No. 23-621

IN THE

Supreme Court of the United States

GERALD F. LACKEY, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE VIRGINIA DEPARTMENT OF MOTOR VEHICLES,

Petitioner,

v.

DAMIAN STINNIE, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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U.S. District Court
Western District of Virginia (Charlottesville)
CIVIL DOCKET FOR
CASE #: 3:16-cv-00044-NKM-JCH

DAMIAN STINNIE, *et al.*,

Plaintiffs

v.

RICHARD D. HOLCOMB,
in his official capacity as the
Commissioner of the Virginia
Department of Motor Vehicles,

Defendant.

DOCKET ENTRIES

Date	#	Docket Text
07/06/2016	1	COMPLAINT against Richard D. Holcomb (Filing & Administrative fee $ 400 paid by e- receipt 0423-2485566.), filed by Neil Russo, Demetrice Moore, Damian Stinnie, Robert Taylor. 70 Day Notice due by 9/14/2016 90 Day Service due by 10/4/2016 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4

		Exhibit D, # 5 Civil Cover Sheet)(hnw)
07/07/2016	2	Summons Issued as to Richard D. Holcomb.(hnw)
08/02/2016	3	ACKNOWLEDGEMENT OF SERVICE Executed *August 2, 2016* Acknowledgement filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor.(Blank, Jonathan)
08/02/2016	4	WAIVER OF SERVICE Returned Executed by Neil Russo, Demetrice Moore, Damian Stinnie, Robert Taylor. Richard D. Holcomb waiver sent on 7/19/2016, answer due 9/19/2016.(Blank, Jonathan)
08/02/2016	5	Consent MOTION for Extension of Time to File Answer *October 3, 2016* by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
08/02/2016	6	ORDER granting 5 Motion for Extension of Time to Answer re 1 Complaint. Richard D. Holcomb answer due 10/3/2016. Signed by Judge Norman K. Moon on 8/2/2016. (mab)
10/03/2016	7	NOTICE of Appearance by Margaret Hoehl O'Shea on behalf of Richard D. Holcomb (O'Shea, Margaret)
10/03/2016	8	NOTICE of Appearance by Nancy Hull Davidson on behalf of All

		Defendants (Davidson, Nancy)
10/03/2016	9	MOTION to Dismiss by Richard D. Holcomb. (Davidson, Nancy)
10/03/2016	10	Brief / Memorandum in Support re 9 MOTION to Dismiss . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit A)(Davidson, Nancy)
10/04/2016	11	PRETRIAL ORDER, CASE REFERRED Magistrate Judge Joel C. Hoppe. Signed by Judge Norman K. Moon on 10/04/2016. (mab)
10/06/2016	12	Consent MOTION for Extension of Time to File Response/Reply *to Defendant's Motion to Dismiss Plaintiffs' Complaint* by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Motions referred to Judge Joel C. Hoppe. (Blank, Jonathan)
10/06/2016	13	ORDER granting 12 Motion for Extension of Time to File Response/Reply Responses due by 11/3/2016. Signed by Magistrate Judge Joel C. Hoppe on 10/6/16. (jcj)
10/13/2016	14	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: In Chambers Conference Call with parties held on 10/13/2016. Court allows 7 additional days to request changes to 11 pretrial order. (kld)

10/20/2016	15	Joint MOTION to Amend/Correct 11 Pretrial Order, Case Referred to Magistrate Judge by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order to Amend Pre-Trial Dates)(Ciolfi, Angela)
10/27/2016	16	MOTION for Leave to File Excess Pages by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order)(Blank, Jonathan)
10/27/2016	17	ORDER granting 16 Unopposed Motion for Leave to Plaintiff's to File a brief exceeding twenty-five (25) pages to respond to Defendant's Motion to Dismiss. Signed by Magistrate Judge Joel C. Hoppe on 10/27/16. (jcj)
10/27/2016	18	NOTICE of Telephonic Hearing: **(N)** (No Interpreter requested). Scheduling Conference Call set for 11/2/2016 01:00 PM before Magistrate Judge Joel C. Hoppe. Chambers to set up call and email parties dial in instructions. (kld)

11/02/2016	19	ORDER granting 15 Motion to Amend dates in 11 Pretrial Order; Fed.R.Civ.P.26(f) Conference: No later than January 6, 2017; Initial disclosures under Fed.R.Civ.P.26(a): No later than January 9, 2017; Plaintiff initial expert disclosure: No later than April 18, 2017; Defendant initial expert disclosure: No later than June 19, 2017; Rebuttal expert: No later than July 20, 2017; Deadline to complete discovery: 105 days before trial date; Deadline to file dispositive motions: 100 days before trial date; Deadline for hearing dispositive motions: 45 days before trial date; Trial set for December 11-15, 2017. Signed by Magistrate Judge Joel C. Hoppe on 11/2/2016. (mab)
11/02/2016	20	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: Scheduling Conference Call held in chambers on 11/2/2016. (kld)
11/03/2016	21	Brief / Memorandum in Opposition re 9 MOTION to Dismiss *Plaintiffs' Complaint*. filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
11/03/2016	22	NOTICE of Appearance by David L. Heilberg on behalf of NAACP

		(Heilberg, David)
11/03/2016	23	MOTION for Leave to File *Amicus Brief* by Naacp. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Exhibit 1 to Motion, # 2 Exhibit Exhibit A to Brief, # 3 Exhibit Exhibit B to Brief, # 4 Text of Proposed Order)(Heilberg, David)
11/03/2016	24	NOTICE of Hearing: **(CR)** Bench Trial set for December 11-15, 2017 09:30 AM in Charlottesville before Judge Norman K. Moon. **Counsel must contact the Clerk's Office no later than five (5) business days before the scheduled trial date for your technology needs.** (hnw)
11/04/2016	25	ORDER granting 23 Motion for Leave to File brief as amicus curiae; directing clerk to file the brief and supporting affidavits. Signed by Magistrate Judge Joel C. Hoppe on 11/4/2016. (mab)
11/04/2016	26	Brief in Opposition to 9 MOTION to Dismiss. filed by NAACP. (Attachments: # 1 Affidavit Aaron Bloomfield, # 2 Affidavit Cassius Adair)(mab) Modified on 11/8/2016- corrected spelling of party name (mab).
11/07/2016	27	Brief/Memorandum - *Statement of Interest of the United States*. filed by UNITED STATES OF AMERICA. (Giorno, Anthony)

11/09/2016	28	Consent MOTION for Extension of Time to File Response/Reply as to 21 Brief / Memorandum in Opposition *to Defendant's Motion to Dismiss* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Baugh, Janet)
11/09/2016	29	Oral ORDER granting 28 Motion for Extension of Time to File Response/Reply. Defendant's reply brief is due not later than November 22, 2016. Entered by Magistrate Judge Joel C. Hoppe on 11/9/16. (JCH)
11/22/2016	30	NOTICE by Richard D. Holcomb *of Supplemental Authority* (Attachments: # 1 Exhibit Virginia Supreme Court Rule 1:24)(O'Shea, Margaret)
11/22/2016	31	REPLY to Response to Motion re 9 MOTION to Dismiss. filed by Richard D. Holcomb. (Davidson, Nancy)
11/30/2016	32	Consent MOTION for Extension of Time to File Response/Reply as to 30 Notice (Other) *of Supplemental Authority* by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Motions referred to Judge Joel C. Hoppe. (Blank, Jonathan)
12/01/2016	33	ORDER granting 32 Motion for Extension of Time to File Response/Reply to 30 Notice of Supplemental Authority in

		Support of Defendant's Motion to Dismiss Responses due by 12/22/2016 Replies due by 1/6/2017.. Signed by Magistrate Judge Joel C. Hoppe on 12/1/2016. (mab)
12/01/2016	34	NOTICE of Hearing on Motion 9 MOTION to Dismiss : **(CR)** (Motion Hearing set for 2/2/2017 02:00 PM in Charlottesville before Judge Norman K. Moon.), NOTICE of Hearing: **(CR)** (Oral Argument Hearing on NOTICE by Richard D. Holcomb of Supplemental Authority set for 2/2/2017 02:00 PM in Charlottesville before Judge Norman K. Moon.) (hnw)
12/22/2016	35	Response re 30 Notice (Other) *of Supplemental Authority*. filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
01/06/2017	36	Response re 35 Response, 30 Notice (Other) *Reply to Plaintiff's Response in Opposition to Notice of Supplemental Authority*. filed by Richard D. Holcomb. (O'Shea, Margaret)
01/18/2017	37	NOTICE of Telephonic Hearing: **(N)** In Chambers Conference Call set for 2/8/2017 11:00 AM before Magistrate Judge Joel C. Hoppe. Chambers to set up call and email parties dial in instructions. (kld)

