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**Center for Elder Law & Justice**  
**Testimony to the New York State Legislature**  
**Joint Hearing of the Senate Finance and Assembly Ways and Means Committees**  
**2024-2025 Executive Budget**

**Topic: Housing**

Submitted by:  
Kevin M. Quinn, Esq.  
Director of Impact Litigation

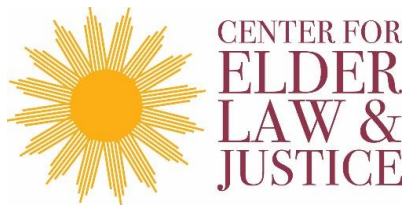
Thank you, Chair Krueger and Chair Weinstein, for the opportunity to submit this testimony to the Joint Legislative Budget Hearing on Housing. This testimony is presented by Kevin M. Quinn, Director of Impact Litigation at the Center for Elder Law & Justice. The Center for Elder Law & Justice (“CELJ”) has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, persons with disabilities, and low-income families. CELJ’s primary goal is to use the legal system to assure that individuals may live independently and with dignity. CELJ also provides for policy and systems change, particularly in the areas of housing, elder abuse prevention, nursing home reform, and consumer protection. Currently, CELJ provides full legal representation in ten counties of Western New York. CELJ’s Free Senior Legal Advice Helpline is open to all of New York State. CELJ operates a central office in downtown Buffalo, with three additional offices in Cattaraugus, Chautauqua, and Niagara counties.

We urge you take the following positions regarding issues before this committee:

- Support: Funding of \$40 Million to the Homeowner Protection Program (HOPP)
- Reject: The Sweep of IOLA Funds into the General Fund
- Support: Funding for a State-wide Civil Right to Counsel (RTC) in Eviction Proceedings

**Support: Funding of \$40 Million to the Homeowner Protection Program (HOPP)**

New York’s Home Ownership Protection Program (“HOPP”) is the sole source of funding for the statewide network of housing counseling and legal services agencies providing foreclosure prevention and homeownership preservation services for New York’s struggling low and moderate income (“LMI”) homeowners. **The Governor’s proposed budget eliminates all funding for HOPP, even though the services this network provides are more crucial than ever.**



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CELJ has provided legal representation to homeowners in foreclosure actions since HOPP's inception. CELJ provides full representation from a client's first appearance in a foreclosure case through completion. CELJ is a fixture in foreclosure courts, receiving a majority of our caseload through referrals from clerks and judges. CELJ focuses its' practice in Erie, Niagara and Orleans county. Through the funding, CELJ assists homeowners in securing loan modifications, which allow them to retain their home and defeat a foreclosure. In addition to this service, we help our clients navigate an often confusing and complex settlement conference process in Court. The overwhelming majority of our clients would not be able to afford their own counsel to represent them through the foreclosure process. They would be at a significant disadvantage but for our services, as all banks appear through their own experienced counsel in these proceedings. In addition to direct client representation, CELJ staff attend outreach events, publicizing our services and providing tips as to how someone can avoid foreclosure.

Across New York State, the HOPP network comprises 89 non-profit housing counseling and legal services providers who help New York homeowners, coop owners and condo owners avert homelessness and displacement by preventing avoidable mortgage and tax lien foreclosures, who combat mortgage fraud, deed theft, loan modification and partition scams, and who challenge predatory and discriminatory lending and abusive mortgage servicing practices that disproportionately impact New York's most vulnerable communities—seniors and people of color. The network serves every county in New York State and all five boroughs of New York City, but current grants funding this vital network end on July 15, 2024, and the Governor's budget proposes to de-fund this program even though the need for these services is more acute than ever before. A total of \$40 million is needed to ensure that the existing HOPP network is able to meet the existing need in light of the unprecedented homeowner distress across New York State, which dwarfs the rates of default seen during the last foreclosure crisis.<sup>1</sup>

