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Increasing the Accessibility of Massachusetts Small Claims Courts

Prepared For:

Greater Boston Legal Services, Consumer Rights Unit

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GREATER BOSTON LEGAL SERVICES
... and justice for all

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DISCLAIMER

The author conducted this study as part of the program of professional education at the Frank Batten School of Leadership and Public Policy, University of Virginia. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency.

HONOR PLEDGE

On my honor as a student, I have neither given nor received aid on this assignment.

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KEY TERMS & DEFINITIONS

Access to Justice Commission (AJC): The AJC was established by the Supreme Judicial Court in 2005 to provide "leadership, vision, and coordination for the many organizations dedicated to improving access to justice for all persons in the Commonwealth" (Massachusetts Access to Justice Commission, 2024). Their membership, which includes judges, attorneys, nonprofit leaders, government officials, and law professors, makes annual recommendations to the Supreme Judicial Court for reforms consistent with their goal of improving access to justice (Massachusetts Access to Justice Commission, 2024).

California Fair Debt Buying Practices Act (CFDBPA): 2013 California legislation that established protections for consumers whose debts have been purchased by debt buyers, requiring these plaintiffs to provide evidence proving the debt's ownership, amount, and age to the debtor upon request and when using legal means to collect (Aneja et al., 2024).

Civil Gideon: *Gideon v. Wainwright* was the landmark 1963 decision that established the constitutional right to legal counsel, regardless of the ability to pay, in criminal proceedings under the Sixth Amendment. Civil Gideon refers to reforms that expand this right to civil cases, including small claims (Grant, 2024).

Consumer Debt Action: A legal proceeding where a creditor or debt collection agency seeks to collect a debt that an individual consumer owes. Generally, consumer debt actions arise from credit card debt, loans for everyday expenses, or debts related to purchases of goods or services (Rickard et al., 2020).

Credit Lender: An individual, business, or financial institution that provides loans or extends credit to borrowers, with the expectation that the borrowed funds, along with interest, will be repaid. Typically includes credit card companies, banks, auto lenders, and mortgage lenders (CFI Team, n.d.).

Debt Collector: Agencies or individuals who buy debts from creditors (credit card companies, banks, mortgage lenders, auto lenders, etc.) and then attempt to collect on them. They generally buy debts after they have been "charged off" by a creditor (written the account off as a loss and the account closed to future charges) for cents on the dollar but are allowed to collect the full amount. Any amount collected is generally retained by the debt collector rather than returned to the credit lender (Consumer Financial Protection Bureau, 2023).

Default Judgment: A legal ruling in favor of one party (usually the plaintiff) when the other party (usually the defendant) fails to respond to a lawsuit or appear in court within the required time frame (Pfeffer-Gillett, 2023).

Defendant: The party being sued in a case (United States Courts, n.d.). In the context of this report, it generally refers to individuals who debt collectors and creditors claim owe debt.

Plaintiff: The party that "files a complaint with the court" (United States Courts, n.d.). In the context of this report, it generally refers to debt collectors and creditors who file cases aimed at recovering debt allegedly owed to them.

Rules of Evidence: The guidelines that determine which information is admissible in court to prove or disprove a claim. Rules of evidence vary by state but generally require that the evidence presented be relevant, authentic, and free of hearsay (P. M. King, 2023). In small claims, these rules are relaxed, allowing the admission of evidence that would not stand in traditional courts (Holland, 2014).

Small Claims Courts (SCCs): SCCs are specialized units of state civil courts that hear disputes about monetary harms where the party bringing the case is seeking to recover relatively modest monetary damages (Steele, 1981). They use simplified procedures and rules of evidence to make the legal system more accessible to ordinary individuals litigating ordinary disputes (Yngvesson & Hennessey, 1975).

Supreme Judicial Court (SJC): The SJC is Massachusetts' highest appellate court. In addition to hearing cases and issuing decisions, they also "supervise the judiciary and the bar, makes or approves rules for court operations, and gives advisory opinions, upon request, to the governor and legislature" (Massachusetts Court System, n.d.).

SJC Standing Advisory Committee on the Rules of Civil Procedure: The Standing Advisory Committee on the Rules of Civil Procedure assists the SJC in reviewing and recommending amendments to the Massachusetts Rules of Civil Procedure. Its members, who include judges, court clerks, practicing attorneys, and law professors, recommend their own rule changes and consider those brought by the public to the SJC.

EXECUTIVE SUMMARY

Small Claims Courts were developed in the 19th century to make the legal system more accessible to ordinary individuals, litigating ordinary disputes for relatively low monetary amounts. They achieve this goal by using simplified procedures and encouraging parties to represent themselves to lower costs (Steele, 1981). In the past 30 years, however, Small Claims Courts have become dominated by consumer debt cases where credit card companies and debt collection agencies sue individuals to collect money owed (McKim, 2024a; Rickard et al., 2020). This problem is particularly pronounced in Massachusetts, where 85% of small claims cases are consumer debt actions (Massachusetts Trial Court, Department of Research & Planning, 2024b). **The recent domination of Massachusetts's SCCs by debt collection agencies and creditors takes advantage of this informality and leaves defendants vulnerable to unsubstantiated debt collection lawsuits and judgments to pay.**

Three key features of the small claims system make this reality a significant problem worthy of policy intervention: default judgment rules, relaxed standards of evidence, and disproportionate institutional knowledge between plaintiffs and defendants. The default judgment rule allows plaintiff debt collectors and creditors to win by default if consumer defendants do not appear in court. In these scenarios, which occur in about 50% of consumer debt cases in Massachusetts, plaintiffs do not have to show any evidence validating the amount of the debt or that it was even owed to them (Massachusetts Trial Court, Department of Research & Planning, 2024b). Small Claims Courts also have rules of evidence that are significantly relaxed from traditional district courts. Even in cases where defendants appear, plaintiffs can substantiate their argument based on evidence that would be inadmissible in district court (Goldberg, 2006; Holland, 2014). Debt collectors and creditors have admitted that they frequently do not have sufficient evidence to prove standing, liability, and damages. However, they can collect billions annually due to the relaxed rules in this setting (Holland, 2014). Finally, the rates of legal representation vary significantly between plaintiffs and defendants in consumer debt cases. Plaintiffs are represented in about 99% of cases and defendants in just 3% (Lezcano et al., 2023; Massachusetts Trial Court, Department of Research & Planning, 2024b; Rickard et al., 2020). These disproportionate representation rates give plaintiffs, represented by experienced attorneys with an intricate understanding of the legal system, an advantage over defendants who lack this institutional understanding and do not know that defenses are available. This runs counter to the initial intent of SCC and potentially saddling defendants with unjust debt (Albin-Lackey, 2016; McKim, 2024a; Spector, 2012).

In consumer debt cases, these features combine to create a system that leaves too many defendants vulnerable to unsubstantiated debt collection lawsuits and judgments to pay. It is also at odds with the main goal of the small claims—to make the legal system more accessible to ordinary individuals.

Civil legal aid organizations, like Greater Boston Legal Services, have recognized these problems and are interested in potential policy solutions that could be used to address them. This report assesses three evidence-backed alternatives that Greater Boston Legal Services can recommend to and lobby for in the Massachusetts legislature.

Alternative #1: Civil Gideon

Building on the constitutional right to legal counsel, regardless of ability to pay in criminal proceedings, Massachusetts would provide legal counsel to all defendants in civil legal proceedings, including small claims.

Alternative #2: California Fair Debt Buying Practices Act

Massachusetts could implement legislation modeled after the California Fair Debt Collection Practices Act to address the lack of documentation often presented in consumer debt claims.

Alternative #3: Ban Lawyers in Small Claims Courts

Like several other states, Massachusetts could ban lawyers from representing parties in small claims cases. Because the rate of legal representation among plaintiff debt collectors and creditors is so high, this alternative effectively requires debt collection claims to be heard in district court where traditional rules of evidence apply and default judgments cannot be entered without a plaintiff substantiating their claim.

Leveraging publicly available court data and the research of other academics, I evaluated these alternatives on three equally weighted criteria: financial impact, effectiveness, and implementational feasibility. Based on this analysis, Alternative #3, Banning Lawyers in Small Claims Courts, is the strongest option. This recommended approach yields a positive financial impact for the Commonwealth (through increased filing fees), reduces the default judgment rate in consumer debt cases, and receives the highest implementational feasibility score.

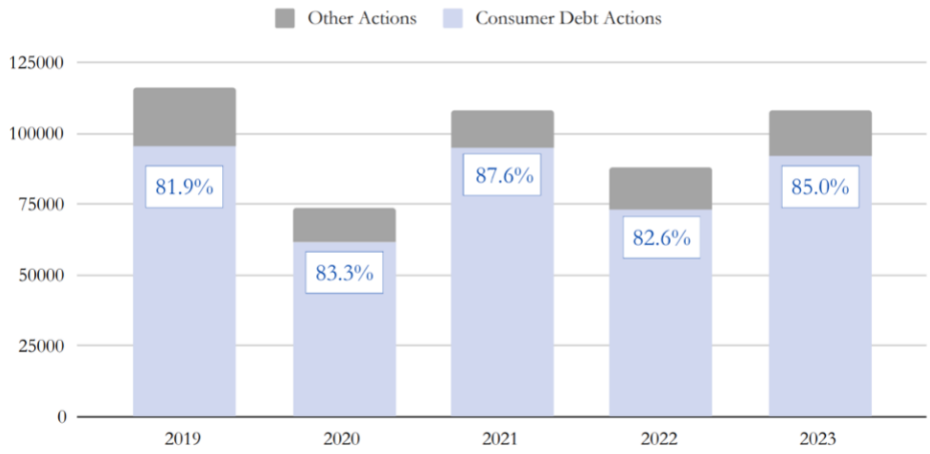
Given the number of Massachusetts residents subject to unsubstantiated debt collection lawsuits, resulting judgments to pay, and the vast consequences that this can have on their personal and economic livelihoods, the Commonwealth must address this problem. Banning lawyers in Small Claims Courts is a financially responsible, effective, and feasible way of doing so. Thus, Greater Boston Legal Services should work with its allies and partners to encourage Massachusetts to consider this solution.

INTRODUCTION

Often called "The People's Court," Small Claims Courts (SCCs) were developed in the 19th century to make the legal system accessible to ordinary individuals, litigating ordinary disputes for relatively low monetary amounts. They achieve this goal by using simplified procedures and encouraging parties to represent themselves at lower costs (Steele, 1981). In SCC's early days, the cases brought here aligned with this original purpose: someone suing a neighbor for a broken fence or a driver for a dented bumper (Yngvesson & Hennessey, 1975). Recently, however, the nature of cases brought in the SCC has changed dramatically. Consumer debt actions—cases brought by credit card companies and debt collection agencies against individuals to collect money owed—now dominate the docket (McKim, 2024a; Rickard et al., 2020).

This problem is particularly pronounced in Massachusetts, where 92,000 consumer debt cases were filed in SCC in 2023 (Massachusetts Trial Court, Department of Research & Planning, 2024b). As Figure 1 shows, these cases have made up over 80% of the Massachusetts small claims docket for the last five years.

Figure 1: Percent of Small Claims Cases That Are Consumer Debt Actions



This reality has caught the attention of legal advocacy organizations and court leaders who argue that it erodes the informal nature of SCC and thus unfairly burdens defendant consumers with debt (Rickard et al., 2020). This report will provide an overview of the Massachusetts small claims system and its inequities and review evidence on existing policy solutions that could be leveraged to improve it. It will then analyze three potential solutions that Massachusetts could consider and ultimately recommend one approach.

Client Profile

This report has been prepared for the Consumer Rights Unit (CRU) of Greater Boston Legal Services (GBLS) and will focus on improving the accessibility of Massachusetts' SCC for defendants in consumer debt actions.

GBLS is a non-profit that provides free assistance to low-income individuals in the Greater Boston area facing various civil legal challenges. CRU specifically works with clients on money-related issues, debt collection, and unfair business practices. Much of CRU's work currently aims to help individual defendants sued by companies for debts owed in SCC. They primarily assist SCC defendants through Lawyer-for-the-Day clinics, counseling clients on available defense and settlement options and representing them in hearings. However, the high number of cases filed in the Massachusetts SCC, over 92,000 in 2023, leaves GBLS unable to provide legal counsel to everyone interested in their services sachusetts Trial Court, Department of Research & Planning, 2024b). To GBLS, too many defendants are thus vulnerable to the inequities that have come to define Massachusetts' SCC. Rather than expanding its Lawyer-for-the-Day program to support more defendants, GBLS is interested in policy solutions that would improve the accessibility of Massachusetts' SCC more broadly. In addition to their direct client work, GBLS also lobbies the Massachusetts General Court, the state's legislature, on policies that would benefit consumers across the Commonwealth. Thus, this report will focus on solutions that GBLS can advance through advocacy efforts in future legislative sessions.

