



TO: Sen. James B. Eldridge and Rep. Claire D. Cronin, Co-Chairs;
Sen. Sonia Chang-Diaz and Rep. Michael S. Day, Co-Vice Chairs;
and the members of the Joint Committee on the Judiciary

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DATE: July 16, 2019

RE: **SUPPORT for S.824 and H.3566 – An Act Promoting Housing Opportunity and Mobility Through Eviction Sealing**

The American Civil Liberties Union of Massachusetts and the ACLU Women’s Rights Project¹ strongly support Massachusetts Senate Bill 824 and House Bill 3566, *An Act promoting Housing Opportunity and Mobility through Eviction Sealing* (“HOMES Act”). The HOMES Act is critical to removing unjust barriers to housing for low-income tenants with prior eviction filings.

Across the Commonwealth, landlords routinely use tenant-screening policies that deny housing whenever an applicant was named in an eviction case—even when the case was dismissed, filed many years ago, or brought on unlawful grounds. While such policies affect all tenants, the devastating consequences of an eviction record disproportionately burden African-American women and often perpetuate social and economic inequities for communities of color. In Massachusetts, these barriers are further exacerbated by the unrestricted availability of eviction records online. Moreover, Massachusetts law does not currently provide any process for sealing or otherwise limiting access to eviction records, thereby allowing a mere eviction filing to become a permanent mark on a tenant’s record.

¹ The American Civil Liberties Union (“ACLU”) is a national, non-partisan organization of over three million members, activists, and supporters. For nearly 100 years, the ACLU has worked nationwide in courts, legislatures, and communities to fight for and defend the fundamental rights and liberties that the Constitution and laws of the United States guarantee to all people in this country. The ACLU Women’s Rights Project, co-founded in 1972 by Ruth Bader Ginsburg, has been a leader in efforts to eliminate barriers to women’s full equality in American society. These efforts include challenging barriers to housing for low-income women of color, and advocating for federal, state, and local policies that advance women’s rights to obtain and maintain safe and stable housing. The ACLU of Massachusetts is the Massachusetts affiliate of the ACLU.

By providing comprehensive eviction record sealing procedures, the HOMES Act effectively advances fair housing for vulnerable and marginalized communities, while balancing the public interest in access to records for scholarly, educational, journalistic, and governmental purposes. The ACLU of Massachusetts and ACLU Women’s Rights Project urge you to immediately pass the HOMES Act to advance access to safe and stable housing for Massachusetts residents.

The problem. As renters struggle with rising housing costs and stagnant wages, eviction has become a crisis. In Massachusetts, there are roughly 37,121 eviction cases filed each year—an average of nearly 102 per day.² Of those cases, about 42%—or 15,708 cases—result in formal eviction judgments.³ Eviction not only imposes devastating consequences, including job loss and homelessness, but also creates long-term barriers to obtaining safe and stable housing due to the permanent stigma associated with a prior eviction record. Across the Commonwealth, landlords routinely employ tenant-screening policies that deny housing to any applicant previously named in an eviction case—regardless of whether the case was dismissed, occurred many years ago, or was filed on unlawful grounds.⁴ Such policies may punish tenants who were able to resolve disputes with prior landlords, or even those who faced eviction as the result of domestic violence that they endured.⁵ The overreliance on eviction records⁵ also reinforces the disparate impact of eviction on African-American women, while perpetuating social and economic inequities for communities of color.⁶

The devastating impact of such policies on Massachusetts residents is exacerbated by the unrestricted availability of eviction records online. When enforcing these policies, landlords and tenant-screening companies rely on publicly available court records through online databases, often creating what are known as “tenant blacklists.”⁷ In Massachusetts, landlords and tenant-screening companies rely on the MassCourts Electronic Case Access system, which provides free and unfettered access to all eviction cases filed in the state. These public records, however, are often inaccurate and outdated, and fail to provide the full context or final outcome of any given eviction case.⁸ As a result, tenants with prior eviction records are indefinitely shut out of housing

² The Eviction Lab at Princeton University, *Understanding Eviction in Massachusetts* (2016), <https://evictionlab.org/map/#/2016?geography=states&bounds=-190.672,2.596,-44.648,60.743&locations=25,-70.653,41.41>.

³ *Id.*

⁴ Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records*, Clearinghouse Community (Aug. 2017), https://www.povertylaw.org/files/docs/article/ClearinghouseCommunity_Caramello.pdf.

