

No. 21-15414

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DARIO GURROLA, et al.,

Plaintiffs – Appellants,

v.

DAVID DUNCAN, et al.,

Defendants – Appellees.

On Appeal from the United States District Court
for the Eastern District of California
Honorable John A. Mendez, District Judge

**MOTION FOR LEAVE TO FILE BRIEF OF PACIFIC LEGAL
FOUNDATION AND STEPHEN SLIVINSKI AS *AMICI CURIAE*
IN SUPPORT OF APPELLANTS**

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, Pacific Legal Foundation (PLF) and Stephen Slivinski, by and through undersigned counsel, respectfully move for leave to file the attached *amicus curiae* brief in support of Appellants Gurrola and Herrera.¹ The proposed *amici* are familiar with the parties' arguments and believe that the attached *amicus* brief will aid the Court in the consideration of the issues presented in this case.

IDENTITY AND INTEREST OF PROPOSED AMICI CURIAE

PLF is a nonprofit 501(c)(3) organization that provides pro bono legal assistance to individuals seeking to challenge infringements of their constitutional rights. Since its founding over 40 years ago, PLF has represented the views of thousands of nationwide supporters who believe in limited government, individual rights, and free enterprise.

PLF has litigated several lawsuits involving economic freedom. *See e.g., Merrifield v. Lockyer*, [547 F.3d 978](#) (9th Cir. 2008), and has appeared as *amicus curiae* in several economic liberty cases. *See e.g., North*

¹ Appellees Falck and Duncan and Appellants Gurrola and Herrera consented to filing the proposed *amicus curiae* brief; however, *Amici* did not receive a response from counsel for Appellee Jeffrey Kepple.

Carolina State Bd. of Dental Examiners v. F.T.C., [574 U.S. 494](#) (2015); *St. Joseph Abbey v. Castille*, [712 F.3d 215](#) (5th Cir. 2013); *Craigmiles v. Giles*, [312 F.3d 220](#) (6th Cir. 2002). This case is of central concern to PLF because regulatory bodies often exercise their powers in ways that target politically powerless groups, especially when it comes to economic regulations and laws that burden the right to earn a living. PLF believes its litigation experience and public policy perspective will aid this Court in consideration of this case.

Stephen Slivinski is a senior research fellow at the Center for the Study of Economic Liberty at Arizona State University.² His research focuses on the regulatory barriers to entry that impact businesses and entrepreneurs. He has published first-of-its-kind research on the adverse effects these barriers have on the ability of those leaving prison to reintegrate into the labor force. Because his research relates directly to the issues involved here, Mr. Slivinski believes that his public policy expertise will aid the Court in consideration of this case.

Proposed *amici* are particularly concerned that the state's ban on EMT certification for convicted felons is an affirmatively

² Institutional affiliation provided for identification purposes only.

counterproductive restriction on Appellants' rights to earn a living. Research unequivocally confirms that employment is a key factor in preventing recidivism. For example, through research discussed in the proposed brief, Mr. Slivinski found that high occupational burdens increase a state's recidivism rates. *See* Stephen Slivinski, Ctr. for the Study of Economic Liberty at ASU, *Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform* 2, (2016). Mr. Slivinski's research revealed that over a ten year period, the average increase in the recidivism rate was much larger in states with highly restrictive occupational licensing and certification restrictions, such as California. *Id.* The study demonstrates that prohibitive occupational restrictions significantly impair a state's ability to lower its recidivism rate and reach better public safety outcomes linked to recidivism. This consideration is highly relevant to the disposition of this case.

Ultimately, depriving former offenders of economic opportunities for long periods of time without any connection between crime and restricted occupation fails to serve public safety. Rather, it jeopardizes public safety by increasing the likelihood that a person will reoffend and

by imposing massive economic costs on the state's justice system. Proposed *amici*'s arguments, arising from this reality, support and enlarge upon the points advanced by Appellants.

CONCLUSION

Proposed *amici* respectfully request that their motion for leave to file an *amicus curiae* brief be granted.

DATED: May 18, 2021.

