IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EVELYN PARHAM, **NICHOLE JONES**, **CARLOTTA MITCHELL**, **DOMINIQUE ROBERTS**, and **VICTOR HALL**,

Plaintiffs,

v.

DISTRICT OF COLUMBIA; **GABRIEL ROBINSON**, Director of the District of Columbia Department of Motor Vehicles, in his official capacity; **GLEN LEE**, Chief Financial Officer for the District of Columbia, in his official capacity,

Defendants.

Case No.: 1:22-cv-02481-CKK

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION

All four preliminary injunction factors weigh heavily in Plaintiffs' favor: Plaintiffs are substantially likely to succeed on Counts I and II of their complaint; Plaintiffs will continue to suffer irreparable harm in the absence of a preliminary injunction; and both the balance of equities and the public interest warrant a preliminary injunction. ECF No. 4-1 at 26-45. Defendants address only the likelihood-of-success factor. ECF No. 9 at 19-20. As explained below, their position on this factor is unavailing. And by not even attempting to address the other three factors, Defendants concede that each one supports Plaintiffs.

A. Plaintiffs Are Substantially Likely to Succeed on Counts I and II

1. Defendants Have Violated Plaintiffs' Procedural Due Process Rights

a. Plaintiffs have a constitutionally protected property interest in retaining their driver's licenses

The Supreme Court has repeatedly held that the Constitution's procedural due process guarantee protects one's interest in retaining a driver's license once issued. *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Dixon v. Love*, 431 U.S. 105, 112 (1977); *Mackey v. Montrym*, 443 U.S. 1, 10 & n.7 (1979); *Cleveland v. United States*, 531 U.S. 12, 25 n.4 (2000). Defendants attempt to circumvent this considerable body of precedent by arguing that two Plaintiffs never had a driver's license and that the licenses of the other three naturally expired by their terms without any "interference" from Defendants. Thus, according to Defendants, all five Plaintiffs are claiming a property interest in "obtaining"—not retaining—a license, which Defendants say is not constitutionally protected. *See* ECF No. 9 at 7-9.

Defendants badly distort the facts. As Plaintiffs' sworn declarations make clear, all five Plaintiffs—not just three—possessed District driver's licenses until the Clean Hands Law prevented renewal. *See* ECF No. 4-5 (Parham Decl.), ¶¶ 4, 9; ECF No. 4-6 (Nichole Jones Decl.),

¶ 6; ECF No. 4-7 (Mitchell Decl.), ¶ 5; ECF No. 4-8 (Roberts Decl.), ¶¶ 2, 5; ECF No. 4-9 (Hall Decl.), ¶¶ 3, 7; *see also* ECF No. 1-2 (Compl.), ¶¶ 10, 16, 17, 20, 24, 28, 34, 37, 38, 41, 47, 48. Further, Plaintiffs' licenses did not naturally expire by their terms such that, via renewal, Plaintiffs would be "obtaining" licenses as if for the first time. Rather, through renewal, Plaintiffs would *retain* licenses they already possessed. The only reason their licenses expired and could not be retained was the operation of the Clean Hands Law's provision automatically disqualifying them from renewal as punishment for unpaid debt to the government. *See* D.C. Code § 47-2862(a). Put differently, Plaintiffs had licenses, and the only thing that deprived them of those licenses was, and is, Defendants' enforcement of the law challenged in this case. *See* ECF No. 4-5, ¶¶ 4, 9; ECF No. 4-6, ¶ 6; ECF No. 4-7, ¶ 5; ECF No. 4-8, ¶¶ 2, 5; ECF No. 4-9, ¶¶ 3, 7; ECF No. 1-2 (Compl.), ¶¶ 10, 16, 17, 20, 24, 28, 34, 37, 38, 41, 47, 48. Though Defendants contend that they did nothing to "interfere" with Plaintiffs' licenses, ECF No. 9 at 8, enforcing the Clean Hands Law to disqualify Plaintiffs from renewing the licenses they already had is nothing if not interference.

Defendants do not present any argument, much less evidence, to rebut the point that Plaintiffs' only obstacle to retaining their existing licenses was the Clean Hands Law. They deny neither that the statute mandated automatic non-renewal of their licenses nor that, as a result, non-renewal under the statute worked like a "slow-motion suspension." ECF No. 4-1 at 1, 3-6, 19. And because a driver's license subject to suspension is indisputably a constitutionally protected property interest under the Supreme Court's driver's license due process precedents, *see supra* (citing *Bell, Dixon, Mackey,* and *Cleveland*), so is an existing driver's license subject to "slow-motion suspension," *i.e.*, non-renewal.

A second line of procedural due process precedent reinforces this conclusion: Plaintiffs have had a property interest in renewing their licenses because of their "legitimate claim of

entitlement" in renewal, absent the impediment of the Clean Hands Law. *Perry v. Sindermann*, 408 U.S. 593, 602 (1972). The "criteria for renewal" are "undemanding" and "objective" and demonstrate that the District "expect[s] most licenses to be renewed as a matter of course." *Estate of Wobschall by Wobschall v. Ross*, 488 F. Supp. 3d 737, 748 (E.D. Wis. 2020) (citations and quotations marks omitted); *see also id.* (as to "[w]hether a person has a property interest in renewing her [driver's] license, . . . the Court concludes that she does."). According to the Department of Motor Vehicles ("DMV") website, which reflects DMV regulations, *see* DCMR § 18-110, a District resident with an unexpired Real ID license can renew it online if they simply have "[their] current name on file with DC DMV," "[their] current address on file at DC DMV," "[their] driver license number and the control number from [their] renewal notice [and] a valid credit card," and have not experienced certain medical conditions. *See* D.C. Department of Motor Vehicles, Online Driver's License Renewal, https://dmv.dc.gov/node/1120186. Renewing by email or in person is similarly "undemanding" and "objective," requiring proof of identity, residence in the District, and Social Security number, as well as a current license. *See* D.C. Department of Motor Vehicles, Renew a REAL ID or Limited Purpose Driver License, https://dmv.dc.gov/node/1119107. What's more, DMV mails, emails or texts renewal notices 60 days before a license expires, and the licensee is eligible to renew *within* that period, *see id.*—yet another fact undermining Defendants' assertion that the Clean Hands Law does not interfere with a license during its "defined term." ECF No. 9 at 8. Based on these "rules and understandings promulgated and fostered by" the DMV, licensees have a *bona fide* expectation of license renewal. *Perry*, 408 U.S. at 602.[1]

