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STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
CLERK

No. 95024-5

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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CHRISTAL FIELDS, an individual,

Appellant,

v.

STATE OF WASHINGTON DEPARTMENT OF EARLY LEARNING,

Respondent.

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**MOTION TO AMEND APPELLANT'S SUPPLEMENTAL BRIEF**

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## **I. DESIGNATION OF PARTY SEEKING RELIEF**

Appellant Christal Fields is the party who seeks the relief identified in Section II.

## **II. STATEMENT OF RELIEF**

Ms. Fields respectfully asks for leave to file the Amended Supplemental Brief of Appellant submitted simultaneously with this motion.

## **III. GROUNDS FOR RELIEF**

On February 16, 2018, counsel for Ms. Fields filed the Supplemental Brief of Appellant. Counsel intended to include a table of authorities with the supplemental brief so that the Court and the parties could easily locate passages referencing particular cases, statutes, and other authorities. Due to unforeseen circumstances that arose during the review process, however, counsel did not have sufficient time to complete the table of authorities in advance of the deadline for filing. Counsel is attempting to correct this error on the following judicial day.

In preparing the table of authorities, counsel saw that a placeholder for footnote 13 was inadvertently included in the supplemental brief even though there is no such footnote. Counsel has corrected this mistake by deleting the placeholder, which has caused the subsequent footnote numbering to be reordered.

Submitted with this motion is an Amended Supplemental Brief of Appellant that includes a table of authorities and the corrected footnote numbering. No other revisions have been made to the brief.

This Court “may, on its own initiative or on motion of a party, waive or alter the provisions of any of [the Rules of Appellate Procedure] and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice . . . .” RAP 18.8(a).

The inclusion of a table of authorities with the Supplemental Brief of Appellant will assist both the Court and the parties in the process of this appeal. Likewise, the correction of the footnote numbering will ensure there is no confusion about whether text is missing. Accordingly, Ms. Fields respectfully requests leave to file the Amended Supplemental Brief of Appellant submitted with this motion.

#### **IV. CONCLUSION**

For the reasons set forth above, the Court should grant Ms. Fields leave to file the Amended Supplemental Brief submitted with this motion.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of February 2018.

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**CERTIFICATE OF SERVICE**

I certify that on February 20, 2018, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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**AMENDED SUPPLEMENTAL BRIEF OF APPELLANT**

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## **I. STATEMENT OF THE ISSUES**

(1) The Department of Early Learning (DEL) refuses to provide a meaningful hearing to a person with a conviction for attempted robbery because robbery is on DEL's list of crimes resulting in mandatory lifetime disqualification from employment in childcare. Does DEL's refusal violate procedural due process?

(2) Does DEL's imposition of a mandatory lifetime ban from employment in childcare on individuals with a robbery conviction violate substantive due process?

(3) Does Article I § 3 of the Washington State Constitution provide greater due process protections than the Fourteenth Amendment of the Federal constitution?

## **II. SUMMARY OF FACTS AND ARGUMENT**

DEL has permanently banned Christal Fields from working in any part of the childcare profession for which DEL conducts background checks<sup>1</sup> based on an attempted robbery conviction from 30 years ago. CP

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<sup>1</sup> Chapter 43.215 RCW establishes DEL's authority over background checks for any "applicant" seeking employment in an "agency." RCW 43.215.005(4). The term "agency" means "any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective to whether there is compensation to the agency: Child day care center ...; Early learning ...; Family day care provider ...; Nongovernmental private-public partnership ...; [and] Service provider ... ." RCW 43.215.010(1).

11-17. It did so as part of an administrative scheme that, while admirably intended to protect vulnerable children, fails to provide even the most basic of due process protections for those who seek to demonstrate—to the agency’s satisfaction—that they present no risk to DEL’s objectives.<sup>2</sup>

Robbery is on DEL’s list of convictions that automatically, permanently, and mandatorily disqualify a person from early childcare work. WAC 170-06-0120. And the conviction alone is dispositive: no other considerations may be raised, no matter the facts of the underlying conviction, the evidence of rehabilitation, or the amount of time that has since passed. WAC 170-06-0090.

