



October 7, 2021

Rep. Michael S. Day, House Chair
Sen. James B. Eldridge, Senate Chair
Joint Committee on the Judiciary
24 Beacon St.
State House Room 136
Boston, MA 02133

RE: Testimony in Support of H.1792/S.996, *An Act to Create Access to Justice*

Dear Representative Day, Senator Eldridge, and Honorable Members of the Committee:

The Massachusetts Appleseed Center for Law & Justice (Massachusetts Appleseed) respectfully submits the following testimony in support of H.1792/S.996, *An Act to Create Access to Justice*, and strongly urges the Joint Committee on the Judiciary to give the bill a favorable report.

The mission of Massachusetts Appleseed is to promote equal rights and opportunities for Massachusetts residents by developing and advocating for systemic solutions to social justice issues. Appleseed centers across the country work both collectively and independently to build a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest. Central to this mission is identifying ways to make state administrative agencies in Massachusetts more inclusive, fair, and accessible for everyone in the Commonwealth – including the nearly 1 in 10 Massachusetts residents that speak a primary language other than English.

As part of this work, in 2018 Massachusetts Appleseed began examining the extent to which Massachusetts' administrative state agencies accommodated limited English proficient (LEP) individuals who require these agencies' services. Following our initial research, we identified the Massachusetts Department of Children and Families (DCF) as an agency whose provision of language access services for limited English proficient families necessitated further review, given the significant consequences of child removal that may come with DCF involvement. This review led to our most recent report *Families Torn Apart: Language-Based Discrimination at the Massachusetts Department of Children and Families*.¹ Our report found that 1) an interpreter is present in only 25% of the LEP home visits DCF conducts, 2) LEP families regularly do not receive essential documents translated into their primary languages, and 3) LEP parents experience wait-times double those that English-speaking parents face when trying to attend the social services (such as therapy, substance use disorder meetings, or parenting classes) that are mandated by DCF.

Ultimately, our report found that DCF-involved LEP parents are unable to meaningfully comprehend or participate in the Department's process. As a result, LEP families face an increased likelihood of separation compared to their English-speaking counterparts.

These difficulties experienced by LEP families have arisen because the Department of Children and Families does not prioritize language access; in fact, language access services at DCF are continually

¹ <https://massappleseed.org/wp-content/uploads/2021/01/Families-Torn-Apart-Final.pdf>

placed on the backburner. Although DCF maintains an internal complaint procedure to address language access issues, a number of attorneys interviewed for our *Families Torn Apart* report, cited above, were wholly unaware that this process existed, as DCF does not publicize this opportunity to LEP clients or their attorneys. Furthermore, attorneys interviewed for our report who had in the past filed such complaints were met with little acknowledgment by the Department and limited change for their LEP clients' cases.² This process cannot effectively resolve the individual concerns of each LEP family and thus renders LEP families powerless to remedy the unacceptable treatment they received. Ultimately, because DCF fails to train its staff on the importance of providing language access to LEP families, external remedies are necessary to redress the disparate impact discrimination facing the LEP population.

DCF is not alone among state agencies in failing to provide “meaningful access” to LEP families; in fact, disparate impact discrimination occurs across many governmental agencies, programs, and departments in Massachusetts, including in our schools, in our transportation system, and when individuals are applying for public benefits such as welfare or unemployment. Due to the essential nature of these services and programs, it is therefore vital to make sure that the practices of these entities do not have a disparate impact on anyone because of their race, color, national origin, or any other protected characteristic.

While one solution to discrimination previously came from federal civil rights protections such as Title VI Section 601 of the Civil Rights Act of 1964, a 2001 Supreme Court decision, *Alexander v. Sandoval*, eliminated an individual's right to sue for disparate treatment received based on their race, color, gender, or national origin.³ The Court held that Section 601 of the Civil Rights Act of 1964 **prohibits intentional discrimination only**, which left private individuals without remedies when they cannot prove intentional discrimination, but experienced disparate impact discrimination committed by agencies receiving federal funds.

This bill fills the above gap in existing federal civil rights law by banning state agencies and other government entities in Massachusetts from engaging in methods, policies, or practices that have a harmful disparate impact on members of a legally protected class, and by creating a private civil right of action that empowers victims of disparate impact discrimination to take legal action in defense of their civil rights. This bill has wide-ranging civil rights implications in Massachusetts and provides a systemic remedy for our residents who are suffering due to the discriminatory practices of state agencies. *An Act to Create Access to Justice* would allow victims of all kinds of disparate impact discrimination – from language-based discrimination, to housing discrimination, to environmental discrimination – to raise their voices through the courts and create real change.

For all of these reasons, **Massachusetts Appleseed strongly urges you to issue a favorable report for H.1792/S.996, *An Act to Create Access to Justice***. Thank you for considering this testimony and please do not hesitate to contact me if you should have any questions or require additional information.

Respectfully submitted,



Deborah M. Silva,
Executive Director
Massachusetts Appleseed Center for Law & Justice

² Ibid., p.63

³ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001).