[1] The authorities Defendants cite to argue that Plaintiffs did not have a legitimate claim of entitlement in license renewal are easily distinguished. *Baer v. White*, Civil Action No. 08-3886, 2009 WL 1543864, at *8 (N.D. Ill. June 3, 2009), was about applying for a driver's license for the

Further, contrary to Defendants' claims, this expectation of renewal stands in contrast to a District resident's expectation of "obtaining" a license. The process for obtaining a license has additional, more demanding criteria, including vision-screening, a knowledge test, and a road test. D.C. Department of Motor Vehicles, Obtain a REAL ID Driver License, https://dmv.dc.gov/node/1119101; DCMR §§ 18-103-107.

Defendants rest their counterintuitive, regulation-defying argument that Plaintiffs sought to "obtain" new licenses—not retain existing licenses through renewal—on the following passage from the D.C. Court of Appeals' decision in *Wall v. Babers*: "it would be illogical to treat the renewal of a license differently than the issuance of a license for the first time." 82 A.3d 794, 800 (D.C. 2014); ECF No. 9 at 7-8. This passage cannot bear any of the weight that Defendants give it. To begin, the passage comes not from the relevant section of *Wall* addressing the procedural due process claim in that case, but rather from the section addressing the claim that the District violated D.C. law by rejecting the plaintiff's application for renewal based on the unresolved suspension of his driving privileges in two other states. In the procedural due process section, the court—without acknowledging that the Supreme Court has recognized a property interest in a driver's license once issued—assumed without deciding that the plaintiff *had* a protected interest in his District driver's license, and proceeded straightaway to an evaluation of the process due under *Mathews v. Eldridge*, 427 U.S. 319 (1976). Because *Wall* did not hold that District drivers

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first time, not renewal. *Ace Partners, LLC v. Town of E. Hartford*, 883 F.3d 190, 202 (2d Cir. 2018) (EMT license), *Vars v. Citrin*, 470 F.3d 413, 414 (1st Cir. 2006) (liquor license), and *Lockhart v. Matthew*, 83 F. App'x 498, 500-01 (3d Cir. 2003) (pawnshop license), were not about driver's licenses at all; they involved government licenses under licensing schemes much different, and much more discretionary, than driver's license renewal schemes and, importantly, because they did not involve driver's licenses, they did not implicate the "substantial" property interest recognized in the Supreme Court's driver's license due process cases.

do not have a property interest in renewing a driver's license, and in fact assumed just the opposite (without even acknowledging *Bell* and its progeny), *Wall* does not support Defendants' position.

The passage Defendants cite also does not end where they suggest. There is a comma where Defendants put a period, and what comes after the comma is material: "it would be illogical to treat the renewal of a license differently than the issuance of a license for the first time, *given the District's authority to revoke or suspend licenses*." *Wall,* 82 A.3d at 800 (emphasis added). The court continued: "If the District has the ability to suspend an individual's active license, it makes little sense to require the District to automatically renew a license with the same deficiencies." *Id.* In context, the cited passage from *Wall* simply says that, in cases where the District could suspend a license, District law does not require the District to renew a license, just as District law would not require issuance of a license for the first time in those circumstances. If anything, *Wall* indicates not that renewal and original application are equivalent, as Defendants incorrectly assert, but rather that *non-renewal and suspension* are equivalent. Which gets back to the point above: because a driver's license in the suspension context is indisputably a property interest entitled to due process protection, so too is a driver's license in the non-renewal context.

Because Plaintiffs had driver's licenses at the time the District disqualified them from renewal under the Clean Hands Law, they had a property interest entitled to due process protection.

b. Defendants have infringed Plaintiffs' procedural due process rights by providing them no opportunity for a hearing before, or even after, refusing to renew their driver's licenses under the Clean Hands Law

Defendants further argue that, even if Plaintiffs have a protected property interest, they received all the process they were due when the District originally ticketed and fined them, even though the non-renewal of their licenses was hardly a certainty then. ECF No. 9 at 10-12. This argument suffers from myriad flaws.

At the outset, and notwithstanding their earlier acknowledgment that the Supreme Court's decision in *Bell* applies when an individual has a property interest in a driver's license, ECF No. 9 at 8, Defendants ignore *Bell* and confine their argument to the *Mathews* factors. Decided five years before *Mathews* and left unmodified by *Mathews* or any later decision, *Bell* held that, except in "emergency" situations implicating public safety, "due process requires that when a State seeks to terminate an interest such as that here involved [*i.e.,* a driver's license], it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." *Bell,* 402 U.S. at 242 (citations omitted). Plaintiffs' driving does not present any "emergency" public safety risk, and Defendants do not contend otherwise. Therefore, under the explicit command of *Bell*, Defendants' failure to provide Plaintiffs any hearing ***at all*** before, or even after, automatically disqualifying them from renewing their licenses violates due process.[2] *Stinnie v. Holcomb,* 355 F. Supp. 3d 514, 529-31 (W.D. Va. 2018); *compare Mackey*, 443 U.S. 1 (availability of immediate post-suspension hearing satisfied due process for licensee who was arrested for drunk driving and refuses a breathalyzer) *with Dixon*, 431 U.S. 105 (availability of post-revocation hearing and hardship exceptions prior to such hearing satisfied due process for

[2] In their brief's background section, Defendants mention D.C. Code § 47-2865(c), which provides that "[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." Tellingly, however, Defendants do not rely on this provision to support their argument that Plaintiffs received the process they were due. Nor do they deny Plaintiffs' core allegation that they have not provided Plaintiffs any opportunity for a hearing to challenge license non-renewal. Defendants do not argue, much less present evidence, that (1) they, in fact, comply with D.C. Code § 47-2865(c) and grant hearings on request; (2) they notified Plaintiffs (or notify anyone denied renewal under the Clean Hands Law) of the opportunity to request a hearing; or (3) at such a hearing, Plaintiffs could have presented evidence of their inability to pay their outstanding debt or of any errors or unfairness in the assessment of that debt. Defendants' silence on these points confirms the validity of Plaintiffs' allegations that license non-renewal is automatic under the Clean Hands Law, that Defendants' application system is electronically programmed with a business rule that immediately terminates any application for renewal when a Clean Hands "red flag" appears, and that Plaintiffs did not receive any opportunity for a hearing to challenge the automatic bar to non-renewal of their licenses.

licensee who was convicted of speeding three times in a year and whose license was suspended three times within ten years).