⁵ Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU Blog (Mar. 30, 2017), [https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately-see-also-Brief-of-Amici-Curiae-American-Civil-Liberties-Union,-et-al.-in-Support-of-Appellant-Ashlee-Rousey,-Indigo-Real-Estate-Servs.-v.-Rousey,-No.-61831-8-\(Wash.-App.-filed-Feb.-11,-2009\),https://www.aclu.org/sites/default/files/field_document/indigorealestateservicesv.rouseyamicibrief.pdf](https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately-see-also-Brief-of-Amici-Curiae-American-Civil-Liberties-Union,-et-al.-in-Support-of-Appellant-Ashlee-Rousey,-Indigo-Real-Estate-Servs.-v.-Rousey,-No.-61831-8-(Wash.-App.-filed-Feb.-11,-2009),https://www.aclu.org/sites/default/files/field_document/indigorealestateservicesv.rouseyamicibrief.pdf).

⁶ See Caramello & Mahlberg, *supra* note 5.

⁷ *Id.*

⁸ Massachusetts Law Reform Institute, *Evicted for Life: How Eviction Court Records Are Creating a New Barrier to Housing*, http://www.passthehomesact.org/uploads/2/7/0/4/27042339/evicted_for_life_mlri.pdf.

opportunities without adequate justification or consideration. Moreover, MassCourts records sometimes include the names of children as young as three years old as parties to an eviction case.⁹ Absent provisions to address such errors, these records may follow children into adulthood, affecting their housing and economic opportunities. The fear of an eviction record compels tenants to avoid court involvement at all costs. Rather than exercising their rights, many tenants endure unsafe and horrible living conditions, or comply with unlawful termination notices to avoid sustaining the insurmountable black mark of an eviction filing.

The HOMES Act is critical to removing barriers to safe and stable housing for all Massachusetts residents, but particularly for low-income women of color. Although there is limited research on the race and gender disparities in Massachusetts eviction cases, scholarly research has consistently shown that the community most affected by eviction is low-income African-American women. In Milwaukee, for example, women renters from Black neighborhoods faced eviction nearly twice as often as male renters from the same neighborhoods, and more than five times as often as women renters from white neighborhoods.¹⁰ Similarly, the ACLU commissioned a study on evictions in the Seattle-area King County in Washington State, which showed that Black tenants were 5.5 times more likely to have an eviction case filed against them as compared to white tenants.¹¹ The study further demonstrated that women were evicted at greater rates than men, finding that women with children were the among most vulnerable for eviction.¹² Studies in other cities have revealed that people of color comprise between 72% to 86% of tenants facing eviction, and that women made up 62% of tenants facing eviction in Chicago and 70% of tenants facing eviction in Philadelphia.¹³

Similar race and gender disparities are reflected in the Massachusetts rental market, as well as anecdotal evidence from judicial officers and advocates. In Massachusetts, 74% of Hispanic households and 66% of Black households are renters, placing them at a greater risk of being evicted. As noted in a 2012 Report by the Boston Bar Association Task Force on the Civil Right to Counsel, the demographics of tenants in Massachusetts Housing Courts “reveal a vulnerable group of litigants, typically poor, often women, and disproportionately racial and ethnic minorities.”¹⁴ In light of these stark racial and gender disparities, unjust eviction screening policies

⁹ *City Council Weekly Meeting – Order for a Hearing to Discuss Ways to Support Tenants Facing Eviction and Displacement*, LydiaEdwards.org (Feb. 27, 2019) available at <https://lydiaedwards.org/index.php?page=notes&family=council&category=c&pg=pg3&display=379>.

¹⁰ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 A.J.S. 1, 88-133 (July 2012), <http://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

¹¹ Timothy A. Thomas, et al., *The State of Evictions: Results from the University of Washington Evictions Project*, University of Washington (Feb. 17, 2019), <https://evictions.study/index.html>.

¹² *Id.*

¹³ Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 Housing Policy Debate 4, 461–501 (2003), <https://www.innovations.harvard.edu/sites/default/files/10950.pdf>.

¹⁴ Mary K. Ryan & Jayne B. Tyrrell, *The Importance of Representation in Eviction Cases and Homelessness Prevention: A Report on the BBA Civil Right to Counsel Housing Pilots*, Boston Bar Association Task Force on the Civil Right to Counsel (Mar. 2012), <https://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1->

often prevent Black women, people of color, and other marginalized communities from accessing high-opportunity neighborhoods, thereby reproducing social and economic inequities for communities of color.¹⁵ As sociologist and renowned scholar Matthew Desmond has observed, “[E]victions . . . aren’t just a condition of poverty; they’re a cause, too.”¹⁶ The HOMES Act is a critical step toward eradicating long-term inequities in housing and other economic conditions for women of color.

