UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EVELYN PARHAM, ***et al*****.** **Plaintiffs,** **v.** **DISTRICT OF COLUMBIA,** ***et al.*****,** **Defendants.**	**Civil Action No. 1:22-cv-02481-CKK**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

District of Columbia law provides that residents are eligible to receive a driver's license—a property interest created under state law—if certain statutory criteria are met. As relevant here, the District's Clean Hands Law, D.C. Code § 47-2862, limits the availability of driver's licenses to residents who do not owe more than $100 in fines or fees to the District. Plaintiffs, who are District residents without current driver's licenses, acknowledge that they each owe the District more than $100 in fines or fees, cannot afford to pay their outstanding debts, and thus cannot obtain or renew their now expired licenses through conventional means by operation of the Clean Hands Law. Searching for an end run, Plaintiffs now contend that they have a constitutional right to a District-issued driver's license, regardless of whether they owe fines or fees to the government, and they seek an order from this Court enjoining the District from enforcing the Clean Hands Law against them. Plaintiffs moved on August 26, 2022, for a preliminary injunction on that basis and to that effect.[1]

But Plaintiffs are incorrect on the merits of each of their four claims, so much so that the Court should not only deny their motion for a preliminary injunction, but also dismiss the Complaint, with prejudice. Plaintiffs have no protected property or liberty interest in obtaining or renewing their licenses, and even so, the District provides all debtors, including Plaintiffs, constitutionally-sufficient notice and means to challenge their debts—two independent reasons Plaintiffs' procedural due process claim (Count 1) fails as a matter of law. And Plaintiffs' three remaining claims—relying on equal protection (Counts 2 and 3) and substantive due process (Count 4) principles—suffer the same basic and dispositive flaw: There is no fundamental right

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[1] Defendants are submitting the same memorandum in support of both their motion to dismiss the Complaint and in opposition to Plaintiffs' motion for a preliminary injunction.

to obtain or renew a driver's license, and the District's Clean Hands Law easily clears rational basis review. Plaintiffs' Complaint and motion for a preliminary injunction thus boil down to a disagreement with the District's current *policy* of using the driver's license application process as a means to collect local revenue owed to the government. The Court should deny Plaintiffs' motion and dismiss the Complaint, with prejudice.

BACKGROUND

I. The DMV and Obtaining a Driver's License in the District of Columbia

The District's Department of Motor Vehicles (DMV) is "charged with helping to improve the District of Columbia's economic competitiveness and quality of life by fostering the safe operation of motor vehicles on District streets in accordance with applicable laws and regulations." D.C. Code § 50-902. The DMV's responsibilities include "provid[ing] all services which pertain to the issuance of driver permits and licensing." D.C. Code § 50-904(2)(D). Relatedly, District law provides that "[n]o individual shall operate a motor vehicle in the District … without having first obtained an operator's permit." *Id*. § 50-1401.01(d). In terms of obtaining a driver's license, "[t]he Mayor is authorized to issue a new or renewed motor vehicle's permit, valid for a period not to exceed 8 years … to any individual 17 years of age or older" subject to certain conditions, including payment of an application fee and successful demonstration that the applicant is "mentally, morally, and physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property." *Id*. § 50-1401(a).

The DMV also "[a]dminister[s] the processes of collecting traffic fines and adjudicate[s] disputes regarding traffic movement or parking movement in the public right-of-way." *Id*. § 50-904(1)(A). If a driver is fined for a moving or parking violation, District law provides notice and an opportunity for the driver to contest the violation. *See id*. § 50-2302.01, *et seq*. (Moving

Infractions); D.C. Code § 50-2303.01, *et seq*. (Parking, Standing, Stopping and Pedestrian Infractions). Drivers who incur more than $350 in DMV-related fines and penalties may contact the District's Central Collection Unit (CCU) to workout a payment plan. *See* CCU Frequently Asked Questions, available at: https://cfo.dc.gov/node/1526691 (last visited Sept. 26, 2022).

