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Discriminatory Driver's License Suspension Schemes

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"The story of license suspensions . . . reveals both the extent of the injury governments are willing to inflict on low-income people in order to balance their books and the results that advocacy can achieve to reduce the damage." – Peter Edelman¹

More than seven million Americans have lost their driver's licenses for nonpayment of a ticket or fine.² For many lower-income community members in 21st century America, a driver's license is critical for everyday life tasks like getting to work, childcare or a child's school, doctor's appointments (especially vital for senior citizens), and transporting heavy groceries. Most people who are not able to afford to pay their fines, therefore, just keep driving.³ When a person driving with a suspended license is stopped by law enforcement, they typically get a ticket, may be subjected to more fines, and may even be arrested and end up in prison. Their inability to pay that original fine—their poverty—is, in effect, criminalized.

National awareness of governments' use of fines and fees to extract revenue from low-income, predominantly African-American residents has risen substantially since the protests and violent conflict that followed the 2014 killing of Michael Brown by the Ferguson, Missouri Police Department. Here was an object lesson in state and local governmental power to perpetuate and criminalize poverty. After the U.S. Department of Justice Civil Rights Division investigated police and court practices in Ferguson, it released a report describing how citizens get trapped in a double helix of poverty and punishment. Initial fines and fees quickly and automatically trigger more monetary penalties, a suspended driver's license (with more penalties imposed for driving on a suspended license), mandatory court appearances (with more penalties levied for missing those hearings), and, almost inevitably, criminal penalties. The City of Ferguson's "focus on revenue rather than . . . public safety needs," the report

¹ PETER EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* 40 (The New Press 2017).

² Justin Wm. Moyer, *More than 7 Million People May Have Lost Driver's Licenses Because of Traffic Debt*, WASH. POST (May 19, 2018) ("The total number nationwide could be much higher based on the population of states that did not or could not provide data."). This number was derived from a single snapshot in time published in 2017. *Id.*

³ See, e.g., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., *EFFECTIVENESS OF ADMINISTRATIVE LICENSE SUSPENSIONS AND VEHICLE SANCTION LAWS IN OHIO* (2000) (noting estimates that "up to 75% of DUI offenders continue to drive while suspended").

found, led to “procedures that raise due process concerns and inflict unnecessary harm,” including the suspension of driver’s licenses for unpaid debts, followed oftentimes by an arrest for driving without a license.⁴

In the wake of Ferguson, a wave for reform has emerged. Institutions like the American Bar Association, for example, have weighed in on this issue, adopting the principle that “disproportionate sanctions, including driver’s license suspension, should never be imposed for a person’s inability to pay a fine or fee,”⁵ and explaining that “[e]xcessive fines and fees . . . have burdened millions of Americans, particularly those too poor to pay. The alarming results, including jail time for unpaid traffic tickets, have effectively criminalized poverty and eroded public confidence in the justice system.”⁶ And indeed, in the past several years, a growing number of state-level reform efforts have been launched to end license-for-payment schemes in which the legal right to drive is taken away from people for non-payment of fines or fees with no inquiry into their ability to pay.

This Issue Brief examines the policy and legal features of this systemic justice problem and efforts to address it. Part I sketches out the scope of the problem. Part II explores how license-for-payment schemes: deprive low-income families of money and opportunity while increasing their exposure to the criminal justice system; disproportionately impact communities of color; force courts, prosecutors, and police officers to divert resources away from public safety efforts; and, to the extent they do generate some revenue for the state government, do so largely as a wealth transfer to the state from low-income communities of color who can least afford it. Part III identifies constitutional flaws in license-for-payment schemes and highlights the growing wave of reform that is emerging through legislative action and litigation. A handful of states and now the District of Columbia have taken legislative steps towards reform, and three federal district courts have already sustained constitutional challenges to state license-for-payment schemes. Both of these trends are poised to continue. Part IV concludes with some reflections on anticipated reforms and court challenges, and where we go from here.

I. Background

When most people hear about suspended licenses, they think of public safety issues—drunk driving, for example, or accumulating too many points on a driving record. In contrast to public-safety suspensions, debt-collection suspensions are about money, punishment, and coercion—and on a very large scale, at that. As documented by the Legal Aid Justice Center, license-for-payment systems are “ubiquitous.”⁷ In Texas alone, more than 1.8 million people

⁴ CIVIL RIGHTS DIV., DEP’T OF JUSTICE, *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* 2 (2015).

⁵ See *TEN GUIDELINES ON COURT FINES AND FEES* § 3 cmt. (AM. BAR ASS’N 2018).

⁶ *Id.* at iv.

⁷ MARIO SALAS & ANGELA CIOLFI, LEGAL AID JUSTICE CTR., *DRIVEN BY DOLLARS* 8 (2017). Only four states (California, Kentucky, Georgia, and Wyoming)—do not suspend driver’s licenses for unpaid court debt. See *id.*

have had their licenses suspended for unpaid, court-related debts.⁸ More than forty states use driver’s license suspension as punishment for failure to pay certain debts, which may include traffic or parking tickets, other types of court debt from civil judgments, child support orders, and taxes or other amounts allegedly owed the state or municipal government.⁹

In most states, a person’s driver’s license may be suspended *without* regard for or inquiry into their ability to pay at the time of suspension.¹⁰ Only four states—Louisiana, Minnesota, New Hampshire, and Oklahoma—require a determination that the person had the ability to pay and intentionally refused to do so.¹¹

In many states, driver’s license suspension is a “mandatory consequence anytime a person does not pay court debt on time.”¹² Nineteen states have rules that require driver’s license suspension following a missed deadline for court debt payment. Of these states, only New Hampshire requires a court to first determine that the debtor has the ability to pay.¹³

Most jurisdictions that suspend driver’s licenses for unpaid debt to the government do so indefinitely.¹⁴ In these states, driver’s licenses remain suspended until the state is satisfied concerning payment (be it payment of the full amount or through a negotiated settlement), or until statutes of limitation on debt collection expire, preventing the state from pursuing those debts any longer.¹⁵ Only five states have laws limiting the length of these suspensions,¹⁶ and virtually every jurisdiction imposes an *additional* fee to reinstate a suspended license.

Failure to pay a fine to the state government, even if it does not lead to the immediate suspension of a person’s license, can, in some jurisdictions, lead to the denial of a person’s application to *renew* a license, a car registration, or both. As in the suspension context, the denial of application for *renewal* of the license or registration is automatic and occurs with no

⁸ See ANDREA M. MARSH, NAT’L CTR. FOR COURTS, [RETHINKING DRIVER’S LICENSE SUSPENSIONS FOR NONPAYMENT OF FINES AND FEES](#) 21 (2017).

