOMOUS TENANTS UNION NETWORK, <https://atun-rsia.org/tenants-unions> [perma.cc/8XJ6-JWZQ].

68. *Who We Are*, *supra* note 67 (“We are not under the direction of paid staff, boards of directors, or state agencies, and we are funded primarily by our members rather than by grants or major donors.”).

69. See, e.g., L.A. TENANTS UNION, NAMING THE MOMENT 2018, at 14 (2019), <https://latenantsunion.org/en/2019/09/09/naming-the-moment-2018> [perma.cc/VYH3-P89Y].

70. See *id.*

labor unions, which are formal legal entities with structured leadership positions.⁷¹

Few laws exist that recognize tenant groups as collective actors. The ones that do focus on smaller-scale tenants groups, such as an association for a single apartment complex.⁷² The District of Columbia is the only jurisdiction in which tenants can form a tenants organization with the power to bargain as a single unit with the landlord.⁷³ Some scholars posit that facilitating tenants unions' incorporation and recognition as legal entities would improve landlord-tenant relations and unions' effectiveness.⁷⁴ As the ATUN's Points of Unity make clear, however, tenants unions in the ATUN value their independence from legal institutions and the restrictions that institutionalization entails.⁷⁵ By operating outside the formal legal infrastructure, tenants unions lack the protections and legal support afforded, for example, to labor unions⁷⁶—but they also remain uninhibited by government restrictions and regulations.⁷⁷ This Note does not argue that the law should aim to create a more standardized structure for tenants unions. Rather, it argues that the law should aim to support the strategies that tenant organizers are already using without imposing legal restrictions they have not called for.

Despite the limited legal framework for tenants groups, most jurisdictions have at least some laws protecting tenants' rights to organize. A majority of states have adopted some form of the Uniform Residential Landlord and Tenant Act (URLTA), which prohibits landlords from retaliating against tenants

71. See, e.g., AFSCME, OFFICERS HANDBOOK 14 (2017), <https://www.afscme.org/about/governance/document/Officers-Handbook.pdf> [perma.cc/9HGY-95AA]; see also Alan Hyde, *Democracy in Collective Bargaining*, 93 YALE L.J. 793, 839 (1984) (describing how the underrepresentation of “black, female, and other ethnic minority workers” means that “union negotiators often do not reflect the aspirations and priorities of their constituents”). Not all tenant groups follow the ATUN model. Some tenants unions that are not part of the ATUN choose to incorporate as nonprofits and follow more traditional leadership models. See e.g., *TU Staff and Board*, TENANTS UNION OF WASH. STATE, <https://tenantsunion.org/about/tenants-union-staff-board> [perma.cc/5LKN-H4XA]; *Help Support Us*, TEX. TENANTS' UNION, <https://txtenants.org/help-support-us> [perma.cc/KU8L-UTV6].

72. See, e.g., *Forming a Tenant Association (as per TOPA)*, ULS HOMEWORKS, <http://uls-homeworks.org/tenant/forming.aspx> [perma.cc/4WX9-EBF8].

73. D.C. CODE § 42-3404.02a (2001) (limiting a “tenant organization” to an organization formed within “a housing accommodation of 5 or more units”); Bangs, *supra* note 18, at 59; D.C. CODE § 42-3505.06(b) (2001) (establishing that tenants have the right to “meet and confer through representatives of their own choosing with an owner”). Some jurisdictions require tenants associations to incorporate as nonprofits before they can take advantage of certain benefits. See, e.g., D.C. CODE §§ 42-3404.08, .11 (2001). Tenants associations often stand alone, but in some cities they are part of a neighborhood network or city-wide union. See, e.g., *Locals*, L.A. TENANTS UNION, <https://latenantsunion.org/en/locals> [perma.cc/P7D7-U8BT].

74. See H. Edward Hales Jr. & Charles H. Livingston, Note, *Tenant Unions: Their Law and Operation in the State and Nation*, 23 U. FLA. L. REV. 79, 86–87 (1970).

75. See *Who We Are*, *supra* note 67.

76. See Cynthia Estlund, *Are Unions a Constitutional Anomaly?*, 114 MICH. L. REV. 169, 196–98 (2015) (describing the “unusual powers” that federal labor law affords labor unions).

77. See *infra* Section II.C; Estlund, *supra* note 76, at 199–204.

when they organize or participate in tenants groups.⁷⁸ Thirty-two jurisdictions give tenants some form of protection against landlord retaliation for organizing and protesting.⁷⁹ New York, California, and the District of Columbia have particularly strong protections for tenants compared to other jurisdictions,⁸⁰ including the right for tenant organizers to canvass in multifamily housing⁸¹ and the right to obtain information from landlords in certain circumstances.⁸² These legal protections support tenants unions by providing individual tenants with legal support that encourage tenants to build up mass-membership organizations and protect them from legal liability and retaliation when they do.⁸³ However, nineteen states still do not have general protections for tenant organizing.⁸⁴ Additionally, no jurisdiction requires the landlord to bargain with the tenants or a tenants association.⁸⁵

C. *Legality of Rent Withholding*

In a limited way, the law already supports a very narrow category of rent withholding. Today, tenants in some jurisdictions have a legal right to withhold rent in response to uninhabitable living conditions. Until the 1970s, courts considered tenants' obligations under a lease to be independent of an owner's obligations as a landlord: if a landlord breached the statutory duty to keep the property up to code, the tenant still had to pay rent or else face eviction.⁸⁶ The D.C. Circuit, in *Javins v. First National Realty Corp.*, was one of the first courts to reverse this rule, holding instead that the obligations between landlord and tenant are dependent on one another: if a landlord fails to keep the property adequately maintained, the tenant may continue to reside in the property without paying some or all of the rent owed.⁸⁷ This right, called the warranty of habitability, imposes affirmative obligations on the landlord to

78. Bangs, *supra* note 18, at 60–61.

79. *Id.* at 58.

80. *Id.* at 59.

81. See D.C. CODE § 42-3505.06(b), (c) (2001).

82. See N.Y. PRIV. HOUS. FIN. LAW § 22-b(3) (McKinney 2015).

83. See Andrias & Sachs, *supra* note 14, at 560–61.

84. Bangs, *supra* note 18, at 61.

85. See *id.* at 59–60.

86. Rabin, *supra* note 9, at 524.

87. 428 F.2d 1071 (D.C. Cir. 1970).

the tenant; in *Javins*, the tenant's right to withhold rent served as an enforcement mechanism for when the landlord failed to meet this obligation.⁸⁸ However, only some jurisdictions recognize a tenant's right to withhold rent when the landlord breaches the warranty of habitability.⁸⁹

Even among jurisdictions that do allow tenants to withhold rent, tenants are typically required to place rent in an escrow account until the landlord makes the necessary repairs. The URLTA provides that a court "may order the tenant to pay into court all or part of the rent accrued and thereafter accruing."⁹⁰ In some jurisdictions, tenants can use rent-withholding laws as a self-help remedy by placing rent into an escrow account without prior judicial review of their basis for withholding.⁹¹ In other jurisdictions, however, tenants must receive court approval before they can start withholding rent via an escrow account.⁹² To take advantage of rent-withholding laws, tenants must be current on their rent and not otherwise in violation of the lease.⁹³

When a tenant withholds rent outside of legal protections for doing so, the landlord has the legal right to evict the tenant.⁹⁴ But the landlord must go through the judicial process. Tenants have the right not to be subject to a landlord's use of self-help—such as the landlord changing the locks to prevent the tenant from entering the property, removing the tenant's belongings, or cutting off water and other utilities—to repossess the property after the tenant breaches the lease.⁹⁵ Even if the tenant is in breach of the lease and the landlord has the right to repossess the property, the landlord's exclusive remedy, unless in a jurisdiction that expressly preserves self-help remedies, is to apply for a "show cause" hearing for the eviction of a tenant and to receive an eviction order from the court.⁹⁶ Eviction hearings occur very soon after the tenant is served with notice—typically within days.⁹⁷ In *Lindsey v. Normet*, the Supreme Court upheld the speed of the eviction process.⁹⁸ Landlords argue that eviction

88. See Rabin, *supra* note 9, at 526. For a table delineating the source of law for each state's warranty of habitability, see Jana-Ault Phillips & Carol J. Miller, *The Implied Warranty of Habitability: Is Rent Escrow the Solution or the Obstacle to Tenant's Enforcement?*, 25 CARDOZO J. EQUAL RTS. & SOC. JUST. 1 app. (2018); see also Hales & Livingston, *supra* note 74, at 92–96 (detailing five rationales to justify rent withholding, all of which require landlord misconduct to precede the tenants' withholding of rent).

