

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CHONG and MARILYN YIM, KELLY
LYLES, EILEEN, LLC, and RENTAL
HOUSING ASSOCIATION OF
WASHINGTON

Plaintiffs,

v.

THE CITY OF SEATTLE, a Washington
Municipal corporation,

Defendant.

CASE No. 2:18-cv-736-JCC

**BRIEF OF AMICI CURIAE SARGENT
SHRIVER NATIONAL CENTER ON POVERTY
LAW & NATIONAL HOUSING LAW PROJECT
IN OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT AND IN
SUPPORT OF DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

In 2010, an estimated 19 million people with past felony convictions were living in the U.S.¹ As many as 100 million—or 1 in 3 American adults—have some kind of a criminal record.² These numbers make the far reach of the criminal justice system and its impact on housing undeniable. Where these individuals are allowed to live is an important question that Defendant’s Fair Chance Housing Ordinance (“Ordinance”) seeks to address.

In the private rental market, housing bans against people with felony records appear regularly, even in the State of Washington.³ In addition to being likely violations of the federal Fair Housing Act,⁴ such criminal records bans increase a person’s risk of housing instability and return to the criminal justice system. Indeed, formerly incarcerated individuals are ten times more likely than the general population to experience homelessness.⁵

When the City of Seattle enacted the Ordinance, it recognized an urgency to help justice-involved individuals find safe, decent, and affordable housing at a time when such housing is increasingly scarce. The Ordinance also reflected a broader movement to help similar individuals across the country re-integrate into their communities through housing and other supports. By taking overly restrictive and possibly discriminatory housing policies out of the decision-making process, the

¹ Sarah K.S. Shannon, et al., *Growth, Scope, and Spatial Distribution of People with Felonies*, 54 *Demography* 1795, 1806-07 (2017).

² See Dept. of Hous. & Urban Dev., *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, p. 1 (Apr. 4, 2016) (hereafter “HUD 2016 Guidance”).

³ Press Release, Wash. State Office of Att’y Gen., AG Takes on Discriminatory Blanket Housing Bans on Renters with Criminal Histories (Jan. 23, 2017) (including links to individual consent decrees).

⁴ HUD 2016 Guidance at 5-7.

⁵ Lucius Couloutte, Prison Policy Institute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People* (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> (last visited Nov. 19, 2018).

Ordinance can make the difference for a person between being housed and homeless, between enjoying housing stability and enduring housing insecurity.

II. IDENTITY AND INTERESTS OF AMICUS CURIAE

Amicus Sargent Shriver National Center on Poverty Law (“Shriver Center”) is a nonprofit organization provides national leadership to promote justice and improve the lives and opportunities of people living in poverty. *Amicus* the National Housing Law Project (“NHLP”) is a nonprofit national housing and legal advocacy center established in 1968, whose mission is to advance housing justice for low-income people. Stemming from decades of expertise and experience, *amici* Shriver Center and NHLP have strong commitments and interests in the barriers that impact the ability to obtain safe, healthy, and affordable housing and how this intersects with criminal justice

A full description of *amici*’s interests and identities are set forth in their motion for leave to file, Dkt. 26 and *amici* file the instant brief with leave of the Court, Dkt. 37.

III. BACKGROUND

Amici adopt and incorporate by reference the factual background set forth in the City of Seattle’s Cross-Motion for Summary Judgment. *See generally* Dkt. No. 33 at 2-7.

IV. ARGUMENT

A. People with criminal records face numerous barriers to securing the suitable and affordable housing they need.

Criminal records barriers contribute to problems of homelessness and housing insecurity by disqualifying persons from rental housing, even when they have the financial means to afford the housing and could live there successfully.

