THE COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

DOCKET NO. SJC-13497

RAYMOND FRECHETTE AND ANOTHER

PLAINTIFFS APPELLEES,

v.

ELIZABETH D'ANDREA AND OTHERS

PRO SE DEFENDANTS/APPELLANTS

ON REFERRAL OF QUESTIONS FROM SINGLE
JUSTICE OF THE APPEALS COURT

AMICUS BRIEF

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Date: February 23, 2024

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This Brief is submitted pursuant to Mass. R. App. P. 17. Karen Merritt as *pro se Amicus.* Your Amicus submits this brief in support of Defendant-Appellant, given her shared experience and interest of the purportedly "former" home-owners of our state.

STATEMENT OF INTEREST OF AMICUS CURIAE

This Court's *Amicus Curiae* requests the Court's consideration as a full member of "the people" of the Commonwealth. She stands on her constitutional right and obligation to ensure that the Preamble's "covenant with each citizen" is fulfilled for ALL homeowners and occupants including those that deserve the extra care to experience equal hearing in our courts and on our rights.

This Court's *Amicus* writes in support of D'Andrea and dozens she has met working as a volunteer in Massachusetts to help people save their homes from illegal foreclosures. This Court's amicus herself may have lost more than a generation's of wealth to undeniably predatory loans she was induced (really tricked and pressured) into signing trusting in her fiduciary relationship with her broker. Not only has she had to defend her title and home when indigent, unquestionably, like D'Andrea, the broken trust and stress of potential loss of her home harmed her health.[1]

[1] Janet Currie and Erdal Tekin, *Is the Foreclosure Crisis Making Us Sick?* National Bureau of Economic Research (2011)

Like D'Andrea, I had assumed that I would be heard in our courts — that finally there would be an impartial interpreter to hear the injustice done to me and my family. And surely, she had a right to be heard fully and equally as to those violations and be protected as to her due process and confidentiality. In 2019, my home had been foreclosed in Rehoboth Massachusetts. I too had thought that the judge in housing court would save me. I too had thought that he would never allow me to be abused. Afterall how can anyone allow anyone to foreclosure on a home with a 54% interest rate? Its Craziness! Anything over 20% without first notifying the attorney general is a state felony of usury. However, They did and broke confidentiality as to financial information as to indigency like D'Andrea.

We open up like flowers when we understand. When we feel whole, empowered and strong to do our day's work.

I ask this court to remand in D'Andrea's favor on the merits as is to be provided her Constitutional equal rights when Indigent in seeking justice so as also equally "to sue, be a party and give evidence" as to her contact and property rights from the misconduct of a fiduciary, predatory lending and illegal foreclosure.

That social compact with each other makes me responsible to speak to this Court to ensure D'Andrea the same

promise that has been made to all of us including equally all with disabilities: that we should be “governed by certain laws for the common good”, not for the good of the wealthiest amongst us and for the bad of the rest of us. And that we experience our law “without fraud, violence or surprise… of entering into an original, explicit and solemn compact with each other… for ourselves and posterity.”

And, moreover, that our rights to equally “acquire, possess and protect our property.” You need the Courts’ support and advocacy to ensure that you can equally defend.

Not only did the Appellees use confidential information given as part of D’Andrea’s demonstrating her right to equal protection as an indigent litigant to attempt to skew the courts on indigency thresholds but with their apparent ignorance as to how mortgage loan contracts work, they also used it to cast aspersions with no legitimate basis on her legitimate attempts to protect her home.

Nota Bene: If homeowner falls behind for even a short time, it is the mortgagee not homeowner who controls if you can 'cure' - that is, they refuse partial payments, they control if you can even negotiate let alone get a modification. Fannie & Freddie (with 60% of mortgages) won't look until you are 4 months behind, securitized trusts (with about 30% of mortgages) mostly promise

investors no mods. FHA had over 30 yrs ago put regs in requiring offering a face-to-face negotiation within 90 days of default based on conclusive research that that is when cure is generally possible BUT it's agreed that in D'Andrea's case with an FHA mortgage that the bank scheduled but never showed up for that negotiation.

