
United States Court of Appeals

for the

Third Circuit

Case No. 25-1028

RODNEY PHATH,

Plaintiff-Appellant,

– v. –

CENTRAL TRANSPORT LLC,

Defendant-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR *AMICI CURIAE* NATIONAL EMPLOYMENT LAW PROJECT, COMMUNITY LEGAL SERVICES OF PHILADELPHIA, CLEAN SLATE INITIATIVE, COLLATERAL CONSEQUENCES RESOURCE CENTER, CENTER FOR EMPLOYMENT OPPORTUNITIES, COMMUNITY JUSTICE PROJEC, DEFENDER ASSOCIATION OF PHILADELPHIA, LAST PRISONER PROJECT, LEGAL ACTION CENTER, LEGAL AID AT WORK, LEGAL AID OF SOUTHEASTERN PENNSYLVANIA, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, PENNSYLVANIA ASSOCIATION FOR RATIONAL SEXUAL OFFENSE LAWS, PHILADELPHIA LAWYERS FOR SOCIAL EQUITY, PUBLIC DEFENDER ASSOCIATION OF PENNSYLVANIA AND PUBLIC INTEREST LAW CENTER IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and Local Appellate Rule 26.1, each Amicus represents that it is a non-governmental corporation with no parent company and is not publicly traded.

Date: March 24, 2025
New York, New York

/s/ Christopher M. McNerney
Christopher M. McNerney

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IDENTITY & INTERST OF AMICI CURIAE¹

Amici are sixteen non-profit organizations involved in advocating on behalf of people with criminal records.

Founded in 1969, NELP is a 501(c)(3) nonprofit advocacy organization dedicated to building a just and inclusive economy in which all workers have expansive rights and thrive in good jobs. Over the past two decades, NELP's work to advance its mission has included a focus on the employment rights of workers with arrest and conviction records. Because people with records are disproportionately Black, Latinx, and Indigenous, advocating for workers with records is crucial to NELP's goals of racial and economic justice. In addition, employer exploitation of workers with records can negatively impact all workers, especially those in underpaid jobs. Together with local, state, and national partners, including many in Pennsylvania and across the Third Circuit, NELP has worked to expand the rights of, and eliminate job barriers faced by, people with arrest and conviction records. Robustly enforcing and defending worker rights and employer

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(e), Amici Curiae certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than Amici Curiae, their counsel and their members contributed money intended to fund the brief's preparation or submission.

responsibilities under existing laws, such as the Pennsylvania Criminal History Record Information Act, is central to this work and NELP's mission.

Community Legal Services Inc. ("CLS") was founded by the Philadelphia Bar Association in 1966 as an independent 501(c)(3) organization to provide free legal services in civil matters to low-income Philadelphians. CLS represents more than 13,000 low-income Philadelphians every year. Approximately two-thirds of the individuals who contact our Employment Unit and over 1,000 individuals annually, do so because they face barriers to employment because of a criminal record. Therefore, CLS prioritizes direct representation, community engagement, and systemic advocacy work focused on removing barriers to employment for people with criminal records. CLS pioneered Pennsylvania's "clean slate" law, which uses automated technology to seal old and minor criminal records from public view and has become a national model. Despite the success of Clean Slate, many Pennsylvanians remain ineligible for record clearing and continue to face unfair and overbroad barriers to employment because of their records. For this reason, CLS also works extensively on fair hiring policy and cases, including litigation under Section 9125 of the Criminal History Records Information Act and related local, state, and federal laws. Our advocacy on behalf of workers with criminal records is part of a broader bipartisan movement that recognizes our laws should help people access economic opportunity, not shut them out of it. Our clients, their families, and

our communities are safer and stronger when people can access meaningful employment opportunities.

The Clean Slate Initiative (“CSI”) seeks to pass and implement laws that automatically clear eligible records for people who have completed their sentence and remained crime-free, and to expand who is eligible for clearance. CSI has a deep commitment to helping Pennsylvanians move forward in life—opening doors to jobs, housing, and opportunities they might not have otherwise.