Problem Statement

SCCs were developed to make the legal system more accessible to ordinary citizens by using simplified procedures and lowering costs by eliminating the need for legal counsel (Steele, 1981). **However, the recent domination of Massachusetts's SCCs by debt collection agencies and creditors takes advantage of this informality and leaves defendants vulnerable to unsubstantiated debt collection lawsuits and judgments to pay.**

PROBLEM BACKGROUND

Small Claims Requirements & Process

Under Massachusetts law, there are strict requirements about the kinds of cases that can be brought in SCC and how a case must proceed.

For a case to be heard in SCC, the party bringing the case, the plaintiff, must be seeking only monetary damages for monetary harm (Mass. General Laws c.218 § 21, 2021). Examples of claims appropriate for SCC include back-owed rent, credit or medical bills, or money to repair broken or damaged property (Massachusetts Office of Consumer Affairs and Business Regulation, 2024). Plaintiffs cannot sue in SCC for non-monetary harms like damage to reputation, slander, libel, or to require specific performance on a contractual obligation (Massachusetts Office of Consumer Affairs and Business Regulation, 2024). The claim's value also cannot exceed $7000 (Mass. General Laws c.218 § 21, 2021).

After establishing that a claim meets these requirements, a small claims case follows the procedure outlined below (Trial Court Rule III: Uniform Small Claims Rules, 2009).

1. To begin a small claims case, the plaintiff files a Statement of Claim with the Massachusetts District Court. This document outlines the cause of the action (the harm) and the total damages sought, but does not require any supporting evidence. If a business files a case, it must also

include the defendants' account number, the last payment date, and their mailing address (Trial Court Rule III: Uniform Small Claims Rules, Rule 2, 2009).

2. Once the Court receives the Statement of Claim, a clerk will send a first-class mail notice to the defendant at the address provided by the plaintiff. This notice will include the Statement of Claim, instructions for the defendant to answer, contest, or counterclaim, and information about when and where the hearing will occur (Trial Court Rule III: Uniform Small Claims Rules, Rule 3, 2009).

3. At any point before trial, the parties may submit an Agreement for Judgment, a legally binding settlement approved by the court (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009).

4. If there is no Agreement for Judgment, the case proceeds to trial on the date and time outlined in the notice sent to the defendant (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009). At trial, both sides will have the opportunity to make their argument and present evidence in favor.
    a. If the plaintiff does not appear for trial, the case is decided in favor of the defendant by default.
    b. If the defendant does not appear for trial, the case is decided in favor of the plaintiff by default.
    c. If neither party appears, the case is dismissed.

5. The clerk magistrate who presided over the case will decide and file the judgment. If debts are owed, this will include the Judgment to Pay, the official amount of debt owed to the plaintiff. Both parties will be sent notice of the judgment (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009).

6. If the case is decided in favor of the plaintiff, it proceeds to payment, where the clerk specifies the amount to be paid and the due date (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009).
    a. A payment hearing occurs if the defendant is present when the case is decided. Here, the defendant must complete a financial statement to determine their ability to pay and an appropriate payment plan.
    b. If the defendant is not present, the order to pay will be for the total amount outlined in the claim, due in full in thirty days.

7. If the defendant fails to pay, the plaintiff must notify the court, which will schedule an enforcement proceeding. This proceeding, which must be presided over by a judge, allows plaintiffs to request payment through garnished wages or seized property. Defendants can also

be charged with civil or criminal contempt of court, punishable by fines or jail time at this time (Trial Court Rule III: Uniform Small Claims Rules, Rule 9, 2009).

   a. If the defendant cannot pay currently, they must complete a financial statement, and the judgment to pay will remain on their record for the next twenty years.

8. The plaintiff must file an Acknowledgement of Satisfaction of Judgment within 10 days of fully paying a judgment, which ends the case (Trial Court Rule III: Uniform Small Claims Rules, Rule 9, 2009).

Drivers of Inaccessibility in Small Claims:

Three primary features of the Massachusetts SCCs interact to drive its inaccessibility: the default judgment rule, relaxed evidence requirements, and disproportionate institutional knowledge between business plaintiffs and consumer defendants.

Default Judgment Rules

Much of the inaccessibility of Massachusetts's SCCs is rooted in its strict default judgment rule, which allows plaintiff debt collectors and creditors to win by default if consumer defendants do not appear in court. Data from the Massachusetts court system suggests that the default judgment rate in these cases has sat around 50% for the past few years, meaning that most small claims defendants receive judgments to pay the entirety of the alleged debt without any opportunity to dispute evidence or provide a defense (Massachusetts Trial Court, Department of Research & Planning, 2024b).

Default judgments date back to the early English common law (Pfeffer-Gillett, 2023). These rules rest on the theory that in a party's failure to respond, they implicitly "admits the cause of action is valid, admits [it] has no defense, and consents to suffer judgment" (*Keeler Bros. V. Yellowstone Valley Nat. Bank,* 1916*)*. When these assumptions are incorrect, the default judgment is a penalty for one side's failure to comply with procedural rules and inconvenience to the abiding party (Park, 2012).

Today, they are standard practice in many areas of American civil law, with proponents arguing that they are necessary because they allow already busy courts to decide cases efficiently and serve as a deterrent for non-compliance (Park, 2012). Critics, however, say this practice does not allow the legal process to occur as intended, where defendants can explain why claims are invalid (Rickard et al., 2020). Others argue it is fundamentally at odds with the "innocent until proven guilty" principle foundational to American law (Park, 2012). To bring a claim in a Massachusetts small court, plaintiffs need to state the amount of debt they believe the defendant owes them, but no evidence in support (Mass. Gen. Laws ch.218 § 21). Thus, when a defendant does not appear in court, plaintiffs do not have to show any evidence of the alleged debt owed to them to collect.

The default judgment rule's role in making the Massachusetts SCC inaccessible for many defendants is also driven by the fact that most small claims defendants do not appear in court. Anecdotal evidence collected by Greater Boston Legal Services (GBLS) and Jenifer McKim, an investigative reporter focusing on Massachusetts SCC, suggests that many defendants are unaware they have been sued (Bor-Zale & Perlman, 2024; McKim, 2024a). Interestingly, Massachusetts law

only requires that notice be sent to rather than received by defendants (Mass. Gen. Laws ch.218 § 21). While no data is specific to Massachusetts, defendants in SCCs nationwide are significantly more likely to be lower-income (Rickard et al., 2020). A large body of literature suggests that lower-income households move more frequently (Feldman, 2024; Phinney, 2013). Together, this indicates a possibility that the address to which a notice was sent is no longer valid and offers a potential explanation as to why so few defendants appear in court (New York Appleseed & Jones Day, LLP, 2009). Another factor explaining the high default judgment rate involves logistical limitations in getting to court. Kristen Bor-Zale, an attorney at GBLS who supports these clients regularly, says that many small claims defendants do not appear in court because they cannot afford to take off work, find child care, or get transportation (K. Bor Zale, personal communication, October 11, 2024).

Relaxed Evidence Rules

Relaxed evidence rules in SCCs also contribute to the inaccessibility of this system for defendants in consumer debt cases. In traditional civil courts, parties must prove specific evidentiary requirements before testimony, documents, or objects can be admitted as evidence before a judge. Particularly relevant to debt collection lawsuits, evidentiary standards of "hearsay, authenticity of documents, proof of chain of assignment, and certainty as to the amount of the damages" apply in district court (Holland, 2014, p. 261). For individuals unfamiliar with the legal system and rules of evidence, admissibility can be challenging to prove. Thus, to make SCCs more accessible and eliminate the need for legal representation in this forum, these rules were relaxed. However, this allows plaintiffs to use evidence that would be considered hearsay—a statement made out of court presented in court to prove the truth of that statement—and, therefore, inadmissible in district court (Goldberg, 2006; Holland, 2014; United States Courts, n.d.). Debt collectors and creditors have admitted that they frequently do not have sufficient evidence to prove standing, liability, and damages in these cases and rely on these relaxed rules to collect billions annually (Holland, 2014).

It is also important to note how relaxed evidence rules interact with the default judgment rule, requiring tens of thousands of individuals a year to pay debts for which no evidence was ever provided. As mentioned above, plaintiff credit lenders and debt collectors only need to outline the amount owed and the basis for the claim to sue a consumer defendant in SCC (Trial Court Rule III: Uniform Small Claims Rules, Rule 2, 2009). They do not need to submit any evidence substantiating the claim (Trial Court Rule III: Uniform Small Claims Rules, Rule 2, 2009). Under the default judgment rule, however, clerks automatically decide cases in favor of the plaintiff when the defendant does not appear and take the amount outlined in the initial Statement of Claim as accurate (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009). For half of the small claims cases that end in a default judgment for the plaintiff, this rule means that defendants are left to pay debts that are unsubstantiated with evidence and potentially unjust.

Disproportionate Institutional Knowledge Between Plaintiffs & Defendants:

Another driver of the inaccessibility plaguing Massachusetts's small claims system is the disproportionate institutional knowledge about courts and the legal process between plaintiffs and

defendants. SCC was developed to address "ordinary day-to-day grievances and disputes involving the common man" (Steele, 1981). It aims to make the legal process more accessible by using simplified procedures and reducing costs by eliminating the need for parties to hire an attorney (Steele, 1981). Today, however, cases brought by debt collection and credit lending companies take up most of the small claims docket. An attorney almost always represents these plaintiffs (Lezcano et al., 2023; Massachusetts Trial Court, Department of Research & Planning, 2024b; Rickard et al., 2020). Conversely, defendants are represented in just 3% of small claims cases (Massachusetts Trial Court, Department of Research & Planning, 2024b). These disproportionate representation rates give plaintiffs, represented by experienced attorneys with an intricate understanding of the legal system, an advantage over defendants who lack this institutional understanding and do not know that defenses are available, running counter to the initial intent of SCC and potentially saddling defendants with unjust debt (Albin-Lackey, 2016; McKim, 2024a; Spector, 2012).

Taken together with the recent surge of consumer debt cases in SCCs, these unique features create a legal system inaccessible to defendants, characterized by "a sophisticated business represented by a skilled lawyer suing an unsophisticated, unrepresented consumer in which no formal rules of evidence are applied, and rank hearsay is rampant" (Holland, 2014, p. 261).

Consequences of Debt

The inequities of the small claims system, which require defendants to pay potentially unsubstantiated debt, are even more problematic when considering the consequences of these judgments on consumers' economic stability for years to come (Rickard et al., 2020).

Excess Cost:

Under Massachusetts law, Judgments to Pay—the official debt owed as decided by the court—are subject to an annual interest rate of 12%, the highest in the country (Rickard et al., 2020). The amount owed accrues quickly and can make it harder to escape the cyclical nature of debt (Rickard et al., 2020).

Collections:

If an individual who loses an SCC case does not repay their debts within the timeframe outlined in the judgment, plaintiffs can ask the court to garnish wages or seize money from bank accounts and physical assets (Trial Court Rule III: Uniform Small Claims Rules, Rule 9, 2009). Given that small claims defendants are overwhelmingly low-income and live paycheck to paycheck, these garnishments and seizures can cause significant financial stress that may take years to recover from (Rickard et al., 2020).

Arrest & Incarceration:

In the most extreme situations, consumers can be arrested and jailed for consumer debt. While this practice is rare, Massachusetts law allows judges to hold defendants in civil contempt and incarcerate individuals to enforce the payment of a judgment (Trial Court Rule III: Uniform Small

Claims Rules, Rule 9, 2009). Time spent in jail can have significant consequences for wages and potential loss of employment (American Civil Liberties Union, 2018; Holsinger, 2016; Rickard et al., 2020).