ARGUMENT

As Appellant D'Andrea pointed out, the Appellee's entire request of this Court is to look into D'Andrea's household's financial situation and find that she can afford to pay and that, therefore, the Court can avoid reviewing the constitutional issues and due process and equal protection rights. No court, of course, under our Constitution and jurisprudence can avoid thinking about those fundamentals in a decision.

A. But what is dramatic is that Appellees' entire brief could not exist if the confidentiality requirements of the Indigent Court Costs Law had been upheld.

Appellees' demand of payment from D'Andrea is inapposite by the confidentiality rule, since it is between her and the Court to figure out whether she is indigent and comply with the steps in the Indigent Court Costs Law ("ICCL"). Impermissibly under our *stare decisis*, the Court shared and in violation of the Code of Professional Conduct that Appellee's lawyers used documents they received by

mistake. (Cf MRCP Rule 26(b)(5)(b) "governing discovery")[2]

The purpose of the Legislatively-promulgated ICCL procedure/proceeding is not for the non-indigent litigants, here the Appellees casting aspersions, to attempt to bias the Court and avoid the indigent litigants having an impartial, equal treatment and access to possibly win.

There is only one purpose to the ICCL: to codify our Constitutional guarantee to not have to pay for justice; that is, if you are legally indigent, that the courts "shall" ensure you the equal ability (as a reasonable person in your shoes would act) to "prosecute, defend or appeal" in the Commonwealth's courts; in short, that fundamental guarantee to each of us for a "civilized society":

> "It is now the settled doctrine of this Court that the **Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just.** The more fundamental the beliefs are, the less likely they are to be explicitly stated. But respect for them is of the very essence of the Due Process Clause. **In enforcing them, this Court does not translate personal views into constitutional limitations. In applying such a large, untechnical concept as "due process," the Court enforces those**

[2] From Professional Code of Conduct Rule 4.4 Respect for Rights of Third Persons: "(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender."

> **permanent and pervasive feelings of our society as to which there is compelling evidence of the kind relevant to judgments on social institutions.**" [bold added] Solesbee v. Balcom, 339 U.S. 9, 16 (1950)

Appellees misused and abused that opportunity to see and hear in court that confidential information (and this SJC proceeding) to impermissibly insert themselves (1) into the confidential process (2) to change D'Andrea's court-ordered determination of legal Indigency, (3) asking that she be impermissibly priced out of her appeal (note: that is transparently to their legal advantage), and (4) by more than once bringing in their opinion of the payment history on the mortgage based upon misunderstanding the fundamentals of mortgage contracts. They have misquoted the standard as to her income and the costs that were ordered by the Housing Court as affordable, when it is almost 60% of her entire household income, clearly not affordable. Then, Appellees frame her as being "simply unwilling", when the matter before this Court is whether the sacred rights guaranteed to all in our society as to due process to defend oneself can be "denied or abridged"[3].

Moreover, D'Andrea's motion, filed with her Notice of

[3] See Article I as annulled and amended by Amendment Article CVI: "All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned … that of acquiring, possessing and protecting property…Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."

Appeal, under the ICCL was to the Central Housing Court ("CHC"). It was not an opposition to whatever the Plaintiff separately motioned to CHC that it wanted for the appeal bond (including the component use and occupancy).

Filing under the ICCL was the commencement of a purely confidential proceeding (subsidiary to the Summary Process case) between the indigent litigant(s) and the Court, to preserve the indigent litigant's due process right. See the caution on the Court-promulgated Affidavit of Indigency form and, as affirmed Adjartey at 841 and Reade, 472 Mass. at 574 n.2: Instructions to Courts on the Administration of the Indigent Court Costs Law 2 (2003).

