



TZEDEK DC
Legal Help for People in Debt

Before the Committee on Transportation & the Environment
Public Roundtable Regarding “Enforcement against Vehicles with Substantial Unpaid Traffic Fines”

December 6, 2021

Testimony of Tzedek DC¹ Submitted by Ariel Levinson-Waldman, Founding President and Director-Counsel, and Joshua M. Levin, Volunteer Staff Attorney (Submitted December 20, 2021)

Committee Chair Cheh, Members of the Council of the District of Columbia, and Committee staff:

Thank you for your leadership and for the opportunity to provide post-hearing testimony regarding the “Department of Public Works’ Enforcement Against Vehicles with Substantial Unpaid Traffic Fines,” and the District’s larger efforts to implement Vision Zero through enhanced enforcement methods designed to ensure the payment of outstanding traffic and parking fines. Though we were not able to participate in the hearing, we have had a chance to review the video recording, and have noted concerns regarding the Executive’s testimony that we wanted to share here for the record.

At the outset, thank you Committee Chair Cheh and Committee Members Henderson and Lewis George for your co-sponsorship of 2021 Bill 24-230, the DC Driving to Opportunity Amendment Act of 2021, which would reform the so-called “Clean Hands Law” by ending the District’s current practice of prohibiting the renewal of driver’s licenses to District residents, based solely on the fact that they owe more than \$100 to the District in outstanding fines, penalties, or interest. That bill recognizes that the current Clean Hands Law punishes poverty, and makes it next to impossible for tens of thousands of DC residents to meet the many challenges (*e.g.*, work, children’s school, grocery shopping) of daily life. In 2018, through the leadership of this Committee, the District enacted the Traffic and Parking Ticket Penalty Amendment Act, which ended the District’s *suspension* of driver’s licenses based solely on the

¹ Drawing from the Jewish teachings of “Tzedek, tzedek tirdof,” or “Justice, justice you shall pursue,” and headquartered at the UDC David A. Clarke School of Law, Tzedek DC’s mission is to safeguard the legal rights of DC residents with lower incomes facing debt-related legal crises. Of Tzedek DC’s clients, 90% are African American, 60 % our women, 25% have a disability, and all are DC residents with lower incomes.

existence of over \$100 of debt. That law recognized the importance of enforcing DC’s traffic and parking restrictions through measures grounded in equity rather than punishment. It is time for the Council to take the next step and abolish the non-renewal of licenses based solely on such debt, as well.

The Committee’s December 6 roundtable discussion highlighted two divergent realities associated with the District government’s efforts to achieve traffic safety – the fundamental goal of Vision Zero —through the collection of unpaid tickets. First, widespread recognition appears to exist that equity should be at the heart of the District’s policies regarding the recovery of fines and fees from DC residents. As Chair Cheh noted in her opening statement: “We know that some tickets go unpaid because a resident cannot afford to pay them. While enforcement is a critical part of making our roadways safer, we have to also consider why residents may not be paying their tickets, and the ramifications of booting their vehicles they rely on to get to work, to take their children to school, or otherwise support their family.” Deputy Mayor for Operations and Infrastructure Lucinda M. Babers similarly acknowledged in prepared testimony that the District “must address traffic safety through the lens of racial equity,” and she added that the addressing both the disproportionate number of traffic fatalities, and the disproportionate number of tickets issued, in low-income communities and communities of color “requires a nuanced discussion and approach.”

Second, and at the same time, the December 6 hearing revealed the persistent, troubling assumption within the Executive that punishing DC drivers, by taking away their licenses due to unpaid fines and fees, is sound public policy and a healthy way to achieve traffic safety. Deputy Mayor Babers decried the 2018 passage of the Traffic and Parking Ticket Penalty Amendment Act, one of the District’s most important and commendable steps away from enforcing our traffic safety laws through the use of a wealth-based driver’s license system. The Deputy Mayor called the District’s pre-2018 practice of suspending DC driver’s licenses based on unpaid debt “a collection tool that was very effective at ensuring motorists paid their outstanding fines.” She further testified that with the passage of the 2018 Act, the District “lost a critical tool in ensuring motorists complied with District law.” Deputy Mayor Babers’ comments reflect a concerning nostalgia for a regressive (and discriminatory) tax on the District’s poorest residents that is wholly at odds with the “traffic safety through racial equity” lens elsewhere espoused by the Executive.