Ms. Fields argues that she should be permitted to present evidence to DEL of rehabilitation and her qualification to work in childcare despite her decades-old conviction. CP 62. The agency has rebuffed her at every turn and, having exhausted the administrative and judicial appeals process, she now looks to this Court for relief.

Ms. Fields readily admits the difficult circumstances of her early life. She was abandoned by her father and homeless at age 16. She was sexually exploited, abused, and introduced to drugs by older men. CP 66.

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<sup>2</sup> Those affected by DEL’s policy are disproportionately women, particularly low-income women of color. *See* Memorandum of Amici Curiae Legal Voice, The Public Defender Association, Incarcerated Mothers Advocacy Project, and SURGE in Support of Petition for Review, p. 2-3

And, in 1988, she was convicted of attempted robbery after trying to grab a woman's purse.

But by 2006, Ms. Fields was on a new path. CP 66. She entered the King County Drug Court program, graduated in 2008, and has been clean and sober ever since. She is raising her son and helps care for her grandson. *Id.* She has been gainfully employed for twelve years—first as the caregiver for an elderly adult, and then in childcare.<sup>3</sup> *Id.* The record is replete with letters commending her for her public service and deep commitment to helping others. CP 111–124.

Considerable authority supports the importance of Ms. Fields' constitutional right to pursue her chosen profession and recognizes the severe risk of error that results from automatic lifetime disqualification. Ms. Fields' constitutional rights are neither outweighed by nor inconsistent with DEL's mandate to "safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance." RCW 43.215.005. The permanent, lifetime exclusion from childcare work with no opportunity to demonstrate current fitness for the

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<sup>3</sup> DEL originally did not disqualify Ms. Fields for her 1988 conviction. Rather, Ms. Fields received a Notice of Disqualification from DEL that erroneously relied on a separate conviction misattributed to Ms. Fields. CP 53, CP 76-109. Additionally, DEL allowed Ms. Fields to work in childcare from January 2013 until she was disqualified in January 2015. CP 62.

profession violates both the procedural and substantive due process protections of the state and federal constitutions.

### III. ARGUMENT

**A. The *Mathews* procedural due process test requires a meaningful hearing with the opportunity to prove current fitness for work in childcare.**

When a state agency seeks to deprive a person of a protected interest—here, the right to pursue a profession or occupation—procedural due process requires that the individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct 893, 909, 47 L. Ed 2d 18 (1976). Chapter 170-06 of the Washington Administrative Code fails to provide Ms. Fields with a meaningful opportunity to be heard during which she can demonstrate her current fitness for childcare work despite a decades-old conviction. *See* WAC 170-06-0070(1); WAC 170-06-0115(5).

To determine what process is due to Ms. Fields, one looks to the three factors identified in *Mathews*: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the challenged procedures and probable value of additional procedural safeguards; and (3) the government's interest, including the potential burden of additional procedures. *City of Bellevue v. Lee*, 166 Wn. 2d 581, 585, 210 P.3d 1011, 1015 (2009).

1. The private interest in the right to pursue an occupation is substantial.

It is well-established “that pursuit of an occupation or profession is a liberty interest protected by the due process clause.” *Amunrud v. Board of Appeals* 158 Wn.2d 208, 218, 143 P.3d 571, 576 (2008) (citing range of cases from U.S. Supreme Court and Ninth Circuit dating from 1959) (citations omitted). As this Court explained in 1911:

The liberty mentioned in that [due process] amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

*State ex rel. Davis–Smith Co. v. Clausen*, 65 Wash. 156, 192, 117 P. 1101, 1112 (1911).

The significance of this liberty interest is heightened because the State seeks to impose a lifetime ban. “The duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved.” *City of Redmond v. Moore*, 151 Wn.2d 664, 671, 91 P.3d 875, 879 (2004) (quoting *Mackey v. Montrym*, 443 U.S. 1, 12 (1979)). In *Amunrud, supra*,

this Court recognized that even the short-term deprivation of a constitutionally protected liberty or property right, such as a driver's license suspension for a limited time period when a person owes child support, requires adequate due process. Here, DEL seeks to prohibit Ms. Fields from working in her chosen occupation for as long as she is alive.