The steps, as D'Andrea laid out in her Appellant Brief (p.17-18), this Court's *amicus* repeats here:

(i) a finding of indigency or not (MGL Ch. 261 §27A)- D'Andrea has been found legally indigent;

(ii) that the court orders from which the Indigent party is seeking remedy qualify or not as "extra fees and costs" (MGL Ch. 261 §27A) — "Appeal Bond" statutorily defined as "extra cost", affirmed at *Adjartey,* 837, 840, 843, N.19 and relied upon at 845[4];

(iii) That, as to "extra fees and costs", remedy "shall" be provided where the purpose of the expense is

[4] "If the cost of an appeal bond is considered "extra""

(a) "reasonably necessary to assure the applicant [b] as effective a prosecution, defense or appeal as he would have if he were financially able to pay." (MGL Ch. 261 §27C (4)) – *Adjartey* affirms at 841, 843, and provides the standard at 843; and (c) distinguished those an indigent litigant chooses to 'employ' as opposed to having to 're-spond' to, *Adjartey* affirms at N.19. Thus, the legislature ensures the standard: necessary financially and for legal strategy (frivolousness standard was removed to ensure "equal" standards to access to due process). D'Andrea could not appeal at all without one of the legislated remedies;

(iv) then which of the three remedies provided under the ICCL will be provided that fulfills the extent of the need: "waiver, substitution or payment by the common-wealth" (MGL Ch. 261 §27C (2) & (6)). Statute does not provide for a fourth option of no remedy at all.

The first one, deciding whether the litigant is in-digent is clearly confidential. The second is whether a reasonable litigant in their shoes would see as necessary what they seek a Court remedy for. Lockley at 160-161:

> "This standard is essentially one of reasonableness, and looks to whether a defendant who was able to pay and was paying the expenses himself, would consider the "document, service or object" sufficiently im-portant that he would choose to obtain it in prepara-tion for his trial. … it need not be shown that the addition of the particular item to the defense or prosecution would necessarily change the final

> outcome of the case. The test is whether the item is reasonably necessary to prevent the party from being subjected to a disadvantage in preparing or presenting his case adequately, in comparison with one who could afford to pay for the preparation which the case reasonably requires."Com. v. Lockley 381 Mass. 156 (1980)

In other words, a Judge may have more experience and a sense that a particular felt need might not be effective but the test is from the perspective of the litigant. Your Amicus would certainly argue that not having money for food or to heat your home or for co-pays for medication or money to get to the grocery store would certainly detract from being able to as effectively prosecute an appeal; in the modern era, ability to pay for your cell phone or wifi for a home computer or money for gas to get the library puts you at a hopeless disadvantage trying to file I court, track your docket and in many ways "be party" to a suit effectively at all (the Court is reminded the higher courts rules do not accept handwritten briefs and all the complicated formatting is impossible without the above electronic access.)

Where due process recognizes the right to appeal, if you have not been "fully heard", that is a due process right. These are part of the profound right to due process of those who take on the mantle of residency under our constitutional governments.

If a judge struggles with stepping into your shoes to

recognize that the above is clearly something a reasonable litigant "who can afford to pay" would not possibly go without so as to pay for their due process right to access the higher courts, clearly your opponent's perspective is not that of a reasonable person looking at it from your side. Especially here where they literally argue you should go without the above necessities if D'Andrea seeks her Constitutional birthright access to our higher courts.

Paying to Appeal if ordered is not an optional additional thing that a reasonable litigant might believe would improve their chances. Here, you have no chance if you cannot pay this. The Court, then, has to decide whether somebody with the money would pay for it or not. Here, where it is not an additional thing that would be helpful, but the entire ability to go forward, somebody able to pay would, in all reasonableness, pay for "the object" of access to the courts at all and the ability to win your case.

Sometimes, where it is an optional additional useful service that somebody seeks, then, the Court can look at how much that additional optional thing might cost but that is not relevant in a "repons[ive]" use of the ICCL to be "given a liberal construction to the end that its broad and humane purposes may be served." Reade v. Secretary of State Galvin, 472 Mass. 573, 579 (2015)

The final step, the Court decides through a process with the indigent litigant how the government will make sure they can afford to carry out their case as they see necessary or most effective – via waiver, substitution or government payment. (MGL Ch. 261 §27C) The opponent has no legitimate interest in how those costs are remedied.