Respectfully submitted,

JOSHUA POLK
ANASTASIA BODEN

s/ Joshua Polk
JOSHUA POLK

*Attorneys for Amici Curiae Pacific
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Joshua Polk
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Attorney for Amici Curiae

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JOSHUA POLK

Attorney for Amici Curiae

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**BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION
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IN SUPPORT OF APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Pacific Legal Foundation, a nonprofit corporation organized under the laws of California, hereby states that it has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
IDENTITY AND INTEREST OF AMICI CURIAE	1
INTRODUCTION	3
SUMMARY OF ARGUMENT	4
ARUGMENT	4
I. California’s ex-offenders have a constitutional right to pursue employment as a firefighter without arbitrary and irrational restrictions	4
II. Categorical exclusion of former offenders from employment makes former offenders more likely to commit new crimes	8
a. Collateral consequences have run amok	8
b. Collateral consequences like the ban challenged here increase recidivism	10
III. Categorical employment prohibitions on former felons are economically catastrophic	16
CONCLUSION	19
APPENDIX A	21
STATEMENT OF RELATED CASES	22
FORM 8	23
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>The Case of the Monopolies</i> , 77 Eng. Rep. 1260, 1266 (K.B. 1602).....	5
<i>Cleburne v. Cleburne Living Center</i> , 473 U.S. 432 (1985).....	5
<i>Craigsmiles v. Giles</i> , 312 F.3d 220 (6th Cir. 2002).....	1, 7
<i>Greene v. McElroy</i> , 360 U.S. 474 (1959).....	4
<i>Matter of La Cloche v. Daniels</i> , No. 403466, 2006 WL 6863910.....	15
<i>Lowe v. S.E.C.</i> , 472 U.S. 181 (1985).....	4
<i>Merrifield v. Lockyer</i> , 547 F.3d 978 (9th Cir. 2008).....	1, 4, 6, 7
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	5
<i>North Carolina State Board of Dental Examiners v. Federal Trade Commission</i> , 574 U.S. 494 (2015).....	1
<i>Ranschburg v. Toan</i> , 709 F.2d 1207 (8th Cir. 1983).....	7
<i>St. Joseph Abbey v. Castille</i> , 712 F.3d 215 (5th Cir. 2013).....	1, 6, 7

Rules

Fed. R. App. P. 29.....	1
-------------------------	---

Statutes

Cal. Code Regs. § 100214.3	19
Code of Ala. § 34-7B-21	16

Other Authorities

Alec C. Ewald, <i>Barber, Caregivers, and the “Disciplinary Subject”: Occupational Licensure for People with Criminal Justice Backgrounds in the United States</i> , 46 Fordham Urb. L.J. 719, 728–29 (2019)	9
Associated Press, <i>At \$75,560, housing a prisoner in California now costs more than a year at Harvard, L.A.</i> Times (June 4, 2017)	18
Ben Geiger, <i>The Case for Treating Ex-Offenders as a Suspect Class</i> , 94 Calif. L. Rev. 1191, 1201–02 (2006).....	18
Bryant Jackson-Green, <i>How Occupational Licensing Blocks Path to Success for Ex-Offenders</i> , Ill. Pol’y (2015)	12
Bureau of Just. Statistics, U.S. Dep’t of Just., <i>Survey of State Criminal History Information Systems 2</i> (2015).....	17
Bureau of Just. Stats., U.S. Dep’t of Just., <i>Survey of State Criminal History Information Systems, 1997</i> 13 (1999	17
C. Kevin Marshall, <i>Why Can’t Martha Stewart Have a Gun?</i> , 32 Harv. J.L. & Pub. Pol’y 695 (2009)	7

Cal. Dep't of Corrections and Rehabilitation, <i>Several Poor Administrative Practices have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs</i> 1 (2019)	11
Catherine E. Forrest, <i>Collateral Consequences of Criminal Conviction: Impact of Corrections and Reentry</i> , Corrections Today, January/February 2016	9
Cherrie Bucknor & Alan Barber, <i>The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies</i> , Center for Econ. & Pol'y Research at 1 (2016).	17
Clyde Haberman, <i>Ex-Inmate Denied Chair (and Clippers)</i> , N.Y. Times (Feb. 25, 2003)	15
Dallan F. Flake, <i>When Any Sentence Is a Life Sentence: Employment Discrimination Against Ex-Offenders</i> , 93 Wash. U. L. Rev. 45, 59–60 (2015).	15
Elizabeth Castillo, Cal Matters, <i>California's final frontier faces firefighter shortage</i> (2020).....	11
Jessica M. Eaglin, <i>Improving Economic Sanctions in the States</i> , 99 Minn. L. Rev. 1837, 1850 (2014).....	15
Jo Craven McGinty, <i>How Many Americans Have a Police Record? Probably More Than You Think</i> , Wall St. J. (Aug. 7, 2015).....	17
John G. Malcolm, <i>The Problem with the Proliferation of Collateral Consequences</i> , 19 Federalist Soc'y Rev. 36, 38–39 (2018).....	16
John Schmitt & Kris Warner, <i>Ex-offenders and the Labor Market</i> , Ctr. For Econ. & Pol'y Res. 14 (2010)	18
Margaret Love, et al., <i>Collateral Consequences of Criminal Convictions: Law, Policy and Practice</i> 4–7, 35–179 (2013).....	8

Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, Bureau of Justice Statistics, <i>Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010</i> (2014).....	10
Michael Schulte, <i>Felony Conviction, Barrier to Obtaining Professional License</i> , Ga. Ctr. for Opportunity (2014).....	12
Mike Vuolo, et al., <i>Criminal Record Questions in the Era of “Ban the Box”</i> , 16 Criminology & Pub. Pol’y 139, 140–41 (2017).....	11
Ruben Castillo, et al., U.S. Sentencing Comm’n, <i>Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines</i> 29 (2004).....	12
Samuel K. Baier, <i>Reducing Employment Barriers for People with Criminal Records</i> , 46 J. Corp. L. 219, 225 (2020).	10
Sarah Bohn, Caroline Danielson & Tess Thorman, Public Policy Institute of California, <i>Poverty in California</i> (2018).....	19
Stephen Slivinski, Ctr. for the Study of Economic Liberty at ASU, <i>Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform</i> 1 (2016)	10, 12
Stephen Slivinski, Goldwater Institute Policy Report No. 272, <i>Bootstraps Tangled in Red Tape</i> (2015)	14, 18
World Population Review, <i>GDP Ranked by Country 2021</i> (2021).....	17
World Population Review, <i>Prison Population by State 2021</i> (2021).....	11

IDENTITY AND INTEREST OF AMICI CURIAE¹

Pursuant to Fed. R. App. P. 29, Pacific Legal Foundation (PLF) submits this brief amicus curiae in support of Appellants.² PLF is a nonprofit 501(c)(3) organization that provides pro bono legal assistance to individuals seeking to challenge unconstitutional infringements of their rights. Since its founding over 40 years ago, PLF has represented the views of thousands of supporters who believe in limited government, individual rights, and free enterprise.

PLF has litigated several lawsuits involving economic freedom, *see, e.g., Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008), and has appeared as amicus curiae in several economic liberty cases. *See, e.g., North Carolina State Bd. of Dental Examiners v. F.T.C.*, 574 U.S. 494 (2015); *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002). This case is of central concern to PLF

¹ In accordance with Fed. R. App. P. 29(c)(5), Amici Curiae affirms that no counsel for any party authored this brief in whole or in part, no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than the Amici, their members, or their counsel have made a monetary contribution to this brief's preparation or submission.

² Appellees Troy Falck and David Duncan and Appellants Gurrola and Herrera consented to the filing of this brief; however, Amici did not receive a response from counsel for Appellee Jeffrey Kepple.

because regulatory bodies often exercise their powers to exclude legitimate competition, infringing on constitutional protections for the right to earn a living. PLF believes its litigation experience and public policy perspective will aid this Court in consideration of this case.

Stephen Slivinski is a senior research fellow at the Center for the Study of Economic Liberty at Arizona State University.³ His research focuses on the regulatory barriers to entry that impact businesses and entrepreneurs. He is the author of first-of-its-kind research on the adverse effects these barriers have on the ability of those leaving prison to reintegrate into the labor force. Slivinski believes that his public policy expertise will aid this Court in consideration of this case.

³ Institutional affiliation provided for identification purposes only.

INTRODUCTION

Employment is a key factor in preventing recidivism. Yet former offenders often find themselves face-to-face with a vast number of government-created employment restrictions after they serve their sentence, including categorical bans on employment like the one here. While purportedly designed to protect the public, research demonstrates that depriving former offenders of economic opportunity for long periods of time without any connection between the crime and the occupation fails to serve public safety. Instead, it jeopardizes public safety by increasing the likelihood that a person will reoffend.

Given that former offenders lack political clout, they have little chance of reducing employment-related collateral consequences through the political process. Instead, like other politically powerless groups, they must turn to the courts to vindicate their constitutional rights. Because categorical employment restrictions on former felons, such as the EMT licensure ban here, affirmatively harm public safety with no identifiable public benefit, they are irrational and violate the Fourteenth Amendment.