As recently as November 14, 2023, Governor Hochul signed important legislation making improvements to various aspects of the law that will benefit homeowners who have already been victimized by deed theft scams. At a bill signing ceremony at Brooklyn Law School that day, Governor Hochul spoke compellingly about how central homeownership is to the American dream. Sitting beside her as she signed that legislation, along with Attorney General Letitia James, were Joseph Clarke and Jacqueline Knight, who were victims of a pernicious deed theft scam and clients of a HOPP grantee legal services agency who had successfully pursued protracted litigation that restored the title to their home. Governor Hochul praised the HOPP agency's efforts over years of litigation to restore the couple's home, but less than two months later her proposed budget would eliminate funding for the very program whose advocates

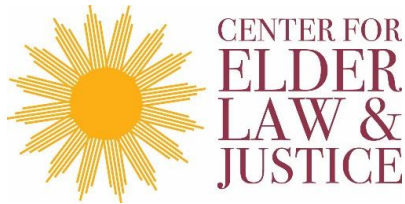
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<sup>1</sup> The HOPP grantees contract years are not aligned with the State fiscal year, so funding in this year's budget is required for the network to be able to continue after current contracts end on July 15, 2024. The executive budget includes re-appropriation language that will permit last year's allocation to be used after March 31, 2024 for the existing contracts, which are not paid until after the end of the contract term, but last year's allocation will have been exhausted upon the conclusion of the current contract year on July 15, 2024.

restored Mr. Clarke and Ms. Knight's home after they fell prey to a deed theft scam. The recent legislation, as well as additional provisions contemplated in the proposed budget, are important protections, but without the HOPP network distressed homeowners will have nowhere to turn but to the scammers looking to prey on them, and the provisions meant to provide protections for deed theft and partition scam victims (including those contemplated in the Governor's proposed budget) will be of no use if the HOPP-funded programs representing homeowners seeking to vindicate their rights under those initiatives are eliminated.

We are thankful for the Legislature's consistent support for HOPP and we recognize that without the restoration of funding for this program every year when funding for it was excluded from the executive budget proposals, New York would have long ago lost its investment in the country's most robust foreclosure prevention network. The executive budget's exclusion of any funding for the HOPP network—New York's only program focused on preserving existing homeownership, largely in communities of color and affecting the elderly—threatens the termination of this vital program just when it is most needed.

- New York is continuing to see high delinquency rates, especially in communities of color. According to U.S. Census Household Pulse Survey data, as of fall 2023, an average 8% of New York homeowners were delinquent on their mortgage loans, with an average of 306,587 New York families at risk of losing their homes. These numbers show a significant increase in mortgage distress since the prior year, when the number of families at risk was 288,261. This delinquency rate dwarfs the rate of 2.2% in January 2020, right before the COVID pandemic started, and exceeds the high of 3.8% in January 2009, during the height of the financial crisis and Great Recession. Court filings are also rising, with New York State Unified Court System data showing nearly 11,000 new foreclosure case filings in the first eight months of calendar year 2023, and nearly 21,000 pending foreclosure cases across the State.
- HOPP preserves homeownership in communities of color. Statewide, 43% of clients served by our network providers are homeowners of color; in NYC, the number exceeds 75%. The foreclosure crisis following the great recession disproportionately impacted New York's communities of color, who were targeted for the predatory lending that precipitated that crisis. The COVID-19 pandemic has been no different, with the health impacts and the economic pain felt more acutely amongst black and brown New Yorkers. On average, 15.72% of Black homeowners in NY are delinquent compared to 7. % of non-Hispanic white homeowners, as reflected in the US Census Pulse Survey data available in the fall of 2023.
- A complicated patchwork of federal and state programs has evolved in the aftermath of the pandemic that homeowners cannot navigate on their own. FHA, Fannie Mae, Freddie Mac, and conventional lenders launched different forbearance plans and loss mitigation options for distressed borrowers, and New York State enacted its own law on forbearance programs for New York-regulated lenders and mortgage servicers. Accessing relief requires understanding the details of these various interventions and knowing who owns the loan in question and what



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program a homeowner may be eligible for. Homeowners need help to ensure they can access relief and they need advocates to make sure lenders are complying with applicable federal or NY laws and regulations. New York's Homeowner Assistance Fund, which has made federal funding available to assist distressed New York homeowners in a program administered by NY Homes and Community Renewal ("HCR"), which is now winding down, has reached a small portion of New York's distressed homeowners, and it has been dependent on the HOPP network to assist homeowners in accessing the program.

