NO. 201,997-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE ZACHARY LEROY STEVENS, BAR APPLICANT

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, WASHINGTON DEFENDER ASSOCIATION, DISABILITY RIGHTS WASHINGTON, WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, NATIONAL EMPLOYMENT LAW PROJECT, INSTITUTE FOR JUSTICE, BRAD A. MERYHEW, AND COLUMBIA LEGAL SERVICES

Christopher B. Durbin
WSBA #41159
Gabrielle J. Hanna
WSBA #57855
COOLEY LLP
1700 Seventh Ave., Ste. 1900
Seattle, WA 98101
Tel.: (206) 452-8700
cdurbin@cooley.com

Matthew D. Brown
Cal. Bar #196972
Christopher A. Vail
Cal. Bar #317760
COOLEY LLP
3 Embarcadero Ctr., 20th Fl.
San Francisco, CA 94111
Tel.: (415) 693-2000

Nancy L. Talner
WSBA #11196
Antoinette M. Davis
WSBA #29821
Jaime M. Hawk
WSBA #35632
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111
Tel.: (206) 624-2184
talner@aclu-wa.org

Counsel for Amici Curiae ACLU of Washington

Alexandria "Ali" Hohman
WSBA #44104
Cindy Arends Elsberry
WSBA #23127
WASHINGTON DEFENDER ASSOCIATION
110 Prefontaine Pl. S., Ste. 610
Seattle, WA 98104-2626
Tel.: (206) 623-4321
ali@defensenet.org
cindy@defensenet.org

Counsel for Amicus Curiae
Washington Defender Association

Brad A. Meryhew
WSBA #26797
THE MERYHEW LAW GROUP
200 Broadway, Suite 301
Seattle, WA 98122
Tel.: (206) 264-1590
brad@meryhewlaw.com

Heather McKimmie
WSBA #36730
DISABILITY RIGHTS WASHINGTON
315 Fifth Ave. S., Suite 850
Seattle, WA 98104
Tel.: (206) 324-1521
heatherm@dr-wa.org

Counsel for Amicus Curiae
Disability Rights Washington

Mark Middaugh
WSBA #51425
WACDL AMICUS COMMITTEE
600 University St., Suite 3020
Seattle, WA 98101
Tel.: (206) 919-4269
mark@middaughlaw.com

Counsel for Amicus Curiae
Washington Association of
Criminal Defense Lawyers

Beth Avery
Cal. Bar #298232
NATIONAL EMPLOYMENT
LAW PROJECT
2030 Addison St., Suite 420
Berkeley, CA 94612
Tel.: (510) 663-5708
bavery@nelp.org

Counsel for Amicus Curiae
National Employment Law
Project

Janet Chung
WSBA #28535
Nicholas B. Allen
WSBA #42990
COLUMBIA LEGAL SERVICES
101 Yesler Way, Suite 300
Seattle, WA 98104
Tel.: (206) 287-8613
janet.chung@columbialegal.org

Counsel for Amicus Curiae
Columbia Legal Services

William R. Maurer
WSBA #25451
INSTITUTE FOR JUSTICE
600 University St., Suite 1730
Seattle, WA 98101
Tel.: (206) 957-1300
wmaurer@ij.org

Counsel for Amicus Curiae
Institute for Justice

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I. IDENTITY AND INTEREST OF AMICI

The identities and interests of Amici are fully set forth in the concurrently filed Motion for Leave to File Brief of Amici Curiae.

II. INTRODUCTION

An otherwise-qualified applicant with a criminal record who has served their sentence, demonstrated rehabilitation, and poses no meaningful risk of re-offending should not be denied the opportunity to practice law in Washington. Zachary Stevens is one such applicant, and one of many persons with criminal histories who face innumerable barriers to fully and meaningfully re-entering society.