89. See Phillips & Miller, *supra* note 88, at 21.

90. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.105(a) (UNIF. L. COMM'N 1972).

91. See Phillips & Miller, *supra* note 88, at 22.

92. See Michele Cotton, *When Judges Don't Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 68–69 (2015).

93. See *id.* at 75.

94. See, e.g., CAL. CIV. CODE § 1946.2(b)(1)(A) (West 2010).

95. See Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 150–51, 159 (2000).

96. *Id.* at 159.

97. *Id.* at 154.

98. 405 U.S. 56, 64 (1972).

proceedings aren't efficient enough.⁹⁹ But tenant advocates worry that the summary eviction process is so efficient that tenants are, in practice, denied meaningful judicial review.¹⁰⁰

In some circumstances, rent strikes are legal under rent-withholding laws, such as when all the striking tenants in a building reside in units in breach of the warranty of habitability.¹⁰¹ Much of the time, however, the law opposes rent strikes. Rent strikes that are not protected under the law include those where tenants are striking for something other than necessary repairs, such as for affordable rents, or where the tenants on strike are not the ones facing the issues but instead are striking in solidarity with the tenants requiring repairs.¹⁰²

Rent strikes can be successful even when the landlord has the legal right to evict the tenant for withholding rent. For example, eviction courts require tenants to deal with landlord-tenant disputes one-on-one and in isolation from tenants in other units;¹⁰³ in a rent-strike action, tenants use this structure to their advantage: when they collectively stop paying rent, they require the landlord to bring so many individual failure-to-pay-rent actions that it would be cheaper for the landlord to simply bargain with the tenants than go through the courts.¹⁰⁴ Rent strikes are risky for tenants, exposing them to a high chance of eviction, and they tend to follow earlier attempts to negotiate with the landlord and make a deal. A strike is used as a last resort when it is the only strategy left between the tenant and eviction, displacement, or being left without access to housing at all.¹⁰⁵ Still, most reforms fail to reduce, or even address, the risks tenants take when seeking to enforce their rights or engage in collective bargaining.

99. Randy G. Gerchick, Comment, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 791 (1994).

100. E.g., NAT'L HOUS. L. PROJECT, PROCEDURAL DUE PROCESS CHALLENGES TO EVICTIONS DURING THE COVID-19 PANDEMIC 1 (2020), <https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf> [perma.cc/U8KM-CH6E].

101. Eliza Berkon, *When Tenants Take On Landlords over Bad Conditions: A Rent-Strike Explainer*, NPR (Feb. 27, 2020), <https://www.npr.org/local/305/2020/02/27/809935489> [perma.cc/D59E-AZ3Y].

102. See Rick Paulas, *Do Rent Strikes Actually Work?*, VICE (July 13, 2018, 12:16 PM), <https://www.vice.com/en/article/a3qg3k/do-rent-strikes-work> [perma.cc/427Z-PZXG].

103. See L.A. TENANTS UNION, *supra* note 69, at 48 (discussing the difficulties organizers face in assembling tenant associations due to individual tenants' needs to focus on their own landlord-tenant disputes).

104. In the Boyle Heights mariachi rent strike, the public pressure on the landlord, the picketing and protests by the tenants, and the number of tenants involved in the strike incentivized the landlord not to pursue eviction proceedings. See *supra* notes 2–7 and accompanying text.

105. See Lang, *supra* note 58 (describing how rent strikes are “[o]ften viewed as a last resort by tenant-rights groups”); Johnson, *supra* note 60, at 161.

II. TOWARD TENANT POWER

43. In *LATU*, tenants talk, strategize, and deal with individual crises—an eviction notice, a leaking roof, a deportation threat, a landlord with a pickax—but also learn how those individual crises are part of, caused by, and contribute to, a collective one.

44. We teach each other the rights we have to defend our homes—rent control, the warranty of habitability—but also our rights to organize and protest.

—Tracy Jeanne Rosenthal, 101 Notes on the LA Tenants Union¹⁰⁶

Landlord-tenant reforms mainly focus on individual rights or housing-market regulation, but they need to do more. Individual rights include the warranty of habitability,¹⁰⁷ antidiscrimination rights,¹⁰⁸ and rights against a landlord's use of self-help¹⁰⁹—rights that protect an individual tenant from landlord misconduct. Housing-market regulations directly impose restrictions on landlords and enforce those restrictions without involving the tenant. Rent-control laws are a primary example.¹¹⁰ Beyond these two prominent categories of reform is a third category: collective action rights.¹¹¹ Most jurisdictions provide tenants with some collective-action rights, such as the right not to be retaliated against for protesting.¹¹² This Part discusses how individual rights and housing-market regulation have been used to address tenants' issues and why they are insufficient. It then argues that collective action-rights are a crucial element of landlord-tenant reform and that the right to strike is a key form of collective action-rights that jurisdictions should provide to tenants.

106. Rosenthal, *supra* note 1.

107. See *supra* Section I.C.

108. See, e.g., Fair Housing Act, 42 U.S.C. § 3604.

109. See Gerchick, *supra* note 99, at 773 n.53, 777 (explaining that most states have banned landlord self-help, such as changing locks or removing tenants' belongings, before a court orders eviction).

110. See, e.g., N.Y. UNCONSOL. LAW § 26-401 (McKinney 2012 & Supp. 2021).

111. This Note uses “collective-action rights” to mean legal rights that remove barriers to organizing and support tenants' ability to take action as a collective, including through protests, collective bargaining, and rent strikes. The categories of individual rights, housing regulation, and collective-action rights can often overlap: for example, as discussed *infra* in Section II.A, rights that protect a tenant from retaliation when they engage in organizing are both individual rights and rights that support collective action. Discussing housing reform through these categories, imperfect though they are, exposes the shortcomings of individual rights and housing regulation absent strong collective action.

112. NON-LEGISLATIVE COMMISSION ON THE STUDY OF LANDLORD-TENANT LAWS, REPORT TO GOVERNOR MIKE BEEBE, PRESIDENT PRO TEMPORE OF THE SENATE, AND SPEAKER OF THE HOUSE 18 (2012), https://ualr.edu/lawreview/files/2013/01/Foster_Commission-Report.pdf [perma.cc/55PY-P96X].

A. Individual Rights

Individual rights have played an essential role in protecting minorities and “build[ing] solidarity among rights holders.”¹¹³ Individual rights are especially powerful when activists wield them as part of a broader movement: in the civil rights era, “the use of rights rhetoric was a radical, movement-building act.”¹¹⁴ When it comes to the practical enforcement of tenants’ rights today, however, too much reliance on individual rights has troubling consequences. The limits of individual rights stem from a variety of factors, including access to the courts, judicial discretion, and landlords’ indifference to or retaliation against the assertion of these rights. An analysis of when and why individual rights fail to protect tenants can offer insight into the necessity of alternative reforms, particularly enhanced collective-action-rights.