In addition, "[n]otwithstanding any other provision of law, the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant … [o]wes the District more than $100 in outstanding fines, penalties, or interest." D.C. Code § 47-2862(a). This provision, known as the District's Clean Hands Law, has two exceptions. First, if the debt is still subject to dispute, then "the outstanding debt shall not be cause for the District government to deny the issuance or reissuance of any license or permit." *Id*. § 47-2862(b). Second, "[a] license or permit shall not be denied … if the applicant has agreed to a payment schedule to eliminate the outstanding debt, the payment schedule has been agreed to by the District government, the applicant is complying with the payment schedule, and the payment schedule is otherwise permitted by law." *Id.* § 47-2862(c). Further, "[a]ny person whose application is denied [under the Clean Hands Law] may request a hearing within 10 days of the denial on the basis for that denial." *Id.* § 47-2865(c).

II. <u>Plaintiffs' Complaint and Procedural History</u>

On July 20, 2022, Plaintiffs Evelyn Parham, Nichole Jones, Carlotta Mitchell, Dominique Roberts, and Victor Hall filed their Complaint in D.C. Superior Court, asserting claims against Defendants the District; Gabriel Robinson, in his official capacity as Director of DMV; and Glen Lee, in his official capacity as the District's Chief Financial Officer. Notice of Removal, D.C. Superior Court Documents [1-2]. Plaintiffs also sought leave to file a motion for a preliminary injunction because their motion exceeded the Superior Court's page limit, but their motion for

leave was never decided by the Superior Court so their motion for preliminary injunction was never accepted by the clerk. Notice of Removal, D.C. Superior Court Documents. On August 19, 2022, Defendants removed the case to this Court [1]. Relieved of the Superior Court's page limit, Plaintiffs subsequently filed their motion for preliminary injunction [4] on September 26, 2022.

While the exact details of each Plaintiff's allegations differ, they share important key commonalities. Plaintiffs acknowledge that they each owe the District more than $100 in unpaid parking and traffic tickets and related fines and fees and that under the plain language of the Clean Hands Law they are not eligible to renew or obtain a driver's license because of their unpaid debts. Compl. ¶¶ 10, 20, 28, 34, 41. Plaintiffs do not allege that their licenses were ever suspended because of their debts or that the District in any way interfered with their continued possession of their licenses during the licenses' defined term. *Id*. ¶¶ 10–50. Rather, each Plaintiff alleges that he/she was prevented from renewing their license—*i.e.*, obtaining a license for a new, defined period after the expiration of a previously granted license—or obtaining a license in the first instance because they did not meet the statutory criteria for renewal. *Id*. ¶¶ 10–50. Plaintiffs each point to their financial circumstances as the reason they are unable to pay their existing fines or fees and renew or obtain their licenses by conventional means. *Id*.

Based on their inability to obtain driver's licenses, Plaintiffs assert four claims against Defendants. In Count 1, Plaintiffs allege that they have a "constitutionally protected property and liberty interest" in a driver's license, and therefore procedural due process "requires that, before disqualifying Plaintiffs and other DC residents from obtaining or renewing a driver's license for non-payment of debt to the District, Defendants must notify them of the existence of such debt, conduct an inquiry into their ability to pay such debt, provide them an opportunity to

establish their inability to pay such debt, and determine that the non-payment of such debt is willful." Compl. ¶¶ 106–08.

In Count 2, Plaintiffs allege that they have a right under the Due Process and Equal Protection Clauses "not to be punished by Defendants because of their poverty." *Id.* ¶ 114. Plaintiffs contend that their equal protection rights have been violated because "Defendants [deprive] Plaintiffs and other DC residents of their driver's licenses because of their debts without inquiring into their ability to satisfy those debts and thus without determining that the nonpayment of those debts is willful and not because of their poverty." *Id.* ¶ 115.

In Count 3, Plaintiffs purport to allege a separate and distinct violation of their equal protection rights, asserting that it is a violation of their rights for the Defendants to disqualify Plaintiffs from obtaining driver's licenses based on debts owed to the District government, but not similarly disqualifying residents who owe civil money judgments to non-government parties. *Id.* ¶ 125.

In Count 4, Plaintiffs allege that they have a constitutionally protected property interest in obtaining a driver's license and that the Clean Hands Law violates their substantive due process rights because it is not rationally related to a legitimate government interest. *Id.* ¶¶ 130–31.

LEGAL STANDARDS

I. <u>Motion to Dismiss Under Rule 12(b)(6)</u>

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw [a] reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). "While legal conclusions can provide the framework of

a complaint, they must be supported by factual allegations." *Iqbal*, 550 U.S. at 679. "[A] complaint [does not] suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id*. at 678 (quoting *Twombly*, 550 U.S. at 557).