We submit this testimony to express concern about this view and to highlight a path forward for the Council as one of the reforms that should be taken. In April 2021, Tzedek DC—in coalition with a 35-plus organization coalition of civil rights, faith-based, consumer protection, and justice advocacy organizations—published [Driving DC to Opportunity](#):

Wealth Should Not Determine Who Gets To Keep Their Driver’s License². This report detailed the problems associated with both the old (pre-2018) system -- which suspended driver’s licenses based on the existence of outstanding debt -- and the current system -- which, through the Clean Hands Law, continues to prohibit the issuance or renewal of such licenses based on debt. The report highlights real-life stories from District residents injured by the Clean Hands Law, which in effect ties the ability to drive lawfully in DC to wealth. The report makes it clear that reform of the Clean Hands Law is needed to end the current system’s automatic withholding of driver’s licenses from all DC residents with unpaid fines or fees without any inquiry as to their ability to pay.

We urge the Council to consider five key points from the report as you continue the important policy work needed to ensure traffic safety. First, the District’s policy to withhold driver’s licenses based solely on the existence of debt exacerbates racial inequality. Second, withholding driver’s licenses from District drivers solely because of unpaid debt deprives DC residents of access to jobs, medical care, food and other essentials of life. Third, the Clean Hands Law has been applied to driver’s licenses since 2001 to increase revenue, with neither the purpose nor the result of enhancing safety. Fourth, DC is now a regional and national outlier—one of only three jurisdictions in the United States that denies driver’s license renewals to people based on their owing debt to the government. Finally, the Council has two already introduced, pending pieces of legislation that, if enacted, would make critically needed reforms of the Clean Hands Law. We detail these points below.

I. The District’s current law withholding driver’s licenses based solely on the existence of debt exacerbates racial and other inequalities.

DC residents harmed by the denial of driver’s licenses under the Clean Hands Law are disproportionately Black. More than 97% of the “fines and forfeitures” the DC government collects each year come from parking and traffic tickets,³ and Black drivers in DC are ticketed

² Tzedek DC, *Driving DC to Opportunity: Wealth Should Not Determine Who Gets To Keep Their Driver’s License*. (April 2021), available at:

<https://static1.squarespace.com/static/57056a9e0442629a7a43ca60/t/608635b59618be5fc287fc67/1619408310140/Driving+DC+to+Opportunity+-+Tzedek+DC.pdf>. Below, we provide cites to the report, which in turns collects and cites extensively to data, studies, articles, and reports.

³ In Fiscal Year 2019, of the \$195.39 million in revenue from “fines and forfeitures,” 35% came from traffic tickets (\$68,433,000), 3.8% came from red light camera tickets (\$7,411,000), and 58.4% came from speed camera tickets (\$114,196,000). Fiscal Year 2021 Approved Budget and Financial Plan: Volume 1, *supra* note 6,

disproportionately. At the same time, Black DC residents have, on average, fewer financial assets than white residents and are far more likely than white residents to have consumer, medical, and other types of debts and debts in collection.

Black drivers are far more likely than white drivers to be ticketed during traffic stops. In 2020, Black adult drivers comprised 65% of people who received tickets during traffic stops,⁴ even though Black adults comprise only 43% of DC’s adult population.⁵ Black men comprised 44% of motorists who received tickets during traffic stops, even though Black men comprise only 19% of DC’s adult population⁶ Black adult drivers in DC were nearly four times more likely than white adult drivers to receive traffic tickets.⁷ Thus, regardless of why Black drivers are ticketed more often (whether due to racial profiling or more innocuous reasons like driving longer distances or driving more often), Black drivers receive the largest proportion of tickets from traffic stops, which comprise 35% of the “fines and forfeitures” collected by the DC government.⁸

Even as Black DC drivers are more likely than white drivers to face fines that must be paid in order to receive or renew a driver’s license, Black DC residents are also much less likely than white residents to have the resources to pay those fines. The median white household in DC has a net worth of 81 times the net worth of the median Black household.⁹ And the median white household in DC has three times as much as the median Black household.¹⁰ Black DC residents are also, on average, more likely than white residents to be in debt, and for those residents in debt, to have higher total debts than white residents.

The Racial Equity Achieves Results (REACH) Amendment Act, passed thanks to your and colleagues’ work, requires the Mayor to evaluate how any proposed budget “advances racial

pp. 3-35 to 3-36 tbl.3-15 (.pdf pp. 120-121); see also *id.* at p. 3-21 (.pdf p. 106) (“Fines and forfeitures . . . is mostly revenue from traffic fines[.]”)

⁴ See *Driving DC to Opportunity*, at 12.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

equity in the District” and “reduces disparate outcomes.”¹¹ Without reform of the Clean Hands Law, any DC budget that relies on fines collected because of the law is unlikely to meet the standard established by the REACH Act.