Plaintiffs' Perspectives on Small Claims:

In Massachusetts, the majority of consumer debt cases in small claims courts are brought by a relatively small group of original credit lenders and debt buyers (Massachusetts Trial Court, Department of Research & Planning, 2024b). These include entities like TD Bank, whose business is more regionally focused around New England, and corporations like Midland Funding and Portfolio Recovery Associates, which conduct debt collection litigation across the country (Massachusetts Trial Court, Department of Research & Planning, 2024b). Generally, these lawsuits are very profitable for both credit lenders and debt buyers. Unfortunately, there is no data suggesting how much money these entities collect under the small claims system across the country or in Massachusetts specifically. Estimating from the distribution of claim amounts and the number of cases filed, plaintiffs are likely collecting between $90 and $210 million annually from consumer debt cases in Massachusetts alone (Massachusetts Trial Court, Department of Research & Planning, 2024a).

EVIDENCE ON EXISTING INTERVENTIONS:

In speaking with various stakeholders involved with the small claims process in Massachusetts, four categories of policy options emerged as potential solutions to this problem: legal representation, restrictions on the business use of SCC, changes in service requirements, and extended court hours. A review of relevant literature on these interventions is below. Before doing so, however, it is necessary to acknowledge that experimental and quasi-experimental research designs are greatly underutilized in the law (Greiner & Matthews, 2016). This trend results in a lack of causal evidence on any potential intervention and is a major limitation in this literature review.

Civil Gideon:

The most widely studied intervention that could address the unfairness of Massachusetts' small claims process is the right to counsel in civil cases, which scholars often refer to as "Civil Gideon." The term comes from the 1963 U.S. Supreme Court case *Gideon v. Wainwright*, which established the defendant's constitutional right to counsel in all criminal cases, regardless of their ability to pay (Derocher, 2008). In the intervening 60 years, stakeholders in all corners of the legal profession have also called for this right to be extended to all defendants in civil cases (Grant, 2024). If Civil Gideon were adopted, it would guarantee small claims defendants access to a lawyer regardless of their ability to afford one (Brito et al., 2016; Ortiz, 2023). Currently, less than three percent of defendants in Massachusetts are represented by legal counsel at any stage of the small claims process (Massachusetts Trial Court, Department of Research & Planning, 2024b). If legal representation improves defendants' outcomes, Civil Gideon could effectively address the inequities defining Massachusetts' SCC because so many more defendants would have access to an attorney. Further, anecdotal evidence provided by three Boston-area attorneys who regularly represent small

claims defendants suggests improved outcomes for those with access to counsel (K. Bor Zale, personal communication, October 11, 2024; S. Perlman, personal communication, October 24, 2024; A. Rosenbloom, personal communication, October 18, 2024). To effectively evaluate these claims and understand the potential impact of Civil Gideon on Massachusetts' small claims process, experimental or quasi-experimental studies looking at the effects of access to legal counsel in Massachusetts' SCC would be ideal.

Unfortunately, no such studies exist about Massachusetts or any other US state's SCC system. However, several experiments examine the impacts of a Civil Gideon in Housing Court (HC). As outlined in Appendix 1, HC offers an interesting and valid parallel to SCC, making generalizing these results appropriate.

Since the 1970s, researchers have attempted to understand how legal counsel impacts defendants in HC. These studies typically find moderately positive results, suggesting that represented defendants were less likely to be evicted and have judgments entered against them (Birnbaum et al., 1979; Chadha, 1996; Desmond, 2012; Eldridge, 2002; Gunn, 1995; Hazard, 1973; Kleinman, 2004; Monsma & Lempert, 1992; Mosier & Soble, 1973; Steinberg, 2010; Taylor Poppe & Rachlinski, 2016). For example, Mosier & Soble (1973), the earliest study looking at the effects of legal representation on outcomes in HC in Chicago, found that plaintiff landlords had a complete judgment entered in their favor in 87.7 percent of cases when the defendant tenant was unrepresented, compared to 46.2 percent when they were represented. Several years later, Birnbaum et al. (1979) completed a similar analysis, again in Chicago, and found similar effects. Landlords won 84.2 percent of eviction cases when defendants represented themselves but only 38.7 percent when they had an attorney (Birnbaum et al., 1979). While these studies indicate a positive impact of attorney representation on defendant outcomes, this evidence is only observational. Because this relationship is not causal, the patterns may be driven by other variables that affect both the likelihood of eviction and legal representation. Thus, the strength of this evidence is relatively weak and should not be the basis of a recommendation.

More recently, however, several studies leveraging experimental and quasi-experimental research designs have provided higher-quality, potentially causal evidence on the effects of legal representation on defendants' outcomes in HC. Cassidy and Currie (2023) looked at New York City's Universal Access to Counsel Program, which offers free legal representation to defendants in HC whose income is at or below 200 percent of the federal poverty line, and became law in 2017. The authors found that increased legal representation significantly improves outcomes for HC defendants. They also specifically argue that these findings generalize to other areas of civil law, making this study particularly relevant to SCC. Their robust research methods suggest that these claims are valid. To isolate the causal effects of universal access, they leveraged the program's phased roll-out across the city and an instrumental variable approach, arguing that the program's impact could only affect defendants' outcomes through increased rates of legal representation. They also control for various potential confounding variables, including poverty, rent regulations, claim amounts, and the difficulty of cases (Cassidy & Currie, 2023). This research design is much more robust than the observational studies outlined above. It thus yields stronger evidence about the impacts of a Civil Gideon reform, which would give legal representation to all defendants.

Another study looked at a similar legal representation program in Massachusetts, making it even more relevant to this project. In 2008, the Boston Bar Association's Task Force on Expanding the Civil Right to Counsel identified HC as a practice where the need for Civil Gideon was the most prominent (Boston Bar Association Task Force on Expanding the Civil Right to Counsel, 2008). As a result of this finding, Bar foundations across Massachusetts funded two Civil Gideon pilot programs for defendants in HC facing eviction. A group of researchers persuaded the providers of this program to conduct a randomized control trial, the gold standard of experimental research, where clients received complete versus limited attorney representation (Greiner et al., 2012). HC defendants in the treated, full representation group received an offer of one-on-one, traditional legal representation. Those in the control, limited representation group received legal assistance in settlement and mediation, but attorneys did not appear on their behalf in the courtroom. In practice, assignment to treatment versus control resulted in significant differences in the amount of time defendants received from their attorneys: 12.4 hours for the treated group and 1.7 for the control (Greiner et al., 2012). This discrepancy is important because it suggests a real difference in the level of legal assistance provided, allowing the researchers to understand how the different programs impacted defendants' outcomes. Greiner et al. (2012) found no statistically significant differences in measured outcomes between the treatment and control groups. This finding suggests that providing a defendant with full legal representation does not produce better outcomes than limited legal assistance (Greiner et al., 2012). This result is surprising, given the literature outlined above. This study's experimental design and the fact that it takes place in Massachusetts, the focus of my project, makes the evidence stronger than early observational studies and likely New York's universal access experiment. However, Greiner et al. (2012) are careful to note that this finding should not be taken to say that legal assistance programs are entirely ineffective. Instead, it may provide evidence that limited legal assistance programs are more effective than traditionally assumed but underscore the need to compare limited assistance to no assistance in future research.

Taken together, the evidence on the effectiveness of Civil Gideon in HC is mixed.

Restrictions on Business Use of Courts:

Consumer debt actions brought by credit lenders and debt collection agencies against individual consumer defendants now dominate the small claims docket, with the share rising steadily over the past several decades (Massachusetts Trial Court, Department of Research & Planning, 2024b; Rickard et al., 2020). Advocates of small claims reform have long taken issue with this use of SCCs, arguing that businesses being allowed to sue in these courts is fundamentally at odds with their original purpose of making the justice system more accessible to ordinary individuals. Thus, companies like credit lenders and debt buyers should be barred from suing individual consumers in SCC (K. Bor Zale, personal communication, October 11, 2024; Frierson, 1977; Kosmin, 1975; Moulton, 1969; S. Perlman, personal communication, October 24, 2024; A. Rosenbloom, personal communication, October 18, 2024). For many years, however, reformers noted this solution was likely unrealistic and dismissed it from the outset (Brownlee et al., 1975; DeJong, 1983; J. Y. King, 1977). Thus, there is no academic literature evaluating the potential effectiveness of this solution.

Short of banning business use of SCC, advocates also suggest limiting the number of such claims that can be brought in a set timeframe, increasing filing fees for each successive claim, and limiting the number of cases brought by a given plaintiff that can be heard on a single day (Brownlee et al., 1975; DeJong, 1983; J. Y. King, 1977). Several states have implemented these practices. For example, Colorado's small claims rules prevent plaintiffs from filing more than two claims per month or 18 claims (whichever is less) per year in the SCC of each county (Colorado Revised Statutes, Title 13, Article 6, Part 4, Section 11). In California, plaintiffs who bring more than 12 small claims cases anywhere in the state face a flat $100 filing fee for each subsequent case as opposed to a $30-$75 fee scaled to the amount of the claim (California Code, Code of Civil Procedure—CCP § 116.230.3(c)). However, there is currently no academic literature evaluating the impacts of these kinds of reforms.

Changes in Service Requirements:

As outlined above, one of the primary reasons for inaccessibility and unfairness in SCC is the default judgment rule, which allows plaintiff debt collectors to win by default if consumer defendants do not appear in court and occur in over 50% of Massachusetts' SCC cases (Massachusetts Trial Court, Department of Research & Planning, 2024b). While better evidence is necessary to extrapolate these claims fully, anecdotal evidence suggests that many defendants are unaware they have been sued (Bor-Zale & Perlman, 2024; McKim, 2024a). Interestingly, Massachusetts law only requires that notice be sent to rather than received by defendants (Mass. Gen. Laws ch.218 § 21). Defendants in SCC are significantly more likely to be lower-income (Rickard et al., 2020). A large body of literature suggests that lower-income households move more frequently (Feldman, 2024; Phinney, 2013). Together, this indicates a possibility that the address to which a notice was sent is no longer valid and offers a potential explanation as to why so few defendants appear in court (New York Appleseed & Jones Day, LLP, 2009).

To address this problem, SCC reform advocates suggest changing service rules to ensure defendants know they have been sued and must appear in court (DeJong, 1983; Rickard et al., 2020). For example, New York City recently changed its SCC rules to bar default judgments from being entered if the notice is marked as undeliverable or otherwise returned to the court (Rickard et al., 2020). Unfortunately, New York City does not make SCC data publicly available, limiting researchers' ability to study the effectiveness of this intervention. Outside of very weak anecdotal evidence, there is currently no basis for evaluating the effectiveness of this intervention.

Extension in Court Hours:

Another common hypothesis for the incredibly high default judgment rate and the inaccessibility of SCC suggests that defendants do not appear because they cannot afford to take time off work or find childcare (Bor-Zale & Perlman, 2024). In Massachusetts, SCC operates during regular business hours during the week. Defendants also do not have the opportunity to select a hearing time or date that they might be able to attend. In response to these logistical challenges that prevent many defendants from appearing, many reform advocates suggest evening or weekend SCC sessions.

The only evidence on this intervention specific to SCC or any potential parallels comes from a 1975 "experiment" in six of California's SCCs (Dickinson, 1979). The California State Legislature assigned three SCCs as experimental courts where various reforms, including evening and weekend sessions, were tested. They found that evening and weekend sessions had significantly lower default judgment rates than sessions heard during business hours, leading the authors to make this the primary recommendation to the California Legislature on improving the state's SCCs (Dickinson, 1979).

However, this study has significant limitations that make generalizing its findings inappropriate. First, the assignment to experimental or control courts was not random. While the authors do not indicate one way or another, it is possible that experimental and control SCCs differed in essential characteristics that would make the treatment look more or less effective than it truly is. Second, this study is almost 50 years old and likely outdated. In the intervening years, outside factors influencing the effectiveness of this treatment may have changed, which would make the results reported here potentially invalid. Finally, and perhaps most importantly, the defendants had to ask for their case to be heard in an evening or weekend session. It follows logically that after making such a request, defendants would be more likely to appear in court than if they were simply told when to appear. These results may capture the effect of being able to choose when a case is heard rather than having it heard outside of traditional business hours. Thus, the evidence for extending court hours is relatively weak.