In recognition of these realities, this Court in *In re Simmons*, 190 Wn.2d 374, 414 P.3d 1111 (2018), instructed that the moral-character inquiry mandated by the Admission and Practice Rules ("APRs") must be conducted on an *individualized* basis. In *Simmons*, that individualized inquiry required a fair and even-handed consideration of the applicant's criminal history—

and the same was required of the Character and Fitness Board (the "Board") of the Washington State Bar Association ("WSBA") here, in which the applicant's history involves highly stigmatized offenses. As the Board's dissenting opinion aptly observed,

> [t]he recognition that people be allowed to overcome their worst mistakes and can be redeemed is at the heart of the Court's ruling in *Simmons*. This principle is particularly important when reviewing the facts of this case, which involves some of the most complicated and hot button issues confronting society and the law; sexuality, sexual identity, the sexual exploitation of children and teenagers, age of consent, adolescent behavioral and cognitive development and the on-going consequences of past criminal conduct.

(*In re: Zachary LeRoy Stevens, Bar Applicant*, Board's Dissent, at 2 (Jan. 26, 2021) ("Dissent").)

As explained in greater detail below, the Board's majority ruling ran afoul of this important principle and misapplied the APRs by assigning undue weight to Mr. Stevens's prior offense and comparatively little weight to mitigating factors—such as

evidence of Mr. Stevens's rehabilitation and his young age at the time of the offense.

This Court should apply to Mr. Stevens's application the individualized APR 21 analysis mandated by *Simmons*, but the importance of this case goes far beyond Mr. Stevens himself. For him and all demonstrably rehabilitated applicants to come, the Board's individualized application of the APRs to the facts on the record, in fidelity to *Simmons*, is among the most meaningful steps the legal profession can take to help reduce barriers to reentry.

More than 1.2 million Washingtonians have a criminal record, and it cannot be disputed that those marked by the criminal legal system—here in Washington and nationwide—are disproportionately Black, Latinx, and Indigenous. The Court's decision in this case thus will implicate, unavoidably, important societal issues such as race equity, gainful employment as a means to reducing recidivism, and the adverse impacts of incarceration on families and communities.

For these reasons, the Court should (1) find that Mr. Stevens has established by clear and convincing evidence that he possesses the current good moral character and fitness to practice law in Washington, and (2) provide further guidance to the Board regarding the individualized application of the APRs to rehabilitated applicants with criminal records.

III. ISSUES PRESENTED

Whether evidence of a bar applicant's rehabilitation from past criminal conduct is sufficient to establish the requisite "character and fitness" to practice law under APR 21 and *Simmons*.

Whether the admission of qualified and rehabilitated bar applicants with criminal histories serves important individual and public interests.

IV. STATEMENT OF THE CASE

Zachary Stevens, an applicant to the Washington Bar, submitted extensive evidence to the Board of his rehabilitation since his 2006 criminal offenses and his current character and

fitness. This evidence included his strong academic record, steady employment history—most recently three years with a law firm dedicated to the specialized work of representing Native American tribes—as well as 30 letters supporting his admission to the WSBA. (Brief of Applicant Zachary Leroy Stevens ("Stevens Br."), Att. A at 6–9; *id.*, Att. D at 92–150.) The supporting letters come from a diverse group of past and current employers, law-school classmates, long-term friends, and family members. (*Id.*, Att. D at 92–150.) Their backgrounds include a mental health counselor, lawyers in private practice and government, hospitality professionals, and friends who have experienced, as Mr. Stevens did, personal struggles while growing up in a deeply religious and socially conservative community. (*Id.*)

The Board acknowledged that Mr. Stevens had led an "exemplary life" and had not engaged in misconduct since 2013, but a slim 6-5 majority nonetheless recommended that his application be denied. (*See In re: Zachary LeRoy Stevens, Bar*

Applicant, Board's Findings of Fact, Conclusions of Law, Analysis, and Recommendation, at 26–28 (Jan. 26, 2021) ("Majority Op.").) The dissent concluded that Mr. Stevens had established his present character and fitness to practice law, noting that "he has appropriately addressed his past misdeeds, appreciates the consequences of his actions and the injuries he has caused others, [and] has not engaged in inappropriate conduct for many years." (Dissent at 2–3.)

