

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/4/2018 3:55 PM  
BY SUSAN L. CARLSON  
CLERK

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/19/2018  
BY SUSAN L. CARLSON  
CLERK

No. 95024-5

---

**IN THE SUPREME COURT FOR THE STATE OF WASHINGTON**

---

CHRISTAL FIELDS, an individual,

Appellant,

v.

STATE OF WASHINGTON DEPARTMENT OF EARLY LEARNING,

Respondent.

---

**APPELLANT'S RESPONSE TO STATE'S SUPPLEMENTAL  
CROP BRIEF**

---

ACLU OF WASHINGTON  
FOUNDATION

Prachi Dave, WSBA # 50498  
Nancy Talner, WSBA # 11196  
901 5th Ave., Suite 630  
Seattle, WA 98164  
(206) 624-2184

TERRELL MARSHALL LAW GROUP  
PLLC

Toby J. Marshall, WSBA # 32726  
936 N. 34th Street, Suite 300  
Seattle, WA 98103  
(206) 816-6603

*Cooperating Attorney for ACLU of  
Washington*

*Attorneys for Appellant Christal Fields*

**TABLE OF CONTENTS**

I. INTRODUCTION..... 1  
II. ARGUMENT ..... 2  
III. CONCLUSION..... 7

**TABLE OF AUTHORITIES**

**Cases**

*Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct 893, 47 L. Ed.  
2d 18 (1976).....7  
*Schware v. Board of Bar Exam. of State of N.M.*, 353 U.S.  
232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).....7  
*State v. Masangkay*, 121 Wn. App. 904, 91 P.3d 140 (2004).....3

**Statutes**

RCW 43.20A.....4  
RCW 43.20A.710(8).....5  
RCW 43.216.170(4).....5, 6  
RCW 43.43.830(6).....5  
RCW 9.97 .....3  
RCW 9.97.020(1).....6  
RCW 9.97.020(4).....4

**Regulations**

WAC 170-06-0050(1)(f).....2, 3, 5

## I. INTRODUCTION

Ms. Fields has been trying to prove her fitness to work in child care since 2015. DEL has consistently maintained that a lifetime ban properly applies to her because she has a 30-year old attempted robbery conviction.

In oral argument on May 8, 2018, DEL raised the notion of a Certificate of Restoration of Opportunity (CROP) for the first time. On May 30, 2018, both parties filed supplemental briefing to address the adequacy of a CROP as a remedy for Ms. Fields and the impact on her constitutional claims.

DEL's submission contains new legal theories and arguments that flow from erroneous statements and/or misinterpretations of the law. The state tries repeatedly to characterize a CROP as something it is not, such as "an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted," arguing that under this pre-CROP rule Ms. Fields would in fact get the hearing she requests and be exempt from disqualification under DEL's lifetime ban if she were to procure a CROP. DEL Supp. Br. re CROP at 1, 4 (On page 1: "a Certificate of Restoration of Opportunity would provide Ms. Fields with the hearing she seeks, allowing her to produce evidence *that she is rehabilitated* and can safely

have unsupervised access to children in child care or early learning settings.” On page 4: “A CROP is an ‘equivalent procedure *based on a finding of the rehabilitation* of the person convicted.’” (emphasis added)). This is a misstatement since nothing in the CROP statute requires a finding of rehabilitation. In the same brief, the state also makes clear that the CROP statute maintains DEL’s unfettered discretion to bar Ms. Fields for life on the basis of her criminal conviction, whether or not she has a CROP. DEL Supp. Br. re CROP at 6. This fundamental inconsistency underscores the need for this Court to rule on Ms. Fields’ constitutional claims. It cannot pass muster that DEL can outsource its obligation to provide a meaningful hearing via a process that does not exist, which would be administered by a separate judicial entity, on the basis of rules that DEL has not yet proposed, when it becomes part of a different agency—and the outcome of which it could then disregard at its sole discretion. The constitutional arguments Ms. Fields raises are as viable as ever.

## **II. ARGUMENT**

The Court should reject the newly made arguments of the State for several reasons.