Literature Limitations:

While evaluating the evidence that does exist on interventions frequently proposed to make the small claims process more accessible to defendants, it became clear that experimental and quasi-experimental research methods are underutilized in the legal field. Greiner and Matthews (2016) draw attention to this trend and want to understand why it occurs, arguing that "the United States would be a better place" if studies that produced casual results, like randomized control trials (RCTs), were more common in the law (Greiner & Matthews, 2016, p. 2). They spent three years looking for US-based, randomized studies evaluating the effectiveness of various legal interventions (access to counsel, alternative dispute resolution, etc.) and found about 50. While relatively modest compared to the number of such studies conducted in other, potentially parallel fields like medicine, Greiner and Matthews expected the total to be lower. They argue that this suggests that RCTs are not impossible to conduct legally, as is frequently assumed. Their analysis also showed that these studies can provide robust evidence of the effectiveness of legal interventions and are likely helpful to lawyers, judges, and policymakers.

The relative shortage of experimental, causal evidence considering these two important findings about their relevance and power in the law is thus surprising. It restricts the strength of conclusions that can be drawn about the effectiveness of potential interventions and serves as a significant limitation to this literature review.

ALTERNATIVES:

After reviewing relevant literature, policy solutions taken by other states, conversations with appropriate stakeholders, and available data, I analyzed three potential alternatives to address this problem.

Alternative #1: Civil Gideon

In 1963, the United States Supreme Court ruled that all defendants in criminal cases, regardless of their ability to pay, have the constitutional right to an attorney in *Gideon v. Wainwright* (Derocher, 2008). In the intervening 60 years, stakeholders in all corners of the legal profession have called for a "Civil Gideon," which would extend this right to counsel to all defendants in civil cases, including Small Claims (Brito et al., 2016; Grant, 2024; Ortiz, 2023).

If put into place, attorneys will be provided to eligible defendants through Massachusetts' existing public defender system, the Committee for Public Counsel Services (CPCS). Before a CPCS attorney can be assigned to a case, a judge must declare an individual indigent, meaning they do not have the resources to pay for an attorney. Under Massachusetts law, there is no standard for a defendant to be declared indigent. Generally, individuals whose income after taxes is less than 125% of the federal poverty level will typically be granted free legal services through CPCS (Massachusetts Supreme Judicial Court, 2025b). CPCS provides representation through a combination of state-employed public defenders and volunteer private attorneys.

The most recent evidence suggests that 64% of eligible Massachusetts residents who request civil legal aid are turned away due to a lack of resources (Boston Bar Association Statewide Task & Force to Expand Civil Legal Aid in Massachusetts, 2014). This indicates an under-supply that would need to be filled by CPCS in response to Civil Gideon protections. However, CSPC is facing a shortage of attorneys with their current workload and would thus have to expand their workforce significantly to keep up under a Civil Gideon (Parnell, 2022). An expanded workforce would need to be supported by expanded allocation in the Commonwealth's next budget cycle and would thus be paid for by Massachusetts taxpayers.

Alternative #2: Implement California's Fair Debt Buying Practices Act

Massachusetts could consider legislation designed to address the lack of documentation provided in many debt collection claims. Specifically, this could be modeled after California's Fair Debt Buying Practices Act (CFDBPA), passed in 2013 (Aneja et al., 2024). CFDBPA requires debt buyers to meet three standards before bringing a case. First, the debt buyer must attempt to contact consumers and, before doing so, must have documents and information showing that:

> " (1) the debt buyer is the sole owner of the debt or has the authority to assert the rights of all owners to the debt
> (2) the debt balance at charge-off and any post-charge-off fees and interest,
> (3) the date of default or last payment,
> (4) the name and address of the credit at charge-off,
> (5) the name and address of the debt in the charge-off creditor's records,

(6) the names and addresses of all purchasers of the debt after charge-off, and
(7) the California license number of the debt buyer" (Aneja et al., 2024).

If the consumer does not respond, the debt buyer can file a lawsuit alleging items 1-6 above, that the plaintiff is a debt buyer, the nature/amount of the debt and the transactions that generated it, and that they complied with the above requirements (Aneja et al., 2024). They also must attach documentation of the consumer's agreement to the debt in the form of a contract or notice of an incurred debt provided to the defendant before the account was charged off (Aneja et al., 2024). Finally, CFDBPA requires that debt buyers provide business records showing items 1-6 above and a sworn declaration of their authenticity before requesting or obtaining a default judgment (Aneja et al., 2024).

Massachusetts implemented Rule 8.1 of its Rules of Civil Procedure in 2019 to add similar requirements to debt collection cases brought in traditional civil court. However, cases brought by district courts represent a relatively small share of consumer debt collection actions—the majority being brought in SCC in Massachusetts (Massachusetts Trial Court, Department of Research & Planning, 2024b). Thus, to have any effect, Massachusetts must ensure that the CFDBPA applies in the small claims setting, where evidentiary requirements are currently not the same.

Alternative #3: Ban Lawyers in SCCs

Like several other states, Massachusetts could amend its small claims rules to ban attorneys from these courts. For example, Massachusetts could leverage language from Michigan's Small Claims Rules, which state that "an attorney at law … shall not take part in the filing, prosecution, or defense of litigation in the small claims division" (Michigan Complied Laws, Section 600.8408).

Because the law establishing SCCs in Massachusetts grants rule- and procedure-making power to the Supreme Judicial Court (SJC), banning lawyers could be done through a rule change, a relatively straightforward and frequent process in Massachusetts District Courts (Massachusetts General Law, Part III, Title I, Chapter 218, Section 21). A Standing Advisory Committee comprised of judges, court clerks, practicing attorneys, and law professors solicits and reviews recommendations for changes to these rules. Upon their recommendation, proposed amendments are reviewed and preliminarily approved by a majority vote of the Massachusetts Supreme Judicial Court (SJC). The proposed regulations are then open to public comment before being reviewed again by the SJC for final approval.

CRITERIA:

Before recommending one of the above alternatives, I evaluate each against three equally weighted criteria: financial impact, effectiveness, and implementational feasibility. To make comparisons across criteria and alternatives easier, I will ultimately rank each criterion on a scale of 1-5, with higher scores being better. The explanation for each will depend on the criterion and will be discussed below. The alternative with the highest overall score will be my recommendation.

Financial Impact:

Instead of a cost criterion, I estimate financial impact by looking at how much money Massachusetts will spend (in the case of Alternative #1) or lose/gain in filing fees (Alternatives 2 & 3) annually. Looking at cost this way is important because while only Alternative #1 involves direct financial expenditures, the rest will likely have economic impacts on the state's revenue and thus may affect the provision of other services. The exact cost calculations and assumptions can be found in Appendix 2.

To make comparing alternatives and criteria easier, I will categorize financial impact on a scale of 1 to 5, with higher scores being better (those that will save the state money).

- 1: Alternatives estimated to cost Massachusetts an additional $50 million-plus (either through additional outlays or lost revenue), effectively more than doubling their current civil legal aid expenditures, will receive a 1 for financial impact (Massachusetts Legal Assistance Corporation, 2024).
- 2: Alternatives estimated to cost Massachusetts between $25 million and $50 million will receive a 2 for financial impact.
- 3: Alternatives estimated to cost Massachusetts between $0 and $25 million will receive a 3 for financial impact.
- 4: Alternatives estimated to save Massachusetts between $0 and $25 million will receive a 4 for financial impact.
- 5: Alternatives estimated to save Massachusetts more than $25 million will receive a 5 for financial impact.

Effectiveness

This report is focused on improving the accessibility of SCC by reducing the number of defendants who are required to pay unsubstantiated debts. Thus, it is essential to understand how much the proposed solutions will achieve this goal. While there is no perfect way to measure this, the best estimate is the share of cases ending in a default judgment against the defendant. When cases end in a default judgment, plaintiffs are not required to submit any evidence of the alleged debt owed to them to collect, and defendants do not have the opportunity to dispute evidence or assert any defenses. I operationalize this criterion by leveraging data from other contexts and states to estimate the percent change in default judgment rate in consumer debt cases that each alternative will provide. The specific operationalization for each alternative is explained in each alternative.

I will categorize effectiveness on a scale of 1-5 to make comparing alternatives and criteria easier.

- 1: Alternatives estimated to reduce the default judgment rate by between 0-10% will receive a 1 in effectiveness.
- 2: Alternatives estimated to reduce the default judgment rate by between 10-20% will receive a 2 in effectiveness.
- 3: Alternatives estimated to reduce the default judgment rate by between 20-30% will receive a 3 in effectiveness.

- 4: Alternatives estimated to reduce the default judgment rate by between 30-40% will receive a 4 in effectiveness.
- 5: Alternatives estimated to reduce the default judgment rate by more than 40% will receive a 5 in effectiveness.

Implementational Feasibility:

This criterion will measure the difficulty of implementation for each policy alternative. Recognizing that various considerations factor into the implementational feasibility of any potential policy solution, I have created a series of "yes" or "no" questions that will yield a score between 1 and 5.

Implementational Feasibility Rubric:
Scores Range From 1-5

Legal Avenue Required:

- Can the alternative be implemented through a regulation change? → If yes, it receives 3 points.
  - If no,
    - Can the alternative be implemented through a legislation change? → If yes, it receives 2 points
    - If no,
      - The alternative must be implemented through a constitutional amendment and receives 1 point.

Minimum Timeframe:

- Is it legally possible for the alternative to be implemented within the next 12 months?
  - If yes, 1 point
  - If no, 0 points

Staff Issues/Concerns:

- Does the alternative require the state to hire additional attorneys?
  - If yes, 0 points
  - If no, 1 point

I will first consider the legal avenue—regulation change, legislation, or constitutional amendment—required to implement each alternative. Amending the Massachusetts Constitution is an incredibly complex multi-year process that requires signatures, legislative approval in two consecutive sessions, and a majority vote on a statewide referendum. On the other extreme, regulation changes are much more straightforward. The law establishing SCCs in Massachusetts grants rule- and procedure-making power to the Supreme Judicial Court (SJC) (Massachusetts General Law, Part III, Title I, Chapter 218, Section 21). A Standing Advisory Committee comprised of judges, court clerks, practicing attorneys, and law professors solicits and reviews

recommendations for changes to these rules. Upon their recommendation, proposed amendments are reviewed and preliminarily approved by a majority vote of SJC. The proposed rules are then open to public comment before being reviewed again by the SJC for final approval.

I will also consider each alternative's minimum legal timeline. Given the incredible scope of this problem and the unfair burdens it places on many consumers, an ideal solution will be implemented quickly.

Finally, understanding that the Massachusetts public defenders are already understaffed and face significant difficulty hiring new staff, I will consider whether the proposed solution would require more attorneys.

In answering the questions above, each alternative will receive an implementational feasibility score, again ranging from 1-5, with higher scores indicating higher levels of feasibility.

ASSESSMENT OF ALTERNATIVES:

Alternative #1: Civil Gideon

Financial Impact:

Because a Civil Gideon program would involve cost outlays on the part of Massachusetts, I operationalized the financial impact of this alternative by estimating how much the program would cost the Commonwealth every year.

Understanding this cost first requires estimating how many new cases public defenders would be required to take on. Because many defendants in civil cases have private legal representation and others get representation from civil legal aid organizations, like Greater Boston Legal Services, not all civil cases will become the state's responsibility. To estimate how many cases would be left to the state, I leveraged data from a 2014 assessment of Massachusetts civil legal aid organizations, revealing they had to turn away about 33,000 eligible cases due to staffing shortages and other resource constraints (Boston Bar Association Statewide Task & Force to Expand Civil Legal Aid in Massachusetts, 2014). I divided this by the total number of civil cases filed in 2014 to calculate the "turn-away" rate, which is about 16.4% of all civil cases (Massachusetts Trial Court, Department of Research and Planning, 2014). I multiplied the turn-away rate by the total number of civil matters filed in Massachusetts in 2024 to estimate how many cases the state would have to take each year, about **44,500** (Massachusetts Trial Court, Department of Research and Planning, 2025).

Next, I leveraged analysis from the same civil legal aid report to estimate the cost per attorney. I adjusted this for inflation using the Consumer Price Index, estimating that each additional attorney would cost the state about **$122,000** in 2024 dollars (Boston Bar Association Statewide Task & Force to Expand Civil Legal Aid in Massachusetts, 2014). The same report found that attorneys can take on 35 civil cases annually (Boston Bar Association Statewide Task & Force to Expand Civil Legal Aid in Massachusetts, 2014). Dividing the estimated number of turned-away cases by 35, I estimated that Massachusetts would need to hire an additional **1272** attorneys to support the influx of cases as a result of a Civil Gideon. Multiplying the total number of additional attorneys by the inflation-adjusted price, I estimate that a Civil Gideon program would cost Massachusetts about **$155 million** annually, effectively tripling the current civil legal aid budget. Applying the rubric above, this alternative scores **1** on financial impact.