1 One way in which criminal history poses a barrier to housing is through the consideration of
 2 arrest records. Records of arrests are limited in the information that they convey because they prove
 3 only that a person has been suspected of criminal activity, not that the person has committed criminal
 4 activity.⁶ Yet some housing providers deny applicants on the basis of arrests only, even arrests that
 5 never led to conviction.⁷

7 Another barrier is the lack of a reasonable time limit on the use of criminal records. Federal law
 8 imposes no limit on how long criminal records may be reported in connection with an application for
 9 tenancy,⁸ and the seven-year limit under state law does not run until the “date of disposition, release, or
 10 parole.”⁹ Some housing providers ask for an applicant’s criminal history without indicating whether a
 11 record might be too old to be relevant to the admissions analysis.¹⁰ In Austin, Texas, for example, a
 12 number of affordable housing providers surveyed impose lifetime bans on applicants with drug-related
 13 or violent criminal history.¹¹

15 A related barrier is the use of overbroad categories of criminal activity. One of the most
 16 common examples is bans on tenants with felony records—including felonies having little or no
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 19

20 ⁶ *Schwabe v. Bd. of Bar Examiners*, 353 U.S. 232, 241 (1957); see also HUD 2016 Guidance at 5; *Landers v. Chicago Hous. Auth.*, 936 N.E.2d 735, 742 (Ill. App. Ct. 2010).

21 ⁷ See, e.g., Marah A. Curtis, et al., “Alcohol, Drug, and Criminal History Restrictions in Public Housing,” 15
 22 *Cityscape* 37, 44 (2013) (“interaction with the criminal justice system via a warrant, pending charges, or previous arrest for
 23 drug-related activities results in bans in several of the PHAs, regardless of the criminal justice result (for example,
 24 conviction or not).”).

25 ⁸ See 15 U.S.C. § 1681c(a)(2).

26 ⁹ See RCW 19.182.040(1)(e).

27 ¹⁰ See, e.g., Amended Complaint at 2, *Fortune Society v. Sandcastle Towers Hous. Dev’t Fund Corp., et al.*, No.
 28 1:14-CV-6410 (E.D.N.Y. May 1, 2015) (claiming that a 900+ unit housing development in New York City has a policy of
 denying any applicant who has ever been convicted of crime without regard to time passed).

¹¹ Austin/Travis County Reentry Roundtable, *Locked Out: Criminal History Barriers to Affordable Rental Housing in Austin & Travis County, Texas* 10-11 (2016).

1 connection to housing or fulfilling a person's duties as a residential tenant. Such policies been
 2 documented across the country, including the state of Washington.¹²

3 Because of these and other ways that criminal records pose barriers to housing, the fact of
 4 incarceration increases a person's risk for homelessness, and vice versa,¹³ with formerly incarcerated
 5 individuals nearly ten times more likely to be homeless than members of the general population. The
 6 chances of homelessness are even higher for formerly incarcerated women, with the most severe
 7 housing barriers affecting Black women. Adding to homelessness the problem of housing insecurity
 8 (which includes living in marginal shelters like rooming houses, hotels and motels) further amplifies
 9 the need for affordable housing among formerly incarcerated persons.¹⁴

11 **B. In passing the Fair Chance Housing Ordinance, the city of Seattle fell in line with**
 12 **federal, state, and local policymakers working to address the housing needs of**
 13 **people with criminal records.**

14 **1. The federal government's shift from "One Strike" to second chances.**

15 Seattle passed the Ordinance against a shifting federal landscape that has moved from strict
 16 "one-strike" policies in housing to second chances for formerly incarcerated people.

17 In 1996, the Department of Housing and Urban Development (HUD) issued a hardline "One
 18 Strike and You're Out" policy that instructed PHAs to, among other things, strictly screen applicants

20 ¹² Press Release, Wash. State Office of Att'y Gen., AG Takes on Discriminatory Blanket Housing Bans on Renters
 21 with Criminal Histories (Jan. 23, 2017) (including links to individual consent decrees); *see also* Complaint, at 2-3, *Equal*
 22 *Rights Center v. Mid-America Apartments Communities Inc. & Mid-America Apartments, L.P.*, No. 1:14-CV-2659 (D.D.C.
 23 Dec. 12, 2017) (alleging a felony ban by one of the largest apartment owners and operators with properties in the District of
 24 Columbia, Florida, Georgia, Maryland, North Carolina, Texas and Virginia); Phillip ME Garboden & Eva Rosen, How
 Landlords Discriminate, TalkPoverty (May 17, 2016), <https://talkpoverty.org/2016/05/17/when-landlords-discriminate/>
 (last visited Nov. 19, 2018) (reporting that landlords from a study in Baltimore, Dallas, and Cleveland generally would
 deny housing to an applicant with a felony record).

