



TO: Sen. Lydia Edwards and Rep. James Arciero, Chairs;
Sen. John F. Keenan and Rep. Meghan Kilcoyne, Vice Chairs;
and the members of the Joint Committee on Housing

FROM: Gavi Wolfe, Legislative Director, ACLU of Massachusetts
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DATE: January 18, 2024

RE: **Testimony on the Affordable Homes Act, H.4138 – In Support of Robust Protections for *Eviction Sealing and Access to Counsel***

Dear Senator Edwards, Representative Arciero, and members of the Committee:

The American Civil Liberties Union (ACLU) of Massachusetts and the national ACLU strongly support the bold measures in **House Bill 4138 (the omnibus “Affordable Homes Act”)** that aim to promoting housing opportunity and security. The Affordable Homes Act is critical to advancing access to safe and stable housing for Massachusetts residents, and particularly for low-income women of color and other vulnerable residents.

While we strongly support this legislation, we write to respectfully ask the Committee to consider additional measures to strengthen the omnibus bill in two respects. First, we urge the Committee to strengthen the eviction sealing protections in Section 47 of the Affordable Homes Act. Second, we urge the Committee to establish a program providing access to legal counsel during eviction proceedings.

Securing robust sealing protections and right to counsel in eviction cases is key to fighting the housing crisis in the Commonwealth. We urge the Committee to take immediate action to protect vulnerable residents across the Commonwealth.

We urge the Committee to strengthen eviction sealing protections to remove unjust barriers to housing for all Massachusetts residents, and particularly for low-income women of color.

Across the Commonwealth, landlords routinely use 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.ⁱ Such policies often punish tenants who were able to resolve disputes with prior landlords, obtained a favorable judgment or dismissal in court, or faced eviction as a result of domestic violence that they endured.ⁱⁱ The devastating impacts of such policies on Massachusetts residents are exacerbated by the unrestricted availability of eviction records online through the MassCourts Electronic

Case Access system.ⁱⁱⁱ These public records, however, are often inaccurate and outdated, and fail to provide the full context or final outcome of any given eviction case.^{iv}

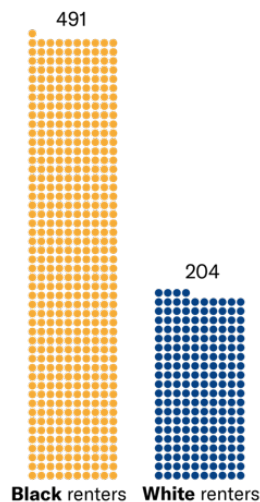
As a result, tenants with prior eviction records are indefinitely shut out of housing opportunities without adequate justification or consideration. The fear of an eviction record compels many tenants to avoid court involvement at all costs: Rather than exercising their rights, many tenants endure unsafe living conditions or comply with unlawful termination notices to avoid sustaining the insurmountable permanent mark of an eviction filing.^v

While unjust eviction screening policies harm all tenants, the devastating consequences of eviction records disproportionately burden Black women and other communities of color. In Massachusetts, 74% of Hispanic households and 66% of Black households are renters, placing them at a greater risk for displacement and housing instability.^{vi} 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.”^{vii} Given these stark racial and gender disparities, unjust eviction screening policies 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.^{viii}

The ACLU’s data analytics team analyzed Massachusetts eviction data from 2012 to 2016, provided by the Eviction Lab, and found that Black renters, and Black women in particular, are most harmed by unjust eviction screening policies.^{ix} Black renters are, on average, 2.4 times more likely to have an eviction filed against them than white renters.^x

BLACK RENTERS IN MASSACHUSETTS HAD EVICTIONS FILED AGAINST THEM AT 2.4X THE RATE OF WHITE RENTERS.

