



207 East Buffalo Street, Ste 325  
Milwaukee, WI 53202  
(414) 272-4032  
aclu-wi.org

Wisconsin

August 25, 2022

The Honorable Patience Roggensack, Chief Justice  
Attn: Deputy Clerk-Rules  
PO Box 1688  
Madison, WI 53701  
*via mail and email at clerk@wicourts.gov*

Re: Petition 22-03, In re Amendment to SCR 72.01(8), 72.01(9),  
and 72.01(10), Relating to Retention of Records in Eviction Cases

Dear Chief Justice Roggensack and Associate Justices of the Court:

The American Civil Liberties Union of Wisconsin submits this letter in support of the petition of Legal Action of Wisconsin, Inc. to amend the retention rules for eviction records to allow courts to purge those eviction cases that did not result in a money judgment owed to a landlord after one year, instead of 20 years as the current retention rules require. Resolving the petition requires this Court to balance the harm caused to tenants by those records with the public's interest in open court records.

This petition appropriately balances the interests. It guarantees public access to records for one year and then allows courts to purge only select records that unduly harm and prejudice rights of tenants. There is overwhelming evidence that eviction records are used to inappropriately deny rental opportunities and the disparate impact that has on tenants of color, especially Black women. For these reasons, the Court should grant the petition and amend the eviction records retention rules.

### **Interest of the ACLU of Wisconsin**

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan membership organization and the ACLU of Wisconsin is the Wisconsin affiliate of the national ACLU. The ACLU is dedicated to the defense and promotion of civil rights and liberties, along with governmental transparency and accountability. The ACLU recognizes the tension that can arise between individuals' need for privacy and the public's need for access to government records, and the ACLU has advocated for both the individual's interests in sealing and the public's interests in disclosure, depending on the circumstances.

As part of its public education and advocacy work, the ACLU relies on public records to gather information and ensure that the public is informed about the conduct and practices of public officials. This includes court records. For example, when South Carolina banned the automatic collection of court records, sometimes

known as “scraping” or “mining,” the ACLU of South Carolina, alongside the NAACP, sued because the public must be able to use noninvasive techniques to access public court information to understand, analyze, and challenge the role our courts play *in matters of public concern*.<sup>1</sup> In that case, the ACLU and NAACP were scraping eviction court records to identify tenants in need of services before eviction and identify systemic trends with evictions and court processes.<sup>2</sup> This type of systemic research is necessary to “hold powerful actors accountable.”<sup>3</sup>

The need for the public to gather information to allow for public oversight of the government is critical. However, it is not absolute, and reforms must strike a balance with the individuals’ expectation of privacy and the related need that their personal information not be used in ways that prejudice or discriminate against them. While the ACLU often relies on, and pushes for access to, public records, it also recognizes the personal and sensitive nature of certain records, which can be protected from disclosure or purged after a reasonable time. The need for public information must be balanced against the degree of invasiveness and harm of providing the information.

Accordingly, the ACLU has advocated for limited and reasonable eviction sealing laws, despite the reduced access to public records, precisely because of the invasive and harmful effect of those records on tenants’ ability to find safe and affordable housing in the future.<sup>4</sup>

### **Eviction Records in Wisconsin**

It is important to recognize how easy it is in Wisconsin for a prospective landlord to obtain the docket of a prior eviction case. Because the Wisconsin courts online

---

<sup>1</sup> ACLU of South Carolina, ACLU, and NAACP Represent SC NAACP in Lawsuit Challenging South Carolina Court System Ban on Automated Collection of Public Court Records, Mar. 30, 2022, <https://www.aclu.org/press-releases/aclu-south-carolina-aclu-and-naacp-represent-sc-naacp-lawsuit-challenging-south>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See Sophie Beiers, et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, Jan. 10, 2020, <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>; See also *Race and Gender Discrimination in Housing*, Policy Statement of ACLU of Iowa, [https://www.aclu-ia.org/sites/default/files/revise\\_housing.pdf](https://www.aclu-ia.org/sites/default/files/revise_housing.pdf); *No Eviction Without Representation*, ACLU Research Brief, May 2022, p.3 <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief> (advocating for tenants to have a right to counsel in eviction cases because, in part, when tenants are represented, they are more likely to get their eviction sealed).

dockets are freely accessible and user friendly, a landlord can quickly receive a listing of any eviction filings involving a prospective tenant and use that information to deny a rental.

