

Senate Committee on Commerce and Consumer Protection
Honorable Jarrett Keohokalole, Chair
Honorable Carol Fukunaga, Vice Chair

RE: Testimony with Comments on H.B. 463 H.D. 3, Relating to Eviction Records

Hearing: March 14, 2025 at 9:30 a.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 with **comments** on H.B. 463 H.D. 3.

Prior drafts of this measure included provisions that would *categorically seal* court records, in violation of the First Amendment right of public access to judicial records. *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).

H.B. 463 H.D. 3 avoids that constitutional defect by *disassociating* eviction case records from the name of a tenant in the Judiciary’s publicly accessible case search platform, eCourt Kokua. Disassociation is also a more effective and narrowly tailored solution than sealing. In prior testimony we explain how, for example, even if a criminal case is sealed, it will still be associated with the defendant’s name and show up in eCourt Kokua search results, as shown below.

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



Disassociation better accomplishes the goal of preventing potential discrimination when landlords or others search eCourt Kokua. By disassociating the eviction *case* from the *name of the tenant*, an eCourt Kokua search of the tenant's name would yield no eviction case. The case would still be searchable by the name of the landlord, which ensures abusive housing practices are not unintendedly obscured.¹ And the case records would still be available for courthouse (in person) access, ensuring the public's First Amendment right of access remains intact.

In the end, disassociation makes finding certain records harder, but not impossible. But even if a landlord went through the effort to obtain records, Part III of H.B. 463 S.D. 3 still prohibits using the information in those records to discriminate. Thus, the solution as currently drafted provides what advocates want to accomplish without violating the constitutional right of access to court records and proceedings.

Thank you again for the opportunity to testify with comments on H.B. 463 S.D. 3.

¹ *E.g.*, <https://www.aclu.org/press-releases/aclu-and-naacp-secure-access-to-public-eviction-records-in-data-scraping-case> (“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.”).