

# SUPREME COURT COPY

No. S229428

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IN THE SUPREME COURT OF CALIFORNIA

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SUPREME COURT

FILED

EILEEN CONNOR

*Plaintiff-Appellant,*

v.

FIRST STUDENT, INC., et al.,

*Defendants-Respondents*

MAY 04 2016

Frank A. McGuire Clerk

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Deputy

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Court of Appeal, Second Appellate District, Case No. B256075

Los Angeles County Superior Court, Case No. JCCP 4624

The Honorable John S. Wiley

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**APPLICATION TO FILE BRIEF AND BRIEF OF *AMICUS CURIAE* A NEW WAY OF LIFE REENTRY PROJECT, BAY AREA LEGAL AID, BET TZEDEK LEGAL SERVICES, CENTER FOR EMPLOYMENT OPPORTUNITIES, COLLATERAL CONSEQUENCES RESOURCE CENTER, COMMUNITY SERVICE SOCIETY OF NEW YORK, DRUG POLICY ALLIANCE, EAST BAY COMMUNITY LAW CENTER, ELLA BAKER CENTER FOR HUMAN RIGHTS, EQUAL RIGHTS ADVOCATES, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, LEGAL ACTION CENTER, LEGAL AID FOUNDATION OF LOS ANGELES, LEGAL AID OF MARIN, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LEGAL SERVICES OF NORTHERN CALIFORNIA, NATIONAL CONSUMER LAW CENTER, NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY, NORTH CAROLINA JUSTICE CENTER, PUBLIC COUNSEL, PUBLIC INTEREST LAW PROJECT, PUBLIC LAW CENTER, ROOT & REBOUND, RUBICON PROGRAMS, WESTERN CENTER ON LAW AND POVERTY IN SUPPORT OF PLAINTIFF-APPELLANT**

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF A NEW WAY OF LIFE REENTRY PROJECT, BAY AREA LEGAL AID, BET TZEDEK LEGAL SERVICES, CENTER FOR EMPLOYMENT OPPORTUNITIES, COLLATERAL CONSEQUENCES RESOURCE CENTER, COMMUNITY SERVICE SOCIETY OF NEW YORK, DRUG POLICY ALLIANCE, EAST BAY COMMUNITY LAW CENTER, ELLA BAKER CENTER FOR HUMAN RIGHTS, EQUAL RIGHTS ADVOCATES, LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, LEGAL ACTION CENTER, LEGAL AID FOUNDATION OF LOS ANGELES, LEGAL AID OF MARIN, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LEGAL SERVICES OF NORTHERN CALIFORNIA, NATIONAL CONSUMER LAW CENTER, NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY, NORTH CAROLINA JUSTICE CENTER, PUBLIC COUNSEL, PUBLIC INTEREST LAW PROJECT, PUBLIC LAW CENTER, ROOT & REBOUND, RUBICON PROGRAMS, WESTERN CENTER ON LAW AND POVERTY IN SUPPORT OF PLAINTIFF-APPELLANT**

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## **APPLICATION TO FILE AMICUS BRIEF**

Pursuant to the California Rules of Court, rule 8.520(f), the organizations described below respectfully request permission to file the attached brief as *amici curiae* in support of Plaintiff-Appellants Eileen Connor and Jose Gonzalez.

This application is made pursuant to Rule 8.200(c) of the California Rules of Court and Section 12 of the Code of Civil Procedure. No party or counsel for any party in the pending appeal authored the proposed *amicus* brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the *amicus curiae*, their members, or their counsel in the pending appeal.

### **I. Background of *Amici Curiae***

**A New Way of Life Reentry Project (ANWOL)** is home to the largest reentry legal clinic in Southern California, filing over a thousand expungement petitions to help people overcome barriers to gainful employment imposed by old criminal records. ANWOL also carries out impact litigation work on behalf of the formerly-incarcerated or convicted people. Ever since the decision of the District Court in *Moran v. The Screening Pros* finding ICRAA unconstitutionally vague, however, ANWOL attorneys have lost an important tool in removing employment barriers for people determined to re-enter our community as productive members.

