

September 22, 2023

Honorable Lydia Edwards
Senate Chair
Joint Committee on Housing

Honorable James Arciero
House Chair
Joint Committee on Housing

Re: Testimony in Support of *An Act promoting housing stability and Access to Counsel in Massachusetts, S. 864* (Sen. DiDomenico)

Dear Chairs and Members of the Joint Committee on Housing:

I join with members of the Campaign for Access to Counsel and Justice in Evictions, made up of diverse organizations including property owners, racial justice groups, municipal leaders, and public health members, to urge members of the Housing Committee to report **S. 864 (Sen. DiDomenico)**, *An Act promoting housing stability and homelessness prevention in Massachusetts*, out favorably.

S. 864 would provide for access to legal representation for low income and vulnerable **tenants** and **owner occupants** of 1-3 family homes, which is their sole dwelling, in eviction cases. As a Professor of Law and the Director of Clinical Programs at New England Law | Boston, I have witnessed the challenges facing those without counsel; I have also witnessed the impact that representation can have. As a member of the Steering Committee of the National Coalition for a Civil Right to Counsel, I have worked with people across the country to expand the civil right to counsel in evictions, family matters, and certain immigration cases. I have also served on the Boston Bar Association (BBA) Task Force on the Civil Right to Counsel, the BBA's Statewide Task Force to Expand Civil Legal Aid in Massachusetts, and for twelve years on the Massachusetts Access to Justice Commission, including six years on the Commission's Executive Committee.

For the following reasons, the legislation should be enacted:

We face an unprecedented and devastating eviction crisis.

Massachusetts was in need of a right to counsel program in eviction cases even before the pandemic hit the Commonwealth. Yet, the housing crisis that existed prior to March, 2020, is about to be greatly exacerbated with eviction filings exceeding what they were before the pandemic. No eviction moratorium is in place and the Housing Court and District Courts are working to "clear" their backlog of cases. The most vulnerable families, which will be disproportionately impacted, are families with children, people who speak a language other than English, and people of color. Those vulnerable residents cannot be allowed to face eviction without representation by counsel.

Despite the efforts of judges and other court personnel, the high number of tenants without lawyers creates a process that is fundamentally unfair.

While our courts promise equal justice for all, the most common housing case, whether in Housing Court or District Court, pits a represented landlord against an unrepresented tenant. The courts' statistics, as well as reports from the BBA Task Force on the Civil Right to Counsel and the BBA's Statewide Task Force to Expand Civil Legal Aid in Massachusetts, document the fact tenants are typically represented in less than 10% of the cases. In contrast, landlords often are represented by counsel. In FY2022, only 11.5% of tenants who faced eviction were represented by counsel, in contrast to landlords, who were represented by counsel in 86.6% of the proceedings.¹

A case pitting a represented party against an unrepresented one challenges the operation of our adversarial system of justice and is fundamentally unfair. In a survey of Massachusetts judges, over 60% of judges handling housing matters reported problems due to the lack of representation. The problems they reported included that the lack of representation slowed procedures, forced repeat appearances and filings, and caused an increase in court staff time in assisting unrepresented litigants.² **Sixty-one percent of the judges responding to the survey reported that the lack of representation “negatively impacts the court’s ability to ensure equal justice to unrepresented litigants.”**³ Access to counsel for indigent tenants would level the playing field and improve access to, and the administration of, justice.

Tenants with counsel receive dramatically better results than unrepresented tenants, as randomized control study from Quincy District Court demonstrated.

Reports from across the country reveal that represented tenants fare significantly better than unrepresented ones, with represented tenants keeping possession of their homes at least 3 times as often as unrepresented ones. In some places, represented tenants kept possession 6, 10 and even 19 times as often as unrepresented tenants depending on the setting.⁴

In Massachusetts, studies show that represented tenants achieved better outcomes, and therefore were less likely to become evicted and homeless, than unrepresented parties.⁵ The BBA Right to

¹ See, <http://www.massrtc.org/why.html>, citing statistics from the Trial Court.

² Statewide Task Force to Expand Civil Legal Aid in Massachusetts, *Investing in Justice: A Roadmap to Cost Effective Funding of Civil Legal Aid in Massachusetts*, 60-61 (Boston Bar Association 2014) (“*Investing in Justice*”), available at <http://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf>.

³ *Investing in Justice*, supra note 2, at 61.

⁴ Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 *FORDHAM URB. L. J.* 37, 46-51 (2010).