01/24/2017	38	NOTICE of Appearance by Adam John Yost on behalf of Richard D. Holcomb (Yost, Adam)
01/24/2017	39	Memorandum in Support of 40 MOTION to Stay *Discovery* by Richard D. Holcomb. (Baugh, Janet) Modified on 1/25/2017-changed event type; incorrectly docketed as motion by counsel (mab).
01/24/2017	40	MOTION to Stay *Discovery* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Plaintiffs' first set of discovery request)(Baugh, Janet) Modified on 1/25/2017-Modified text; removed link to document 39; Memorandum in Support of Motion (mab).
01/25/2017	41	Notice of Correction re 39 Memorandum in Support of Motion to Stay 40 , 40 MOTION to Stay; modifications made to docket entries. Memorandum in support of motion was incorrectly filed as a motion to stay by counsel; Motion to stay text was modified to remove double language. (mab)
01/30/2017	42	RESPONSE in Opposition re 40 MOTION to Stay. filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Attachments: # 1 Exhibit 1, # 2

		Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Blank, Jonathan)
01/30/2017	43	NOTICE by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor re 37 Notice of Hearing *Notice to Add Motion to Stay to February 8, 2017 Status Hearing* (Blank, Jonathan)
01/31/2017	44	NOTICE of Telephonic Hearing on Motion 40 MOTION to Stay : **(FTR)** Telephonic Motion Hearing set for 2/8/2017 11:00 AM before Magistrate Judge Joel C. Hoppe. Conference call previously set up and parties have been emailed dial in instructions. (kld)
02/02/2017	46	Minute Entry for proceedings held before Judge Norman K. Moon: Motion Hearing held on 2/2/2017 re 9 MOTION to Dismiss filed by Richard D. Holcomb. (Court Reporter Judy Webb.) (hnw)
02/06/2017	47	REPLY to Response to Motion re 40 MOTION to Stay *Discovery*. filed by Richard D. Holcomb. (Yost, Adam)
02/08/2017	48	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: Telephonic Motion Hearing held on 2/8/2017 re 40 MOTION to Stay discovery filed by Richard D. Holcomb. (Court Reporter M. Bottiglieri, FTR.)

		(mab)
02/08/2017	49	ORDER denying 40 Motion to Stay Discovery. Signed by Magistrate Judge Joel C. Hoppe on 2/8/2017. (mab)
02/08/2017	50	FTR Log Notes for Telephonic Motion Hearing in the Charlottesville Division in CR3 held before Judge Joel C. Hoppe on 2/8/2017. In accordance with 28 USC 753(b), I certify that I monitored the digital recording of this proceeding and that it is a true and correct record, that it is sufficiently intelligible when played on the FTR (For the Record) Player, and that it can be transcribed without undue difficulty. FTR Operator: Michele Bottiglieri, FTR (mab)
02/09/2017	51	Objections by Defendant Richard D. Holcomb re 49 Order on Motion to Stay (O'Shea, Margaret)
02/16/2017	52	TRANSCRIPT REQUEST (Expedited-7 calendar days Service) by Damian Stinnie for Motion to Dismiss held on **2/2/2017** before Judge Norman K. Moon. (Judy Webb, OCR) *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan) Modified on 2/16/2017 - added court reporter's name (bkd).

02/17/2017	53	**Financial arrangements made** (Expedited-7 calendar days Service) re 52 Transcript Request, **Transcript due by 2/23/2017.** (jw)
02/17/2017	54	Brief/Memorandum *in Opposition to Defendant's Objections to the Magistrate Judge's Order Denying Defendant's Motion to Stay Discovery*. filed by Damian Stinnie. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Blank, Jonathan)
02/23/2017	55	TRANSCRIPT of Proceedings: Motion Hearing held on **2/2/2017** before Judge Norman K. Moon. Court Reporter/Transcriber Judy Webb, Telephone number judyw@vawd.uscourts.gov/540-857-5100 X 5333. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov Transcript may be viewed at**

		the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/16/2017. Redacted Transcript Deadline set for 3/27/2017. Release of Transcript Restriction set for 5/24/2017. (jw)
03/13/2017	56	MEMORANDUM OPINION. Signed by Judge Norman K. Moon on 3/13/17. (hnw) (Main Document 56 replaced on 3/15/2017) (mab).
03/13/2017	57	ORDER granting 9 Motion to Dismiss. This case is hereby dismissed without prejudice for lack of subject matter jurisdiction. The motion to stay discovery and objections to Magistrate Judge Joel C. Hoppe's Order thereon are Denied as Moot. The Clerk is hereby directed to strike this case from the active docket of this court. Signed by Judge Norman K. Moon on 3/13/17. (hnw)
03/13/2017	58	Notice of Cancellation of December 11-15, 2017 Bench Trial (Cancel Court Reporter) (hnw)
03/15/2017	59	Notice of Correction re 56 Memorandum Opinion; Original document contained typographical errors and was

		replaced with corrected Memorandum Opinion. Errors corrected were: Page 11, line 11, word 12 is corrected from "difference" to "different." Citations in footnote 38 to "Rule 1:23" are corrected to "Rule 1:24". (mab)
04/10/2017	60	MOTION to Alter Judgment *per FRCP 59 and Obtain Relief from Judgment per FRCP 60* by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
04/10/2017	61	Brief / Memorandum in Support re 60 MOTION to Alter Judgment *per FRCP 59 and Obtain Relief from Judgment per FRCP 60* . filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11)(Blank, Jonathan) Modified on 5/22/2017 Docket entries 61-1 through 61-11 are STRICKEN from the RECORD Pursuant to Order 72 Entered May 22, 2017.(hnw).

04/20/2017	62	TRANSCRIPT REQUEST (COPY *Only applies if original transcript has been ordered Service) by Richard D. Holcomb for Motions Hearing held on **February 2, 2017** reported by Court Reporter Judy Webb before Judge Norman K. Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (O'Shea, Margaret)
04/20/2017	63	Transcript Copy Delivered re 62 Transcript Request, (jw)
04/24/2017	64	MOTION to Strike 61 Brief / Memorandum in Support, *Exhibits* by Richard D. Holcomb.Motions no longer referred to Judge Joel C. Hoppe. (Davidson, Nancy) Modified on 4/27/2017 (hnw).
04/24/2017	65	Brief / Memorandum in Support re 64 MOTION to Strike 61 Brief / Memorandum in Support, *Exhibits* . filed by Richard D. Holcomb. (Davidson, Nancy)
04/24/2017	66	Brief / Memorandum in Opposition re 60 MOTION to Alter Judgment *per FRCP 59 and Obtain Relief from Judgment per FRCP 60* filed by Richard D. Holcomb. (Davidson, Nancy)
05/01/2017	67	REPLY to Response to Motion re 60 MOTION to Alter Judgment *per FRCP 59 and Obtain Relief*

		from Judgment per FRCP 60 filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
05/08/2017	68	Brief / Memorandum in Opposition re 64 MOTION to Strike 61 Brief / Memorandum in Support, *Exhibits* . filed by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
05/09/2017	69	NOTICE of Hearing on Motion 60 MOTION to Alter Judgment *per FRCP 59 and Obtain Relief from Judgment per FRCP 60* : **(CR)** (No Interpreter requested) Motion Hearing set for 5/23/2017 12:00 PM in Charlottesville before Judge Norman K. Moon. (hnw)
05/11/2017	70	NOTICE of Hearing on Motion 64 MOTION to Strike 61 Brief / Memorandum in Support, *Exhibits* : **(CR)** (No Interpreter requested) Motion Hearing set for 5/23/2017 12:00 PM in Charlottesville before Judge Norman K. Moon. (hnw)
05/15/2017	71	REPLY to Response to Motion re 64 MOTION to Strike 61 Brief / Memorandum in Support, *Exhibits* . filed by Richard D. Holcomb. (Yost, Adam)
05/22/2017	72	ORDER granting Defendants' 64 Motion to Strike. Docket entries 61 -1 through 61 -11 are Stricken

		from the record. Order denying Plaintiffs' 60 Motion for reconsideration. Signed by Judge Norman K. Moon on 5/22/17. (hnw)
05/22/2017	73	Notice of Cancellation of May 23, 2017 Motion Hearing schedule at 12:00 pm in Charlottesville before the Hon. Norman K. Moon (Cancel Court Reporter) (hnw)
06/14/2017	74	NOTICE OF APPEAL as to 72 Order on Motion to Alter Judgment, Order on Motion to Strike, 57 Order on Motion to Dismiss, by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Filing fee $ 505, receipt number 0423-2694355. (Blank, Jonathan)
06/15/2017	75	Transmittal of Notice of Appeal to 4CCA re 74 Notice of Appeal, NOTE: The Docketing Statement and Transcript Order Form are available on the 4th Circuit Court of Appeals website at www.ca4.uscourts.gov. If CJA24 form(s) are applicable, you must submit a separate Auth-24 for each court reporter from whom you wish to order a transcript through the District Court's eVoucher system. (jcj)
06/16/2017	76	NOTICE of Docketing Record on Appeal from USCA re 74 Notice of Appeal, filed by Damian Stinnie,