SUMMARY OF ARGUMENT

While deferential, the rational basis test does not require courts to turn a blind eye to the facts. Research from scholars and policy experts from across the political spectrum demonstrates that broad employment restrictions on former offenders, such as those levied on Appellants, do not serve any legitimate public end. Instead, they affirmatively undermine public safety by encouraging recidivism and imposing a massive burden on the economy and criminal justice system. If a law restricts economic opportunity with no public benefit, it is irrational. And if it is irrational, it is unconstitutional. Research conducted by Slivinski and others demonstrates that the district court was wrong to dismiss Appellants' claims.

ARGUMENT

I. California's ex-offenders have a constitutional right to pursue employment as a firefighter without arbitrary and irrational restrictions.

The Constitution protects every individual's right to earn a living free from arbitrary laws. *See* U.S. Const. amend. XIV; *Lowe v. S.E.C.*, 472 U.S. 181, 228 (1985); *Greene v. McElroy*, 360 U.S. 474, 492 (1959); *Merrifield*, 547 F.3d at 983. As Courts have long recognized, these

constitutional protections date back to early common law and are essential to the pursuit of happiness in a free nation. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (explaining that due process “denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men”); *see also The Case of the Monopolies*, 77 Eng. Rep. 1260, 1266 (K.B. 1602) (holding that the grant of monopoly rights violates common law and “liberty of the subject”); Va. Decl. of Rights § 1 (June 12, 1776) (“[A]ll men . . . have certain inherent rights . . . [including] the enjoyment of life and liberty, with the means of acquiring and possessing property . . .”).

Thus, California does not have *carte blanche* to regulate occupations. To survive a due process challenge, economic regulations must be rationally related to a legitimate governmental purpose. *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985). And conversely, a regulation violates the Due Process Clause if it deprives a

person of economic liberty without any rational justification. *See, e.g., Merrifield*, 547 F.3d at 988, 992. When analyzing a law’s fit to its purported ends, courts need not ignore facts that directly contradict the government’s justification. *Id.* at 991 (“[A] rationale so weak that it undercuts the principle of non-contradiction [] fails to meet . . . rational basis review.”); *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013) (“[A] . . . rationale, even post hoc, cannot be fantasy, and . . . the [government’s] chosen means must rationally relate to the state interests it articulates.”).

Here, the district court assumed that employment restrictions on individuals with a criminal record are automatically rational regardless of the relationship between the crime and the desired profession and despite the consequences of excluding former offenders from employment. Order Granting Defendants’ Motions to Dismiss at 18, *Gurrola v. Duncan*, No. 2:20-cv-01238-JAM-DMC (E.D. Cal. 2021) (“[I]t is not illogical for the government to conclude that individuals with multiple or recent felony convictions are more likely to harm persons

than those without.”).⁴ This assumption is not only unfounded, it misunderstands rational basis review.

Rational basis jurisprudence makes clear that the mere existence of a legitimate government interest is not enough. Rather, a law must bear a rational connection to furthering that interest. As several courts have noted, not all conceivable rationales have a sufficient connection to the law at hand. *Merrifield*, 547 F.3d at 983; *St. Joseph Abbey*, 712 F.3d at 223–27; *Craigmiles*, 312 F.3d at 228; *Ranschburg v. Toan*, 709 F.2d 1207, 1211–12 (8th Cir. 1983).

Even assuming that former offenders generally present a greater safety risk to the public than non-offenders, the district court failed to explain how that justifies excluding ex-offenders from certain occupations even where the desired occupation has no relationship at all to the underlying offense and restricting entry has no relationship to preventing a crime in that industry. If this Court accepts the district court’s reasoning, *any* restriction on the ability of former offenders to get

⁴ This disconnect between disqualification and the specifics of an ex-offender’s past behavior is a common problem with collateral consequences. See C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol’y 695 (2009).

a job would be constitutional. Indeed, any restriction on former offenders *at all* would be constitutional. In other words, the appropriate question is not whether the government had a reason to think former offenders bear a higher risk of committing a crime. The question is whether excluding them from the occupation at issue will reduce that risk. Here, research demonstrates that the answer is “no.”

Successful workplace reintegration of released offenders is a key factor in reducing recidivism rates. As explained below, allowing the categorical exclusion to stand will lead to increased recidivism rates and impose massive costs on the criminal justice system. The rational basis test does not require the Court to ignore these realities.