That's not all. As Plaintiffs' opening brief explained, application of the *Mathews* factors reinforces the result dictated by *Bell*. Each factor—the strength of Plaintiffs' interest in retaining their licenses; the risk of erroneous deprivation and the probable value of safeguards; and the government's interest in enforcement—weighs in favor of finding that Defendants have violated Plaintiffs' due process rights. ECF No. 4-1 at 29-35.

Plaintiffs' interest in retaining driver's licenses. Defendants' answer to Plaintiffs' legally and factually unassailable contention that their interest in retaining a driver's license is strong, *id.* at 30-32, is to redefine that interest and thereby attempt to diminish it. ECF No. 9 at 10-11. Relying on *Fowler v. Benson*, 924 F.3d 247, 256 (6th Cir. 2019), Defendants argue that the interest at stake is not Plaintiffs' interest in retaining a driver's license, but rather a much narrower "interest in *applying* for a license, *despite [having] debts to the District*." ECF No. 9 at 10 (emphasis added). That definitional maneuvering founders on two levels.

First, as explained above in Section I.A.1.a., Plaintiffs' interest is in retaining licenses they already possessed, not in "applying" for licenses as if for the first time.

Second, the anomalous analytical framework the *Fowler* majority applied to hold that poor people unable to pay government debt have no protectible property interest in retaining a driver's license does violence to the framework the Supreme Court has established for assessing the existence and weight of protected property interests. As the *Fowler* dissent observed, the panel majority—like Defendants here—"ignores age-old Supreme Court precedent that squarely recognizes a protected property interest in the continued possession of a driver's license and proceeds as if Plaintiffs must establish a more specific property interest." 924 F.3d at 264 (Donald,

J., dissenting). Indeed, the Supreme Court has serially stated that the property interest in a driver's license is "important" and "substantial" and that "[o]nce licenses are issued . . . , their continued possession may become essential in the pursuit of a livelihood." ECF No. 4-1 at 30-31 (collecting cases); *see also Cleveland*, 531 U.S. at 25 n.4 (citing *Bell* to observe that "we have held that individuals have constitutionally protected property interests in state-issued licenses essential to pursuing an occupation or livelihood"). Plaintiffs' lived experiences powerfully confirm how vital a driver's license is for navigating daily life. ECF No. 4-1 at 31; *cf. City of Chicago v. Fulton*, 141 S. Ct. 585, 593-94 (2021) (depriving debtors of a car based on their debts interferes "not only with [their] ability to earn an income and pay their creditors but also with their access to childcare, groceries, medical appointments, and other necessities") (Sotomayor, J., concurring).

Further, the *Fowler* majority "put[] the cart before the horse" and engaged in tautological reasoning by defining the property interest in a driver's license according to its "deprivation procedures"—a move the Supreme Court has explicitly held to be impermissible. *Fowler*, 924 F.3d at 264-65 (Donald, J., dissenting) (citing *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) ("'Property' cannot be defined by the procedures provided for its deprivation any more than can life or liberty."); *see also Fowler*, 924 F.3d at 266-68. To amplify the *Fowler* dissent's point: if the *Fowler* majority were correct, the property interest recognized in *Bell* would not have been one's interest in retaining a driver's license, but rather one's interest in retaining a driver's license when state law requires a license to be immediately suspended, without a determination of fault, for failure to post bond after an accident. That narrower interest is plainly not the interest recognized in *Bell*.

Neither *Bell* nor the Supreme Court's other procedural due process driver's license cases suggest that a licensee's interest should be circumscribed by the statutory grounds for deprivation.

To the contrary, each holds that the interest in retention exists and is substantial, and each examines the statutory grounds for deprivation *not* to determine the existence or weight of the interest, but rather to answer the separate question of what process is due. *Bell,* after recognizing a substantial property interest in a driver's license, found that a pre-suspension hearing was required because the statutory grounds for suspension hinged on whether a licensee who got into an accident posted a security bond "from which to pay any judgment" without accounting for whether the licensee was at fault for the accident. 402 U.S. at 539-40. *Dixon* distinguished *Bell* and held that the government did not violate due process by failing to provide a pre-revocation hearing to an individual with three convictions for speeding within a 12-month period, and three driving-related license suspensions within 10 years, because the individual reasonably posed a threat to public safety and the availability of both hardship exceptions to temporary suspension and post-suspension administrative hearings was adequate to protect his interest in a license. 431 U.S. at 112-16. *Mackey* again distinguished *Bell*, holding that, despite his "substantial" interest in continued possession of a license, the licensee, who was arrested for drunk driving and refused to take a breathalyzer, did not have the right to a pre-suspension hearing because he presumptively endangered public safety and his interest was adequately protected by the availability of an immediate, "same day" post-suspension hearing. 443 U.S. at 10-19.

By redefining a licensee's property interest using the Clean Hands Law's mandate for license non-renewal based on unpaid debt, Defendants, like the *Fowler* majority, ignore the fact that, in all these cases, the Supreme Court recognized a substantial property interest in retaining a driver's license—full stop—and did *not* define that interest according to the statutory grounds for deprivation. Defendants' attempt to redefine and diminish that interest based on an obvious "tautology," *see Loudermill*, 470 U.S. at 541—*i.e.*, the absence here of a statutory exception for

indigency means that Plaintiffs have no interest in retaining their driver's licenses without regard to their indigency—must be rejected as illogical, offensive to decades of precedent, and inconsistent with the uncontested facts of Plaintiffs' lives.