The Collateral Consequences Resource Center (“CCRC”) is a non-profit organization that promotes public discussion regarding the collateral consequences of arrest and conviction]. CCRC takes a national perspective on this dynamic area of law and social policy, and its Restoration of Rights Project collects and analyzes mechanisms for obtaining relief from collateral consequences in every U.S. jurisdiction. CCRC has a particular interest in ensuring robust interpretation and enforcement of state laws limiting record-based employment discrimination.

The Center for Employment Opportunities (“CEO”) provides people returning from incarceration, all of whom have criminal records, immediate paid employment, skills training, and ongoing career support in Philadelphia, Pittsburgh, and Harrisburg. CEO hires its program participants through its social enterprise to offer transitional jobs, provides a robust set of wraparound vocational support services, and works with participants for a year after they find full-time positions.

CEO hires more than 400 people every year in Pennsylvania in transitional employment and supports them in obtaining full-time jobs with employers throughout the state. CEO is signing on to this brief because, as part of its work, the organization strongly supports compliance with the Pennsylvania Criminal History Records Information Act and policies that avoid any unreasonable employment restrictions on workers with criminal records.

The Community Justice Project (“CJP”) is a statewide unrestricted legal aid program that represents low-income Pennsylvanians in impact litigation and other advocacy across multiple practice areas, including employment and civil rights law. CJP has filed class and collective action lawsuits to ensure that workers are paid the minimum wage and overtime, as well as systemic employment discrimination lawsuits, class actions to protect workers’ rights during background checks, and other types of impact-oriented employment cases.

The Defender Association of Philadelphia is a private, non-profit that represents a substantial percentage of the criminal defendants in Philadelphia County, Pennsylvania at trial, at probation and parole revocation proceedings, and on appeal. The Defender Association provides high quality client-centered legal representation, courtroom advocacy, and a connection to social services. It strives to protect the state and federal constitutions, ensure a fair and equitable justice system, and to improve the lives of vulnerable populations. It also strives to consider

and protect its clients from untoward collateral consequences resulting from criminal convictions and involvement in the criminal legal system. It has participated in numerous appellate cases in both state and federal court.

Last Prisoner Project (“LPP”) is a national, nonpartisan, 501(c)(3) nonprofit organization focused on the intersection of cannabis and criminal justice reform. Through policy campaigns, direct intervention, and advocacy, LPP’s team of policy experts works to redress the past and continuing harms of unjust cannabis laws. LPP is currently working in Pennsylvania to ensure that adult-use cannabis legalization includes dedicated expungement and sentence-modification laws to provide retroactive relief for offenses rendered obsolete by legalization. We believe that no one’s rights, including their access to occupational licensing and employment, should be impeded due to an unjust cannabis record.

The Legal Action Center (“LAC”) is a national non-profit law and policy organization founded in 1973. LAC uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with arrest and conviction records, substance use disorders, and HIV or AIDS. LAC’s work includes extensive litigation and policy advocacy to eliminate the myriad unjust barriers to employment, housing, legal benefits, and other life essentials that individuals with records of arrest and conviction need to support themselves, their families, and their communities. For decades, LAC has represented individuals

facing employment discrimination and decreased economic opportunity because of their criminal record history.

Legal Aid at Work (“LAAW”) is a non-profit, public interest law firm founded in 1916, with a mission to protect, preserve, and advance the rights of individuals from traditionally underrepresented communities. LAAW has appeared numerous times in federal and state courts, both as counsel for plaintiffs and in an amicus curiae capacity, and has expertise in interpreting fair chance policies and the overarching impact of a record on an individual’s employment. LAAW represents workers who seek to assert their fair chance rights and rights against race-based discrimination. Finally, LAAW advocates for systems and policy change to challenge structural racism and advance the rights of marginalized workers, including currently and formerly incarcerated people.