II. Categorical exclusion of former offenders from employment makes former offenders more likely to commit new crimes.

a. Collateral consequences have run amok

Over the past two decades, collateral consequences have proliferated. *See* Margaret Love, et al., *Collateral Consequences of Criminal Convictions: Law, Policy and Practice* 4–7, 35–179 (2013) (demonstrating the breadth and severity collateral consequences in the United States). The American Bar Association recently studied collateral consequences

for federal and state criminal convictions and identified over 45,000 collateral consequences and civil disabilities. *See* Catherine E. Forrest, *Collateral Consequences of Criminal Conviction: Impact of Corrections and Reentry*, *Corrections Today*, January/February 2016, at 31. Some collateral consequences relate directly to legitimate public safety concerns (e.g., childcare employment restrictions for sex offenders). However, many other collateral consequences, like the subject of this case, are applied without any regard to the underlying crime and without a demonstrable connection to protecting public health or safety.

The “collateral consequences” of having a criminal record can affect all aspects of a former offender’s life, from employment, to housing, to public assistance. But a significant number of collateral consequences limit access to employment. Alec C. Ewald, *Barber, Caregivers, and the “Disciplinary Subject”: Occupational Licensure for People with Criminal Justice Backgrounds in the United States*, 46 *Fordham Urb. L.J.* 719, 728–29 (2019) (showing that over 30,000 regulations and statutes restrict former offenders from over 800 licensed occupations). This state of affairs is problematic because employment has been unequivocally shown to be a key factor in reducing recidivism. *See* Stephen Slivinski, Ctr. for the

Study of Economic Liberty at ASU, *Turning Shackles into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform* 1 (2016); see also Samuel K. Baier, *Reducing Employment Barriers for People with Criminal Records*, 46 J. Corp. L. 219, 225 (2020). Thus, while some collateral consequences are passed with the purported design of ensuring public safety, they have the practical effect of *endangering* the public instead.

b. Collateral consequences like the ban challenged here increase recidivism

The American prison system has proven to be a costly and counterproductive revolving door. In the United States, roughly 68% of released prisoners reoffend within three years after completing their prison sentence. Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (2014). That number rises to 76.6% at five years from release. California's recidivism rates are some of the highest ever recorded—with roughly 75% of former prisoners being rearrested within three years of release. *Id.*⁵

⁵ In California, roughly 50% of released inmates are convicted of a new crime (that is, a crime that does not include a parole violation or a

Recidivism is of particular concern in California because the state has the second-largest prisoner population in the United States and the second-largest number of people on parole. *See World Population Review, Prison Population by State 2021* (2021). Accordingly, former offenders make up a massive portion of California's workforce. An absence of job opportunities for members of a population this large would be problematic under any circumstances. However, these problems are magnified by the risk of repeat offenses, a shortage of emergency services personnel (including, ironically, firefighters),⁶ and the risk of keeping people with criminal records in a cycle of poverty (or worse, crime).

Research has repeatedly demonstrated that employment is strongly linked to reducing recidivism. *See Mike Vuolo, et al., Criminal Record Questions in the Era of "Ban the Box", 16 Criminology & Pub. Pol'y 139, 140–41* (2017). The recidivism rate for those employed after release from prison is 13 percentage points lower than for those unemployed after

condition of release) within three years of leaving prison. *See Cal. Dep't of Corrections and Rehabilitation, Several Poor Administrative Practices have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs 1* (2019).

⁶ Elizabeth Castillo, Cal Matters, *California's final frontier faces firefighter shortage* (2020).

release. Ruben Castillo, et al., U.S. Sentencing Comm’n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 29 (2004). Yet states often pursue policies that categorically bar ex-prisoners from obtaining legitimate work without any consideration of whether such employment would be riskier for a given individual. See Michael Schulte, *Felony Conviction, Barrier to Obtaining Professional License*, Ga. Ctr. for Opportunity (2014) (listing many professions that are off limits to felons in Georgia, “including barber, cosmetologist, electrical contractor, plumber, conditioned air contractor, auctioneer, utility contractor, registered trade sanitarian, and scrap metal processor”); Bryant Jackson-Green, *How Occupational Licensing Blocks Path to Success for Ex-Offenders*, Ill. Pol’y (2015) (listing licenses that can be denied due to a felony record in Illinois, including barber, nail technician, pet shop operator, referee, livestock dealer, and dance hall operator).

