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TO: Sen. Cynthia Stone Creem and Rep. Eugene L. O’Flaherty, Co-Chairs,
and the members of the Joint Committee on the Judiciary

FROM: Nancy Ryan, immediate past President,
ACLU of Massachusetts Board of Directors
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DATE: September 17, 2009

RE: SUPPORT for: House Bill 1747 – An Act Relative to Housing Discrimination Against Victims of Domestic Violence, Rape, Sexual Assault and Stalking

The American Civil Liberties Union of Massachusetts and the national ACLU Women’s Rights Project¹ strongly support this legislation, which is needed to help prevent landlords from evicting or refusing to rent to those who have been victims of domestic violence, rape, sexual assault, or stalking and to allow survivors of domestic violence, rape, sexual assault, or stalking to find and keep safe and secure housing. By prohibiting housing providers from revictimizing individuals who have experienced these crimes, the legislation will effectively outlaw one form of sex discrimination against women, who make up the great majority of those who experience such violence. These bills will also help ensure the safety of women and their children who are threatened with domestic violence by eliminating one of the obstacles that deter women from calling the police.

The problem. Some landlords believe they can ensure safety on their property by prohibiting domestic violence survivors from living on the premises. Often such denials of

¹ The American Civil Liberties Union is a national, nonpartisan public interest organization of almost 600,000 members, dedicated to protecting the constitutional rights of individuals. Through its Women’s Rights Project, founded in 1972 by Ruth Bader Ginsburg, the ACLU has long been a leader in the legal battles to ensure women’s full equality. This commitment includes fighting for equal housing and employment opportunities for women and working to protect the rights of battered women. Moreover, in recent years, the ACLU Women’s Rights Project has taken a leading role at the local, state, and national levels in working to ensure safety and improve access to housing and employment opportunities for survivors of domestic violence and their children. Through these efforts, the ACLU has been at the forefront of efforts to establish that discrimination against domestic violence victims is a form of gender discrimination. More information about the ACLU’s work in this area can be found at www.aclu.org/fairhousingforwomen. The ACLU of Massachusetts is our state’s affiliate organization.

housing are based on so-called “zero tolerance” policies, requiring the eviction of everyone occupying an apartment if criminal activity occurs there, regardless of whether a person was a victim of violence or the perpetrator. On the basis of such policies, landlords may evict victims of domestic violence or deny applications for housing from women who have experienced domestic violence in the past. In other circumstances, landlords evict women who have experienced domestic violence from housing on the basis of gender stereotypes, such as the belief that battered women are necessarily to blame for the violence against them. When landlords retaliate against victims of violence in this way, it sends the pernicious message that individuals experiencing domestic violence or sexual assault must keep the abuse secret at the risk of losing their homes. Women who know that they and their children may become homeless if their landlords find out about the abuse are less likely to take the necessary steps to make themselves and their families safe, such as obtaining a protective order or seeking the assistance of the police, because these actions are likely to make the abuse public. By placing obstacles in the path of individuals seeking to end abusive relationships, landlords who threaten battered women with eviction thus render their properties *less* safe as such policies make it more likely the violence will continue.

Such policies also contribute to a homelessness epidemic for survivors of domestic violence and their children. Local and regional studies across the United States confirm that domestic violence is a primary cause of homelessness. A study of family homelessness in Massachusetts found that 92 percent of homeless women had experienced severe physical and/or sexual assault at some time in their lives and that one third of homeless women were current or recent victims of domestic violence.² Domestic violence was cited by mayors across the United States as one of the three main causes of homelessness for families with children in 2007.³ Between 22 and 50 percent of homeless women report that they are homeless as a direct result of domestic violence,⁴ and at least one study has found that women experiencing recent or ongoing domestic violence are far more likely to face eviction than other women.⁵ Domestic violence survivors are subjected to discrimination when they apply for housing simply because they have experienced violence.⁶ The risk of homelessness for domestic violence survivors is increased by

² See National Center on Family Homelessness, Factsheet, *Violence in the Lives of Homeless Women* (summarizing findings of six-year National Center on Family Homelessness study), at www.familyhomelessness.org.