B. The only person who could have an interest in conflict with any of the remedies is the 'vendor' for the cost if waived or reduced without government payment

The only element of all the above steps that in any way would impact the opposing litigant is if they are the person who would get paid for whatever it is that the indigent litigant is asking the Court to pick one of the three remedies to cover. Then, they might have an issue, between themselves and the Court about how much they want to get paid for whatever it is and what their legitimate basis would be for that ask and the price they request.

Clearly, in cases such as this, the defendant-occupant might be a useful fact witness in that situation to accurately represent what, if anything, the opposing litigant might have a right to charge.

How that charge is going to get paid, however, is irrelevant to the opposing litigant. No matter how much they want to get paid, they have no right to use that as a means to win their case by stripping the indigent

litigant of their equally effective ability to win their case and in this situation their entire ability to proceed.

That said, based on the procedure above, and based on the only interest for the named Appellee in this case that is legitimate is how much they want to get paid. That is not part of this subsidiary proceeding that is to be confidential between the indigent litigant and the Court. They, quite transparently, have no interest in this material issue of how appeals costs will get paid. They cannot be helped or harmed by its outcome. Therefore, they lack prudential standing. (MRCP Rule 17(a))

Also this Court has already promulgated procedures that recognize that they have no interest. With no interest, the confidential character denies them no due process right. In fact, it recognized that they have no standing in this subsidiary segregable proceeding as to indigency.

Logically, it appears, therefore, that the process recognizes the interest of the indigent litigant. Here, the interest of the government actor, the CHC judge is:

> "this Court does not translate personal views into constitutional limitations. **In applying such a large, untechnical concept as "due process," the Court enforces those permanent and pervasive feelings of our society as to which there is compelling evidence…"**

It appears that the framers of the statute, when they added appeal bonds to the ICCL definition of "extra fees"

(MGL Ch. 261 §27A) in 1980, were not concerned about the possible cost to the state of providing equal protection to the indigent litigants.[5] Outside of the statutory conception, it appears that the judges are inserting some interest that is not Constitutional due process interest of the judicial branch of government that they see themselves protecting. The only entity which judges might have a misplaced concern related to the indigency waiver, substitution, or government payment might be some presumed court interest in the government's budgetary impact.

As the historian for the ICCL which this Court relied upon in *Reade* reports periodically some judges have collapsed the "separation of powers" guaranteed in the our Constitutional Article XXIX and thought about their role as that of the executive branch to propose a budget or the legislature to pass one, but it is not their role in relation to the ICCL and due process access to the higher courts. See Rodgers, Rap-ups of a Retired Reformer: Stories About How Legal Services Advocates Transformed the Laws for Poor People in Massachusetts 81 (2013):

> "from time to time, some courts stopped approving affidavits because they claimed that the funds had run

[5] Where the state regularly pays housing subsidies for nursing homes and shelters for those who cannot afford to pay, it is unsurprising that the Legislature appears not to have been concerned for those costs for the relatively short time period of maybe a couple of years for an appeal.

> out or they believed that they should personally carry out an effort to save money for the courts."

But in the past, this SJC has consistently corrected that misperception

(In a plain read of the statute, it does not appear to this Court's *amicus* that there is any bar on mixing and matching among the three remedies. That is, it appears that a court could decide on a substitution or a waiver and thereby diminish the amount of government payment needed, but there does not seem to be any problem with using more than one of the remedies, given the wording of the statute.)

C. Appellee has No Legitimate Interest in Whether the Government Subsidizes Housing but It has for Near a Century

Appellee appears to mistakenly posit on the behalf of the government some sort of misguided public presumption that you are not allowed to live in your home "for nothing", even if you cannot afford to pay. As this is clearly not the public policy stance of either state or federal government, (see Reply Brief as to Public Policy-makers' previous enactments, pp.19-23), it appears more that Appellee advocates that a judge either make an unresearched presumption that the government will not pay or that due process access to our courts is not an equal right:

> "critically important to safeguarding every Massachusetts litigant's ability to "obtain right and

> justice freely, and without being obliged to purchase it." Art. 11 of the Massachusetts Declaration of Rights" Adjartey at 840

The premised stance of our entire judicial system is due process for all.