In a landmark study, Amicus Stephen Slivinski explored the relationship between recidivism rates and professional licensing and certification burdens. See Stephen Slivinski, Ctr. for the Study of Economic Liberty at ASU, *Turning Shackles into Bootstraps: Why*

Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform 2 (2016). Through an analysis of data sets collected by the Institute for Justice, the Pew Center on the States, and the National Employment Law Project, Slivinski’s research confirms the surging effect of high occupational burdens on recidivism. *Id.* His study compares the average change over a 10-year period (1997–2007) in new crime recidivism rates⁷ in states with low occupational licensing burdens with those that have high burdens—including states with categorical prohibitions like those challenged in this case (results included as Appendix A). *Id.* at 6. Slivinski concluded that the increase in the recidivism rate was larger than average in states with highly restrictive occupational licensing regimes, such as California. *Id.* The increased recidivism rates were much more significant than in states that do not generally prohibit occupational licenses to former prisoners or do not have restrictive conditions for which an ex-prisoner may be denied a license. *Id.* Highly restrictive states experienced a more than 9% increase in the new crime recidivism rate—over 3.5 times the 2.6% average

⁷Recidivism not due solely to a “technical violation” of parole or other release conditions.

increase for all of the states included in the project and substantially more than the 4.2% *decline* in the average new crime recidivism rate in states with low occupational restrictions. Occupational burdens were second only to overall labor market conditions in influencing recidivism rates. *Id.* at 7. In sum, Slivinski's research demonstrates that prohibitive occupational restrictions significantly increase the new crime recidivism rate and impair public safety outcomes linked to recidivism.

These results should not come as a surprise. The vast majority of released prisoners have lower education levels and fewer job skills compared to the general population. *See Occupational Licensing: A Framework for Policymakers*, U.S. Dep't of the Treasury, Office of Econ. Pol'y, the President's Council of Econ. Advisors & U.S. Dep't of Labor (2015). The plaintiffs here, for example, lack professional experience beyond their firefighting experiences while in prison. People with fewer resources, lower levels of education, and formal jobs have a more difficult time surmounting onerous occupational restrictions. *See* Stephen Slivinski, Goldwater Institute Policy Report No. 272, *Bootstraps Tangled in Red Tape* (2015).

In other words, economic opportunity is already narrow for this segment of the population.⁸ Jessica M. Eaglin, *Improving Economic Sanctions in the States*, 99 Minn. L. Rev. 1837, 1850 (2014). Up to 60% of former prisoners are unemployed one year after they are released from prison. See Dallan F. Flake, *When Any Sentence Is a Life Sentence: Employment Discrimination Against Ex-Offenders*, 93 Wash. U. L. Rev. 45, 59–60 (2015). California’s already high occupational licensure burdens, combined with bans like the one at issue, mean that prisoners have even fewer options when trying to reenter society. The foreseeable

⁸ Unfortunately, Appellants’ story is not unique. Some states have offered prisoners training and experience only to deny access to the profession after the prison sentence concludes. One tragic example is the case of Marc LaCloche. See Clyde Haberman, *Ex-Inmate Denied Chair (and Clippers)*, N.Y. Times (Feb. 25, 2003). Mr. LaCloche served a prison term in New York after being convicted of first-degree robbery. *Id.* After completing a 1,200-hour barber’s course in prison so that he could take up a legitimate career after release, the state refused his application when he was a parolee on the grounds that “the applicant’s criminal history indicates a lack of good moral character.” *Id.* Mr. La Cloche won the right to a license on appeal. *Id.* But after working as a barber for five months without issue, the NY Secretary of State revoked his license. He appealed the decision once again but passed away while litigation was still ongoing. See *Matter of La Cloche v. Daniels*, No. 403466, 2006 WL 6863910, at *3 (N.Y. Cty. Sup. Ct. June 1, 2006). Though recognizing the need to dismiss LaCloche’s case after his death, New York state judge Louis York remarked that, “the court feels compelled to comment upon the injustice that has been committed here[,]” criticizing the state for its part in denying LaCloche’s license applications.

result is that this population will return to crime. *See* John G. Malcolm, *The Problem with the Proliferation of Collateral Consequences*, 19 Federalist Soc’y Rev. 36, 38–39 (2018) (“As the American Bar Association has pointed out, ‘if promulgated and administered indiscriminately, a regime of collateral consequences may frustrate the chance of successful re-entry into the community, and thereby encourage recidivism.’”).