⁹ SALAS & CIOLFI, *supra* note 7, at 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 8, 13 n. 38 (citing N.H. REV. STAT. § 263:56-a).

¹⁴ See *id.* at 14-15.

¹⁵ Even where the judgment has expired, however, and the law requires reinstatement of the license, DMV bureaucracies may fail to promptly restore the license. See, e.g., [Performance Oversight Hearing Regarding the Department of Motor Vehicles: Hearing Before the Committee on Transportation and the Environment](#), Council Period 22, 2 (D.C. 2018) (statement of Stacy Santin, Staff Attorney, Legal Aid Society of the District of Columbia) (“One common and problematic scenario we see involves the continued license suspension based on a judgment that has already expired.”).

¹⁶ See SALAS & CIOLFI, *supra* note 7, at 9. The states with laws limiting the length of suspensions are Idaho, Minnesota, New Mexico, Vermont, and Wisconsin. *Id.*

inquiry as to the person's income or ability to pay.¹⁷ The denial of the renewal functions, in effect, as a slow-motion suspension.

II. License-for-Payment Schemes Are Bad Policy

State-level regimes that suspend driver's licenses for unpaid debt without requiring an assessment of the individual's ability to pay have a number of negative public policy consequences for the individuals whose licenses are suspended and their families, as well as for the broader community. License suspensions can result in reduced job prospects; further inability to pay (or for the government to collect) outstanding debts; and increased exposure to the criminal justice system, which in turn diverts criminal justice resources away from public safety efforts. These consequences disproportionately fall on our communities of color.

A. Lost Jobs and Reduced Job Prospects

The most direct consequence of widespread license suspension is decreased employment and income: the loss of a license makes it harder to find or keep a job.¹⁸ A license is "often needed for commuting, particularly as jobs are increasingly located outside of inner-city areas; many jobs require driving as part of the work responsibilities; and even for non-driving jobs, employers often require applicants to have a valid driver's license as an indicator of reliability or responsibility."¹⁹ In one survey, 80 percent of respondents reported not having access to or being unqualified for job opportunities due to license suspensions.²⁰

Studies have found a robust correlation between a lack of legal authority to drive and unemployment/underemployment.²¹ For example, a study of New Jersey drivers found that 42 percent of individuals whose licenses had been suspended lost their jobs within six months after the license suspension, and nearly half were unable to obtain new employment during the suspension.²² And of those drivers that could find another job, 88 percent reported a decrease in income.²³ Further, even where employers are willing to hire individuals without driver's

¹⁷ See, e.g., Hawaii (H.C.T.R. Rule 15(b)), Illinois (625 I.L.C.S. § 5/6-306.6); Texas (TEX. TRANSP. CODE ANN. §§ 706.002, 706.004); DC Official Code §§ 47-2861 (D.C.'s so-called "clean-hands law," under which an applicant for a license renewal will be denied if \$101 or more is owed to the DC government for, among other things, any fine, penalty, interest, or tax).

¹⁸ See, e.g., ALEX BENDER, ET AL., LAWYERS COMM. FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, [NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA](#) 7 (2015).

¹⁹ *Id.* at 17.

²⁰ MARGY WALLER, JENNIFER DOLEAC, & ILSA FLANAGAN, BROOKINGS INST., [DRIVER'S LICENSE SUSPENSION POLICIES](#) 2 (2005).

²¹ See, e.g., BENDER ET AL., *supra* note 18, at 17 n.70 (collecting studies).

²² N.J. MOTOR VEHICLES AFFORDABILITY AND FAIRNESS TASK FORCE, [FINAL REPORT](#) 38 (2006) [hereinafter N.J. MOTOR VEHICLES].

²³ *Id.* Further, job losses resulting from loss of driving privileges can have a cascading cost effect, with the economic costs of unemployment or job switches sometimes being transferred onto the employers. As one California report found, "there is a cost to hiring and re-training a new person for a job being done well by someone else. It is an unnecessary expense to both employers and the state to pay unemployment insurance for an employee who would be retained if the person had a license." BENDER ET AL., *supra* note 18, at 7.

licenses, a car remains crucial, as a practical matter, for physical access to jobs in cities, suburbs, and rural communities. For example, a Brookings Institute report found that only 37 percent of jobs in the D.C. metro area are accessible by public transit within ninety minutes.²⁴

Driver's licenses are often a job requirement for jobs that can lift people out of poverty, such as construction, manufacturing, security, transportation, and union jobs.²⁵ The New Jersey study found that low-income and young drivers were most likely to lose their jobs due to license suspension and also least likely to find another job.²⁶ Another study found that "a valid driver's license was a more accurate predictor of sustained employment than a General Educational Development (GED) diploma among public assistance recipients."²⁷ The relationship between day-to-day mobility and the ability to transition from government assistance to employment is also well-documented.²⁸ Put simply, most adults rely on driver's licenses to travel to work and maintain employment.²⁹

B. Decreased Ability to Pay Fines

License suspensions' negative effects on employment raises the basic question of why governments would continue to suspend licenses for unpaid debts. Lisa Foster, a former judge, former Director of the U.S. Department of Justice Office of Access to Justice, and current Co-Director of the Fines and Fees Justice Center, aptly sums it up this way: "If the goal is for people to pay their court debt, why would we make it more difficult for them to get to work?"³⁰

If the goal of license-for-payment schemes is to coerce payment of outstanding fines or fees, that logic is flawed when it comes to low-income people. By harming the job prospects and upward mobility of those whose licenses are suspended, license-for-payment laws curtail people's ability to generate the income necessary to repay any outstanding fines or fees and to transition away from government assistance.³¹ When the government suspends driver's licenses for failure to pay debt, it typically makes debtors less able to pay their fines (a condition which is only exacerbated as fines are multiplied by the addition of late fees and license reinstatement fees). *The Washington Post* editorial page persuasively described the effect

²⁴ ADIE TOMER, ET AL., METROPOLITAN POLICY PROGRAM AT BROOKINGS, [MISSED OPPORTUNITY: TRANSIT AND JOBS IN METROPOLITAN AMERICA](#) 16 (2011).

²⁵ Alana Semuels, *No Driver's License, No Job*, ATLANTIC (June 15, 2016).

²⁶ See N.J. MOTOR VEHICLES, *supra* note 22, at 38.

²⁷ REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, [THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES](#) 20-21 (2010) (citing JOHN PAWASARAT & LOIS M. QUINN, EMPLOYMENT & TRAINING INST., UNIV. OF WIS. MILWAUKEE, [THE EARN \(EARLY ASSESSMENT & RETENTION NETWORK\) MODEL FOR EFFECTIVELY TARGETING WIA & TANF RES. TO PARTICIPANTS](#) (2007)).