		Demetrice Moore, Neil Russo, Robert Taylor. USCA Case Number 17- 1740. Case Manager Tony Webb (hnw)
07/21/2017	77	STIPULATION re 61 Brief / Memorandum in Support,, *Concerning Correction of Exhibits Attached to the Memorandum in Support of Plaintiffs' Rule 59 and 60 Motions* by Damian Stinnie (Attachments: # 1 Exhibit Exhibit A)(Blank, Jonathan)
05/23/2018	78	USCA Memorandum Opinion from 4th Circuit re 74 Notice of Appeal, DISMISSED AND REMANDED decided on 05/23/2018 (jcj)
05/23/2018	79	USCA JUDGMENT as to 74 Notice of Appeal, filed by Damian Stinnie, Demetrice Moore, Neil Russo, Robert Taylor (Attachments: # 1 USCA Notice of Judgment)(jcj)
06/14/2018	80	MANDATE of USCA as to 74 Notice of Appeal, filed by Damian Stinnie, Demetrice Moore, Neil Russo, Robert Taylor (jcj)
06/22/2018	81	ORDER GRANTING leave to the plaintiffs to amend or clarify, within 21 days, any fact, claim, party or theory in their complaint. The substantive provisions of the pretrial orders (documents 11 and 19) are REINSTATED. The parties are ORDERED to meet

		and confer within 30 days of this Order to establish a trial date from which to calculate the deadlines in the pretrial order. The parties may recommence discovery after the filing of the amended complaint. Signed by Senior Judge Norman K. Moon on 6/22/18. (jcj)
06/29/2018	82	Consent MOTION for Extension of Time to Amend *Complaint and to Reset Other Deadlines* by Demetrice Moore, Neil Russo, Damian Stinnie, Robert Taylor. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order Proposed Order)(Blank, Jonathan)
07/02/2018	83	ORDER granting 82 Plaintiff's Motion for Extension of Time to Amend Complaint to and including September 11, 2018; Defendant shall have 45 days from the date Plaintiffs' file an amended complaint to file a responsive pleading; and the parties may recommence discovery 60 days after the date Defendants' file a responsive pleading. Signed by Magistrate Judge Joel C. Hoppe on 7/2/18. (jcj)
09/11/2018	84	AMENDED COMPLAINT against Richard D. Holcomb, filed by Damian Stinnie. (Attachments:

		# 1 Exhibit Dugger Declaration, # 2 Exhibit Court Website, # 3 Exhibit Virginia Uniform Summons, # 4 Exhibit Holcomb Report)(Ciolfi, Angela)
09/11/2018	85	MOTION to Certify Class by Damian Stinnie. (Attachments: # 1 Text of Proposed Order) (Ciolfi, Angela)
09/11/2018	86	MOTION for Leave to File Excess Pages *on Memorandum in Support of Motion to Certify Class* by Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Ciolfi, Angela)
09/11/2018	87	Brief / Memorandum in Support re 85 MOTION to Certify Class . filed by Damian Stinnie. (Attachments: # 1 Exhibit Dugger Declaration, # 2 Exhibit Stinnie Declaration, # 3 Exhibit Adams Declaration, # 4 Exhibit Johnson Declaration, # 5 Exhibit Bandy Declaration, # 6 Exhibit Morgan Declaration, # 7 Exhibit DMV Email, # 8 Exhibit Blank Declaration, # 9 Exhibit Ciolfi Declaration)(Ciolfi, Angela)
09/11/2018	88	MOTION for Preliminary Injunction by Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order)(Ciolfi, Angela)
09/11/2018	89	MOTION for Leave to File Excess Pages *on Memorandum in*

		Support of Motion for Preliminary Injunction by Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Ciolfi, Angela)
09/11/2018	90	Brief / Memorandum in Support re 88 MOTION for Preliminary Injunction filed by Damian Stinnie. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit, # 17 Exhibit, # 18 Exhibit, # 19 Exhibit)(Ciolfi, Angela)
09/12/2018	91	Oral ORDER granting 86 Motion for Leave to File Excess Pages. Plaintiffs are granted leave to file a memorandum in support of their motion for class certification that exceeds the page limit by 10 pages. Entered by Magistrate Judge Joel C. Hoppe on 9/12/18. (JCH)
09/12/2018	92	Oral ORDER granting 89 Motion for Leave to File Excess Pages. Plaintiffs are granted leave to file a memorandum in support of their motion for preliminary injunction that exceeds the page limit by 25 pages. Entered by Magistrate Judge Joel C. Hoppe on 9/12/18. (JCH)

09/20/2018	93	NOTICE of Hearing on Motion 88 MOTION for Preliminary Injunction : **(CR)** Motion Hearing set for 11/15/2018 01:30 PM in Charlottesville before Senior Judge Norman K. Moon. (sfc)
10/11/2018	94	NOTICE of Appearance by Christian Arrowsmith Parrish on behalf of Richard D. Holcomb (Parrish, Christian)
10/15/2018	95	Joint MOTION For Consent Order by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order)(Blank, Jonathan)
10/19/2018	96	ORDER granting in part and modifying in part Joint 95 Motion Consent Order with Scheduling Order. Signed by Senior Judge Norman K. Moon on 10/19/18. (hnw) (Main Document 96 replaced on 10/19/2018 to correct date on signature line) (hnw).
10/19/2018	97	NOTICE of Hearing: **(CR)** Bench Trial set for August 5-9, 2019 09:30 AM in Charlottesville before Senior Judge Norman K. Moon. **Counsel must contact the Clerk's Office no later than five (5) business days before the scheduled trial date for your technology needs.** (hnw)

10/23/2018	98	SCHEDULING ORDER. Signed by Senior Judge Norman K. Moon on 10/23/18. (hnw)
10/26/2018	99	RESPONSE in Opposition re 88 MOTION for Preliminary Injunction . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit 1 - Affidavit of M. Ford)(O'Shea, Margaret)
11/08/2018	100	NOTICE of Appearance by Benjamin Peter Abel on behalf of Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Abel, Benjamin)
11/08/2018	101	MOTION for *Alyssa M. Pazandak* to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0423-3013448. by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order)(Abel, Benjamin)
11/09/2018	102	Oral ORDER granting 101 MOTION for *Alyssa M. Pazandak* to Appear Pro Hac Vice in this case. Entered by Magistrate Judge Joel C. Hoppe on 11/9/18. (JCH)
11/09/2018	103	REPLY to Response to Motion re 88 MOTION for Preliminary Injunction filed by Melissa Adams, Williest Bandy, Adrainne

		Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit) (Abel, Benjamin)
11/14/2018	104	MOTION to Dismiss by Richard D. Holcomb. (O'Shea, Margaret)
11/14/2018	105	Brief / Memorandum in Support re 104 MOTION to Dismiss filed by Richard D. Holcomb. (O'Shea, Margaret)
11/14/2018	106	MOTION for Reconsideration re 98 Order , *Motion to Stay Discovery, and Motion to Stay Response to Class Certification* by Richard D. Holcomb. Motions no longer referred to Judge Joel C. Hoppe. (Baugh, Janet) Modified on 11/16/2018 (hnw).
11/14/2018	107	Brief / Memorandum in Support re 106 MOTION for Reconsideration re 98 Order , *Motion to Stay Discovery, and Motion to Stay Response to Class Certification* . filed by Richard D. Holcomb. (Baugh, Janet)
11/15/2018	108	Minute Entry for proceedings held before Senior Judge Norman K. Moon: Motion Hearing held on 11/15/2018 re 88 MOTION for Preliminary Injunction filed by Damian Stinnie. Opinion to issue. (Court Reporter: JoRita Meyer) (hnw) (Entered: 11/16/2018)