Stiff licensing requirements harm even those without a criminal record.⁹ But licensing restrictions based on criminal record make it even more difficult to get a job. Taking away opportunities for ex-offenders to secure employment after completing their sentence does not protect the public. Instead, it endangers the public by increasing the likelihood of recidivism.

III. Categorical employment prohibitions on former felons are economically catastrophic.

California’s EMT certification restrictions are also destructive to the economy. One study connected occupational restrictions on former offenders to a 1.7% reduction in the employment rate for men and

⁹ *See, e.g.*, Alabama’s requirement that applicants acquire five months of training and experience to attain a manicurists license. Code of Ala. § 34-7B-21.

estimated that these reductions cost the U.S. roughly \$65 billion in lost output in just one year. More recent estimates place the potential annual losses above \$78 billion. Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, Center for Econ. & Pol’y Research at 1 (2016). The lower end of the GDP loss estimate in the U.S is larger than the entire GDPs of over half of the world’s countries. See World Population Review, *GDP Ranked by Country 2021* (2021). These massive costs are only intensified by an ever-growing population of former offenders. Today, more than 70 million adults in the United States—nearly 1-in-3—have a criminal record, compared to roughly 35 million in 1995. See Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More Than You Think*, Wall St. J. (Aug. 7, 2015); see also Bureau of Just. Statistics, U.S. Dep’t of Just., *Survey of State Criminal History Information Systems 2* (2015); Bureau of Just. Stats., U.S. Dep’t of Just., *Survey of State Criminal History Information Systems, 1997* 13 (1999). Beyond the impact to GDP, the costs to society, the economy, and to the former prisoners themselves—in the form of lost

hours of labor, higher crime rates, and the lost potential earnings to individual ex-offenders—are immeasurable.

Studies indicate that states could save an average of \$15.5 million to their budgets by helping former offenders avoid returning to prison. John Schmitt & Kris Warner, *Ex-offenders and the Labor Market*, Ctr. For Econ. & Pol’y Res. 14 (2010); *see also* Bucknor & Barber, *supra*. That number is even higher for the State of California, which maintains a higher per-prisoner cost than the national average. Associated Press, *At \$75,560, housing a prisoner in California now costs more than a year at Harvard*, L.A. Times (June 4, 2017) (noting that correctional costs continue to increase every year despite a declining prisoner population).

Burdensome occupational restrictions are especially hard on individuals with a conviction history, given that this population is comprised of people with disproportionately low-income and low-education levels. Ben Geiger, *The Case for Treating Ex-Offenders as a Suspect Class*, 94 Calif. L. Rev. 1191, 1201–02 (2006). The occupations foreclosed by clearance requirements frequently include jobs that require little experience or education—i.e., those most likely to be attainable by former offenders. *See* Stephen Slivinski, Goldwater Institute Policy

Report No. 272, *Bootstraps Tangled in Red Tape* (2015). Thus, categorical occupational exclusions like 22 Cal. Code Regs. § 100214.3 tend to be economically disastrous for California populations already suffering from high poverty levels. *See* Sarah Bohn, Caroline Danielson & Tess Thorman, Public Policy Institute of California, *Poverty in California* (2018).

Given the enormous cost of occupational restraints, subjecting Appellants to such sanctions regardless of whether doing so benefits, or even *could* benefit, public safety is a grave, irrational, and unconstitutional act.

CONCLUSION

The district court's decision ignores what is plain on its face: when substantial portions of the population are arbitrarily excluded from the workforce, there is a cost, not a benefit, to the public. For the foregoing reasons, Amici respectfully urge this Court to reverse the holding of the district court and allow Appellants a chance to prove their claims.

DATED: May 18, 2021.