A useful example is the failure of the warranty of habitability to provide low-income tenants with safe and habitable living conditions. When the *Javins* court articulated the policy concerns motivating the establishment of the warranty of habitability, it envisioned a legal regime that would allow a tenant to “legitimately expect that the apartment will be fit for habitation for the time period for which it is rented.”¹¹⁵ Today, almost all jurisdictions provide tenants the right to a habitable apartment. Yet uninhabitable living conditions continue to be rampant in low-income rental housing.¹¹⁶

The warranty of habitability fails to prevent uninhabitable rental-housing conditions for a variety of reasons. Low-income tenants are often in a vulnerable position, and merely pursuing a remedy can make matters worse for the tenant.¹¹⁷ For example, low-income tenants often fall behind on rent or allow family in need of housing to live with them as “unauthorized boarders”; the landlord can use these areas of vulnerability against the tenants as soon as they complain about housing conditions.¹¹⁸ The flip side of retaliatory evictions is the landlord’s indifference to rent withholding. Because tenants are required to put money into escrow, the landlord can be assured that the money is there,

113. Paul D. Butler, Essay, *Poor People Lose: Gideon and the Critique of Rights*, 122 *YALE L.J.* 2176, 2189 (2013); see Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 *HARV. C.R.-C.L.L. REV.* 401, 414 (1987).

114. Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331, 1365 (1988).

115. *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1079 (D.C. Cir. 1970).

116. See *supra* notes 39–41 and accompanying text.

117. In *Evicted*, Matthew Desmond details the experiences of low-income tenants in Milwaukee who fear retaliatory eviction if they report conditions to a building inspector or withhold rent. See *DESMOND, supra* note 41, at 75–76.

118. See *id.* at 64, 75–76. Relatedly, tenants in low-income housing may also fear reporting to a building inspector because tenants will be left without access to housing if the building inspector responds by shutting the units down. See Alana Semuels, *How Housing Policy Is Failing America’s Poor*, *ATLANTIC* (June 24, 2015), <https://www.theatlantic.com/business/archive/2015/06/section-8-is-failing/396650> [perma.cc/Z7XD-UUP7].

just not currently available to them.¹¹⁹ Wealthy landlords, faced with the odd tenant withholding rent, have little incentive to take immediate action and instead drag their feet on repairs.

The legal system itself poses many barriers to tenants pursuing legal remedies. While 90 percent of landlords have counsel in eviction hearings, only 10 percent of tenants do.¹²⁰ Having a lawyer makes a significant difference for tenants: tenants with representation are far more likely to prevail than those without, independent of the merits of the case.¹²¹ But legal barriers extend beyond tenants' difficulty in navigating a complex system.¹²² Judicial discretion and bias can also play a significant role. In Baltimore, tenants must receive court approval before withholding rent in escrow.¹²³ Judges in Baltimore have been reluctant to give approval, delaying tenants' requests for months and without apparent reason.¹²⁴ One judge admonished a tenant for using escrow as "rent avoidance," revealing potential bias against low-income tenants whom the judge, without justification, suspected of illicit motives.¹²⁵ As these examples demonstrate, overreliance on individual rights can create many barriers to actually addressing the issues low-income tenants experience.

The line between individual rights and collective-action rights, however, is not a clear one, and the categories are often overlapping and context specific. Rights that protect a tenant from retaliation when they organize are both individual rights and rights that support collective action. Antiretaliation law provides a tenant with the individual right not to be retaliated against and must be asserted in court by the individual tenant based on their own experience of retaliation; at the same time, the existence of the right encourages tenants to participate in collective strategies, thus bolstering organizing efforts.¹²⁶ The movement to guarantee tenants' right to counsel is an example of how individual rights can become collective-action rights in certain contexts. When legal reformers call for a right to counsel outside of the context of a broader movement, it perpetuates a system that makes tenants reliant on lawyers to protect their rights, and it accepts the typical landlord-tenant legal relationship that requires tenants to deal with their cases one by one, in isolation

119. Ronald Lawson, *The Rent Strike in New York City, 1904–1980: The Evolution of a Social Movement Strategy*, 10 J. URB. HIST. 235, 240–41 (1984); Johnson, *supra* note 60, at 162.

120. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, FAST FOCUS (Univ. of Wis.–Madison Inst. for Rsch. on Poverty), Mar. 2015, at 1, 5, <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf> [perma.cc/7VJR-YM5V].

121. Carroll Seron, Gregg Van Ryzin, Martin Frankel & Jean Kovath, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419, 419 (2001).

122. *Cf.* DESMOND, *supra* note 41, at 75 ("It was not that low-income renters didn't know their rights. They just knew those rights would cost them.")

123. Cotton, *supra* note 92, at 65–68.

124. *See id.* at 69.

125. *Id.* at 77–78.

126. *See, e.g.*, CAL. CIV. CODE § 1942.5 (West 2010); Andrias & Sachs, *supra* note 14, at 620.

from one another. Yet in New York City, tenant organizers pushed for the establishment of the right to counsel, and it was leveraged as part of a broader strategy “to increase the power of the tenant movement.”¹²⁷

By listening to tenants and paying careful attention to their ongoing organizing strategies, policymakers and legal scholars can identify legal strategies for supporting collective action that might otherwise seem to fall only in the category of individual rights. In the context of rent strikes, procedural protections in the eviction process are one such reform, and their connection to rent strikes is discussed in Section III.A.

B. Housing-Market Regulation

Landlord-tenant reform also comes in the form of housing-market regulation. Policymakers both set the terms of these regulations and enforce them. Rent control is a primary example. Rent-control laws limit the rate at which landlords can increase rent in a particular area.¹²⁸ In gentrifying areas, rent-control laws prevent the sudden, steep rent hikes that force low-income tenants out of their communities. They can thus promote stability and prevent the displacement of communities of color.¹²⁹ Although tenants can recover excess rent paid to a landlord charging above the limit, they are not expected to enforce rent control through private actions. New York City’s rent-control statute, for example, provides the city’s housing-rent agency the authority to pursue court injunctions and fines against violating landlords.¹³⁰ Other examples of prominent housing-market regulation include inclusionary zoning and rental-housing quality inspections.¹³¹ These regulations take the burden off of low-income tenants, who are often overworked and exhausted by the daily consequences of systemic oppression, to create and implement solutions to substandard housing and displacement.¹³²

A troubling feature of housing-market regulation as a mode of change, however, is that it reserves the power and decisionmaking for policymakers, leaving room for discrepancies between the tenants’ needs and the reforms that ultimately get passed. The American political process is a system in which

127. Whitlow, *supra* note 9, at 1082.

128. For an overview of how rent-control laws work and how they vary across jurisdictions, see Vicki Been, Ingrid Gould Ellen & Sophia House, *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*, 46 *FORDHAM URB. L.J.* 1041 (2019).

129. For one argument against the criticism that rent control decreases overall access to affordable housing, see Dean Preston & Shanti Singh, *Dear Business School Professors: You’re Wrong, Rent Control Works*, SHELTERFORCE (Mar. 28, 2018), <https://shelterforce.org/2018/03/28/rent-control-works> [perma.cc/4PWG-257T].

130. N.Y. UNCONSOL. LAW § 26-516 (McKinney 2012).

131. See Weiss, *supra* note 9, at 253–54.

132. Cf. Elizabeth K. Julian, *Segregation Now, Segregation Tomorrow, Segregation Forever?*, 36 *LAW & INEQ.* 269, 272 (2018) (critiquing how nondiscrimination provisions often “put all the burden of righting the historic wrongs done by the country to African Americans squarely on the shoulders of individual victims of discrimination rather than on the architects and beneficiaries of segregation”).