25 ¹³ U.S. Interagency Council on Homelessness, Reducing Criminal Justice Involvement Among People
 Experiencing Homelessness 1 (Aug. 2016).

26 ¹⁴ Lucius Couloutte, Prison Policy Institute, Nowhere to Go: Homelessness Among Formerly Incarcerated People
 27 (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> (last visited Nov. 19, 2018).

1 for criminal history.¹⁵ The goal behind those one-strike policies, which included enlisting courts and
 2 law enforcement agencies to help screen applicants through comprehensive background checks, was to
 3 aggressively root out “criminals.”¹⁶ HUD took these actions in step with other aggressive federal anti-
 4 crime efforts at the time, including strict sentencing laws and mandatory minimums.¹⁷

5
 6 These tough anti-crime policies helped the United States prison population swell to 1.5 million
 7 in 1995 (from 390,000 people in 1980).¹⁸ By 2005, the United States prison population reached 2.3
 8 million people, “by far the largest in the world.”¹⁹ With over 600,000 people being released from jails
 9 and prisons each year by the early 2000s, the sustainability and wisdom of such aggressive policies
 10 came into question; only then did lawmakers turn their attention to the high costs of incarceration and
 11 recidivism in the absence of support services and permanent affordable housing options.²⁰

12
 13 In 2011, the Federal Interagency Reentry Council, a collaboration of 20 federal agencies,
 14 launched a coordinated, comprehensive effort to identify and remove federal barriers to successful
 15 reentry.²¹ HUD fell in line with other agencies that promoted second chances, and sought to turn the
 16 ship around after decades of encourage strict “one-strike” policies.

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 19 ¹⁵ Dept. of Hous. & Urban Dev., “One Strike and You’re Out” Screening and Eviction Guidelines for Public
 20 Housing Authorities (HAs), PIH 96-16 (Apr. 12, 1996).

21 ¹⁶ *Id.*

22 ¹⁷ See, e.g., Pub.L. 104-132 (Antiterrorism and Effective Death Penalty Act of 1996).

23 ¹⁸ John Arit, *A Timeline of the Rise and Fall of 'Tough on Crime' Drug Sentencing*, The Atlantic, Apr. 29, 2014.

24 ¹⁹ *Id.*; U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2005*, (2007), available at:
 25 <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=912>; see also Dept. of Hous. And Urban Dev., *Application of Fair*
 26 *Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, p. 1
 27 (Apr. 4, 2016).

28 ²⁰ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Prisoners in 2008, Table 3 Number of sentenced prisoners*
admitted to and released from state and federal jurisdiction, 2000-2008 (December 2009), available at:
<https://www.bjs.gov/content/pub/pdf/p08.pdf>; Chris Suellentrop, *The Right has a Jailhouse Conversion*, New York Times
 Magazine, (Dec. 24, 2006).

²¹ See website of the National Reentry Resource Center, <https://csgjusticecenter.org/nrrc/projects/firc/>.

As one of its first steps, HUD sent letters to Public Housing Authorities (PHAs) and private owners of HUD-subsidized properties in 2011 noting new research on the connection between housing instability and recidivism.²² The letters reminded PHAs and housing providers that they have “broad discretion to set admission and termination policies” for their housing programs and that they should use this discretion in ways that offer second chances for people returning from the criminal justice system.²³ For example, although PHAs and project owners have the discretion under federal law to deny admission to applicants who have a drug-related criminal history, there is no federal mandate to do so.²⁴ The letters signified a change in the federal government’s mindset about its role in family reunification and providing second chances to “people who have paid their debt to society.”²⁵

Continuing its effort to address the collateral consequences of mass incarceration, HUD subsequently released guidance to PHAs and project owners in 2015.²⁶ The 2015 guidance bars the use of arrest records as the basis for an adverse housing action including evictions, terminations of assistance, and denial of admission for federally assisted residents.²⁷ It also reminds PHAs that one-strike policies are not required by law, and that “PHAs and owners may consider all of the circumstances relevant to the particular admission” including a range of mitigating circumstances.²⁸

HUD continued to underscore the importance of housing people with a criminal record in 2016 when it published a legal memo analyzing the application of the federal Fair Housing Act to housing

²² Letter from Shaun Donovan, HUD Secretary, to PHA Executive Directors (June 17, 2011); Letter from Shaun Donovan, HUD Secretary and Carol Galante, Acting Ass. Sec. for Hous. to Owners and Agents (undated).