²⁸ See, e.g., U. S. GAO, [WELFARE REFORM: TRANSPORTATION'S ROLE IN MOVING FROM WELFARE TO WORK](#) (1998).

²⁹ *Id.*

³⁰ Lisa Foster, Lecture at the 59th Miller Distinguished Lecture Series at Georgia State University College of Law: [Injustice Under Law: Perpetuating and Criminalizing Poverty Through the Courts](#) (Mar. 2, 2017).

³¹ BENDER ET AL., *supra* note 18 at 7 ("[B]y restoring driver's licenses and allowing people to work, more drivers would be able to pay traffic fines and fees, which would reduce uncollected court debt and increase revenue.").

of suspending indigent driver's licenses as: "a vicious cycle. You can't afford to pay an initial court fine for a parking ticket . . . so you lose your license. That means you can't drive to work or hold a job that requires a license—which makes you even less able to pay" ³²

C. Unnecessary Exposure to the Criminal Justice System

License suspension schemes set up low-income people to suffer the consequences of getting caught up in the criminal justice system, as many people who have had their licenses revoked keep driving due to the realities of life. ³³ "And if they are stopped by law enforcement, they then get a ticket for driving on a suspended license, which in many states is a misdemeanor. More fines and fees are imposed, and they may be incarcerated—all because they are poor." ³⁴ As an analysis by the National Conference of State Legislatures concluded: "All 50 states and the District of Columbia . . . have penalties for driving without a license. These penalties vary widely, but follow a similar theme: driving without a license is a serious offense that goes beyond a moving violation. Penalties generally involve fines, jail time or both." ³⁵

But as Dahlia Lithwick has observed:

It makes no sense to jail people who are poor for trying to do the very things that could lift them out of poverty; better to repeal the laws requiring the suspension of driving privileges for non-traffic safety related reasons, than to see it become a one-way road into prison. ³⁶

D. Disproportionate Impact on Communities of Color

License-for-payment schemes are especially problematic because their consequences fall disproportionately on low-income communities of color. The criminal justice implications of these schemes are emblematic of this disparity. In an analysis in D.C., for example, where roughly 47 percent of residents are African-American, over 80 percent of those arrested in a single year for driving without a license were African-American. ³⁷ In Milwaukee, a black driver is seven times as likely to be stopped by police as a white driver, according to an investigation by the Milwaukee Journal-Sentinel, ³⁸ and two of every three working-age African-Americans

³² Editorial Board, *Virginia is Punishing the Poor—and Perpetuating Their Poverty*, WASH. POST, (Feb. 5, 2018).

³³ Thomas B. Harvey, *Jailing the Poor*, 42 HUM. RTS. MAG. 16 (2017).

³⁴ Lisa Foster, *Injustice Under Law: Perpetuating and Criminalizing Poverty Through the Courts*, 33 GA. ST. U. L. REV. 695, 708 (2017); see also Ariel Levinson-Waldman & Joanna Weiss, *D.C. Should Stop Suspending Driver's Licenses for Unpaid Fines*, WASH. POST (Aug. 19, 2018) ("No one should have to risk incarceration because he or she needs to drive to work, pick up kids or rush a family member to the hospital.").

³⁵ *Driving While Revoked, Suspended or Otherwise Unlicensed: Penalties by State*, NAT'L CONF. ST. LEGISLATURES (Oct. 27, 2016). Future research is warranted on the number of people arrested for driving on a suspended or revoked license where the license was stripped due to unpaid debts.

³⁶ Dahlia Lithwick, *Punished for Being Poor*, SLATE (July 16, 2016).

³⁷ *The "Driver's License Revocation Fairness Amendment Act of 2017" (22-0618): Hearing Before the Committee on Transportation and the Environment*, Council Period 22 (D.C. 2018) [hereinafter Banks Testimony], (statement of Marques Banks, Equal Justice Works Fellow, Washington Lawyers' Committee for Civil Rights and Urban Affairs).

³⁸ Ben Poston, *Racial Gap Found in Traffic Stops in Milwaukee*, MILWAUKEE J. SENTINEL (Dec. 3, 2011).

do not have a license.³⁹ An analysis by the ACLU of license suspensions and traffic stops in Ohio concluded that “the high police presence in low-income urban areas likely accounts for this gap. . . . The big picture here is that people’s licenses are being suspended because we have targeted enforcement of laws Law enforcement officers are often deployed to low-income communities and communities of color.”⁴⁰

In jurisdictions with sizable communities of color, the disproportionate impact of license-for-payment schemes extends well beyond criminal law enforcement. In California, African-Americans “are 60 percent more likely than non-Hispanic whites to lose their licenses, and Hispanics are 20 percent more likely.”⁴¹ Similarly, a 2015 study showed that in Virginia, African-Americans represented nearly 50 percent of the drivers who had their licenses revoked for failure to pay, despite constituting 22 percent of the population.⁴²

E. Inefficient State Revenue Generator

In 2017, then-California Governor Jerry Brown offered a budget bill that ended the suspension of licenses for unpaid traffic tickets. A report accompanying the enacted bill explained that increased fines and penalties “place[] an undue burden on those who cannot afford to pay,” which in California had “led to an increasing amount of fines and penalties going uncollected.”⁴³ The report concluded that there “does *not* appear to be a strong connection between suspending someone’s driver’s license and collecting their fine or penalty.”⁴⁴

Similarly, the Durham County, North Carolina district attorney found that forgiving the types of traffic debt and court fees that frequently lead to license suspension would not result in lost revenue for the state, noting that “[o]ur research shows that anybody that hasn’t paid within two years is not going to pay.”⁴⁵

When courts consider a person’s income and ability to pay in assessing and collecting fines and fees, however, the likelihood of collecting that debt are much higher. An analysis in Minnesota found that the state’s diversion pilot program for those with suspended licenses, which allowed them to obtain valid licenses while paying fines and fees pursuant to certain modest

³⁹ Jessica Eaglin, *Driver’s License Suspensions Perpetuate the Challenges of Criminal Justice Debt*, BRENNAN CTR. FOR JUST. (Apr. 30, 2015).

⁴⁰ Sara Dorn, *License Suspensions Disproportionately Imposed on Poor Ohioans, Trapping Them in Debt*, CLEVELAND.COM (Mar. 31, 2017) (internal quotations omitted) (describing study by ACLU of Ohio).

⁴¹ EDELMAN, *supra* note 1, at 38.

⁴² Banks Testimony, *supra* note 37.