- For more than a decade, this network has been helping families in every county across New York State, and in each of the five boroughs of New York City, navigate complex housing challenges -- including mortgage fraud, scams, displacement, discriminatory lending and mortgage servicing -- and it has helped thousands of families to keep their homes and allowed them to stay in their communities. It has helped not just the individual families affected by foreclosures but the communities at large, by preventing displacement and by preventing the increased crime and reduced property values that accompany waves of foreclosure, which, in turn, adversely affect the local community tax base.

Without the restoration of the funding proposed to be eliminated by the Governor's proposed budget many of those not-for-profit housing counseling agencies and legal services providers will be ending their homeownership retention services when current contracts expire on July 15, 2024 and will be forced to turn away homeowners needing their assistance, leaving New York's struggling homeowners more vulnerable to the scammers peddling foreclosure rescue deed theft schemes and distressed property consultants, whose ranks have been multiplying as real estate values are increasing in many regions of the state. Indeed, even now, with the Governor's proposed elimination of the program causing uncertainty about the continuation of the program after the current contract year (as it does every year) case acceptance at HOPP-funded agencies is inhibited, because agencies cannot in good conscience accept new cases that have no prospect of resolution prior to July 15, 2024 with the continuation of the program after that date in question. This uncertainty is also damaging to HOPP staff morale, many of whom are lost every year when the program's continuation is thrown into question by the Governor's proposal to defund HOPP. Without HOPP, CELJ will not be able to serve any clients in foreclosure. We have no other funding streams that would be able to supplement this work. Homeowners will have to navigate the court system on their own in each of the counties we serve. This will put a massive strain on the court system as staff will have to guide laypeople who are not familiar with the court process through the foreclosure action.

Not only will New York families suffer and face displacement; employees across almost 90 organizations are in danger of losing their jobs, and their expertise, along with the associated

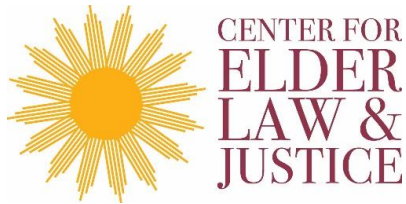
infrastructure in place that supports this network, which represents a substantial investment by the State of New York, will be discarded.<sup>2</sup>

There are also a number of laws and programs in New York State that depend on HOPP network services; HOPP service providers are embedded in New York’s consumer protections enacted after the foreclosure crisis, which are now a permanent part of our foreclosure process, such as:

- Lenders are required by law to send pre-foreclosure notices specifically identifying counseling agencies serving the homeowners’ county—the very agencies that will be no longer funded to do foreclosure prevention work if funding lapses.
- Network providers are integral to NY’s pioneering foreclosure settlement conference process, where we partner with the courts to staff clinics and conferences, and have been instrumental in drastically increasing the numbers of homeowners with representation at settlement conferences and in increasing the numbers of homeowners answering foreclosure complaints and preventing default judgments. CELJ works with the courts on a daily basis to assist homeowners in settlement conferences. The vast majority of the clients CELJ represents are referred to us as a result of the settlement conference process. CELJ receives these referrals because court staff understand that having a legal services agency assisting in a foreclosure action allows the court to function more efficiently, maintaining judicial economy. Without HOPP funding for CELJ and our legal partners, the court would need to navigate unrepresented homeowners through the foreclosure process unaided. Once CELJ begins representation, our agency reviews the foreclosure petition and files answers and motions when necessary. Again, without our assistance, homeowners will be at a significant disadvantage, trying to litigate cases against banks who are represented by experienced counsel.