Effectiveness:

A 2024 report conducted by Princeton's Debt Collection Lab found that defendants in debt collection cases in four jurisdictions (filed in both small claims and traditional civil courts) whose attorneys represent them are 91.1% less likely to receive a default judgment than those with no legal representation (Wherry & Hill, 2024). While this finding alludes to the effectiveness of legal representation, it is limited in that those who had representation self-selected to participate in the court process, either by working with an attorney before coming to court or receiving assistance from a legal aid group, like Greater Boston Legal Services, after coming to court (Wherry & Hill, 2024). As noted above, the number of defendants in debt collection cases who appear in court is low, about 50% in Massachusetts, meaning that the Debt Collection Lab estimate also captures the effect of appearing in court, not just having a lawyer, requiring other data sources for an appropriate estimation (Massachusetts Trial Court, Department of Research & Planning, 2024b).

While there have been frequent calls for Civil Gideon over the last 60-plus years, such programs have never been fully implemented at a state or district level, which makes estimating their effectiveness challenging. Instead, several states and localities have launched pilot programs designed to test the effectiveness of legal counsel in specific civil matters, mainly housing court eviction proceedings. Importantly for this report, these proceedings offer an interesting and helpful parallel to SCC(explained in Appendix I) on which to base an estimate of such a program's effectiveness.

The most well-studied program is New York City's Housing Court Access to Counsel project, first launched in 1993. Initially, researchers recruited participants who were in court to respond to nonpayment of rent petition. Those interested in receiving legal counsel met with attorneys to confirm eligibility, and those eligible were randomly assigned to either treatment or control. They found that being represented by an attorney resulted in a 78% reduction in default judgment rates (Seron et al., 2001). While access to a lawyer was randomized in this study, the sample was limited only to the participants who responded to their claims and showed up in court. Like the Debt Collection Lab's work outlined above, the findings also include the effect of showing up in court, limiting generalizability. However, the results from this study inspired New York City to launch the Universal Access to Counsel (UAC) program in 2017 (NYU Furman Center, 2018). UAC requires that all income-eligible residents of New York City, those making less than 200% of the federal poverty line, receive free, full representation for non-payment of rent eviction cases (NYU Furman Center, 2018). Leveraging phased rollout, researchers found that the program caused the default judgment rate to drop by **34%** across the city (Pollock, 2024).

Given the empirical robustness of these findings and the strength of the comparison between small claims and housing court explained in Appendix I, I estimate that a Civil Gideon program that provides free, full legal representation to income-eligible defendants would reduce the default judgment rate in small claims consumer debt cases by **34%.** Under the thresholds outlined above, Civil Gideon scores a **4** in effectiveness.

Implementational Feasibility:

Applying the Implementational Feasibility Rubric outlined above, a Civil Gideon program receives a score of **2.**

Looking first at the required legal avenue, there is debate among legal scholars as to whether a Civil Gideon program could be accomplished through legislation or would require constitutional protections through an amendment. On the legislation side, Brown (2011) points to statutes in many states granting the right to counsel in specific civil proceedings, like parental rights termination and involuntary commitment, to suggest that an overall Civil Gideon could be accomplished through the same channels. This argument aligns with the American Bar Association's incremental approach to expanding the right to counsel and the Boston Bar Association Task Force on Expanding the Civil Right to Counsel's recommendation for legislature-led Civil Gideon pilot programs to understand how these efforts would work in Massachusetts specifically (ABA House of Delegates, 2010; Boston Bar Association Statewide Task & Force to Expand Civil Legal Aid in Massachusetts, 2014; Brown, 2011). Others, however, argue that Civil Gideon would require a constitutional amendment to best ensure the protection of these rights. Since the Supreme Court established the right to counsel for criminal proceedings based on the 6th Amendment constitutional protection, they argue that the same right for civil proceedings should come from constitutional protections as well (Abel, 2006; Grant, 2024). Given the lack of certainty about the legal avenue necessary for this change, I give this alternative the average between the two scores, which is **1.5.**

This alternative cannot be implemented in the next twelve months, regardless of which avenue is used to pursue it. Looking at the legislative route, the Massachusetts legislature, The General Court, operates on a two-year session, starting on the first Wednesday of January of odd-numbered years. For example, the current Massachusetts legislative session began on January 1st, 2025. Interestingly, Massachusetts requires that all bills for the upcoming session be filed by the third Friday of January of the first year in the session (Commonwealth of Massachusetts Public Employee Retirement Administration Commission, n.d.). Since this deadline passed in early January, legislators must now wait until the next legislative session, beginning in January of 2027, to introduce potential legislation. Thus, it cannot be implemented in the next twelve months and receives zero points for this criterion. If Civil Gideon requires a constitutional amendment, it is also not possible to implement it in the next twelve months. Under Article XLVII of the Massachusetts Constitution, Greater Boston Legal Services (GBLS) would begin by filing an Initiative Petition that called for the right to legal counsel in civil matters. Ten registered voters must sign it before GBLS can submit it to the Attorney General's office to be certified as constitutional. If the petition is deemed constitutional, they must collect about 75,000 additional signatures before being sent to the General Court for legislative review. If it passes the legislature in two consecutive sessions, the measure would be put on the ballot for a statewide referendum in the next general election, where a simple majority is required for adoption. Given the requirement that it pass in two legislative sessions and Massachusetts's two-year sessions, the minimum timeframe is four years, assuming that there is a general election. Because neither avenue would allow this alternative to be implemented in the next twelve months, it receives a **0** for this implementational feasibility criterion.

Finally, as outlined in the cost criterion above, bringing the right to counsel in civil cases would require the state to hire significantly more attorneys to take on the influx of cases that would result. Thus, this receives a **0** on this criterion.

Adding the scores for each part of the rubric, Civil Gideon receives a **1.5** in implementational feasibility.

Alternative 1: Civil Gideon	**Financial Impact (33%)**	**Effectiveness (33%)**	**Implementation Feasibility (33%)**	**Total Score (Out of 15)**
	1 ($155M in Cost)	4 (34% Reduction)	1.5	6.5

Alternative #2: CFDBPA

Financial Impact:

Because the CFDBPA does not involve any direct financial outlays by Massachusetts, I operationalize the financial impact of this alternative by estimating the change in filing fee revenue that courts will see as a result.

Following the implementation of the CFDBPA, collections cases filed by debt buyers fell dramatically from a high of about 120,000 cases in 2012, the year before passage, to a low of about 32,000 in 2015 (Barnard et al., 2020). Since then, filings have rebounded slightly but remained steady around 50,000 cases annually, representing a roughly **57% decrease** from before CFDBPA went into effect (Barnard et al., 2020). Thus, it is reasonable to assume that Massachusetts would experience filing decreases if they were to bring this legislation to the Commonwealth, which would, in turn, affect court revenue from filing fees.

Using data from the Massachusetts Trial Courts, I calculated the number of debt collection lawsuits filed in the state in both small claims and the traditional civil session (Massachusetts Trial Court, Department of Research & Planning, 2024b, 2024a). Importantly for this estimate, Massachusetts Rule of Civil Procedure 8.1: Special Requirements for Certain Consumer Debts puts similar evidentiary burdens to the CFDBPA on plaintiffs who file consumer debt cases in civil court. Thus, I do not estimate that the number of civil court filings will be affected by implementing the CFDBPA. Instead, I expect it will impact small claims filings only and estimate that Massachusetts will see **roughly 26,000** debt collection cases in SCC after implementing CFDBPA (Barnard et al., 2020; Massachusetts Trial Court, Department of Research & Planning, 2024b, 2024a).

I next estimated Massachusetts's current revenue from filing fees in consumer debt cases. Since the filing fee for cases brought in the district court is the same regardless of the claim amount, I multiplied the total civil debt collection cases (32,748) by the filing fee ($195) for an estimated total revenue of about $6.4 million (Massachusetts Trial Court, Department of Research & Planning, 2024b, 2024a). Estimating revenue from small claims is more challenging because the filing fee depends on the claim amount. While Massachusetts publishes the number of claims that fall into each fee range and the total share of small claims cases that are consumer debt, the data is not specific to the number of consumer debt claims that fall into each fee (Massachusetts Trial Court, Department of Research & Planning, 2024a, 2024b). Thus, I assumed that the share of consumer debt cases is consistent across claim amounts and multiplied the number of cases by this share by 85.0% to estimate the number of consumer debt cases. I multiplied that number by the associated

filing fee and added them to get the total small claims revenue of $4.6 million. Adding this to the revenue from civil cases, I estimate that Massachusetts brings in about **$11 million** annually in filing fees from consumer debt actions.

To estimate filing fee revenue under the CFDBPA, I used the same process as I did to estimate current filing revenue but reduced the number of small claims cases by 57% to reflect the decrease in consumer debt filings California saw after passing the same legislation in 2013 (Barnard et al., 2020). I estimate that under the CFDBPA, Massachusetts would bring in **$8.39 million** in filing fee revenue.

Subtracting the estimated post-CFDBPA filing fee revenue from the estimated current filing fee revenue, I estimate that Massachusetts will see a reduction in filing fee revenue of about **$2.62 million.** Under the financial impact thresholds above, this alternative scores a **3** on financial impact.

Effectiveness:

Approximately one year after CFDBPA, the default judgment rate in consumer debt cases in California decreased by 14% (Aneja et al., 2024). This effect lasted about four years, but as of 2019, the default judgment rate returned to levels that matched those before CFDBPA took effect (Aneja et al., 2024). At first glance, this rebound in default judgment rates suggests that CFDBPA is only effective in the short term. However, after looking more closely, the increased default judgment rates may be a problem with enforcement rather than with the law itself.

Analysis by The Center for Responsible Lending found that compliance with CFDBPA has been an issue for debt buyers and the courts. In 2019, 61% did not meet the evidentiary requirements of the CFDBPA, a problem that they say has been worsening over time (Barnard et al., 2020). Under the law, plaintiffs in these cases should be barred from collecting default judgments without providing strong evidence, but courts seem to be signing off without ensuring compliance with CFDBPA (Barnard et al., 2020). In fact, they found that almost 25% of default judgments occurred in cases where the minimum documentation required under CFDBPA was not met (Barnard et al., 2020).

According to Aneja et al.'s analysis, the default judgment rate in these cases was 49% in 2019, which is the same as it was before the CFDBPA (Aneja et al., 2024). However, according to Barnard et al., the default judgment rate should **be at least 25%** lower if CFDBPA was fully complied with. Thus, I estimate that the default judgment rate would be **36.75%** under full compliance (Aneja et al., 2024; Barnard et al., 2020).

Thus, I estimate that bringing CFDBPA to Massachusetts would **reduce the default judgment rate by 25%.** Applying the thresholds above, this alternative scores a **3** in effectiveness.

Implementational Feasibility:

Applying the implementational feasibility rubric above, a Massachusetts application of the CFDBPA receives a score of **3**.

As a piece of legislation itself, the CFDBPA would require Massachusetts to pass its own version of this legislation. While this is not as complicated as the constitutional amendment process outlined above, it still has to be approved by a legislature that has struggled to pass debt-collection-

related consumer protections in recent years (McKim, 2024b). Thus, this alternative receives **2** points from the legal avenue piece of implementational feasibility.

The Massachusetts legislature, The General Court, operates on a two-year session, starting on the first Wednesday of January of odd-numbered years. For example, the current Massachusetts legislative session, the 194th General Court, began on January 1st, 2025. Interestingly, Massachusetts requires that all bills for the upcoming session be filed by the third Friday of January of the first year in the session (Commonwealth of Massachusetts Public Employee Retirement Administration Commission, n.d.). Since this deadline passed in early January, Massachusetts must wait until the next legislative session, beginning in January of 2027, to introduce potential legislation. Thus, it cannot be implemented in the next twelve months and receives **0** points for this criterion.

Finally, this alternative does not require Massachusetts to hire additional attorneys to support it. As noted above, the state already faces a shortage of public defenders and has struggled to hire individuals for these roles for many years. This reality yields significant implementational feasibility limits for solutions requiring additional attorneys, which this alternative avoids. Thus, it receives a **1** on this part of the rubric.