“the wealthy exercis[e] vastly disproportionate power over politics and government.”¹³³ Our democracy is rooted in deep political inequality that continues to perpetuate systemic oppression, and “elected officials are at best only weakly accountable to nonwealthy constituents.”¹³⁴ As a result, tenants often lack a voice in the political process, and policymakers decide on behalf of tenants what compromises should be made. Policymakers might choose to apply stricter rent control in certain areas of the city, for example, rather than allow for a higher limit on rent across the city.¹³⁵ This decision would have serious implications for who can stay in their community and who gets priced out, yet those making the decision are not the ones most affected by it. This perpetuates top-down decisionmaking rather than community-driven change.

When elected officials *are* responsive to the needs of low-income communities, it is often the result of grassroots organizing and mass mobilization of the working class.¹³⁶ Rent-control laws in cities across the country were preceded by large-scale tenant movements pushing for the reform.¹³⁷ Lawmakers should support the housing-market regulations that community activists call for, but they should also prioritize community members’ ability to organize for those changes in the first place. The necessary complement to housing-market regulation as *substantive* policy reform is, in a sense, *process* reform—that is, shifting how the process of making change takes place. The goal of community organizers and grassroots leaders is not merely to change the substantive laws; it is to “change the severely disproportionate allocations of power that create and reinforce the systems of oppression that produce unjust laws and policies.”¹³⁸ When policymakers engage only in substantive housing-market regulation without complementing those reforms with shifts in the balance of power, they act as gatekeepers to the political process, withholding for themselves the power to create meaningful change.

C. *The Right to Strike*

The Supreme Court has long expressed its respect for the role that collective action and organizing play in marginalized people’s access to justice. In

133. Andrias & Sachs, *supra* note 14, at 548.

134. *Id.* at 549.

135. This example is hypothetical, but it mirrors a decision that labor unions bargain over with employers: whether to accept pay cuts for all employees or layoffs for some. *See, e.g., LA County Proposes Hard Pay Concessions as an Alternative to Lay-offs*, SEIU 721 (May 29, 2020), <https://www.seiu721.org/2020/05/la-county-proposes-hard-pay-concessions-as-an-alternative-to-layoffs.php> [perma.cc/X3JV-7CMX].

136. *See* Tim Iglesias, *Housing Impact Assessments: Opening New Doors for State Housing Regulation While Localism Persists*, 82 OR. L. REV. 433, 485 (2003) (“Strong local housing movements are a primary reason why local governments attending to the housing needs of their residents actually do so.”).

137. *See id.*

138. Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 150 (2016).

NAACP v. Claiborne Hardware Co., for example, the Court upheld nonviolent civil rights boycotts as constitutional, stating that “the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. . . . [B]y collective effort individuals can make their views known, when, individually, their voices would be faint or lost.”¹³⁹ Thirty-two jurisdictions in the United States have passed anti-retaliation laws for tenants engaged in organizing, signaling strong approval across the country for tenants’ practice of “banding together” in pursuit of common goals.¹⁴⁰

Although low-income people’s right to form a collective is theoretically accepted, attempts to strengthen that collective and use it to exert economic pressure are heavily scrutinized. The trajectory of labor law since the passage of the Taft-Hartley Act reflects this tendency. Labor law scholars argue that “[o]rganized labor is being strangled by laws that block workers from exercising the rights to organize, to strike, and to act in solidarity.”¹⁴¹ Unions are tightly monitored and face numerous restrictions on how and when they may engage in collective bargaining.¹⁴² The right to strike as a part of the collective-bargaining process has been cut back enormously: twelve years after the NLRA was enacted, the Taft-Hartley Act significantly eroded the right to strike for workers,¹⁴³ particularly for low-income workers.¹⁴⁴ Since then, a series of court and administrative decisions have cut back the right to strike even further.¹⁴⁵

Strikes are controversial because they require the traditionally dominant party—the employer, the landlord—to cede economic power. In valuing solutions such as arbitration over strikes,¹⁴⁶ courts expect employees to resolve

139. 458 U.S. 886, 907–08 (1982). In a twist of irony, this language is quoted from an earlier Supreme Court case that upheld election contributions from a group lobbying against rent control. *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley*, 454 U.S. 290, 294 (1981).

140. Bangs, *supra* note 18, at 58.

141. James Gray Pope, Ed Bruno & Peter Kellman, *The Right to Strike*, BOS. REV. (May 17, 2017), <https://bostonreview.net/forum/james-gray-pope-ed-bruno-peter-kellman-right-strike> [perma.cc/WJ7Z-SEM9] (discussing constraints imposed by the NLRA’s “government-defined ‘bargaining unit’ boxes” and the system of exclusive representation).

142. *Id.*

143. *Id.*

144. Alex Gourevitch, *The Right to Strike: A Radical View*, 112 AM. POL. SCI. REV. 905, 906 (2018) (“[L]ow-skill, high labor supply workers . . . are in a different situation. These kinds of workers, in part because they are in such high supply, tend to have less bargaining power and therefore usually enjoy lower wages, longer hours, and worse working conditions.”).

145. See, e.g., *Boys Mkts., Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970); *Elk Lumber Co.*, 91 N.L.R.B. 333 (1950).

146. See *Boys Mkts.*, 398 U.S. at 252 (overruling a decision for the purpose of protecting the “effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes without resort to strikes”).

class struggles with little or no concessions of power from employers. Rejecting this framework in the context of tenants unions, the Autonomous Tenants Union Network states in its Points of Unity,

We assert that the interests of landlords and tenants are fundamentally irreconcilable, and we reject any policy that attempts to paper over this conflict. While we do not rule out on principle the possibility of temporary truces and agreements between landlord and tenant, we advocate for a strategy of class struggle.¹⁴⁷

Property law scholars frequently give in to the temptation to paper over class struggle in the context of landlord-tenant law.¹⁴⁸ One criticism of rent strikes is that, despite instances of substandard housing and unaffordable rent prices, strikes are an unreasonable form of coercion against landlords.¹⁴⁹ This criticism signals a disregard for deeply embedded class conflicts at play and a view of the struggles low-income tenants face as stemming from isolated “social wrongs” rather than interconnected cycles of poverty and oppression that property law perpetuates.¹⁵⁰

To justify strikes in the employee context, Professor Alex Gourevitch gives an account of “oppression in class societies,” in which systemic, long-term oppression causes some people to have no option but to work for others.¹⁵¹ Employees thus become “de jure and de facto subordinates to a specific employer.”¹⁵² The employer can “exercis[e] legally permitted prerogatives,” such as requiring workers to work in extreme heat and hazardous conditions.¹⁵³ The employer can also go beyond legal prerogative to “tak[e] advantage of the material power that comes with threatening to fire or otherwise discipline workers,” such as by threatening immigrant workers with deportation to pay them illegally low wages or deny them legally required lunch breaks.¹⁵⁴ This oppression has a distributive effect, ensuring the wealthy and

147. *Who We Are*, *supra* note 67.

148. One popular property law casebook teaches its students that “[p]ersons who have not accumulated much in the way of assets and/or have poor credit will often *prefer* to lease assets rather than purchase them”—as if homeownership is a choice low-income tenants have simply opted not to take. THOMAS W. MERRILL & HENRY E. SMITH, *PROPERTY: PRINCIPLES AND POLICIES* 644 (3d ed. 2016) (emphasis added); *see also* Myron Moskowitz & Peter J. Honigsberg, *The Tenant Union-Landlord Relations Act: A Proposal*, 58 *GEO. L.J.* 1013, 1017 (1970) (arguing that legislatures need to place a check on the “moral and tactical judgment[s]” tenants make when deciding to strike, thus facilitating the “peace-making process” between landlord and tenant).

149. G. Richard Gold, Note, *Rent Strike—Landlord’s Remedies*, 11 *WM. & MARY L. REV.* 740, 740 (1970); *see also* *Springfield, Bayside Corp. v. Hochman*, 255 N.Y.S.2d 140, 145 (Sup. Ct. 1964) (enjoining tenants from picketing outside landlord’s house because they were “seeking economically to coerce the plaintiff into meeting their demands”).