11/15/2018	110	Exhibit List by Melissa Adams, Williest Bandy, Richard D. Holcomb, Adrainne Johnson, Brianna Morgan, Damian Stinnie.. (Attachments: # 1 Exhibit)(hnw) (Entered: 11/16/2018)
11/16/2018	109	TRANSCRIPT REQUEST (3 Day Service) by David M. Parker for Motion Hearing held on **November 15, 2018** reported by Court Reporter JoRita Meyer before Judge Norman K. Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (ca)
11/16/2018	111	**Financial arrangements made** (3 Days Service) re 109 Transcript Request, **Transcript due by 11/19/2018.** (jm)
11/19/2018	112	ORDER taking under advisement 106 Motion for Reconsideration and discovery remains open. Defendant's deadline to respond to Plaintiffs' motion to certify class is moved to December 10, 2018. Signed by Senior Judge Norman K. Moon on 11/19/18. (jcj)
11/19/2018	113	TRANSCRIPT of Proceedings: Preliminary Injunction held on **11/15/18** before Judge Moon. Court Reporter/Transcriber JoRita Meyer, Telephone number 540-857-5100, EXT 5311,

		JoRitaM@vawd.uscourts.gov. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/10/2018. Redacted Transcript Deadline set for 12/20/2018. Release of Transcript Restriction set for 2/19/2019. (jm)**
11/21/2018	114	TRANSCRIPT REQUEST (COPY *Only applies if original transcript has been ordered Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion for Preliminary Injunction Hearing held on **11/15/2018** reported by

		Court Reporter JoRita Meyer before Judge Judge Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan) Modified docket text on 11/21/2018 to reflect that this order is for a COPY. (ca)
11/21/2018	115	**Financial arrangements made** (Expedited-7 calendar days Service) re 114 Transcript Request,, **Transcript due by 11/28/2018.** (jm)
11/21/2018	116	Transcript Copy Delivered re 114 Transcript Request, (jm)
11/27/2018	117	NOTICE of Appearance by Maya Miriam Eckstein on behalf of Richard D. Holcomb (Eckstein, Maya)
11/27/2018	118	NOTICE of Appearance by Trevor Stephen Cox on behalf of Richard D. Holcomb (Cox, Trevor)
11/27/2018	119	MOTION for *Neil K. Gilman* to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0423-3023758. by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Attachment A, # 2 Text of Proposed Order Proposed Order) (Eckstein, Maya)
11/27/2018	120	Oral ORDER granting 119 MOTION for *Neil K. Gilman* to Appear Pro Hac Vice in this case.

		Entered by Magistrate Judge Joel C. Hoppe on 11/27/18. (JCH)
11/28/2018	121	NOTICE of Appearance by Stuart Alan Raphael on behalf of Richard D. Holcomb (Raphael, Stuart)
12/04/2018	122	Joint MOTION to Amend/Correct 112 Order on Motion for Reconsideration, *Scheduling Order* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order Proposed Order)(Eckstein, Maya)
12/07/2018	123	ORDER granting 122 Joint Motion for Consent Order. Signed by Magistrate Judge Joel C. Hoppe on 12/7/18. (hnw)
12/12/2018	124	NOTICE of Appearance by Brooke Alexandra Weedon on behalf of Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Weedon, Brooke)
12/19/2018	125	NOTICE of Appearance by David Mitchell Parker on behalf of Richard D. Holcomb (Parker, David)
12/21/2018	126	MEMORANDUM OPINION. Signed by Senior Judge Norman K. Moon on 12/21/18. (jcj)
12/21/2018	127	PRELLIMINARY INJUNCTION/ORDER granting 88 Plaintiffs' Motion for Preliminary Injunction. Signed by

		Senior Judge Norman K. Moon on 12/21/18. (jcj)
01/04/2019	128	RESPONSE in Opposition re 85 MOTION to Certify Class . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Ex. 1, # 2 Exhibit Ex. 2, # 3 Exhibit Ex. 3, # 4 Exhibit Ex. 4, # 5 Exhibit Ex. 5, # 6 Exhibit Ex. 6, # 7 Exhibit Ex. 7, # 8 Exhibit Ex. 8, # 9 Exhibit Ex. 9)(Eckstein, Maya)
01/08/2019	129	NOTICE of Appearance by Travis Cory Gunn on behalf of Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Gunn, Travis)
01/08/2019	130	Brief / Memorandum in Opposition re 104 MOTION to Dismiss . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit Exhibit 1)(Gunn, Travis)
01/31/2019	131	REPLY to Response to Motion re 85 MOTION to Certify Class . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Blank, Jonathan)
02/11/2019	132	RESPONSE in Support re 104 MOTION to Dismiss . filed by Richard D. Holcomb. (Eckstein, Maya)

03/01/2019	133	NOTICE of Hearing on Motion 104 MOTION to Dismiss , 85 MOTION to Certify Class : **(CR)** Motion Hearing set for 3/25/2019 10:30 AM in Charlottesville before Senior Judge Norman K. Moon. (hnw)
03/06/2019	134	NOTICE Rescheduling Hearing on Motion 85 MOTION to Certify Class , 104 MOTION to Dismiss **(CR)** previously set for 3/25/19 at 10:30 a.m. before Judge Norman K. Moon in Charlottesville: Motion Hearing RESET for 3/25/2019 11:00 AM in Charlottesville before Senior Judge Norman K. Moon. PLEASE NOTE THIS IS A CHANGE IN TIME ONLY(hnw)
03/11/2019	135	MOTION for *Laura A. Lange* to Appear Pro Hac Vice. Filing fee $ 100, receipt number 0423-3095726. by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order Proposed Order)(Abel, Benjamin)
03/13/2019	136	Oral ORDER granting 135 MOTION for Laura A. Lange to Appear Pro Hac Vice in this case. Entered by Magistrate Judge Joel C. Hoppe on 3/13/19. (JCH)

03/19/2019	137	Joint MOTION for Protective Order by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Protective Order)(Eckstein, Maya)
03/25/2019	138	STIPULATED PROTECTIVE ORDER granting 137 Motion for Protective Order. Signed by Magistrate Judge Joel C. Hoppe on 3/25/19. (jcj)
03/25/2019	139	Minute Entry for proceedings held before Senior Judge Norman K. Moon: Motion Hearing held on 3/25/2019 re 104 MOTION to Dismiss filed by Richard D. Holcomb, 85 MOTION to Certify Class filed by Damian Stinnie. (Court Reporter: Sonia Ferris) (hnw)
04/23/2019	140	MOTION to Dismiss *case as Moot* by Richard D. Holcomb. (Eckstein, Maya)
04/23/2019	141	Notice of Correction re 140 MOTION to Dismiss. Changed viewing restriction of Document 140 due to attorney filing document in error(hnw)
04/23/2019	142	MOTION to Dismiss *case as Moot* by Richard D. Holcomb. (Eckstein, Maya)
04/23/2019	143	Brief / Memorandum in Support re 142 MOTION to Dismiss *case as Moot* . filed by Richard D.

		Holcomb. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Eckstein, Maya)
04/24/2019	144	MOTION to Stay *Discovery* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit, # 2 Exhibit)(Eckstein, Maya)
04/25/2019	145	ORDER taking under advisement 144 Motion to Stay Case. Plaintiffs should file any brief in opposition to Defendant's motion to stay discovery on or before May 1, 2019. Defendant may file a reply brief on or before May 3, 2019. The Court will hold a hearing on this motion the week of May 6, 2019. Signed by Magistrate Judge Joel C. Hoppe on 4/25/19. (jcj)
04/29/2019	146	MOTION to Compel by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Blank, Jonathan)
04/29/2019	147	Brief / Memorandum in Support re 146 MOTION to Compel filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7

		Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20)(Blank, Jonathan)
04/30/2019	148	NOTICE of Telephonic Hearing on Motion 146 MOTION to Compel , 144 MOTION to Stay *Discovery* : **(FTR)** Telephonic Motion Hearing set for 5/6/2019 09:30 AM before Magistrate Judge Joel C. Hoppe. Chambers to set up call, dial in information emailed to counsel. (kld)
05/01/2019	149	RESPONSE in Opposition re 144 MOTION to Stay *Discovery Memorandum in Opposition to Defendant's Expedited Motion to Stay Discovery*. filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Demetrice Moore, Brianna Morgan, Neil Russo, Damian Stinnie, Robert Taylor. (Blank, Jonathan)
05/03/2019	150	Brief / Memorandum in Opposition re 146 MOTION to Compel . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Eckstein, Maya)
05/03/2019	151	REPLY to Response to Motion re

		144 MOTION to Stay *Discovery* . filed by Richard D. Holcomb. (Eckstein, Maya)
05/06/2019	152	FTR Log Notes for Motion Hearing in the Charlottesville Division in CR3 (mag) held before Judge Joel C. Hoppe on 5/6/19. In accordance with 28 USC 753(b), I certify that I monitored the digital recording of this proceeding and that it is a true and correct record, that it is sufficiently intelligible when played on the FTR (For the Record) Player, and that it can be transcribed without undue difficulty. FTR Operator: Karen Dotson (kld)
05/06/2019	153	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: Motion Hearing held on 5/6/2019 re 146 MOTION to Compel filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan, 144 MOTION to Stay *Discovery* filed by Richard D. Holcomb. (FTR Operator: Karen Dotson) (kld)
05/06/2019	154	NOTICE of Telephonic Hearing: **(FTR)** Status Conference Call set for 5/9/2019 02:00 PM before Magistrate Judge Joel C. Hoppe. Chambers to set up call. Dial in information emailed to counsel.