Respectfully submitted,

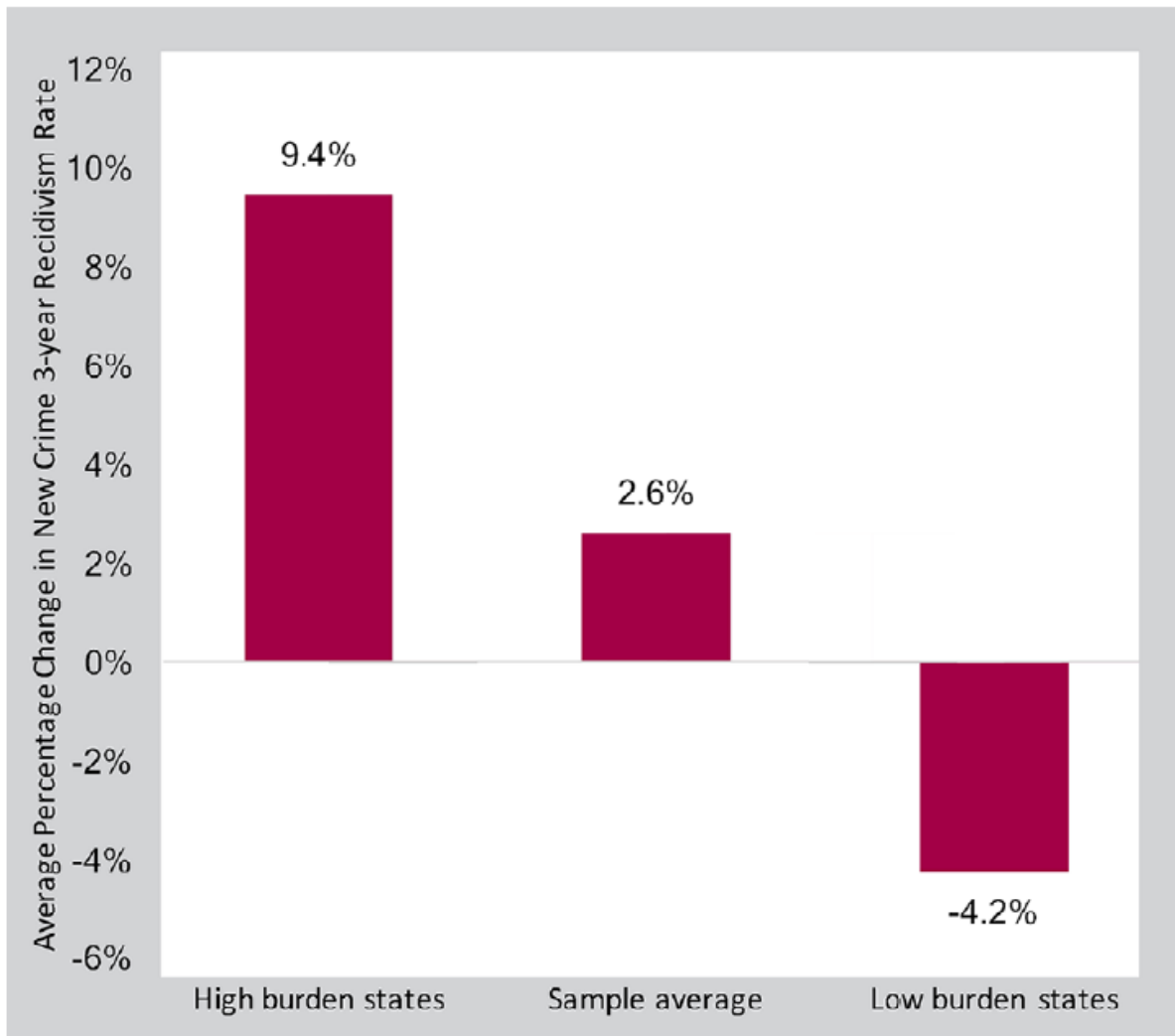
JOSHUA POLK
ANASTASIA BODEN

s/ Joshua Polk
JOSHUA POLK

*Attorneys for Amici Curiae
Pacific Legal Foundation and
Stephen Slivinski*

APPENDIX A

Average Change in Recidivism Rate by Occupational Licensing Burden Category



STATEMENT OF RELATED CASES

Plaintiffs-Appellants are aware of no related cases within the meaning of Circuit Rule 28–2.6.

FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS
9TH CIR. CASE NUMBER 21-15414

I am the attorney or self-represented party.

This brief contains 3,666 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

- ☐ [] complies with the word limit of Cir. R. 32-1.
- ☐ [] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
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- ☐ [] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ☐ [] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
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 - ☐ [] a party or parties are filing a single brief in response to multiple briefs; or
 - ☐ [] a party or parties are filing a single brief in response to a longer joint brief.
- ☐ [] complies with the length limit designated by court order dated ____.
- ☐ [] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/ Joshua Polk

Date May 18, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Joshua Polk
JOSHUA POLK