First, the State asserts that a CROP falls under the “equivalent procedure” provision of WAC 170-06-0050(1)(f), which would remove

the criminal history disqualification for Ms. Fields if she had a CROP (which she does not). DEL Supp. Br. re CROP at 4-5. But WAC 170-06-0050 predates the CROP statute, makes no mention of a CROP, and refers instead to a “certification of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted[.]” WAC 170-06-0050(1)(f). And a CROP is not a “certification of rehabilitation” because it does not require the issuing court to make a finding of rehabilitation. Neither the CROP statute (RCW 9.97), nor the forms developed by the Administrative Office of Courts require any finding of rehabilitation, and DEL does not cite to any part of the CROP statute noting such a *requirement*. *Cf.*, DEL Supp. Br. re CROP at 1, 5, citing the CROP bill but not the actual statute. And *cf.* DEL Supp. Br. re CROP at 10-11, where DEL describes the consideration of rehabilitation under CROP as belonging to the Department and not the court-issuing CROP. Moreover, no court in Washington has authority to issue a “certificate of rehabilitation,” *State v. Masangkay*, 121 Wn. App. 904, 906, 91 P.3d 140 (2004), leaving it further unknown what an “equivalent” procedure is. This Court should reject DEL’s misstatement of the law.

Second, DEL claims that once it becomes part of the Department of Children, Youth, and Families (DCYF), “the new Department is authorized to accept Certificates of Restoration of Opportunity when

reviewing an applicant's criminal history, and then exercise its discretion to either (1) allow an applicant with a CROP to have unsupervised access to children in child care or early learning programs, *or (2) disqualify the applicant based solely on the applicant's criminal history, notwithstanding the CROP.*" DEL Supp. Br. re CROP at 6 (emphasis added). This statement makes plain that DEL, as DCYF, could still disqualify Ms. Fields and others like her on the basis of criminal history. It also flatly contradicts DEL's first argument, which (wrongly) asserts that a CROP would functionally remove Ms. Fields' disqualifying conviction and allow her an "individualized determination" (DEL Supp. Br. re CROP at 5, 14-15). DEL cannot have it both ways.

Third, how DEL will treat CROP after DEL becomes DCYF remains opaque. The State relies heavily on the authority that governs DSHS (RCW 43.20A), asserting that when DEL becomes part of DCYF, the CROP rules pertaining to DSHS will also apply to DEL (as part of DCYF). DEL Supp. Br. re CROP at 5-9. But DCYF, in a section separate from the one pertaining to DSHS, has been directed by the CROP statute that will be effect in July 2018 to adopt rules implementing CROP (RCW 9.97.020(4)(a), (f) (version effective 7/1/18)), but it has yet to do so. Because this Court has only self-contradictory arguments from the State and not even draft rules, it cannot rely on speculative actions DEL may or

may not take when it becomes a different agency to dismiss Ms. Fields' constitutional claims.

Fourth, the State relies on RCW 43.216.170(4) and RCW 43.20A.710(8), arguing that these subsections will not result in disqualification on the basis of a prior conviction “if the otherwise disqualifying conviction or disposition has been the subject to a pardon, annulment, or other equivalent procedure.” DEL Supp. Br. re CROP at 8; *id.* at 4, n.5. The State asserts this language is “[s]ubstantively identical” to the language in WAC 170-06-0050(1)(f) and would be the avenue for a consideration of a CROP. *Id.* This assertion is incorrect in several ways. The language of RCW 43.216.170(4) on which the State relies (“other equivalent procedure *based on a finding of the rehabilitation of the person convicted*”) is absent from RCW 43.216.170(4). The language of RCW 43.216.170(4) conflicts with DEL’s reference to other statutes using the term “pardon, annulment, or other equivalent procedure” because those other statutes and DEL’s own rule (RCW 43.43.830(6) and WAC 170-06-0050(1)(f), cited in DEL Supp. Br. re CROP at 4) require a finding of *innocence* to be “equivalent to a pardon or annulment,” a finding DEL’s brief omits.<sup>1</sup> There is no authority that a CROP is the equivalent to a

---

<sup>1</sup> WAC 170-06-0050(1)(f) states “The crime will not be considered a conviction for the purposes of the department when the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, or other equivalent procedure based on

pardon by the Governor, nor is it equivalent to an annulment—a procedure that does not exist in Washington with regard to criminal convictions.