V. STANDARD OF REVIEW

This Court reviews de novo the Board's advisory recommendation on a bar application. *Simmons*, 190 Wn.2d at 382; *see also* APR 1(a) ("The Supreme Court of Washington has the exclusive responsibility and the inherent power to establish the qualifications for admission to practice law, and to admit and license persons to practice law in this state.").

VI. ARGUMENT

A. Under *Simmons*, Mitigating Evidence of Rehabilitation May Establish the Requisite Character and Fitness.

This Court's analysis of Mr. Stevens's application begins with the 14 factors in APR 21(a), along with the aggravating and mitigating factors in APR 21(b), which collectively guide the determination of an applicant's moral character and fitness to practice law. It is not enough, however, simply to recite and nominally apply the APR 21 factors to the record. Mr. Stevens, like all applicants, is entitled to a rigorous, individualized analysis—as this Court made clear in 2018, when it "affirm[ed] the principles that for purposes of bar admission, a moral character inquiry is determined on *an individualized basis* and that there is *no categorical exclusion* of an applicant who has a criminal or substance abuse history." *Simmons*, 190 Wn.2d at 378 (emphasis added).

Simmons did not simply announce broad principles to guide the Board's application of the APR 21 factors. The Court

conducted an *individualized* inquiry into whether the applicant, despite her "extensive criminal history and recent substance abuse," had demonstrated "sufficient rehabilitation from her prior criminal conduct and addictions." *Id.* at 380. Appropriately focused on the applicant's *present* character and fitness, the Court further considered whether she "*now* demonstrates that she conducts herself with a high degree of honesty, integrity and trustworthiness in her legal obligations, and . . . has the ability to conduct herself in a manner that engenders respect for the law and that adheres to the Washington Rules of Professional Conduct." *Id.* (emphasis added).

The Court concluded in *Simmons*, as it should here, that the applicant had demonstrated sufficient rehabilitation and established that she was "*currently* of good moral character and fit to practice law." *Id.* at 401 (emphasis added). In doing so, *Simmons* reaffirmed this Court's long-standing "recogni[tion] that one's past does not dictate one's future." *Id.* This case calls upon the Court to again reinforce this principle and ensure that it

informs the Board's consideration of applicants with criminal histories.

B. Crediting Evidence of Rehabilitation and Other Mitigating Factors Is Particularly Important When an Applicant's Offense Is Subject to Stigmatization.

The importance of an individualized APR 21 analysis is at its zenith when the Board considers an applicant with a criminal offense that society may view as inflammatory or stigmatized. To be clear, a bar applicant's criminal record—including a conviction for voyeurism, as in this case—is relevant to the APR 21 inquiry and should be scrutinized. However, as this Court has recognized, an applicant cannot fairly be denied admission to the bar based on generalized and inherently biased conclusions about past criminal offenses. Rather, each applicant is entitled to an individualized, fact-specific consideration of their past conduct (not the *label* attached to their offense) and subsequent rehabilitation as evidence of their *present* character and fitness. *See Simmons*, 190 Wn.2d at 401.

The individualized assessment mandated by *Simmons* is rarely more vital than when the label assigned to an applicant's offense is highly susceptible to stigmatization and likely to evoke biases and prejudices. That is the singular risk presented in this case, where the applicant is within the broad category of "sex offenders": intentionally or not, the label effectively ends the moral-character inquiry and becomes a de facto categorical exclusion. As the dissent noted, Mr. Stevens's application involves "hot button issues confronting society and the law," such as "sexuality, sexual identity, the sexual exploitation of children and teenagers, age of consent, adolescent behavioral and cognitive development and the on-going consequences of past criminal conduct." (Dissent at 2.)