Legal Aid of Southeastern Pennsylvania (“LASP”) is a 501(c)(3) nonprofit organization that provides free civil legal services to low-income and vulnerable clients in Pennsylvania. LASP clients who have had past interactions with the criminal legal system often struggle to find jobs and support their families even many years after completing their sentences.

Legal Services for Prisoners with Children (“LSPC”) is a non-profit organization dedicated to protecting and advancing the civil and human rights of persons affected by the carceral system. LSPC provides legal training, technical

assistance, and advocacy support to legal services providers on issues affecting incarcerated persons, formerly incarcerated persons, and their families. LSPC has worked extensively on fair chance employment policies, which are designed to counteract the stigmatization and reduction of employment opportunities experienced by persons with arrest and conviction records.

The Pennsylvania Association for Rational Sexual Offense Laws (“PARSOL”) is a Pennsylvania organization dedicated to advocating for the rights of individuals with past sexual offense convictions now committed to pursuing a community-focused life and preventing future sexual harm. We are deeply invested in ensuring that individuals with criminal records are afforded fair opportunities for employment and reintegration into society, and our interests align with Pennsylvania’s long-standing policy to avoid unwarranted stigmatization and unreasonable restrictions on those with conviction histories. PARSOL’s works to make communities safer through policies and practices that facilitate the successful reintegration of individuals with sexual offense records into our communities. We recognize the significant barriers faced by citizens with criminal records, such as barriers to housing, employment, programs, and services, plus collateral consequences that affect families and communities.

Philadelphia Lawyers for Social Equity (“PLSE”) consists of public interest attorneys working exclusively to improve outcomes for low-income individuals who

have had contact with the criminal justice system. PLSE's work involves direct service, strategic litigation, community education, research, and legislative advocacy. The overwhelming majority of PLSE clients seek services as a result of barriers to obtaining employment. In the high-arrest, low-income neighborhoods of Philadelphia, we estimate that as many as 60% of the adult population have criminal records. A criminal history significantly impacts an individual's ability to not only obtain stable employment but to secure safe housing and education for their families, leading to a cycle of poverty that robust enforcement of the CHRIA can help to interrupt. We respectfully submit this brief in the hope of providing further illustration to the court of the wide-ranging impact of criminal records upon the lives of indigent defendants, and why courts should act within the guidelines of the law to prevent that harm.

The Public Defender Association of Pennsylvania ("PDAP") is a Pennsylvania non-profit corporation whose membership consists of over a thousand public defenders employed full- or part-time in the sixty-seven county public defender offices of this Commonwealth. PDAP is dedicated to securing a fair justice system and ensuring high quality legal representation for people facing loss of life, freedom or family. PDAP's mission is to provide tools, strategies, mutual support, training, and information to public defender offices; to be the voice of public defense; and to promote best practices in the leadership, management, and

administration of justice in Pennsylvania. The members of PDAP represent many people charged with criminal offenses who would be impacted by a decision of the Court in this case. PDAP has previously participated in numerous cases before this Court.

The Public Interest Law Center, one of the original affiliates of the Lawyers' Committee for Civil Rights Under Law, uses high-impact legal strategies to advance the civil, social, and economic rights of communities across Pennsylvania facing discrimination, inequality, and poverty. The Law Center has a long-standing commitment to improving employment opportunities for individuals with criminal records. The Law Center seeks to eliminate the barriers faced by people reentering society after incarceration and to address the discriminatory use of criminal background checks in hiring, which can create nearly insurmountable barriers for large numbers of individuals of color in obtaining the employment they need to lead stable and sustainable lives, and to contribute to their families and communities. The Law Center frequently advocates for and litigates on behalf of job applicants whose CHRIA rights have been violated, and to compel systemic reforms in hiring practices across the Commonwealth.

