

NO. 75406-8-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

Christal Fields, an individual,

Appellant

v.

State of Washington Department of Early Learning,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING
COUNTY

REPLY BRIEF OF APPELLANT CHRISTAL FIELDS

NEWMAN DU WORS LLP
Keith Scully, WSBA # 28677
2101 Fourth Ave., Suite 1500
Seattle, WA 98121
(206) 274-2801

ACLU OF WASHINGTON
Prachi Dave, WSBA #50498
901 5th Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184

*Cooperating Attorney for
ACLU of Washington*

Attorneys for Appellant Christal Fields

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I. INTRODUCTION

The Department of Early Learning (DEL) asks this Court to sanction an automatic, lifetime bar on working with children for a list of 50 crimes, no matter the current circumstances of an applicant. DEL claims this bar passes substantive and procedural due process because there is a rational relationship between a past crime and current child safety. But this is a guess, not a relationship. Christal Fields is entitled to a hearing to prove that DEL's guess is wrong, and that her exemplary life outweighs her 28-year-old attempted robbery conviction.

Ms. Fields request here is simple: she asks only that she be granted access to the hearing process DEL *already* has in place to evaluate the suitability of candidates without a prior criminal history. Her request is in accordance with well-settled law, which provides people like Ms. Fields protection against government action that deprives them access to their chosen profession without any meaningful opportunity to be heard.

It is, moreover, an eminently reasonable request. DEL's irrational resistance to providing Ms. Fields with the procedural and substantive due process to which she is entitled hampers the ability of people like Ms. Fields who want nothing more than to become productive members of society. Our state has an undeniable interest in ensuring that Ms. Fields and others like her are fully reintegrated into their communities after serving time. That interest is not incompatible with DEL's mission to protect vulnerable children. Indeed, the relief Ms. Fields requests will have no impact on child safety whatsoever because DEL still gets the final say on who can and cannot work with children—all she asks is to be considered as an applicant in her own right.

II. ARGUMENT

A. DEL may not rely on any facts other than Ms. Fields' 1988 attempted-robbery conviction.

DEL presents a convoluted series of reasons why Ms. Fields may be banned from working in childcare. (DEL Brief at

2-3.) However, DEL previously abandoned all alternative arguments and relied solely on Ms. Fields' 1988 Attempted Robbery conviction, and it is that conviction alone that this Court can consider. (CP 140.) If the matter is remanded, then DEL can consider—and Ms. Fields can rebut—other evidence.

B. DEL is not entitled to deference.

DEL misstates the standard of review by claiming its decision to disqualify Ms. Fields is entitled to deference. (DEL Brief at 4-5.) Because this is a pure question of law, this Court's review is de novo and neither DEL, the Administrative Law Judge, nor the Superior Court is entitled to deference. *Amunrud v. Bd. of Appeals*, 158 Wn. 2d 208, 215, 143 P.3d 571, 574 (2006). In fact, DEL and the ALJ previously declined to rule on Ms. Fields' constitutional argument, precisely because they lacked jurisdiction to decide constitutional questions.

DEL's citation to *Heinmiller* is inapposite. (DEL Brief at 5, citing *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 601, 903

P.2d 433, 436 (1995), amended, 909 P.2d 1294 (Wash. 1996) *Heinmiller* addresses agency interpretation of a statute, not agency interpretation of the Constitution. DEL has no special expertise or standing to interpret the Constitution, and thus is entitled to no deference on constitutional questions.

DEL's argument that it has statutory authority to bar Ms. Fields based on a 28-year-old conviction is confusing. (DEL Brief at 6-7.) DEL's authority to adopt rules has not been challenged. The Legislature granted DEL authority to make rules, but did not—and could not—direct DEL to adopt an unconstitutional lifetime ban.

C. Ms. Fields's right to work in her chosen profession is a protected liberty interest.

DEL argues that Ms. Fields was not granted a license because it grants licenses only to childcare centers, and merely qualifies or disqualifies individual applicants. (DEL Brief at 1-3.) Whether DEL chooses to call what it issues a license, a

qualification, a permission slip, or any other term, Ms. Fields needs it to work in childcare.