These "hot button issues"—particularly conduct within the broad category of "sexual offenses" and persons labeled as "sex offenders"—undeniably can elicit strong personal views, overt or implicit biases, and stereotypes or assumptions. *See, e.g.*, Lydia Saad, *Sex Offenders Registries Are Underutilized by*

the Public, GALLUP POLL (June 9, 2005) (finding that, less than four years after 9/11, Americans were more afraid of "sex offenders" than terrorists), https://news.gallup.com/poll/16705/sex-offender-registries-underutilized-public.aspx.

In fact, many of the widely held assumptions about persons labeled as "sex offenders" are simply wrong. For example, studies have shown that persons convicted of sex offenses have among the *lowest* rates of recidivism. *See, e.g.*, Patrick A. Langan, *et al.*, *Recidivism of Sex Offenders Released from Prison in 1994*, at 1, BUREAU JUST. STATS. (Nov. 2003) (study of nearly 10,000 offenders released from prison in 1993 found that 94.7% had not been arrested for another sex crime three years later), https://bjs.ojp.gov/content/pub/pdf/rsorp94.pdf; *Recidivism Among Sex Offenders in Connecticut*, CONN. OFFICE OF POL'Y & MGMT., at 4 (Feb. 15, 2012) ("2012 OPM"), https://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex_offender_recidivism_2012_final.pdf; Ivan Kuzyk, *Notes on OPM's 2017 Sex Offender Recidivism Study*, at

15, CONN. OFFICE OF POL'Y & MGMT. (May 25, 2017), https://portal.ct.gov/-/media/OPM/CJPPD/CjResearch/RecidivismStudy/before-2020/Sex-OffenderRecidivsm-2011-Cohort-Sentencing-Comm-presentation.pdf?la=en (2012 and 2017 studies found, respectively, that 96.4% and 95.9% of persons convicted of a sex offense released five years earlier had not been arrested for another sex crime). Additional research has found that for every "five years [an] offender is in the community without a new sex offence, their risk of recidivism roughly halves." (Stevens Br., Att. D at 39 (citing Amy Phenix, *et al.*, STATIC-99R CODING RULES 11 (2016 rev.)).)

Nonetheless, objective data is often not enough to combat flawed but deeply held beliefs and biases about those who society labels "sex offenders." Which is why, in this case, *Simmons*'s insistence on an individualized and evenhanded application of the APRs is paramount. As the Court explained, evidence of an applicant's acceptance of, and rehabilitation from, their prior misconduct, length of time without reoffending, and recent

actions and conduct are a stronger indication of the applicant's *present* moral character and fitness to practice law than an applicant's *past* misdeeds. *See Simmons*, 190 Wn.2d at 387.

C. The Board's Majority Opinion Does Not Reflect the Individualized Inquiry Mandated by *Simmons*.

1. The majority erred in discounting Mr. Stevens's evidence of rehabilitation.

While the Board majority recited the relevant APR 21 factors, its application to the facts ran afoul of *Simmons*. First, the Board assigned inexplicably little weight to Mr. Stevens's post-conviction compliance and rehabilitation. Since his voyeurism convictions in 2006, 15 years ago, Mr. Stevens has not committed another sex offense. And although Mr. Stevens's 2013 guilty plea to the amended charge of impaired driving occurred while he was on probation for his voyeurism convictions, he has complied with all court orders and restrictions arising from his 2006 offenses—including drug-alcohol assessment, counseling, and abstinence. (Stevens Br. at 8–9.) Notably, the Utah Probation and Parole Department

recommended that probation for his voyeurism convictions be terminated early due to compliance; the court did not object and immediately closed the case. (*Id.* at 9; *id.*, Att. B at 39–41.)

Second, despite the Utah court's conclusion that Mr. Stevens's sentence was adequate for the crime he committed, the majority curiously found that Mr. Stevens's punishment was insufficient. The majority cited no Utah authorities to support this finding. (Majority Op. at 23.) Undoubtedly, the Utah judge who sentenced Mr. Stevens was more familiar with the underlying factual record, charges, and applicable law—all of which presumably led the judge to conclude that Mr. Stevens's sentence was adequate and proportional to the conviction.