Risk of erroneous deprivation and probable value of safeguards. Defendants contend that this factor does not address the risk of any unconstitutional failure to provide Plaintiffs an indigency determination, and is instead limited to the risk that the underlying determination of Plaintiffs' debt was in error. Defendants accuse Plaintiffs of focusing on the purportedly irrelevant first point to the exclusion of the second. ECF No. 9 at 11-12.

This is doubly inaccurate. Supported by citations to evidence, Plaintiffs assert that there *are* risks of error in the underlying determinations of debt that trigger the Clean Hands Law's prohibition on license renewal. These include inadequate notice to those accused of infractions and mistaken identification of those who owe debt. ECF No. 4-1 at 7-8, 32-33; ECF No. 4-4, ¶¶ 4-12 (Anthony Q. Jones Decl.) (recounting inability to register vehicle due to unpaid tickets mistakenly attributed to him); ECF No. 4-6, ¶ 6 (Nichole Jones Decl.) (recounting arrest, fines and fees for driving on a suspended license about which she did not receive notice); ECF No. 1-2, ¶¶ 24, 68, 109.

Lead Plaintiff Evelyn Parham asserts another kind of error. Ms. Parham amassed fines and fees she cannot afford to pay because the District reneged on its promises not to ticket her. Ms. Parham's car was disabled in 2016 due to an accident caused by a large pothole on Benning Road. She could not afford to fix the damage given her limited income, and the District rejected her claim for reimbursement because, after delaying providing her the required reimbursement form, it said she submitted the form three days late. When the car's registration and inspection certificate expired in 2017, she called the Mayor's Office to ensure the car would not be ticketed. Despite

obtaining assurances, she received three tickets for expired tags and inspection in the next two months. She also received assurance from the police that her car would not be ticketed further or towed, but several months later the car was towed. All the parking-related debts that have precluded Ms. Parham from renewing her driver's license, which expired in April 2019, stem from the damage done to her car by a District pothole. *See* ECF No. 4-1 at 9-10; ECF No. 4-5 (Parham Decl.), ¶¶ 4-8; ECF No. 1-2, ¶¶ 10-19.

Defendants are also mistaken in asserting that the erroneous-risk-of deprivation factor is strictly confined to the risk of error in the original assessment of debt and excludes the risk that the license deprivation itself is unconstitutional. Although each of the Supreme Court's due process driver's license cases (*Bell, Dixon* and *Mackey*) discusses the possibility of an erroneous underlying assessment, none of them precludes consideration of a deprivation that is erroneous because it violates the Constitution. And how could they? It makes no sense to say that a potentially mistake-prone driver's license disqualification scheme creates a risk of "erroneous" deprivation of a property interest, while a scheme that is constitutionally infirm does not. Constitutional flaws create a risk of "erroneous" deprivation no less than susceptibility to factual mistake.

The district court in *Stinnie*—which Defendants ignore—recognized this. It found that none of Virginia's procedures for challenging a conviction and court costs that later triggered license suspension prevented the risk of erroneous deprivation, because none provided the licensee with the opportunity to challenge the suspension itself—which was not a certainty at the time of sentencing—based on the inability to pay. *Stinnie*, 355 F. Supp. 3d at 530-31. Inherent in the district court's finding was that due process required a hearing to contest a license suspension on indigency grounds and that Virginia's suspension scheme risked erroneous deprivation because it

furnished no such opportunity. *Id.* The District's Clean Hands scheme creates precisely the same risk.

It necessarily follows that the risk of erroneous deprivation, whether because of mistake, unfairness or unconstitutionality, would be mitigated with the opportunity for a hearing prior to license non-renewal. As previously explained, a hearing would provide Plaintiffs (and others) the chance to show why the underlying assessment of debt was mistaken or unfair, or why nonpayment is not willful but due to a lack of resources. ECF No. 4-1 at 33. Defendants assert otherwise, saying that a hearing would merely "protect procedure for procedure's sake." ECF No. 9 at 11. But that assertion is premised on the claims that Plaintiffs do not argue the District's parking and traffic enforcement scheme to be prone to error and unfairness, and that the risk-of-erroneous-deprivation factor does not encompass constitutional infirmities. As shown above, these claims are inaccurate.

Defendants rely heavily on *Mendoza v. Garrett* for their position on the risk-of-erroneous-deprivation factor. 358 F. Supp. 3d 1145, 1179-80 (D. Or. 2018). But *Mendoza* is readily distinguishable.[3] The Oregon scheme examined in *Mendoza* featured both: (1) a pre-suspension

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[3] *Mendoza* also goes astray in finding that procedural due process did not require a pre-suspension ability-to-pay determination because driving is not a "fundamental right." *Mendoza,* 354 F. Supp. 3d at 1179. The question for procedural due process purposes under *Mathews* is whether an individual has a *property interest* in a driver's license, not whether they have a "fundamental right" to drive. *Mendoza*'s analysis thus mixes apples and oranges. The mistake matters: overlooked by *Mendoza,* the Supreme Court has repeatedly stated that the property interest in a driver's license is "substantial," "essential in the pursuit of a livelihood," and vital to the "ability to earn an income[,] pay their creditors . . . [and] access to childcare, groceries, medical appointments, and other necessities." *See supra* (citing *Mackey, Bell* and *Fulton*); *see also Wooley v. Maynard*, 430 U.S. 705, 715 (1977) ("driving an automobile" is "a virtual necessity for most Americans"). To be sure, one's "substantial" interest in a driver's license must be balanced against the other *Mathews* factors to determine what process is due. But the interest *itself* is substantial. Contrary to what *Mendoza* says, it is not diminished because it does not implicate a recognized "fundamental right," and the fact that it is not a "fundamental right" is irrelevant to whether the Clean Hands scheme threatens its erroneous deprivation.

