



May 9, 2023

Honorable Sen. James Eldridge
Senate Chair
Joint Committee on the Judiciary

Honorable Rep. Michael Day
House Chair
Joint Committee on the Judiciary

Re: Testimony in Support of *An Act promoting access to counsel and housing security in Massachusetts*, H.1731 (Rep. Dave Rogers and Rep. Michael Day)

Dear Rep. Day, Senator Eldridge, and members of the Committee:

The American Civil Liberties Union (ACLU) of Massachusetts and the national ACLU write to urge members of the Housing Committee to give a favorable report to **H.1731, *An Act promoting access to counsel and housing security in Massachusetts***. This legislation would provide for access to legal representation for low-income and vulnerable tenants and owner-occupants of 1-3 family homes in eviction cases. As you know, the Commonwealth is facing an unprecedented housing crisis that has already forced thousands of individuals to double up with friends or family; use emergency shelters; and live in their vehicles, tents, and makeshift shelters on streets. The effects of the COVID-19 pandemic and rising inflation have only exacerbated existing inequities. Millions of tenants across the country face the threat of eviction in the upcoming months. According to the U.S. Census Bureau's Household Pulse Surveys, more than 122,374 Massachusetts renters are currently behind on rent by one month or more.ⁱ Roughly 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.ⁱⁱ Securing right to counsel is key to fighting this looming crisis. We urge the Committee to take immediate action to protect vulnerable residents across the state by creating access to legal representation.

Evictions devastate lives and communities. Evictions have disastrous effects on the lives of tenants. A growing body of research, as well as anecdotal reports, show that evictions lead to displacement from home and community, decreased physical and mental well-being, instability in employment and education, increased likelihood that children will be placed in foster or other out-of-home care, and greater reliance on social service supports.ⁱⁱⁱ Eviction also commonly leads to homelessness,^{iv} which brings with it an increased risk of arrest and incarceration. Eviction records can affect a tenant's ability to rent for years, which is especially problematic given the well-documented dearth of accessible rental assistance programs and safe, affordable housing.^v

Eviction court proceedings are unfair and imbalanced. In courts, the dynamics and law skew in favor of landlords: nationally, 90% of landlords are represented by counsel, whereas fewer than 10% of tenants are. In Massachusetts, landlords have counsel in 78% of eviction cases, whereas tenants are represented only 9% of the time.^{vi} As a result, 9 out of 10 tenants facing eviction do not have a lawyer assisting them.^{vii} Many tenants without counsel are bewildered and intimidated by the system, while others lack the ability to participate due to employment, childcare, or transportation reasons. Consequently, tenants default at high rates. Landlords count on this imbalance and can file meritless eviction cases with impunity.^{viii} Beyond the imbalance of representation, evictions proceed quickly compared to other civil litigation. Any defenses that are available to a tenant are virtually impossible to prove without a lawyer. While some have found recourse in legal aid and legal services programs, legal aid has always been underfunded and the state's recent expansion of legal assistance is temporary. These programs have never had the resources and support to provide much more than triage services, and only for a small segment of those who need representation.

Evictions are a racial and gender justice issue. Evictions are not experienced equally by all. Without deliberate action, households of color, and particularly Black, female-led households, will be the ones to disproportionately weather this storm.^{ix} Black and Latinx households are more likely than white households to rent their homes,^x and they are consistently over-represented in households facing eviction.^{xi} According to Massachusetts eviction data from 2012 to 2016, provided by the Eviction Lab, Black renters, and Black 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, even though they make up only 11% of the renting adult population.^{xii} Nearly 500 in every 10,000 Black female renters in Massachusetts have had an eviction filed against them, as compared to under 200 in every 10,000 white women.^{xiii} Women of color are especially vulnerable to eviction for many reasons, including staggering pay disparities and wealth gaps.^{xiv} Moreover, racial discrimination compounds other forms of discrimination—such as discrimination against families with children and domestic violence survivors—that disproportionately impact women. During the pandemic, Black and Latinx households were hit significantly harder by COVID-19,^{xv} and in turn, Black and Latinx tenants were twice as likely as white tenants to report that they have little to no ability to make rent each month.^{xvi}

The harms of eviction also run deep — having an eviction on your record results in blacklisting, as many landlords will not even consider an applicant with a prior eviction filing, even if they won the case. Eviction records follow people for years, stigmatizing already marginalized groups and blocking them from housing opportunities.^{xvii}