2. Mr. Stevens's ongoing registration requirement is not evidence that his conduct was "recent."

Even more troubling is the majority's finding that Mr. Stevens's requirement to remain on the sex-offender registry until 2024 is relevant to the recency of his conduct. (Majority Op. at 22.)

To start, Mr. Stevens's registration status is simply a legal consequence of the label put on his conviction; it is not "misconduct," but rather a civil burden. *See State v. Trotter*, 2014 UT 7, 330 P.3d 1267, 1276 (Utah 2014) (registration requirement "is beyond the control of the trial court" and sentencing judge "has no discretion whatsoever in determining whether the defendant will have to comply with registration statutes").

Because Mr. Stevens's ongoing registration requirement does not render his conduct more "recent" than any other type of 15-year-old offense, the majority should not have assigned it any weight as an *aggravating* factor. In fact, Mr. Stevens's unblemished record of compliance with his registration requirement in two different states over the past six years is strong evidence of his rehabilitation and should be viewed as a *mitigating* factor under APR 21(b)(9).

In these ways, the majority's opinion bears indicia of treating Mr. Stevens's status as a "registered sex offender" as a

basis to categorically deny his application—rather than conducting an *individualized* analysis of his rehabilitation. Although the Court did not establish a bright-line rule in *Simmons*, it held that the applicant's sobriety for *six* years was sufficient in light of her efforts toward rehabilitation. 190 Wn.2d. at 387–89. Here, Mr. Stevens's DUI offense occurred seven years ago and his sex offense more than *14* years ago.

The majority also gave insufficient consideration to Mr. Stevens's young age at the time of his offense. Persons who commit a sex offense when young—especially when they go on to successfully complete treatment—are highly unlikely to reoffend. *See* Sarah Stillman, *When Kids Are Accused of Sex Crimes*, at 7, NEW YORKER (Mar. 7, 2016) (finding that "upward of ninety-five percent" of "youths who are charged with a sex offense . . . don't reoffend sexually"), https://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes (citing Elizabeth J. Letourneau & Charles M. Borduin, *The Effective Treatment of Juveniles Who Sexually*

Offend: An Ethical Imperative, 18 ETHICS & BEHAV. 286 (2008)); Shannon C. Parker, *Branded for Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 VA. J. SOC. POL'Y & L. 167, 188 (2014) ("Studies support a consensus among experienced practitioners in the field of juvenile sexual abuse intervention that juvenile sex offenders have a low rate of recidivism (between 2–14%) and are unlikely to become adult sex offenders.").

Furthermore, although Mr. Stevens was 19 years old at the time of his offense, this Court noted in *Fields v. Department of Early Learning* that "psychological and neurological studies show[ ] that the 'parts of the brain involved in behavior control' continue to develop *well into a person's 20s*." 196 Wn.2d 36, 46–47, 434 P.3d 999, 1005 (2019) (emphasis added); *see also State v. O'Dell*, 183 Wn.2d 680, 691–92, 358 P.3d 359, 364 (2015) (even when person is over 18, there are "particular vulnerabilities—for example, impulsivity, poor judgment, and

susceptibility to outside influences—of specific individuals" that may create "fundamental differences between adolescent and mature brains").

In light of the social science and this Court's precedents, the Board majority clearly underweighted Mr. Stevens's age as a mitigating factor under APR 21(b)(1). In keeping with *Simmons*, this Court's de novo review should better account for Mr. Stevens's young age and difficult life circumstances at the time of his offense. He "had learning and behavior challenges intermittently in school, and in high school, began suffering from severe depression. . . . [He] was alienated from the church . . . . and he attempted suicide. . . . [He was] struggling with his sexual orientation in the context of an upbringing where being anything other than a monogamous heterosexual was considered blasphemous." (Stevens Br. 3–4.) Consideration of these individual vulnerabilities is central to the individualized approach required by APR 21 and *Simmons*.