⁴³ *California AB 103 – Public Safety Omnibus*, FINES AND FEES JUST. CTR. (June 27, 2017).

⁴⁴ *Id.* (emphasis added)

⁴⁵ Virginia Bridges, *Why is Durham Dismissing Hundreds of Speeding Tickets, with Thousands More Expected?*, HERALD SUN (Jan. 17, 2019) (internal quotation marks omitted).

payment plans, was “responsible for recovering significant outstanding fine and fee revenue that would otherwise remain uncollected.”⁴⁶

Suspending driver’s licenses for unpaid debt winds up costing police and the state departments of motor vehicles significant administrative and court resources. For example, when Washington State instituted an amnesty program for drivers with suspended licenses, it saved an estimated 4,500 hours of patrol officers’ time.⁴⁷ And a broad study of pilot programs found that “[a] significant amount of court resources are expended on judicial and administrative oversight of delinquent accounts.”⁴⁸ According to one California report, “[t]he police, DMV, and courts spend millions arresting, processing, administering, and adjudicating charges for driving on a suspended license. Add in the cost of jailing drivers whose primary fault was failing to pay, and we have a costly debtor’s prison.”⁴⁹

F. Diversion of Resources from Public Safety

License-for-payment schemes may also *create* public safety risks. When police officers and courts become ad hoc debt collectors, their time is diverted from addressing conduct that truly affects public safety. For example, the Washington State study estimated that the state devoted more than 79,000 personnel hours to dealing with license suspensions unrelated to highway safety. The American Association of Motor Vehicle Administrators determined that “the costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.”⁵⁰

Further, by reducing employment opportunities, license suspensions may increase the likelihood of recidivism for people coming out of jail and prison,⁵¹ further diverting criminal justice system resources from legitimate public safety concerns to address arrests stemming from the loss of driver’s licenses that were taken away simply for lack of funds to pay a ticket.

III. A Wave of Reform Efforts

In recent years, a number of states have taken legislative and administrative action to reform license-for-payment schemes. In parallel, public interest organizations have brought constitutional challenges to the schemes in a number of jurisdictions; several courts have sustained these challenges, while other litigation efforts have sparked legislative or administrative reform.

⁴⁶ DRIVER & VEHICLE SERVS., *LICENSE REINSTATEMENT DIVERSION PILOT PROGRAM, LEGISLATIVE REPORT* 9 (2013) (Minnesota Driving Diversion Program).

⁴⁷ Shaila Dewan, *Driver’s License Suspensions Create Cycle of Debt*, N.Y. TIMES (Apr. 15, 2015).

⁴⁸ See Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53, 70 (2017).

⁴⁹ BENDER ET AL., *supra* note 18, at 7.

⁵⁰ AM. ASS’N OF MOTOR VEHICLE ADM’RS, *BEST PRACTICES GUIDE TO REDUCING SUSPENDED DRIVERS* 2 (2013).

⁵¹ See Kevin T. Schnepel, *Good Jobs and Recidivism*, 128 ECON. J. 447 (2016).

A. Legislative and Administrative Reform

In response to the public policy concerns described above, and further spurred by the high-profile controversies surrounding the fallout from Ferguson, states and cities have begun reforming coercive license-for-payment regimes. Two years before Ferguson, Washington State abolished license suspension for non-moving violations.⁵² Since then, California has enacted legislation ending the suspension of driver's licenses for unpaid traffic tickets.⁵³ Mississippi, after discussions with advocates, announced that it would both reinstate all licenses suspended for nonpayment of fines, fees, and assessments, and stop suspending licenses for mere nonpayment of court debt.⁵⁴ Maine's legislature, over the governor's veto, ended automatic driver's license suspensions for many non-driving related fines.⁵⁵ Idaho recently enacted legislation decriminalizing driving on a suspended license and ending suspensions for unpaid court fines and fees.⁵⁶ And, as discussed further below, in 2018, the District of Columbia enacted legislation ending license suspension for failure to pay tickets for moving violations or to appear at a hearing related to such a ticket, and reinstating licenses suspended on those grounds.⁵⁷

States and cities have also implemented a variety of non-statutory programs, policies, and pilots to ameliorate license-for-payment laws.⁵⁸ The programs include payment plans, some of

⁵² See Eaglin, *supra* note 39.

⁵³ *California No Longer Will Suspend Driver's Licenses for Traffic Fines*, L.A. TIMES (June 29, 2017 9:50 AM).

⁵⁴ *SPLC, MacArthur Justice Center, and Department of Public Safety Announce that Mississippi Will Reinstate Thousands of Driver's Licenses Suspended for Failure to Pay Fines*, U. MISS. SCH. L. (Dec. 19, 2017).

⁵⁵ *LD 1190* (HP 827) 128th Leg. (Me. 2017) (Engrossed by the House on June 23, 2017 and by the Senate on June 27, 2017; Veto Override on July 9, 2018). Maine law previously provided that failure to pay any monetary fine imposed by a court for a civil violation, traffic infraction proceeding, or sentence for a criminal conviction could subject a defendant to license suspension. ME. REV. STAT. ANN. tit. 14, § 3141 Under the recently-passed bill, license suspension was removed from this regime. *Id.* Virginia also enacted legislation to provide payment plans to people at risk of losing their licenses because of court debt, see Travis Fain, *McAuliffe Sign Bill on Drivers License Suspensions*, DAILY PRESS (May 25, 2017, 8:11 PM), but that reform has been criticized as ineffective, see LEGAL AID JUSTICE CTR., *DRIVING ON EMPTY: PAYMENT PLAN REFORMS DON'T FIX VIRGINIA'S COURT DEBT CRISIS* (2018).

⁵⁶ *H.B. 512*, 64th Leg., 2d Sess. (Idaho 2018).

⁵⁷ See D.C. Act 22-449 (amending D.C. Law 2-104; D.C. CODE § 50-2301.01 *et seq.*); see also notes 59 - 61 and accompanying text.

