

No. 21-35567

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

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

*Plaintiffs-Appellants,*

v.

CITY OF SEATTLE,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON (No. 2:18-CV-00736-JCC)

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**MOTION OF *AMICI CURIAE* CONSUMER DATA INDUSTRY  
ASSOCIATION AND THE PROFESSIONAL BACKGROUND  
SCREENING ASSOCIATION FOR LEAVE TO PARTICIPATE  
IN ORAL ARGUMENT**

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The Consumer Data Industry Association (“CDIA”) and the Professional Background Screening Association (“PBSA”) (collectively, “*Amici*”), pursuant to Federal Rules of Appellate Procedure 27 and 29(a)(8), respectfully move this Court for leave to participate in oral argument in the above-captioned matter to address why this Court should reverse the opinion of the District Court. In support of this motion, CDIA and PBSA state as follows:

1. In this case, Plaintiffs-Appellants challenge the legality of the Fair Chance Housing Ordinance, Seattle Municipal Code section 14.09 (the “Ordinance”), because it violates the Due Process and Free Speech provisions of the Washington State Constitution and the United States Constitution, and seek to permanently enjoin Defendant-Appellee, the City of Seattle, from its enforcement.

2. CDIA is an international trade association, founded in 1906, and headquartered in Washington, D.C. As part of its mission to support companies offering consumer information reporting services, CDIA establishes industry standards, provides business and professional education for its members, and produces educational materials for consumers describing consumer credit rights and the role of consumer reporting agencies (“CRAs”) in the marketplace. CDIA is the largest trade association of its kind in the world with a membership of approximately 180 consumer credit and other specialized CRAs operating in the United States and throughout the world.

3. PBSA is an international trade association of over 900 member companies that provide employment and tenant background screening and related services to virtually every industry around the globe. The tenant screening reports prepared by PBSA's background screening members are used by landlords and property managers every day to ensure that residential communities are safe for all who work, reside, or visit there. PBSA members range from large background screening companies to individually owned businesses, each of which must comply with applicable law, including when they obtain, handle, or use public record data.

4. CDIA and PBSA seek leave to participate in oral argument to support Appellants' position and provide the Court with important context on (1) the critical role that tenant screening serves in the rental housing market, (2) the federal laws that require appropriate screening of tenants, and (3) why the Ordinance, as interpreted and applied by the City of Seattle to the members of CDIA and PBSA, is preempted by federal law as applied to CRAs.

5. As *Amici* explained on brief, the tenant screening reports that *Amici* members provide are "consumer reports" governed by the federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* Brief of Amici CDIA and PBSA, ECF No. 17, at 4 ("Br."). Such reports help property owners assess and mitigate financial risk as well as provide an objective mechanism by which property managers can prioritize the safety of their employees, residents, and guests.

6. *Amici* explained the key role tenant screening plays in the U.S. economy, and the responsibilities that all landlords have, including the federal government when acting as a housing provider, to provide safe housing. Br. at 5-6. Recognizing this duty, Congress required that public housing authorities screen applicants who have been convicted of certain types of drug-related, violent, or other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing-agency employees. 42 U.S.C. § 13661; Br. at 6-7 (“Federal guidelines instruct that public housing authorities may reject applicants who have engaged in any of the following activities within a reasonable time before submitting their application: drug-related criminal activity, violent criminal activity, and other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing-agency employees”).

7. *Amici* also explained that, in grappling with the correlation between ethnicity and the ethnic breakdown of convicted persons, the U.S. Department of Housing and Urban Development, charged with enforcement of Fair Housing Law under 42 U.S.C. § 3608(a) and 42 U.S.C. § 3614a, declined to adopt a blanket ban

on the use of criminal record information in housing decisions.<sup>1</sup> Br. at 9. Instead, the law requires providers to establish criteria regarding the use of specific types of criminal records as a basis for disqualification from housing, such as violent offenses and classes of more serious drug offenses. In *Amici*'s members' experience, housing providers' practices are aligned with this policy. Br. at 8.

8. *Amici* highlighted in their briefing the sweeping impact the Ordinance has, not only on the Appellants herein, but on property owners and consumer reporting agencies. In this way, *Amici* offer a broader perspective on the potential unintended consequences of the Ordinance, as applied.