		(kld)
05/06/2019	155	ORDER denying 144 Motion to Stay discovery in Case; taking under advisement 146 Plaintiffs' Motion to Compel. Signed by Magistrate Judge Joel C. Hoppe on 5/6/19. (hnw)
05/07/2019	156	Brief / Memorandum in Opposition re 142 MOTION to Dismiss *case as Moot or, In the Alternative, For a Stay of Proceedings*. filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Blank, Jonathan)
05/07/2019	157	MOTION to Compel *Production of Documents* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Eckstein, Maya)
05/07/2019	158	Brief / Memorandum in Support re 157 MOTION to Compel *Production of Documents* filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Defendant's RFP, # 2 Exhibit Obj. to RFP, # 3 Exhibit 4.29.19 Letter to J. Blank, # 4 Exhibit Depo of Williest Bandy, # 5 Exhibit Depo of Damian Stinnie, # 6 Exhibit Plaintiffs' Supp Initial Disclosures) (Eckstein, Maya)

05/09/2019	159	FTR Log Notes for Telephonic Status and Discovery Conference in the Charlottesville Division in CR3 held before Judge Joel C. Hoppe on 5/9/19. In accordance with 28 USC 753(b), I certify that I monitored the digital recording of this proceeding and that it is a true and correct record, that it is sufficiently intelligible when played on the FTR (For the Record) Player, and that it can be transcribed without undue difficulty. FTR Operator: H. Wheeler (hnw)
05/09/2019	160	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: Telephonic Discovery Hearing held on 5/9/2019. (FTR Operator: H. Wheeler) (hnw) (Entered: 05/10/2019)
05/10/2019	161	TRANSCRIPT REQUEST (Hourly Service) by Richard D. Holcomb for Conference - Motion/Discovery held on **05/6/19 and 5/9/19** before Judge Hoppe. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Eckstein, Maya)
05/10/2019	162	ORDER granting 146 Plaintiff's Motion to Compel and granting in part 157 Defendant's Motion to Compel. Signed by Magistrate Judge Joel C. Hoppe on 5/10/19. (jcj)

05/10/2019	163	**Financial arrangements made** (Original) (3 Days Service) re 161 Transcript Request. Transcriber: EXCEPTIONAL REPORTING SERVICES. **Transcript due by 5/13/2019.** (ca)
05/13/2019	164	TRANSCRIPT of Proceedings: Telephonic Motion Hearing held on **May 6, 2019** before Judge Joel C. Hoppe. Court Reporter/Transcriber: Exceptional Reporting Services, Inc., Telephone number (361) 949-2988. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained**

		through PACER unless a Redacted Transcript has been filed. Redaction Request due 6/3/2019. Redacted Transcript Deadline set for 6/13/2019. Release of Transcript Restriction set for 8/12/2019. (ca)
05/13/2019	165	TRANSCRIPT of Proceedings: Telephonic Discovery/Status Hearing held on **May 9, 2019** before Judge Joel C. Hoppe. Court Reporter/Transcriber: Exceptional Reporting Services, Inc., Telephone number (361) 949-2988. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After**

		that date it may be obtained through PACER unless a Redacted Transcript has been filed. Redaction Request due 6/3/2019. Redacted Transcript Deadline set for 6/13/2019. Release of Transcript Restriction set for 8/12/2019. (ca)
05/13/2019	166	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion and Discovery Hearing held on **05/09/19** reported by Court Reporter FTR before Judge Hoppe. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan)
05/14/2019	168	**Financial arrangements made** (Copy) (3 Days Service) re 166 Transcript Request. Transcriber: Exceptional Reporting Services, Inc. **Transcript due by 5/17/2019.** (ca)
05/14/2019	169	Transcript Copy Delivered re 166 Transcript Request. (ca)
05/14/2019	170	RESPONSE in Support re 142 MOTION to Dismiss *case as Moot* . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Moats Subpoena, # 2 Exhibit Dugger

		Subpoena, # 3 Exhibit Kumer Subpoena, # 4 Exhibit Holcomb Declaration)(Eckstein, Maya)
05/16/2019	171	NOTICE of Appearance by Michelle Shane Kallen on behalf of Richard D. Holcomb (Kallen, Michelle)
05/16/2019	172	MOTION to Exclude *Plaintiffs' Proposed Expert Witnesses* by Richard D. Holcomb. Motions no longer referred to Judge Joel C. Hoppe. (Eckstein, Maya) Modified on 5/17/2019 (hnw).
05/16/2019	173	Brief / Memorandum in Support re 172 MOTION to Exclude *Plaintiffs' Proposed Expert Witnesses* filed by Richard D. Holcomb. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15)(Eckstein, Maya)
05/16/2019	174	MOTION to Expedite *Motion to Exclude Plaintiff's Expert Witnesses* by Richard D. Holcomb. Motions no longer referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Transcript)(Eckstein, Maya) Modified on 5/17/2019 (hnw).

05/17/2019	175	ORDER granting 174 Defendant's Motion to Expedite. Plaintiffs shall file their response to Defendants' Motion to exclude Plaintiffs' proposed expert witnesses on or before May 20, 2019. Defendants' response, if any, shall be filed no later than May 21, 2019. Signed by Senior Judge Norman K. Moon on 5/17/19. (jcj)
05/17/2019	176	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Telephonic Discovery Hearing held on **05/06/2019** reported by Court Reporter FTR before Judge Hoppe. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan)
05/17/2019	177	**Financial arrangements made** (Copy) (3 Days Service) re 176 Transcript Request. Transcriber: Exceptional Reporting Services, Inc. **Transcript due by 5/20/2019.** (ca)
05/19/2019	178	Transcript Copy Delivered re 176 Transcript Request. (ca) (Entered: 05/20/2019)

05/20/2019	179	Brief / Memorandum in Opposition re 173 Brief / Memorandum in Support, 172 MOTION to Exclude *Plaintiffs' Proposed Expert Witnesses* . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Blank, Jonathan)
05/21/2019	180	RESPONSE in Support re 172 MOTION to Exclude *Plaintiffs' Proposed Expert Witnesses* . filed by Richard D. Holcomb. (Eckstein, Maya)
05/23/2019	181	NOTICE of Hearing on Motion 142 MOTION to Dismiss *case as Moot*, 140 MOTION to Dismiss *case as Moot* : **(CR)** Motion Hearing set for 6/19/2019 11:30 AM in Charlottesville before Senior Judge Norman K. Moon. (hnw)
05/23/2019	182	ORDER denying the Commissioner's Motion to Exclude 172 . Signed by Senior Judge Norman K. Moon on 5/23/19. (jcj)

05/28/2019	183	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion to Dismiss/Motion to Certify Class held on **03/29/2019** reported by Court Reporter FTR before Judge Judge Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan) Modified on 5/28/2019 (ca). TRANSCRIPT REQUEST RE-FILED CORRECTLY AT DOCUMENT NO. 184 .
05/28/2019	184	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion to Dismiss/Motion to Certify Class held on **03/25/2019** reported by Court Reporter Sonia Ferris before Judge Judge Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Blank, Jonathan)
05/28/2019	185	Notice of Correction: Changed viewing restriction of Document No. 183 (Transcript Request) due to attorney attaching incorrect/deficient pdf; only viewable by court personnel. Document correctly filed at

