

House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Mahina Poepoe, Vice Chair

RE: Testimony in Opposition to H.B. 463 H.D. 2, Relating to Eviction Records
Hearing: February 19, 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. 2.

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 be subject to challenge in court. *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 **recommend amendments** to address this constitutional concern.

Although we appreciate efforts to promote affordable housing, sealing court records is *not* the solution. In addition to constitutional concerns, sealing eviction court records has the potential to obscure abusive landlord practices and hinder reform efforts. *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.”).

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. On the following page 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	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

A more direct and effective solution than sealing would be to disassociate the *case* from the *name of the tenant*. That way, an eCourt Kookua 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 obscured. And by not requiring automatic sealing, the public's First Amendment right of access is not an issue. We thus recommend the following amendments at **page 2, line 7** to **page 5, line 8** (changes in bold):

"§666- Eviction records; [sealing] disassociation.

(a) Within a reasonable time, [The] the court shall [make a good faith and diligent effort to seal] disassociate a residential tenant [within a reasonable time] from [all court records of any] a legal proceeding brought by a landlord to evict [a residential] the tenant [, whether by a summary possession proceeding or an action in the nature of an action of ejection or otherwise] if:

(1) The final resolution of an eviction proceeding does not result in a judgment for possession in favor of the landlord, including instances in which a case was dismissed for any reason; or

(2) All parties agree to the [sealing of records] disassociation, regardless of the final disposition of the claim.

(b) The court may [seal] disassociate a residential tenant from a [court records of any] legal proceeding brought by a landlord to evict [a residential] the tenant [, whether by a summary possession proceeding or an action in the nature of an action of ejection or otherwise,] upon motion by [a residential] the tenant if the [residential] tenant demonstrates by a preponderance of the evidence that:

[. . . subparagraphs 1 thru 7 . . .]

(c) [Upon written request, the clerk of the court shall provide access to a record sealed under this section to the residential tenant.] As used in this section:

"Disassociate" means to remove a residential tenant's name from the judiciary's publicly accessible electronic databases to ensure that the legal proceeding cannot be accessed online by the tenant's name."

We also respectfully urge this Committee to focus the bill on discriminatory housing practices based on an individual's **status**. Simply prohibiting discriminatory practices based on a "sealed eviction record" does not fulfill the intent of this measure. For example, H.B. 463 H.D. 2 does not prohibit a landlord from denying housing on the basis of an individual previously being the subject of a failed eviction action. Yet that is the core purpose of this bill. We thus recommend the following amendments at **page 5, lines 13 - 16**:

"§515- **[Sealed eviction records] Eviction discrimination; prohibited.** It is a discriminatory practice for a person to engage in any act deemed unlawful under this chapter based on the actual knowledge or belief that a person has **[a sealed eviction record] been the subject of an eviction action identified in section 666- .**"

To conform the remainder of the bill to the amendments proposed above, we further recommend the Committee **delete section 4** and **replace** "sealed eviction record" with "status as a residential tenant in an eviction action identified in section 666-__" at **page 6, line 9; page 11, line 20; page 13, lines 3 and 11; page 14, line 6; page 16, lines 7 - 8; and page 17, lines 1 - 2.**

Careful consideration of the constitutional issues implicated by this bill is warranted. There are alternatives to sealing that can deliver similar, if not better, results without the inevitable uncertainty and delay in 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 H.D. 2.