

## ACCESS TO JUSTICE COALITION LETTER OF SUPPORT

January 26, 2022

*Via Electronic Mail*

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**Subject: H.1792/S.996 – Joint Coalition Letter – Support**

Chair Eldridge, Chair Day, Vice Chair Lesser, Vice Chair Tyler, and Members of the Joint Committee on the Judiciary:

The 43 named organizations write in enthusiastic support for An Act to Create Access to Justice, H.1782/S.996 (“Access to Justice Bill”). We represent a broad coalition working to eradicate discrimination in the Commonwealth. The Access to Justice Bill has the potential to advance environmental justice, transportation justice, inclusionary land use practices, language access, equitable school discipline and special education practices, disability rights, and prisoners’ rights.

The bill, **H.1792/S.996**, is an opportunity for the Commonwealth to lead the nation in civil rights state law by providing victims of civil rights abuses a meaningful way to challenge unintentional discrimination at the state level. In the 2001 *Sandoval* case, the United States Supreme Court significantly undermined plaintiffs’ ability to do so at the federal level under Title VI of the Civil Rights Act of 1964. *Sandoval* held that there is no federal cause of action to enforce disparate impact regulations; there is only a federal cause of action to challenge intentional discrimination.<sup>1</sup> The unfortunate result of *Sandoval* is that it has been and continues to be increasingly difficult for victims of civil rights abuses to vindicate their rights in federal court.

**H.1792/S.996** can rectify the result of *Sandoval* by creating an avenue for civil rights victims to challenge disparate impacts at the state level. The Access to Justice Bill eliminates the unwarranted burden of proving that governmental programs or activities with a disparate impact are motivated by discriminatory intent. The Access to Justice Bill ensures a means of recourse for individuals or groups who have been harmed as a result of a government program or policy that is neutral on its face but discriminates against or excludes people from participation based on characteristics such as race, sex, disability status, or any other protected characteristic. Massachusetts needs this bill to provide a remedy for individuals and groups harmed by the most

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<sup>1</sup> *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

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pervasive injustices in our society—those stemming from actions that appear neutral on their face but perpetuate or result in disparate impacts when applied.

The Access to Justice Bill is intended to fill a gap between the complaint process for discriminatory actions under the exclusive jurisdiction of the Massachusetts Commission Against Discrimination and other discriminatory actions where the complainant should not have to prove that the discriminatory act was intentional. The gap involves issues of environmental injustices, public transit delays, exclusionary land use practices, lack of language access services, the school to prison pipeline, lack of sufficient special education services, and inadequate prison conditions for certain populations. The Access to Justice Bill would provide access to state court for residents alleging the disproportionate siting of polluting facilities or dangerous energy infrastructure in communities of color and low-income communities and zoning that prevents affordable multifamily housing. Providing opportunities to challenge policies with discriminatory effects in state courts will be especially critical in the event there is a federal administration hostile to civil rights.

The Access to Justice Bill would provide a remedy for people seeking language access, equitable transit operations, just criminal sentences, and dignified prison conditions. For example:

- The Massachusetts Department of Children and Families’ “failure to provide sufficient language access services places LEP [Limited English proficiency] families at increased risk of being unnecessarily torn apart.”<sup>2</sup>
- A local news team investigated student discipline at Massachusetts public schools and found that “students of color are suspended at much higher rates than their white peers.”<sup>3</sup>
- The Massachusetts Bay Transportation Authority (MBTA) itself had to look into why a higher percentage of its bus routes that serve largely minority communities perform subpar compared to bus routes that serve mostly white riders.<sup>4</sup>
- “Most of the tickets MBTA Transit Police issue for skipping fares are to people of color even though they account for a smaller percentage of subway riders.”<sup>5</sup>
- The Criminal Justice Policy Program (“Program”) at Harvard Law School found that, in Massachusetts, Black defendants are incarcerated at a rate of 7.9 times, and Latinx defendants are incarcerated 4.9 times the rate of white defendants.<sup>6</sup>

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<sup>2</sup> See, e.g., MASS. APPLESEED CTR. FOR LAW & JUST., *FAMILIES TORN APART* 24 (2021), <https://massappleseed.org/wp-content/uploads/2021/01/Families-Torn-Apart-Final.pdf>.