SOURCE OF AUTHORITY TO FILE AS AMICI CURIAE

Under the Federal Rules of Appellate Procedure, other than the United States, its officers or agencies, or a state, any other individuals may participate in an appeal as Amicus Curiae by leave of court or if the brief states that all parties have consented to its filing. Fed. R. App. P. 29(a). In this matter, Plaintiff-Appellant consents and Defendant-Appellee Central Transport LLC does not object to the filing of this brief.

ARGUMENT

The district court's narrow interpretation of Pennsylvania's Criminal History Record Information Act (the "CHRIA") will lead to underenforcement of the Act and undermine efforts to reintegrate those with criminal records across the Commonwealth and the country.

As study after study has shown, a criminal conviction results in access to fewer jobs and lower lifetime income for individuals reentering society, and collateral consequences that damage families and communities for generations. Recognizing this serious problem in a state with millions of residents with criminal records, Pennsylvania courts have, for over half a century, articulated and reaffirmed the "deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon [people with conviction histories]," while interpreting statutes in ways consistent with that public policy, to the benefit of those with criminal convictions seeking a chance to better their lives. *Sec'y of Revenue v. John's Vending Corp.*, 309 A.2d 358, 362 (Pa. 1973).

A crucial expression of this public policy, and mechanism for its enforcement, is Section 9125 of the CHRIA, which restricts employers from considering criminal convictions unless they "relate to the applicant's suitability for employment in the

position for which [they] applied.” 18 Pa. Cons. Stat. Ann. § 9125(b).² This guardrail instructs employers to carefully consider a decision to revoke a job offer because of a criminal record, requiring employers to base their decision on whether the conviction negatively impacts the applicant’s ability to do the job for which they are otherwise qualified, and not on the employer’s bias.

By limiting the scope of Section 9125(b) to the narrow situation where an employer receives an actual copy of the applicant’s criminal history record information file, the district court frustrates Pennsylvania’s public policy goal of rehabilitation, and undermines the CHRIA, leaving Plaintiff-Appellant Rodney Phath (and, if the opinion is left to stand, countless other Pennsylvanians) with no legal recourse to challenge overbroad criminal history screens under Pennsylvania law.

The Court should reverse the district court’s order and allow Phath’s claim of employment discrimination to be considered on its merits.

² This standard of job suitability closely resembles the employer’s burden in a Title VII disparate impact lawsuit to show that its policy is job related. *See Ramos v. Walmart, Inc.*, No. 21 Civ. 13827, 2023 U.S. Dist. LEXIS 34780, at *11 (D.N.J. Mar. 2, 2023) (discussing Title VII job relatedness standard in context of class action challenging criminal history screen as disparate impact race discrimination). However, Title VII does not contain protections specifically for criminal history like the CHRIA (and thus covers significantly fewer Pennsylvanians) and is otherwise more limited in the scope of its remedies.

I. Significant Numbers of Pennsylvanians Face the Negative Collateral Consequences of a Criminal Record.

Workers with criminal records, like Phath, are routinely denied jobs that lack any relationship to their conviction record and for which they are well qualified. The resulting inability to secure stable income prevents these individuals from successfully reintegrating into their communities, harming those individuals, their families, communities of color, and society more broadly. The job prospects of millions of Pennsylvania workers may be reduced because of a past record. Pennsylvania state criminal history files contain records for 3,114,600 individuals.³

Notably, the impacts of the U.S. carceral system are not evenly distributed: members of the Black, Latino, and Indigenous communities are disproportionately likely to have a record.⁴ In Pennsylvania, Black people are imprisoned at over seven times the rate of white people.⁵ These profound racial and ethnic disparities are not explainable by differences in rates of offending. For example, studies show that

³ Becki R. Goggins & Dennis A. DeBacco, SEARCH Group, *Survey of State Criminal History Information Systems, 2022* tbl.1 (2024), <https://www.ojp.gov/pdffiles1/bjs/grants/309360.pdf>.

⁴ Leah Wang, “The U.S. criminal justice system disproportionately hurts native people: the data, visualize,” *Prison Pol’y Initiative* (Oct. 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/> (charting nationwide racial disparities in incarceration rates using 2019 data).