notice from the Oregon DMV to return to court, after the court initiated suspension proceedings, to resolve the issue of nonpayment; and (2) the opportunity to address the outstanding debt at the hearing, including the ability to present evidence of inability to pay, and persuade the court either "to create a payment plan or adjust the fine." *Id.* Like the Virginia scheme in *Stinnie*, which *Mendoza* explicitly distinguished, the District's Clean Hands scheme provides no such protections. *See id.*; *see also Mendoza v. Garrett*, No. 3:18-cv-01634-HZ, 2019 WL 2251290, at *5-6 (D. Or. May. 16, 2019)

The government's interest. Defendants breezily assert in a single sentence that they have a strong interest in revenue collection. But as established in the opening brief, whatever *general* interest Defendants may have in revenue collection is not only unrealizable but also undermined and disserved by depriving *these* Plaintiffs and other indigent District residents of their driver's licenses. No matter how coercive the Clean Hands scheme might be, it cannot force these individuals to come up with money they do not have, and without a license, it is even harder for these individuals to earn the money needed to pay off their debts. ECF No. 4-1 at 33-34.[4] Defendants have no answer to this reality—a reality that the Supreme Court recognized half a century ago and that *Stinnie* recently reconfirmed. *Tate v. Short*, 401 U.S. 395, 399 (1971); *Bearden v. Georgia*, 461 U.S. 660, 670 (1983); *Stinnie*, 355 F. Supp. 3d at 531.

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Unlike the government agencies in *Dixon* and *Mackey*, Defendants do not and cannot contend that Plaintiffs' driving poses a presumptive threat to public safety. Instead, Defendants

[4] At a preliminary injunction hearing as well as at trial, Plaintiffs here, like the plaintiffs in *Stinnie*, are prepared to offer expert testimony confirming that, under established social science standards, Plaintiffs are not meaningfully able to pay off the debts the District's records currently show they owe. *See Stinnie v. Holcomb,* Case No. 3:16-cv-00044, ECF No. 113 at 76.

automatically disqualified Plaintiffs from renewing their driver's licenses for the sole purpose of generating revenue. In the process, Defendants furnished Plaintiffs no hearing *at all* to contest the disqualification. Not even *Bell* featured the complete absence of an opportunity to challenge the deprivation of a driver's license. Given *Bell*'s command, and consistent with the recent decision in *Stinnie,* procedural due process required Defendants to provide Plaintiffs a pre-deprivation hearing to challenge the non-renewal of their licenses and address their assessed debt. That conclusion is reinforced by Plaintiffs' weighty property interest in their licenses, the risk that Defendants erroneously deprived Plaintiffs of those licenses, the utility of a pre-deprivation hearing to contest non-renewal, and the futility of imposing the punishment of non-renewal to coerce Plaintiffs to pay their debts.

2. Defendants Have Violated Plaintiffs' Due Process and Equal Protection Rights.

As explained in the opening brief, all four factors for determining whether a government practice violates the *Griffin* "fundamental fairness" principle weigh heavily in Plaintiffs' favor: the individual interest affected—a driver's license—is substantial; depriving Plaintiffs of their driver's licenses has a devastating impact on their ability to manage their daily affairs; as applied to Plaintiffs, there is no rational connection between driver's license non-renewal and the legislative purpose of debt collection; and there are reasonable alternative means of achieving this legislative purpose. *See* ECF No. 4-1 at 9-13, 22-25, 30-32, and 38; ECF Nos. 4-5 – 4-9.

Defendants do not contest any of this. Rather, Defendants claim that: (1) the *Griffin* principle and the heightened level of scrutiny that accompanies it do not apply in the first place because Plaintiffs challenge the deprivation of a driver's license, rather than the deprivation of a "fundamental right"; and (2) the Clean Hands Law satisfies rational basis review, even though Plaintiffs bring an as-applied challenge contending that, as to *them*, the statute bears no rational relationship to a valid governmental purpose. ECF No. 9 at 13-17. Neither argument is persuasive.

a. The Griffin Principle Applies Here

Neither the Supreme Court nor any decision in this Circuit has ever limited application of the heightened level of scrutiny in the *Griffin*/*Bearden* line of cases to the deprivation of "fundamental rights." Rather, the Supreme Court has applied the *Griffin* principle where, as here, the state deprives an individual of an important interest based solely on inability to pay.

In *Griffin* itself, the Supreme Court stressed that there was no predicate right to the interest at issue—an appeal. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (states are "not required by the Federal Constitution to provide . . . a right to appellate review at all"). But the Court explained that, if a state government provides the right to appeal, it cannot do so "in a way that discriminates against some convicted defendants on account of their poverty." *Id.*

In *Bearden,* Justice O'Connor's opinion for the Court likewise made clear that application of the *Griffin* principle does not hinge on the alleged infringement of a fundamental right. *Bearden* eschewed traditional equal protection and due process analysis, establishing instead a multi-part test that begins with consideration of "the nature of the individual interest affected . . . ." *Bearden*, 461 U.S. at 666-67. Had *Bearden* been limited to fundamental rights, this first factor would have been superfluous, and the Court would have had no cause to require a "careful inquiry" into it. That is because it would simply turn on the binary question of whether the Supreme Court has or has not classified the interest at issue as a fundamental right. In its detailed assessment of the interest at issue, *Bearden* did not once use the term "fundamental right," nor did it say that in the absence of a fundamental right, the other three factors are irrelevant; its focus instead was on the "reasons for nonpayment" being "of critical importance" in. *Id*. Defendants' argument that the *Griffin* principle does not apply absent a "fundamental right" cannot be squared with *Bearden*.