⁵⁸ In addition to the types of programs described in the body text, some jurisdictions allow individuals to perform community service in lieu of payment. See, e.g., ALICIA BANNON, MITALI NAGRECHA, & REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, *CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY* 11 (2010); Richard A. Webster, *\$23,000 in Traffic Fines Reduced to \$9 for Man as Pilot Program Takes on New Orleans' Court System*, NOLA.COM (Mar. 30, 2017) (New Orleans); see generally ANDREA M. MARSH, NAT'L CTR. FOR COURTS, *RETHINKING DRIVER'S LICENSE SUSPENSIONS FOR NONPAYMENT OF FINES AND FEES* (2017). Community service programs are often not feasible for people earning a low income. Typically, community service is credited at minimum wage or \$10 per hour, which means that anyone working multiple jobs or carrying significant family obligations cannot feasibly find the dozens or even hundreds of hours required to satisfy even a fairly modest amount of court debt. Some of these programs also require fees for participation (e.g., to cover the administrative costs of the program), which are often sufficiently high as to defeat the purpose of using the program to assist those who cannot afford the monetary fees. See, e.g., *Community Service Program*, S.F. MUN. TRANSP. AGENCY, (listing enrollment fees of up to \$125).

which are keyed to a person's income,⁵⁹ amnesty programs that allow people to have their debts reduced or even forgiven,⁶⁰ and non-prosecution for driving on a license suspended due to unpaid fines and fees.⁶¹ There are and have been a number of such programs; they were the major source of reform before the post-Ferguson tide of legislative repeal efforts and constitutional challenges. Non-legislative reforms, however, are often limited in their scope, duration, or efficacy. For example, a payment plan might require a down payment or minimum monthly payment that is prohibitively high for people with low incomes, and in some jurisdictions, drivers who have previously utilized a payment plan cannot establish another one.⁶²

The District of Columbia provides an example of how positive legislative and administrative efforts can move, more or less, in tandem.

In 2018, the Council of the District of Columbia (D.C.'s state-level, municipal, and county-level legislature), with support from D.C. Attorney General Karl Racine, enacted a bill that ended the suspension of driver's licenses for unpaid traffic debts or nonattendance at a traffic court hearing, and required the D.C. Department of Motor Vehicles to restore all licenses suspended on those bases within 30 days.⁶³ In addition, D.C. enacted a bill that ends the ability of insurance companies to register a civil court judgment with the mayor and have the defendant's license suspended until the judgment is satisfied.⁶⁴ The impact of these reforms has been significant. According to a D.C. Department of Motor Vehicles report, and as documented by *The Washington Post*, over 65,000 people have had their D.C. driver's licenses or driving privileges restored under the now-legally operative law relating to suspension for unpaid traffic debts or traffic court nonattendance,⁶⁵ and an additional 2,282 have the opportunity to have their licenses restored as of March 13, 2019, when the law pertaining to civil court judgments completed congressional review and took legal effect.

In parallel to the legislative process, the office of D.C. Mayor Muriel Bowser launched a pilot program to allow residents returning home from prison with unpaid traffic debt to have their

⁵⁹ See, e.g., DRIVER & VEHICLE SERVS., *supra* note 46; Megan Cassidy, *Can't Get Your Phoenix Driver's License Back Because of Fines? Court Program Can Help*, AZ. CENT. (Jan. 27, 2016) (Phoenix, Arizona Compliance Assistance Program).

⁶⁰ See, e.g., *Durham Driver Amnesty Program*, FINES AND FEES JUST. CTR. (Nov. 27, 2017).

⁶¹ Adam Tamburin, *Prosecutor's New Plan for Driver's License Violations Could Keep 12,000 Cases Out of Court*, TENNESSEAN (Sept. 4, 2018); Yolanda Jones, *Shelby County DA's Office Won't Prosecute Many Revoked Driver's Licenses Cases*, DAILY MEMPHIAN (Oct. 20, 2018, 4:00 AM).

⁶² See Vinnie Rotondaro, *Traffic Tickets: the District Profits and Residents Pay*, WASH. CITY PAPER (Sept. 13, 2018) (noting that "[d]rivers are currently only allowed one-time access to a payment plan where tickets can be paid in installments" in D.C.).

⁶³ 66 D.C. Reg. 590 (Jan. 18, 2019); see also Reis Thebault, *In D.C., No More License Suspensions for Drivers with Unpaid Tickets*, WASH. POST (July 12, 2018); *D.C. Enacts Tzedek DC-Championed Driver's License Suspension Reform Bill*, UDC/DCSL (Sept. 10, 2018).

⁶⁴ 66 D.C. Reg. 590 (Jan. 18, 2019) (bill pending congressional review).

⁶⁵ See Justin Wm. Moyer, *D.C. Restores Driving Privileges for More Than 65,000 People*, WASH. POST (Feb. 27, 2018).

licenses reinstated in exchange for a payment or agreement to a modest payment plan, noting that “[t]he No. 1 reason for recently released men and women being re-incarcerated . . . is for driving without a valid license, which also can lead to additional charges for failing to stop and other related crimes.”⁶⁶ Through this program, an additional 250 D.C. residents, all formerly incarcerated individuals, have been able to have their licenses restored or renewed by paying “a fraction of the original debt owed.”⁶⁷

B. Reform Through the Courts

The Department of Justice’s report on Ferguson helped catalyze a wave of litigation challenging the constitutionality of license suspension practices. The report did more than recount the many ways—including driver’s license suspensions—that Ferguson’s law enforcement and court practices, “shaped by the City’s focus on revenue rather than by public safety needs,” targeted African-American citizens and especially harmed “those living in or near poverty.”⁶⁸ It also explained that these practices raised “significant due process and equal protection concerns.”⁶⁹ In doing so, the Department identified practices that required immediate attention and also suggested a blueprint for challenging those practices in court.

Lawsuits are now pending in Alabama, California, Michigan, Montana, Pennsylvania, North Carolina, Oregon, Tennessee, and Virginia.⁷⁰ The challenged state practices differ somewhat, but what they all have in common is that they either automatically suspend a person’s license or otherwise fail to consider a person’s ability to pay the fines or fees that trigger suspension. Four legal theories, all of which share common nuclei in the Constitution’s equal protection and due process clauses, underlie these challenges.⁷¹ Two of these theories are familiar to most lawyers: procedural and substantive due process. The remaining two theories draw from longstanding but less familiar Supreme Court precedent limiting the state’s power both to punish individuals for being unable to pay government-owed debt and to employ unduly

⁶⁶ Beth Schwartzapfel, *43 States Suspend Licenses for Unpaid Court Debt, But That Could Change*, MARSHALL PROJECT (Nov. 21, 2017) (quoting the Office of D.C. Mayor Muriel Bowser).

⁶⁷ Press Release, Office of Mayor Muriel Bowser, [Mayor Bowser’s Pathways to Work Reentry Program Hits Milestone of 250 Residents Helped](#) (Oct. 4, 2018).

⁶⁸ CIVIL RIGHTS DIV., DEP’T OF JUSTICE, *supra* note 4, at 2, 4.

⁶⁹ *Id.* at 55.