150. *See* Gold, *supra* note 149, at 740.

151. Gourevitch, *supra* note 144, at 907.

152. *Id.* at 909 (emphasis omitted).

153. *Id.* at 908.

154. *Id.*

powerful retain their wealth and power and workers remain in an ongoing, subordinate position to employers.¹⁵⁵

The landlord-tenant relationship is characterized by a similar cycle of subordination and oppression. The history of land ownership in the United States as it exists today began with a property regime in which “Native Americans were killed and dispossessed from land and Black bodies were treated as objects of property as slaves and used to settle space.”¹⁵⁶ The following centuries of racist economic discrimination generally, and housing discrimination specifically, have left many low-income people of color with no option but to rent their housing.¹⁵⁷ Tenants are legally subordinated to their landlords, lacking essential rights to control their housing. Like employers in relation to employees, landlords can exert *de jure* and *de facto* power over tenants. They can legally increase rent arbitrarily to price their tenant out. And they can take advantage of low-income tenants’ vulnerabilities, harassing tenants or leaving them to deal with uninhabitable housing conditions without facing legal ramifications. The landlord-tenant structure perpetuates class oppression in the housing market, reproducing the same allocations of property ownership and control of housing over time.¹⁵⁸ This view elaborates on the Autonomous Tenants Union Network’s characterization of the landlord-tenant relationship as one fundamentally based on “class struggle.” As such, the right to strike for both workers and tenants can be viewed as the “right to resist oppression.”¹⁵⁹ Rent strikes are about more than just leveling bargaining power between the parties; they are a valuable strategy for low-income tenants to assert the human right to decent housing and achieve “control [over] their own housing.”¹⁶⁰

Laws supporting tenant rent strikes do not cut against tenants’ individual rights or housing-market regulation. Rather, enhanced collective-action rights, including rent-strike legislation, would bolster other legal reforms. In relation to individual rights, rent-strike legislation can serve as an enforcement mechanism. Tenants who cannot withhold rent on their own, whether because of judicial barriers or fear of retaliation, would have the support and protection of the striking collective. A landlord who ignored the complaints of one tenant would have the incentive, and perhaps the legal obligation, to bargain with the collective. Rent strikes encourage the landlord to negotiate a deal outside the courts, thus minimizing the barriers of the judicial process

155. *Id.* at 909.

156. Safransky, *supra* note 26, at 1086.

157. *See id.*

158. DESMOND, *supra* note 41, at 251 (describing how low-income tenants’ vulnerability to eviction perpetuates cycles of poverty and housing instability); *id.* at 307 (“Large-scale historical and structural changes have given urban landlords the opportunity to make good money, sometimes spectacular money, by providing housing to struggling families.”).

159. Gourevitch, *supra* note 144, at 909.

160. Rosenthal, *supra* note 1.

and the reliance on legal counsel. In this way, rent strikes make up for gaps in the existing enforcement infrastructure for individual rights.

Beyond enforcing the bare minimum required at law, rent-strike legislation would support tenants as they build more power in policymaking and private bargaining. The difference between these objectives is comparable to the difference between advocating for a federal minimum wage and advocating for workers' right to strike so that they can set their own wage and benefits. The goals go hand in hand. As tenants build power in private bargaining, they will be able to negotiate for better terms in lease agreements—namely, though not exclusively, for affordable rent. Smaller, incremental efforts between a tenants association and a single landlord will feed into the broader strategy of building power for the union.¹⁶¹ And as tenants unions across the country gain more power, more tenant-driven policy reforms can take shape. As successful tenant organizing has already demonstrated, rent strikes have potential to counter the displacement and colonization of Black and brown communities in America in a way that the law has failed to do. And in both large- and small-scale efforts toward change, rent strikes promote tenants' autonomy and control over their circumstances. Legal reformers should follow the lead of tenant organizers, heeding their visions and strategies for justice as instructive.¹⁶²

D. Reframing Rent Strike Legislation Toward Tenant Power

As policymakers and legal scholars consider how to support rent strikes, they must ensure the legislation they promote does not overregulate tenants unions, stymieing grassroots movements in favor of a carefully monitored regulatory regime. Past efforts to protect tenants' rights to collectively bargain and organize rent strikes have fallen into the trap of attempting to replace or control organizing rather than support it.¹⁶³ For instance, public-interest lawyer Elizabeth K. Johnson proposed that a Landlord-Tenant Relations Board should hear cases regarding a hypothetical requirement that landlords bargain in good faith, using its discretion to allow tenants to withhold rent when the landlord violates this duty.¹⁶⁴ She further proposed that when the parties have bargained to an impasse, tenants should be allowed to withhold rent only if they put an additional amount beyond their rent value into an escrow account; this additional amount would not be returned to tenants but rather used for low-income housing development.¹⁶⁵ These proposals have as much potential

161. See Andrias & Sachs, *supra* note 14, at 623–27.

162. Cf. Kate Andrias, *Peril and Possibility: Strikes, Rights, and Legal Change in the Age of Trump*, 40 BERKELEY J. EMP. & LAB. L. 135, 147 (2019).

163. See Johnson, *supra* note 60; Moskowitz & Honigsberg, *supra* note 148. A few student pieces on tenants unions preceded these proposals. See, e.g., Note, *Tenant Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968); Samuel A. Simon, Comment, *Tenant Interest Representation: Proposal for a National Tenants' Association*, 47 TEX. L. REV. 1160 (1969).

164. Johnson, *supra* note 60, at 164.

165. *Id.* at 164–65.

to hinder tenant organizing as they do to support it. They create additional hoops for tenants to jump through, some of which will be impossible to satisfy, especially where large amounts must be placed in escrow.

More troubling, however, is that these proposals express their own *ex ante* value judgments on strikes. They say to tenants: only when your strikes satisfy our understanding of what a proper strike is will our laws protect you from legal repercussions. This approach is objectionable for two reasons. First, no matter how airtight a proposal is, tenants will still face legal repercussions if they rely only on the laws and not on organizing and other collective strategies. As history teaches us, laws are easily misused, underenforced, and cabined to the point of becoming ineffective.¹⁶⁶ Second, legal reformers should not take on the role of making value judgments about what types of strategies or actions are politically acceptable. This is one of the great failures of labor law: policymakers imposed their own value judgments on labor organizing, shaping which strikes are legally acceptable and allowing strikes that fall outside of the legal framework to be publicly condemned.¹⁶⁷

Johnson frames her proposal with the question, “should the rent strike be institutionalized?”¹⁶⁸ This is the wrong question. Legal scholars like Johnson should not ask how to institutionalize organizing strategies. They should instead ask how to support organizing while allowing grassroots movements to maintain independence, control, and decisionmaking over the organizing strategy and its implementation.

III. ENVISIONING RENT STRIKE LEGISLATION

79. *As a tactic, rent strikes demonstrate the underlying force of our union: Even when we have no laws to protect us as tenants, we still have each other.*

80. *Though they are not supported by City Council members, though they’re discouraged by the Housing Department and limited by court decisions, rent strikes sometimes get the goods.*

—Tracy Jeanne Rosenthal, 101 Notes on the LA Tenants Union¹⁶⁹

Rent strike legislation should aim to give tenants additional tools in their toolbox when engaging in rent strikes, rather than creating a new regulatory structure within which strikes must take place. The following proposals are,

166. See *supra* Section II.A; notes 141–145 and accompanying text.

167. For example, after the 2018 West Virginia teachers strike, West Virginia lawmakers passed a bill to clarify that teachers strikes are not legal. Much of the rhetoric surrounding the bill condemned the teachers for “leav[ing] kids hanging” and for allowing the strike to jeopardize, as the lawmakers saw it, student wellness. Larisa Casillas, *West Virginia Passes Bill That Cracks Down on Public Employee Strikes*, WTRF (Feb. 23, 2021, 7:19 AM), <https://www.wtrf.com/news/west-virginia-headlines/west-virginia-passes-bill-that-cracks-down-on-public-employee-strikes> [perma.cc/5AFX-TMJX].