The HOMES Act provides an effective solution to housing barriers faced by Massachusetts residents due to prior eviction records. The HOMES Bill has three key features that specifically address, and reasonably resolve, the unjust barriers to housing caused by eviction records. First, the HOMES Act requires the court to automatically seal all eviction filings unless and until there is a final eviction judgment, thereby removing false positives from the record. This provision is critical to protecting tenants’ access to housing during the pendency of eviction litigation, while ensuring that tenant-screening reports do not punish tenants for eviction filings that did not result in an adverse judgment. Second, the HOMES Act provides for the automatic sealing of all eviction judgments after three years. Additionally, the HOMES Act allows a tenant to move to seal a prior eviction record for good cause. As a result, the HOMES Act ensures that tenants will not suffer from a permanent black mark against their record, and that tenants will be able to seek relief in warranted circumstances. Finally, the HOMES Act prohibits the use of a sealed court record to deny housing or otherwise discriminate against tenants, thereby advancing fair housing principles and protecting protected information. These provisions are critical to removing unjust barriers to housing caused by eviction records and undoing the entrenched racial and gender disparities in housing access.

The HOMES Act adequately provides for the public interest in accessing public records for the purposes of journalistic, scholarly, educational, and governmental purposes. The ACLU has a longstanding commitment to ensuring meaningful access to public records, particularly for necessary government oversight. We firmly believe that the HOMES Act’s provisions meet the public interest in access to public records, while providing adequate protections against unjust barriers to housing for low-income residents, people of color, women, people with disabilities, and other marginalized communities who may face a greater risk of eviction. Specifically, the HOMES Act provides that, upon motion and for good cause, sealed court records “may at the discretion of the court upon a balancing of the interests of the litigants and the public in nondisclosure of the information with the interests of the requesting party, be made available for scholarly, educational,

[12.pdf](#); see also Jennifer McKim & Alejandro Serrano, *As rents soar in Boston, low-income tenants try to stave off eviction*, BOSTON GLOBE (Feb. 19, 2019), <https://www.bostonglobe.com/magazine/2019/02/19/rents-soar-boston-low-income-tenants-try-stave-off-eviction/QddCq1bLrV3JQhaFTzYnGP/story.html>.

¹⁵ Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Foundation: How Housing Matters (Mar. 2014), https://www.macfound.org/media/files/HHM_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

¹⁶ A U.S. Catholic Interview, *Eviction: Not just a condition, but a cause of poverty*, U.S. Catholic, <https://www.uscatholic.org/articles/201802/eviction-not-just-condition-cause-poverty-31301>.

journalistic, or governmental purpose only.”¹⁷ The HOMES Act further protects the personal privacy of individual tenants, providing that “identifying information of parties shall remain sealed unless the court determines that release of such information is appropriate under this paragraph and necessary to fulfill the purpose of the request.”¹⁸ Finally, the HOMES Act requires the court to maintain and make public aggregate data on eviction actions, including their judgments, on a semi-annual basis. In light of the HOMES Act’s careful and balanced consideration of public access to records, the ACLU fully endorses the HOMES Act.

The HOMES Bill is a critical step in a larger, national movement. Currently, state legislators in California and Washington have passed laws that allow for eviction cases to be sealed upon filing and during the pendency of litigation. In California, the cases are unsealed only if the landlord prevails.¹⁹ And in Washington, it is unlawful for tenant-screening services to disclose a sealed eviction record or use it as a factor in determining any score or recommendation in a tenant-screening report.²⁰ Similar efforts have taken place across the country, in recognition of the lasting and often insurmountable effect of eviction on housing access for marginalized communities. Massachusetts has a chance to lead this national movement in eradicating unjust barriers to safe and stable housing for the most vulnerable and marginalized in our communities.

We urge the Committee to give a favorable report to this bill.

¹⁷ Mass. S. 824 § 30(c)(5).

¹⁸ *Id.*

¹⁹ Assem. Bill 2819, 2015-2016 Reg. Sess. (Cal. 2016).

²⁰ Sen. Bill 5600, 2018-2019 Reg. Sess. (Wash. 2019).