[Per 10,000 renters]



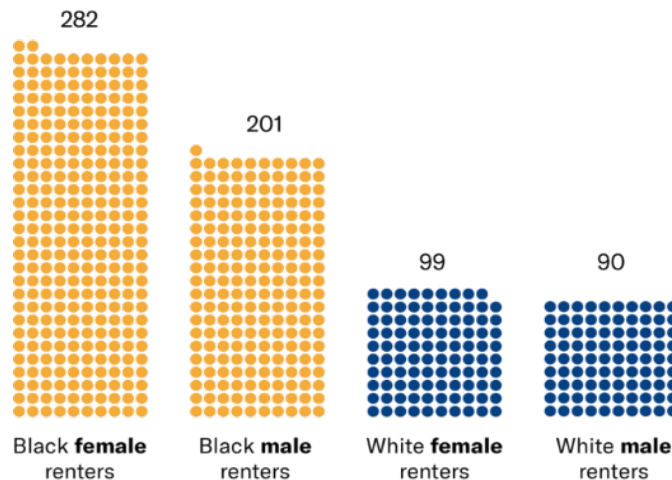
Black women, in particular, face the greatest risk of having an eviction case filed against them. Nearly 500 in every 10,000 Black female renters in Massachusetts have had an eviction filed

against them, as compared to under 420 Black males and 200 white women.^{xi} Women of color are especially vulnerable to eviction for many reasons, including staggering pay disparities and wealth gaps.^{xii} Moreover, racial discrimination compounds other forms of discrimination, such as discrimination against families with children and domestic violence survivors, that disproportionately impact women. As a result, eviction record screening policies often exacerbate and reproduce conditions of economic insecurity for low-income women of color.

The ACLU’s Data Analytics team also found that Black women were more likely to have a prior eviction filing that ultimately resulted in dismissal.^{xiii} In Massachusetts, nearly 300 in 10,000 Black women had evictions filed against them that were dismissed as compared to less than 100 in 10,000 white renters.^{xiv} In other words, Black women are more likely to be denied housing due to prior eviction filings, even when they won.

BLACK WOMEN IN MASSACHUSETTS WERE MOST LIKELY TO HAVE EVICTIONS FILED AGAINST THEM THAT WERE LATER DISMISSED.

[Per 10,000 renters]



In light of these stark race and gender disparities, the ability to seal eviction records is critical to help level the playing field. Section 47 of the Affordable Homes Act represents an important first step toward advancing access to safe and stable housing for Massachusetts residents, and particularly for Black women and other tenants of color.

However, these provisions do not go far enough and will not have the significant positive impact they could with a few targeted amendments. Requiring every eligible tenant to petition for sealing on a case-by-case basis will be a particular hindrance. To ensure that this legislation succeeds in removing unjust barriers to housing for a large class of low-income Massachusetts residents, we urge members of the Committee to further strengthen Section 47 of the Affordable Homes Act in the following ways:

- **Automatic Sealing of Dismissals, No-Fault Evictions, and Judgments in Favor of Tenants.** The bill should ensure that eviction cases resulting in dismissal, eviction cases resulting in judgments in favor of tenants, and no-fault eviction cases be automatically sealed by the court, rather than through a petition process that requires additional resources and steps for the court and all involved parties. This critical measure would prevent tenants from being indefinitely shut out from future housing opportunities due to prior eviction cases that were ultimately dismissed, where the tenant was not at fault, or where the tenant won.
- **Sealing Process for Non-Payment Cases Where Tenants Pay Judgment.** The bill should ensure that in non-payment eviction cases, tenants can seal records after 14 days of paying a judgment and after four years if they were unable to pay due to economic hardship or other good cause, as set forth in the 2023 HOMES Act (S.596 and H.1690). Doing so would eliminate unjust barriers to housing opportunities for tenants who have experienced a change in financial circumstances or satisfied their judgments.
- **Intervening Evictions Must Be Fault Evictions to Prevent Sealing.** The bill should ensure that in a fault eviction (which may be sealed after seven years), an intervening eviction may prevent sealing only if it is a fault eviction, rather than another type of eviction case (such as a no-fault eviction).
- **Clarification of the Court's Discretion.** The bill should clarify that the court has discretion to consider disability and domestic violence in fault eviction cases and to adjust the sealing process accordingly.

We further urge the Committee to establish an Access to Counsel program for low-income and vulnerable tenants and owner-occupants of 1-3 family homes in eviction cases.

The Affordable Homes Act is designed to be bold and forward-looking. As such, we urge you to incorporate another important reform to keep people in housing by avoiding eviction in the first place. Guaranteeing access to counsel is a proven way to keep a roof over people's heads.