168. Johnson, *supra* note 60, at 138.

169. Rosenthal, *supra* note 1.

first and foremost, suggestions for community organizers, tenants, and legal advocates as they consider options for organizing around better rent-strike protections. This Note does not address specific implementation of the reforms, such as whether to enact brand new legislation, add onto existing protections, or repeal laws that inhibit rent strikes. The implementation will vary across jurisdictions and according to the strategies of local tenant organizers. In addition, these proposals aim to illustrate to policymakers and legal scholars an approach to rent-strike legislation rooted in a movement law methodology, in which reforms can support the work of tenant organizers instead of controlling or stymieing it.

A. *Enhancing Procedural Protections in Eviction Court*

Even when tenants have little to no legal basis for withholding rent, their rent strikes can still be successful, in part because the eviction *process* disincentivizes landlords from immediately evicting tenants and shutting down the strike. Evictions cost money, including court costs and attorneys' fees.¹⁷⁰ Each eviction claim can only be brought against the tenants in a single unit.¹⁷¹ The more expensive and time-consuming the eviction process is, the more these costs will add up, especially when a large number of tenants strike at the same time. Additional procedural protections in the eviction process will incentivize the landlord to bargain with the striking tenants before resorting to eviction.¹⁷²

One option to enhance procedural protections is to increase the cost of filing for eviction, thus further disincentivizing the landlord from bringing evictions.¹⁷³ More directly, the legislature could limit the number of evictions a landlord may file in a particular period of time, slowing down the rate at which evictions can be filed and preventing a landlord from evicting all the tenants in a building at once. Finally, more time between notice and subsequent court hearings could support strikes by drawing out the eviction process and giving tenants more time to carry out other aspects of their organizing campaign.¹⁷⁴

170. Gold, *supra* note 149, at 749–50; Stephen Michael White, *Court Costs for Eviction: Is It Worth What It Will Cost You?*, RENTPREP (Oct. 16, 2018), <https://rentprep.com/evictions/court-costs-for-eviction> [perma.cc/N6Z6-LE8F].

171. See Gold, *supra* note 149, at 749.

172. See *id.* at 748.

173. Scholars Philip Garboden and Eva Rosen highlight the difference between “an eviction that is executed for the purposes of removing the tenant” and one “that is filed for the purposes of getting a tenant to *pay*, or modifying a tenant’s behavior.” Philip M.E. Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638, 655 (2019). For eviction filings in the latter category—including, in some instances, eviction filings meant to break up a rent strike—protections in later stages of the eviction process would be less effective, because the landlord would have achieved his purpose simply by filing the claim. *Id.* at 656.

174. *Cf.* Spector, *supra* note 95, at 207 (arguing that summary eviction proceedings do not provide tenants enough time to prepare defenses related to landlord misconduct). Courts point

B. *Controlling the Money*

When the law allows tenants to withhold rent, it often requires them to put their rent into an escrow account.¹⁷⁵ Escrow accounts are one of the main ways policymakers signal their desire to control and monitor strikers. The escrow requirement is justified by the goal of “mitigat[ing] the possibility of bad-faith tenants using the breach of warranty defense merely as an excuse to avoid paying rent.”¹⁷⁶ This reasoning reflects the lack of trust policymakers and judges have in low-income tenants.¹⁷⁷

The law can give tenants more autonomy over rent strikes by allowing them to use rent withholding as a true self-help mechanism. When courts require tenants to receive court approval before the tenant can even begin to withhold rent, the law undermines goals of valuing and enhancing tenant autonomy and control. In some instances, the escrow account might benefit the strike strategy because judges will be more open to the tenants’ underlying defenses if they know where the money is going.¹⁷⁸ But whether escrow will benefit the strike is a decision of organizing strategy better left to the tenants rather than to policymakers disconnected from the context of the strike at hand. One option would be to require tenants to set rent aside in an escrow account but give them full autonomy to decide when and how to open the escrow account.¹⁷⁹ Although this would be an improvement, it could still create challenges for striking tenants: so long as tenants must place an unaffordable amount into escrow, the escrow requirement would undermine the rent strike.

Escrow requirements gut the legality of tenants’ right to strike and bargain over the amount of rent owed, thus undermining a significant category of rent strikes. Rent strikes sometimes occur when tenants *can* pay rent but do not do so because, for example, the property requires repairs. But this is not the only time when tenants strike.¹⁸⁰ Tenants also strike when unexpected circumstances cause the tenants to be unable to pay rent—such as the landlord suddenly increasing rent by 80 percent or a global pandemic causing twenty-two

to judicial efficiency as a justification for summary eviction procedures. *See, e.g.,* *Dolan v. Linen*, 753 N.Y.S.2d 682, 688 (Civ. Ct. 2003). If the process is too efficient, however, it will undermine the tenant’s access to justice and a fair process. The Supreme Court has held that summary eviction proceedings satisfy constitutional due-process requirements. *Lindsey v. Normet*, 405 U.S. 56, 64 (1972). But some scholars argue that summary eviction proceedings are “designed for speed rather than fairness” and allow the landlord-tenant relationship to “avoid[] judicial scrutiny.” Spector, *supra* note 95, at 137.

175. *See supra* Section I.C.

176. Phillips & Miller, *supra* note 88, at 21.

177. *See supra* Section II.A.

178. *See* Lawson, *supra* note 119, at 240–42.

179. *See, e.g.,* Stuart Katz, *Rent Strikes and the Law: The Ann Arbor Experience*, 1 YALE REV. L. & SOC. ACTION 13, 17 (1970) (discussing how the transition from independent escrow accounts to court-controlled escrow accounts “crippled[] tenant control over escrow money”).

180. Berkon, *supra* note 101.

million people to lose their jobs.¹⁸¹ When this type of strike is successful, it will result in a bargain with the landlord that decreases the overall amount owed. In the Boyle Heights mariachi strike, part of the final bargain was to require only a percentage of the withheld rent to be paid back as well as to cap rent increases going forward.¹⁸² Until the landlord finally agreed to negotiate with the tenants, there was no way to know what amount of back rent the tenants would have to pay pursuant to the eventual negotiated agreement.

The COVID-19 pandemic highlighted the urgency of strong collective action and mobilizing among the working class. If rent-strike legislation does not support the type of rent strikes necessary to respond to the circumstances posed by the pandemic, then it fails to sufficiently support the organizing our country needs. Some critiques of COVID-19 rent strikes point out that, due to the pandemic, the landlord is also struggling.¹⁸³ This argument, however, assumes that landlords should expect to make the same (or even more¹⁸⁴) profit in the aftermath of the pandemic—a view that prioritizes profit over tenants' access to safe housing and ignores the inherent power imbalance existing today between landlord and tenant. Where the landlord refuses to negotiate with the tenant or prices rent exorbitantly high, a rent strike is justified even—or perhaps especially—during the pandemic. To support rent strikes such as those during COVID-19, lawmakers must not require tenants to set aside *more* money than an eventual agreement with the landlord may require them to pay. Because there is no way to know what those terms might be, tenants should not be required to set aside rent into escrow before taking advantage of rent-withholding laws.

181. Jonathan Ponciano, *It Could Take 4 Years to Recover the 22 Million Jobs Lost During Covid-19 Pandemic, Moody's Warns*, FORBES (Nov. 30, 2020, 7:20 PM), <https://www.forbes.com/sites/jonathanponciano/2020/11/30/it-could-take-4-years-to-regain-the-22-million-jobs-lost-during-covid-19-pandemic-moodys-warns> [perma.cc/6J3T-G34J].

