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Joint Committee on the Judiciary
Sen. James Eldridge & Rep. Claire Cronin

SUPPORT H.3277
AN ACT TO SECURE CIVIL RIGHTS IN THE COURTS OF THE COMMONWEALTH

Chairwoman Cronin, Chairman Eldridge, and members of the Joint Committee on the Judiciary:

The ACLU of Massachusetts supports H.3277, which will give the Supreme Judicial Court the tools it needs to protect civil rights in Massachusetts.

Today, a federal law commonly known as "Section 1983" provides the most important private remedy when government actors violate individuals' civil rights. Landmark cases brought under Section 1983 have given meaning to the rights guaranteed by the Bill of Rights including *Tinker v. Des Moines* (cementing students' rights to free speech in public schools), *Griswold v. Connecticut* (protecting the right to contraception), and *Lawrence v. Texas* (protecting the right of gay people to form intimate relationships).

Because of recent federal court interpretations, however, Section 1983 has been substantially undermined as a means to hold state and local officials, law enforcement officials in particular, to account for violations of people's rights. And, as the current Administration appoints more conservative federal judges hostile to civil rights, we can expect further restrictions and limitations on section 1983 as a meaningful remedy.

As relief under Section 1983 continues to erode in the federal courts, states must step up to ensure that civil rights are protected. Unfortunately, the current Massachusetts Civil Rights Act (MCRA) is not a sufficient alternative. The MCRA is severely limited by an ill-fitting requirement that the violation of rights must include "threats, intimidation or coercion." While that standard may be appropriate when evaluating claims against private parties, to whom the MCRA also applies, it is an inappropriate standard for holding accountable government agents, who have the power to deprive people of rights through direct action. This high bar has led to absurd results, where the government has clearly and directly violated a person's constitutional rights, but cannot be held accountable under the MCRA. For instance, in 2008, Brockton police officers unlawfully rushed into a home, without a warrant or consent, and dragged a woman who was one week post-partum out of the house, causing her caesarean section incision to bleed. Despite a court's conclusion that the plaintiffs had properly asserted multiple violations of their constitutional rights, the MCRA claim was thrown out because the warrantless entry and excessive force were not preceded by threats.[1]

H.3277 will update the MCRA to ensure that civil rights can be vindicated in our state courts. The bill creates a state cause of action similar to Section 1983. Importantly, the bill limits the use of qualified

[1] *Barbosa v. Conlon*, 962 F.Supp.2d 316, 332 (D. Mass. 2013).

immunity, a loophole in section 1983 jurisprudence that has made it virtually impossible for government officials to be held responsible for wrongdoing. [2]

A statute that meaningfully protects civil rights in Massachusetts will reassure the public that government officials, and particularly law enforcement officers, are not above the law. We welcome the opportunity to be a resource to the Committee as you consider this important bill.

[2] *See, e.g., Gray v. Cummings*, 917 F.3d 1 (1st Cir. 2019) (holding that a law enforcement officer did not use excessive force in violation of the Fourth Amendment when he forced a mentally ill woman to the ground and tased her, and that even if he had violated her constitutional rights, the officer was shielded from liability by qualified immunity).