Given the ongoing effects of the COVID-19 pandemic, rising inflation, and stagnant wages, the Commonwealth is facing an unprecedented housing crisis that has jeopardized housing security and stability for thousands of Massachusetts residents. According to the U.S. Census Bureau's Household Pulse Surveys, more than 174,105 Massachusetts renters are currently behind on rent by one month or more.^{xv} Close to half of those surveyed responded that they are very or somewhat likely to be leaving their housing in the next two months due to eviction.^{xvi} Evictions frequently lead to displacement from home and community, decreased physical and mental health, instability in employment and education, and increased likelihood that children will be placed in foster or other out-of-home care.^{xvii} Eviction also commonly leads to homelessness, which brings with it an increased risk of arrest and incarceration.^{xviii} Moreover, as discussed above, eviction records affect a tenant's ability to rent for years, which is especially troubling given the dearth of accessible rental assistance programs and affordable housing.^{xix}

Eviction court proceedings are unfair and imbalanced, thereby exacerbating the threat faced by Massachusetts renters. In courts, the dynamics and law skew in favor of landlords: In Massachusetts, landlords have counsel in 90% of non-payment eviction cases, whereas tenants are represented only 2.5% of the time.^{xx} As a result, the vast majority of tenants facing eviction do not have a lawyer assisting them.^{xxi} Many tenants without counsel are confused and intimidated by the legal system, while others lack the ability to participate entirely due to employment, lack of childcare, health issues, or lack of reliable transportation.^{xxii} As a result, tenants default at high rates.^{xxiii} Many landlords count on this imbalance and file meritless and even unlawful eviction cases with impunity.^{xxiv} Any defenses, objections, and counterclaims available to a tenant are virtually impossible to prove without a lawyer.^{xxv} And while some have found recourse in legal aid programs, legal aid programs have limited funding and often lack the resources and support to provide much more than triage services, and only for a small segment of those in need.

A right to counsel for tenants in eviction proceedings has been enacted in the states of Washington, Connecticut, Maryland, and Minnesota, and in at least eighteen local jurisdictions to date: New York City, San Francisco, Newark, Cleveland, Philadelphia, Baltimore, Boulder, Seattle, Louisville, Denver, Toledo, Minneapolis, Kansas City, New Orleans, Detroit, Westchester County, Jersey City, and St. Louis.^{xxvi} Several other states and cities have proposed legislation establishing access to counsel programs.^{xxvii} Critically, existing data has demonstrated the tremendous success of these programs for tenants: An analysis of the impact of New York City's right to counsel legislation shows that 84% of represented tenants are remaining in their homes.^{xxviii} In San Francisco, 59% of represented tenants stayed in their homes.^{xxix} Of the remaining 30% who did not remain in their homes, 70% received a favorable settlement.^{xxx} In Cleveland, 93% of tenants avoided an eviction judgment or an involuntary move.^{xxxi} And in Minnesota, tenants with legal representation through Hennepin County's Housing Court Project won or settled their cases 96% of the time, and nearly 80% were able to leave court without an eviction record.^{xxxii}

We need meaningful action to prevent unfair evictions. We urge the Committee to add provisions establishing an Access to Counsel program in the Affordable Homes Act.

ⁱ Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records*, Clearinghouse Community (Aug. 2017), <https://hls.harvard.edu/bibliography/combating-tenant-blacklisting-based-on-housing-court-records-a-survey-of-approaches/>.

ⁱⁱ 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>.

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

^{iv} *Id.*

^v Park, *supra* note ii.

^{vi} Massachusetts Law Reform Institute, *supra* note iii.

^{vii} 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-3-1-12.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>.

^{viii} 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.

^{ix} Sophie Beiers et al., *Clearing the Record: How the Massachusetts HOMES Act Will Advance Housing for Women of Color*, ACLU.org (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

^x *Id.*

^{xi} *Id.*

^{xii} *Id.*

^{xiii} *Id.*

^{xiv} *Id.*

^{xv} *Week 63 Household Pulse Survey: October 18-October 30*, U.S. Census Bureau, (Nov. 8, 2023), <https://www.census.gov/data/tables/2023/demo/hhp/hhp63.html> (Housing Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics).