Ms. Fields has deeply invested in her chosen career.<sup>4</sup> Her former employer acknowledges that her dedication has been to the benefit of the children with whom she has worked. CP 112-114. Further, just as this Court described in *Davis-Smith Co.*,<sup>5</sup> Ms. Fields draws personal fulfillment from being engaged in a socially productive employment activity.

The first *Mathews* prong should carry great weight given the importance of the right at stake and the permanence of the deprivation.

2. The risk of erroneous deprivation is high, and the corresponding value of additional procedures is substantial.

The second *Mathews* factor considers the risk that Ms. Fields will be erroneously deprived of her constitutionally protected liberty interest

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<sup>4</sup> For example, Ms. Fields has obtained a pediatric certification card, a first aid course in HIV, AIDS, infectious disease, and blood borne pathogen training, a certificate in Circle Time for Any Age, a certificate in Using the Early Learning Guidelines to Observe and Teach Children, and 20 hours of State Training and Registry System training, required in Washington for those working in childcare. CP 125-129.

<sup>5</sup> *State ex rel. Davis-Smith Co.*, 65 Wash. at 192.

by the state's action, and the value of a procedure that permits consideration of rehabilitation and current fitness. The risk of error created by DEL's rule is striking. A conviction for robbery results in a mandatory, lifetime bar from employment in the profession of childcare without any consideration of individual circumstances or evidence of current fitness. *See* WAC 170-06-0120. Those like Ms. Fields who have a decades-old conviction for this crime that has nothing on its face to do with children are treated identically to those who committed child abuse within the last year. *See id.* The risk of error is compounded by the inclusion of convictions for *attempted* robbery. WAC 170-06-0050(1)(c). As our sentencing structure recognizes, attempts may be inchoate crimes and should be treated differently from completed crimes.

Due process requires something more than a *pro forma* hearing. It requires an opportunity to heard "at a meaningful time and in a meaningful manner." *Amunrud*, 158 Wn. 2d at 216-17; *In re Detention of June Johnson*, 179 Wn.App. 579, 588, 322 P.3d 22, 27 (2014) ("[A]t its core, procedural due process is a right to be meaningfully heard."). Here, DEL provides only a meaningless proceeding that does nothing to mitigate the risk of erroneous deprivation. The door closed on Ms. Fields before she even stepped foot into the "hearing," at which DEL cared only *whether* Ms. Fields had a prior conviction for attempted robbery. Ms. Fields

functionally received no hearing at all and was certain to be deprived of her constitutionally protected right to pursue an occupation. *Cf. Moore*, 151 Wn.2d at 675-76 (holding that a hearing limited to proving one was not convicted of the underlying offense resulting in a license suspension is insufficient to satisfy procedural due process).

In contrast, the added value of a meaningful hearing regarding Ms. Fields' suitability to work in this field is unquestionably high. Such a hearing would provide Ms. Fields with a chance to address the fundamental question with which DEL claims to concern itself: whether she can safely work in childcare despite her decades-old attempted robbery conviction. Such a hearing would also substantially mitigate the risk of error created by DEL's inclusion of crimes that neither necessarily nor in fact involve child victims on the mandatory and permanent disqualification list.

3. The governmental interest here supports the need for a meaningful opportunity to be heard.

DEL has an unquestionably valid interest in protecting the health, safety, and well-being of children receiving child care and early learning assistance. But nothing about this interest is inconsistent with the hearing that Ms. Fields requests and that due process requires.

Ms. Fields seeks a hearing at which she can provide DEL with evidence of her suitability for work in this field. She would bear the burden of providing this information, which would include, for example, a former employer in the child care field vouching for her competency and care in working with children. And DEL would remain the decision-maker, charged with weighing that evidence against her criminal conviction. Neither would DEL be burdened with creating this process out of whole cloth: it already has procedures to determine the character, suitability, or competence of an individual. WAC 170-06-0050. Further, DEL is already empowered to solicit, obtain, and evaluate additional information necessary to assess the character, suitability or competence of an individual. WAC 170-06-0060. This procedure is available over and above any initial criteria considered by DEL and demonstrates that DEL's own regulations contemplate additional process and investigation into the suitability of an individual to do the work. *Id.*

Finally, the requested procedural protections advance the State's interest in the successful reentry and reintegration into society of

individuals like Ms. Fields.<sup>6, 7</sup> As far back as 1973, reentry principles were codified in Washington's statutory law:

The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the *opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient* to rehabilitation and the assumption of the responsibilities of citizenship.