II. Withholding driver’s licenses from District drivers solely because of unpaid debt deprives DC residents of access to jobs, medical care, food and other essentials of life.

Driving is critically important to most District residents, particularly those who live in areas with more limited public transportation. Currently, tens of thousands of DC residents are disqualified from renewing their driver’s licenses solely because they owe more than \$100 in parking or traffic tickets that they cannot afford to pay. Without driver’s licenses, these residents struggle with critical daily activities, including purchasing food at the grocery store, attending medical appointments, getting kids to childcare, and finding and keeping jobs outside their homes. Before the pandemic, just under 50% of essential workers in DC drove a car to get to work.¹² COVID-19 has made commuting only more difficult, as social distancing can be challenging on public transit. The threat of lasting cuts to Metro service persists as the District struggles with the effects of the pandemic.

Denying driver’s licenses as punishment for unpaid debt also hurts workers indirectly by hurting employers. Employees can’t show up for their jobs, and after an employee loses a job due to loss of a driver’s license, employers must hire and train new employees and potentially pay unemployment insurance for the employee who was terminated, reducing resources available to pay workers and expand services.¹³

The problems from the Clean Hands law’s application to driver’s licenses are particularly acute for the District’s disabled residents, who often face extraordinary challenges relying on Metrorail, buses or other forms of public transportation. For residents with disabilities—including those with amputations, paraplegia, and even immunological compromises--having a license and being able to drive (rather than having to rely on public transportation) makes an enormous difference. Whether such persons are allowed to lawfully drive should *not* depend on whether they bear more than \$100 of debt.

¹¹ Racial Equity Achieves Results (REACH) Amendment Act of 2020, Act 23-503, § 202(a)(2), 67 D.C. Reg. 14,390 (codified at D.C. CODE § 47-308.01(h)(3)).

¹² See *Driving DC to Opportunity*, at 14.

¹³ See *id.* at 15.

Of course, many people who depend on their vehicle elect to drive illegally after their licenses have been withheld—a decision that places them in far greater peril. In DC, driving without a valid license is a criminal misdemeanor punishable by up to a year in jail and a fine of up to \$2,500.¹⁴ Because driving is so vital for accessing jobs, childcare, groceries, and other necessities, however, many people continue to drive without a license despite the risk of arrest, criminal charges, and conviction. Indeed, approximately three-fourths of drivers who used to have a valid license—but no longer do—drive at least occasionally.¹⁵

Driving without a license is by far the most common offense that leads to an arrest for a traffic violation in DC. As the report shows, driving without a license is also the most common reason why DC residents recently released from jail and prison are re-incarcerated.¹⁶ Of the nearly 30,000 arrests for traffic violations made by the DC Metropolitan Police Department between January 2013 and November 2020¹⁷, driving without a license was the most serious offense the motorist was arrested for nearly 80% of the time.¹⁸ That is a staggeringly high rate, given that driving without a license is not, by itself, inherently dangerous.

The evidence demonstrates that the Clean Hands Law exposes residents to criminal punishment because it prevents people from obtaining or renewing their license so that they may drive lawfully. The evidence also shows that DC residents who are arrested for driving without a license are overwhelmingly Black. The evidence is consistent with the conclusion that the Clean Hands Law contributes to the racially disparate arrest rates for driving without a valid license in DC.

III. The Clean Hands Law has been applied to driver’s licenses since 2001 to increase revenue, with neither the purpose nor the result of enhancing safety.

When the Clean Hands Law originally passed in 1996, its purpose was a narrow one: to deter littering, illegal dumping, and delinquent tax filing by withholding licenses and permits from people who committed those offenses and failed to pay their fines.¹⁹ The Council added

¹⁴ D.C. CODE § 50-1403.01(e); *see also id.* § 22-3571.01(b)(5).

¹⁵ *See Driving DC to Opportunity*, at 13.