²³ *Id.* at 2.

²⁴ 24 C.F.R. § 982.553(a)(2)(ii) (permissive rather than mandatory prohibitions).

²⁵ Letter from Shaun Donovan, HUD Secretary, to PHA Executive Directors, p. 2 (June 17, 2011).

²⁶ Dept. of Hous. & Urban Dev., Guidance for Public Housing Agencies and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, PIH 15-19 (Nov. 2, 2015).

²⁷ See *Id.* at 3-4.

²⁸ *Id.* at 2-3.

1 decisions.²⁹ The guidance applies to both federally assisted and private housing and concludes that
 2 “criminal records-based barriers to housing are likely to have a disproportionate impact on minority
 3 home seekers” and therefore may violate the Fair Housing Act in some circumstances.³⁰ HUD’s 2016
 4 guidance confirmed and continued the federal government’s ongoing evolution from a “one-strike” to
 5 a “fair chance” approach to housing and reentry.
 6

7 **2. State and local efforts to increase housing access for people with** 8 **criminal records.**

9 Like the federal government, states and localities are increasingly implementing policies that
 10 limit the use of criminal records in rental housing decisions. The economic and public health impacts
 11 of the criminal justice’s system “revolving door” have attracted the attention of lawmakers all levels of
 12 government.³¹ The role of states and municipalities in reentry is especially important because of the
 13 federal government’s limited ability to regulate the private housing market. Just like HUD has used its
 14 powers to limit the use of criminal records in federally-assisted housing decisions, states and localities
 15 are using their authority to do so for the private rental market.
 16

17 Several states regulate the use of criminal history records in the context of rental housing
 18 admissions. The State of Oregon, for example, enacted a ban on the consideration of arrests not
 19 leading to convictions in both private and publicly-assisted housing.³² The Oregon law also restricts a
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22 ²⁹ See HUD 2016 Guidance.

23 ³⁰ *Id.* at 2.

24 ³¹ National Housing Law Project, *The Importance of Housing for Formerly Incarcerated Individuals*, Housing
 25 Law Bulletin 60 (2010); Illinois Sentencing Policy Advisory Counsel, *The High Cost of Recidivism*, (2018). For example,
 26 people who are incarcerated have dramatically higher rates of disease when compared with the population as a whole and
 jails and prisons are ill-equipped to provide sufficient medical care and treatment. The cost to the public health upon reentry
 can be enormous. VERA Institute of Justice, *On Life Support: Public Health in the Age of Mass Incarceration* (2014).

27 ³² Or. Revised Statute §§ 90.303(2), 90.110 (2018).

landlord's ability to screen for criminal activity to (1) crimes related to property and (2) crimes related to the health, safety or right to peaceful enjoyment of residents, the landlord or the landlord's agent.³³

Through administrative guidance, the state of New York prohibits owners and managers of state-funded housing from implementing blanket bans on applicants with any criminal history.³⁴ The guidance also requires that state-funded housing providers conduct individualized assessments of each housing applicant before denying them for criminal history; in making an individualized assessment, a housing provider must consider mitigating circumstances surrounding any criminal activity including "(a) seriousness of the crime, (b) the time elapsed since the offense, (c) the age of the applicant at the time of the crime, (d) evidence of the applicant's rehabilitation and (e) whether they are an actual danger to their neighbors."³⁵

Similarly, Georgia's Housing Finance Agency, which oversees the state's low-income housing tax credit ("LIHTC") portfolio of 144,000 units, recently enacted an administrative regulation that prohibits blanket bans on applicants with criminal histories.³⁶ The regulation, which applies to all privately-owned LIHTC properties in the state, also bars screening policies that consider an applicant's prior arrests, and limits the consideration of criminal history to crimes that can clearly demonstrate a threat to health and safety of residents or property.³⁷

In addition to states, cities across the country, like Seattle, have enacted a range of policies that regulate the use of criminal records in housing. Urbana and Champaign, Illinois, for example, make

³³Or. Revised Statute §90.303 (2) (2018).