Nor can it be reconciled with *San Antonio Independent School District v. Rodriguez*. 411 U.S. 1 (1973). *Rodriguez* evaluated an equal protection challenge to the inadequate funding of a

state's school systems based on wealth, ultimately declining to recognize access to education as a fundamental right. *Id.* at 35-40. After a discussion of *Griffin*, the Court, rather than distinguishing *Griffin* on the ground that there is no fundamental right to education, noted that it would likely be unconstitutional for the State to make public education "available . . . only to those able to pay a tuition assessed against each pupil" because those unable to pay "the prescribed sum . . . would be absolutely precluded from receiving an education." *Id.* at 21, 25 n.60. Thus, *Rodriguez,* too, recognized that there are interests, other than "fundamental rights," whose deprivation based on wealth is entitled to heightened scrutiny under the *Griffin* principle.

The Supreme Court's decision in *M.L.B. v. S.L.J.* resolved any lingering doubt. There the Court stated that "*Griffin*'s principle has not been confined to cases in which imprisonment is at stake." 519 U.S. 102, 111 (1996). The Court then furnished a detailed historical analysis demonstrating that the *Griffin/Bearden* line of cases was predicated not on the deprivation of recognized fundamental rights, but rather on the deprivation of important interests, based on inability to pay. *Id.* at 111-13. In applying *Griffin/Bearden* to the claim of an impoverished mother who could not afford the fees to appeal the termination of her parental rights, the Court was careful to distinguish between cases seeking "to alleviate the consequences of differences in economic circumstances that existed apart from state action," which do not trigger *Griffin/Bearden* heightened scrutiny, from cases where "the State's devastatingly adverse action" solely affects the poor because of their poverty, which do. *See id*. at 125; *see also id.* at 114–16.

The Supreme Court has not only declined to limit *Griffin/Bearden* to the deprivation of fundamental rights; the Court has applied *Griffin/Bearde*n to the deprivation of private interests that are of comparable or even less importance than retention of a driver's license. In *Mayer v. City of Chicago*, the Court applied *Griffin/Bearden* to imposition of a fine based on inability to

pay, explaining that "[a] fine may bear as heavily on an indigent accused as forced confinement." 404 U.S. 189, 197 (1971). The Court also identified the loss of a professional license as a "collateral consequence[]" that could be "even more serious" than confinement. *Id*. And in Argersinger v. Hamlin, Justice Powell observed in his concurrence that "[l]osing one's driver's license is more serious for some individuals than a brief stay in jail." 407 U.S. 25, 48 (1972) (Powell, J., concurring, joined by Rehnquist, J.) (emphasis added).

At least as serious as a monetary fine, the loss of a professional license, or a brief stay in jail, the loss of a driver's license compels review under *Griffin/Bearden* when it is based on inability to pay. Indeed, as explained in Section I above, the Supreme Court has recognized a person's interest in retaining a driver's license to be "substantial," and "essential to the pursuit of a livelihood," in the procedural due process context. It should be treated no differently in the *Griffin/Bearden* context. As the U.S. Department of Justice has recognized:

> [T]he constitutional principle reaffirmed by [*Griffin*, *Bearden* and related authority] prohibits the imposition of adverse consequences against indigent defendants solely because of their financial circumstances, regardless of whether those adverse consequences take the form of incarceration, reduced access to court procedures, or some other burden. . . . [Virginia's then-operative] practice of automatically suspending the driver's license of a defendant who fails to pay owed court debt without any inquiry into the defendant's financial circumstances—i.e., whether the nonpayment was willful or the result of an inability to pay—violates that principle.

Statement of Interest, No. 3:16-cv-00044-NKM-JCH, (ECF No. 27), at 15, 17.

None of the cases Defendants rely on, are persuasive in arguing otherwise. *See* ECF No. 9 at 14-15. Under the Supreme Court decisions discussed above, the district court decisions in both *Johnson v. Jessup* and *Mendoza v. Garrett* improperly limited application of *Griffin/Bearden* to deprivation of fundamental rights and failed to properly apply the Supreme Court's guidance as to

the importance of retaining a driver's license.[5] 381 F.Supp.3d 619, 624 (M.D. N.C. 2019); 358 F. Supp. 3d 1145, 1160 (D. Or. 2018).

Further, those cases are readily distinguishable. As Defendants concede, the North Carolina suspension scheme sustained in *Johnson,* unlike Defendants' Clean Hands scheme, *included* a procedure for avoiding driver's license revocation by showing that non-payment of debt was not willful. *See* ECF No. 9 at 14; *Johnson,* 381 F. Supp. 3d at 624. Similarly, and also unlike the Clean Hands Law, the Oregon suspension scheme sustained in *Mendoza included* an ability to pay assessment. *See* 358 F. Supp. 3d at 1160 ("Oregon courts . . . *do* consider a person's indigency") (emphasis added); *id.* at 1180.[6]

When subjected to heightened scrutiny under *Griffin*/*Bearden,* the Clean Hands Law's license disqualification scheme plainly violates the Fifth Amendment. ECF No. 4-1 at 35-39. Defendants do not attempt to contend otherwise. ECF No. 9 at 12-17. That is, Defendants do not argue that, if *Griffin*/*Bearden* applies, the Clean Hands scheme is still constitutional. Thus, they concede the point. Because *Griffin*/*Bearden* applies, Plaintiffs are likely to succeed on Count II.

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[5] *Mendoza* and *Johnson* both relied in part on *Fowler* to circumscribe *Griffin/Bearden.* For the reasons described above and by other judges on the Sixth Circuit, this aspect of *Fowler* is also flawed. *Robinson*, 966 F.3d 521, 522 (6th Cir. 2020) (Cole, C.J., *dissenting from denial of rh'g en banc*) ("License-suspension schemes flout [the *Griffin* principle] when they allow residents with the means to pay a fine to keep their driver's licenses despite having committed driving infractions, while suspending the licenses of indigent persons who commit those same infractions"); *Fowler*, 924 F.3d at 271 (Donald, J. dissenting) ("when a state deprives a person of an essential source of livelihood 'solely because [they are] indigent and cannot immediately pay the fine . . . ,' the principle set forth in *Griffin* is implicated.").