³ U.S. Conference of Mayors, *Hunger and Homelessness Survey 12* (2007).

⁴ See generally ACLU Women’s Rights Project, “Domestic Violence and Homelessness” (2008) (collecting studies), at <http://www.aclu.org/womensrights/violence/33984res20080206.html>.

⁵ Richard M. Tolman et al., Michigan Program on Poverty and Social Welfare Policy, *Domestic Violence and Economic Well-Being of Current and Former Welfare Recipients* (2001).

⁶ Equal Rights Ctr., *No Vacancy: Housing Discrimination Against Survivors of Domestic Violence in the District of Columbia* (2008), at <http://www.equalrightscenter.org/publications/novacancy.php>; Nat’l Law Ctr. on Homelessness & Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country* (2007), at http://www.nlchp.org/view_report.cfm?id=218.

the fact that women living in rental housing experience such violence at three times the rate of women who own their homes.⁷

For these reasons, the American Bar Association has urged state and federal lawmakers to prohibit discrimination against victims of domestic violence. As the report accompanying the ABA's recommendation explained, "Until we stop asking women to choose between being beaten and being able to feed and shelter their children, we cannot expect to rid our society of domestic violence."⁸

The Commonwealth of Massachusetts should expressly prohibit this form of housing discrimination that further punishes those who are victims of a crime of violence.

How is this sex discrimination? Since most domestic violence and sexual assault victims are women, policies and practices that discriminate against victims of domestic violence or sexual assault harm women at a higher rate than men. This results in a "disparate impact" on women compared with men. Even if a landlord does not intend to discriminate against women, the landlord's actions are still harmful to women as a group.

Discrimination against victims of domestic violence or sexual assault also is often based on gender stereotypes about this sort of violence. Landlords may seek to evict a woman who has experienced domestic violence, for example, based on the stereotype that battered women must provoke, enjoy, or deserve the abuse and so are to blame for their abusers' actions, or that battered women are untrustworthy and cannot be taken at their word. Denying someone housing on the basis of gender stereotypes is a form of sex discrimination.

Landlords may also treat female victims of domestic violence or sexual assault differently from similarly situated men. For example, if a landlord evicts a woman because her abuser broke a window in her apartment but does not evict a male tenant whose apartment was similarly damaged in a break-in, this is also a form of sex discrimination.

How does this kind of discrimination interfere with other rights of women? The right to call the police for help when being threatened with harm is part of the right to petition the government that is protected by the 1st Amendment. If women are fearful of being evicted from their homes by a landlord who will evict the victim of violence as well as the perpetrator, the women will be reluctant to call the police. This, in turn, places these women at greater risk of harm and jeopardizes their safety and the safety of other family members. No one should be punished for exercising their constitutional right to call the police for help.

⁷ Carrie Marie Rennison & Sarah Welchans, Department of Justice, NCJ 178247, *Intimate Partner Violence* 4 (2000).

⁸ American Bar Association, Young Lawyers Division and Commission on Domestic Violence, Report to the House of Delegates (February 2003).

Why aren't existing anti-discrimination laws enough? State and federal laws currently prohibit sex discrimination in housing. In 2005, a federal court in Vermont ruled that when landlords discriminate against victims of domestic violence, they are engaging in unlawful sex discrimination in violation of the federal Fair Housing Act.⁹ This is an important step forward in providing protection under the law for women, but it is not enough. The Fair Housing Act does not expressly prohibit landlords from taking action against victims of domestic violence, and the Vermont federal court is the only federal court to have issued a ruling like this. The Massachusetts Commission Against Discrimination previously has held that a landlord violated state fair housing laws when he refused to rent to a woman after learning that she had obtained an order of protection, but few are aware of this decision.¹⁰ Other courts and judges may or may not agree that discrimination against a victim of domestic violence or sexual assault is a form of sex discrimination. Thus, in order to ensure that survivors of domestic violence or sexual assault do not lose their homes and are not denied housing on the basis of the violence against them, specific prohibitions on this sort of discrimination are necessary. The specific prohibition also ensures that male victims of domestic violence or sexual assault will not lose their housing on the basis of violence against them.