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.* at 7.

moving and parking infractions to the list of Clean Hands Law-triggering violations in 2001. The amendment’s timing—while DC was working to end the reign of the Financial Control Board, which Congress established in response to DC’s budget crisis and endowed with the power to override the budgetary choices of DC’s elected Mayor and Council²⁰—as well as the legislative history, suggest that its main purpose was to generate additional revenue for DC, not to enhance public safety by deterring people from committing traffic violations. The Council report accompanying the 2001 bill expressed no public safety reasons for amending the Clean Hands Law. Instead, it emphasized that tickets dating back to 1979 and on their face worth about \$53 million remained outstanding because DC motorists lacked a “compelling reason to respond to the notices of violations.”²¹ The report concluded that one way to address this backlog was to “condition[] the issuance of any District license or permit on the payment of outstanding fines owed to the District,” such as fines for traffic and parking violations.²²

To this day, revenue generation remains the principal – if not the sole – rationale for keeping the current Clean Hands Law regime in place. In 2017, Councilmember Trayon White asked Deputy Mayor Babers—at the time, the Director of the DMV: “I’ve heard a lot of conversations about revenue, revenue, revenue, revenue. Do you have data that reflects that as a result of this amount of money collected, DC is in fact safer?”²³ Director Babers’ answer was to refer the Council to the Metropolitan Police Department, which thereafter never justified the denial of driver’s licenses under the Clean Hands Law (or even attempted to do so). *This remains the case to this day.*

The District’s dependence upon (and indeed, appetite for) revenue from fines and fees—especially from traffic cameras—has steadily grown over the past 20 years, with “fines and forfeitures” now accounting for more than 2% of the District’s annual budget.²⁴ Indeed, as one 2020 article regarding fines and fees stressed, “No US City Fines People Like Washington

²⁰ *See id.*

²¹ Report on Bill 13-828, the “Motor Vehicle and Safe Driving Amendment Act of 2000,” COUNCIL OF THE DISTRICT OF COLUMBIA, COMMITTEE ON PUBLIC WORKS AND THE ENVIRONMENT, 5 (Oct. 18, 2000) (copy on file with Tzedek DC).

²² *Id.*

²³ Joint Public Hearing, COUNCIL OF THE DISTRICT OF COLUMBIA (Oct. 27, 2017), 2:59:21-3:00:08, dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4178.

²⁴ *See Driving DC to Opportunity*, at 7.

Fines People.”²⁵ As of 2017, DC collected \$261 in fines and fees per resident, more than any other major U.S. city and more than twice the \$118 per resident collected by the next highest municipal collector, New York City.

It is this revenue push, rather than an expectation that fines and fees serve to keep our streets safe, that remains the basis for the Clean Hands Law’s current-day application to DC drivers. As one observer noted in 2010, when the District considered increasing traffic and parking fees as a way to stanch a revenue shortfall without raising taxes, the proposal “removed the veneer that this is about traffic or safety. It’s about revenue. I genuinely worry that residents, motorists can become ATM machines.”²⁶

And in period in which the District’s healthy fisc and billions of dollars in federal support allow DC to operate in a robust way to address inequities for the next period of years, it is further notable that reforming the Clean Hands law will preserve—and indeed promote—public safety, in two distinct ways.

First, there are important rules now in place separate and apart from the Clean Hands Law to penalize those who drive in an unsafe way. For example, under current DC law, any aggravated reckless driving by a DC resident leads to immediate license revocation. Reforming the Clean Hands Law would not change that penalty in any way. Similarly, currently any person who accumulates 8 or more points can have their license suspended by a hearing examiner, while 10 points lead to automatic suspension. The proposed reforms would not touch these outcomes in any way. Other offenses that currently lead to points/suspensions and that would remain in place include: following a vehicle too closely (2 points), failing to give right of way to a bicycle (3 points) failing to give right of way to a pedestrian (3 points), speeding more than 16 miles over the speed limit (4 points), and speeding in excess of 21 miles over the speed limit (5 points). Reforming the Clean Hands Law would not alter these consequences.

Second, the current system if anything *undermines* public safety, by diverting limited police resources away from violent crime and towards the ticketing and processing of arrests for driving without a license. The proposal would fix that. Notably, the current increase in public safety incidents has occurred under the current rules.

²⁵ *See id.*

²⁶ *Id.*

People who drive in a seriously unsafe way should be off the roads; people should not be prevented from driving lawfully as a punishment for unpaid debt to the government. This core principle of the report promotes public safety and the public interest overall.

Indeed, the Vision Zero Network has stressed that the goal of eliminating traffic fatalities and severe injuries “can be achieved with a focus on the most important factors that contribute to these deaths and injuries—road design and policies such as managing speed for safety.” This system design work “must be conducted in a manner that achieves public safety while acknowledging and understanding the revenue extraction and harms that resulted from policies that are inequitable and ineffective at achieving these objectives.” Vision Zero notes that debt-based driver’s license denials are precisely “one of those policies.”

IV. DC is now a regional and national outlier—one of only three jurisdictions in the United States that denies driver’s license renewals to people based on their owing debt to the government.