³⁴ New York State Office of Homes and Community Renewal, *Management Memorandum- Access to Reduce Housing Barriers for New Yorkers with Criminal Convictions* (April 20, 2016) available at: <http://www.nyshcr.org/AboutUs/Offices/HousingOperations/2016-B-04.pdf>.

³⁵ *Id.*

³⁶ Georgia Office of Housing Finance, Qualified Allocation Plan, § 21(l) (2018).

³⁷ See *Id.*

“people with prior arrest or conviction record” a protected class under the cities’ fair housing laws.³⁸ These ordinances completely prohibit discrimination against people with a criminal history in private housing as well as in employment, credit, and public accommodations. Washington, D.C., and Newark, New Jersey, both regulate private housing by barring the consideration of arrests that did not lead to conviction and requiring the consideration of mitigating circumstances in housing decisions.³⁹ The cities of Richmond and San Francisco in California have passed “fair chance” ordinances that significantly limit the criminal history that affordable housing providers can consider when screening applicants.⁴⁰

Accordingly, Seattle’s ordinance is by no means an outlier. It is part of a larger trend at the federal, state, and local levels toward removing barriers to housing for people reentering society.

3. The Ordinance also builds upon similar efforts to increase employment opportunities for people with criminal records.

Beyond housing, the Ordinance reflects a broader movement to help people who have left the criminal justice system reintegrate back into their communities. This movement has been most visible in the employment sphere, where efforts to end unwarranted discrimination against people with criminal records have gained bipartisan, multi-sector support.

Most prominent is the “ban-the-box” initiative. First introduced in 2004, ban-the-box policies set parameters on how employers conduct criminal background checks, often prohibiting inquiries into an applicant’s criminal history until after the interview stage or, in some cases, until a conditional offer

³⁸ Urbana Code of Ordinances, Ch. 12 Article III, §§ 12-37, 12-64; Municipal Code of the City of Champaign, Ch. 17 Article I, §§ 17.3 – 17.45, Article V §§ 17.71, 17.75.

³⁹ The Fair Criminal Screening for Housing Act of 2016, Washington, D.C., Legislation No. B21-0706 (2016); The Ban the Box Ordinance, Newark Ordinance 14-0921(2017).

⁴⁰ Richmond, Cal. Municipal Code §§ 7.110.010 – 7.110.090 (2018); San Francisco, Cal. Police Code, Art. 48 §§ 4906 – 4908, 4911 – 4912 (2018).

1 of employment has been made. Today, thirty-three states, over 150 cities, and the federal government
 2 have adopted such ban-the-box policies through either legislative or executive action. Eleven states and
 3 seventeen municipalities extend their ban-the-box requirements beyond public employment to private
 4 employers as well.⁴¹ Seeing the benefits of hiring more individuals with criminal records, a significant
 5 number of private employers have adopted ban-the-box policies of their own, including Target,
 6 Starbucks, and Koch Industries, to name a few.⁴²

8 In addition to ban-the-box, there have been efforts to dismantle employment barriers using an
 9 anti-discrimination framework, particularly under Title VII of the Civil Rights Act of 1964 (“Title
 10 VII”).⁴³ Title VII prohibits employment discrimination on the basis of race, national origin, and other
 11 protected classes, and it allows for claims of discriminatory treatment and disparate impact. Criminal
 12 records screening is suspect under Title VII. Though facially neutral, criminal history screening may
 13 have an unjustified racial impact because of the disproportionate number of racial minorities that
 14 interact with the criminal justice system and because of the lack of business necessity and job-
 15 relatedness of these policies.⁴⁴ Charged with enforcing Title VII, the EEOC released updated guidance
 16 in 2012 reaffirming the need for employers to ensure that their criminal records screening policies
 17 comply with civil rights laws.⁴⁵ The EEOC guidance has had far reaching impact, spurring dozens of
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22 ⁴¹ Beth Avery & Phil Hernandez, National Employment Law Project, Ban the Box: U.S. Cities, Counties, and
 23 States Adopt Fair Chance Policies To Advance Employment Opportunities for People with Past Convictions 1 (Sept. 2018).