**Bay Area Legal Aid (BayLegal)** is the largest provider of free civil legal services to low-income residents of the San Francisco Bay Area. More than 60,000 low-income individuals annually benefit from our wraparound legal services in housing preservation, domestic violence and sexual assault prevention, economic security, consumer protection, and healthcare access. BayLegal's consumer protection unit protects vulnerable low-income individuals from unfair debt collection and credit reporting abuses, including errors on investigative reports. In our reentry practice, BayLegal focuses on the specific vulnerabilities of formerly incarcerated populations, including holistic legal representation related to obstacles securing work and housing based on incorrect reporting of criminal backgrounds. California's Investigative Consumer Reporting Agencies Act (ICRAA) is an effective and important tool employed across our practice areas to protect the rights of workers and tenants, help people obtain economic stability, and end the cycle of poverty. The District Court's ruling would negatively impact our mission to help secure a brighter future for low-income residents of the Bay Area.

For the past 40 years, **Bet Tzedek Legal Services** has provided free, comprehensive legal services for low-income individuals and families in Los Angeles, proving that access to justice makes a difference in people's lives. From humble beginnings as a small group of volunteer attorneys helping Holocaust survivors facing gentrification in the Fairfax District, Bet Tzedek has grown into a public interest law firm with a footprint across Los Angeles County and beyond, with practice area expertise in Elder/Caregiver Law, Consumer Rights,

Employment Rights, Guardianships, Human Trafficking, Health, Holocaust Reparations, Housing, Public Benefits and more. Our staff seeks innovative solutions to persistent poverty. Whether harnessing the power of technology to overcome barriers or mobilizing communities through collaborative partnerships, we seek to empower the more than 20,000 people we serve every year with the help of hundreds of pro bono attorneys and volunteers. Bet Tzekek's Consumer Right's practice assists clients with credit reporting, fair debt collection practices, bankruptcy, alternatives to bankruptcy, and judgment enforcement actions.

The **Center for Employment Opportunities (CEO)** is a non-profit dedicated to providing immediate comprehensive employment services exclusively to formerly incarcerated men and women. CEO has 11 offices nationwide across 4 states and serves over 4500 people under criminal justice supervision annually. As an organization dedicated to helping people secure employment after incarceration we know firsthand how important ICRAA and FCRA's protections are to people at this critical moment in their lives. We support this effort to preserve these critical protections.

The **Collateral Consequences Resource Center** is a non-profit organization established in 2014 to promote public discussion of the legal restrictions and social stigma that burden people with a criminal record long after their court-imposed sentence has been served. Through its website, the Center provides practice and advocacy resources for lawyers and others, and news and commentary about this dynamic area of the law. The Center has a particular

interest in improving the mechanisms for relief from the adverse effects of a criminal record that exist in different jurisdictions, and thus in the subject matter of this litigation.

The **Community Service Society of New York (“CSS”)** has led the fight against poverty in New York City for more than 173 years. CSS primarily focuses on promoting living-wage jobs and works to support and stimulate social and economic mobility among the working poor. Because mass imprisonment perpetuates poverty, CSS promotes the implementation of policies and enforcement of laws to speed the successful reentry of people with criminal records via employment. The organization’s Next Door Project utilizes a large cadre of senior citizen volunteers to help individuals request, read and repair their New York and Federal Bureau of Investigation (“FBI”) rap sheets. CSS also litigates against public and private employers that violate state and federal laws that implicate the rights of individuals with criminal conviction histories.

Amicus Curiae **Drug Policy Alliance (DPA)** is the nation’s leading organization devoted to broadening the public debate over drug use and regulation and to advancing pragmatic drug laws and policies grounded in science, compassion, health and human rights. DPA has long been committed to rational sentencing policies aimed at reducing the disparate impact of the nation’s drug laws, and diverting those with nonviolent drug offenses from the criminal justice system and incarceration settings into productive community-based services. DPA supports policies that facilitate successful reentry and reduce the likelihood of

recidivism, including policies that remove barriers to employment, housing, and educational opportunities for people with nonviolent offenses.

The **East Bay Community Law Center (EBCLC)** is the non-profit poverty law clinic of the UC Berkeley Law School. EBCLC's Clean Slate Practice provides free legal services to 1,200 clients each year who have criminal records and are now working to reenter their communities as full and contributing members. These clients face daunting barriers to employment and housing, sometimes as the result of decades-old convictions, and often despite their hard-won success in rehabilitation. Almost all of EBCLC's reentry clients have benefited directly from the protections of California's Investigative Consumer Reporting Agencies Act (ICRAA).