⁷⁰ See [Complaint](#), Robinson v. Purkey, No. 3:17-cv-1263 (M.D. Tenn. Sept. 18, 2017); [Complaint](#), DiFrancesco v. Bullock, No. CV-17-66-BU-SEH (D. Mont., Aug. 31, 2017); [Complaint](#), Fowler v. Johnson, No. 2:17-cv-114411 (E.D. Mich. May 4, 2017); [Complaint](#), Thomas v. Haslam, No. 3:17-cv-00005 (M.D. Tenn. Jan. 4, 2017) (currently pending in the Sixth Circuit, see Thomas v. Haslam, No. 18-5766 (6th Cir. July 27, 2018)); [Complaint](#), Hernandez v. Cal. Dep’t of Motor Vehicles, No. RG16836460 (Super. Ct. of Alameda Cnty., Oct. 25, 2016) (California); [First Amended Complaint](#), Stinnie v. Holcomb, No. 3:16-cv-00044 (W.D. Va. July 6, 2016); [Complaint](#), Harold v. Richards, No. 2:18-cv-00115-RK (E.D. Penn. Jan. 10, 2018); [Complaint](#), Mendoza v. Garrett, No. 3:18-cv-01634-HZ (D. Or., filed Sept. 8, 2018).

⁷¹ For a helpful additional overview of the emerging legal theories underlying challenges to license for payment laws, see NAT’L CONSUMER LAW CTR., [CONFRONTING CRIMINAL JUSTICE DEBT](#) (2016).

harsh methods when attempting to collect that debt; these overlapping claims are often referred to by the key decisions in the case line: *Bearden v. Georgia*⁷² and *James v. Strange*.⁷³

The following sections provide an overview of these claims, focusing on five cases pending in federal district court, none of which have yet to be addressed on the merits in an opinion by a federal appellate court: *Fowler v. Johnson* in the Eastern District of Michigan; *Stinnie v. Holcomb*, in the Western District of Virginia; *Robinson v. Purkey* and its companion case, *Thomas v. Haslam*, in the Middle District of Tennessee; and *Mendoza v. Garrett*, in the District of Oregon. These courts have diverged in their treatment of the four major claims, resulting in complete victory in *Robinson* and *Thomas*, preliminary success on only the procedural due process claims in *Fowler* and *Stinnie*, and complete dismissal in *Mendoza*. The strength and contours of these claims remain in flux as the cases await future merits consideration by the courts of appeal.

1. Procedural Due Process

Most of these cases include a procedural due process claim alleging that the challenged practices provide inadequate pre-deprivation procedural protections—at minimum, notice and opportunity to be heard.⁷⁴ The Supreme Court’s decision in *Bell v. Burson* is the touchstone for these claims.⁷⁵ In *Bell*, the Supreme Court recognized that “[s]uspension of issued [driver’s] licenses thus involves state action that adjudicates important interests of the licensees” and held that “[i]n such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”⁷⁶

Fowler and *Stinnie* provide examples of (thus far) successful procedural due process challenges. The *Fowler* court held that Michigan provided inadequate notice of the consequences of nonpayment of a traffic ticket, the right to request a hearing, and the availability of alternatives to full payment; did not provide sufficient time for a response before suspension; and failed to provide a meaningful pre-suspension inquiry into a person’s ability to pay.⁷⁷ More recently, the *Stinnie* court preliminarily enjoined enforcement of Virginia’s license suspension for court debt statute on similar grounds:

At no time are Plaintiffs given any opportunity to be heard regarding their default, nor do they have the opportunity to present evidence that they are

⁷² *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁷³ *James v. Strange*, 407 U.S. 128 (1972)

⁷⁴ *See, e.g.*, DOJ Statement of Interest at 6, *Stinnie v. Holcomb*, No. 3:16-cv-00044, 2017 WL 963234 (W.D. Va. Mar. 13, 2017) (“A driver’s license is a protected interest that, once issued, cannot be revoked or suspended ‘without that procedural due process required by the Fourteenth Amendment.’”) (quoting *Bell v. Burson*, 402 U.S. 535, 539 (1972)).

⁷⁵ *Bell*, 402 U.S. at 535.

⁷⁶ *Id.* at 539; *see also* *Cleveland v. U.S.*, 531 U.S. 12, 26 n. 4 (2000) (“In some contexts, we have held that individuals have constitutionally protected property interests in state-issued licenses essential to pursuing an occupation or livelihood. *See, e.g.*, *Bell v. Burson*, 402 U.S. 535, 539 (1971) (driver’s license).”).

⁷⁷ *Fowler v. Johnson*, No. 2:17-cv-114411, at *27-31 (E.D. Mich. May 4, 2017).

unable to satisfy court debt. This is not sufficient in light of the ‘degree of potential deprivation that may be created.’⁷⁸

2. Substantive Due Process

The plaintiffs in these suits also raised substantive due process claims, asserting that the challenged practices are not rationally related to legitimate government objectives.⁷⁹ Although rational basis review is often viewed as “minimal scrutiny in theory and virtually none in fact,”⁸⁰ the district court decisions in *Robinson* and *Thomas* nonetheless held that Tennessee’s law failed even that low standard because it was both ineffective—“because no person can be threatened or coerced into paying money that he does not have and cannot get” —and “powerfully counterproductive” —because it “sabotage[d]” the state’s chances of actually collecting the money that the law was supposed to help it collect.⁸¹ In contrast, the *Fowler* and *Mendoza* courts application of rational basis review led them to sustain Michigan and Oregon’s license suspension laws, respectively, against a substantive due process claim.⁸²

3. Proscription Against Punishing Poverty

Suits challenging the license suspension regimes also draw from the Supreme Court’s decision in *Bearden*, which held that a state could not revoke probation solely because a person had failed to pay a fine or restitution.⁸³ *Bearden* concluded that the state must find that the “probationer *willfully* refused to pay or failed to make sufficient bona fide efforts.”⁸⁴ To do otherwise “would be little more than punishing a person for his poverty.”⁸⁵ Following a thirty-year line of established cases ensuring indigent criminal defendants’ access to courts and limiting the state’s ability to penalize those unable to pay fines or restitution, the Court refused to classify its analysis according to traditional equal protection and due process categories. It explicitly eschewed, for example, applying a tier of scrutiny—rational basis, intermediate, or strict—noting that “[d]ue process and equal protection principles converge in the Court’s analysis in these cases.”⁸⁶

The legal framework for analyzing a *Bearden* claim in the license-for-payment context is still developing. There is meaningful variation in litigants’ approaches and jurisdiction-specific case law, and it is possible that multiple standards will emerge. For example, although *Bearden*

⁷⁸ *Stinnie v. Holcomb*, NO. 3:16-CV-00044, 2018 WL 6716700, at *9 (W.D. Va. Dec. 21, 2018).