And because DEL has denied her permission to do that work, DEL has intruded on her liberty interest in pursuing her chosen profession. *E.g.*, *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999)(the “Fourteenth Amendment’s Due Process Clause includes some generalized due process right to choose one’s field of private employment”). *See also Dittman v. California*, 191 F.3d 1020, 1029 (9th Cir.1999)(the pursuit of a profession or occupation is a protected liberty interest that extends across a broad range of lawful occupations); *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F.Supp. 1260, 1271 (S.D. Cal. 1997)(“[t]he right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the “liberty” and “property” concepts” of the federal constitution.)

D. DEL's arbitrary rule violates substantive due process.

Rational relationship scrutiny in the context of a public safety regulation like this one requires that DEL's rule must bear a "substantial relation to the public health, safety, morals, or general welfare." *Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 65 (9th Cir. 1994). DEL dismisses *Wedges* and relies heavily on *Amunrud*. *Amunrud* is simply inapposite: In *Amunrud*, the Court affirmed a rule allowing suspension of a driver's license for nonpayment of child support. *Amunrud*, 158 Wn. 2d at 218. The Court noted that the punitive and coercive aspects of license suspension passed substantive due process muster, and that procedural due process had been afforded because the driver could have challenged the child support obligation in a different proceeding. *Id.*

Driving and paying child support are unrelated, and *Amunrud* allows the State to use one to influence the other. But

DEL's official mandate is not to penalize and coerce Ms. Fields for her attempted robbery conviction by denying her access to her occupation. DEL's due process must relate to childcare. The *Amunrud* court decided that the collection of child support is important enough to warrant suspending driver's licenses in order to encourage payment. That simply is not the case here.

Likewise, DEL argues that it is not required to present evidence justifying its arbitrary ban. (DEL Brief at 15.) Evidence is one method of showing a rational relationship. DEL presented none, and that fact—as well as the regulation on its face, and Ms. Fields' demonstration that she is qualified to work in childcare based on her complete rehabilitation and successful childcare work before DEL revoked her qualification—demonstrates that this regulation is arbitrary. DEL claims that Ms. Fields seeks “proof of efficiency on an individual level” rather than just a rational relationship between her crime and DEL's ban. (DEL Brief at 13.) Ms. Fields does

not. DEL is not required to prove that it makes all the right decisions when deciding who can work with children. It is, however, required to consider relevant information and not arbitrarily ban individuals without a rational reason.

DEL argues that its rule is constitutional because criminal history might have an effect on child safety, and claims that Ms. Fields refuses “to acknowledge that keeping those convicted of serious felonies out of child care might improve child safety.” (DEL Brief at 17.) But that is not Ms. Fields’ argument either; DEL can constitutionally consider criminal history because that is one of many factors that might bear on child safety.

Arbitrarily barring a whole class of persons with any of a list of crimes does nothing for child safety: It excludes people like Ms. Fields, whose complete rehabilitation and successful parenting mean that she would be great with children, while letting a person with dangerous propensities but no convictions work in a daycare center.

DEL focuses on the elements of some of the crimes on its 50-crime list, and claims that a person who once—no matter how long ago—piloted a boat in a reckless manner might be unsafe to work around children. (DEL Brief at 17-18.) But that same argument could be advanced against anyone who had a traffic infraction. That argument could be further extended to bar anyone with even slightly impaired vision from working in childcare—it is safer to have physically perfect individuals caring for children. But no one would claim that it passes rational basis scrutiny to automatically bar any of these persons.

Rational basis scrutiny is designed to be a bulwark against just this type of government action. Although the government has wide leeway to make decisions, rational basis scrutiny is a basic limit designed to ensure regulation does not run roughshod over liberty interests. The whole point of judicial review is to ensure that the basis for a regulation is not simply an agency saying “trust us.”

DEL dismisses the Pennsylvania Supreme Court's thoughtful conclusion that an identical Pennsylvania law was unconstitutional. (DEL Brief at 23, discussing *Peake v. Com.*, No. 216 M.D. 2015, 2015 WL 9488235 (Pa. Commw. Ct. Dec. 30, 2015.) DEL claims that decision should be ignored because the Pennsylvania constitution requires that constitutional challenges be analyzed "more closely" under the rational basis test than due process challenges under the United States Constitution. *Peake*, 132 A.3d at 518. The Pennsylvania court, however, still applied rational basis review; whether it did so "more closely" is splitting a hair.