[6] Also, in *Franseschi v. Yee*—the one other case Defendants cite to argue against applying *Griffin*/*Bearden*—the challenged California statute only required revocation of driver's licenses for state residents with *over one hundred thousand dollars* in unpaid state taxes. 887 F.3d 927 (9th Cir. 2018). This classification self-evidently does not sanction those in poverty, and is a far cry from the District's sweeping scheme, which disqualifies anyone with more than just $100 in unpaid debt from renewing their license.

b. Enforcing the Clean Hands Law Against Plaintiffs Also Fails Rational Basis Review.

Because the *Griffin* principle controls, the Court can end its analysis of Count II there. In the alternative, Defendants' enforcement of the Clean Hands Law against Plaintiffs fails a properly applied rational basis test.

Defendants are correct that, under rational basis review, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne, Tex. v. Cleburne Living Center*, 472 U.S. 432, 440 (1985). But Defendants fail to acknowledge that the constitutional challenges Plaintiffs lodge in *this* case are *as-applied* challenges, where Plaintiffs have "claimed that the Act is unconstitutional because of the way it was applied to the particular facts of their case." *U.S. v. Salerno*, 481 U.S. 739, 745 n.3 (1987). *See* ECF 1-2 (Compl.), ¶¶ 110, 117, 125, 136, and Prayer for Relief subsections (b)-(c). This matters because it means Defendants have to establish the rationality of enforcing the Clean Hands Law *against these Plaintiffs*. And they cannot do so.

Cleburne is a seminal decision on as-applied constitutional challenges. In that case, a local government denied a special use permit for a group home for people with intellectual disabilities. 472 U.S. at 435. While acknowledging the government's generally "legitimate interests" in avoiding population concentration, reducing congestion, eliminating fire hazards, and preserving neighborhood serenity, the Court dug deeper and, after analysis, concluded that "the *record* does not reveal any rational basis for believing *the . . . home* would pose any special threat" and that the ordinance was therefore "invalid as applied." *Id.* at 448 (emphasis added). The Court concluded that the city had failed "rationally to justify" how denying a special use permit to the plaintiffs *in the case* advanced its general, legitimate interests. *Id.* In reaching its decision, the Court was explicit in examining whether the record justified applying the challenged ordinance to deny the

plaintiffs the opportunity to establish a group home. *See id*. at 448 (equal protection violated "[b]ecause . . . the record does not reveal any rational basis for believing that the [] home would pose any special threat to the city's legitimate interests.").

Similarly, in *Allegheny Pittsburgh Coal Co. v. Cty. Comm'n*, which also involved an as-applied challenge, the Supreme Court required the government to show that, based on the factual record in the case, it was rational to apply the challenged property tax assessment law to the plaintiffs. The assessment scheme valued properties based on either recent purchase price or, if the property was not recently sold, previous assessments. 488 U.S. 336, 338 (1989). Under this system, the defendant—a county commission—intentionally and systematically undervalued properties not recently sold, requiring the plaintiffs to owe much higher taxes. *Id.* at 339-40. Chief Justice Rehnquist's opinion for the Court accepted that the assessment scheme was rational *in theory* but concluded that, because it resulted in such gross disparities *in practice*, enforcing it against the plaintiffs violated the Equal Protection Clause. *Id.* at 343-44. Again, the Court was explicit that its conclusion turned on its review of the factual record of the statute as applied to the party challenging its enforcement. *See id*.

Under cases such as *Cleburne* and *Allegheny*, Defendants are incorrect in their claim that "so long as the [Clean Hands Law] provides *some* traffic defendants with an efficacious incentive to pay fines and costs, the law survives." ECF No. 9 at 16 (emphasis in original; internal quotation marks omitted). In defending the Clean Hands Law under the rational basis test, Defendants must adduce *record evidence* showing that enforcing the statute against *these Plaintiffs* is rationally related to the District's asserted interest in revenue generation.[7]

[7] Defendants' reliance on the two-judge panel majority in *Fowler* as to how the rational basis test should be applied is likewise unpersuasive in light of Supreme Court precedent. Sixth Circuit Chief Judge Cole explained his regret that the panel in *Fowler* "rubber-stamp[ed] [] arbitrary laws [and]

The factual record Plaintiffs have provided shows just the opposite. ECF No. 4-1 at 22-25. It demonstrates that there is no rational connection between the only stated purpose of the Clean Hands law, *i.e.,* debt collection, and the legislative means chosen to achieve it, *i.e.,* punishing Plaintiffs by automatically disqualifying them from renewing their driver's licenses. To support this common sense, legally dispositive point, Plaintiffs have provided considerable evidence, including:

- Their own sworn declarations, which detail how non-renewal of their licenses under the Clean Hands Law has further destabilized their already difficult lives and harmed their job prospects, *see* ECF No. 4-5, 4-6, 4-7, 4-8 and 4-9;
- Studies showing the absence of empirical evidence to support the efficacy of coercing debt payment through driver's license deprivation, *see* ECF 4-1 at 23;
- Acknowledgments by policymakers that payment coercion schemes do not work, *id.*;
- Repeated judicial recognition that sanctioning individuals unable to pay their debts will not coerce payment and will instead make repayment even harder. *Id.* at 33, (collecting statements from *e.g., Stinnie*, 353 F.Supp.3d at 531; *Tate*, 401 U.S. at 399; *Bearden*, 461 U.S. at 670; *see also Robinson*, 814 F. App'x. at 996 (Cole, C.J. concurring); and
- The considered observations of the U.S. Department of Justice, *see* Statement of Interest, *Stinnie*, No. 3:16-cv-00044-NKM-JCH, (ECF No. 27), at 13.

As this evidence amply demonstrates, enforcing the Clean Hands law against Plaintiffs to coerce them to pay their debts to the District is irrational.

Defendants have no response. They do not even *attempt to argue* that enforcing the Clean Hands Law against Plaintiffs or other individuals of limited means is rationally related to their debt collection goals. ECF No. 9 at 16.

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abdicate[d] judicial responsibility to safeguard constitutional protections." *Robinson*, 966 F. App'x at 522 (Cole, J., *dissenting from rh'g en banc*).