		Document No. 184 . (ca)
05/28/2019	186	NOTICE by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie re 142 *of Supplemental Authority in Opposition to Defendant's Motion to Dismiss Plaintiffs' Case as Moot* (Blank, Jonathan)
05/28/2019	187	Response re 186 Notice (Other) *Opposition to Notice of Supplemental Authority*. filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Docket)(Eckstein, Maya)
05/28/2019	188	NOTICE by Richard D. Holcomb *Supplemental Authority* (Attachments: # 1 Exhibit Fowler v. Johnson)(Eckstein, Maya)
05/29/2019	189	**Financial arrangements made** (Original) (3 Days Service) re 184 Transcript Request, **Transcript due by 6/3/2019.** (sf)
05/30/2019	190	Consent MOTION for Leave to File Excess Pages by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Proposed Order)(Eckstein, Maya)
05/31/2019	191	ORDER granting 190 Defendant's Consent Motion for Leave to File Excess Pages and ORDERS that the page limits for the opening and response memoranda regarding Defendant's motion to

		exclude Plaintiff's proposed expert witnesses will be increased from 25 to 35 pages. Signed by Magistrate Judge Joel C. Hoppe on 5/31/19. (jcj)
06/02/2019	192	Consent MOTION for Leave to File Excess Pages by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order)(Blank, Jonathan)
06/03/2019	193	TRANSCRIPT of Proceedings: Motion hearing held on **3/25/2019** before Judge Norman K. Moon. Court Reporter/Transcriber Sonia Ferris, Telephone number SoniaF@vawd.uscourts.gov 540.434.3181 Ext. 7. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at**

		www.vawd.uscourts.gov Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER unless a Redacted Transcript has been filed. Redaction Request due 6/24/2019. Redacted Transcript Deadline set for 7/5/2019. Release of Transcript Restriction set for 9/3/2019. (sf)
06/03/2019	194	ORDER granting 192 Consent Motion for Leave to File Excess Pages and ORDERS that the page limits for the opening and response memoranda regarding Plaintiffs' dispositive motion will be increased from 25 pages to 50 pages. The Court, however, encourages the parties to write succinct briefs. Signed by Magistrate Judge Joel C. Hoppe on 6/3/19. (jcj)
06/03/2019	195	MOTION for Summary Judgment by Richard D. Holcomb. (Eckstein, Maya)

06/03/2019	196	Brief / Memorandum in Support re 195 MOTION for Summary Judgment . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Declaration of Morgan, # 2 Exhibit Transcript of Morgan, # 3 Exhibit Declaration of Bandy, # 4 Exhibit Transcript of Bandy, # 5 Exhibit Declaration of Stinnie, # 6 Exhibit Transcript of Stinnie, # 7 Exhibit Declaration of Johnson, # 8 Exhibit Transcript of Johnson, # 9 Exhibit Declaration of Adams, # 10 Exhibit Transcript of Adams, # 11 Exhibit Stinnie Dep Ex. 4, # 12 Exhibit SEALED, # 13 Exhibit SEALED, # 14 Exhibit SEALED, # 15 Exhibit SEALED, # 16 Exhibit SEALED, # 17 Exhibit Preliminary Injunction Hearing, # 18 Exhibit Deposition of Dugger, # 19 Exhibit Deposition of Peterson, # 20 Exhibit Order)(Eckstein, Maya)
06/03/2019	197	MOTION to Seal *Exhibits 12-16 to Defendant's Memorandum in Support of Summary Judgment* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Exhibit Proposed Order)(Eckstein, Maya)
06/03/2019	198	MOTION to Exclude *Plaintiffs' Expert Witnesses* by Richard D. Holcomb. Motions referred to Judge Joel C. Hoppe. (Eckstein,

		Maya)
06/03/2019	199	Brief / Memorandum in Support re 198 MOTION to Exclude *Plaintiffs' Expert Witnesses* . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Deposition of Eger, # 2 Exhibit Deposition of Peterson, # 3 Exhibit Deposition of Puentes, # 4 Exhibit Deposition of Pearce, # 5 Exhibit Ex. 5 to Eger Affidavit, # 6 Exhibit Transcript of Preliminary Injunction Hearing, # 7 Exhibit Affidavit of Puentes, # 8 Exhibit Affidavit of Eger) (Eckstein, Maya)
06/03/2019	200	MOTION for Summary Judgment *As To All Counts* by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Blank, Jonathan)
06/03/2019	201	Brief / Memorandum in Support re 200 MOTION for Summary Judgment *As To All Counts* . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, #

		13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35)(Blank, Jonathan)
06/05/2019	202	ORDER granting in part and denying in part 197 Defendant's Motion to Seal Exhibits 12 through 16. Defendant shall publicly file copies of Exhibits 12 through 15, but all identifying information other than the person's name must be redacted. Signed by Magistrate Judge Joel C. Hoppe on 6/5/19. (jcj)
06/05/2019	203	Sealed Document - Defendant's Exhibits 12 through 16 pursuant to Order 202 . (jcj)
06/06/2019	204	REDACTION to 196 Brief / Memorandum in Support,,, *Redacted Exhibits 12-15* by Richard D. Holcomb (Attachments: # 1 Exhibit REDACTED E-13, # 2 Exhibit REDACTED E-14, # 3 Exhibit REDACTED E-15)(Eckstein, Maya)

06/17/2019	205	Brief / Memorandum in Opposition re 198 MOTION to Exclude *Plaintiffs' Expert Witnesses* filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (Blank, Jonathan)
06/17/2019	206	Brief / Memorandum in Opposition re 195 MOTION for Summary Judgment filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit A)(Blank, Jonathan)
06/17/2019	207	RESPONSE in Opposition re 200 MOTION for Summary Judgment *As To All Counts* . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Eckstein, Maya)
06/18/2019	208	NOTICE by Richard D. Holcomb *of Supplemental Authority* (Attachments: # 1 Exhibit Transcript)(Eckstein, Maya)

06/19/2019	209	Minute Entry for proceedings held before Senior Judge Norman K. Moon: Motion Hearing held on 6/19/2019 re 142 MOTION to Dismiss *case as Moot* filed by Richard D. Holcomb, 140 MOTION to Dismiss *case as Moot* filed by Richard D. Holcomb. (Court Reporter: Sonia Ferris) (hnw)
06/24/2019	210	RESPONSE in Support re 198 MOTION to Exclude *Plaintiffs' Expert Witnesses* filed by Richard D. Holcomb. (Eckstein, Maya)
06/24/2019	211	RESPONSE in Support re 195 MOTION for Summary Judgment . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Docket: Johnson v. Jessup)(Eckstein, Maya)
06/24/2019	212	REPLY to Response to Motion re 200 MOTION for Summary Judgment *As To All Counts* . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Attachments: # 1 Exhibit 1)(Blank, Jonathan)
06/25/2019	213	NOTICE of Hearing on Motion 195 MOTION for Summary Judgment , 200 MOTION for Summary Judgment *As To All Counts*, 198 MOTION to Exclude *Plaintiffs' Expert Witnesses* **(CR)** Motion Hearing set for 7/17/2019

		10:00 AM in Charlottesville before Senior Judge Norman K. Moon. (Parties' Request 10-1) (hnw)
06/28/2019	214	MEMORANDUM OPINION. Signed by Senior Judge Norman K. Moon on 6/28/19. (jcj)
06/28/2019	215	ORDER granting in part and denying in part 142 Motion to Dismiss. This case is STAYED pending the 2020 session of Virginia's General Assembly. The stay will continue through March 21, 2020 and all else as stated in order. The parties are hereby ORDERED to, within ten days of this order, schedule a status hearing to take place within one week of the filing of their March 14, 2020 report. Signed by Senior Judge Norman K. Moon on 6/28/19. (jcj)
06/28/2019	216	Notice of Cancellation of August 5-9, 2019 Bench Trial (Cancel Court Reporter) (hnw)
06/28/2019	217	Notice of Cancellation of Motions Hearing July 17, 2019 (Cancel Court Reporter) (hnw)
07/02/2019	218	NOTICE of Hearing: **(CR)** (No Interpreter requested) Status Conference set for 3/20/2020 11:00 AM in Charlottesville before Senior Judge Norman K. Moon. (hnw)

01/22/2020	219	STATUS REPORT by Richard D. Holcomb (Eckstein, Maya)
01/22/2020	220	STATUS REPORT by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Blank, Jonathan)
03/14/2020	221	STATUS REPORT by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Blank, Jonathan)
03/14/2020	222	STATUS REPORT *Defendant's Second Status Report* by Richard D. Holcomb (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Eckstein, Maya)
03/20/2020	223	Minute Entry for proceedings held before Senior Judge Norman K. Moon: Telephonic Status Conference held on 3/20/2020. (Court Reporter: Judy Webb - by phone) (ca)
03/20/2020	224	NOTICE of Hearing: **(CR)** (No Interpreter requested) TELEPHONIC Status Conference set for 4/16/2020 11:30 AM in Charlottesville before Senior Judge Norman K. Moon. Parties will receive email with dial in instructions.(hnw)

