

August 17, 2021

Honorable Michael J. Rodrigues
Senate Chair
Joint Committee on Ways and Means

Honorable Aaron Michlewitz
House Chair
Joint Committee on Ways and Means

Honorable Daniel Hunt
House Chair
House Committee on Federal Stimulus and Census Oversight

In Support of American Rescue Plan Act Funding to Support *An Act promoting housing stability and homelessness prevention in Massachusetts*
S. 874 (Sen. Sal DiDomenico), H. 1436 (Rep. David Rogers and Rep. Michael Day)

Thank you for the opportunity to testify at the Joint Committee on Ways and Means hearing on July 27, 2021. On behalf of the Massachusetts Right to Counsel Coalition, a broad-based coalition of over 200 organizations including municipal leaders, large subsidized property owners, teachers, and health workers, **we urge members of the Committee to prioritize American Rescue Plan Act (ARPA) funds to invest in the right to counsel with three years of funding in the amount of \$78 million (\$26 million/year).**¹ Funding in the amount of \$26 million/year was recommended in a detailed analysis issued by the Boston Bar Association in June 2020.²

Across the country, states and localities are allocating ARPA funds for access to counsel and eviction prevention. We have a critical opportunity now, through ARPA funding, to launch a right to counsel and provide very low-income and vulnerable tenants and owner-occupants with legal help that can prevent them from the trauma of losing their housing and becoming homeless.

A Right to Counsel is Consistent with a Growing National Response to Housing Stability

By adopting a right to counsel, Massachusetts would take a crucial step that is consistent with a growing national trend. In June, Connecticut passed a statewide right to counsel program for eviction cases and **allocated \$20 million from ARPA funding over the next two years to launch the right to counsel program** while they find a permanent source of funding. In May, Maryland passed the right to counsel and is considering whether to fund the program through ARPA. In April, Washington passed a statewide right to counsel bill. Other states and municipalities across the country are using ARPA and other federal funds to launch and implement right to counsel or eviction diversion programs.³ Milwaukee and Louisville plan to

¹ State and local government recipients can use ARPA funds to cover costs incurred by December 31, 2024. Funds “will remain available” through December 31, 2026.

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

³ National Coalition for a Civil Right to Counsel, “Legal Services Use of Fed. Funds for Tenant Rep/Right to Counsel” (August 5, 2021), available at http://civilrighttocounsel.org/major_developments/146. The following states and municipalities have used federal funding for a right to counsel or universal representation: Connecticut (\$20 million over 2 years from ARPA), Milwaukee County (\$900,000 in 2021, \$1.8 million in 2022 from ARPA), Baltimore (\$2.5 million from CARES), and Louisville (\$400,000 from ERAP). The following states and

use federal funds to kick-start their right to counsel programs. Newark, Seattle, Boulder, and a steadily growing number of other cities have also passed right to counsel legislation.

The Inequity of Representation and the Trauma of Evictions

In Fiscal Year 2020, only 8.5% of tenants in Massachusetts had legal representation in eviction cases, whereas 81% of landlords had a lawyer, meaning that **nine out of ten tenants go to court without a lawyer**.⁴ This inequity has persisted for years and is exacerbated by the housing crisis in Massachusetts.⁵

It is frightening to receive an eviction notice and daunting to represent yourself in court, especially where the other side has a lawyer and you do not. The eviction process is complicated, and tenants, for the most part, are unaware of available legal defenses and options that they may have to preserve their tenancy or negotiate a fair settlement.⁶ The process moves quickly with deadlines, which if missed, can result in losing your home, with no place to go.⁷