<sup>3</sup> Cheryl Fiandaca, *I-Team Investigation Finds Racial Disparity in Massachusetts School Discipline*, CBS BOS. (July 29, 2020), <https://boston.cbslocal.com/2020/07/29/racial-disparity-massachusetts-school-discipline-i-team-investigation/>; see also MASS. DEP’T OF EDUC., *2019-20 Student Discipline Data Report*, <https://profiles.doe.mass.edu/statereport/ssdr.aspx> (last updated Dec. 2, 2021) (reporting school discipline is disproportionately higher in students of color than white students in multiple school districts).

<sup>4</sup> Matt Stout, *Study: MBTA Service for Minority Bus Routes Subpar*, BOS. HERALD (Sept. 19, 2017), <https://www.bostonherald.com/2017/09/19/study-mbta-service-for-minority-bus-routes-subpar/>.

<sup>5</sup> Adam Vaccaro, *People of Color Cited More Often for Skipping Fares on MBTA*, BOS. GLOBE (Aug. 2, 2020), <https://www.bostonglobe.com/2020/08/02/metro/minority-riders-cited-more-often-skipping-fares-mbta/>.

<sup>6</sup> HARV. L. SCH., *RACIAL DISPARITIES IN THE MASSACHUSETTS CRIMINAL SYSTEM* 1 (2020), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

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- The Program also found that even after accounting for non-race and ethnicity factors, like the defendants' criminal history and demographics, initial charge severity, court jurisdiction, and neighborhood characteristics, Black and Latinx defendants receive longer sentences than White defendants.<sup>7</sup>

The Access to Justice Bill is needed to eliminate the unwarranted burden of proving that governmental programs or activities with a disparate impact are motivated by discriminatory intent. Even if the governmental practices noted above appear neutral without evidence of intentional discrimination, they still have devastating consequences for persons with protected characteristics, whom the current Massachusetts Civil Rights Act does not adequately serve. The existence of a disparity does not mean that the person or group alleging discrimination will win the case in court, but the Access to Justice Bill necessarily allows a case to proceed and shifts the burden to the defendant to argue against the claim. **H.1792/S.996** is imperative to the creation of a meaningful mechanism for individuals and groups seeking to assert their civil rights and address the all-too-many inequities that tarnish the integrity of governmental programs and activities in Massachusetts.

We respectfully urge you to favorably report **H.1792/S.996** out of the committee. Thank you for the opportunity to comment and for your leadership on addressing discrimination. You may contact the following people with questions: Staci Rubin, Conservation Law Foundation at (617) 850-1781, [srubin@clf.org](mailto:srubin@clf.org); Deborah Silva, Massachusetts Appleseed Center for Law and Justice at (617) 482-8686, [deb@massappleseed.org](mailto:deb@massappleseed.org); or Judith Liben, Massachusetts Law Reform Institute, at (617) 357-0700 ext. 327, [jliben@mlri.org](mailto:jliben@mlri.org).

Sincerely,

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<sup>7</sup> *Id.*

## **H.1792/S.996 – ACCESS TO JUSTICE COALITION – Support**

1. Alternatives for Community & Environment (ACE)
2. American Civil Liberties Union of Massachusetts
3. Asian Task Force Against Domestic Violence
4. Black and Brown in Belmont
5. Canton Residents for a Sustainable Equitable Future
6. Center for Public Representation
7. Citizens for Juvenile Justice
8. Citizens for Public Schools
9. City Life / Vida Urbana
10. Community Action Works Campaigns
11. Community Labor United
12. Conservation Law Foundation
13. Coalition for Social Justice
14. Clean Water Action
15. Disability Law Center
16. GLBTQ Legal Advocates and Defenders (GLAD)
17. Greater Boston Legal Services
18. GreenRoots
19. Healthlink
20. Jewish Alliance for Law and Social Action
21. Jewish Climate Action Network
22. Lawyers for Civil Rights
23. Massachusetts Advocates for Children
24. Massachusetts Appleseed Center for Law and Justice
25. Massachusetts Climate Action Network
26. Massachusetts Immigrant and Refugee Advocacy Coalition
27. Massachusetts Interfaith Power and Light
28. Massachusetts Law Reform Institute
29. Massachusetts Public Health Association
30. Mental Health Legal Advisors Committee
31. Mothers Out Front Massachusetts
32. Neighbor to Neighbor MA
33. Neighbors United for a Better East Boston (NUBE)
34. New Bedford Human Relations Commission
35. North American Indian Center of Boston
36. Northeast Justice Center
37. Prisoners Legal Services
38. Progressive Massachusetts
39. Temple Beth Shalom Tzedek Committee
40. Union of Concerned Scientists
41. Unitarian Universalist Mass Action
42. Veterans Legal Services
43. 350 Central Mass