182. Chiland, *supra* note 5.

183. See, e.g., Abby Vesoulis, *How Eviction Moratoriums Are Hurting Small Landlords—and Why That's Bad for the Future of Affordable Housing*, TIME (June 11, 2020, 10:08 AM), <https://time.com/5846383/coronavirus-small-landlords> [perma.cc/QPS8-SBZV]. However, this will not apply in every case, as many landlords received COVID-19 mortgage assistance from banks and the government that they did not pass on to tenants in the form of rent breaks. Mordecai Lyon, *Should There Be a COVID-19 Rent Strike?*, BOS. REV. (Mar. 31, 2020), <https://bostonreview.net/class-inequality/mordecai-lyon-COVID-19-rent-strike> [perma.cc/4VM2-CPKD].

184. In the pandemic, many tenants lost rent-controlled units because they fell behind on rent. After the landlord evicts tenants in a rent-controlled unit, the landlord can hike up rent significantly. Landlords were thus incentivized to use the pandemic as an excuse to push out tenants in rent-controlled units and profit substantially from the suffering that COVID-19 caused. See, e.g., Press Release, City of Santa Monica, *City Sues Landlords for Fraudulently Trying to Evict Rent-Controlled Tenants During Pandemic* (Feb. 3, 2021, 10:47 AM), <https://www.santamonica.gov/press/2021/02/03/city-sues-landlords-for-fraudulently-trying-to-evict-rent-controlled-tenants-during-pandemic> [perma.cc/A624-AUJ4].

C. *Creating and Enforcing a Duty to Bargain in Good Faith*

Another way to support rent strikes is through a duty to bargain in good faith. Landlords often refuse to engage with tenants, prohibiting any means of negotiating for better conditions or affordable prices. As issues arise, a duty to bargain in good faith would encourage landlords to work with tenants to keep them in the units. By denying tenants a right to bargain with the landlord, the law instead encourages landlords to ignore their tenants' needs and view eviction as a convenient means of avoiding conflict resolution. Aligning the duty to bargain in good faith with ongoing rent-strike strategies would require a two-step process: first, jurisdictions should enact a duty to bargain in good faith; second, tenants should be able to enforce that duty through self-help rent withholding.

The first step—enacting a duty to bargain in good faith—has strong precedent in labor law, where the law imposes a duty on employers to bargain in good faith with their employees. Under the NLRA, it is an unfair labor practice for an employer to “refuse to bargain collectively with the representatives of his employees,” and the representatives of the employer and employees must “confer in good faith” when negotiating.¹⁸⁵ The COVID-19 pandemic has left low-income tenants with no jobs, enormous rent debt, and impending threats of eviction.¹⁸⁶ Tenants should have been able to expect to bargain with their landlord about paying back whatever portion of this debt was feasible instead of facing the possibility of immediate eviction as soon as the eviction moratorium was lifted. And if a landlord refuses to engage in a scenario like this, tenants should have the right to strike. The circumstances of the pandemic bring to light the constantly changing nature of the issues tenants face, some of which could not have been anticipated in the tenants' original lease agreements. This should not be a reason that a family loses their housing. Instead, the law should support tenants' ability to renegotiate the terms of the lease in light of changing and difficult circumstances.

On top of changing circumstances out of both landlords' and tenants' control, an issue that motivates tenants to strike is a landlord's decision to set sudden and overbearing rent increases.¹⁸⁷ Dramatic rent increases have been forcing tenants out of their neighborhoods for decades.¹⁸⁸ For landlords, the rent increase is often a strategic effort to push out low-income tenants in order

185. 29 U.S.C. § 158(a)(5), (d). In the labor law context, however, this requirement is insufficient without strong organizing, including the use of protests and strikes, to help enforce it. See Andrias & Sachs, *supra* note 14, at 625.

186. Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, CTR. FOR AM. PROGRESS (Oct. 30, 2020, 9:02 AM), <https://www.americanprogress.org/issues/poverty/reports/2020/10/30/492606/pandemic-exacerbated-housing-instability-renters-color> [perma.cc/72PD-APT9].

187. See Lyon, *supra* note 183.

188. See *supra* notes 49–50 and accompanying text.

to remodel and attract a higher-class clientele.¹⁸⁹ In a jurisdiction with a landlord's duty to bargain in good faith, a landlord would fail to satisfy this duty if he demands more than he can expect his tenants to pay in an effort to get out of a deal. Bad-faith pricing could thus be prima facie evidence of a failure to bargain in good faith, allowing an evidentiary inquiry into whether the landlord raised the rent for the purpose of pricing tenants out. Tying a right to withhold rent to a landlord's effort to overprice units in bad faith would further align rent withholding with tenants' ongoing rent-strike strategies.

Justice Scalia indicated disfavor toward landlords who act in bad faith when setting rent prices and supported regulation against this practice. In *Pennell v. City of San Jose*, he wrote that when landlords price their property so as to "produce[] exorbitant returns," the landlord is responsible for the resulting hardship on tenants and "singling [the landlord] out to relieve [the hardship] may not be regarded as 'unfair.'"¹⁹⁰ Justice Scalia wrote this in the context of rent control regulations to argue that rent control is justified in cases where the landlord is responsible for the hardship on the tenant and not as a broader regulation.¹⁹¹ Because this Note's proposed rent withholding would be brought to court as an individual tenant's defense against eviction, it would fit well with Justice Scalia's argument for a case-by-case inquiry into the landlord's fault in overpricing units.

The second step—expanding rent withholding to failures of a landlord's duty to bargain in good faith—is not in conflict with rent withholding's underlying doctrinal basis. Rent withholding is currently allowed when the landlord fails to properly maintain the premises.¹⁹² Although rent withholding is often contemplated as a remedy for lost property value (that is, the tenants are not getting what they paid for because the property is in such poor quality, so they should be able to withhold their rent), this explanation falls short.¹⁹³ While repair-and-deduct statutes allow the tenant to withhold exactly the amount needed to remedy the breach, rent-withholding laws can go further, allowing a tenant to withhold more than what is needed to address the problem.¹⁹⁴ And even when the market for rental units has adjusted so that the rental value reflects the value of the damaged property (that is, the tenant is getting what they have paid for), rent withholding is still permitted.¹⁹⁵

189. Lambert, *supra* note 2.

190. 485 U.S. 1, 20 (1988) (Scalia, J., concurring in part and dissenting in part).

191. *Id.*

192. See *supra* Section I.C.

193. See, e.g., Thomas E. Martin, Jr., *Common Law Residential Rent Withholding—a Call for Legislative Action*, 79 PA. BAR ASS'N Q. 72, 74 (2008).

194. See, e.g., WASH. REV. CODE § 59.18.100 (2021) (repair-and-deduct); MASS. GEN. LAWS ch. 239, § 8A (2020) (rent withholding).

195. See MERRILL & SMITH, *supra* note 148, at 692.

The justification behind the rent-withholding doctrine can instead be understood to arise from landlord misconduct more generally.¹⁹⁶ The *Javins* court held that “the tenant’s obligation to pay rent is dependent upon the landlord’s performance of his obligations, including his warranty to maintain the premises in habitable condition.”¹⁹⁷ Under this explanation, the warranty of habitability is offered as just one example of the sort of landlord misconduct that can justify rent withholding. Where landlords fail to meet other important duties, the same reasoning should apply. As such, jurisdictions can specify other forms of landlord misconduct—such as the failure to bargain in good faith—for which tenants may legally withhold rent.