Adding the scores for each part of the rubric, the CFDBPA receives a **3** in implementational feasibility.

	Financial Impact (33%)	**Effectiveness (33%)**	**Implementation Feasibility (33%)**	**Total Score (Out of 15)**
Alternative 2: CFDBPA	3 ($2.6M in Lost Revenue)	3 (25% reduction)	3	9

Alternative #3: Ban Lawyers in SCCs

Financial Impact:

Because banning lawyers in SCCs does not involve any direct financial outlays by Massachusetts, I operationalized the financial impact of this alternative by estimating the change in filing fee revenue that courts will see as a result.

This operationalization relies on three key assumptions. First, it assumes that banning lawyers in SCCs will lead debt collectors and creditors to bring their cases to district court instead of continuing to sue in small claims so that an attorney can represent them. Evidence from Michigan, which banned lawyers from their SCCs from their establishment in the late 1960s, shows that this is likely true. Lawyers represent 96% of plaintiffs in debt collection lawsuits in the state, meaning that these cases are heard in district court (Michigan Justice for All Commission- Debt Collection Work Group, 2022). In California, 99% of plaintiffs in debt collection cases are represented by attorneys, meaning that over 99% of debt collection cases must be heard in district court in the state (Johnson Raba, 2023). Second, it assumes that the higher standards of evidence in district court will discourage debt collectors and creditors from bringing the cases supported by little to no evidence common in SCCs. This assumption seems well supported by debt buyers and creditors who admit

that the relaxed rules of evidence in small claims allow them to bring cases they would not pursue in a traditional civil setting (Holland, 2014). Finally, it assumes that the buyers/creditors' standards for bringing these cases would be the same in Massachusetts and any potential comparison state. This assumption is essential to establish because, in Massachusetts District Court, plaintiffs are required to provide evidence proving their ownership of the debt and, therefore, their right to collect on it and validation of the amount in question before a default judgment can be entered under Massachusetts Rule of Civil Procedure 8.1 and 55.1 (Mass Legal Services, 2019). Not all states, including several that ban lawyers in their SCCs, have this requirement, meaning that plaintiffs' standards might differ between Massachusetts and a potential comparison state, making the comparison invalid. Importantly, however, under the CFDBPA, California, which has banned lawyers in SCCs since their establishment, requires proof of debt ownership before plaintiffs can request a default judgment or collect on debt allegedly owed to them in consumer debt cases (Aneja et al., 2024; Massachusetts Rule of Civil Procedure 8.1: Special Requirements for Certain Consumer Debts, 2019). Thus, California is a strong state upon which to base comparison.

I leveraged the change in consumer debt filings following the implementation of the CFDBPA in 2013 to calculate a "forward-to-district-court" metric which estimates how many consumer debt cases currently filed in SCCs debt buyers and creditors would file if they were required to do so in district court and were subjected to CFDBPA/Rule 8.1 and 55.1 requirements. As noted above, following the implementation of the CFDBPA, collections cases filed fell dramatically from a high of about 120,000 cases in 2012, the year before passage, to a low of about 32,000 in 2015 (Barnard et al., 2020). Since then, filings have rebounded slightly but remained steady around 50,000 cases annually, representing a roughly **57% decrease** from before CFDBPA went into effect (Barnard et al., 2020).

In 2023, 59,364 consumer debt collection cases were filed in Massachusetts SCC (Massachusetts Trial Court, Department of Research & Planning, 2024b). Applying the 57% decrease with the forward-to-district court metric, I estimate that debt buyers and collectors will bring 25,663 consumer debt collections previously filed in SCC to district court. To calculate the total estimated filing fee revenue that Massachusetts would derive from consumer debt cases, I added this estimate to the number of such cases already filed in district court (32,748), which would be unchanged as a result of this solution. Thus, I estimate that 58,411 consumer debt cases will be filed in district court after banning lawyers in SCC. Multiplying this estimate by the district court filing fee of $195, I estimate that these cases would bring in roughly $11 million in revenue (Massachusetts Court System, n.d.).

Finally, I compared this to the current filing fee revenue under the system where consumer debt cases are heard in both district courts and SCCs. Since the filing fee for cases brought in the district court is the same regardless of the claim amount, I multiplied the total civil debt collection cases (32,748) by the filing fee ($195) for an estimated total revenue of about $6.4 million (Massachusetts Trial Court, Department of Research & Planning, 2024b, 2024a). Estimating revenue from small claims is more challenging because the filing fee depends on the claim amount. While Massachusetts publishes the number of claims that fall into each fee range and the total share of small claims cases that are consumer debt, the data is not specific to the number of consumer debt

claims that fall into each fee (Massachusetts Trial Court, Department of Research & Planning, 2024a, 2024b). Thus, I assume that the share of consumer debt cases is consistent across claim amounts and multiply the number of cases by this share by 85.0% to estimate the number of consumer debt cases. I multiplied that number by the associated filing fee and added them together to get the total small claims revenue of $4.6 million. Adding this to the revenue from cases heard in district court, I estimate that Massachusetts brings in about **$11.4 million** annually in filing fees from consumer debt actions.

Subtracting the estimated filing fee revenue for the proposed solution from the estimated current filing fee revenue, I estimate that Massachusetts will see an increase in filing fees of about **$400,000.** Applying the financial impact rubric above, this alternative scores a **4.**

Effectiveness

Because banning lawyers in SCC effectively means that these cases are heard in district court, I estimate the effectiveness of the analysis by looking at the default judgment rate in California, where the vast majority (99%) of consumer debt cases are heard in district court, and lawyers cannot represent parties in SCC (Barnard et al., 2020). This comparison is valid because both states require plaintiffs to provide proof of debt ownership before a default judgment can be entered when filed in district court and have the same standards of evidence.

In California, in 2019, the most recent year for which data is available, the default judgment rate was 49%, the same as it was in Massachusetts in the same year (Aneja et al., 2024; Massachusetts Trial Court, Department of Research & Planning, 2024b). However, as mentioned above, further analysis suggests that compliance with their default judgment law, the CFDBPA, has been an issue for both debt buyers and the courts. In 2019, most cases (61%) did not meet the evidentiary requirements, which are the same as those they would be subjected to in Massachusetts district courts (Barnard et al., 2020). Under the law, plaintiffs in these cases should be barred from collecting default judgments, but courts seem to be signing off without ensuring compliance (Barnard et al., 2020). In fact, they found that almost 25% of default judgments occurred in these cases where the minimum documentation required under CFDBPA was not met (Barnard et al., 2020).

From Aneja et al.'s analysis, the default judgment rate in these cases was 49% in 2019 (Aneja et al., 2024). However, according to Barnard et al., the default judgment rate should **be at least 25%** lower if CFDBPA was fully complied with. Thus, I estimate that the default judgment rate would be 36.75% under full compliance (Aneja et al., 2024; Barnard et al., 2020).

Thus, I estimate that banning lawyers in SCC would **reduce the default judgment rate by 25%.** Based on the thresholds set above, this alternative scores a **3** in effectiveness.

Implementational Feasibility:

Applying the implementational feasibility rubric above, the banning of lawyers in Massachusetts SCCs receives a **5**.

Looking at the required legal avenue, banning lawyers in SCCs could be established through a regulation change as the law establishing SCCs in Massachusetts grants rule- and procedure-making power to the Supreme Judicial Court (SJC) (Massachusetts General Law, Part III, Title I,

Chapter 218, Section 21). A Standing Advisory Committee comprised of judges, court clerks, practicing attorneys, and law professors solicits and reviews recommendations for changes to these rules. Upon their recommendation, proposed amendments are reviewed and preliminarily approved by a majority vote of the Massachusetts Supreme Judicial Court (SJC). The proposed rules are then open to public comment before being reviewed again by the SJC for final approval. This process is simpler than constitutional amendments and legislation, leading to its score of **3** here.

Banning lawyers in SCC would have a minimum legal implementation timeline of less than twelve months. The SJC only requires that rule changes be made available for public comment for 30 days, and there are no restrictions on how long they must consider the rule or comments (Massachusetts Court System, 2025). Thus, it is legally possible that this alternative could be accomplished in the next twelve months, giving it an additional **1** point in implementational feasibility.

This alternative does not require Massachusetts to hire additional attorneys in support. As noted above, the state already faces a shortage of public defenders and has struggled to hire individuals for these roles for many years. This reality yields significant implementational feasibility limits for solutions requiring additional attorneys, which this alternative avoids. Thus, it receives a **1** on this part of the rubric.

Adding together the scores for each part of the rubric, banning lawyers in small claims receives a **5** in implementational feasibility.

	Financial Impact (33%)	**Effectiveness (33%)**	**Implementation Feasibility (33%)**	**Total Score (Out of 15)**
Alternative 3: Ban Lawyers in Small Claims	4 ($400K in Added Revenue)	3 (25% Reduction)	5	12

OUTCOMES MATRIX:

	Financial Impact (33%)	**Effectiveness (33%)**	**Implementation Feasibility (33%)**	**Total Score (Out of 15)**
Alternative 1: Civil Gideon	1 ($155M in Cost)	4 (34% Reduction)	2	6.5
Alternative 2: CFDBPA	3 ($2.6M in Lost Revenue)	3 (25% reduction)	3	9
Alternative 3: Ban Lawyers in Small Claims	4 ($400K in Added Revenue)	3 (25% Reduction)	5	12

RECOMMENDATION:

After analyzing the cost, effectiveness, and implementational feasibility of the three potential solutions outlined above, Massachusetts should consider a rule change that would ban lawyers in SCC. It is the only proposed alternative estimated to bring revenue to the state, is effective at reducing default judgment rates, and has the highest implementational feasibility score. Together, this gives it the highest total score across all three criteria.

IMPLEMENTATION:

Overview:

If appropriately implemented, banning lawyers in Massachusetts's SCC can decrease the default judgment rate against defendants in consumer debt actions. This plan outlines the key stakeholders involved, describes the necessary steps, and considers what could go wrong.

Stakeholders:

Massachusetts Supreme Judicial Court:

The law establishing SCCs in Massachusetts grants the Supreme Judicial Court (SJC) rule-making and procedure-making power over SCCs. The SJC's support will be necessary to secure successful implementation, as all new rules must be approved by the SJC twice—once preliminary before they are opened for public comment and again after the comment period for final approval.

SJC Standing Advisory Committee on the Rules of Civil Procedure:

The Standing Advisory Committee on the Rules of Civil Procedure assists the SJC in reviewing and recommending amendments to the Massachusetts Rules of Civil Procedure. Its members, who include judges, court clerks, practicing attorneys, and law professors, recommend their rule changes and consider those brought by the public to the SJC. Thus, they are crucial stakeholders to consider in implementation because they must approve a proposal before it can be sent to the SJC for consideration.

Legal Aid Organizations:

Legal aid organizations (including GBLS) currently providing legal counsel to defendants facing consumer debt claims in SCC are another key stakeholder necessary for successful implementation. While this regulation would prevent them from providing the same defense services as they do currently, they often lead efforts to reform the system. They could leverage past experiences and relationships to secure this change.

Debt Collectors & Credit Lenders:

Debt collectors and credit lenders will likely oppose this regulation change as it would fundamentally change their business practices. They have made billions in recent years, leveraging this venue and almost always use lawyers to do so (Rickard, 2020). This industry is incredibly powerful in Massachusetts and maintains a large lobbying presence (K. Bor Zale,

personal communication, October 11, 2024). Understanding their relative strength and perspectives will be important in ensuring the successful implementation of this rule change.

Attorneys Representing Debt Collectors & Credit Lenders:

In many SCC consumer debt cases, plaintiff debt collectors and credit lenders use outside counsel specializing in these lawsuits to represent them in court, called coverage attorneys (Rickard, 2020). These attorneys are generally paid on a per-case basis, so keeping the number of consumer debt cases as high as possible is in their best economic interest. They are likely to oppose a regulation change that would ban them from courts and are thus a critical stakeholder to consider in implementation.