⁵ BOSTON BAR ASS'N, *GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS*, 9 (2008), available at http://www.bostonbar.org/prs/nr_0809/GideonsNewTrumpet.pdf (“GIDEON'S NEW TRUMPET”). A Northeastern study of cases in Cambridge District Court revealed that the Cambridge Housing Authority brought the highest number of cases and that most cases involved nonpayment of rent for total arrearages of less than \$1000. The authors concluded that “[t]enants with representation have a better chance of retaining possession of their housing.” *Id.*, 9; Jennifer Greenwood et al., *Tenancy at Risk: Leveling the Playing Field* 16 (May 2008) (unpublished report).

Counsel Task Force partnered with a Harvard Law School professor who set up a randomized control trial in Quincy District Court where attorneys from Greater Boston Legal Services represented some tenants but did not offer representation to others. In Quincy, two-thirds of the tenants who received full representation were able to stay in their homes, compared with one-third of those who received only limited representation. Those represented tenants who moved were better able to manage their exit on their own timetable and their own terms. Full representation therefore allowed more than two-thirds of the tenants in this pilot to avoid the destabilizing consequences of eviction, including potential homelessness.⁶

Far from draining the court's resources, the Quincy pilot project helped the court work more efficiently. The cases involved fewer court appearances, while the lawyers were able to work through the issues and settle the cases with less involvement from the court than would have occurred without representation. The pilot also offered representation to low income small property owners.⁷

Subsequent pilot studies in two more courts also reveal that represented tenants fare far better than unrepresented ones.

Due to the success of the initial round of pilot projects, the Attorney General's office funded a second round of pilot projects, affording representation to tenants in Worcester Housing Court and Framingham District Court, through lawyers from Community Legal Aid (CLA) and MetroWest Legal Services (MWLS). In both settings, the results from the lawyers were compared to baseline data developed from reviewing court files in periods where the projects were not operative. In Worcester Housing Court represented tenants kept possession over two and a half times as often as tenants in the baseline group. Similarly, represented tenants in Framingham District Court were able to stay in their homes twice as often as tenants in the baseline group. Even in cases where the landlord won a judgment of possession, represented tenants were often able to remain well-housed either because they were able to satisfy the landlords' demands and by agreement could remain in the homes, or because they were able to retain their housing subsidies for use elsewhere. The recent experience with the Massachusetts COVID Eviction Legal Help Project (CELHP) also confirms the importance of representation and legal assistance in preserving housing stability.

Preventing evictions prevents homelessness, not only avoiding trauma for the families, but saving money for the Commonwealth.

The human costs of eviction and homelessness are devastating and have been widely reported and documented elsewhere. Professor Matthew Desmond has demonstrated that families with children are disproportionately the targets of those evicted and that the consequences extend far beyond simply the dislocation of families, but cause increased health problems for parents,

⁶ Boston Bar Association Task Force on the Civil Right to Counsel, [The Importance of Representation in Eviction Cases and Homelessness Prevention: A Report on the BBA Civil Right to Counsel Housing Pilots](http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf) at 17 (March 2012) available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> .

⁷ *Id.*

typically mothers, and school-related and behavioral issues for children. Those human costs alone are sufficient reason to focus on effective homelessness prevention, such as providing representation to those facing eviction.

But the Statewide Task Force to Expand Legal Aid provides another reason: cost savings. The Task Force hired a consultant to analyze the cost savings that would flow from providing counsel to vulnerable tenants and concluded, based on information available in 2014, that every dollar invested in representation would have saved \$2.69 in costs to the state. The consultant recently updated those figures and confirmed that the savings would significantly outweigh the costs. The consultants attributed primary costs to those related to emergency shelters, the public health care system, the fact that when families become homeless, their children often enter the foster care system, and increased costs associated with police and policing activities.⁸ The report did not include other cost savings that were harder to quantify but that would be realized as well. These other potential cost savings included the lower education and earning potential achieved by homeless children, the worse health, mental health and educational outcomes for homeless children in comparison to those well-housed, and the likely increased spending by the Commonwealth involved in higher public assistance and higher crime rates. The BBA's updated Report from 2020 confirmed the extensive savings that would flow to the Commonwealth from full legal representation for low-income tenants "in shelter, health care and foster care costs associated with homelessness."⁹

Comparable studies from New York City found that a fully implemented right to counsel bill there would produce net savings of \$320 million, from decreases in shelter use, the preservation of affordable housing units, and avoiding other homelessness costs, including hospitals and law enforcement.¹⁰ A report from Philadelphia analyzing cost savings from providing legal representation to low-income tenants facing eviction found that with an annual investment of \$3.5 million, Philadelphia could provide legal assistance to all tenants unable to afford representation, avoiding \$45.2 million in costs to the city annually.¹¹

After seeing a dramatic reduction in evictions with increased access to lawyers for families facing eviction and foreclosure, New York City, in July, 2017, became the first jurisdiction to guarantee a right to counsel.

⁸ Matthew Desmond, *Evicted: Poverty and Profit in the American City*, Penguin Random House (2016).