In evaluating a motion under Rule 12(b)(6), the Court "may consider … the facts alleged in the complaint, any documents either attached to or incorporated in the complaint, and matters of which [the Court] may take judicial notice." *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997); *Laughlin v. Holder*, 923 F.Supp.2d 204, 209 (D.D.C. 2013).

II. Preliminary Injunctive Relief

A preliminary injunction "is 'an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'" *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs have the burden to prove that they are "likely to succeed on the merits," that they are "likely to suffer irreparable harm," that "the balance of equities" favors such extraordinary relief, and "that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *see Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting that the last two factors merge when the government opposes an injunction). Because the goal of a preliminary injunction is to preserve the status quo, plaintiffs seeking to alter the status quo "'face an additional hurdle when proving their entitlement to relief' and courts 'exercise extreme caution in assessing' such motions." *George v. George Washington Univ.*, Civil Action No. 22-896, 2022 WL 1719002, *5 (D.D.C. May 27, 2022) (quoting *Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. de C.V.*, 901 F. Supp. 2d 54, 56–57 (D.D.C. 2012)).

ARGUMENT

I. Plaintiffs Fail To Allege a Violation of Their Procedural Due Process Rights.

To adequately allege a violation of their procedural due process rights, Plaintiffs must (1) identify a protected interest of which they have been deprived and (2) demonstrate that the deprivation occurred absent due process. *Atherton v. Dist. of Columbia Office of Mayor*, 567 F.3d 672, 689 (D.C. Cir. 2009). Plaintiffs have done neither.

A. Plaintiffs Have No Property or Liberty Interest in Obtaining a Driver's License.

The Fourteenth Amendment protects property and liberty interests. *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 841 (1977). "[P]roperty interests are created and their dimensions are defined by ... state law." *Hall v. Ford*, 856 F.2d 255, 265 (D.C. Cir. 1988) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985)). And, while liberty interests "may arise from an expectation or interest created by state laws or policies," they generally "arise out of the Constitution itself." *Hall v. Barr*, Civil Action No. 20-3184, 2020 WL 6743080, at *3 (D.D.C. Nov. 16, 2020), aff'd, 830 F. App'x 8 (D.C. Cir. 2020); *see also Alshawy v. U.S. Citizenship & Immigr. Servs.*, Civil Action No. 21-2206, 2022 WL 970883, at *8 (D.D.C. Mar. 30, 2022) ("Because Alshawy does not assert 'a liberty interest protected by the Constitution,' her procedural due process claim must be dismissed.") (quoting *Kerry v. Din*, 576 U.S. 86, 90 (2015)).

Here, Plaintiffs allege that they have both a property and liberty interest in *obtaining* a driver's license. Compl. ¶¶ 106–08. While three of the five Plaintiffs allege that they are disqualified from renewing their licenses, and the remaining two Plaintiffs apparently seek a license for the first time, *id*. ¶¶ 10, 20, 28, 34, 41, that is a distinction without a difference. The D.C. Court of Appeals has already held that "it would be illogical to treat the renewal of a license

differently than the issuance of a license for the first time." *Wall v. Babers*, 82 A.3d 794, 800 (D.C. 2014). For those Plaintiffs who are seeking to renew their licenses, none of them allege that Defendants took any action to interfere with their use of the license, such as revoking or suspending it, during the license's defined term. *See* Compl. ¶¶ 10–50; *cf. Wall*, 82 A.3d at 800 ("The District grants licenses for a set period of years, after which they expire."). Having clarified that Plaintiffs do not allege any interference with an interest that they currently possess, demonstrating their failure to identify a protected interest is a straightforward exercise.

First, Plaintiffs have plainly failed to identify any right to a driver's license under District law. To the contrary, the gravamen of their Complaint is that they do *not* have a right to a driver's license under the plain language of D.C. Code § 47-2862(a). While Plaintiffs discuss caselaw in their motion for a preliminary injunction where the plaintiff had a protected interest under state law, *see* Mem. of P. and A. in Supp. of Pls.' Mot. for Prelim. Inj. [4-1] (Pls.' Mem.) at 27–31, those cases all involved individuals who had had their licenses suspended or otherwise taken away during the defined term of the license. *See, e.g.*, *Bell v. Burson*, 402 U.S. 535, 539 (1971). But those are not the facts alleged here, therefore *Bell* and its progeny are inapposite. *See Baer v. White*, Civil Action No. 08-3886, 2009 WL 1543864, at *8 (N.D. Ill. June 3, 2009) (explaining that *Bell* and its progeny were inapplicable because "the plaintiffs have yet to receive their driver's licenses … thus, their right to their continued possession has not been implicated").[2]