And again, DEL cannot have it both ways: it can either maintain it still has discretion to disqualify Ms. Fields based solely on her conviction (DEL Supp. Br. re CROP at 6), or it can assert that RCW 43.216.170(4) applies, in which case Ms. Fields “shall not be disqualified.”

Finally, this Court should also reject as sufficient to refute Ms. Fields’ due process claims DEL’s assertion that “an applicant presenting a CROP to the Department is entitled to an individualized determination of ‘relevant factors[.]’” DEL Supp. Br. Re CROP at 6. The scope of “cases where an applicant would be disqualified under RCW 43.20A.710,” as set forth in RCW 9.97.020(1)(b), is unknown, as discussed above. And even if it were true that the CROP statute might give authority for DEL to “review . . . relevant factors,” DEL has already argued it can, at its discretion, still disqualify Ms. Fields based “solely” on her criminal history. In other words, it is solely up to DEL to decide whether Ms. Fields or anyone like her would actually receive an individualized determination (even assuming she could get a CROP, which remains unknown). And, even for those few able to obtain a CROP, it is solely up

---

a finding of the rehabilitation of the person convicted, or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.”

to DEL whether such a determination would be binding on the agency. Plus, the unconstitutional lifetime ban list remains in place for those who, like Ms. Fields, do not have a CROP. This scheme fails to cure the constitutional deficiencies of DEL's lifetime ban. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct 893, 47 L. Ed. 2d 18 (1976) (discussing procedural due process); *Schware v. Board of Bar Exam. of State of N.M.*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) (discussing substantive due process).

### III. CONCLUSION

For the above reasons, the Court should reject the State's arguments and address the constitutional claims Ms. Fields has presented.

RESPECTFULLY SUBMITTED this 4th day of June, 2018.

By: /s/Prachi Dave

Prachi Dave, WSBA # 50498  
Nancy Talner, WSBA # 11196  
ACLU OF WASHINGTON FOUNDATION  
901 5th Avenue, Suite 630  
Seattle, Washington 98164  
(tel) (206) 624-2184  
pdave@aclu-wa.org  
talner@aclu-wa.org

By: /s/Toby J. Marshall

Toby J. Marshall, WSBA # 32726  
TERRELL MARSHALL LAW GROUP PLLC  
936 N. 34th Street, Suite 300  
Seattle, WA 98103  
(206) 816-6603  
*Cooperating Attorney for ACLU-WA  
Counsel for Appellant*

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION

June 04, 2018 - 3:55 PM

Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 95024-5  
**Appellate Court Case Title:** Christal Fields v. State of Washington Department of Early Learning  
**Superior Court Case Number:** 15-2-26451-6

**The following documents have been uploaded:**

- 950245\_Briefs\_20180604155151SC889284\_8693.pdf  
This File Contains:  
Briefs - Appellants Supplemental  
*The Original File Name was 2018 06 04 Appellants Response to States Suppl CROP Brief.pdf*
- 950245\_Cert\_of\_Service\_20180604155151SC889284\_4587.pdf  
This File Contains:  
Certificate of Service  
*The Original File Name was 2018 06 04 COS.pdf*
- 950245\_Motion\_20180604155151SC889284\_4255.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was 2018 06 04 Motion for Leave to File Brief Under.pdf*

**A copy of the uploaded files will be sent to:**

- alanc@atg.wa.gov
- candelaria.murillo@columbialegal.org
- debip@nwjustice.org
- ivy.rosa@columbialegal.org
- kmcruer@aclu-wa.org
- meaganm@nwjustice.org
- nick.allen@columbialegal.org
- pata1@atg.wa.gov
- pwalia@legalvoice.org
- rebeccasmitholy@gmail.com
- rsmith@nelp.org
- sainsworth@legalvoice.org
- sgoolyef@atg.wa.gov
- shsseaef@atg.wa.gov
- sujatha.branch@columbialegal.org
- talner@aclu-wa.org
- tmarshall@terrellmarshall.com

**Comments:**

---

Sender Name: Legal Assistant - Email: legalprogramassistant@aclu-wa.org

**Filing on Behalf of:** Prachi Vipinchandra Esq Dave - Email: pdave@aclu-wa.org (Alternate Email: )

Address:

901 5th Avenue, Suite 630  
Seattle, WA, 98164  
Phone: (206) 624-2184

**Note: The Filing Id is 20180604155151SC889284**