24 ⁴² *Id.* at 13, 21.

25 ⁴³ 42 U.S.C. § 2000e *et seq.*

26 ⁴⁴ See *El v. Southeastern Pennsylvania Transportation Authority*, 479 F.3d 233, 239 (3d Cir. 2007).

27 ⁴⁵ Equal Employment Opportunity Commission, Enforcement Guidance on the Consideration of Arrest and
 28 Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §
 2000e *et seq.* (2012).

1 municipalities and ten states to adopt fair chance hiring laws.⁴⁶ It also contributed to HUD's decision
 2 to issue its own fair housing guidance to housing providers on the use of criminal records.⁴⁷

3 Building upon the movement to end employment discrimination against people with criminal
 4 records, the Ordinance extends these protections to Seattle residents who are trying to leave the
 5 criminal justice system behind them and need a place to call home.
 6

7 **C. Because of the limited supply of federally assisted and supportive housing, Seattle**
 8 **has significant reasons for regulating the private rental market to meet the needs**
 9 **of people with criminal records.**

10 **1. Private housing represents the vast majority of Seattle's housing stock.**

11 In Seattle, the housing needs of the reentry population cannot be met by federally-assisted or
 12 other publicly-supported housing alone.⁴⁸ The Seattle metropolitan area has just 49 affordable
 13 dwelling units for every 100 households at or below 50% of the area median income, and only 28
 14 affordable units for every 100 extremely low-income households (at or below 30% of median
 15 income).⁴⁹ For this reason, waiting lists for subsidized properties and vouchers in Seattle have spanned
 16 multiple years in duration, and are sometimes closed altogether.⁵⁰ Meanwhile, 12,112 persons were
 17 found to be experiencing homelessness on the night Seattle's point-in-time count for 2018.⁵¹
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 22 ⁴⁶ Avery & Hernandez, Ban the Box, *supra*.

23 ⁴⁷ See generally HUD 2016 Guidance at 6.

24 ⁴⁸ The Sentencing Project, *Americans with Criminal Records*, available at: <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

25 ⁴⁹ National Low-Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, Appx. B (2018), available
 26 at: https://nlihc.org/sites/default/files/gap/Gap-Report_2018.pdf.

27 ⁵⁰ See, e.g., Seattle Housing Authority, *Historical Wait Times*, available at:
 28 https://www.seattlehousing.org/sites/default/files/Historical_Average_Wait_Times.pdf.

⁵¹ NLIHC, *The Gap*, Appx. B, link in fn 49 *supra*.

1 In 2016, 1,474 people were released from prison in King County.⁵² Since the local existing
 2 affordable housing stock cannot meet the needs of these returning citizens, Seattle and other localities
 3 must rely to a significant degree on the private rental housing market. Private housing represents
 4 87.1% percent of the rental housing stock in Seattle.⁵³ Rental applicants on the private rental market
 5 do not have the same constitutional protections against arbitrary admission denials as applicants to
 6 federally subsidized housing,⁵⁴ however, so policies excluding applicants based on criminal history
 7 may pose even greater obstacles to securing private rental housing.
 8

9 Prior to the Ordinance, the only substantive limit on a Seattle rental owner's discretion to
 10 screen for criminal history were fair housing laws, which HUD has interpreted to likely preclude the
 11 denial of housing based on criminal records in certain circumstances.⁵⁵ In particular, HUD has
 12 observed that the denial of housing based on mere arrest records, or under "blanket bans" that bar
 13 applicants with any kind of criminal record—no matter how old, impertinent to housing, or mitigated
 14 by circumstance—tend to cause unjustifiable discriminatory effects on people of color and particularly
 15 black and Latino men.⁵⁶
 16

17 Putting aside enforcement challenges and other practical considerations, however, these fair
 18 housing theories are ultimately concerned with ensuring that African-Americans, Latinos, and
 19 members of other protected classes experiencing higher rates of criminal justice involvement have
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 21

22 ⁵² Washington State Department of Corrections, *Number of Prison Admissions by County of Admission Number of*
 23 *Prison Releases by County of Release*, available at: <https://www.doc.wa.gov/docs/publications/reports/200-RE001.pdf>

24 ⁵³ Joan Petersilia, California Policy Research Ctr., *Understanding California Corrections* (2006); Gene Balk, "No
 25 major city has enough affordable housing to meet demand, but how does Seattle stack up?" *Seattle Times* (Feb. 16, 2018).