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[2] *Accord Ace Partners, LLC v. Town of E. Hartford*, 883 F.3d 190, 202 (2d Cir. 2018) (explaining that property interest in a driver's license "lasts only for the term of the license"); *Vars v. Citrin*, 470 F.3d 413, 414 (1st Cir. 2006) ("Because the license expired by its terms, [appellants] ceased to have a protectable property interest."); *Lockhart v. Matthew*, 83 F. App'x 498, 500–01 (3d Cir. 2003) ("Natural expiration of the license negates any claim that it is a property interest protected by the due process clause.").

Second, with regard to whether Plaintiffs have a liberty interest in obtaining a driver's license (as opposed to a property interest in maintaining a license), Defendants are aware of no authority for that proposition. For example, in Plaintiffs' motion for a preliminary injunction, they simply assert that "[a] driver's license is a property interest protected by the Constitution's procedural due process guarantee," and then proceed to consider whether they received due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pls.' Mem. at 27–35. But, as already noted, none of the cases cited by Plaintiffs hold, or even remotely suggest, that Plaintiffs have a liberty interest in a driver's license. In fact, many courts have rejected the claim that possession of a driver's license implicates a fundamental right or interest. *See, e.g.*, *Franceschi v. Yee*, 887 F.3d 927, 938 (9th Cir. 2018) (rejecting claim that suspension of driver's license violated plaintiff's substantive due process right to work); *Burlinson v. Rogers*, 311 Fed. Appx. 207, 208 (11th Cir. 2008) ("When the right at stake—here, possession of a driver's license—is a right created only by state law, it is not a right that gives rise to substantive due process protection under the Due Process Clause.").[3]

Because Plaintiffs have not alleged that they have been deprived of a protected interest, their procedural due process claim fails at step one, and the Court has no need to consider

[3] *Accord Simmons v. NYS Dep't of Social Services*, Civil Action No. 19-3633, 2019 WL 1988673, at *4 (S.D.N.Y. May 3, 2019) (rejecting claim that deprivation of a driver's license or passport implicated substantive due process rights); *Johnson v. Jessup*, 381 F. Supp. 3d 619, 640 (M.D.N.C. 2019) (noting that "there is no equal protection or substantive due process right not to have one's driver's license revoked for failure to pay [court fines] without an ability-to-pay determination"); *Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1172 (D. Or. 2018) (finding no support in the caselaw for idea that possession of a driver's license implicates a constitutional right); *Harold v. Richards*, 334 F. Supp. 3d 635, 645 (E.D. Pa. 2018) (noting that "the case law is consistent in holding that the denial of a driver's license does not violate the fundamental right to interstate travel, and that there is no fundamental right to drive"); *Conley v. Kentucky*, 75 F. Supp. 2d 687, 689 (E.D. Ky. 1999) ("It is obvious from *Dixon* [*v. Love*, 431 U.S. 105 (1977)] that the holding of a driver's license is not a fundamental right.").

whether Plaintiffs received adequate notice and an opportunity to be heard under *Mathews*. However, even if the Court finds that Plaintiffs have alleged the deprivation of a protected interest, their procedural due process claim still should be dismissed.

B. Plaintiffs Received Notice and an Opportunity to be Heard Regarding Their Debts to the District.

When assessing whether a party received adequate procedural due process, courts balance: "[1] the private interest that will be affected by the official action; [2] the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [3] the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

Initially, as noted in *Fowler v. Benson*, it is important to accurately define the private interest that a plaintiff is seeking to protect. For example, at issue in *Fowler* was a Michigan law that required suspension of a driver's license for unpaid court debts. 924 F.3d 247, 256 (6th Cir. 2019). The plaintiff argued that it was unconstitutional for Michigan to suspend her license without considering her ability to pay her outstanding debt. *Id*. However, the Sixth Circuit explained that, unlike in *Bell* and related cases, the plaintiff was not simply seeking to protect "a general property interest in a driver's license," but was instead claiming that indigent individuals had a property interest "in maintaining their driver's licenses when state law requires they be suspended due to unpaid court debt." *Id*. The same logic applies here. The private interest Plaintiffs are seeking to protect is not the ability to apply for a driver's license; rather, it is the ability to apply for a license, despite their debts to the District. The interest in applying for a state benefit without regard for whether one satisfies the statutory criteria should necessarily be less important than the interest in maintaining a state benefit that has already been awarded.