The harm caused by easy access to eviction records stretching back 20 years far outweighs any marginal benefit, if any, that the records provide. Critically, the records are not reliable indicators of tenant performance and they perpetuate discrimination and segregation. On the other side of the balance, extended access to records from cases that do not result in a money judgment to the landlord typically provide only limited additional insight into government action. The ACLU therefore supports petition 22-03 to allow courts to purge eviction cases not resulting in a money judgment after one year.

*Eviction Records Do Not Tell the Whole Story*

First, eviction records do not reliably predict tenants' future performance under a rental agreement. Evictions are summary proceedings, and the records themselves are sparse. An eviction file often contains only court forms that describe the allegations in the form of checked boxes and one to two sentences. The files regularly lack any documents that describe the tenants' defenses and counter-claims since state law allows tenants to respond orally.<sup>5</sup> Judgments are often granted at the first court date, by a commissioner, without any transcript or recording of the hearing.<sup>6</sup> Whether before a judge or a commissioner, the hearings themselves are "informal[]" and the rules of evidence do not apply.<sup>7</sup>

There is no right to counsel for tenants anywhere in Wisconsin, which makes the outcome in evictions biased in favor of landlords. It is estimated that in eviction cases, 90 percent of landlords have attorneys but only ten percent of tenants do.<sup>8</sup> When tenants *are* represented, rates of eviction are significantly lower than in those cases where tenants have no representation.<sup>9</sup>

Furthermore, an old eviction record tells us little about an individual's current financial picture. Much can and will change in a tenant's life in one year, much less the 20 years under the current rule. Within one year of an eviction action, a person

---

<sup>5</sup> Wis. Stat. § 799.43.

<sup>6</sup> Wis. Stat. § 799.207(d).

<sup>7</sup> Wis. Stat. § 799.209(1), (2).

<sup>8</sup> Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, March 2015, <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

<sup>9</sup> *No Eviction Without Representation*, ACLU Research Brief, May 2022, <https://www.aclu.org/report/no-eviction-without-representation?redirect=evictionbrief>.

may find a job, graduate from school, leave an abusive relationship, receive financial assistance, or make some other meaningful change that gives them more financial and personal autonomy.

*Eviction Records Perpetuate Discrimination and Segregation*

Second, women and people of color, especially low-income Black women and their children, disproportionately face evictions. This is true even for those eviction actions that are dismissed.<sup>10</sup> In Massachusetts, for example, evictions were filed against 282 Black female renters out of 10,000, and then later dismissed, whereas the same was true for only 90 white male renters out of 10,000.<sup>11</sup> “In other words, Black women are more likely to be denied housing due to prior eviction filings, even when they won.”<sup>12</sup>

As described in detail in Legal Action of Wisconsin’s Supporting Memorandum, records of these evictions make it much more difficult for people to find housing, and that harm falls disproportionately on marginalized communities. Records of eviction judgments, and especially eviction filings that never result in a judgment, are regularly used to deny housing to families. Records of those eviction cases—84% to 90% of which never result in any judgment against the tenant<sup>13</sup>—therefore push people into less safe and less stable housing. That housing is inherently less integrated as a disproportionate amount of low-income people are people of color.

*The Eviction Records at Issue Do Little to Provide Government Oversight*

Third, access to these records is used primarily to limit housing opportunity, not to advance government oversight. The vast majority of plaintiffs are private parties and the disputes revolve around their private contracts. The records are used (and misused) mainly by landlords and tenant screening companies to evaluate tenants. Some researchers, such as those at Princeton’s Eviction Lab and Medical College of Wisconsin’s MKE-Evict, use this data for systemic research and analysis, but even those researchers acknowledge that the benefits of eviction sealing laws outweigh

---

<sup>10</sup> Sophie Beiers, et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, Jan. 10, 2020, <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Legal Action of Wisconsin Supporting Memorandum for Petition 22-03, In re Amendment to SCR 72.01(8), 72.01(9), and 72.01(10), Relating to Retention of Records in Eviction Cases, March 29, 2022.

the gaps in data they cause.<sup>14</sup> Moreover, researchers in Milwaukee pull the data immediately and automatically, and researchers at Princeton scrape data in a similar way.<sup>15</sup> Since this petition asks that records of select cases be eligible to be purged after one year, it would not affect current researchers' work. Additionally, publicly-funded housing (public or subsidized housing) agencies maintain and disclose their records as required under FOIA and Wisconsin's open records law.<sup>16</sup>