Right to counsel – for all – works. A right to counsel for tenants in eviction proceedings has been enacted in the states of Washington, Connecticut and Maryland and in at least fifteen cities to date: New York City, San Francisco, Newark, Cleveland, Philadelphia, Baltimore, Boulder, Seattle, Minneapolis, Toledo, Kansas City, Denver, New Orleans, Detroit, and Louisville. Several other states and cities have proposed legislation for such counsel that is currently being considered.^{xviii} The latest analysis of the impact of New York City’s right to counsel legislation shows that 87% of represented tenants are remaining in their homes.^{xix} In San Francisco, of tenants receiving full representation, 59% stayed in their homes. Of the remaining 30% who did not remain in their homes, 70% received a favorable settlement.^{xx} In Denver, studies show that tenants with legal counsel are significantly more likely to remain in their homes than those who do not.^{xxi} And in Minnesota, tenants who were able to access full 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.^{xxii} We need meaningful action to prevent unfair evictions. We urge your Committee to report H.1731 out favorably to establish legal assistance to the residents of our state.

ⁱ *Week 56 Household Pulse Survey: March 29-April 10*, U.S. Census Bureau, (April 19, 2023), <https://www.census.gov/data/tables/2023/demo/hhp/hhp56.html> (Housing Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics).

ⁱⁱ *Id.*

ⁱⁱⁱ *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>.

^{iv} *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.

^v *Evicted for Life: How Eviction Court Records Are Creating a New Barrier to Housing*, Massachusetts Law Reform Institute (June 12, 2019), https://www.passtheshomesact.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>.

^{vi} Martin J. Walsh, *Tenants facing eviction need legal representation*, Commonwealth Mag. (Sept. 10, 2020), <https://commonwealthmagazine.org/courts/tenants-facing-eviction-need-legal-representation/>.

vii *Id.*

viii 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/>.

ix Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, Eviction Lab (Dec. 18, 2020), <https://evictionlab.org/demographics-of-eviction/>; Sophie Beiers, Sandra Park & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (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 Anthony Cilluffo, A.W. Geiger & Richard Fry, *More U.S. Households Are Renting Than At Any Point In 50 Years*, Pew Research Center Fact Tank (July 19, 2017), <https://www.pewresearch.org/fact-tank/2017/07/19/more-u-s-households-are-renting-than-at-any-point-in-50-years/>.

xi Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, Center for American Progress (Oct. 30, 2020), <https://cdn.americanprogress.org/content/uploads/2020/10/29133957/Renters-of-Color-2.pdf? ga=2.21547954.808660996.1606757696-581109097.1606757696>.

xii *Id.*

xiii 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/>.

xiv *Id.*

xv *See* Anna Bahney, *It's Getting Even Harder For Black And Latino Tenants To Pay The Rent*, CNN Business (June 5, 2020), <https://www.cnn.com/2020/06/05/success/black-and-latino-housing-gaps-coronavirus/index.html>; Sharon Cornelissen & Alexander Hermann, *A Triple Pandemic? The Economic Impacts Of Covid-19 Disproportionately Affect Black And Hispanic Households*, Joint Center for Housing Studies of Harvard University (July 7, 2020), <https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households>; Richard A. Oppel Jr. et al., *The Fullest Look Yet At The Racial Inequity of the Coronavirus*, N.Y. Times (July 5, 2020), <https://www.urban.org/urban-wire/new-data-suggest-covid-19-widening-housing-disparities-race-and-income>.

xvi Solomon Greene & Alanna McCargo, *New Data Suggest COVID-19 is Widening Housing Disparities by Race and Income*, Urban Institute Urban Wire: Housing and Housing Finance (Updated June 2, 2020), <https://www.urban.org/urban-wire/new-data-suggest-covid-19-widening-housing-disparities-race-and-income>.

xvii Megan Kimble, *The Blacklist: Screened out by automated background checks, tenants who face eviction can be denied housing for years to come*, Texas Observer (Dec. 9, 2020), <https://www.texasobserver.org/evictions-texas-housing/>.

xviii *Status Map*, National Coalition for a Civil Right to Counsel, <http://civilrighttocounsel.org/map>

xix *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.

xx *All About the Right to Counsel for Tenants in San Francisco*, National Coalition for a Civil Right to Counsel (Updated Feb. 3, 2022), http://civilrighttocounsel.org/major_developments/1179.

xxi Aubrey Hasvold & Jack Regenbogen, *Facing Eviction Alone: A Study of Evictions in Denver, 2014-2016*, Colorado Coalition for the Homeless and Colorado Center on Law and Policy (Dec. 14, 2017), https://cclponline.org/wp-content/uploads/2018/04/Facing-Eviction-Alone-2017-Report_Final-1.pdf.

xxii 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>.