However, no matter what weight is accorded to the private interest here, the remaining *Mathews* factors heavily favor Defendants.

With regard to the risk of erroneous deprivations and the benefit of additional procedural safeguards, here, as in *Mendoza*, Plaintiffs appear to misunderstand the operative question. *See* Pls.' Mem. at 32. Plaintiffs wrongly assume "that there is a constitutional right to an indigency determination in the first place and that the rights implicated by the suspensions are fundamental in a constitutional sense." *See Mendoza*, 358 F. Supp. 3d at 1179. But, as explained in *Franceschi*, 887 F.3d at 936–37, and *Fowler*, 924 F.3d at 259, the appropriate focus is on how likely it is that the *cause* of the deprivation was in error—*i.e.*, the debt that renders Plaintiffs ineligible for a license—and whether the proposed additional procedural safeguards would mitigate potential errors. In other words, "[t]he Due Process Clause does not protect procedure for procedure's sake." *Fowler*, 924 F.3d at 259. That is why, in *Franceschi*, where the plaintiff had his license suspended because of unpaid taxes, the Ninth Circuit considered how likely it was that the suspension was based on an erroneous determination of tax liability. 887 F.3d at 936–37. The court noted that the plaintiff had many opportunities to contest the amount of his tax liability under state law and that an additional hearing prior to suspension of his license would provide little value. *Id*. Likewise, in *Fowler*, where the suspension of the plaintiff's license was based on unpaid debts arising from traffic violations and the plaintiff sought a hearing prior to suspension to show an inability to pay the debts, the Sixth Circuit concluded that such a hearing would be "pointless" because it would be wholly irrelevant to whether the plaintiff actually owed the amount in question. 924 F.3d at 259 (applying *Mathews* for sake of

argument after rejecting claim that plaintiff had identified a protected interest).[4] So too here. Plaintiffs do not allege that they failed to receive notice and an opportunity to be heard with respect to the debt that they owe the District. *See* Compl. ¶¶ 10–50. A hearing on whether Plaintiffs have the ability to pay their debts would therefore be "pointless" because it would have no bearing on whether Plaintiffs actually owed the debts in question and, in turn, whether they are eligible for a license. *Cf. Agomo v. Fenty*, 916 A.2d 181, 193 (D.C. 2007) (finding liability provisions of Traffic Adjudication Act satisfy due process); *DeVita v. District of Columbia*, 74 A.3d 714, 717 (D.C. 2013) (holding administrative procedures provided for violations of Automated Traffic Enforcement System satisfy due process).

Finally, with regard to the government interest, here, as was the case in *Fowler* with respect to unpaid taxes, the state "obviously has a strong interest in revenue collection, and the challenged statutory scheme appropriately reflects the importance of this interest." 924 F.3d at 937.

II. <u>Plaintiffs Fail To Allege a Violation of Their Equal Protection Rights.</u>

Plaintiffs assert two violations of their equal protection rights. First, Plaintiffs contend that conditioning eligibility for a driver's license on whether someone owes the government money violates the fundamental fairness principle first articulated in *Griffin v. Illinois*, 351 U.S. 12 (1956). Compl. ¶¶ 112–20. Second, Plaintiffs contend that it is unconstitutional for Defendants to condition license eligibility on unpaid government debts while not doing the same

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[4] *Accord Mendoza*, 358 F. Supp. 3d at 1179 (finding that "[a]dditional procedures [*i.e.*, a hearing to demonstrate inability to pay] here would be of little probative value" given that "the procedures currently used allow the violator to appear in court to contest the violation and then, if a fine is imposed and remains unpaid and the court notifies the DMV, the violator receives a pre-deprivation notice direction him or her to return to the court).

for unpaid debts owed to private parties arising from civil court judgments. Compl. ¶¶ 121–26. Neither claim has merit, the Clean Hands Law easily satisfies rational basis review, and Plaintiffs' equal protection claims should be dismissed.