⁵ Ashley Nellis, The Sent’g Project, *The Color of Justice* 7 (2021), <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>. On average across the nation, Black people are incarcerated at nearly five times the rate of white people. *Id.*

white and Black populations use drugs at similar rates, yet Black people are arrested and incarcerated for drug offenses at substantially higher rates.⁶

For those with records, job barriers can be steep. Via one survey, nearly two-thirds of employer-respondents reported that they “probably or definitely would not” hire an individual with a criminal record.⁷ Many employers decline to even consider a job applicant after discovering a criminal record, especially for job applicants of color. One prominent study found that indicating a record on a job application halved the callback rate for white applicants from 34% to 17%.⁸ Black candidates with records were penalized even more harshly than white applicants, with their callback rate reduced by almost two-thirds, from 14% to 5%.⁹ All told, the unemployment rate of formerly incarcerated people has been estimated at over 27% – higher than the U.S. unemployment rate at the height of the Great Depression.¹⁰

⁶ *Id.* at 9-10.

⁷ Devah Pager & Bruce Western, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men* 20 (2009), <https://www.ojp.gov/pdffiles1/nij/grants/228584.pdf>.

⁸ Devah Pager & Lincoln Quillian, Walking the Talk? What Employers Say Versus What They Do, 70 *Am Socio. Rev.* 355, 362 (2005), https://scholar.harvard.edu/files/pager/files/asr_pagerquillian2.pdf.

⁹ *Id.*

¹⁰ Lucius Couloute & Daniel Kopf, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” *Prison Pol’y Initiative* (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> (using 2008 data).

The joblessness rate during the first four years following incarceration is estimated to be even higher at over 60%.¹¹

Employers penalize workers for their records not only in the short term, but for many years or even decades, resulting in a lifelong reduction in income for people with records and their families. Throughout their lives and careers, the average annual earnings of previously incarcerated people equal less than half the earnings of otherwise similarly situated individuals.¹² Earnings are also significantly impacted for people who were convicted but never imprisoned: for those with a felony conviction, annual earnings are 22% less than similarly situated individuals, and, for people with a misdemeanor or other non-felony conviction, 16% less.¹³ The reduction in job opportunities can last for many years, even if the offense was minor or the person was arrested but never convicted.¹⁴

¹¹ Leah Wang & Wanda Bertram, “New data on formerly incarcerated people’s employment reveal labor market injustices,” *Prison Pol’y Initiative* (Feb. 8, 2022), <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

¹² Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings* 14, 18-19 (Brennan Ctr. for Just., 2020), https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.

¹³ *Id.* at 14.

¹⁴ Simone Ispa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record*, 54 *Criminology* 387, 36-40 (2016), <https://doi.org/10.1111/1745-9125.12108>.

In total, over their lifetime, a formerly incarcerated person's earnings are reduced by roughly half a million dollars.¹⁵ Meanwhile, people convicted of an offense but never incarcerated experience an average lifetime earnings loss of roughly \$100,000.¹⁶ On average, the annual earnings of formerly incarcerated individuals remain below the federal poverty threshold throughout their lives,¹⁷ and chances for upward mobility are significantly diminished.¹⁸ The economic stability and upward mobility of future generations is hindered as well, given that nearly half of all U.S. children have at least one parent with a record.¹⁹ These negative impacts on employment, income, and mobility are even greater for Black and Latino workers and communities.²⁰ In fact, some academics have theorized that mass incarceration has played a major role in increasing poverty rates across U.S. communities, helping

¹⁵ Craigie et al., *supra*, at 17-19. A similar study found that previously incarcerated men take home an average of 40% less pay each year than those without incarceration history, adding up to nearly \$179,000 in lost earnings by age 48. Bruce Western & Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* 4, 11-12 (Pew Charitable Trts., 2010), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateral_costs1pdf.pdf.

¹⁶ Craigie et al., *supra*, at 17-19.