D. This Court's Individualized Application of the APRs to Rehabilitated Applicants Serves Important Individual and Public Interests.

The Court's analysis of Mr. Stevens's bar application is, by design, individualized and narrowly focused on the evidence presented to the Board. But the implications of the Court's decision are much broader. As explained below, the Court should also consider the effects of a precedent in this case on rehabilitated applicants' individual interests in pursuing their chosen profession, as well as the public interests of reducing barriers to reentry and enhancing the reputation of the legal profession.

1. Admission of rehabilitated applicants supports important individual interests.

When the government excludes a person from their chosen profession—in this case, the legal profession—there are constitutionally significant individual interests at stake. Specifically, it is well-established "that pursuit of an occupation or profession is a liberty interest protected by the due process clause." *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 219, 143

P.3d 571, 576 (2006) (citing U.S. Supreme Court and Ninth Circuit authorities dating from 1959) (citations omitted), *abrogated in part on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019); *see also Fields*, 193 Wn.2d at 43–45 (discussing applicant's substantive and procedural due process challenges to licensing regulations). As this Court explained more than a century ago,

> [t]he liberty mentioned in that [due process] amendment . . . is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; [and] to pursue any livelihood or avocation.

State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 192, 117 P. 1101, 1112 (1911).

In short, preventing an individual from pursuing their occupation without a rational basis erroneously deprives that person of a protected right. *See Fields*, 193 Wn.2d at 43–44. It is thus imperative that the Board scrupulously adhere to *Simmons* when applying the APRs and, in doing so, ensure that

rehabilitated applicants with criminal histories have a fair chance to pursue a career in law.

2. Important public interests are served by admitting rehabilitated applicants to the bar.

a. Admission of rehabilitated applicants assists in removing barriers to reentry.

Each branch of Washington's government has made clear that dismantling barriers to reentry is an important public policy. Nearly 50 years ago, reentry principles were codified in Washington's statutory law:

> The legislature declares that it is the policy of the state of Washington to encourage and contribute to the rehabilitation of felons and to assist them in the assumption of the responsibilities of citizenship, and the opportunity to secure employment or to pursue, practice or engage in a meaningful and profitable trade, occupation, vocation, profession or business is an essential ingredient to rehabilitation and the assumption of the responsibilities of citizenship.

RCW 9.96A.010. Accordingly, state agencies must take action to "improve public safety by reducing recidivism and help repair and rebuild families and communities impacted by

incarceration." Exec. Order No. 16-05, *Building Safe and Strong Communities Through Successful Reentry* (Apr. 26, 2016), https://www.governor.wa.gov/sites/default/files/exe_order/eo_16-05.pdf (noting importance of "eliminating policies or practices that exclude people from employment based on any criminal record" and giving applicants "a fair chance and allow[ing] employers the opportunity to judge individual job candidates on their merits"); *see also* RCW 43.380.005 (establishing Statewide Reentry Council to "improv[e] public safety and outcomes for people reentering the community from incarceration").

The population for whom these government programs are designed—persons with arrest and conviction records—is startlingly large. Over 70 million people—or nearly one in three U.S. adults—have an arrest or conviction record. Beth Avery, *et al.*, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions*, at 5, NAT'L EMP'T L. PROJECT (2019), https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v4-2019.pdf. In Washington

alone, an estimated 1.2 million individuals, or more than one-fifth of the state population, have a record. *Id.* at 31.

Even more distressing than the size of the population marked by the criminal legal system is the race disparity within that group. In Washington, Black people are incarcerated at a rate of 1,272 per 100,000 residents—approximately six times the rate for white people. *See* SENTENCING PROJECT, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 5 tbl.1 (2016), https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf. And because those marked by the criminal legal system are disproportionately Black, Latinx, and Indigenous, barriers to reentry in the form of employer preferences and legal restrictions disparately impact persons and communities of color.