26 ⁵⁴ See, e.g., *Ressler v. Pierce*, 692 F.2d 1212, 1216 (9th Cir. 1982) (denial of application to federally-subsidized
 27 housing may not be denied except in accordance with due process of law).

⁵⁵ HUD 2016 Guidance at 5-7.

⁵⁶ See *Id.* at 5-7.

1 *equal* access to rental housing.⁵⁷ HUD’s guidance did not challenge the underlying paradigm that
 2 landlords may screen tenants for criminal history, but simply isolated and criticized criminal history
 3 screening practices that tend to exclude returning citizens arbitrarily or unfairly—such as through
 4 policies that cannot be proven to “through reliable evidence [to] actually assist[] in protecting resident
 5 safety and/or property.”⁵⁸ Ensuring that criminal records screening policies are not discriminatorily
 6 applied is important, but does not address the more direct and practical problem that cities like Seattle
 7 face in simply meeting the housing needs of returning citizens.

8
 9 “Since 2004, an average of over 650,000 individuals have been released annually from federal
 10 and state prisons, and over 95 percent of current inmates will be released at some point.”⁵⁹ Making
 11 sure those formerly incarcerated individuals returning to communities in Washington have the ability
 12 to find a home is a paramount public policy.⁶⁰ Indeed, the Legislature has further recognized that
 13 “[r]esidents must have a choice of housing opportunities within the community where they choose to
 14 live.”⁶¹ Criminal history screening not only limits housing choice—forcing returning citizens to rely
 15 more heavily on publicly-assisted housing and, perhaps, less desirable rentals where admission criteria
 16 may be relaxed; criminal history screening, in a city like Seattle, may even deny individuals with
 17 criminal records any realistic housing opportunities whatsoever.

18 19 20 **2. The supply of federally-assisted housing is inadequate to meet the needs of returning citizens.**

21 A shortage of housing stocks makes federally assisted housing a wholly inadequate solution to
 22 meet the needs of families who need it most, including people returning to the community post-release

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24 ⁵⁷ See *Id.* at 2.

25 ⁵⁸ *Id.* at 5.

26 ⁵⁹ *Id.* at 1.

27 ⁶⁰ See RCW 43.185B.009 (“The objectives of the Washington housing policy act shall be to attain the state’s goal
 28 of a decent home in a healthy, safe environment for every resident of the state...”).

⁶¹ RCW 43.185B.005(1)(d).

1 and people with criminal records. For every family in the United States that is fortunate enough to
 2 receive federal housing assistance, there are two more households that qualify for, but do not receive,
 3 such assistance.⁶² In Washington State, the situation is even worse for poor families; only 29% of
 4 households that need rental assistance receive it.⁶³ There is no doubt that the country is in the midst of
 5 an affordable housing crisis. Currently, more than 10 million households in the United States are
 6 paying 50% or more of their income for housing.⁶⁴ In the Seattle metropolitan area, 72% of the
 7 lowest-income households (i.e., those making less than 30% of area median income) pay over half
 8 their their incomes for housing.⁶⁵

10 The need for affordable housing simply exceeds the supply. Seattle is home to only about 8,000
 11 federally subsidized units including public housing, project-based section 8 and vouchers.⁶⁶ The
 12 competition for these affordable units is overwhelming. Seattle Housing Authority's waitlist for
 13 section 8 vouchers is currently closed and when the list is open, applicants must win a lottery in order
 14 to add their names.⁶⁷ The Seattle Housing Authority also has no available units in any of its project-
 15 based buildings and many of the waitlists for individual projects are also closed.⁶⁸ Once a family does
 16 get on the wait list, waiting times range from 1-8 years.⁶⁹ To rely on the subsidized market alone to
 17 expand housing opportunities for people reentering is simply unrealistic.

20 ⁶² Center on Budget Policy Priorities, *United States Factsheet: Federal Rental Assistance* (2017).