### Examples in Other States

Other states nationwide are also grappling with the long-term impacts of eviction records and trending toward limiting access to eviction records. Eight states and D.C. currently have some form of eviction-sealing law.<sup>17</sup> In 2021, 17 more states introduced over 30 more such laws. In 2022, Michigan, Arizona,<sup>18</sup> and Indiana<sup>19</sup>

---

<sup>14</sup> See Matthew Desmond and Maurice P. During, Letter in support of Rule Petition 22-03, Aug. 16, 2022; *Article: Eviction Data Can Keep Cities From "Designing Policy in the Dark,"* James Minton, Aug. 16, 2018, <https://evictionlab.org/updates/blog/how-housing-matters-article/> and Emily Peiffer, *Robust Eviction Data Can Keep Cities From "Designing Policy in the Dark,"* Aug. 15, 2018, <https://housingmatters.urban.org/feature/robust-eviction-data-can-keep-cities-designing-policy-dark> ("Data gaps are sometimes in states, like California, that seal records of eviction filings to protect renters. Researchers hope to strike a balance with states to allow access to these records and boost evidence around evictions while ensuring that sealed records remain secure so tenants keep their information private and so landlords can't use that information against potential renters.") and Eviction Lab and Emily A. Benfer, COVID-19 Housing Policy Scorecard Methodology, <https://evictionlab.org/covid-housing-scorecard-methods/> (noting that eviction sealing laws help tenants avoid the negative effects of an eviction).

<sup>15</sup> Medical College of Wisconsin, City of Milwaukee Evictions, <https://mke-evict.com/about>; *Eviction Lab, Methods FAQ, How did you collect the data?*, Eviction Lab, Princeton University, [www.evictionlab.org., https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf](https://evictionlab.org/docs/Eviction%20Lab%20Methodology%20Report.pdf).

<sup>16</sup> See 24 CFR Part 15; See also e.g. Housing Authority of the City of Milwaukee, Public Records Notice, <https://www.hacm.org/contact-us/public-records-requests>.

<sup>17</sup> Erica Rickard and Natasha Khwaja, *State Policymakers Are Working to Change How Courts Handle Eviction Cases*, Aug. 26, 2021, <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases#:~:text=Currently%2C%20seven%20states%E2%80%94California%2C,record%2Dsealing%20law%20in%20place.>; see also New Jersey: Governor Murphy Signs Sweeping Housing Eviction Prevention and Utility Assistance Bill, Aug. 4, 2021, <https://www.nj.gov/governor/news/news/562021/20210804b.shtml#:~:text=The%20eviction%20prevention%20bill%20will,%2C%20through%20December%2031%2C%202021.>; D.C. Bans Evictions Over Unpaid Rent of Less Than \$600, March 1, 2022, <https://dcist.com/story/22/03/01/dc-bans-evictions-over-unpaid-rent-under-600/>.

<sup>18</sup> Andrew Oxford, *Proposed Arizona Law Would Seal Records from Some Evictions*, April 7, 2022, <https://www.azpm.org/p/headlines/2022/4/7/208800-proposed-arizona-law-would-seal-records-from-some-evictions/>.



Wisconsin

207 East Buffalo Street, Ste 325  
Milwaukee, WI 53202  
(414) 272-4032  
aclu-wi.org

introduced bipartisan eviction sealing bills, and Indiana’s bill passed unanimously. Indeed, this issue is bipartisan, with 64 percent of voters supporting making it easier to seal and/or expunge eviction records.<sup>20</sup>

## Conclusion

We want to keep records public so that we can keep an eye on our government—not our neighbor. Eviction records demonstrably harm our already vulnerable and marginalized neighbors, perpetuating cycles of poverty, eviction, and racial segregation. Legal Action of Wisconsin’s proposal strikes the right balance between the need for open government and the individual’s needs for privacy and to be safe from discrimination in access to housing.

Sincerely,

Chris Donahoe  
Staff Attorney

---

<sup>19</sup> Ko Lyn Cheang, *Had an Eviction Filing Harm You? You Might Be Able to Expunge It from Your Record*, July 5, 2022, <https://www.indystar.com/story/news/local/marion-county/2022/07/05/indiana-evictions-new-law-helps-conceal-evictions-records/7786875001/>.

<sup>20</sup> Poll: Voters Support Protections from Eviction Records, *The Appeal*, Apr. 12, 2021, <https://theappeal.org/the-lab/polling-memos/voters-support-protections-from-eviction-records/>.