Even before encountering barriers at the hiring stage, many people with criminal records are screened out of entire professions—including the legal profession—at the licensing

stage. The impact of licensing regimes on employment and reentry is particularly acute here in Washington, in which licensed workers comprise 30.5 percent of the workforce—the third-highest rate of occupational licensure in the nation. *See* White House, *Occupational Licensing: A Framework for Policymakers*, 24 tbl.1 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

The employment barriers facing people with criminal records also create substantial financial difficulties—not only for individuals and their families, but also to the detriment of the overall economy. A study of 2014 data estimated that reduced employment prospects for people with records translated into a loss of about $78 to $87 billion in annual gross domestic product. Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, at 1, CTR. FOR ECON. & POL. RSCH.

(2016), https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf.

Additionally, because gainful employment is proven to reduce recidivism, eliminating barriers to work for people with records also enhances public safety. A 2011 study found that employment was the single most important influence on decreasing recidivism—two years after release, nearly twice as many employed people with records had avoided another brush with the law as those without jobs. Mark T. Berg & Beth M. Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 397–98 (Apr. 2011), https://www.pacific-gateway.org/reentry,%20employment%20and%20recidivism.pdf; *see also* John M. Nally, *et al.*, *Post-Release Recidivism and Employment Among Different Types of Released Offenders: A 5-Year Follow-up Study in the United States*, 9 INT'L J. CRIM. JUST. SCI. 16, 28–29 (2014) ("[P]ost-release employment was the major predictor of recidivism, regardless of an offender's classification (*i.e.*,

violent, non-violent, sex, and drug offenders). . . . Results of this 5-year follow-up study clearly indicated that post-release employment was as an effective buffer for reducing recidivism among ex-offenders."); Aaron Yelowitz & Christopher Bollinger, *Prison-To-Work: The Benefits of Intensive Job-Search Assistance for Former Inmates*, MANHATTAN INST. FOR POL'Y RSCH. 1 (Mar. 26, 2015) ("Having a legitimate job reduces the likelihood of recidivism for ex-offenders."), https://media4.manhattan-institute.org/sites/default/files/cr_96.pdf

The same beneficial effects of post-conviction employment on recidivism apply to the profession at issue in this case. There is little, if any, increased risk of future bar discipline associated with prior criminal conviction. *See* Leslie C. Levin, *et al.*, *The Questionable Character of the Bar's Character and Fitness Inquiry*, 40 LAW & SOC. INQUIRY 51, 66 (2013) (prior criminal conviction not associated with statistically significant greater chance of bar discipline).

b. Admission of rehabilitated applicants enhances the reputation of the legal profession and the quality of the bar.

In matters relating to admission of attorneys, the Court's "responsibility . . . is to guard the public and its confidence in the judicial system." *In re Belsher*, 102 Wn.2d 844, 850, 689 P.2d 1078, 1082 (1984). Such a responsibility is fulfilled by the admission of applicants who have demonstrated rehabilitation, exemplary conduct, and candor, such as Mr. Stevens, Tarra Simmons, Stacey Ann Lannert, Ben Aldana, Christopher Poulos, and Shon Hopwood.

Indeed, as the Court has recognized, admitting rehabilitated applicants to the bar presents a significant opportunity to enhance the bar's reputation and improve public confidence in our profession. *See Simmons*, 190 Wn.2d. at 400 ("[G]iven the substantial obstacles that [Simmons] has overcome, her success is an even stronger indicator of her abilities than it would be for the average law student.").

Broader studies also indicate that applicants with criminal histories tend to improve the caliber of legal representation with their unique perspectives. *See* Sydney Wright-Schaner, *The Immoral Character of "Good Moral Character"—The Discriminatory Potential of the Bar's Character and Fitness Determination in Jurisdictions Employing Categorical Rules Preventing or Impeding Former Felons from Being Barred*, 29 GEO. J. LEGAL ETHICS 1427, 1434 (2016) ("Former felon lawyers, who offer the unique perspective of someone intimately acquainted with the justice system, may improve the caliber of legal representation."); Maureen M. Carr, *The Effect of Prior Criminal Conduct on the Admission to Practice Law: The Move to More Flexible Admission Standards*, 8 GEO. J. LEGAL ETHICS 367, 370 (1995) ("[T]he community may be denied the service of an active and dedicated individual who, quite possibly, has learned from past mistakes and who may now be more committed than many to ensuring that justice is served.").