municipalities have used federal funds to expand tenant representation using ARPA funds: California (\$120 million over 3 years), Chicago (\$2.2 million), Portland, OR (\$1.7 million). Many states and municipalities used CARES Act funding to expand legal representation including: Chicago (\$1 million), Detroit (\$2.2 million), Los Angeles (\$3 million), Massachusetts (\$14.8 million; part of Eviction Diversion Initiative), Michigan (\$6.25 million), Pennsylvania (\$8 million on cases, outreach, necessary costs; some used for non-eviction cases), Pima County AZ (\$2 million), Rhode Island (\$1.3 million), San Mateo County (\$1 million), Texas (\$4.2 million as part of Eviction Diversion Program through TX Supreme Court). Many states and municipalities are also using ERAP funding for eviction prevention including: Cuyahoga County OH (\$1 million for all suburbs outside Cleveland), Michigan (\$7 million), Oklahoma (\$2.6 million), San Diego (\$15 million), Sonoma County CA (\$1.4 million), Texas (\$20 million), Virginia (\$2.5 million), Wyoming (\$1 million). The following states have used either ERAP or ARPA funding for eviction prevention: Denver (\$2.7 million), Virginia (\$2.5 million).

⁴ Commonwealth of Massachusetts, Housing Court Department, Fiscal Year 2020 Statistics, available at <https://www.mass.gov/doc/2020-housing-court-self-represented-represented-litigants-by-court-location/download>

⁵ As of August 11, 2021, 93% of tenants in eviction cases for non-payment of rent were pro se, whereas only 15% of landlords did not have a lawyer. Massachusetts Trial Court, Department of Research and Planning, All Residential Eviction Cases, Non-Payment of Rent, available at <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtSummaryProcess/SummaryProcess>. See also Housing Court, Fiscal Year Statistics, available at <https://www.mass.gov/info-details/trial-court-statistical-reports-and-dashboards#statistical-reports> (FY2019 - 91.3% tenants unrepresented; 78% of landlords represented; FY2018 - 92.4% tenants unrepresented, 70.2% of landlords represented; FY2017 - 93.0% tenants unrepresented, 66.9% of landlords represented; FY2016 - 93.1% tenants unrepresented, 63.6% of landlords represented; FY2015 - 92.7% tenants unrepresented, 61.3% of landlords represented; FY 2011 - 91.3% tenants unrepresented, 59.4% of plaintiffs represented).

The housing crisis in Massachusetts further drives this inequity. Where nearly 1 million or 38% of Massachusetts households are renters, metropolitan Boston has become the third most expensive rental market in the country causing one out of every four renters to be “extremely cost burdened,” paying over 50 percent of their income on housing. National Low Income Housing Coalition, “Out of Reach 2021: Massachusetts,” available at <https://reports.nlihc.org/oor/massachusetts>. For those without high incomes, paying rent is unsustainable.

⁶ *Adjarkey v. Central Division of the Housing Court Department*, 481 Mass. 830, 834-840 (2019) (discussing the complexity and speed of summary process cases and the disparities in legal representation between landlords and tenants in such cases).

⁷ As few as seven weeks might elapse between the time a tenant is served with a notice to quit and the time they are physically removed from their residence. *Adjarkey*, 481 Mass. at 837.

Alone in court, not knowing what to do, unrepresented tenants too often sign unfair and unsustainable agreements that can result in a judgment where they are forcibly moved out.⁸ Evictions completely disrupt people’s lives. They remove people from their support systems, cause illness and depression, uproot children from schools, and send families into shelters.⁹ Evictions result in tenants experiencing adverse mental and physical health, employment insecurity, and greater material hardship.¹⁰ Evictions disproportionately impact black and brown people, women, and children.¹¹ The COVID-19 pandemic has only exacerbated these inequities.