DEL's reliance on *Weinberger v. Salfi*, 422 U.S. 749 (1975) is mistaken. In *Weinberger*, the Court considered a social security regulation that allowed the Social Security Administration to bar anyone married within 9 months of a social security recipient's death from receiving survivor benefits. The Court noted that social security regulations

receive special treatment under the Constitution: “we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.”

Weinberger, 422 U.S. at 768. The standard the Court applied, specific to the review of regulations governing Social Security, was that of whether the regulation was “patently arbitrary”—a standard different from (and lower than) rational basis review, which requires a “substantial relationship” between the claimed benefit and the regulation that attempts to achieve it.

Wedges/Ledges, 24 F.3d at 65.

Even more critically, the *Weinberger* Court approved a carefully tailored and narrowly constructed presumption designed to prevent a particular harm. The statute barred recently-married spouses from receiving survivor’s social security benefits, but also contained a range of exemptions designed to ensure that marriages entered into for legitimate

reasons were not caught up in the ban. *Weinberger*, 422 U.S. at 780-81. None of those safeguards are present here: There are no exceptions and no exemptions to DEL's lengthy list.

E. DEL's failure to brief the *Mathews* factors is an admission that DEL's procedure violates due process.

In order to satisfy procedural due process, a hearing must meet the *Mathews* factors and be more than a "mere formality." *Nguyen v. State, Dep't of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 527 (2001.), citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)). Dismissing Ms. Fields' procedural due process argument, DEL argues that it is not required to brief the *Mathews* factors because it provided Ms. Fields a hearing to determine if she had a disqualifying criminal conviction. (DEL Brief at 8-12.) DEL misunderstands Ms. Fields' argument and *Mathews* itself.

Mathews provides the test for determining whether a hearing provides adequate procedural due process. *Mathews*,

424 U.S. at 348. Each factor weighs heavily here in favor of the substantive hearing Ms. Fields requests, not the rubber-stamp of disqualification DEL provided. Ms. Fields' interest in her occupation is "profound." *Nguyen*, 144 Wn. 2d at 527. There is a significant risk of an erroneous deprivation of that interest absent a hearing. And because Ms. Fields asks to use the existing screening process available to all applicants without automatically-disqualifying criminal convictions, there is only a minimal burden on the State.

DEL's arguments that summary judgment is a viable procedure and that Ms. Fields had an opportunity to challenge whether she had a conviction are misplaced. DEL relies heavily on *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). But in *Moore*, the Court found that the Department of Licensing violated procedural due process by suspending drivers licenses without an administrative hearing prior to or after suspension. DEL argues that its arbitrary procedure is the same as *Moore*

because the *Moore* court approved a hearing wherein a driver could challenge what happened in the underlying court proceeding, and present evidence that the court may have not credited payments made or updated information. (DEL Brief at 9.) DEL claims that Ms. Fields had a similar hearing because she could have challenged the fact that she had a conviction. But *Moore* requires a hearing into the *basis* for the fine or conviction, not merely whether it *exists*. And it is exactly that hearing that Ms. Fields seeks.

Likewise, DEL misapprehends *Amunrud*, where the court found constitutional a driver's license suspension based on failure to pay child support in a separate proceeding. (DEL Brief at 11.) There, because the State was using one interest (driving) to affect another (paying child support) there was no need for a hearing regarding whether the subject could safely drive.

III. CONCLUSION

WAC 170-03-230 is unconstitutional on its face and as-applied. This Court should so find, and remand to DEL to conduct a substantive hearing into whether Ms. Fields is qualified to work with children.

RESPECTFULLY SUBMITTED this 7th day of
December.



Keith Scully, WSBA No. 28677

Newman Du Wors LLP

Prachi Dave, WSBA No. 50498

ACLU of Washington

Attorneys for Appellant

Christal Fields

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2016, I caused the foregoing to be served via Messenger to:

Attorney for State of WA. Department of Early Learning
Patricia L. Allen
Assistant Attorney General
Attorney General of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

I declare under penalty of perjury that the foregoing is true and correct.



Chy Eaton

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