A. *Griffin*'s Fundamental Fairness Principle Is Inapplicable Because Plaintiffs Have No Fundamental Right to a Driver's License.

It is well-established that poverty is not a suspect class such that laws having a disparate impact based on ability to pay are *not* subject to heightened scrutiny. *See Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 458 (1988) ("We have previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny."); *Harris v. McRae*, 448 U.S. 297, 323 (1980) ("[T]his Court has repeatedly held that poverty, standing alone is not a suspect classification."). However, the Supreme Court has applied heightened scrutiny in an extremely narrow category of situations where the ability to pay involves fundamental fairness. *See, e.g.*, *Bearden v. Georgia*, 461 U.S. 660, 672 (1983); *Griffin*, 351 U.S. at 17–18. The ability to obtain a driver's license does not even bear a passing resemblance to the situations where the fundamental fairness principle has been applied, and Plaintiffs' attempt to invoke it should be rejected.

In *Griffin*, the Supreme Court considered whether it was unconstitutional for the government to require an indigent criminal defendant to pay for a transcript that was necessary to appeal his conviction. 351 U.S. at 13 (plurality). The Court held that such a practice was unconstitutional under the rules of due process and equal protection because it "den[ied] adequate appellate review to the poor while granting such review to all others." *Id.* Cases following *Griffin* likewise held that in the criminal justice context, legislation limiting a criminal defendant's right to be free of wrongful imprisonment will be subject to heightened scrutiny. *See Williams v. Illinois*, 399 U.S. 235, 240–41 (1970) (holding states cannot detain convicted

defendants beyond the statutory maximum for their offense solely because they are too poor to pay fines); *Tate v. Short*, 401 U.S. 395, 398 (1971) (holding states cannot convert fines assessed under fines-only statute into a jail term solely because defendant is unable to pay). But "absent a fundamental interest or classification attracting heightened scrutiny … the applicable equal protection standard 'is that of rational justification.'" *M.L.B. v. S.L.J.*, 519 U.S. 102, 115–16 (1996) (citing *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973)); *see also Schultz v. Alabama*, 42 F.4th 1298, 1323 (11th Cir. 2022) (explaining that "[f]or heightened scrutiny to apply to a claim of wealth discrimination … the claim [must] arise in certain well-defined contexts that the Supreme Court has identified").

Several recent decisions have confirmed that *Griffin* does not apply to claims involving the right to a driver's license. In *Johnson*, the court addressed a North Carolina law that required the revocation of driver's licenses based on individuals' failure to pay court fines for motor vehicle violations. 381 F. Supp. 3d at 623. The plaintiffs argued that, because of their limited means, it was unconstitutional to revoke their licenses without first determining if they had an ability to pay. *Id*. However, unlike the Clean Hands Law, the North Carolina law expressly provided for a procedure where individuals could avoid revocation by showing that their failure to pay was not willful. *Id*. at 624. But the court still easily dispensed with the plaintiffs' equal protection claim, noting that "[i]t has long been black-letter law that, absent the involvement of a suspect classification or fundamental right, statutes challenged under the Fourteenth Amendment's equal protection or substantive due process guarantees are upheld so long as they have a 'rational basis.'" *Id*. at 629.

The *Johnson* court then proceeded to discuss specifically why *Griffin* was inapposite, explaining that "[t]he only contexts in which the Supreme Court has applied this fundamental

fairness doctrine are those in which a state has deprived persons of fundamental rights because of their indigency—specifically, incarcerating them or denying them access to the courts when they cannot make a certain payment." *Johnson*, 381 F. Supp. 3d at 629 (collecting cases). In fact, the court noted that the plaintiffs had "not proffered a single case from the Supreme Court or Fourth Circuit in the sixty-plus years since *Griffin* in which the fundamental fairness doctrine was applied to an alleged harm not involving fundamental rights or interests." *Id*. at 630. In then finding that the North Carolina law had a rational basis, the court rejected many of the same arguments made by Plaintiffs here, including that the law actually made it more difficult for individuals to pay their debts. *Id*. at 631 ("But the rational basis test does not require laws to be narrowly tailored to accomplish the State's ends," and since there was a "reasonably conceivable state of facts, under which [the law] provides *some* traffic defendants with an efficacious incentive to pay fines and costs, the law survives rational basis review." (emphasis in original)).