RCW 9.96A.010 (emphasis added). More recently, the Governor issued an executive order entirely devoted to improving reentry policies as a way of furthering state goals.<sup>8</sup> *Building Safe and Strong Communities through Successful Reentry*, available at

[https://www.governor.wa.gov/sites/default/files/exe\\_order/eo\\_16-05.pdf](https://www.governor.wa.gov/sites/default/files/exe_order/eo_16-05.pdf)

(April 19, 2017). The order emphasizes the importance of reentry policies

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<sup>6</sup> Consideration of rehabilitation is built into the rules governing admission into other professions. *See, e.g., Admission and Practice Rules, Rule 21(b)* (allowing for consideration of recent nature of negative conduct, the circumstances underlying the conduct, and evidence of rehabilitation, recovery, or remission, among other factors); *cf. In re Tarra Denelle Simmons*, No. 201,671-5 (considering six years of rehabilitation, post-conviction in the context of a denial by the character and fitness board).

<sup>7</sup> DEL will only consider evidence of rehabilitation under the circumstances laid out in WAC 170-06-0050(1)(f). *See* Section III.B, *infra*.

<sup>8</sup> The Executive Order identifies various agencies for changes to internal procedure to further reentry goals, including the Office of Financial Management, the Department of Licensing, the Department of Commerce, the Department of Social and Health Services, the Employment Security Department, the State Board of Community and Technical Colleges, the State Apprenticeship and Training Council, the State Cybersecurity Office, and the Health Care Authority.

at every level of government and requires state agencies to align their practices accordingly.

As other states have recognized, lifetime bans that use convictions as automatic disqualifying criteria fly in the face of government interests<sup>9</sup> because they hurt people, like Ms. Fields, who have successfully rehabilitated and want to work.<sup>10</sup> Pursuant to the *Mathews* analysis, the type of hearing Ms. Fields seeks furthers both the State's interests in protecting children and in facilitating reentry. That hearing does not guarantee applicants like her a license, but due process requires DEL at least to provide a meaningful opportunity to be heard.

**B. DEL's mandatory and permanent bar violates substantive due process because it fails rational basis review.**

Substantive due process "asks whether the government has an adequate reason for taking away a person's life, liberty, or property."

Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, 4<sup>th</sup>

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<sup>9</sup> For example, the Pennsylvania cases also took into account the public policy of that state regarding reentry in finding unconstitutional a similar ban. *Nixon v. Commonwealth*, 789 A.2d 376, 381 (Pa. 2001) (quoting *Secretary of Revenue v. John's Vending Corporation*, 453 Pa. 488, 309 A.2d 358 (Pa. 1973)) ("We are also mindful . . . of the deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders.).

<sup>10</sup> Richard R. Arnold, *Presumptive Disqualification and Prior Unlawful Conduct: The Danger of Unpredictable Character Standards for Bar Applicants*, 1997 Utah L. Rev. 63 (1997). The State's focus on and interest in reentry recognizes the uphill battle faced by those with prior convictions, particularly where conviction records are publicly available. See *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*, National Consumer Law Center (April 2012).

Edition. In so doing, it protects people against arbitrary and capricious government action. *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir. 1994). The degree of scrutiny with which this Court reviews governmental action depends on the interest at stake. Because the right to pursue an occupation is a protected liberty interest, “the proper standard of review is rational basis.” *Amunrud*, 158 Wn. 2d, 222. Under the rational basis test, the court inquires whether the challenged regulation has a rational relationship to a legitimate state interest. *DeYoung v. Providence Medical Center*, 136 Wn.2d 136, 144, 960 P.2d 919, 923 (1998). DEL’s regulation automatically and permanently barring Ms. Fields from childcare work on the basis of a conviction is not rationally related to its goal of protecting children.

The rational basis test is “not a toothless one.” *Mathews v. Lucas*, 427 U.S. 495, 510, 96 S. Ct. 2755, 2764, 49 L. Ed. 2d 651 (1976). It is this Court’s role to “assure that even under this deferential standard of review the challenged legislation is constitutional.” *DeYoung*, 136 Wn.2d at 144 (finding an equal protection violation under rational basis review).

