

April 18, 2022

Honorable Kathy Hochul
Governor of the State of New York
Executive Chamber
New York State Capitol Building
Albany, NY 12224

RE: Passage of Right to Counsel legislation to guarantee the right to a FREE lawyer for ALL tenants facing eviction in New York State

Dear Governor Hochul,

We are writing to urge you to prioritize our statewide Right to Counsel legislation ([A7570/S6678](#)) this session and to work with tenants, organizers, advocates, and legal services providers to ensure prompt passage of this legislation into law. As providers of free legal services to low-income New Yorkers, we see first-hand the profound difference that legal representation has for low-income tenants. Collectively, we represent tens of thousands of tenants in eviction proceedings in Landlord Tenant courts across New York State and are honored to be working on permanent and transformative solutions to New York's eviction crisis. The legal services community has been pursuing Right to Counsel for over a decade and we are excited that New York is on the cusp of nation-wide leadership on this issue.

The statewide Right to Counsel legislation, introduced by Senator Rachel May and Assembly Member Latoya Joyner, would ensure that every tenant in New York State has the right to a lawyer when facing an eviction and:

- Covers every tenant across the state, regardless of income.
- Covers any legal proceeding that could result in a tenant losing their home.
- Requires that tenants be represented throughout their entire case, not just when they show up in court. This includes legal advice, advocacy, and assistance.
- Requires the State to contract with non-profit legal services organizations to provide Right to Counsel and with non-profit community based organizations to provide tenants' rights education and tenant organizing.

While we are encouraged by your recent recognition of the success of NYC's Right to Counsel law in your 2022 State of the State and your proposed program to provide funding for free legal assistance to upstate renters facing eviction with incomes at or below 200 percent of the federal poverty line, it does not go far enough to protect tenants. It does not establish the universal Right to Counsel that tenants across New York State need, nor does it help downstate tenants in NYC and the surrounding areas. In contrast, [A7570 / S6678](#) establishes the right to free legal representation for every tenant in court cases where their basic human right to a home is at risk. Passing [A7570/ S6678](#) and immediately signing it into law is the only real way to address our state's long standing eviction crisis.

New York State's eviction crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes – Passing statewide Right to Counsel would do just that. As you noted in your State of the State, Right to Counsel is proven to stop evictions – [84 percent of tenants in New York City who had a Right to Counsel lawyer](#) were able to stay in their homes and the seven cities that now have Right to Counsel have seen up to a 77 percent reduction in evictions. Evictions across New York City also

declined more than five times faster in neighborhoods where tenants had the Right to Counsel than in areas that did not. As a result of Right to Counsel, evictions have also decreased by nearly 40% and landlords are suing tenants less overall, with eviction filings dropping by 30%. Defaults also dropped by more than 30%, which means more tenants (by way of their counsel) are showing up in Housing Court to fight their cases. Last year, [Washington State, Maryland, and Connecticut also passed Right to Counsel statewide](#). Recent [analysis](#) from Stout also shows that a statewide Right to Counsel would have a marked positive impact on tenants outside New York City: Approximately 97% of tenants who appear in Landlord Tenant court would benefit from Right to Counsel, with 46,600 tenant households receiving legal representation. Eviction filings could decrease by at least 19% and we could see a 32% decline in default rates.

The legislature has passed important and meaningful tenant protections in recent years. Before the pandemic, the Housing Stability and Tenant Protection Act of 2019 extended notice periods for no-cause evictions, limited security deposits, imposed financial penalties for illegal evictions, terminated vacancy increases and locked in preferential rents in regulated apartments, and excluded non-rent charges from eviction proceedings, among other things. After the pandemic, in addition to the Emergency Rental Assistance Program, the State passed the Tenant Safe Harbor Act. This law prevents landlords from evicting tenants who were unable to pay rent during the pandemic months (March of 2020 through January of 2022), restricting landlords' remedies to money judgments.

Unfortunately, many of these defenses will not protect tenants without attorneys. Landlord-tenant law is a complex and fast-paced area of practice, governed by a dense thicket of rules and regulations, which can often bewilder even experienced attorneys. These recent tenant protections offer affirmative defenses which tenants must identify and raise at the appropriate time, in the appropriate manner. Some courts are more lenient with unrepresented litigants, but the court's role is ultimately neutral, and even sympathetic judges cannot help tenants gather the evidence they need to assert these defenses. Additionally, all new laws inevitably contain some ambiguity. Many of the finer subtleties of these new tenant protections must be clarified through case law. For example, we do not yet know, exactly, *how much* of a financial hardship tenants must have suffered before they qualify for a Tenant Safe Harbor Act defense. Tenants need access to attorneys in order to ensure that these new defenses actually protect them. *Tenant defenses that can only be identified and asserted by attorneys will not protect tenants who don't have access to attorneys.*

Here in New York, the majority of cases are initiated by landlords and nearly all landlords have lawyers in eviction cases, while most tenants do not. This creates a power imbalance in the courts that favors landlords, many of whom consider evictions essential to their business models: Landlords evict tenants because they have power, and because it increases their profits, not because the law supports them. Right to Counsel disrupts this business model by regulating the eviction process, changing the amount of power landlords have over tenants, and helping to stop evictions and displacement.

The housing and eviction crisis ravaged New York communities long before the COVID-19 pandemic began. COVID-19 made the eviction crisis more visible and forced us to contend with it. **To meet the needs of tenants across the state, we must pass [A7570](#) / [S6678](#) and establish a Right to Counsel.**

Sincerely,

Albany Law School Landlord Tenant Pro Bono Society
Association of Legal Aid Attorneys - UAW Local 2325
The Bronx Defenders
Brooklyn Bar Association Volunteer Lawyers Project
Brooklyn Legal Services Corporation A
Catholic Migration Services
Center for Elder Law & Justice
Community Service Society of New York
Cornell Law School Tenants Advocacy Practicum
Empire Justice Center
Erie County Bar Association Volunteer Lawyers Project
HerJustice
Hiscock Legal Aid Society
Hudson Valley Justice Center
JustCause
The Legal Aid Society
Legal Aid Bureau of Buffalo, Inc.
The Legal Project
The Legal Aid Society of Rochester
Legal Services of Central New York
Legal Services Staff Association 2320 (LSSA 2320)
Make the Road NY
Mobilization for Justice
New York Legal Services Coalition
Northern Manhattan Improvement Corporation (NMIC)
Probono.net
Queens County Bar Association Volunteer Lawyers Project
Rural Law Center
TakeRoot Justice Union (TRJU)
Urban Justice Center - Safety Net Project
Volunteer Lawyers Project of CNY, Inc.
Volunteers of Legal Service
Western New York Law Center
Youth Represent

Cc: Hon. Andrea Stewart-Cousins
Hon. Carl E. Heastie