The **Ella Baker Center for Human Rights (EBC)**, based in Oakland, advances racial and economic justice to ensure dignity and opportunity for low-income people and people of color. The EBC organizes with individuals who have criminal records and their families. The daunting barriers to employment and housing that individuals with a criminal record face have negative impacts on their families' abilities to thrive. Many of our members benefited directly from the protections of the ICRAA compromised by the trial court's ruling in this case.

**Equal Rights Advocates (ERA)** is a national civil rights organization based in San Francisco whose mission is to protect and expand economic and educational access and opportunities for women and girls. Since our founding in 1974, ERA has engaged in direct legal services, high impact litigation, and

legislative advocacy aimed at eradicating gender-based discrimination in the workplace and addressing other systemic barriers to the economic advancement of women and girls. ERA has heard from and provided legal assistance to highly qualified women who are ready and willing to work, but cannot find employment due to their criminal conviction histories, and are struggling to support themselves and their families as they try to reintegrate into society.

The **Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR)** is a civil rights and legal services organization that advances, protects, and promotes the rights of communities of color and immigrants and refugees. LCCR's Second Chance Legal Clinic serves primarily low-income people of color who are seeking to overcome legal barriers due to past arrests and convictions- many of whom seek the benefits of ICRAA to ensure that their backgrounds are not inappropriately reported.

**Legal Action Center (LAC)**, founded in 1973, is a national non-profit law and policy organization, based in New York City, New York, that works to fight discrimination against and promote the privacy rights of individuals with criminal records, alcohol/drug histories, and/or HIV/AIDS. LAC provides direct services to approximately 2,000 clients per year. Our National H.I.R.E. (Helping Individuals with criminal records Reenter through Employment) Network works with policy makers and advocates nationwide to promote employment and other opportunities for individuals with criminal records. Through policy advocacy and impact litigation, LAC works to ensure compliance with the fair credit reporting



laws at both the federal and state level and to promote best practices. The questions posed on appeal are of vital concern to LAC's constituency across the country, who are trying to better their lives despite past involvement with the criminal justice system.

The **Legal Aid Foundation of Los Angeles (LAFLA)** has been the frontline law firm providing free civil legal services to low-income people in Los Angeles County for over 85 years. LAFLA assists over 80,000 low-income individuals annually. LAFLA has served many clients who have had brushes with the law as juveniles or as adults in the past who are now seeking to move on with their lives, get jobs and reach self-sufficiency. LAFLA assists individuals with filing petitions for dismissal, correcting arrest records, sealing juvenile record and resolving citations to reinstate driver's licenses. All of this work is done in an effort to remove barriers to employment. One of the major stumbling blocks to our clients' ability to secure employment is the inaccurate information regarding past criminal records and arrests relayed to prospective employers by reporting businesses.

Since 1958, **Legal Aid of Marin** has been protecting jobs, homes, and families for low-income, vulnerable, and otherwise underserved residents of Marin County. The current housing crisis inflicts severe hardships for our clients, and far too often they also suffer from inaccurate and unfair "background reports" that cause lost opportunities for their families.

**Legal Services for Prisoners with Children (LSPC)** organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights, and to reunify families and communities. LSPC believes that the one of the greatest barriers to successful community reentry and family reintegration following incarceration is employment discrimination based on conviction history. LSPC supports the full human and civil rights of people with convictions, including the right to support one's family.

**Legal Services of Northern California** is a non-profit legal aid organization which provides free legal services to thousands of clients annually, striving to deliver quality legal services that empower the poor to identify and defeat the causes and effects of poverty within their community. LSNC's eight offices and various programs regularly represent individuals with possibly prejudicial criminal and consumer records in a variety of contexts, including housing, public benefits, civil rights, health, education, and criminal records remedies for those who face significant barriers to employment and housing due to their criminal records. Particularly vulnerable groups include survivors of domestic violence, whose arrest records developed as a result of reporting domestic violence may appear on background checks, and former foster youth who have reported seeing their juvenile records appear in background checks. Accordingly, many clients LSNC serves each year rely on ICRAA and FCRA's protections to be treated fairly in a variety of contexts, most notably the housing and job markets;

these significant protections would be greatly compromised by the district court's ruling in this case.