The Outcomes

In places where a right to counsel has been adopted, the outcomes are significant. Four years ago, New York City, which was the first place in the country to pass a right to counsel bill, reported that in 2020, **86% of represented tenants were able to remain in their homes.**¹² San Francisco passed a right to counsel bill three years ago, and in 2020, the San Francisco Mayor's Office reported that representation resulted in households in **67% of closed cases staying in their homes.**¹³

The right to counsel program would also result in significant monetary savings to the Commonwealth. In the Boston Bar Association report, “Investing in Fairness, Justice, and Housing Stability” (BBA Report), the BBA estimates that at an annual cost of \$26 million to the Commonwealth, the minimum annual savings from full representation in eviction cases is \$63 million.¹⁴ **The BBA report found that for every \$1 spent on full representation in eviction cases, the Commonwealth would save at least \$2.40 on direct costs associated with homelessness.**¹⁵ Cost savings include savings in emergency assistance, emergency shelter, health care, and foster care.¹⁶

Right to Counsel Bills

There are two right to counsel bills before the Legislature that the Coalition supports: **S. 874 and H. 1436.** Tenants and owner occupants whose incomes are below 80% of Area Median Income would be eligible for representation. Financial support for right to counsel would be appropriated

⁸ BBA Report, fn 10. A 2005 survey analyzing 559 Massachusetts summary processes reported that landlords were awarded possession in 76% of the cases, a theme consistently observed in earlier versions of the survey. See Massachusetts Law Reform Institute, “2005 Summary Process Survey – Number 4,” available at https://www.masslegalservices.org/system/files/library/2005_summary_process_survey.pdf. See also Massachusetts Access to Justice Commission, “Massachusetts Justice for All Strategic Plan,” December 22, 2017, p. 48 (“Under an [agreement for judgment], judgment typically enters for the landlord”), available at <https://massa2j.org/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf>

⁹ BBA Report at 18-20.

¹⁰ Id.

¹¹ Id. at 5, fn. 7.

¹² Office of Civil Justice, New York City Human Resources Administration, “Universal Access to Legal Services”, Fall 2020, 11.

¹³ Mayor London N. Breed, “Tenant Right to Counsel: Six-Month Implementation Update to Land Use Committee”, February 25, 2020, 31.

¹⁴ BBA Report, at 7.

¹⁵ Id.

¹⁶ Id. at 14-18.

by the General Court through a specific line item in the Judiciary budget, with the funding not interfering with existing funding for legal services or existing organizations currently providing housing stability assistance.

The Right to Counsel Program would be administered by the Massachusetts Legal Assistance Corporation (MLAC). MLAC would designate non-profit organizations to provide full legal representation through a public process. With a proven track record of having the capacity and infrastructure to manage and oversee funding for civil legal aid programs, MLAC is positioned to manage complex projects, collect a wide range of data, and track and report on outcomes.

The COVID Eviction Legal Help Project (CELHP) and the Governor's Eviction Diversion Initiative has laid some important groundwork towards the goal of equitable representation in evictions. As of the end of June, attorneys and paralegals provided legal assistance in over 3,000 cases, helping over 7,700 people, of which at least 2,600 were children. **That legal assistance has been transformative, with positive outcomes in 90% of the cases closed as of June - 70% of the cases resulted in the tenancy being preserved and 20% resulted in more time to find a place to live.**¹⁷ Despite this tremendous impact, thousands of tenants remain unrepresented.

The failure to adopt a right to counsel risks further destabilizing a large number of vulnerable households who will suffer displacement and trauma that can and must be avoided. The data is clear that representation promotes housing stability. Massachusetts needs to hold onto and expand the investment that the state and legal aid programs have made through CELHP, by hiring and training staff to provide legal help so that we can build the long-lasting and permanent capacity needed to provide representation. Passing and implementing a right to counsel program now, using American Rescue Plan funds, is a logical next step. We should not lose the gains we have made.

We are grateful for the leadership of Senator DiDomenico, Representative Rogers, and Representative Day, who are joined by 64 other Senators and Representatives who have co-sponsored S. 874 and H. 1436, and we urge your Committees to make an investment, as other states have done, and allocate ARPA funds to launch a strong right to counsel that makes sense for our Commonwealth.

We look forward to working with the Committee on these bills. Thank you for your consideration.

Sincerely,

Annette Duke, Senior Housing Attorney

Lia Marino, Housing Attorney

¹⁷Massachusetts Legal Assistance Corporation, 2021. CELHP Case Data through 6/30/2021.