If, when judges are making their decisions, they are not making them as an impartial arbiter of our ICCL, but are representing some other government perspective that they have undertaken they are being partial and not fulfilling their function as guaranteeing due process and equal rights as our most primary constitutional guarantee. As quoted above: "In enforcing them, this Court does not translate personal views into constitutional limitations."

Where the ICCL subsidiary proceeding is between the indigent litigant and the courts, and the judge is a government actor who is playing a gatekeeping role in this situation, the standard of review of the Housing Court's action for this Court is then strict judicial scrutiny.

> "When analyzing due process challenges under art. 10, we "adhere[] to the same standards **followed in Federal due process analysis.**" Gillespie v. Northampton, 460 Mass. 148, 153 n.12 (2011), quoting Goodridge v. Department of Pub. Health, 440 Mass. 309, 353 (2003) (Spina, J., dissenting). **When a fundamental right is burdened, we apply strict scrutiny.**" Desrosiers v. The Governor, 486 Mass. 369, 388 (Dec. 10, 2020).

And what is the strict scrutiny test when the person's whose action is complained of is a government actor?

> "When a fundamental right is burdened, we apply strict scrutiny, which requires that **governmental restraints be "narrowly tailored to further a legitimate and compelling governmental interest**" (citation omitted). Gillespie [v. Northampton, 460 Mass. 148, 153 n.12 (2011)], supra at 153, 950 N.E.2d 377." *Desrosiers* at 388

But the "compelling interest" is already defined here as 'due process' made equally attainable via an ICCL remedy

There is no question that, as a statutory category created and well defined specifically by our Legislature through the ICCL, indigent litigants (once so determined) are a "protected" class. Thus, if denied the statutory codification of the above most fundamental rights, the Court would have to apply strict judicial scrutiny to the basis given by the judge who did not provide the due process/equal/Constitutional rights provided via the ICCL.

The government actor, here, the Housing court judge would have to — under the above judicial scrutiny definition — provide a rational basis that was expressed in overriding interest with a narrowly tailored solution.

There can be no overriding interest in our courts, beyond providing due process and equal protection and our constitutional guarantees where our unalienable real property rights are at issue by a possible pretender to our title; this *amicus* has been able to find none, let alone imagine any. Thus, only narrow tailoring might be allowed.

D. If Any Exception to the Indigent Court Costs Law as a Codification of Constitutional equal and due process Rights, it is up to the Legislature to "Narrowly Tailor"

Where there might be any exception, it would have to be narrowly tailored to that specific circumstance. The Legislature which is to make our laws, as opposed to the judiciary which is to interpret our laws, found one exception for appeal bonds. It defined a single situation that is distinguishable from all other appeal bonds including the homeowners fighting to defend their title as part of the Plaintiff's possession claim (and occupants where new purchasers claim title from a private sale also under §6 and the occupants of those claiming new title after a tax-title taking under §6A). That narrowly tailored 'class' is the group that had a preexisting voluntarily entered lease agreement as tenants of a pre-existing landlord Plaintiff, even if they have since become a tenant at sufferance.

Howard v Merriam, 59 Mass. 563, 580 (1850) is still good law for how a tenancy-at-sufferance can arise — and it is only where there was a previous tenancy:

> By the parol lease, the defendant was tenant at will only; but by the subsequent lease for years to Dow, the estate at will was determined by act of law; and the defendant then became tenant at sufferance only.

The special requirements just for pre-existing Landlord Tenant relationships was a narrowly tailored carve out in 1975 when the Legislature had already passed the

ICCL in 1974 to cover everyone, including litigants like D'Andrea; the Legislature then a year later added language for a new cost into only one section of one chapter of our General Laws: MGL Chap. 239 §5.

When the Legislature added that in in 1975 *after the passage of the Indigent Court Costs Law*, they could have added it into MGL Chap. 239 §6 *and chose not to*.