The *Mendoza* court reached the exact same conclusion for the exact same reasons. 358 F. Supp. 3d at 1168–71. The court offered a lengthy analysis as to why it was inappropriate to apply the fundamental fairness doctrine to a law involving the suspension or revocation of driver's licenses, noting that all of the cases applying it involved "incarceration or access to the courts, or both," *i.e.*, fundamental rights or interests, and "[n]one of those rights or interests are present here." *Id*. at 1171; *see also Franceschi*, 887 F.3d at 940 (rejecting equal protection claim because "[g]overnmental conduct, such as revocation of a driver's license, that 'neither proceeds along suspect lines nor infringes fundamental constitutional rights' is subject to rational basis review.") (quoting *FCC v. Beach Commc'ns. Inc.*, 508 U.S. 307, 313 (1993)).

Given that the Clean Hands Law is not subject to heightened scrutiny under *Griffin*, the only question is whether "there is any reasonably conceivable state of facts that could provide a

rational basis" for it. *See Sanchez v. Off. of State Superintendent of Educ.*, 513 F. Supp. 3d 101, 113 (D.D.C. 2021), aff'd, 45 F.4th 388 (D.C. Cir. 2022). Here, Plaintiffs themselves supply the most obvious one: That the purpose of the Clean Hands Law is to generate revenue for the District by incentivizing individuals to pay their debts. Compl. ¶ 5. And collecting debts owed to the government is plainly a rational basis for the law. *See Fowler*, 924 F.3d at 263 (recognizing "government's interest in prompt assessment and collection of civil penalties"); *Mendoza*, 358 F. Supp. 3d at 1175 (recognizing "state's legitimate interest in enforcing fines for violations of traffic laws"); *Johnson*, 381 F.Supp.3d at 631 ("There is no argument that collection of monetary exactions is not a legitimate state interest."); *see also Franceschi*, 887 F.2d at 940 (The court had "no difficulty" concluding that the challenged law had a rational basis given that the state "has a legitimate—and significant—interest in the prompt collection of tax revenue.").

While Plaintiffs allege that the Clean Hands Law lacks any rational basis because it has "no coercive effect on DC residents who can afford to pay their parking and traffic fines," Compl. ¶ 5, Plaintiffs miss the point. *See Fowler*, 924 F.3d at 262–63 (rejecting similar claim). As was explained in *Johnson*, so long as the challenged law "provides *some* traffic defendants with an efficacious incentive to pay fines and costs, the law survives rational basis review." 381 F. Supp. 3d at 631. "That the statute may be overinclusive by its enforcement as to indigent traffic debtors with no means of paying the fine, does not, under rational basis review, render it unconstitutional." *Mendoza*, 358 F. Supp. 3d at 1175. And, as acknowledged by Plaintiffs, the

Clean Hands Law does incentive some individuals to pay their debts, *see* Compl. ¶ 2, therefore, it survives scrutiny under rational basis.[5]

B. The Clean Hands Law Does Not Deny Indigent Residents Benefits Available to Other Debtors.

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Plaintiffs further contend that the Fifth Amendment's equal protection guarantee "prohibits disparate, discriminatory debt collection laws and practices" and thus prohibits the District from "imposing on Plaintiffs … remedies that are harsher than the remedies District law imposes on [District] residents with civil money judgments to private parties." Compl. ¶ 123. Specifically, Plaintiffs allege that the Clean Hands Law disqualifies Plaintiffs from obtaining a driver's license when District residents with similar debts to non-government parties are not disqualified. *Id*. ¶ 125. While the Supreme Court has held that differential treatment with regard to the payment of debts can raise equal protection concerns, *see James v. Strange*, 407 U.S. 128 (1972), the concerns present in *Strange* are clearly not present here.