⁹ *Investing in Fairness, Justice and Housing Stability: Assessing the Benefits of Full Legal Representation in Eviction Cases in Massachusetts*, Boston Bar Association, at 2 (June 2020), available at <https://bostonbar.org/docs/default-document-library/rtc-report-for-web-or-email.pdf>.

¹⁰ See, summary of study commissioned by the New York City Bar Association, available at <https://www.nycbar.org/media-listing/media/detail/new-study-finds-right-to-counsel-in-eviction-cases-would-save-money-for-nyc-1>. The full study, *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A* (March 16, 2016) is available at https://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf.

¹¹ *Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants*, Prepared for the Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force (November 2018), available at <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>

In July, 2017, New York City became the first jurisdiction to create a right to counsel in the area of evictions. As an interim step, New York City had provided significant funding to increase representation for those facing eviction. As a result of that funding, representation of tenants increased from 1% to 27%, and while evictions by city marshals during the same period dropped 24%.¹² In the program's first year of operation after its adoption in 2017, in Housing Court eviction cases resolved by the legal services providers, "84% of households represented in court by lawyers were able to remain in their homes..."¹³ Moreover, eviction filings declined more than five times faster in the areas in which the program was implemented than in other areas of the City.¹⁴

Other Jurisdictions are following New York City's lead.

Other jurisdictions are following New York City's lead. Three states so far, Washington State, Maryland and Connecticut, have adopted a right to counsel in evictions. Right to counsel bills are pending in four other states in addition to Massachusetts. Following New York City's lead, other cities have adopted or are moving forward on implementation a right to counsel in eviction cases in their jurisdictions: San Francisco (2018), Newark (2018), Cleveland (2019), Philadelphia (2019), Boulder (2020), Baltimore (2020), Seattle (2021), Louisville (2021), Denver (2021), Toledo,(2021), Minneapolis (2021), Kansas City (2021), New Orleans (2022), Detroit (2022), Jersey City (2023), St. Louis (2023), and Westchester County (2023).¹⁵ Massachusetts, a leader in access to justice issues, should do the same.

The Massachusetts Access to Counsel program is essential for the well-being of families in the Commonwealth, and a cost-effective, proven response to the impending crisis.

Two rounds of pilot projects in the Commonwealth are consistent with report after report from across the country. Represented families stand a better chance of navigating the court system, preserving the roof over their heads and avoiding homelessness. It is time to follow the lead of other states and cities and recognize that the proper response at this point is to establish statewide a right to counsel for financially eligible persons facing eviction and foreclosure. Money spent by the Commonwealth to provide representation would not only avert the tragic human costs involved in eviction and homelessness, but save the Commonwealth money. The sooner the right can be extended to the maximum number of families, the more quickly the devastating consequences to families, and the financial costs to the Commonwealth, can be ameliorated.

¹² New York City Office of Civil Justice, 2016 Annual Report at 1-2 (June 2016) available at https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

¹³ *Universal Access to Legal Services: A Report on Year One of Implementation in New York City*, prepared by the Office of Civil Justice, New York City Human Resources Administration at 2 (Fall 2018), available at <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>.

¹⁴ See, Oksana Mironova, *NYC Right to Counsel: first year results and potential for expansion*, (March 25, 2019), available at <https://www.cssny.org/news/entry/nyc-right-to-counsel>.

¹⁵ See, <http://www.massrtc.org/national.html>, http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf

The legislature should enact legislation tailored to the needs of Massachusetts residents and consistent with the principles articulated on the Campaign’s website. In this way, the legislation would promote housing stabilization and homelessness prevention, provide fairness in the legal system, foster community engagement and collaboration and include upstream, or pre-court, solutions. The Massachusetts Access to Counsel program should build upon and strengthen existing institutions, be funded with new money, and tied to other systemic housing solutions. Oversight and assessment of the program should be designed in a way to insure measurable outcomes, data collection, and public reporting.¹⁶

In this way, the legislation would provide crucial assistance to vulnerable residents of the Commonwealth, not only stabilizing their housing and averting homelessness, but preventing the trauma that results from the process and displacement, while saving the Commonwealth money. It is not surprising that the Massachusetts Senate’s *Reimagining the Future of Massachusetts Report* recently urged that “[t]o ensure a fairer process, Massachusetts should guarantee tenants a right to counsel.”¹⁷ The time to act is now.

Sincerely,
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¹⁶ The Massachusetts Right to Counsel Coalition’s principles that should guide the legislation are available at <http://www.massrtc.org/bills.html>.

¹⁷ *Reimagining the Future of Massachusetts Report*, MassSenate, at 18 (October 5, 2021), available at <https://malegislature.gov/Committees/Detail/S64/Documents>.