



TO: Sen. James B. Eldridge and Rep. Michael S. Day, Chairs;
Sen. Lydia Edwards and Rep. Christine P. Barber, Vice Chairs;
and the members of the Joint Committee on the Judiciary

FROM: Gavi Wolfe, Legislative Director, ACLU of Massachusetts
Sandra Park, Senior Staff Attorney, ACLU Women’s Rights Project
Linda Morris, Staff Attorney, ACLU Women’s Rights Project

DATE: May 9, 2023

RE: **SUPPORT for Legislation Promoting Housing Opportunity and Mobility Through Eviction Sealing — H.1690 & S. 956 (“HOMES Act”)**

The American Civil Liberties Union of Massachusetts and the ACLU Women’s Rights Project¹ strongly support legislation promoting housing opportunity and mobility through eviction sealing, including House Bill 1690 and Senate Bill 956 (“HOMES Act”).² 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.

² The ACLU and ACLU of Massachusetts testified in support of the HOMES Act in 2019 as well as in 2021.

By providing eviction record sealing procedures, the HOMES Act 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, evictions have become a crisis. Before the COVID-19 pandemic, there were roughly 37,121 eviction cases filed in Massachusetts each year—an average of nearly 102 per day.³ Of those cases, about 42%—or 15,708 cases—resulted in formal eviction judgments.⁴ With the dire economic and health consequences of the COVID-19 pandemic, expiration of federal relief efforts, and rising inflation, increased protections for tenants facing eviction are needed now more than ever. 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.⁵ 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.⁶ The overreliance on eviction records also reinforces the disparate impact of eviction on African-American women, while perpetuating social and economic inequities for communities of color.⁷

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.”⁸ 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

³ 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>.

⁴ *Id.*

⁵ 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.

⁶ 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).

⁷ See Caramello & Mahlberg, *supra* note 5.

⁸ *Id.*

often inaccurate and outdated, and fail to provide the full context or final outcome of any given eviction case.⁹ As a result, tenants with prior eviction records are indefinitely shut out of housing 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.¹⁰ 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.

While the unrestricted availability of eviction records online has continuously posed a serious challenge to tenants, the expiration of the federal moratorium on evictions and other forms of assistance in response to the COVID-19 pandemic virtually guarantees that unless concrete action is taken, housing insecurity will be yet another inequity and life-long consequence caused by the COVID-19 pandemic. Sealing prior eviction records is a minor, yet key step in addressing the disparate impact of COVID-19 on low-income families.

The HOMES Act is an important step toward removing barriers to safe and stable housing for all Massachusetts residents, but particularly for low-income women 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. 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.”¹¹ In light of 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.¹² As sociologist and

⁹ 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.

¹⁰ *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>.

¹¹ 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/OddCq1bLrV3JQhaFTzYnGP/story.html>.

¹² 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.

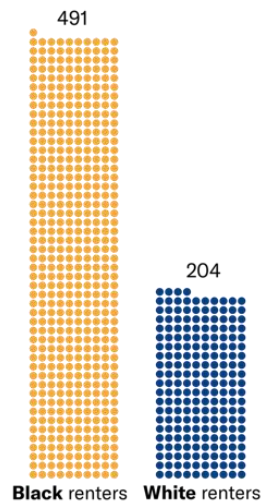
renowned scholar Matthew Desmond has observed, “[E]victions . . . aren’t just a condition of poverty; they’re a cause, too.”¹³

The ACLU’s data analytics team analyzed Massachusetts eviction data from 2012 to 2016, provided by the Eviction Lab, to better understand the disparate rate and impact of eviction across racial and gender lines.¹⁴ The results were clear: Black renters, and women in particular, are most harmed by the current system.

Black renters are, on average, 2.4 times more likely to have an eviction filed against them than white renters.¹⁵

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

[Per 10,000 renters]¹⁶



Additionally, Black women 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 in every 10,000 Black males, and 200 white women. Women of color are especially vulnerable to eviction for many reasons, including staggering pay disparities and wealth gaps.¹⁷ 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 and tenant-screening

¹³ 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>.

¹⁴ 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/>.