A specific law on this subject would be better for landlords as well as the tenants, by providing clear notice of what is prohibited. Landlords should not have to guess about what actions constitute unlawful discrimination and what do not.

In addition, Senate Bill No. 755 provides important additional protections for survivors of domestic violence and sexual assault. Most importantly, it allows a tenant experiencing domestic violence or sexual assault to break a lease early upon providing documentation demonstrating the violence. This provision makes it financially possible for a tenant to move to escape an abuser and

⁹ *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (2005). Quinn Bouley, the plaintiff in the case, lived with her husband and children in a small apartment building. When her husband brutally attacked her one night, she managed to call the police and flee the apartment. Her husband was arrested and never returned to their home. Immediately after the incident, Bouley's landlord sent her a letter of eviction. Bouley, assisted by Vermont Legal Aid and the ACLU Women's Rights Project, sued, claiming that the reason she was evicted was based on the landlord's sex discriminatory stereotypes about how a female victim should act. The court agreed that Bouley had a valid claim of sex discrimination, paving the way for a trial. Soon after the court ruling, the landlord agreed to settle the case.

The court's decision, that because women are most often the victims of domestic violence, the protection of the Fair Housing Act against sex discrimination applies, will help battered women everywhere take the steps they need to keep themselves and their families safe. Legal documents from *Bouley v. Young-Sabourin* are available online at www.aclu.org/WomensRights/WomensRightsList.cfm?ContentStyle=6&c-173.

¹⁰ *O'Neil v. Karahlais*, 13 MDLR 2004 ((Mass. Comm'n Against Discrimination Oct. 21, 1991).

thus is a crucial tool for survivors of domestic or sexual violence to protect themselves and their children from further violence. While many states explicitly permit such emergency moves, in Massachusetts current law provides no such protection.

Is this bill a reasonable solution to the housing problems that victims of domestic violence and sexual assault face? Recently enacted federal and state laws make clear that these measures are practical responses to the pressing needs of survivors of these forms of violence.

First, the federal Violence Against Women Act of 2005, which became effective 2006, contains similar protections against discrimination for those victims of domestic violence and stalking who live in public housing or housing subsidized through federal Section 8 programs. Thus, public housing authorities in Massachusetts, private Massachusetts landlords accepting Section 8 vouchers, and privately-owned site-based Section 8 developments in the state already are prohibited from evicting someone on the basis of their status as a victim of domestic violence or stalking in most circumstances and may not refuse housing to an individual because she or he has experienced domestic violence or stalking in the past. The proposed legislation would simply extend these protections to individuals in private, non-subsidized housing and impose uniform obligations on private and public landlords.

Second, in recent years a growing number of geographically diverse states and localities across the political spectrum have enacted similar legislation in an effort to offer greater protection for victims of domestic violence or sexual assault. Rhode Island, Washington, North Carolina, Indiana, Oregon, the District of Columbia, and Westchester County, New York, for example, have enacted laws that prohibit landlords from evicting or otherwise discriminating against tenants who have been the targets of domestic violence. Arizona, California, Colorado, Delaware, Illinois, New York, North Carolina, Oregon, Texas, Washington, Wisconsin, and the District of Columbia also permit a tenant experiencing domestic violence or (in most of these states) sexual assault to break her lease if she needs to do so to protect herself, as long as she has documentation of the violence. Several states, including Colorado, Iowa, Louisiana, New Mexico, Virginia, Washington, and Wisconsin, also provide a specific defense to eviction for victims of domestic violence in their landlord tenant laws. Multiple states also have provisions explicitly protecting victims' rights to summon the police without retaliation from their landlords: these include Alaska, Arizona, Colorado, the District of Columbia, Minnesota, and Texas. Every year brings new state legislation protecting the housing rights of survivors of domestic violence and sexual assault. No state has acted to repeal or narrow these measures once passed. Massachusetts should not be left behind in this national movement to ensure that the fear of homelessness will not force women to suffer domestic violence or sexual assault in silence.

We urge the Committee to give a favorable report to this bill.