¹⁷ *Id.*

¹⁸ Western & Pettit, *supra*, at 16-17.

¹⁹ *Id.* at 18-21.

²⁰ *Id.* at 4; Richard V. Reeves & Christopher Pulliam, "No Room at the Top: The Stark Divide in Black and White Economic Mobility," *Brookings* (Feb. 14, 2019), <https://www.brookings.edu/articles/no-room-at-the-top-the-stark-divide-in-black-and-white-economic-mobility/>.

to explain why poverty remains high despite general economic growth in recent decades.²¹

The employment barriers facing people with records not only create financial difficulties for individuals and their families; these barriers also undermine the economic health and safety of communities. Economists estimate that the reduced employment prospects of people with felony conviction records²² translated into a loss of about \$78 to \$87 billion in annual U.S. gross domestic product, using 2014 data.²³ The negative impact on communities is further compounded by the fact that quality employment is critical to a person's ability to successfully rejoin their community after incarceration. Studies have closely linked employment with significant reductions in the likelihood of an individual's rearrest, and higher wages translate to less reincarceration.²⁴

²¹ Robert DeFina & Lance Hannon, "The Impact of Mass Incarceration on Poverty," 59 *Crime & Delinquency* 562 (2013), <https://doi.org/10.1177/0011128708328864>.

²² Because most people with a record do not have a *felony conviction* record, this figure likely understates the economic cost of records.

²³ Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies* 1 (Ctr. for Econ. & Pol'y Rsch., June 2016), <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.

²⁴ See Mark T. Berg & Beth M. Huebner, "Reentry and the Ties that Bind," 28 *Just. Q.* 382, 397-98 (2011), <https://www.bethhuebner.com/wp-content/uploads/2020/07/Reentry-and-the-Ties-that-Bind-An-Examination-of-Social-Ties-Employment-and-Recidivism.pdf>; Christy Visher et al., *Employment After Prison*, Urban Inst. Just. Pol'y Ctr., at 8 (Oct. 2008),

II. Pennsylvania Has a “Deeply Ingrained” Public Policy, Rooted in the State Constitution, to Avoid Unreasonable Employment Restrictions for Individuals With Criminal Records.

Pennsylvania has sought to limit the perverse outcomes described above by restricting employers’ ability to consider conviction records or utilize overly exclusionary criminal history screening policies and practices.

For decades, Pennsylvania courts have reaffirmed the “deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon [people with conviction histories],” and applied that public policy to the benefit of Pennsylvanians with criminal records. *John’s Vending Corp.*, 309 A.2d at 362 (explaining that “a court may look beyond the strict letter of the law to interpret a statute according to its reason and spirit and accomplish the object intended by the legislature” and rejecting “blanket prohibition barring anyone who has been convicted of a crime of moral turpitude without regard to the remoteness of those convictions or the individual's subsequent performance”); *see also Megraw v. Sch. Dist. of Cheltenham Twp.*, No. 577 C.D. 2017, 2018 Pa. Commw. Unpub. LEXIS 530, at *13-21, *28 (Pa. Commw. Ct. May 1, 2018) (discussing “large[] corpus of case law dating back to 1973” where courts endorsed challenges to statutory employment bans predicated on prior convictions, and finding in favor of

<https://www.urban.org/research/publication/employment-after-prison-longitudinal-study-releasees-three-states>.

plaintiff); *Warren Cnty. Hum. Servs. v. State Civil Serv. Comm'n (Roberts)*, 844 A.2d 70, 74 (Pa. Commw. Ct. 2004) (rejecting effort “[t]o forever foreclose a permissible means of gainful employment because of an improvident act in the distant past” because that “completely loses sight of any concept of forgiveness for prior errant behavior and adds yet another stumbling block along the difficult road of rehabilitation”); *Nixon v. Commonwealth*, 789 A.2d 376, 381-82 & 381 n.4 (Pa. Commw. Ct. 2001) (collecting cases applying policy to various statutes); *Unemployment Comp. Bd. of Re. v. Dixon*, 365 A.2d 668, 670 (Pa. Commw. Ct. 1976) (“Interpreting the Unemployment Compensation Law in accordance with its reason and spirit, we are unable to conclude that the Legislature intended a working man to be denied unemployment compensation benefits in the circumstances of this case.”).²⁵