The **National Consumer Law Center (NCLC)** is a nonprofit organization that has served as one of the nation's leading advocates for economic justice since 1969. NCLC has unique expertise and interest in fair credit reporting issues and publishes *Fair Credit Reporting* (8th ed. 2013), a comprehensive analysis of the FCRA, state credit reporting laws, and related issues. In 2012, NCLC conducted an extensive analysis of the background screening industry and documented common mistakes and poor practices.

**Neighborhood Legal Services of Los Angeles County (NLSLA)** is a nonprofit legal aid agency that has been providing free civil legal services to low-income families and individuals in Los Angeles County since 1965. NLSLA provides legal assistance in the areas of housing, consumer, health, government benefits, criminal record clearance remedies, employment, community development, immigration, and family law. While NLSLA assists countless clients with removing barriers created by their criminal record at our various program and community clinics, many continue to experience significant hurdles in obtaining adequate housing and employment because of errors contained in their background checks. The negative implications can be far reaching in its impact on the individuals' journey to self-sufficiency and ultimate advancement out of poverty.

The **North Carolina Justice Center** is a 501(c)(3) organization with the mission of eliminating poverty by ensuring that every household has access to the resources, services and fair treatment it needs to achieve economic security. The North Carolina Justice Center's Second Chance Initiative advocates for policy reforms that remove unnecessary barriers to employment, housing, and other resources essential to productive citizenship for community members with criminal records. The Investigative Consumer Reporting Agencies Act provides important protections for applicants with criminal records trying to secure stable employment and housing and serves as a model for efforts to extend similar protections in other states.

**Public Counsel** is the largest pro bono law firm in the nation. It annually assists more than 30,000 families, children, immigrants, veterans, and nonprofit organizations with issues related to systemic poverty and civil rights, including issues specific to gaining and keeping employment, government benefits, and affordable housing. Inaccurate consumer reports and background checks threaten the ability of Public Counsel's clients to obtain and keep jobs, government assistance, and safe and reasonably priced homes. Public Counsel views the ICRAA as a necessary and reasonable measure to protect California residents by ensuring that reporting companies exercise appropriate diligence and care.

The **Public Interest Law Project**. The Public Interest Law Project is a California non-profit corporation providing advocacy support, technical assistance and training to local legal services offices throughout California on issues related to

affordable housing, public benefits and civil rights. With catastrophic increase in rents and housing prices in much of California, preventing arbitrary disqualification of lower income households from eligibility for housing due to inaccurate credit reporting has become a significant barrier to adequate housing for thousands of households.

**Public Law Center** is a nonprofit legal services organization, committed to providing access to justice for Orange County, California's low-income residents. PLC fulfills its mission through direct legal services, impact litigation, policy advocacy and legislative support. Public Law Center works with individuals who have been turned down for housing or employment because of errors in their background checks and therefore face countless other legal issues as a result of homelessness or unemployment. ICRAA is crucial to providing protections for these individuals.

**Root & Rebound** is a reentry advocacy and legal education center that works to increase access to justice and opportunity for people in reentry from prison and jail, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California. In a country with 44,000 documented legal barriers for people with criminal records, and where criminal records have contributed to an estimated 20% of the U.S. poverty rate, ICRAA provides important protections for people with criminal records in moving forward with their lives and securing

employment. These critical protections must be upheld in order for people with records to have a second chance in society.

Founded in 1973, **Rubicon Programs**' mission is to transform East Bay communities by equipping people to break the cycle of poverty. Rubicon supports participants across Contra Costa and Alameda Counties who are actively searching for employment by addressing barriers to finding and retaining jobs. In 2015 alone, we have served over 4000 participants, 39% of whom have had contact with the criminal justice system. For these people, having a criminal record can be a significant barrier to employment. The significance of ICRAA's protections cannot be overstated when it comes to helping this population access employment after incarceration. ICRAA's protections afford them the opportunity to move past their mistakes, become successful members of society, and move out of poverty.

**Western Center on Law and Poverty (WCLP)** is the oldest and largest statewide support center for legal services advocates in California. WCLP and partner organizations are engaged in ongoing advocacy to remove barriers to work, including reforming unfair driver's license suspension rules and practices and challenging inaccurate criminal background checks on public benefits recipients applying for jobs. Ensuring that the full scope of ICRAA protections is available to low-income Californians seeking to lift themselves and their families out of poverty by securing stable employment is critical to WCLP's anti-poverty mission.