Thanks to this Committee, in 2018, the Council took a vital first step toward eliminating its wealth-based driver’s license system by ending suspensions of DC driver’s licenses based on unpaid debt—an important acknowledgement that driver’s licenses should be suspended only for public safety reasons.

After DC ended suspensions of driver’s licenses for unpaid debts in 2018, and spurred by the national Free to Drive coalition of anti-poverty and business groups, Maryland, Virginia, and West Virginia, as well as Hawaii, Mississippi, Montana, New York, and Oregon, followed suit.²⁷ In 2020, Maryland ended the suspension and nonrenewal of driver’s licenses due to unpaid traffic debt and judgments for motorists who enter into a payment plan.²⁸ In 2020, Virginia also ended the suspension of driver’s licenses for outstanding fines and failure to appear in court.²⁹ In addition, Virginia reinstated 626,000 driver’s licenses that were suspended for failure to pay fines and fees.³⁰

²⁷ See *Driving DC to Opportunity*, at 18.

²⁸ 2020 Maryland Laws Ch. 150 (S.B. 234), § 1, mgaleg.maryland.gov/2020RS/Chapters_noln/CH_150_sb0234t.pdf (repealing MARYLAND CODE, TRANSPORTATION § 17-207 and amending § 26-204(e)(1)).

²⁹ 2020 Virginia Laws Ch. 965 (S.B. 1), § 2, leg1.state.va.us/cgi-bin/legp504.exe?201+ful+CHAP0965+pdf (repealing VIRGINIA CODE § 46.2-395).

³⁰ 2020 Virginia Laws Ch. 965 (S.B. 1).

DC was once a national leader on this racial and economic justice issue, but now is just the opposite, both nationally and regionally. The District remains one of only three state-level jurisdictions in the United States (Illinois and Texas are the others) that deny driver’s licenses to people who owe debt to the government.³¹ DC’s policy is especially problematic given that DC belongs to an integrated, compact regional economy—more than half of income earned in DC is earned by non-residents,³² and more than half of the jobs in DC are held by non-residents³³—and Maryland and Virginia (and West Virginia) do not deny license renewals (or suspend licenses) for unpaid fines and fees, but DC still does, uniquely punishing its residents in this way for unpaid fines and fees.

V. The Council must reform the Clean Hands Law so that residents are barred from driving only for reasons of public safety, and cannot backslide on suspensions.

For residents unable to pay their fines or fees, the Clean Hands Law fails to either advance public safety or enhance revenue. Even as it fails to achieve these goals, it is inflicting disproportionate harms on DC’s Black and brown community members; disabled residents; and the full array of residents without wealth or sufficient income to pay fines and fees. Just as the law that authorized suspensions as punishment – which the Council wisely jettisoned – did, the Clean Hands Law punishes poverty, exacerbates racial inequalities, exposes poor people to criminal punishment, diverts public safety resources and hurts the economic well-being of drivers and employers alike. The continued application of the current Clean Hands Law to driver’s licenses cannot be justified.

We applaud the work of this Committee to examine the role and budget of the Department of Public Works in enforcing DC’s laws. And in doing so, the Council should also not lose sight of the equity and criminalization of poverty harms inflicted by the Clean Hands Law, and the opportunity to address that problem now.

The Council, through the Economic Development Committee, has the opportunity to move forward on either or both of two introduced and pending bills to reform the Clean Hands Law and remove its present prohibition of license issuances and renewals to drivers with debt. One is Councilmember McDuffie’s “Clean Hands Certification Equity Amendment Act of 2021,”

³¹ See 625 ILLINOIS COMPILED STATUTES § 5/6-306.6; TEXAS TRANSPORTATION CODE §§ 706.002, 706.004.

³² See *Driving DC to Opportunity*, at 18.

³³ See *Driving DC to Opportunity*, at 18.

2021 Bill 24-237, which would exempt driver’s licenses from the reach of the Clean Hands Law. It would also raise, from \$100 to \$5,000, the threshold for denying other enumerated licenses and permits now covered by that Act. A second, 2021 Bill 24-230, the “DC Driving to Opportunity Amendment Act of 2021,” and cosponsored by Chair Cheh and Committee Members Henderson and Lewis George, would make a simple, critical, change to the Clean Hands Law by clarifying that the permits covered by that law do not include a driver’s license.

Tzedek DC supports both of these pieces of legislation, which are essential and long-overdue means by which the District may truly and finally address traffic safety through the lens of racial equity, and we hope that this Committee’s work will be consistent with these principles.

Thank you for this opportunity to share our views.