This public policy is supported by the Pennsylvania Constitution’s “guarantee[]” of “an individual’s right to engage in any of the common occupations of life.” *Hunter v. Port Auth. of Allegheny Cnty.*, 419 A.2d 631, 635 (Pa. Super. Ct. 1980) (“[W]e have no trouble concluding that when a person is denied public employment on the basis of a prior conviction for which he has been pardoned,

²⁵ See also, e.g., *McKernan v. Bureau of Pro. & Occupational Aff., State Bd. of Acct.*, 261 A.3d 570, 581 (Pa. Commw. Ct. 2021) (citing public policy); *Jones v. Penn Delco Sch. Dist.*, No. 294 M.D. 2012, 2012 Pa. Commw. Unpub. LEXIS 955, at *21, *25-26 (Pa. Commw. Ct. Dec. 13, 2012) (same).

unless the conviction is reasonably related to the person’s fitness to perform the job sought, or to some other legitimate governmental objective, article I, section 1, is violated.”);²⁶ *see also Peake v. Commonwealth*, 132 A.3d 506, 521 (Pa. Commw. Ct. 2015) (holding that a “lifetime employment ban infringes on an interest protected by the due process clause of the Pennsylvania Constitution”); Katrina Liu, *Reentering the City of Brotherly Love: Expanding Equal Employment Protection for Ex-Offenders in Philadelphia*, 22 Temp. Pol. & Civ. Rts. L. Rev. 175, 184 & nn.83-85 (2012) (explaining that Pennsylvania Constitution reflects “a public policy of avoiding stigmatization and unreasonable restrictions of ex-offenders in the state”).

By limiting a Pennsylvania employer’s ability to consider criminal history to those “[f]elony and misdemeanor convictions” that “relate to the applicant’s suitability for employment in the position for which he has applied,” Section 9125 of the CHRIA represents a particularly strong expression of Pennsylvania’s intention and interest in ensuring that qualified Pennsylvanians with criminal histories have access to gainful employment. 18 Pa. Cons. Stat. Ann. § 9125; *see also Mudd v. Hoffman Homes for Youth, Inc.*, 543 A.2d 1092, 1098 (Pa. Super. Ct. 1988) (Cercone, J., concurring in part and dissenting in part) (explaining that Section 9125 creates a “public policy against unnecessarily stigmatizing [people with criminal

²⁶ *Hunter* has been cited favorably by the Pennsylvania Supreme Court. *See, e.g., Weaver v. Harpster*, 975 A.2d 555, 563 (Pa. 2009).

records]” (citations omitted)); *Cisco v. United Parcel Servs., Inc.*, 476 A.2d 1340, 1343 (Pa. Super. Ct. 1984) (“[C]onvictions for felonies and misdemeanors [pursuant to Section 9125(b)] may be considered only insofar as they relate to an applicant’s suitability for the job. We may assume that this principle is an expression of public policy.”); *see also Hunter*, 419 A.2d at 633-35 (situating CHRIA within context of Pennsylvania’s broader public policy).

A “thorough review of the secondary sources and Pennsylvania case law discussing § 9125 make clear that its underlying purpose is to promote gainful employment by [people with conviction records], decreasing the likelihood of recidivism, while nonetheless permitting employers to reject [applicants with conviction records] when there is a rational basis for doing so.” *Guzzo v. Allen Distrib.*, 479 F. Supp. 3d 91, 97-98 (M.D. Pa. 2020) (collecting sources).²⁷

III. The District Court’s Opinion Will Impede Pennsylvanians’ Ability to Seek Gainful Employment and Frustrate Pennsylvania Policy.