The U.S. Supreme Court has previously found that the rigid application of bright line rules to automatically exclude categories of people from a profession is constitutionally suspect. In *Schwartz v. Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d

796 (1957), the Court applied rational basis review to find unconstitutional a prohibition on bar admission for previous members of the Communist Party. The Court specifically condemned the use of an “indiscriminate classification” that failed to consider individual circumstances, the length of time that had passed, and evidence of subsequent good moral character. *Id.* Because the Court saw “no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law,” it held that the state “deprived petitioner of due process in denying him the opportunity to qualify for the practice of law.” *Id.*<sup>11</sup>

Other courts agree. For example, Pennsylvania’s appellate courts have concluded that lifetime employment bans based on conviction history are unconstitutional. In *Johnson v. Allegheny Intermediate Unit*, the Commonwealth Court of Pennsylvania held that converting felony homicide from a five-year ban to a lifetime ban violated substantive due process under rational basis review. 59 A.3d 10, 24 (Pa. Commw. Ct. 2012) (“[The list] creates limitations that have no temporal proximity to the time of hiring, it does not bear a real and substantial relationship to the Commonwealth’s interest in protected children and is unconstitutional.”).

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<sup>11</sup> The *Schware* Court also found the applicant’s personal history of overcoming discrimination and challenging social conditions highly relevant to the due process analysis. The amici briefs in Ms. Fields’ case explain more fully the parallels to the *Schware* analysis.

*Johnson* relies on cases in which the Pennsylvania Supreme Court found other lifetime bans to violate substantive due process under rational basis scrutiny. See *Nixon v. Commonwealth*, 576 Pa. 385, 839 A.2d 277 (2003); *Peake v. Commonwealth*, 132 A.3d 506 (Pa. Commw. Ct. 2015). These cases in turn relied on a state constitutional right to work, and Washington similarly recognizes employment as a protected constitutional right. *Peake*, 132 A.3d at 518; see also *Cornwell v. California Bd. of Barbering & Cosmetology*, 962 F. Supp. 1260 (S.D. Cal. 1997) (due process violation found where cosmetology regulations requiring 1,600 hours of training did not rationally achieve the state’s asserted safety objective).

Lifetime employment bans are already suspect under a rational basis standard. It is hardly rational to use the conduct of a person 30 years ago to determine her present fitness to work, particularly when the past conduct has nothing to do with the present job.<sup>12</sup> But the irrationality of DEL’s lifetime ban is heightened by the inclusion of convictions that have nothing whatsoever to do with children—whether on the face of the

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<sup>12</sup> Ample research in fact demonstrates the opposite: risk of re-offending reduces drastically over time. See, e.g., Alfred Blumenstein & Kiminori Nakamura, *Redemption in the Presence of Widespread Background Checks*, 47(2) *Criminology* 327 (2009); Meagan C. Kulychek, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53(1) *Crime & Delinquency* 64 (2007).

criminal statute or in the facts of the conviction—and are therefore unrelated to DEL’s avowed government interest.

This circumstance is all the more peculiar (and arbitrary) in light of the rest of DEL’s statutory scheme. Not only does DEL administer another list for which only a five-year employment ban applies, WAC 170-06-0120, but also DEL treats some people with the same prior conviction as qualified. WAC 170-06-0050(1)(f) provides: “[A] crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted . . . .”

Thus, DEL will ignore a previous conviction for attempted robbery (or any of the other listed crimes) if a person is found by a third party to have been rehabilitated, yet it will not allow Ms. Fields to utilize an “equivalent procedure” within its own agency to consider that possibility. WAC 170-06-0050(1)(f). In creating this exception, DEL’s own regulations recognize that the demonstration of rehabilitation is important and that individuals who have proof of rehabilitation can safely work in child care. That crimes on the lifetime disqualification list are not exempted from WAC 170-06-0050(1)(f), is an acknowledgement by DEL

that individuals with those convictions may very well achieve the character, competence, and suitability requirements to work in child care.