9. Although the Ordinance expressly states that it "shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law, including but not limited to . . . [the FCRA]" Seattle Mun. Code. § 14.09.115(A), the Seattle Office of Civil Rights ("SOCR") - which is the agency

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<sup>1</sup> U.S. Dept. of Housing and Urban Development, *Office of General Counsel Guidance on Application of Fair Housing Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (Apr. 4, 2016), available at [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF) The Guidance expressly noted that Section 807(b)(4) of the Fair Housing Act "does not prohibit conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)."

charged with the enforcement of the Ordinance<sup>2</sup> - has interpreted this provision in a manner that brings it into direct conflict with the FCRA and other federal law. Br. at 18-19. In particular, SOCR has declared that the Ordinance not only prevents housing providers from using most criminal records in the application process, but that it must be read to also preclude consumer reporting agencies, *Amici's* members, from preparing the reports in the first instance. Br. at 2, 19.

10. This interpretation is invalid based on a plain reading of the Ordinance, and in any event is preempted by the FCRA. *See* Br. at 17-20. CDIA and PBSA are uniquely qualified to assist this Court in understanding the Ordinance's attempt to thwart the intent of Congress in enacting the FCRA to create a uniform national framework governing credit reporting and the impact the Ordinance, as applied, would have on all participants in the tenant screening process in Seattle. CDIA has participated as *amicus curiae* in numerous appeals in this Circuit and others that involved the interpretation of the FCRA.<sup>3</sup>

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<sup>2</sup> City of Seattle, Ordinance 125393, Council Bill 119015 ([https://www.seattle.gov/Documents/Departments/CivilRights/Fair%20Housing/Fair%20Chance%20Housing%20FAQ\\_amendments\\_FINAL\\_08-23-18.pdf](https://www.seattle.gov/Documents/Departments/CivilRights/Fair%20Housing/Fair%20Chance%20Housing%20FAQ_amendments_FINAL_08-23-18.pdf)).

<sup>3</sup> *See Gorman v. Wolpoff & Abramson, LLP et al.*, No. 06-17726 (9<sup>th</sup> Cir.); *Pintos v. Pacific Creditors Ass'n, et al.*, No. 04-17485 (9<sup>th</sup> Cir.); *Bateman v. American Multi-Cinema, Inc.*, No. 09-55108 (9<sup>th</sup> Cir.). *See also Premium Mortgage Corp. v. Equifax, Inc., et al.*, 583 F.3d 103 (2<sup>d</sup> Cir. 2009) (identifying CDIA as *amicus curiae*); *Taylor v. Acxiom Corp.*, 612 F.3d 325 (5<sup>th</sup> Cir. 2010) (same); *Picard v. Credit Solutions, Inc.*, 564 F.3d 1249 (11<sup>th</sup> Cir. 2009) (same) and been granted leave to participate as *amicus curiae* by the U.S. Supreme Court.

11. The City responded to several points raised by *Amici* in their brief. Answering Brief of City of Seattle, ECF No. 25, at 26, 32 n.13, 47-52, 62. Given the importance of the issues presented, *Amici* respectfully suggest that this Court should grant *Amici's* motion to participate in oral argument.

12. Plaintiffs-Appellants do not oppose *Amici's* participation in oral argument in this case and do not oppose granting Defendant-Appellee an additional five minutes of arguing time to accommodate *Amici's* request but are unable to cede any of their time. Defendant-Appellee does not oppose *Amici's* request to participate, but only on the condition that *Amici* use some of the time allotted to Plaintiffs-Appellants.

13. This Court has scheduled oral argument in this case to take place on Tuesday, May 17, 2022 at 9:30 a.m. *Amici* respectfully request that the Court grant an additional five minutes of time for *Amici* to argue in support of Plaintiffs-Appellants, taken from neither party. Out of fairness, this Court should grant an additional five minutes to Defendant-Appellee.

14. If the Court grants this motion, undersigned counsel, Jennifer Sarvadi, would argue on behalf of *Amici*, and would promptly file an "Acknowledgement of Hearing Notice" form on the docket consistent with this Court's requirements.

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*See, e.g., Radian Guaranty, Inc. v. Whitfield, et al.*, 553 U.S. 1091 (2008) (granting CDIA's motion for leave to file a brief of *amicus curiae*).

Attorney Sarvadi is admitted to practice in this Circuit and has previously filed an appearance in this case.

WHEREFORE, *amici curiae*, the Consumer Data Industry Association and Professional Background Screening Association pray for leave to participate in oral argument and be allotted 5 minutes, taken from neither party.

Dated: April 7, 2022

Respectfully submitted,

s/ Jennifer L. Sarvadi

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## CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,678 words, excluding the parts exempted by the Rules.
2. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: April 7, 2022

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### **CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2022, I electronically filed the foregoing document 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.

Signature: s/ Jennifer L. Sarvadi