Accordingly, the public interest is well served by admitting qualified and rehabilitated applicants who have shown the potential to be assets to the bar and other professions, as in *Simmons* and *Fields*. Mr. Stevens is among that group and deserves admission, but there is much more at stake. It would do grave harm to the public interest to exclude applicants like Mr. Stevens based on unfounded assumptions about past misconduct with too little regard for evidence of subsequent rehabilitation.

VII. CONCLUSION

For the forgoing reasons, Mr. Stevens has established by clear and convincing evidence that he possesses the requisite good moral character and fitness to practice law in Washington.

DATED this 13th day of September, 2021.

I certify that this brief contains 4,395 words, in compliance with the RAP 18.17 limit of 5,000 words for an amicus brief.

COOLEY LLP

By: 

Christopher B. Durbin, WSBA #41159
Gabrielle J. Hanna, WSBA #57855
1700 Seventh Avenue, Suite 1900
Seattle, WA 98101-1355
Tel.: (206) 452-8700
cdurbin@cooley.com
ghanna@cooley.com

Matthew D. Brown, Cal. Bar #196972
Christopher A. Vail, Cal. Bar #317760
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111-4004
Tel.: (415) 693-2000

Nancy L. Talner, WSBA #11196
Antoinette M. Davis, WSBA #29821
Jaime M. Hawk, WSBA #35632
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111
Tel.: (206) 624-2184
talner@aclu-wa.org

Alexandria "Ali" Hohman,
WSBA #44104
Cindy Arends Elsberry
WSBA #23127
WASHINGTON DEFENDER ASSOCIATION

110 Prefontaine Pl. S., Suite 610
Seattle, WA 98104-2626
Tel.: (206) 623-4321
ali@defensenet.org
cindy@defensenet.org

Mark Middaugh
WSBA #51425
WACDL AMICUS COMMITTEE
600 University St., Suite 3020
Seattle, WA 98101
Tel.: (206) 919-4269
mark@middaughlaw.com

Beth Avery
Cal. Bar #298232
NATIONAL EMPLOYMENT
LAW PROJECT
2030 Addison St., Suite 420
Berkeley, CA 94612
Tel.: (510) 663-5708
bavery@nelp.org

William R. Maurer
WSBA #25451
INSTITUTE FOR JUSTICE
600 University Street, Suite 1730
Seattle, WA 98101
Tel.: (206) 957-1300
wmaurer@ij.org

Brad A. Meryhew
WSBA #26797
THE MERYHEW LAW GROUP
200 Broadway, Suite 301

Seattle, WA 98122
Tel.: (206) 264-1590
brad@meryhewlaw.com

Janet Chung
WSBA #28535
Nicholas B. Allen
WSBA #42990
COLUMBIA LEGAL SERVICES
101 Yesler Way, Suite 300
Seattle, WA 98104
Tel.: (206) 287-8613
janet.chung@columbialegal.org

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Christopher Durbin, declare under penalty of perjury under the laws of the State of Washington that I am a partner in the law firm of Cooley LLP, at all times hereinafter mentioned, I was and am a resident of the State of Washington, over the age of 18 years, not a party to the above-entitled action, and competent to be a witness herein.

On this 13th day of September, 2021, I caused copies of the following documents to be served on the following individuals via U.S. Mail and E-mail:

Catherine Ann Biestek
catherineb@wsba.org
Renata De Carvalho Garcia
renatag@wsba.org
WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

Kevin M. Bank
kevin@kevinbanklaw.com
KEVIN BANK LAW PLLC
P.O. Box 61183
Seattle, WA 98141-6183

DATED this 13th day of September, 2021.

Christopher B. Durbin