Nothing makes the arbitrariness of DEL's position more clear than the particular circumstances of Ms. Fields, who has a robust record of rehabilitation and qualification to work with children. In the thirty years since her conviction, she has turned her life around to become a safe and capable childcare worker. In light of the well-documented effects of the war on drugs and mass incarceration, particularly on poorer communities of color, one can reasonably expect that she is not alone. Including robbery (and attempted robbery) on a list of convictions that stands in as a proxy for a suitability determination may be "efficient," but doing so does not survive rational basis review.

**C. DEL's Lifetime Ban for Robbery Convictions Violates the Due Process Clause of the Washington Constitution.**

DEL's lifetime ban from childcare employment based on a prior robbery conviction, without individualized consideration, violates article 1, section 3 of the Washington Constitution with or without a *Gunwall* analysis. *State v. Gunwall*, 106 Wn.2d 54, 60, 720 P.2d 808, 812 (1986). Although the text of Article 1, Section 3 and the Fourteenth Amendment due process clauses are substantially similar, the United States Supreme Court's interpretation of the Fourteenth Amendment does not control this

Court's interpretation of Article 1, Section 3. *See State v. Bartholomew*, 101 Wn.2d 631, 639-40, 683 P.2d 1079, 1085-86 (1984). The Court is free to find a due process violation for the reasons set forth in this brief and Ms. Fields' prior briefs without federal constitutional analysis being controlling.

*Gunwall* laid out six "nonexclusive neutral criteria" as relevant "in determining whether, in a given situation, the Washington State Constitution should be considered as extending broader rights to its citizens than the United States Constitution." *Gunwall*, 106 Wn.2d at 58. Those criteria are "(1) the textual language; (2) differences in the texts; (3) constitutional history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern." *Id.*

Several of these factors are of particular relevance here. The fourth factor, regarding preexisting state law, supports a finding that state due process is more protective here. This Court has long held that the right to pursue an occupation or profession is a valuable, constitutionally protected right. *See Amunrud, supra*, and *Davis-Smith Co., supra*.

Factor five is also satisfied here, as it is in every *Gunwall* analysis. *State v. Russell*, 125 Wn.2d 24, 61 (1994) (stating that "[t]he state constitution limits powers of state government, while the federal constitution grants power to the federal government.").

Finally, the regulatory scheme governing unsupervised access to children who are receiving early learning services is purely a matter of state and local concern, in which there is no need for national uniformity. Indeed, states exhibit substantial variance in the ways that they use criminal history to determine qualification to work with vulnerable populations, demonstrating that these procedures are a matter of local legislative and regulatory concern.<sup>13</sup> The state's reentry policy is also a matter of state and local concern.<sup>14</sup> RCW 9.96A.010. The time and resources this state has dedicated to improving reentry outcomes for individuals with prior convictions demonstrates that there are significant state and local concerns at stake here, satisfying factor six of the *Gunwall* analysis.<sup>15</sup> This Court should conclude that DEL's lifetime ban on Ms. Fields working in childcare violates the state constitution.

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<sup>13</sup> See, e.g. Amanda Borsky et. al., *Centers for Medicare & Medicaid Services National Background Check Program: Long Term Care Criminal Convictions Work Group 2-3*, 19-21 (2012), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-24-Attachment-.pdf>.

<sup>14</sup> *Supra*, section III.A.1.3.

<sup>15</sup> See, e.g. *The Effectiveness of Reentry Programs for Incarcerated Persons: Findings for the Washington Statewide Reentry Council*, available at [http://www.wsipp.wa.gov/ReportFile/1667/Wsipp\\_The-Effectiveness-of-Reentry-Programs-for-Incarcerated-Persons-Findings-for-the-Washington-Statewide-Reentry-Council\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1667/Wsipp_The-Effectiveness-of-Reentry-Programs-for-Incarcerated-Persons-Findings-for-the-Washington-Statewide-Reentry-Council_Report.pdf) (analytical report by the Washington State Institute for Public Policy reviewing the effectiveness of 59 reentry related programs).

#### IV. CONCLUSION

Procedural due process requires a meaningful hearing at a meaningful time. Substantive due process requires a rational relationship between a government regulation and a restriction on liberty. Christal Fields has completely turned her life around, yet she is permanently banned from an entire field of employment due to a 30-year old criminal conviction. She deserves a chance to prove that she is qualified to work in childcare.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of February 2018.

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**CERTIFICATE OF SERVICE**

I certify that on February 20, 2018, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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