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President

Anthony D. Romero
Executive Director

To: Representative Kendra Johnson, Chair of the Delaware House
Housing & Community Affairs Committee

Cc: All Representatives

From: Sandra Park, Senior Staff Attorney

Re: ACLU statement in support of SS1 for SB101

The national American Civil Liberties Union (ACLU) joins the ACLU of Delaware to urge the passage of SS1 for SB 101, which would guarantee the right to legal counsel for tenants in evictions and other landlord-tenant actions. As the Delaware House is aware, Delaware is facing an unprecedented housing crisis that has already forced thousands of Delawareans to double up with friends or family; use emergency shelters; and live in their vehicles, tents, and makeshift shelters. Approximately 18,000 eviction cases are filed each year in Delaware with only 101,000 rental households. The COVID-19 pandemic has only exacerbated existing inequities, which, even pre-pandemic, have been worsened by gentrification, the wealth gap and a chronic shortage of housing for the working class and poor.ⁱ

With the end of the federal moratorium on evictions in sight, millions of tenants across the country face the threat of eviction in the upcoming months. Securing tenants' right to counsel is key to fighting this looming crisis. We urge the Delaware House to take immediate action to protect vulnerable tenants across the city by creating a right to counsel for tenants facing eviction in Delaware.

Evictions devastate lives and communities, and to an even greater degree during the pandemic. Evictions lead to displacement from home and community, loss of personal property, instability in employment and education, increased likelihood that children will be placed in foster or other out-of-home care, and greater reliance on social service supports.ⁱⁱ Eviction also commonly leads to homelessness,ⁱⁱⁱ which brings with it an increased risk of arrest and incarceration as well as significant mental and physical health issues. Families who are subjected to eviction filings additionally bear the scarlet "E" for years, leading to denials when they apply to new housing and restricting their access to higher opportunity communities.

Moreover, mass evictions are a racial and gender justice issue. The coming eviction cliff, as with the eviction crisis steadily growing prior to

the pandemic, will not be experienced equally by all. Without deliberate federal, state, and local action, households of color, and particularly Black, female-led households, will be the ones to weather this storm on their own.^{iv} For example, in 2016, women faced more than 55% of eviction filings in the state, and nearly 18% of cases were filed against Black women.^v

Eviction court proceedings historically have been unfair and imbalanced. In Delaware, 86% of landlords are represented by an attorney, agent, or business manager, while only 2% of tenants have representation.^{vi} Evictions proceed quickly compared to other civil litigation, and any defenses that are available to a tenant are virtually impossible to prove without a lawyer. Consequently, tenants default at high rates. Not only can this imbalance result in meritless eviction cases with impunity,^{vii} balancing the playing field can often result in faster and more efficient outcomes for landlords and tenants. For that reason, landlords spoke in favor of the bill upon its introduction in the Senate.^{viii}

Right to counsel also works. A right to counsel for tenants in eviction proceedings has been enacted in three states (Washington, Maryland, and Connecticut) and ten cities (New York City, San Francisco, Newark, Cleveland, Philadelphia, Boulder, Baltimore, Seattle, Louisville, and Denver). The latest analysis of the impact of New York City's right to counsel legislation shows that 86% of represented tenants are remaining in their homes.^{ix} In San Francisco, the filing rate decreased by 10% between 2018-2019, and of those receiving full representation, 67% stayed in their homes.^x

SS1 for SB 101 would help preserve tenants' housing and would level the playing field for tenants in eviction court. We need meaningful action to stop mass evictions during the pandemic and beyond. This bill would create a pre-eviction diversion program and protect against unnecessary evictions. People should have access to safe and stable housing. We urge the Delaware House to pass SB 101 and lead the nation in establishing a model law that can guide tenants protections across the nation, and help boost our economic recovery beyond the pandemic by ensuring robust housing protections.

ⁱ Conor Dougherty and Glenn Thrush, *The U.S. Averted One Housing Crisis, but Another Is in the Wings*, NEW YORK TIMES (updated June 17, 2021), <https://www.nytimes.com/2021/06/16/business/affordable-housing-crisis.html>.

ⁱⁱ See, e.g., Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship And Health*, 94 Soc. Forces, no.1, 295 (2015); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Problems, no. 1, 46 (2016); Lisa Berg & Lars Brännström, *Evicted Children And Subsequent Placement In Out-Of-Home Care: A Cohort Study*, PLoS One 13(4): e0195295 (2018); *Costs of COVID-19 Evictions*, National Low Income Housing Coalition (Nov. 19, 2020), <https://nlihc.org/sites/default/files/costs-covid19-evictions.pdf>.

ⁱⁱⁱ See *Protect Tenants, Prevent Homelessness*, National Law Center on Homelessness & Poverty, 16-19 (2018) <https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>, for descriptions of studies and reports analyzing evictions as a direct and indirect cause of homelessness; Tara Cookson, Margaret Diddams, Xochitl Maykovich, Edmund Witter *Losing Home: The Human Cost of Eviction* (2018), 59-63 https://www.kcba.org/Portals/0/pbs/pdf/HJP_LosingHome_%202018.pdf, for descriptions of how evictions impact tenants locally.

^{iv} Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, Eviction Lab (Dec. 18, 2020), <https://evictionlab.org/demographics-of-eviction/>; Sophie Beiers, Sandra Park & Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (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/>.

^v Analysis was done based on Eviction Lab data and is on file with the ACLU.

^{vi} *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, National Coalition for a Civil Right to Counsel (NCCRC), (Last modified 4/21/21).

^{vii} *2019 Annual Report*, Office of Civil Justice, New York City Human Resources Administration (2019) (In New York City, after the right to counsel was implemented, tenant advocates found that filings began to decrease. This annual report documents a 30% decrease in eviction filings since 2013); *see also* Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filings: How Landlords Use the Courts to Collect Rent*, Eviction Lab (Sept. 15, 2020), <https://evictionlab.org/serial-eviction-filings/>.

^{viii} *Delaware Right to Counsel for Eviction Defense (DRCED) Campaign Launch*, ACLU of Delaware (April 2021), <https://www.facebook.com/ACLUDelaware/videos/133930898753109/>.

^{ix} *Universal Access to Legal Services: A Report on Year Three of Implementation in New York City*, Office of Civil Justice, New York City Human Resources Administration (Fall 2020), https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2020.pdf.

^x *All About the Right to Counsel for Tenants in San Francisco*, National Coalition for a Civil Right to Counsel (Updated Aug. 27, 2020), http://civilrighttocounsel.org/major_developments/1179.