October 16, 2017

Honorable William N. Brownsberger Honorable Clare D. CroninSenate Chair, Joint Committee on Judiciary House Chair, Joint Committee on JudiciaryState House, Room 504 State House, Room 136Boston, MA 02133 Boston, MA 02133

**Re: In Support of H. 3589, An Act establishing a right to counsel in certain eviction cases and S. 831 & H.968, An Act to promote homelessness prevention**

Dear Chairs and Members of the Joint Committee on Judiciary:

Thank you for the opportunity to present written testimony on H. 3589 and S. 831 & H.968, to supplement my oral testimony.

I am a Professor of Law and the Director of Clinical Programs at New England Law | Boston. I serve on the Executive Committee of the Massachusetts Access to Justice Commission and the Steering Committee of the National Coalition for a Civil Right to Counsel. I have served on the Boston Bar Association (BBA) Task Force on the Civil Right to Counsel and the BBA’s Statewide Task Force to Expand Civil Legal Aid in Massachusetts.

I have written law review articles in the areas of Access to Justice, Civil Right to Counsel and unrepresented litigants. I am familiar with many studies on housing courts, the challenges facing those without counsel, and the impact of representation.

I support H. 3589 and S. 831 & H.968, which establish a right to counsel for indigent persons in certain eviction cases, and urge adoption, for the following reasons:

**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.

A case pitting a represented party against an unrepresented challenges the operation of our adversary 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 lack of representation slows procedures, forces repeat appearances and filings, and causes an increase in court staff time in assisting unrepresented litigants.[[1]](#footnote-1) 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.”[[2]](#footnote-2)

**Tenants without counsel receive dramatically worse results than represented tenants**

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, and in some reports 6, 10 or even 19 times as often as unrepresented tenants depending on the setting.[[3]](#footnote-3) In Massachusetts, studies and reports show that represented tenants achieved better outcomes, and therefore were less likely to become evicted and homeless, than unrepresented parties.[[4]](#footnote-4) The Northeastern study, of cases in Cambridge District Court, revealed that it was the Cambridge Housing Authority, the landlord of last resort, that 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.”[[5]](#footnote-5)

**A randomized control study from Quincy District Court showed the significant impact of representation on case outcomes for tenants.**

The BBA Right to 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. The project tested the Targeted Representation Model, where tenants who fit certain criteria were eligible for representation. 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 lacked 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.

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.[[6]](#footnote-6)

**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.

**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 of Harvard 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, 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 consult to analyze the cost savings that would flow from providing counsel to vulnerable tenants and concluded that every dollar invested in representation saves $2.69 in costs to the state. 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.[[7]](#footnote-7) The report did not include other cost savings that were harder to quantify but that would be realized as well, such as 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. And comparable studies from New York initially found that every dollar invested saves $5 or 6 dollars for the state, with more recent studies putting the figure at $10 saved for every $1 spent.[[8]](#footnote-8)

**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.**

With the enactment of Intro 214-b in July, 2017, adopted by the New York City Council and signed into law by the Mayor of New York City, 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%.[[9]](#footnote-9)

**A statewide right to counsel along the lines envisioned in H. 3589 and S. 831 & H. 968 is long overdue, and essential for the well-being of families in the Commonwealth**

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 New York City’s lead 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.

Sincerely,

Russell Engler

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Professor of Law &

Director of Clinical Programs

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1. 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)(hereinafter “Investing in Justice”) , available here <http://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf>. [↑](#footnote-ref-1)
2. Investing in Justice, supra note 1, at 61. [↑](#footnote-ref-2)
3. 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). [↑](#footnote-ref-3)
4. 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 (hereinafter “Gideon’s New Trumpet”); Jennifer Greenwood et al., *Tenancy at Risk: Leveling the Playing Field* 16 (May 2008) (unpublished report)(hereinafter “Northeastern Study”). [↑](#footnote-ref-4)
5. Gideon’s New Trumpet, *supra*  note 3, at 9. [↑](#footnote-ref-5)
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 at 17 (March 2012) available at <http://www.bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf> . [↑](#footnote-ref-6)
7. Investing in Justice, supra note 1, at, 17-20. [↑](#footnote-ref-7)
8. Remarks of Chief Judge Jonathan Lippmann (Ret.), *Shifting the Landscape on Access to Justice,* pp. 14-15, Keynote Speaker, 2016 Hawaii Access to Justice Conference, June 24, 2016, available at <http://25shu2g61cw30sjn46t4k87by.wpengine.netdna-cdn.com/wp-content/uploads/2016/02/chief-judge-lippmans-remarks.pdf> . [↑](#footnote-ref-8)
9. 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> [↑](#footnote-ref-9)