In a footnote that relies on nothing more than a single *Washington Post* editorial published after the Council had already voted to repeal the statutory provision challenged here, Defendants make a half-hearted attempt to justify continued enforcement of the Clean Hands Law on public safety grounds. ECF No. 9 at 17 n.5. This too fails, for at least three reasons. First, Defendants offer no evidence or argument that, with driver's licenses, Plaintiffs pose any unique public safety risks. Second, as detailed in the opening brief, when the Council amended the Clean Hands Law in 2001 to enact the provision challenged here, its sole stated purpose was to generate additional revenue for the District; the Council made no attempt to justify this expansion of the Clean Hands Law on public safety grounds. *See* ECF 4-1 at 8 (detailing legislative history). Third, there is no evidence in the legislative record on the 2022 repeal of the Clean Hands Law that a system that only punishes those unable to pay contributes to public safety. As Councilmember Kenyan McDuffie, Chair of the Council committee that conducted a hearing and published a comprehensive report, stated unequivocally in summarizing the legislative record: "There's *no evidence* to suggest that Clean Hands promotes public safety. There's *no evidence* that it promotes public safety generally or safe driving specifically." *See* D.C. Committee of the Whole, Thirtieth Additional Legislative Session, at 30:08 (May 24, 2022) http://dc.granicus.com/MediaPlayer.php?view_id=3&clip_id=7480 (statement of Councilmember Kenyan McDuffie) (emphasis added).

B. Defendants Do Not Challenge, and Thus Concede, that the Other Preliminary Injunction Factors Favor Plaintiffs

Defendants confine their argument in opposition to Plaintiffs' preliminary injunction motion to the likelihood-of-success factor. They do not address any of the other factors the Court must consider. Plaintiffs address each of these other factors in depth. ECF 4-1 at 39-45. By failing to

address these factors, Defendants concede that all of them weigh strongly in Plaintiffs' favor. *See Shaw v. District of Columbia*, 825 F. Supp. 2d 173, 177 (D.D.C. 2011).[8]

With their silence, Defendants have conceded that Plaintiffs will suffer irreparable harm in the absence of a preliminary injunction—that, without driver's licenses, Plaintiffs will continue to struggle with the essential activities of daily life, from finding and keeping a job to going to the grocery store, attending medical appointments, taking children to childcare, and visiting and caring for elderly relatives. ECF No. 4-1 at 39-40.

Defendants further concede that the equities strongly favor Plaintiffs—that while Plaintiffs face obvious hardship without a driver's license, Defendants would experience little or no adverse consequences by permitting Plaintiffs to apply for renewal. Defendants face *de minimis* administrative burdens and zero economic harm. ECF No. 4-1 at 39-42.

Finally, Defendants concede that a preliminary injunction is in the public interest. It would not only end the daily harms that the absence of a driver's license inflicts on Plaintiffs, but for the next year, until the Clean Hands Certification Equity Amendment Act takes effect, would also mitigate the substantial societal costs the Clean Hands Law exacts, which include, among other things, compromising local employers' ability to maintain a stable workforce and exacerbating racial inequalities. ECF No. 4-1 at 42-44.

II. DEFENDANTS' MOTION TO DISMISS SHOULD BE DENIED

Defendants' motion to dismiss should be denied in its entirety. For the reasons set forth above in Section I, it should be denied on Count I (procedural due process), Count II (fundamental

[8] Having elected to make no argument on the other factors in their opposition to the preliminary injunction motion, Defendants may not use their reply on the motion to dismiss to address these factors. *See* ECF 7 at 2 ("Defendants will reply in support of the motion to dismiss by October 31, 2022.").

unfairness based on equal protection and due process principles), and Count IV (substantive due process). The motion should also be denied as to Count III, which states a valid equal protection claim under *James v. Strange*, 407 U.S. 128 (1972).

James struck down a Kansas debt collection scheme because it afforded public debtors none of the exemptions available to private debtors, and thus "impose[d] unduly harsh or discriminatory terms merely because the obligation [was] to the public treasury rather than to a private creditor." *Id*. at 138. The Court emphasized: "State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency." *Id*. at 141-42.

The District's debt collection scheme for debtors "to the public treasury" under the Clean Hands Law violates the rule in *James* because it lacks two major protections that District law affords to debtors facing "private creditors,": (1) an ability to pay assessment and accompanying protections from wage garnishment for debtors as to whom payment of the outstanding amount would constitute an undue hardship, D.C. Code § 16-572.01(a)(1); and (2) an indigency exemption, which extinguishes wage garnishments following civil judgments for private debtors earning less than minimum hourly wage, *see id*. 16-572(1)(a). These differences are material under the line the Supreme Court and lower courts have drawn in applying *James*. *Compare*, *e.g.*, *United States v. Bracewell*, 569 F.2d 1194, 1198-1200 (2d Cir. 1978) (discussing the need for individualized consideration of defendants' financial wherewithal so as not to create hardship in violation of *James*) *with Fuller v. Oregon*, 417 U.S. 40, 47 (1974) (upholding state debt collection scheme in part because it allowed debtors to demonstrate that repayment would impose "manifest hardship").

Defendants claim that "District law actually provides individuals who owe DMV-related fines and penalties greater protections than those who owe civil court judgments through the [government Central Collection Unit]". ECF No. 9 at 18. But Defendants cannot avoid a *James* claim by pointing out differences in different types of *public* debt collection. The operative question under *James* is whether the District has "impose[d] unduly harsh or discriminatory terms merely because the obligation [is] to the public treasury rather than to a *private* creditor." *James,* 407 U.S. at 138 (emphasis added); *see also Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984). Plaintiffs have adequately pled that the District has done exactly that. Therefore, as with the other counts, the motion to dismiss fails as to Count III.

CONCLUSION

For the reasons stated above, as well as those set forth in Plaintiffs' opening brief, the Court should grant Plaintiffs' motion for preliminary injunction and deny Defendants' motion to dismiss.

Respectfully submitted,

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