In *Strange*, the Supreme Court found problematic a Kansas statute that allowed the state to recover legal defense costs from indigent defendants without providing them the exemptions and protections available to other civil judgment debtors, such as limitations on the amount of wages that could be subject to garnishment. *Id*. at 135, 141–42. Even so, the Supreme Court "recognize[d], of course, that the State's claim to reimbursement may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures

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[5] In addition to generating revenue, the Clean Hands Law has a public safety component by disincentivizing speeding and red-light violations. For example, if drivers know that, in addition to being fined, they may also be ineligible for a license in the future, they may be less likely to run red lights or speed in the first place. *See* Editorial Board, *This D.C. Council decision makes city streets unsafe*, Wash. Post, July 15, 2022, available at https://www.washingtonpost.com/opinions/2022/07/15/ dc-council-unpaid-traffic-tickets-drivers-license/ (last visited Sept. 26, 2022).

with respect to judgments need not be identical." *Strange*, 407 U.S. at 138. Yet, just two years later, in *Fuller v. Oregon*, the Supreme Court upheld a recoupment statute aimed at indigent criminal defendants who later gained the ability to pay, because the statute retained the protections available to other judgment debtors. 417 U.S. 40, 46 (1974). The Court explained that in *Strange* the "offending aspect of the Kansas statute was its provision that in an action to compel repayment of counsel fees, none of the exemptions provided for in the code of civil procedure (for collection of all other debts) shall apply to any such judgment," and those aspects were not present in the Oregon law. *See id.* at 47.

In contrast to the Kansas statute challenged in *Strange*, the Clean Hands Law does not eliminate any exemptions or protections that would normally be available to individuals with debt to private entities with respect to the collection of the debts at issue. And courts have consistently rejected similar challenges to statutes that revoke driver's licenses for unpaid debt for the same reason. *See Fowler*, 924 F.3d at 263 (finding *Strange* inapplicable because challenged statute did not eliminate exemptions normally available to debtors); *Mendoza*, 358 F. Supp. 3d at 1177 ("Nothing in the Oregon statutory scheme regarding the collection of a judgment for unpaid traffic debt provides for treatment different from any civil judgment debtor by creating exemptions from ordinary collection methods.").

In fact, as explained above, *see* Background, District law actually provides individuals who owe DMV-related fines and penalties *greater* protections than those who owe civil court judgments through the CCU. Accordingly, because the Clean Hands Law has a rational basis, *see* Section II.A, Plaintiffs' equal protection claim asserted in Count 3 should be dismissed as well.

III. Plaintiffs Fail To Allege a Violation of Their Substantive Due Process Rights.

In Count 4, Plaintiffs allege that the Clean Hands Law violates their substantive due process rights because it lacks any rational basis. As explained above, the Clean Hands Law clearly has a rational basis. Count 4 should be dismissed.

IV. Plaintiffs Have Failed To Show That They Are Entitled to Preliminary Injunctive Relief.

As explained, for Plaintiffs to prevail on their motion for emergency injunctive relief, they bear the burden of proving a substantial likelihood of success on their claims, irreparable injury in the absence of relief, and a balancing of the relative equities that favors their position. *See* Legal Standards (citing, among others, *Winter*, 555 U.S. at 20, and *Nken*, 556 at 435). The Circuit has long-held that at least the first of these elements—likelihood of success—is an "independent" and "free-standing" requirement, *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011), such that any failure to make a "clear showing" of probable success is independently sufficient to defeat the motion, *see Ark. Dairy Coop. Ass'n v. United States Dep't of Agric.*, 573 F.3d 815 (D.C. Cir. 2009) (refusing to consider other factors where plaintiff had not shown likelihood of success). Plaintiffs' motion for a preliminary injunction thus falters at the earliest possible step.

In their motion, Plaintiffs seem to acknowledge the frailty of the substantive due process and equal protection challenges they assert in Counts 3 and 4 of the Complaint, and argue only that they are likely to succeed on Counts 1 and 2. Pls.' Mem. at 27 n.6. But even with respect to those, Plaintiff cannot make the sort of "clear showing" required for the emergency relief they seek. Indeed, as explained, with respect to Count 1, Plaintiffs acknowledge that they do not have a property right under District law to obtain a driver's license, and they have not identified any legal authority supporting the proposition that they have a liberty interest in a driver's license.

See Section I. At best, that claim is a long-shot. With respect to Count 2, Plaintiffs have failed to identify any situations where *Griffin*'s fundamental fairness principle was applied outside of the context of fundamental rights or interests, meaning, Plaintiffs' likelihood of success would at least require that the Court extend, not apply, existing law. In short, given the complete absence of authority directly supporting Plaintiffs' claims, their likelihood of success is at best remote and, more realistically, out of the question. The Court should deny their motion on that basis alone.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' Complaint with prejudice, or in the alternative, deny their motion for a preliminary injunction.

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Respectfully Submitted,

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