⁷⁹ *See, e.g., Robinson v. Purkey*, No. 3:17-cv-1263, 2017 WL 4418134 at *8 (M.D. Tenn. Oct. 5, 2017) (“It is therefore difficult to discern the rational basis for the aspect of the scheme that Robinson and Sprague have challenged—the lack of an exception for the truly indigent.”).

⁸⁰ Gerald Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

⁸¹ *Thomas v. Haslam*, 329 F. Supp. 3d 475, 483-84, nn. 7, 9 (M.D. Tenn. 2018).

⁸² *Mendoza v. Garrett*, No. 3:18-cv-01634-HZ, 2018 WL 6528011, at *20 (D. Or. Dec. 12, 2018); *Fowler v. Johnson*, No. 17-11441, 2017 WL 6379676, at *8 (E.D. Mich. Dec. 14, 2017).

⁸³ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁸⁴ *Id.* at 672 (emphasis added).

⁸⁵ *Id.* at 671.

⁸⁶ *Id.* at 665.

itself rejected a level-of-scrutiny approach that characterizes many constitutional claims, the district court in *Robinson* ruled that it was bound by Sixth Circuit precedent to apply rational-basis review.⁸⁷ But the district court’s opinion in *Robinson* is forceful enough to suggest that license-suspension schemes might run afoul of overlapping theories of harm:

[T]aking an individual’s driver’s license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.⁸⁸

Recently, the same judge expanded on her opinion in *Robinson*, concluding that *Bearden* was not limited to protecting only fundamental rights.⁸⁹

In contrast, *Mendoza* concluded that under *its* reading of *Bearden*, that authority applies only where “either incarceration or access to the courts, or both, is at stake,” finding that the plaintiffs had not demonstrated that their challenge to Oregon’s law suspending licenses for unpaid traffic debt was likely to succeed because “[n]one of those rights or interests are present here.”⁹⁰

4. Prohibition on Unduly Harsh or Discriminatory Debt Collection Tactics

Challenges to license suspension schemes also raise another claim, drawn from the Supreme Court’s decision in *James v. Strange*: When the government is acting as a debt collector, it cannot use its power to “impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.”⁹¹ The argument that license suspension without an indigency exception is an “unduly harsh” collection tactic that also discriminates against the poor can be compelling.⁹² The court in *Thomas* granted summary judgement for the plaintiffs on their *Strange* claim, concluding that

the [law] at issue in *Strange* was ... unconstitutional because it singled out debtors who owed money to the government . . . and imposed on them uniquely harsh collection mechanisms in ‘such discriminatory fashion’ that it ‘blight[ed]’

⁸⁷ *Robinson v. Purkey*, No. 3:17-cv-1263, 2017 WL 4418134 at *8 (M.D. Tenn. Oct. 5, 2017).

⁸⁸ *Id.* at *9 (emphasis added).

⁸⁹ *Thomas v. Haslam*, 303 F. Supp. 3d 585, 612 (M.D. Tenn. Mar. 26, 2018).

⁹⁰ *Mendoza v. Garrett*, No. 3:18-cv-01634-HZ, 2018 WL 6528011, at *19 (D. Or. Dec. 12, 2018).

⁹¹ *James v. Strange*, 407 U.S. 128, 138 (1972); cf. *Thomas*, 303 F. Supp. 3d at 627 (“*Strange* ... does not have a novella’s worth of later Supreme Court opinions explaining precisely what the lower courts should construe it to mean.”).

⁹² Significantly, the Supreme Court recently held in *Timbs v. Indiana*, 139 S. Ct. 682 (2019) that the Eighth Amendment’s Excessive Fines Clause is an incorporated protection applicable to the states under the 14th Amendment’s due process clause. In its decision, the Court noted that “[t]he Excessive Fines Clause traces its venerable lineage back to at least 1215... As relevant here, Magna Carta required that economic sanctions ‘be proportioned to the wrong’ and ‘not be so large as to deprive [an offender] of his livelihood.’” *Id.* at 687-88 (internal citations omitted). Under this reasoning, the individual needs of the defendant for economic survival must be considered in the analysis of whether a fine is considered to be excessive.

the ‘hopes of indigents for self-sufficiency and self-respect.’ That is exactly what [the Tennessee law] *by failing to have an exception for indigence*, does as well.⁹³

Fowler, by contrast, found that the Michigan statute did not expressly eliminate any “exemptions normally available to judgment creditors” and therefore did *not* violate the Equal Protection Clause.⁹⁴ *Mendoza*, which rejected the *Strange* claim, agreed, and additionally concluded that the statute was likely to survive rational basis review.⁹⁵ Thus, though there is force to applying *Strange* to license-suspension laws (as is the case with the due process and *Bearden* arguments), it remains to be seen whether—and under what facts—a *Strange* claim will ultimately prevail.

IV. Where We Go from Here

In coming years, several developments may grow out of the recent reforms of state and local license-for-payment schemes. More states and municipalities are poised to end or curtail automatic license suspensions for unpaid traffic tickets and other fines and fees.⁹⁶ Thus-far-unsuccessful legislative reforms in jurisdictions like Florida, Minnesota, and Virginia, nonetheless made substantial progress through the legislative process.⁹⁷ These jurisdictions may well see a continued push for legislative reform. In late 2018, for example, Virginia’s governor proposed legislation ending license suspensions for unpaid court costs and fees, noting that “Often, people don’t pay court costs because they can’t afford it. Suspending their license for these unpaid fees makes it that much harder on them.”⁹⁸

Jurisdictions that do not reform these practices by legislation or executive action face a substantially increased likelihood of legal challenge. In addition to the litigation approaches discussed above, two other areas relatively unexplored in litigation may see increased focus.

⁹³ *Thomas v. Haslam*, 329 F. Supp. 3d 475,494 (M.D. Tenn. 2018) (emphasis added).

⁹⁴ *Fowler v. Johnson*, No. 17-11441, 2017 WL 6379676, at *9 (E.D. Mich. Dec. 14, 2017). In a few recent cases in locations where public transportation is severely limited, such as in Montana and Michigan, plaintiffs have asserted their right to intrastate travel, claiming that these state statutory schemes allowing for the suspension of a driver’s license due to unpaid fees and fines without inquiry into one’s ability to pay deprived them of their constitutional right to intrastate travel. In support of this complaint, plaintiffs often cite *Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002), noting that the court in *Johnson* held that the Due Process Clause of the Fourteenth Amendment protected the right to “travel locally through public spaces and roadways.” *Id.* This argument has yet to prevail on the merits. The District Court in the Eastern District of Michigan noted that the Sixth Circuit a number of other Circuits have held that “denying an individual a single mode of transportation – such as a car driven by the individual him or herself – does not unconstitutionally impede the individual’s right to intrastate travel because there is no fundamental right to drive.” *Fowler*, 2017 WL 6379676, at *7.