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<sup>2</sup> In the contract year that ran from July 16, 2021 through June 15, 2022, the HOPP network of housing counseling agencies and legal services providers served 9,501 clients, with a total staff count of 473 (203.53 FTE). In the following contract year (running from July 16, 2022 through July 15, 2023), the network served 20,564 clients (more than double the number served in the prior year), and it increased its staffing levels, with the total staff count increasing to 637 (289.67 FTE) (thanks to the increased funding of \$35 million allocated in the FY 2022 budget). In the current contract year, for which the FY 2023 budget allocated \$40 million, which runs through July 15, 2024, the HOPP network’s staffing has further increased to 667 (FTE 316.47) as groups across the State continued to ramp up capacity to meet the increased need for services, and we expect the number of clients served to exceed that of the prior contract year. At the conclusion of the current contract year on July 15, 2024 the current allocation will have been exhausted, given the significant ramp up in hiring to meet the increased demand for services. These numbers are derived from HOPP grantees’ data reporting to the two Anchor Partners who work with the Office of the Attorney General to administer the HOPP grants, Empire Justice Center and the Center for New York City Neighborhoods. This is consistent with industry reports showing that foreclosure starts in the first half of 2023 increased by 15 percent compared to the same period in the previous year. Indeed, New York is among the states with the most foreclosure starts, along with California, Florida, Texas, and Illinois. See Attom, Midyear 2023 U.S. Foreclosure Report, available at <https://www.attomdata.com/hnr/midyear-2023-u-s-foreclosure-report/>.



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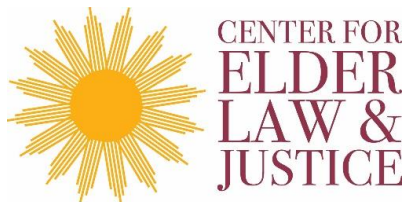
The homeowners receiving help from HOPP agencies are working, LMI families, New Yorkers of color who were targeted for predatory loans, seniors battling a wave of foreclosures on reverse mortgages and tax and water liens, and families who have experienced illness or deaths that have landed them in financial distress. The network mitigates displacement from foreclosures, scams and mortgage distress and its advocates challenge abusive mortgage servicing by financial institutions and discriminatory lending practices such as reverse redlining, in which vulnerable communities were targeted for the most toxic of loan products. Of late, the HOPP network has been tackling the epidemic of “zombie second lien” foreclosures, pursued by debt buyers who purchased for pennies on the dollar long-abandoned second mortgages, which were marketed during the heyday of predatory lending as toxic “80/20” loans targeted to communities of color. The originating lenders abandoned those underwater loans years ago, but with appreciating real property values, speculators and private equity are now attempting to foreclose on homes saddled with these second liens, even though the claims are largely barred by statutes of limitations.

CELJ provides holistic services and will screen homeowners for other legal issues in addition to their housing matter. CELJ often finds that homeowners at risk of foreclosure are at risk of being scammed or are victims of scams themselves. Our agency provides the homeowner with education on popular financial scams and, in some instances, is able to recover some, if not all, of the funds the homeowner has lost. Additionally, CELJ has been educating members of our community on deed theft, a key piece of the Executive’s legislation detailed above. In assisting homeowners who are at risk of deed theft, CELJ has helped members of our community retain homeownership and financial stability. CELJ has also helped prevent vacant and abandoned homes by ensuring that lenders do not lock homeowners out or let properties in foreclosure deteriorate such that they negatively impact an otherwise stabilized neighborhood.

We URGE the New York State Legislature to restore \$40 million in funding for HOPP in this year’s budget so that the HOPP network can continue its great work combating urgent housing issues and continuing to help homeowners in distress and foreclosure.

### **Reject: the \$100 Million Sweep of the IOLA Fund into the General Fund**

CELJ is deeply concerned about the unprecedented Executive Budget proposal to sweep \$100 million from the Interest on Lawyers Account to the general fund. IOLA funding not only supports essential services that help low-income New Yorkers obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs and access to health care, it is a critical source of infrastructure dollars that the civil legal services community is in desperate need of. These funds are accumulated for distribution at the next round of grants to civil legal services providers, which are intended to assist in addressing the dual crises of an estimated \$1 billion civil justice gap and community wide salaries that are at least 30% below counterparts in similar public interest and public sector fields.



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New York’s IOLA Fund was established in 1983, under New York State Finance Law (§ 97-v). With the recognition of the vast need to fund civil legal services, these funds were created for the *sole purpose* of funding civil legal assistance. The legislative intent was as follows:

*Legislative findings and declaration.* The legislature finds that the availability of civil legal services to poor persons is essential to the due administration of justice. ***The purpose of this act is to provide funding for providers of civil legal services*** (emphasis added) in order to ensure effective access to the judicial system for all citizens of the state to extent pc within **the means** available for that purpose.