## **II. Interest of *Amici Curiae***

The proposed *amici curiae* include a diverse group of non-profit organizations involved in policy work, litigation, and direct services for indigent clients with substantial barriers to employment and housing. The issues presented in this case implicate the interests of millions of Californians, including *amici* organizations' California clients, who are at the mercy of screening companies to accurately and fairly report their public records when they apply for housing and employment. ICRAA empowers these clients to ensure accurate reporting of their public records. This case, which addresses the validity of ICRAA, has a profound impact on our clients' ability to obtain redress under California's consumer reporting statutes.

Non-California-based *amici* champion ICRAA as a vitally important protection against the constellation of harm that can befall individuals subject to inaccurate, poor-quality background checks.

## **III. Need for Further Briefing**

The proposed *amici curiae* believe that this brief will provide the Court with important perspectives not yet offered in the parties' briefing, but helpful to the Court's assessment of the parties' arguments on the constitutionality of ICRAA. We submit this *amicus* brief to (1) provide the Court with real-world stories that show why ICRAA offers critical and indispensable protections for job and rental housing applicants in California; and (2) demonstrate that Respondents' contention that ICRAA fails to provide fair notice of what is required of employers

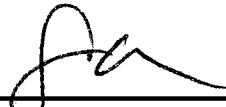
and screening companies is not rooted in a sincere concern about due process, but in a plain desire to avoid the stricter disclosure requirements in ICRAA.

**IV. Conclusion**

For the foregoing reasons, *amici curiae* respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: April 27, 2016

Respectfully submitted,



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## **INTRODUCTION**

The impetus for the 1998 amendments to the Investigative Consumer Reporting Agencies Act (ICRAA) was an *L.A. Times* article about Bronti Kelly, whose story is as heartbreaking as it is maddening. A former Air Force Reservist with extensive retail sales experience, Kelly ended up bankrupt and homeless after being denied hundreds of department store jobs over the course of four years. Kelly later learned he had been the victim of identity theft, and that screening companies had been falsely reporting that he shoplifted from a prior employer. The Consumer Credit Reporting Agencies Act (CCRAA) required employers to notify applicants if a screening report would be run, and if an application was denied based on a report, but not once in four years did Kelly receive either notice.

Senator Leslie found this appalling, and expanded the scope of ICRAA to provide greater disclosure and accountability standards for job and housing applicants. A 2002 amendment further strengthened the disclosure requirement for employee screening reports.

At issue in this appeal is a straightforward provision in ICRAA that requires employers to provide job applicants a disclosure and authorization form before ordering a screening report on them. This form must disclose the name and contact information for the screening company. The policy underlying this provision is equally straightforward: employment is one of life's basic needs, so fairness dictates that an applicant should be given notice and an opportunity to contact the screening company to dispute any inaccuracies in its report.

Defendants (“First Student”) now complain that it is they who have been deprived of fair notice because, after the 1998 ICRAA amendments, they have no notice of whether employee screening reports are governed by ICRAA or CCRAA. This argument is rooted in the Fourth District’s decision in *Ortiz v. Lyon Management Group, Inc.*, (2007) 157 Cal. App. 4th 604, which overlooked that tenant screening reports containing unlawful detainer information are explicitly regulated in both CCRAA and ICRAA, then inexplicably construed the statutes to be separate statutes governing distinct *types* of information. The truth of the matter is that the screening industry is not at all confused about the scope of ICRAA. This case is just the latest cynical vagueness challenge that seeks to leverage *Ortiz’s* improper statutory construction to gut California’s strong protections for employee and tenant screening reports containing public records information.

*Amici* submit this brief to provide real-world stories which show that many of the abuses by the employee and tenant screening industry that inspired the 1998 ICRAA amendments continue to this day, with devastating impacts on our clients. *Amici* regularly see qualified applicants lose employment and housing opportunities as a result of inaccurate public records reporting, untimely disclosures, and insufficient dispute reinvestigation procedures. If the validity of ICRAA is not reaffirmed, many Californians will lose a crucial set of protections that empower them to protect their reputations, privacy rights, and access to job and housing opportunities.