> This Court is not to presume that the Legislature does not know what it is doing:
>
> "The Legislature must be presumed to have meant what the words plainly say, and it also must be presumed that the Legislature knew pre-existing law and the decisions of this court." Condon v. Haitsma, 325 Mass. 371, 373 (1950)

Instead, the Legislature added it only to MGL Chap. 239 §5 *and added it with explicit language that cases under §6* Plaintiff's possession claim (and occupants where new purchasers claim title from a private sale also under §6 *, where the further procedures added to MGL Chap. 239 §5 were not "provided"*. That exclusion exists again at MGL Chap. 239 §5(e) , where it limits additional payment to only those covered under §5(c) : "any person for whom the bond or security provided for in subsection (c)…"

The Legislature avoided the equal protection violation of an overly broad classification and narrowly tailored it to a specific class, where the obligation would not have fallen under the ICCL, because it was a

preexisting private obligation, rather than an "appeal bond" that was explicitly added to the non-exhaustive list of "extra fees and costs" which can be waived, substituted or paid by the government under the ICCL in 1980. This was after a period of numerous decisions as to indigency including after the decision in Hampshire Village Associates v. District Court of Hampshire, 381 Mass. 148, 154 (1980), where this Court had reminded the world of the distinction between traditional landlord-tenant cases, long settled in our law, and any other type of appeal cost. See Appellant brief for more citations and statutory history, pp.43-52.

That decision, reminding the world of the distinction between tenant-landlord cases and all other cases had just entered, when the ICCL was amended by the Legislature in 1980 to add appeal bonds as a remediable expense and added the language that all appeals up from any statute that imposed a court ordered regular or extra fee or cost to being covered under the Indigent Court Costs Law.

E. Equal Protection Bars Impermissibly Overly Broad Classifications

Further, it would violate an equal protection principal to deny indigent litigants equal treatment by the courts and equal access to due process; that is, to impermissibly apply an overbroad classification where the Legislature had already carefully tailored a narrow

solution to the enduringly unique situation of pre-existing Landlord-tenant situations and their unique law.

Equal protection guarantee operates precisely as a limitation on permissible legislative classification[6] and therefore, as to permissible judicial classification as equally a government actor. (See p.211) In its basic form, it requires that all persons who are similarly situated will be treated in a similar manner, and those who are not similarly situated will not be treated as if they were.

In order to define a class, the Legislature designates a particular quality, characteristic, trait, or relation, the possession of which determines an individual's membership in or inclusion within the class.

Thus, it is impossible to pass judgment on the reasonableness of a classification without first considering the purpose of the law; that is, the "mischief" the Legislature seeks to dispel.[7] Thus it is said that we can "speak of the relation of the classification to the purpose of the law

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[6] Tussman and tenBroek at 342-343 The Equal Protection of the Laws, 37 Calif.L.Rev. 341, 344 (1949) (hereinafter "Tussman and tenBroek") ("The subsequent career of the equal protection clause as a standard for the criticism of legislation has moved along several lines. First, it has operated as a limitation upon permissible legislative classification. This its most familiar role. Second, it is used to oppose 'discriminatory' legislation. And third, it shares with due process the task of imposing 'substantive' limits upon the exercise of the police power.").

[7] Tussman and tenBroek at 346-347.

as the relation of the Trait to the Mischief."[8]

The Landlords and Tenants statute, which created the summary process proceeding, was created to address the mischief that occurs when a tenants holds-over after a tenancy and landlords were faced with the lengthy procedure of showing their already-acknowledged title via the only existing procedure of a Writ of Entry in 1825 when the Summary Process law was first enacted (Chapter 89 of the Acts of 1825). The class who this statutory proceeding were intended to benefit are plaintiffs who have clear, unquestioned title to the subject property and should not have to reprove it in the lengthy Writ of Entry. See *Howard v. Merriam* (1850) at 565-566 for the history.

These are clearly not similarly situated to D'Andrea's opposition, where no previous title-clearing process has established the plaintiff or its predecessor's title and it was not legally acknowledged via a pre-existing rent or lease contract.

Equally true, MGL Ch. 261 §§27A-G was created to ensure all Indigent litigants in our state courts (a "shall" provision) are liberally protected in not only entering the doors of our courts but *equally prosecuting their cases.*

[8] Tussman and tenBroek at 346. See Rotunda, Nowak & Young, Treatise on Constitutional LawSubstance and Procedure Vol. II,, §18.2 (1986).