21 ⁶³ Center on Budget Policy Priorities, *Washington Factsheet: Federal Rental Assistance* (2017).

22 ⁶⁴ *Id.*

23 ⁶⁵ See NLIHC, "*The Gap*," Appx. B, link at fn 49 *supra*.

24 ⁶⁶ Seattle Housing Authority, *About Us*, <https://www.seattlehousing.org/about-us> (last visited Nov. 15, 2018).

25 ⁶⁷ Seattle Housing Authority, *Housing Choice Voucher Waitlist*, <https://www.seattlehousing.org/waitlist> (last
 26 visited Nov. 18, 2018).

27 ⁶⁸ Seattle Housing Authority, *SHA Housing*, <https://www.seattlehousing.org/housing/all/list>, (last visited Nov. 18,
 28 2018).

⁶⁹ *Id.*

1 In addition, to provide an appropriate range of housing options for people reentering, Seattle
 2 must expand housing opportunities outside of the federally-assisted stock. Seattle's subsidized housing
 3 is mostly located in racially and ethnically segregated areas that are in many cases far from
 4 employment, high performing schools, and reliable transportation.⁷⁰ Relegating housing options solely
 5 to areas with federally assisted housing will limit individual housing choice and also steer people to
 6 segregated neighborhoods, perpetuating a history of segregation.⁷¹ People reentering deserve to find
 7 housing that is close to family and other support systems and in parts of the city that are more
 8 integrated, healthier, and have lower levels of poverty.⁷² Seattle's ordinance necessarily encourages
 9 housing choice by opening up the private housing market in all areas of the city.
 10

11 **3. Supportive housing is also in short supply and cannot meet the needs of**
 12 **returning citizens.**

13 Permanent supportive housing is permanent housing coupled with services such as medical,
 14 drug and alcohol treatment, and education and job training. Supportive housing is associated with
 15 positive outcomes for people reentering the community.⁷³ It is a key resource particularly for men and
 16 women who have been out of the work force or other social systems for some time. Like federally-
 17 assisted housing, however, supportive housing is a scarce resource that does not serve nearly the
 18 number of people who could benefit from it. Seattle has about 1,482 units of permanent supportive
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23 ⁷⁰ City of Seattle and Seattle Housing Authority, *Draft 2018-2022 Joint Consolidated Plan*; City of Seattle and
 24 Seattle Housing Authority, *Draft 2017 Joint Assessment of Fair Housing*.

25 ⁷¹ *Id.*

26 ⁷² The Urban Institute, *Families and Reentry: Unpacking How Social Support Matters* (2012); The Urban Institute,
 27 *Benefits of Living in High Opportunity Neighborhoods Insights from the Moving to Opportunity Demonstration* (2012).

⁷³ Jocelyn Fontaine, The Urban Institute, *The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners*, (2013).

1 housing,⁷⁴ yet the total need for supportive housing in Seattle is estimated to be about 13,300 units—
 2 about nine times the number of units that currently exist.⁷⁵

3 Due to the scarce amount of supportive and government-assisted housing in Seattle, private
 4 rental housing is essential to meet the needs of people reentering. The Ordinance is appropriate and
 5 necessary to ensure that people with criminal records can access housing with Seattle’s private
 6 residential landlords.
 7

8 **V. CONCLUSION**

9 For the reasons set forth above, the Court should deny Plaintiff’s Motion for Summary
 10 Judgment and grant Defendant’s Cross-Motion for Summary Judgment.
 11

12 Respectfully submitted this 23rd day of November,
 13

14 **NATIONAL HOUSING LAW PROJECT**
 15 **SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW**

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 18 Counsel for Amici NHLP and Shriver Center
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25 ⁷⁴ Washington State Department of Corrections, *Number of Prison Admissions by County of Admission Number of*
 26 *Prison Releases by County of Release*, available at: <https://www.doc.wa.gov/docs/publications/reports/200-RE001.pdf>;
 Seattle King 5 News, “What Seattle has Spent on Housing for the Homeless” (May 29, 2018).

27 ⁷⁵ Seattle King 5 News, “What Seattle has Spent on Housing for the Homeless,” (May 29, 2018).

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2018, the foregoing document was electronically filed with the United States District Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Eric Dunn

Eric Dunn