The Interest on Lawyers Account (IOLA) fund established by this act will be authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matter to poor persons. The IOLA fund will receive the interest earned by qualified client funds held by attorneys in unsegregated interest-bearing accounts designated IOLA accounts. Funds which qualify for deposit in IOLA accounts are those which, in current practice, attorneys do not deposit in segregated accounts because insufficient interest would be earned to justify the expense of administration. When pooled in an IOLA account, funds which would be unproductive as individual accounts will generate income, the ***beneficial interest in which will be held by the IOLA fund exclusively for charitable purposes*** (emphasis added).<sup>3</sup>

Even during the most extreme financial crises in the past, IOLA funds have never been swept or used for any other purpose than to provide civil legal services to low-income New Yorkers. Now is not the time to divert or undermine the purpose of this critical resource.

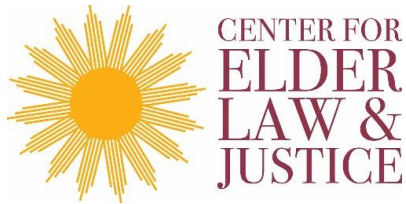
IOLA distributes the accumulated interest dollars through competitive requests for proposals issued every two years. IOLA also collects and distributes outcomes from the services. In 2023, IOLA grantees closed over 307,000 client cases, benefiting over 639,000 low-income New Yorkers. The top five areas of service from 2023 are housing, immigration, family law, education and health.

Since its inception, interest rates have fluctuated wildly, in the early days, this resulted in wild swings in funding for civil legal services, causing uncertainty and financial crisis for providers. To guard against this, IOLA rightly shifted to a “rainy day” approach that creates a reserve of funds that can be used to avoid cuts in funding and thus civil legal services during periods where interest rates and thus earnings are low.

Furthermore, this attempted sweep could not come at a worse time. The civil legal services community faces a complex crisis. The value of and need for civil legal services has never been more front of mind in our state. Recognition that there is no civil Gideon for folks facing bankruptcy, loss of home, healthcare – the essentials of life – has grown among the public and policy makers as a result of educational efforts. The Access to Justice Gap, the space between the

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<sup>3</sup> Chapter 659 of the Laws of 1983.



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civil legal needs of low-income New Yorkers and the resources available to meet those needs has now been documented and assessed at a \$1 billion over what is currently in the system. As noted in the Permanent Commission on Access to Justice’s 2023 report to the Chief Judge, “the Permanent Commission recently adopted its Funding Working Group’s report finding that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding, over and above existing funding, to close the justice gap.”<sup>4</sup> Notably, this analysis focuses only on those earning up to 250% of poverty and does not include immigration related legal services.

In addition, IOLA has just launched a multi-year Justice Infrastructure project that will assist our under-resourced community with improving the delivery of services and create efficiencies across programs. The accumulated funds are what made it possible for the IOLA Fund to pursue this project. By sweeping 100 million from the IOLA Fund, the Governor is disrupting a shared vision for pay parity and infrastructure investment between IOLA and the civil legal services programs they fund.

Demand and need for our community’s services is vast, but the resources are not there, leaving far too many New Yorkers facing life altering legal junctures without an attorney who understands the process. At the same time, salaries, in comparison to any other government funded attorney services are so low, it is now moreover, our extremely low salaries are interfering with our Diversity, Inclusion and Equity (DEI) efforts. impossible to compete with state, county and city positions. CELJ is not an attractive option to attorneys of color and we have been unable to retain any diverse attorneys for longer than three years. Exit interviews with former employees of color indicate that while the work and culture of a legal services job is incredibly satisfying, the salaries at government jobs (which also have federal loan forgiveness) simply make the option of staying at CELJ untenable.

Moreover, with the well-deserved and long overdue increase in rates for assigned counsel in criminal matters, civil legal services salaries have fallen even further behind. CELJ attorneys start at \$60,000, or \$28.85 per hour. Compare that to the Assigned Counsel rate of \$158 per hour.