Access to Justice Commission (Consumer Rights):

A key partner for GBLS in this effort will be the Massachusetts Access to Justice Commission (AJC). AJC was established by the SJC in 2005 to provide "leadership, vision, and coordination for the many organizations dedicated to improving access to justice for all persons in the Commonwealth" (Massachusetts Access to Justice Commission, 2024). Specifically relevant to this recommendation, they are required to make annual recommendations to the SJC for reforms consistent with improving access to justice (Massachusetts Access to Justice Commission, 2024). One such recommendation could be to change the rule to ban lawyers from SCCs outlined above. Given the influence of this organization and GBLS's strong connections to it, they will be a critical stakeholder and partner in this potential.

General Public:

Beyond their role as potential defendants in these cases, the public is also a key stakeholder group given the opportunity to comment on the possible rule change. While comments do not serve as a referendum on the regulation, the SJC must read all the comments, and an overwhelmingly negative response could dissuade them from issuing final approval.

Implementation Steps:

The implementation of this alternative is relatively straightforward, which is reflected in its high implementational feasibility score above. The steps, beginning with GBLS through the SJC, and their estimated timelines are outlined below. Together, I estimate that the implementation will take a year and five years. While, as explained above, it is legally possible for the entire process to occur in less than a year, there is significant ambiguity about and variation in the amount of time for which decision-makers like the AJC, Standing Committee on Rules of Civil Procedure, and SJC consider rule changes before approving them. This yields a less particular and potentially longer timeline for implementation.

Step One: Communications Strategy

Leveraging this report and the associated forthcoming leadership products (presentation, talking points, one-pager, etc.), GBLS should develop a communications strategy to help garner the

support of potential partners (AJC most prominently) and decision-makers, such as the Standing Committee on Rules of Civil Procedure and the SJC.

Here, it will be critical to emphasize why this is such an important issue to address, particularly from an access to justice perspective, and why the recommended approach is the right one. To do so, GBLS should use the data analysis above. However, they should also work to add the perspectives of two critical stakeholder groups: attorneys and defendants. As this recommendation's "negative" impacts center around attorneys, attorney support for it will be crucial in garnering decision-maker support. As a non-attorney, I have tried to capture this as best as I could, but hearing from lawyers who work on this issue daily will be more impactful and likely carry more weight. It is also necessary to include the perspective of defendants, those who are most directly impacted by this policy problem and thus most likely to benefit from a change. Here, GBLS should leverage its expansive former client network to find individuals willing to share their stories and perspectives on the small claims experience.

This stage of implementation will take about two months. This report and associated leadership materials will be delivered to GBLS by the end of April. Integrating these additional perspectives is relatively straightforward and should not take significant time or resources. In preparation for incoming summer interns, GBLS has asked that I consider ways for these individuals to help advance this project. One such recommendation is to contact former clients, conduct interviews, and integrate this into pre-existing materials.

Step Two: GBLS Proposal to the Access to Justice Commission

Using the communications strategy outlined above, GBLS should propose to the AJC that lawyers in Massachusetts SCCs be banned. For ease, GBLS can leverage existing language from other states that already have this practice.

- Michigan: "An attorney at law, except on the attorney's own behalf, … shall not take part in the filing, prosecution, or defense of litigation in the small claims division" (Michigan Compiled Laws 600.8408).
- California: "Except as permitted by this section, no attorney may take part in the conduct or defense of a small claims action" (California Code of Civil Procedure § 116.530).

It is important to note that the AJC recognizes the need for small claims reform as an issue of access to justice and has worked on solutions for several years. In their September 2024 annual report, the AJC shared their "focus on systemic reforms that impacted self-represented litigants in these crucial areas of law where litigants often proceed without attorneys" (Massachusetts Access to Justice Commission, 2024). They were successfully able to encourage trial courts to issue an order to support lawyer-for-the-day programs in consumer debt cases in March of 2024, and the SJC to amend the Small Claims rules in February 2025 to protect debtors from having to use exempt income or assets to comply with judgments to pay (Massachusetts Access to Justice Commission, 2024; Massachusetts Supreme Judicial Court, 2024b). This commitment to progressing on this issue suggests they may be receptive to this potential solution, which is why I recommend that GBLS start here.

Under Massachusetts law, there is no minimum, maximum, or typical timeframe for which a proposal brought to the AJC must be considered, making estimating this stage's timeline challenging, assuming that they are onboard. However, the committee issues a report to the SJC each fall, including reform recommendations. A recommendation to ban attorneys from SCCs could be included in the 2025 report.

Step Two B: GBLS Proposal to the Standing Advisory Committee on Rules of Civil Procedure

If AJC is not receptive, GBLS can make the same proposal to the Standing Advisory Committee on Rules of Civil Procedure, which is also responsible for making recommendations on rule changes to the SJC. AJC may be more receptive to this idea because its job is to think about ways to improve access to justice issues. The Standing Committee, however, has a broader responsibility to all sides of this issue. Thus, in communications with the Standing Committee, GBLS needs to emphasize the scope of the problem and the significant consequences it places on individuals across the Commonwealth.

As with the AJC, estimating the timeframe associated with this step is challenging because there is no minimum, maximum, or typical timeframe for which a proposal must be considered. Looking at several recent rule changes from the Standing Committee, the timescale from initial consideration to ultimate SJC approval (Step 5) ranged from less than a year to almost five (Massachusetts Supreme Judicial Court, 2021, 2024c). Thus, I estimate that the Standing Committee approval time will vary from several months to several years.

Step Three: SJC considers the rule change at the recommendation of The Standing Committee

The SJC will consider the rule change at the recommendation of either the AJC or the Standing Committee on Rules of Civil Procedure, the SJC will consider the rule change. The SJC is likely to have an even broader focus than the Standing Committee and the AJC. Thus, GBLS's proposal must emphasize why this is such an important change, leveraging the data analysis above and client stories to show why this is such an issue.

There is no information on the typical time for which a proposal is initially considered by the SJC other than the broader timeline specified above. Under this assumption, the initial approval time for the SJC will range from several months to several years.

Step Four: SJC issues preliminary approval of the rule, and it is open to public comment

If the SJC supports this rule change, it will issue a preliminary approval, after which it goes up for public comment. In the public comment stage, debt collectors, credit lenders, coverage attorneys, and the public are most likely to push back. To counter this, GBLS should encourage its partners, allies, staff, and clients to comment in favor of the bill. Although public comments are not a referendum on the proposed change, the SJC must consider all comments in its final decision-making process. Therefore, it is crucial to ensure that supporters of the proposed change share their perspectives to maximize the chances of success.

The SJC only requires that rule changes be available for public comment for 30 days (Massachusetts Court System, 2025). However, at its discretion, the SJC may extend comment periods. Of the five rules currently under SJC consideration, the time for public comment ranges from 30 days to about four months (Massachusetts Supreme Judicial Court, 2025a, 2025c).

Step Five: SJC Approval & Implementation

After considering all the comments received during the open comment period, the SJC issues final approval for the proposed rule change. Looking at several rule changes recently approved by the SJC, final approval seems to take between three and ten months (Massachusetts Supreme Judicial Court, 2024a, 2024b). Generally, rule changes take effect several months after final approval to give parties sufficient time to adjust and comply. For example, the SJC approved changes to Trial Court Rule III: Uniform Small Claims Rules in December 2024, which then went into effect in February 2025.

Potential Risks & Mitigation

The main risk associated with this proposal is that members of the AJC, the Standing Committee, or the SJC see this action as too significant a change and are unwilling to support it. However, this risk seems relatively unlikely given the SJC's focus on small claims reforms in recent years. For example, in December of 2024, they approved changes to five small claims rules that were "intended to ensure that courts do not inadvertently issue or enforce small claim payment orders that require debtors to pay using income or an asset that is exempt from collection under state or federal law" and were reflective of broader efforts to make the small claims system more uniform and fair across the state (Massachusetts Supreme Judicial Court, 2024b). Perhaps more importantly, these changes were also supported by the debt collection bar members, signaling a willingness to work to make this system more fair for defendants (Massachusetts Supreme Judicial Court, 2024b). However, GBLS can work to minimize these risks by ensuring that its initial proposal conveys the importance of addressing this issue and highlights why banning lawyers from small claims is the most appropriate solution.

CONCLUSION:

Without intervention, Massachusetts SCC will continue to leave too many individuals vulnerable to unsubstantiated debt collection lawsuits and judgments to pay, threatening their economic and personal livelihoods and the Commonwealth's broader commitments to equal justice under the law. Changing the Massachusetts Trial Court Rule III: Uniform Small Claims Rules to ban lawyers from representing parties in small claims cases is a financially responsible, effective, and feasible way to do so. By effectively requiring these kinds of cases to be heard in district courts, it ensures that plaintiff debt collectors and creditors have sufficient evidence to prove their ownership of the debt and validate the amount owed before an individual is required to pay, preventing these entities from taking advantage of the informal nature of small claims. Thus, Greater Boston Legal Services should work with its allies and partners to encourage Massachusetts to consider this solution.

APPENDIX 1: HOUSING COURT AS A PARALLEL FOR SMALL CLAIMS

Generalizing HC results to SCC is appropriate, given four key similarities between the two venues. First and most importantly, matters brought in the two systems, at their core, involve the same facts: plaintiffs claim that defendants owed them money that went unpaid (Cassidy & Currie, 2023; Zucker & Her, 2002). Unlike other civil matters, plaintiffs do not claim that money is owed to compensate for physical damages, and evidence tends to be more straightforward in SCC and HC, making this comparison particularly helpful (Cassidy & Currie, 2023; Zucker & Her, 2002). Another key similarity between the two systems is that they are heard outside traditional trial courts and, thus, not by district court judges when they are first brought (Horan, 2023; Massachusetts Court System, n.d.; Massachusetts Trial Court, Department of Research & Planning, 2009). While there is no clear evidence suggesting that district judges handle these cases differently, the fact that they are both heard by more specialized institutions makes comparing SCC to HC more effective than comparing SCC to civil court more broadly. Finally, and perhaps most importantly, in the context of Civil Gideon, a near-zero share of defendants have legal counsel compared to almost all plaintiffs in both SCC and HC (Massachusetts Trial Court, Department of Research & Planning, 2024a, 2024b). If access to counsel is as effective as its proponents claim, the vastly increased rates that would come with Civil Gideon could help significantly improve the accessibility and fairness of the SCC process for defendants.

This is not to say that HC is a perfect parallel or that the results will translate exactly to SCC. Thus, the analysis based on this evidence will have validity concerns and should be treated as such. However, the lack of evidence specific to SCC makes this extrapolation necessary to provide more than anecdotal evidence and evaluate the potential effectiveness of such a program.

APPENDIX 2: COST & EFFECTIVENESS CALCULATIONS

Alternative 1:

Alternative 1: Financial Impact	
Total Civil Matters (2024)	271219
Total Civil Matters (2014)	331,122
Civil Turn Aways (2014)	54,342
Turn Away Rate (2014)	0.164114737
Estimated Turnaways (2024)	44511
Average Cost of Attorney (2014)	$91,429
CPI (2014)	236.7
CPI (2024)	315.605
Average Cost of Attorney (2024)	$121,907.26
Cases Per Attorney	35
Total Number of Additional Attorneys	1271.743854
Total Cost:	$155,034,814.62

Alternative 1: Effectiveness	
Default Judgement Rate (MA)	48
Reduction in Default Judgment Rate (Pollock)	37
Estimated Default Judgment Rate	**30.24**

Alternative 2:

Alternative 2: Estimated Cases	
Mass Civil Consumer Debt Filings (2023)	92,112
Total (Non-SC) Civil Cases	49769
Consumer Debt %	0.658
Civil Debt Collection Cases	32748
Total SC Cases	69840
Consumer Debt %	0.85
SC Consumer Debt Cases	59364
CFDBPA Reduction in Filings	**-57%**
Consumer Debt Cases (2012)	119,711
Consumer Debt Cases (2017)	51,750
Estimated Mass Consumer Debt Filings after CFDBPA	
Civil	32748
Small Claims	25663

Alternative 2: Estimated Current Filing Fee Revenue				
Small Claims		**Estimated Consumer Debt Cases**	**Filing Fee**	**Estimated Revenue**
$500 or less (Case #)	3,093	2629	$40	$105,162
$501 - $2000 (Case #s)	34,866	29636	$50	$1,481,805
$2001-$5000 (Case #'s)	22,967	19522	$100	$1,952,195
Over $5000 (Case #'s)	8,396	7137	$150	$1,070,490
			Total	**$4,609,652**
Civil Court	49769	32748	$195	**$6,385,860**
			Total	**$ 10,995,512**