^{xvi} *Id.*

^{xvii} See, e.g., *No Eviction Without Representation*, American Civil Liberties Union (May 11, 2022), <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>; Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship And Health*, 94 Soc. Forces, no.1, 295 (2015); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Problems, no. 1, 46 (2016); Lisa Berg & Lars Brännström, *Evicted Children And Subsequent Placement In Out-Of-Home Care: A Cohort Study*, PLoS One 13(4): e0195295 (2018); *Costs of COVID-19 Evictions*, National Low Income Housing Coalition (Nov. 19, 2020), <https://nlihc.org/sites/default/files/costs-covid19-evictions.pdf>.

^{xviii} See *Protect Tenants, Prevent Homelessness*, National Law Center on Homelessness & Poverty, 16-19 (2018) <https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>, for descriptions of studies and reports analyzing evictions as a direct and indirect cause of homelessness; Tara Cookson, Margaret Diddams, Xochitl Maykovich, Edmund Witter *Losing Home: The Human Cost of Eviction* (2018), 59-63 https://www.kcba.org/Portals/0/pbs/pdf/HJP_LosingHome_%202018.pdf, for descriptions of how evictions impact tenants locally.

^{xix} *Evicted for Life: How Eviction Court Records Are Creating a New Barrier to Housing*, Massachusetts Law Reform Institute (June 12, 2019), https://www.passthehomesact.org/uploads/2/7/0/4/27042339/evicted_for_life_mlri.pdf; see also Annette Duke & Andrea Park, *Court Database Shouldn't Be Landlord Screening Tool: Misleading Eviction Records Hinder Those Seeking Housing*, Commonwealth Magazine: Nonprofit Journal of Politics, Ideas, and Civic Life, Opinion (July 18, 2019), <https://commonwealthmagazine.org/opinion/court-database-shouldnt-be-landlord-screening-tool/>; *Salt in the Wound: How Eviction Records and Back Rent Haunt Tenant Screening Reports and Credit Scores*, National Consumer Law Center (August 2020), https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Salt_in_the_Wound.pdf; Adam Porton, Ashley Gromis & Matthew Desmond, *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, Housing Policy Debate (July 28, 2020), <https://doi.org/10.1080/10511482.2020.1748084>.

^{xx} Massachusetts Right to Counsel Coalition, *Enact S.864 and H.1731: An Act promoting access to counsel and housing stability in Massachusetts*, Oct. 3, 2023, [Access to Counsel Bills Co-Sponsor Fact Sheet 10-3-23.docx](https://www.massrtc.org/Access-to-Counsel-Bills-Co-Sponsor-Fact-Sheet-10-3-23.docx) ([massrtc.org](https://www.massrtc.org)).

^{xxi} *Id.*

^{xxii} ACLU & National Coalition for a Civil Right to Counsel (NCCRC), *No Eviction Without Representation* (2022), <https://www.aclu.org/publications/no-eviction-without-representation>.

^{xxiii} *Id.*

^{xxiv} *2019 Annual Report*, Office of Civil Justice, New York City Human Resources Administration (2019) (In New York City, after the right to counsel was implemented, tenant advocates found that filings began to decrease. This annual report documents a 30% decrease in eviction filings since 2013); see also Lillian Leung, Peter Hepburn &

Matthew Desmond, *Serial Eviction Filings: How Landlords Use the Courts to Collect Rent*, Eviction Lab (Sept. 15, 2020), <https://evictionlab.org/serial-eviction-filings/>.

^{xxv} ACLU & NCCRC, *supra* note xxii.

^{xxvi} NCCRC, *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, Nov. 2023, http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf.

^{xxvii} NCCRC, *Status Map*, <http://civilrighttocounsel.org/map>

^{xxviii} *Universal Access to Legal Services: A Report on Year Five of Implementation in New York City*, Office of Civil Justice, New York City Human Resources Administration (Winter 2022),

https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2022.pdf.

^{xxix} NCCRC, *All About the Right to Counsel for Tenants in San Francisco*, Feb. 3, 2022,

http://civilrighttocounsel.org/major_developments/1179.

^{xxx} *Id.*

^{xxxi} Right to Counsel: Annual Report to Cleveland City Council (Jan. 2021), at 2, <https://lasclev.org/wp-content/uploads/January-2021-report-on-initial-6-months-of-Right-to-Counsel-Cleveland-high-res.pdf>.

^{xxxii} Luke Grundman & Maria Kruger, *Legal Representation in Evictions – Comparative Study*, MinnPost (2018), <https://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf>.