The mischief here to be provided resolution was:

> "many litigants in both civil and criminal cases are unable to secure due process of law and equal protection of the laws in the courts of Massachusetts by reason of being too poor to afford the fees and costs … incident to such litigation." Reade at 578-579

Here, MGL Ch. 239 §6 bonds are purely of court-ordered creation as no previous private contractual obligation existed and no previous possession is to be "recovered". D'Andrea is a member of this class of indigent litigants who will be barred by a purely court-created 'extra fee'; if instead they are excluded, the class the statute (and the Constitutional protection it was passed to embody) is drawn impermissibly too narrowly.

These are the qualities, characteristics, traits, or relations that determine one's inclusion or exclusion from the class, and the benefits or burdens, as the case may be, to which those who are included will be subjected by the statute. As all of this relates to matters of economy or general social welfare, there is little reason to doubt that it is rationally related to a legitimate end of government and not drawn on impermissible criteria or arbitrarily used to burden certain persons.

If the classification wrought by MGL c.239 §5(c)-(e) were to include every possible occupant with disputed possession, it would fall on stony ground as a matter of

constitutional law, for being impermissibly over-inclusive just as in both Howard v. Merriam 565-566 (1850) and Warren v. James (1881) this Court held such a classification of every possible occupant would. (Tussman and tenBroek 351)

Unique to MGL Ch. 239 §5(c) & (e), the Legislative purpose is to require payments for rent or O&U — not to just anyone, but to those, by pre-existing contract, are already agreed to be rightfully entitled to it. The person holding over following a foreclosure but before entry of judgment by a Court competent to determine a new title claim (like one claimed through an alleged foreclosure by sale chain which no court has yet adjudicated) is not similarly situated to those former tenants who are corralled by the classification of a Plaintiff having unassailable title.

CONCLUSION

Being guided by the explicit due process nature of the ICCL, that its enforcement is legislated as a mandatory "shall" law (repeatedly affirmed by this Court) and that this subsidiary process has repeatedly been affirmed as confidential, Appellee could not have received D'Andrea's confidential indigency information. Ethically and per the conditions of Appellee's lawyer's license, Appellee could not use that information — especially where it is stated right on the Affidavit of Indigency

that it is confidential. Appellee has no legitimate interest in the Court's and the Indigent Litigant's process to comply with statute and embody our "fundamental" "moral principles" as a "civilized society".

Instead, Appellee has been permitted confidential information, allowed to cloak its private interest that D'Andrea be denied her right to higher court review and clothe it in prejudicial misrepresentation of (i) D'Andrea's right to 'dignity of her person' in having her basic necessities including access to our higher courts and her constitutional guarantees and (ii) used a gross misrepresentation of almost a hundred years of our public policy recognizing housing as a 'public good' which we happily all contribute to — especially for those with disabilities and seniors.

This matter is and should have been and now needs to be addressed between the only interested parties — D'Andrea and the courts — in accord with the statutory expression of our constitutional rights.

Respectfully submitted,

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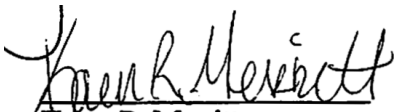
Date: February 23rd

CERTIFICATE OF COMPLIANCE WITH RULE 16(k) and 17

I hereby certify that the foregoing Amicus Brief complies, to the best of my knowledge and belief, with the Court rules pertaining to filing appellate briefs, including those specified in MRAP 16(k). It is formatted in compliance with monospaced font, 12-point Courier, requirements.

I also certify that no party or party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; no person or entity — other than the Amicus curiae — contributed money that was intended to fund preparing or submitting the brief; and nor does Amicus Curiae represent nor has Amicus represented one of the parties to the present appeal in another proceeding involving similar issues, nor was a party or represented a party in a proceeding or legal transaction that is at issue in this appeal,



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Date: February 23, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished on February 23, 2024, by E-Service upon the following:

PLAINTIFF/APPELLEE
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