¹⁵ *Id.*

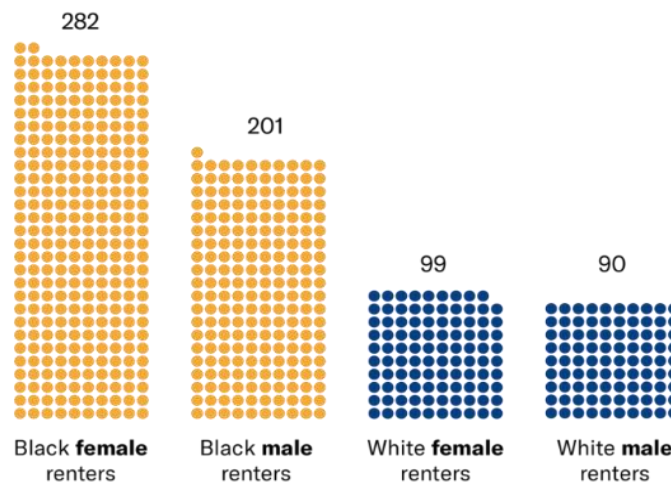
¹⁶ *Id.*

¹⁷ *Id.*

policies often exacerbate and reproduce conditions of economic insecurity for low-income women of color.

Our Data Analytics team also found that Black women were more likely to have a prior eviction filing that ultimately resulted in dismissal. 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. 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]¹⁸



The HOMES Act provides an important step forward to addressing housing barriers faced by Massachusetts residents due to prior eviction records.

The HOMES Act helps overcome some of the unjust barriers to housing caused by eviction records. First, the HOMES Act allows tenants to seek the sealing of their records under certain circumstances: 1) after the conclusion of the case, if they faced no-fault eviction; 2) within 14 days of satisfying a judgment or agreement in cases involving non-payment; 3) after 4 years if they faced an eviction based on non-payment, if another nonpayment case has not been filed against them during the preceding 4 years; and 4) after 7 years if they faced fault-based eviction, so long as another fault eviction case was not filed against them. As a result, the HOMES Act provides tenants with a mechanism to ensure that they will not suffer from a permanent black mark against their record, and that tenants will be able to seek relief in warranted circumstances. Moreover, the HOMES Act prohibits consumer reporting agencies from disclosing the existence of a sealed record or using sealed information to determine

¹⁸ *Id.*

a score or recommendation in a consumer report. Lastly, it requires housing and credit applications to notify applicants that they may answer “no record” if their eviction records are sealed.

We note that these protections will remove some of the unjust barriers to housing caused by eviction records, but they do not address the full scale of the problem. We urge the legislature to strengthen these protections in future sessions, including by prohibiting housing providers from considering eviction filings that do not result in judgments when evaluating housing applicants.

The HOMES Act 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 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 public safety, scholarly, educational, journalistic, or governmental purposes only.” 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.”

We note that this legislation adds “public safety” as a basis for disclosure, a phrase that was not included in earlier versions of the HOMES Act. It is not clear what public safety needs would be advanced by disclosure that are not already covered by the allowance for dissemination for governmental purposes or to pursue a criminal investigation or prosecution. Our view is that the legislation would be stronger without it; if it is allowed to remain, it must be interpreted very narrowly in order to be consistent with the privacy interests recognized by the legislation.

The HOMES Act is a critical step in a larger, national movement. A number of states have passed laws that address the need to seal cases and prevent dissemination of records. In California, the cases are sealed upon filing and unsealed only if the landlord prevails.¹⁹ 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 In New York, it is unlawful for landlords to reject applicants based on past landlord-tenant housing actions.²¹ Oregon

¹⁹ Cal. Civ. Proc. Code § 1161.2.

²⁰ Wash. Rev. Code Ann. § 59.18.367.

²¹ N.Y. Real. Prop. Law § 227-f.

has greatly limited how landlords can consider prior housing court records when evaluating applicants, including prohibiting the consideration of cases that were dismissed or cases that resulted in judgments that are more than five years old or from claims that arose between April 2020 and March 2022.²² These efforts are part of a widespread recognition that governments must mobilize against the lasting and often insurmountable effects of eviction on housing access for marginalized communities. Now is the time for Massachusetts to pass the HOMES Act and stand with other states 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.

²² Or. St. § 90.303.