If the Court affirms the district court’s decision, the legislative aims of the CHRIA and the public policy of the Commonwealth (as expressed in case law and the Pennsylvania Constitution) will be thwarted, and Pennsylvanians with records

²⁷ This case law, which articulates a strong public interest in increasing the employment of individuals with criminal records, reinforces the potential benefit of petitioning for certification of the issue presented to the Pennsylvania Supreme Court – including for that court’s input on the interaction of Pennsylvania public policy with the CHRIA. *See also* ECF No. 23 (Opening Br.) at 4 n.3.

will face additional unfair barriers to economic stability. This result would occur because the district court's opinion allows Pennsylvania employers to escape the statute's protections simply by basing their determination on criminal history record information self-disclosed by an applicant instead of the same information presented in a background check report. In other words, an employer could exempt itself from CHRIA compliance simply by changing the method by which it gets the same information, including by simply asking for this information on the application form. *See also* ECF No. 23 (Opening Br.) Argument, § II.²⁸ This arbitrary difference would allow employers to avoid the protections provided by the Pennsylvania legislature, effectively gutting the CHRIA and setting the protections for individuals with criminal history record information in Pennsylvania back decades. *See, e.g., Green v. Mo. Pac. R.R. Co.*, 523 F. 2d 1290, 1298 (8th Cir. 1975) (noting, in 1975, that “[w]e cannot conceive of any business necessity that would automatically place

²⁸ This argument is also in tension with another section of the CHRIA, which specifically contemplates that the Act applies to individuals who themselves proffer criminal history record information to an employer. *See* 18 Pa. Cons. Stat. Ann. § 9122.6(b) (“An employer to whom an individual voluntarily discloses the individual’s criminal history record information shall be immune from liability for any claim arising under section 9122.5(a.1) (relating to effects of expunged records and records subject to limited access) related to the employer’s otherwise lawful use or consideration of the criminal history record information in connection with any employment decision.”); *see also* Pennsylvania’s Statutory Construction Act, 1 Pa. Cons. Stat. § 1921(a) (“[e]very statute shall be construed, if possible, to give effect to all its provisions”).

every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed”). This is an absurd result, that could not have been intended by the Pennsylvania General Assembly. *See* 1 Pa.C.S. § 1922(1) (“[The General Assembly does not intend a result that is absurd”).

Especially given the increased ability of employers to access criminal history information in the last decade, the district court’s decision has the potential to harm millions of people with records, like Phath, and their families and communities and reduce the safety and economic health of the Commonwealth of Pennsylvania.

CONCLUSION

The Court should reverse the district court’s decision and remand for further proceedings.

Date: March 24, 2025
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I, Christopher McNerney, counsel at Outten & Golden, certify, pursuant to Local Appellate Rule (“LAR”) 28.3(d), that I am a member in good standing of the Bar of the Court of Appeals for the Third Circuit. I further certify, pursuant to Federal Rules of Appellate Procedure (“FRAP”) 32(a)(5)-(7), 32(g)(1) and LAR 31.1(c) and 32.1(c), that the foregoing brief is proportionately spaced and has a typeface of 14-point Times New Roman, contains 4929 words (not counting portions excluded from the word count by FRAP 32(f)), and that the text of the electronic brief is identical to the text of the paper copies. I further certify, pursuant to LAR 31.1(c), that Windows Defender has been run on this Brief before filing and that no virus was detected.

Date: March 24, 2025
New York, New York

/s/ Christopher M. McNerney

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CERTIFICATE OF SERVICE

I, Christopher M. McNerney, counsel for Amici Curiae, certify that on March 24, 2025 I filed the foregoing brief via the Court's CM/ECF system, causing a Notice of Docket Activity and a copy of the filing to be served upon the following counsel of record who are registered CM/ECF users:

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Pursuant to Local Appellate Rule 31.1 and the May 2, 2023 standing order, seven identical hard copies of this Brief will be sent to the Clerk of the Court via Federal Express within five days of the electronic filing:

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