



House Committee on Consumer Protection and Commerce  
Honorable Scot Z. Matayoshi, Chair  
Honorable Cory M. Chun, Vice Chair

**RE: Testimony in Opposition to H.B. 463 H.D. 1, Relating to Eviction Records**

Hearing: February 11, 2025 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to submit testimony in **opposition** to H.B. 463 H.D.1.

We specifically oppose the provisions of this bill that seek to categorically seal and make unavailable public court records. Those provisions violate the First Amendment right of public access to judicial records and would certainly be challenged in the courts. *E.g., Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 607-10 (1982) (striking down state statute that categorically barred public access to certain court proceedings because it failed to consider individualized circumstances on a case-by-case basis); *Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile*, 113 F.4th 1168, 1172 (9th Cir. 2024) (holding unconstitutional state court rule requiring categorical sealing of all medical and health records filed in any state court proceeding without a case-by-case analysis). Below we offer **suggestions** to address this constitutional concern.

Although we appreciate efforts to promote affordable housing, sealing court records is *not* the solution. Sealing eviction court records has the potential to obscure abusive landlord practices and hinder reform efforts. The American Civil Liberties Union (ACLU), for example, recently brought a lawsuit to secure access to eviction court records under the First Amendment. After successfully settling the case, in 2023, the ACLU announced, “The South Carolina NAACP will now have access to all of the public docket information it requires to provide services to tenants in eviction proceedings, and to engage in advocacy to enforce fair housing laws.”

<https://www.aclu.org/press-releases/aclu-and-naacp-secure-access-to-public-eviction-records-in-data-scraping-case>.

Rather than categorically sealing court records, we respectfully urge this Committee to consider a technological solution through **disassociation**. Disassociation better serves the goal of preventing potential discrimination when landlords or others search the Judiciary’s information management system – eCourt Kokua. Even when a case is



entirely sealed, eCourt Kokua still associates the case with the parties involved. Below is a screenshot of search results for an individual with an expunged and sealed criminal record. Thus, even if an eviction case is sealed, it will still be associated with the tenant's name and show up in eCourt Kokua search results.

Party Name	Case	Case Type
Rogan, Jerome	<a href="#">21908</a> - STATE OF HAWAII, Plaintiff-Appellee v. JEROME ROG	Appeal
Rogan, Jerome, Tramaine	<a href="#">4596512MO</a> - State v. Jerome, Rogan	Traffic Crime
Rogan, Jerome, Tramaine	<a href="#">4596516MO</a> - State v. Jerome, Rogan	Traffic Infraction
Rogan, Jerome, Tramaine	<a href="#">4596515MO</a> - State v. Jerome, Rogan	Traffic Crime
Redacted	<a href="#">1PC970001153</a> - Case Title Redacted	Circuit Court Criminal

A more direct and effective solution than sealing would be to disassociate the *case* from the *name of the tenant*. That way, an eCourt Kokua search of the tenant's name would yield no eviction case. But the case would still be searchable by the name of the landlord, which ensures abusive housing practices are not unintendedly obscured. And by not requiring sealing, the public's First Amendment right of access remains intact.

We also respectfully urge this Committee to focus the bill on discriminatory housing practices based on an individual's **status** as a defendant in an eviction action. Simply prohibiting discriminatory practices based on a "sealed eviction record" is not adequate to fulfill the intent of this measure. H.B. 463 H.D.1, does *not* prohibit, for example, a landlord from denying housing on the basis of an individual being previously evicted or the subject of an eviction action that did not result in a final judgment or writ of possession. Yet that is the core purpose of this bill.

Careful consideration of the constitutional issues implicated by this bill is warranted. There are alternatives to sealing that can deliver similar results without the inevitable uncertainty and delayed reform efforts that would be caused by passing a plainly unconstitutional law.

Thank you again for the opportunity to testify in opposition to H.B. 463 S.D. 1.