Alternative 2: Estimated Post-CFDBPA Filing Fee Revenue					
Pre-CFDBPA Small Claims		**Pre-CFDBPA Estimated Consumer Debt Cases**	**Post-CFDBPA Estimated Consumer Debt Cases**	**Filing Fee**	**Estimated Revenue**
$500 or less (Case #)	3,093	2629	1137	$40	$45,461
$501 - $2000 (Case #s)	34,866	29636	12811	$50	$640,571
$2001-$5000 (Case #'s)	22,967	19522	8439	$100	$843,917
Over $5000 (Case #'s)	8,396	7137	3085	$150	$462,763
				Total	**$1,992,712**
Pre-CFDBPA Civil Claims	49769	32748	32748	$195	**$ 6,385,860**
Total	**$8,378,572**				
Difference in Filing Fees	**($2,616,940)**				

Alternative 3:

Alternative 3: Financial Impact	
Mass Civil Consumer Debt Filings (2023)	92,112
Total (Non-SC) Civil Cases	49769
Consumer Debt %	0.658
Civil Debt Collection Cases	32748
Total SC Cases	69840
Consumer Debt %	0.85
SC Consumer Debt Cases	59364
CFDBPA Reduction in Filings	**-57%**
Consumer Debt Cases (2012)	119,711
Consumer Debt Cases (2017)	51,750
Estimated Mass Consumer Debt Filings after CFDBPA	
Civil	32748
Small Claims	25663

Alternative 3: Estimated Current Filing Fee Revenue						
Small Claims		**Estimated Consumer Debt %**	**Estimated Consumer Debt Cases**		**Filing Fee**	**Estimated Revenue**
$500 or less (Case #)	3093	0.85	2629		$ 40	$105,162
$501 - $2000 (Case #s)	34866	0.85	29636		$ 50	$1,481,805
$2001-$5000 (Case #'s)	22967	0.85	19522		$ 100	$1,952,195
Over $5000 (Case #'s)	8396	0.85	7137		$ 150	$1,070,490
					Total	**$ 4,609,652**
Civil Court	49,769	0.658	32748		195	**$ 6,385,860**
					Total	**$ 10,995,512**
Alternative 3: Estimated Post SCC Lawyer Ban Revenue						
					Filing Fee	
Estiminated Cases Filed in District Court	**58411**				195	**$ 11,390,053.14**
Difference in Filing Fees	$ 394,541.14					

APPENDIX 3: DATA LIMITATIONS, RELATED IMPACTS, & OTHER POTENTIAL SOLUTIONS

Data Limitations & Impact:

One of the primary challenges in compiling this report was the lack of publicly available court data, from both SCCs and traditional civil courts. It limited which potential solutions could be robustly analyzed and thus included in this report. While Massachusetts publishes select statistics on civil case filings and action types annually, this data does not indicate if the case is a consumer debt action or how the case was decided (Massachusetts Trial Court, Department of Research & Planning, 2024a). The main exception to this was the Trial Court's publication of the *Small Claims and Civil Consumer Debt Actions: Selected Statistics on Cases Filed and Disposed in the Boston Municipal and District Courts* report in July 2024 (Massachusetts Trial Court, Department of Research & Planning, 2024b). Its information on consumer debt filings, legal representation rates, and default judgments is the basis of much of the analysis in this report. However, this report was the first time that the Commonwealth has published this information, and they did not indicate any intention of doing so in the future.

Unfortunately, the lack of publicly available data is not unique to Massachusetts. Only five states (Indiana, Minnesota, Missouri, Connecticut, and North Dakota) regularly publish any data on debt collection lawsuits, and the information available varies significantly by state. The Debt Collection Lab at Princeton University collects, cleans, and publishes this data several times a year, allowing for a more robust analysis of these state's debt collection lawsuits and potential interventions. For example, this data allowed researchers to compare judgments in debt-collection cases across four states with different policies and ultimately recommend practices based on these findings (Wherry & Hill, 2024). Researchers have also gained access to courts' databases to analyze the effects of specific reforms, which is how I estimated the cost and effectiveness of each potential solution above (Aneja et al., 2024; Barnard et al., 2020; Johnson Raba, 2023; Michigan Justice for All Commission- Debt Collection Work Group, 2022; Seron et al., 2001). Even with the information available through The Debt Collection Lab and other academics, there was only sufficient data to evaluate a relatively small subset of potential solutions in this report.

Given the scale of this problem and the severe consequences of unsubstantiated debt that the current small claims system places on defendants, I wanted to focus on potential solutions for which I could evaluate effectiveness. With a goal of improving the accessibility of SCC by reducing the number of defendants who are required to pay unsubstantiated debts, I chose to operationalize effectiveness by estimating the change in default judgment rate that would occur as a result of the proposed policy. While I am confident that this operationalization best reflects this goal of reducing the number of defendants required to pay unsubstantiated debt (as opposed to an approach that looked at the number of filings, for example), it limits which alternatives could be fully evaluated, and thus included in this report, because so few states publish data that allowed me to know or estimate their default judgment rate in consumer debt cases.

Other Potential Solutions:

To help address the main tradeoff of this decision, I have provided a high-level overview of other potential approaches that could help improve the accessibility of small claims but were not included in this report.

Banning Debt Collectors & Creditors from SCCs

Given that much of SCCs' inaccessibility results from debt collectors' and creditors' use of them, an intuitive and frequently suggested reform is to ban these entities from filing collections lawsuits in this venue. Like my recommended solution, this proposal seeks to lower the default judgment rate by requiring these plaintiffs to sue in district court under its stricter evidentiary standards. While no states have gone so far as to ban both entities, 16 ban third parties (including debt collectors) from suing individual defendants in their SCCs (Baumle, 2024). Two of these states, Missouri and North Dakota, make debt collection data publicly available such that The Debt Collection Lab calculated their default judgment rate. Perhaps unsurprisingly, this rate was low in both states. From 2021 to 2024, 39.7% of debt collection cases ended in a default judgment in Missouri and 13.3% in North Dakota (Wherry et al., 2024b, 2024a). Compared to Massachusetts, where the default rate in the same types of cases during the same period was about 50%, these statistics suggest that a policy banning debt collectors from SCCs would be effective (Massachusetts Trial Court, Department of Research & Planning, 2024b). However, both Missouri and North Dakota implemented this reform before The Debt Collection started collecting this data. Without being able to compare the default rates before and after the reform, I could not estimate how a similar policy would change the default judgment rate in Massachusetts. While I assume that this reform would cause default judgments to fall, it is possible that default rates in these two states were lower than in Massachusetts before they implemented this reform. This would make it seem like the effect of banning debt collectors was greater than it is. Thus, assuming that Massachusetts' default rate would be the same as either of these states (or even an average between them) is inappropriate and bars this potential solution's inclusion in this report.

In a context where over 99% of debt buyers and creditors are represented by attorneys, this potential solution mirrors my recommendation of banning attorneys from SCCs in Massachusetts (Massachusetts Trial Court, Department of Research & Planning, 2024b). In both scenarios, these entities must bring cases in district court where stricter evidentiary standards apply. However, the data available from California and analysis by Aneja et al. (2024) and Barnard (2020) show the default judgment rate from before and after the implementation of relevant reforms. Thus, I obtained a more robust estimate of the effectiveness of banning lawyers from SCCs and chose to analyze this avenue of removing debt collectors and creditors from SCCs.

Extensions in Court Hours:

Following from the idea that the default judgment rate is so high in consumer debt cases because individuals cannot afford to take time off work or find childcare to appear in court, Massachusetts could consider hosting evening or weekend SCC sessions. In New York City, for example, small claims sessions begin at 6:30 pm to allow defendants who cannot take time off work

to appear (New York Court System, n.d.). It follows intuitively from this that default judgment rates would decrease as a result. However, the lack of publicly available data from these courts or others that have extended small claims hours prevents robust analysis of this potential solution.

As outlined in the Existing Evidence section, a 1970s effort in California suggests that the default judgment rate was significantly lower in courts with extended hours (Dickinson, 1979). However, this study has significant limitations that make estimating the effectiveness of this potential from its findings inappropriate. First, the assignment to experimental or control courts was not random. While the authors do not indicate one way or another, it is possible that experimental and control SCCs differed in important characteristics that would make the treatment look more or less effective than it truly is. Second, this study is almost 50 years old and likely outdated. In the intervening years, outside factors influencing the effectiveness of this treatment may have changed, which would make the results reported here potentially invalid. Finally, and perhaps most importantly, the defendants had to ask for their case to be heard in an evening or weekend session. It follows logically that after making such a request, defendants would be more likely to appear in court than if they were simply told when to appear. These results may capture the effect of being able to choose when a case is heard rather than having it heard outside of traditional business hours. Thus, I was unable to evaluate the effectiveness of this potential solution and could not include it in my full analysis above.

Restrictions on the Number of Cases That Plaintiffs Can Bring in Set Timeframe or Location:

In response to the incredibly high number of cases brought by debt buyers and creditors, some reformers advocate for restrictions on the number of cases that plaintiffs, whether corporate or individual, bring in SCCs. After reaching this limit, plaintiffs must file in district court. Eight states restrict the number of cases plaintiffs can bring in a specified timeframe and/or location. For example, Colorado's small claims rules prevent plaintiffs from filing more than two claims per month or 18 claims (whichever is less) per year in the SCC of each county (Colorado Revised Statutes, Title 13, Article 6, Part 4, Section 11). Montana prevents parties from filing more than 10 claims across the state in a calendar year, except for claims involving shoplifting (Montana Department of Justice- Office of Consumer Protection, n.d.). Unfortunately, these states do not publish data on their default judgment rate or how putting these restrictions affected it. Thus, it was barred from inclusion in my analysis above.

Changes in Service Requirements:

As outlined above, one of the primary reasons for inaccessibility and unfairness in SCC is the default judgment rule, which allows plaintiff debt collectors to win by default if consumer defendants do not appear in court and occur in over 50% of Massachusetts' SCC cases (Massachusetts Trial Court, Department of Research & Planning, 2024b). While better evidence is necessary to extrapolate these claims fully, anecdotal evidence suggests that many defendants are unaware they have been sued (Bor-Zale & Perlman, 2024; McKim, 2024a). Interestingly, Massachusetts law only requires that notice be sent to rather than received by defendants (Mass. Gen. Laws ch.218 § 21). Defendants in SCC are significantly more likely to be lower-income

(Rickard et al., 2020). A large body of literature suggests that lower-income households move more frequently (Feldman, 2024; Phinney, 2013). Together, this indicates a possibility that the address to which a notice was sent is no longer valid and offers a potential explanation as to why so few defendants appear in court (New York Appleseed & Jones Day, LLP, 2009). Even more troubling, evidence from at least three states shows that debt collectors and creditors regularly engage in "sewer service," intentionally not delivering notice to defendants that they must appear in court in many of these cases to increase their likelihood of collecting a default judgment (New York Appleseed & Jones Day, LLP, 2009; Rickard et al., 2020; Steinberg, 2018).

To address this problem, SCC reform advocates suggest changing service rules to ensure defendants know they have been sued and must appear in court (DeJong, 1983; Rickard et al., 2020). For example, New York City recently changed its SCC rules to bar default judgments from being entered if the notice is marked as undeliverable or otherwise returned to the court (Rickard et al., 2020). Unfortunately, New York City does not make SCC data publicly available, limiting researchers' ability to study the effectiveness of this intervention. Outside of very weak anecdotal evidence, there is currently no basis for evaluating how this change would impact default judgment rates, barring its inclusion in this report.

Non-Lawyer Advocates:

One unique feature of the Massachusetts small claims system that could be leveraged to improve its accessibility is its approval of non-attorney representation (K. Bor Zale, personal communication, February 25, 2025). Specifically, Rule 7b of the Uniform Small Claims Rule says that "non-attorneys shall be allowed to assist parties in the presentation or defense of their cases when, in the judgment of the court, such assistance would facilitate the presentation or defense" (Trial Court Rule III: Uniform Small Claims Rules, Rule 7, 2009). The state or organizations like GBLS could train non-lawyers, potentially paralegals or law/pre-law students, to help defendants navigate this complicated process. Because this is such a novel idea, I could not find evidence of states trying this system in SCC or any potentially analogous situation. Thus, I could not evaluate its effectiveness in this report.

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