⁹⁵ *Mendoza*, 2018 WL 6528011, at *24.

⁹⁶ The Fines & Fees Justice Center maintains a clearinghouse of legislation, pilots and programs, litigation, and other developments. See *The Clearinghouse*, FINES & FEES JUST. CTR., (last visited Feb. 8, 2019).

⁹⁷ *Id.*; see also S.B. 1270, Reg. Sess. (Fla. 2018); H.F. 3357, 90th Leg. (Minn. 2018); S.B. 1013, Reg. Sess. (Va. 2018).

⁹⁸ Press Release, Office of Governor Ralph Northam, [Governor Ralph Northam Unveils Budget Amendments for the 2018–2020 Biennium to the Joint Money Committees](#) (Dec. 18, 2018). Unfortunately, though the state Senate passed the bill, Republicans on a House subcommittee later voted to kill it. See Editorial Board, *Virginia Inexplicably Killed a Bill that Could’ve Helped Thousands with Suspended Licenses*, WASH. POST (Feb. 18, 2019).

First, jurisdictions that bar a person from *renewing* their license until they pay outstanding fines, fees, or other amounts allegedly owed to the government may well have litigation exposure. The same legal principles that persuaded several courts that license suspensions without any such inquiry are unconstitutional would seem to apply equally to the denial of license renewals without any such inquiry. To the extent these schemes function in effect as slow-motion suspensions for unpaid debts, the ultimate harm is materially the same, as the individual who cannot pay loses access to the benefits of lawfully driving to work and engaging in other key day-to-day life activities.

Second, *Bearden*, *Bell*, and similar precedents would likewise seem to apply to suspensions from unpaid child support orders. Federal statutory law requires all states to adopt “[p]rocedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver’s licenses . . . of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.”⁹⁹ Those states with child support-based suspension schemes that do not examine, prior to suspension, whether the non-custodial parent can pay, may be vulnerable to claims similar to the due process and equal protection challenges described above concerning suspensions from unpaid fines and fees.¹⁰⁰

More than forty states have statutes that, in effect, use driver’s license suspension or renewal denial to coerce payment of debts allegedly owed to the government. Most of these statutes contain no safeguards to distinguish between people who intentionally refuse to pay and those who default due to poverty. They punish both groups equally harshly, as if they were equally blameworthy. They are not. Our laws should not penalize or criminalize poverty. The good news is that we are seeing a wave of reform addressing this systemic problem through state legislatures and in courts. With the help of engaged, fair-minded citizens, lawyers, and policy makers, we can expect that wave to grow.

⁹⁹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 369, 110 Stat. 2251 (codified as amended at 42 U.S.C. § 466(a)(16)).

¹⁰⁰ For example, the Alaska Supreme Court has noted that if its state’s suspension provision “were applied so as to take away the license of an obligor who was unable to pay child support, it would be unconstitutional as applied in that case” because “there would be no rational connection between the deprivation of the license and the State’s goal of collecting child support.” *State, Dep’t of Revenue, Child Enforcement Div. v. Beans*, 965 P.2d 725, 728 (Alaska 1998). Additionally, a class action complaint filed earlier this month in the U.S. District Court for the Eastern District of Missouri alleges that a law that allows the state to suspend the driver’s license of any person who owes at least three months’ worth of child support payments or at least \$2,500, whichever is less, without first inquiring into ability to pay, violates parents’ Constitutional substantive due process, procedural due process, and equal protection rights. *See Wright v. Family Support Div.*, No. 4:19-cv-00398 (E.D. Mo. Mar. 4, 2019).

APPENDIX: Pending Cases Challenging License-for-Payment Schemes

State	Case Citation	Status
AL	<i>Cook v. Taylor</i> , No. 2:18-cv-00977-WKW-SRW (M.D. Ala. Nov. 19, 2018).	11/19/18: Complaint filed.
CA	<i>Hernandez v. Cal. Dep't of Motor Vehicles</i> , No. RG16836460 (Super. Ct. of Alameda Cty. Oct. 25, 2016).	10/25/16: Complaint filed.
MI	<i>Fowler v. Johnson</i> , No. 2:17-cv-11441 (E.D. Mich. May 4, 2017); 18-1089 (6th Cir.).	10/3/18: Oral argument held before Sixth Circuit re: district court's grant of preliminary injunction, and findings that plaintiffs have standing and court has jurisdiction.
MO	<i>Wright v. Family Support Division</i> , No. 4:19-cv-00398-RLW (E.D. Mo. Mar. 4, 2019).	3/4/2019: Complaint filed.
MT	<i>DiFrancesco v. Bullock</i> , No. 2:17 CV-17-00066-SEH (D. Mont. Aug. 31, 2017).	1/9/19: Motion for class certification denied.
NC	<i>Johnson v. Jessup</i> , No. 1:18-cv-00467 (M.D.N.C. May 30, 2018).	10/3/18: Second motions for class certification, preliminary injunction, and judgment on the pleadings filed.
NY	<i>Berry v New York State Dept. of Taxation & Fin.</i> , No. 158919/2016, 2017 NY Slip Op 31345 (N.Y. Sup. Ct. June 21, 2017).	6/28/18: Trial court's dismissal affirmed by court of appeal.
PA	<i>Harold v. Richards</i> , No. 2:18-cv-115-RK (E.D. Penn. Jan. 10, 2018).	9/25/18: Motion to dismiss granted.
OR	<i>Mendoza v. Garrett</i> , 3:18-cv-01634-HZ (D. Or. Sept. 7, 2018).	12/12/18: Motion for preliminary injunction denied.
TN	<i>Robinson v. Purkey</i> , No. 3:17-cv-1263 (M.D. Tenn. Sept. 18, 2017); 18-6121 (6th Cir.).	10/24/2018: Appeal of district court's partial grant of preliminary injunction docketed.

State	Case Citation	Status
TN	<i>Thomas v. Haslam</i> , 3:17-cv-0005 (M.D. Tenn. Jan. 1, 2017); 18-5766 (6th Cir.).	07/27/2018: Appeal from district court's grant of summary judgment to plaintiff docketed. 01/24/2019: Amicus briefing filed.
VA	<i>Stinnie v. Holcomb</i> , No. 3:16-cv-00044 (W.D. Va. July 6, 2016).	12/21/2018: Preliminary injunction granted on procedural due process grounds.

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