We need the legislature’s support in addressing the needs of our client community through rejecting the proposal in the executive budget to sweep funding from IOLA. These funds, along with OCA’s efforts are essential to our community’s ability to make gains against the justice gap.

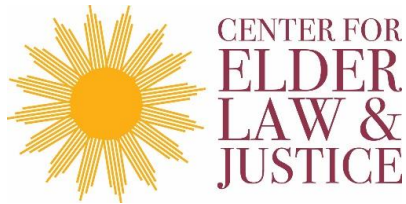
### **Support: Funding for a State-wide Civil Right to Counsel (RTC) in Eviction Proceeding**

CELJ is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, legal services providers, unions, faith communities and many others who are working to ensure that all New Yorkers across the state have a Right to Counsel when facing eviction. We and

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<sup>4</sup> Permanent Commission on Access to Justice’s 2023 report to the Chief Judge, November 2023.  
[https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/23\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/23_ATJ-Comission_Report.pdf)





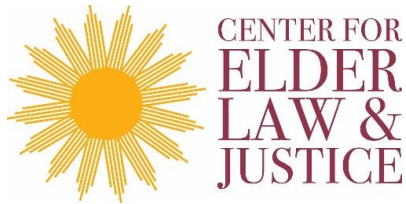
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members of our [Housing Courts Must Change! Campaign](#) collectively represent tens of thousands of tenants across New York State and are honored to work on permanent and transformative solutions to New York’s eviction crisis.

The historic passage in 2017 of New York City’s Right to Counsel law made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties win a Right to Counsel](#), including Westchester County in 2023. The statistics speak for themselves: 84% of NYC tenants with a Right to Counsel lawyer have won their case and been able to remain in their homes; and default evictions as well as eviction filings have dropped dramatically. San Francisco saw a 10% drop in eviction filing rates in just one year after passing a universal RTC, and two-thirds of all represented tenants were able to remain in their homes. Cleveland found that within the first six months of having Right to Counsel, 93% of tenants with a Right to Counsel lawyer avoided eviction or an involuntary move.

Right to Counsel works. It’s a solution with a proven track record of success everywhere it’s passed. Yet while New York City led this charge, the majority of New Yorkers still lack this fundamental right. And with landlords suing over [175,000 New Yorkers for eviction](#), New York State needs Right to Counsel now more than ever. In many localities across the state, only a fraction of tenants facing eviction are represented. In Albany, for example, in 2022, less than 2% of tenants had an attorney, while the vast majority of landlords were represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home. In Buffalo, tenant attorneys are overwhelmed with incredibly high caseloads. Despite legal services providers’ best efforts, many tenants are still forced to appear at an eviction proceeding unrepresented. Burnout among civil legal services attorneys is common in this field, leading to a shortage of attorneys available to handle this essential work.

That’s why we are now fighting, with over 100 statewide partners, for a Statewide Right to Counsel. S2721, our Right to Counsel for ALL legislation introduced by Senator Rachel May, guarantees the right to a free attorney for all New Yorkers facing displacement across the state. **This year we are also requesting \$260 million in funding to begin Right to Counsel’s implementation.** \$260 million is the necessary first step in empowering a wholesale change in our court system. It’s going to allow for tens of thousands more tenants to be represented. It will equip attorneys to fully litigate their cases and help ensure long-term housing stability for tenants. It will transform workplace conditions for legal providers and help us to compete nationally, attracting the next generation of civil legal talent to New York State. It will support organizers whose work is essential to ensuring tenants know what their rights are and how to use them. And it will establish a new state agency, the Office of Civil Representation, to oversee the Right to Counsel.



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We urge you to support the funding and passage of Right to Counsel in the budget this year. As a society, we cannot stand by any longer while New Yorkers are forced into a confusing and traumatizing court system without counsel by their side, and as a result, face devastating consequences that could have been avoided. We know that establishing this right will keep New Yorkers in their homes, prevent an array of long-lasting harms to our families and communities, and save our state money in the long-term. New York has every reason to pass and fund S2721 in the budget this year, and we count on your leadership to ensure this happens.

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Thank you for the opportunity to submit this testimony. CELJ is available to answer any questions and provide additional information.

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