Of course, enacting new rights for which tenants may withhold rent runs into the same problems that the warranty of habitability already has: tenants without an attorney might struggle to assert these rights as a defense at an eviction hearing, and new rights still leave room for abuse and judicial discretion.¹⁹⁸ At the end of the day, however, it is the organizing—not a judge’s eventual determination of legality—that will make the strike successful. The purpose of these proposals is to provide legal backing to actions that tenants are taking. More robust legal backing for rent withholding increases the possibility that tenants will prevail if a landlord responds to the strike by filing for eviction. And as the law gives the tenant more possibilities of prevailing, the landlord’s odds in turn diminish. This increased chance of prevailing will encourage more tenants to participate in the strike, disincentivize risk-averse lawyers from undermining tenant organizers’ strategy by trying to convince tenants not to participate, and help bring landlords to the bargaining table by reducing their certainty of prevailing in eviction court.

D. *Employing Rent Withholding as a Solidarity Right*

To further address the insufficient protections of individual rights, statutory provisions allowing these rights to be used in solidarity with other tenants, or as a “solidarity right,” would support rent strikes. Under current law, when a tenant is allowed to withhold rent, they are allowed to do so in response to breaches of warranties that are implied or expressed in *that tenant’s* lease agreement. Yet the experiences of tenants, especially tenants who share a landlord, are interconnected. Rent-withholding laws can recognize tenants’ interconnectedness by allowing all tenants with the same landlord—not just those with a habitability issue in their apartment—to strike whenever a landlord fails to comply with the warranty of habitability.

196. Compare *Bakirdan v. Ferguson*, No.3-11-0004, 2012 WL 7005358, at *3 (Ill. App. Ct. Apr. 30, 2012) (holding that under a repair-and-deduct law, “[t]he tenant must submit the paid bill, from an appropriate tradesman, to the landlord,” only after which may she “deduct from her rent the cost of repairs” (citation omitted)), with *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1082 (D.C. Cir. 1970) (holding that under a rent-withholding rule, “the tenant’s obligation to pay rent is dependent upon the landlord’s performance of his obligations”).

197. *Javins*, 428 F.2d at 1082.

198. See *supra* Section II.A.

When it comes to grievances in the workplace, striking in solidarity with others is well established.¹⁹⁹ Section 7 of the NLRA protects “concerted activities for the purpose of collective bargaining or other mutual aid or protection.”²⁰⁰ In 1942, Judge Learned Hand wrote:

When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a “concerted activity” for “mutual aid or protection,” although the aggrieved workman is the only one of them who has any immediate stake in the outcome. The rest know that by their action each one of them assures himself, in case his turn ever comes, of the support of the one whom they are all then helping; and the solidarity so established is “mutual aid” in the most literal sense, as nobody doubts.²⁰¹

The Boyle Heights mariachi strike is one example of tenants striking in accordance with Judge Hand’s account. When the landlord increased rent, he only increased it for six tenants.²⁰² But tenants whose rent was not increased still decided to join the rent strike.²⁰³ One tenant, Jose Sánchez, described this decision as an act of solidarity. “We knew they were going to evict us in groups,” Sánchez said. “In solidarity with the others, we said they’re coming for us next, and we stood with our neighbors.”²⁰⁴

Rent withholding as a solidarity right should also extend to tenants who would otherwise be barred from withholding rent because of issues specific to their case. Jurisdictions often prevent a tenant behind on rent from asserting their individual rights.²⁰⁵ But preventing a tenant from participating in collective action because of their individual vulnerabilities—struggling to make enough to pay rent and falling behind, for example—runs counter to the notion of solidarity. Instead, a tenant should be permitted to withhold rent as part of a rent strike and use the strike as a defense to eviction even if they were already behind on rent at the inception of the strike.

This aspect of solidarity would likely receive more pushback. It could, in effect, put a pause on the landlord’s ability to evict any tenant for the duration of the strike, because any tenant already behind on rent could use the strike as

199. See *What’s the Law?*, NLRB, <https://www.nlr.gov/about-nlr/rights-we-protect/whats-law> [perma.cc/2AB2-FFY7] (“[T]he National Labor Relations Act protects your right to band together with coworkers to improve your lives at work.”).

200. 29 U.S.C. § 157.

201. *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F.2d 503, 505–06 (2d Cir. 1942). The Taft-Hartley Act has limited the scope of solidarity strikes by prohibiting “secondary boycotts,” or strikes against employers by members of a different union. 29 U.S.C. § 158(b)(4)(b).

202. Jason McGahan, *Boyle Heights Mariachis Take a Win Against an 80% Rent Hike*, L.A. TACO (Feb. 16, 2018), <https://www.lataco.com/boyle-heights-mariachis-take-win-80-rent-hike> [perma.cc/5QX7-RK8Z].

203. *Id.*

204. *Id.*

205. See, e.g., CAL. CIV. CODE § 1942.5(a) (West 2010).

a defense to eviction. This effect should be embraced. Courts and legal scholars are far too concerned with searching for a tenant's worst intent—for example, that rent withholding is used “merely as a pretext by tenants who cannot or will not pay lawfully due rent”²⁰⁶—and not concerned enough with holding landlords who fail to meet their obligations as property owners accountable. The fact that a tenant may have several reasons to withhold rent does not undermine a strike's validity. Whether the rent withholding is “pretext” should be based only on an inquiry into whether the landlord has in fact failed to meet his duties (that is, whether the strike itself is justified). No other inquiry into why a tenant is withholding rent is warranted.

The law as it currently stands asks tenants to “[s]trik[e] a balance between the organizing efforts and the legal battle.”²⁰⁷ While the organizing efforts require tenants to see themselves as part of an interconnected struggle, their legal case can isolate them from the issues of other tenants and “contradict efforts to build collective power.”²⁰⁸ To support rent strikes as an important form of tenant organizing, the law must encourage solidarity. It must support tenants like Jose Sánchez who choose to stand with their neighbors to fight for safe and affordable housing in their own communities. This solidarity right can be achieved by guaranteeing tenants the right to strike in the two circumstances discussed above: when another tenant with the same landlord has a right to withhold rent, and when the striking tenant might otherwise be precluded from asserting their rights due to prior default on rent or other issues.

CONCLUSION

The material benefits of this Note's proposals extend only as far as their likelihood of being enacted into law. In most United States jurisdictions, these proposals may seem like nonstarters. But for those advocating for legal reform—whether through the power of a legislator's vote or through the pages of a law review article—the takeaway of this Note should not be that the considerations here are fruitless. The purpose of these policy proposals is not to delineate the reforms that are necessary for legal reformers to *begin* to take rent strikes seriously. Rather, it is to argue that they should *already* be taking rent strikes seriously as an important organizing strategy—and, in any legal reform they choose to pursue, they should follow a method of law reform based in collaboration with communities and deference to the communities' creative visions and strategies for change.

In presenting this argument, this Note participates in the practice of challenging assumptions and norms associated with property law: encouraging ways of valuing neighborhoods based on more than their market value to developers and proposing an orientation toward property law that views rent

206. Martin, *supra* note 193, at 75; see also Cotton, *supra* note 92, at 68.

207. L.A. TENANTS UNION, *supra* note 69, at 48.

208. *Id.*; Akbar et al., *supra* note 24, at 870 (describing the potential for “public-interest legal practice [to] reconstitute the lawyerly idea of the client's individuated ‘problem’ in ways that undermine collective power building”).

strikes as a form of the “right to resist oppression” rather than as illegal violations of landlords’ property rights.²⁰⁹ Tenants engaging in rent strikes are living out these values, and it is the task of policymakers, lawyers, and legal scholars to be allies and collaborators with tenants as they “outlin[e] the blueprint of a new” landlord-tenant law.²¹⁰

209. Gourevitch, *supra* note 144, at 909; see Murray, *supra* note 51; see also *supra* note 65 and accompanying text.

210. Andrias, *supra* note 162, at 148.