03/20/2020	225	ORDER: This matter is before the Court further to the Court's June 28, 2019 Order staying the case, Dkt. 215. Upon consideration of the parties' status reports, Dkt. 219-22, and positions stated at the March 20, 2020 status conference, the Court finds it appropriate to ORDER the following, 1. This Case is Stayed until 4/17/2020, as agreed by the Parties, and 2. A Telephonic Status Conference is set for 4/16/2020 11:30 AM before the Senior Judge Norman K. Moon.. Signed by Senior Judge Norman K. Moon on 3/20/2020. (hnw)
04/14/2020	226	STATUS REPORT *(Joint)* by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Blank, Jonathan)
04/15/2020	227	SECOND ORDER continuing Stay as set forth: 1. This case is further STAYED until May 15, 2020, as agreed by parties; 2. The parties are DIRECTED to contact Heidi Wheeler, Scheduling Clerk, to set a telephonic status conference to be held in early May 2020, at a date and time agreeable to the parties, but no later than May 13, 2020 and 3. The parties are DIRECTED to file by April 28, 2020, a joint status

		report addressing any issues that the parties intend to raise at the status conference, including a proposed schedule for any further briefing and a continuation of the stay.. Signed by Senior Judge Norman K. Moon on 4/15/20. (jcj)
04/15/2020	228	Notice of Cancellation of April 16, 2020 11:30 a.m. Telephonic Status Conference **(No Interpreter requested)** (Cancel Court Reporter) (hnw)
04/27/2020	229	NOTICE of Hearing: **(CR)** Telephonic Status Conference set for 5/8/2020 10:00 AM in Charlottesville before Senior Judge Norman K. Moon. (hnw)
04/28/2020	230	STATUS REPORT *(Joint)* by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Blank, Jonathan)
05/07/2020	231	STIPULATION of Dismissal by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Attachments: # 1 Text of Proposed Order Proposed Order)(Blank, Jonathan)
05/07/2020	232	ORDER: The Court has reviewed and hereby ADOPTS the parties' Stipulation of Dismissal filed on May 7, 2020. This action is DISMISSED as MOOT. The Court RETAINS JURISDICTION

		to decide the issue of whether to award attorneys' fees. The Court ORDERS that briefing on attorneys' fees shall be BIFURCATED and all further such relief as set forth in said Order.. Signed by Senior Judge Norman K. Moon on 5/7/20. (jcj)
05/07/2020	233	Notice of Cancellation of May 8, 2020 10:00 a.m. Telephonic Status Conference **(No Interpreter requested)** (Cancel Court Reporter) (hnw)
07/02/2020	234	MOTION for Attorney Fees *and Litigation Expenses* by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Motions referred to Judge Joel C. Hoppe. (Attachments: # 1 Text of Proposed Order Exhibit A)(Blank, Jonathan)
07/02/2020	235	Brief / Memorandum in Support re 234 MOTION for Attorney Fees *and Litigation Expenses* filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Blank, Jonathan)
08/28/2020	236	ORDER REFERRING MOTION: 234 MOTION for Attorney Fees *and Litigation Expenses* filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan Motions

		referred to Joel C. Hoppe.. Signed by Senior Judge Norman K. Moon on 8/28/2020. (hnw)
08/31/2020	237	Brief / Memorandum in Opposition re 234 MOTION for Attorney Fees *and Litigation Expenses* . filed by Richard D. Holcomb. (Eckstein, Maya)
09/29/2020	238	Reply re 234 MOTION for Attorney Fees *and Litigation Expenses* . filed by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Blank, Jonathan)
10/09/2020	239	NOTICE of Hearing on Motion 234 MOTION for Attorney Fees *and Litigation Expenses* : **(FTR)** (No Interpreter requested) If this is a video conference click here for guidance re: participation via ZoomTELEPHONIC Motion Hearing set for 12/9/2020 11:00 AM in Charlottesville before Magistrate Judge Joel C. Hoppe. Parties will receive an email from chambers with dial in instructions. (hnw)
12/08/2020	240	NOTICE of Appearance by Tennille Jo Checkovich on behalf of All Plaintiffs (Checkovich, Tennille)

12/09/2020	241	Log Notes for Motion Hearing in the Harrisonburg Division held before Judge Joel C. Hoppe on 12/9/20. In accordance with 28 USC 753(b), I certify that I monitored the digital recording of this proceeding and that it is a true and correct record, that it is sufficiently intelligible when played on the FTR (For the Record) Player, and that it can be transcribed without undue difficulty. AT&T Conference Manager: Karen Dotson (kld)
12/09/2020	242	Minute Entry for proceedings held before Magistrate Judge Joel C. Hoppe: Motion Hearing held on 12/9/2020 re 234 MOTION for Attorney Fees *and Litigation Expenses* filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. (AT&T Conference Manager: Karen Dotson) (kld)
02/16/2021	243	REPORT AND RECOMMENDATIONS re 234 MOTION for Attorney Fees *and Litigation Expenses* filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. Signed by Magistrate Judge Joel C. Hoppe on 2/16/2021. (hnw)

02/23/2021	244	TRANSCRIPT REQUEST (3 Day Service) by Jonathan Blank for Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion Hearing held on **12/09/2020** reported by Court Reporter Karen Dotson before Judge Joel C. Hoppe, USMJ. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Abel, Benjamin) Lisa Blair to transcribe. Modified on 2/23/2021 (sad).
02/24/2021	245	**Financial arrangements made** (Original) (3 Days Service) re 244 Transcript Request, **Transcript due by 2/27/2021.** (lmb)
02/24/2021	246	TRANSCRIPT of Proceedings: Motions Hearing held on **12/9/2020** before Judge Hoppe. Court Reporter/Transcriber Lisa Blair, Telephone number 434-409-4575. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public**

		without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER unless a Redacted Transcript has been filed. Redaction Request due 3/17/2021. Redacted Transcript Deadline set for 3/29/2021. Release of Transcript Restriction set for 5/25/2021. (lmb)
03/01/2021	247	OBJECTION to 243 Report and Recommendations by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. (Abel, Benjamin)
03/15/2021	248	Response re 247 Objection to Report and Recommendations *Defendant's Response to Plaintiffs' Objections to the R&R regarding Plaintiffs' Petition for Attorneys' Fees and Litigation Expenses* . filed by Richard D. Holcomb. (Attachments: # 1 Exhibit Ex.1, # 2 Exhibit Ex.2, # 3 Exhibit Ex.3)(Eckstein, Maya)

03/22/2021	249	NOTICE by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie re 247 *Hearing on Objections to the Report and Recommendation Regarding Plaintiffs Petition for Attorneys Fees and Litigation Expenses* (Abel, Benjamin)
06/04/2021	250	MEMORANDUM OPINION. Signed by Senior Judge Norman K. Moon on 06/04/2021. (dg)
06/04/2021	251	VACATED ON 8/29/2023 - ORDER denying 234 Motion for Attorney Fees; adopting 243 Report and Recommendations; overruling 247 Objection to Report and Recommendation. Signed by Senior Judge Norman K. Moon on 06/04/2021. (dg) Modified text on 8/29/2023, Order vacated per 271 USCA Mandate (skm).
07/02/2021	252	NOTICE OF APPEAL as to 250 Memorandum Opinion, 251 Order on Motion for Attorney Fees, Order on Report and Recommendations by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie. Filing fee $ 505, receipt number AVAWDC-3738787. (Abel, Benjamin)

07/02/2021	253	Transmittal of Notice of Appeal to 4CCA re 252 Notice of Appeal, NOTE: The Docketing Statement and Transcript Order Form are available on the 4th Circuit Court of Appeals website at www.ca4.uscourts.gov. If CJA24 form(s) are applicable, you must submit a separate Auth-24 for each court reporter from whom you wish to order a transcript through the District Court's eVoucher system. (dg)
07/09/2021	254	USCA Notice of Appellate Case Opening re 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. USCA Case Number 21-1756. Case Manager: Richard H. Sewell. (dg)
07/14/2021	255	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Motion Hearing before Judge Moon on June 19, 2019 (Doc. 209) held on **June 19, 2019** reported by Court Reporter Sonia Ferris before Judge Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Abel, Benjamin) Main Document 255 replaced with

		flattened PDF on 7/15/2021 (sad).
07/14/2021	256	TRANSCRIPT REQUEST (3 Day Service) by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie for Telephonic Status Conference on March 20, 2020 (Doc. 223) held on **March 20, 2020** reported by Court Reporter Judy Webb before Judge Moon. *Transcript Due Deadline will be set when Financial Arrangements are made.* (Abel, Benjamin) Main Document 256 replaced with flattened PDF on 7/15/2021 (sad).
07/14/2021	257	**Financial arrangements made** (Original) (3 Days Service) re 256 Transcript Request, **Transcript due by 7/18/2021.** (jw) Modified on 7/15/2021. **Corrected due date. (jw).**
07/15/2021	258	**Financial arrangements made** (Original) (3 Days Service) re 255 Transcript Request,, **Transcript due by 7/18/2021.** (sad)
07/16/2024	259	Appeal Transcript filed for Status Conference for dates of **3/20/2020** before Judge Norman K. Moon, re 252 Notice of Appeal, Court Reporter/Transcriber: Judy Webb, Telephone number judy.webb@gmail.com/540-857-5100 x 5333.

		NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov *Does this satisfy all appellate orders for this reporter? Yes* Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. **After that date it may be obtained through PACER unless a Redacted Transcript has been filed. Redaction Request due 8/6/2021.** **Redacted Transcript Deadline set for 8/16/2021. Release of Transcript Restriction set for 10/14/2021. (jw)**
07/18/2021	260	TRANSCRIPT of Proceedings: Motion Hearing held on **June 19, 2019** before Judge Norman K. Moon. Court

Reporter/Transcriber Sonia Ferris, email: sonia.ferris@gmail.com. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.vawd.uscourts.gov Transcript may be viewed at the court public terminal or purchased through Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER unless a Redacted Transcript has been filed. Redaction Request due 8/9/2021. Redacted Transcript Deadline set for 8/19/2021. Release of Transcript Restriction set for 10/18/2021. (sad) (Entered: 07/19/2021)**

01/14/2022	261	ORDER of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. The court grants Michelle S. Kallen's motion to withdraw from further representation on appeal. (dg)
06/27/2022	262	USCA Memorandum Opinion from 4th Circuit re 252 Notice of Appeal, **affirming** decided on 06/27/2022 (Attachments: # 1 Attachment)(dg) (Entered: 06/28/2022)
06/27/2022	263	USCA JUDGMENT as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan (dg) (Entered: 06/28/2022)
07/11/2022	264	USCA Temporary Stay of Mandate (dg)
08/09/2022	265	ORDER of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan (dg)
08/09/2022	266	ORDER of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan (dg)

08/16/2022	267	ORDER of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan (dg)
08/07/2023	268	USCA Memorandum Opinion from 4th Circuit re 252 Notice of Appeal, **vacated and remanded by published opinion** decided on 8/7/2023. (skm)
08/07/2023	269	USCA JUDGMENT as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan: In accordance with the decision of this court, the district court order entered June 4, 2021, is vacated. This case is remanded to the district court for further proceedings consistent with the court's decision. (skm)
08/23/2023	270	ORDER of USCA transferring all appellate-related litigation expenses proceedings to the District Court as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. (slt)
08/29/2023	271	MANDATE of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan. (skm)

08/30/2023	272	ORDER regarding 269 USCA Judgment and 270 USCA Order: The Court refers Plaintiff's 234 Petition for Attorney's Fees and Litigation Expenses to U.S. Magistrate Judge Joel C. Hoppe for a Report & Recommendation, and to conduct any proceedings in aid thereof. Signed by Senior Judge Norman K. Moon on 8/30/2023. (skm)
08/30/2023	273	ORAL ORDER: The parties are directed to confer and, within 14 days, submit a proposed briefing schedule for Plaintiff's Petition for Attorney's Fees and Litigation Expenses, ECF No. 234 . Entered by Magistrate Judge Joel C. Hoppe on 8/30/2023. *This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.*(skm)
09/06/2023	274	NOTICE of Appearance by Evan Tucker on behalf of Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Tucker, Evan)
09/06/2023	275	NOTICE of Appearance by John Justin Woolard on behalf of Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Woolard, John)

09/13/2023	276	STATUS REPORT *Joint Status Report* by Melissa Adams, Williest Bandy, Adrainne Johnson, Brianna Morgan, Damian Stinnie (Tucker, Evan)
10/05/2023	277	ORDER regarding 276 Joint Status Report: Defendant shall file written notice with this Court within ten days of the date on which he files, or decides not to file, his petition for a writ of certiorari. If Defendant does file such a petition, he shall file written notice with this Court within ten days of the date on which the U.S. Supreme Court enters an order granting or denying the petition. Briefing on Plaintiffs' petition for attorney's fees and litigation expenses, ECF No. 276 , is hereby STAYED pending further order of this Court. The case is not stayed. Signed by Magistrate Judge Joel C. Hoppe on 10/5/2023. (skm)
10/27/2023	278	NOTICE by Richard D. Holcomb *Notice of Filing an Application for a Two Week Extension of Time to File a Petition for Writ of Certiorari* (Attachments: # 1 Exhibit Exhibit 1)(Eckstein, Maya)
11/28/2023	279	NOTICE of Application for Writ by Richard D. Holcomb (Attachments: # 1 Exhibit Exhibit

		1 - Petition for Writ of Certiorari)(Eckstein, Maya)
12/12/2023	280	USCA Notice of petition for a writ of certiorari filed **No. 21-1756**. (skm)
03/25/2024	281	ORDER of USCA as to 252 Notice of Appeal, filed by Adrainne Johnson, Damian Stinnie, Williest Bandy, Melissa Adams, Brianna Morgan (dsa)
03/27/2024	282	ORAL ORDER: The case is STAYED except that the defendant is directed to file a notice as required by the Order entered on October 5, 2023, ECF No. 277 . Entered by Magistrate Judge Joel C. Hoppe on 3/27/24. *This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.*(kld)
04/23/2024	283	USCA Notice of Petition for Writ of Certiorari granted in Supreme Court of the United States, **No. 21-1756**. (dsa)
04/23/2024	284	NOTICE by Richard D. Holcomb re 277 *Notice of Writ of Certiorari* (Attachments: # 1 Exhibit 1 - April 22, 2024 Order List)(Eckstein, Maya)
04/24/2024	285	ORDER of USCA as to 252 Notice of Appeal: The court grants Leslie Kendrick's motion to withdraw from further representation on appeal.(skm)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES Defendant.	Civ. No: 3:16-cv-00044

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Damian Stinnie, Melissa Adams, and Adrainne Johnson, individually and on behalf of all others similarly situated, and Williest Bandy, and Brianna Morgan individually, and on behalf of all others similarly situated (collectively, "Plaintiffs"), state as follows for their First Amended

Complaint:

1. The Plaintiffs in this lawsuit are Virginia residents who have suffered indefinite suspension of their driver's licenses for failure to pay court costs and fines ["court debt"] that they could not afford to pay.

2. As a result of the Commonwealth's efforts to coerce payment of court debt, and its failure to distinguish between those who are *unwilling* to pay and those who are *unable* to pay, nearly one million people have lost their drivers' licenses simply because they are too poor to pay, effectively depriving them of reliable, lawful transportation necessary to get to and from work, take children to school, keep medical appointments, care for ill or disabled family members, or, paradoxically, to meet their financial obligations to the courts.

3. From 2011-2015, people who had lost their licenses for failure to pay court debt were sentenced to a total of 1.74 million days in jail for driving on a suspended license.

4. Since Plaintiffs filed their original complaint, the Defendant, Commissioner Richard D. Holcomb, has issued hundreds of thousands of suspensions for failure to pay court debt, and hundreds of thousands of Virginians have been convicted for driving on a suspended license due solely to failure to pay court debt, and/or been sentenced to serve jail time for driving on a suspended license due solely to failure court debt.

5. The Plaintiffs contend that, as written and as implemented by the Commissioner,[1] Section

[1] In its Order setting a schedule for filing an amended

46.2-395 of the Virginia Code is unconstitutional on its face for failing to provide sufficient notice or hearing to any driver before license suspension. It is additionally unconstitutional as applied to people who cannot afford to pay due to their modest financial circumstances.

6. The Plaintiffs bring this action for themselves and on behalf of all others similarly situated, seeking relief from the Commonwealth's unconstitutional law that unfairly traps them in a vicious cycle of debt, unemployment, and incarceration.

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complaint, the Court asked Plaintiffs to clarify whether their suit presents "facial or factual challenges (or both)" to the statute. ECF Doc. 81. One of Plaintiffs' claims is a facial challenge that conforms to the highest standard imposed by the Supreme Court on facial challenges: that the challenged law be unconstitutional in all its applications. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Section 46.2-395 unconstitutionally violates procedural due process on its face by revoking driver's licenses— constitutionally protected property interests—without notice or a hearing. In this regard, every enforcement of the provision is unconstitutional. Plaintiffs' other claims challenge the statute as applied to people who are unable to pay: both as written in the Code and as implemented by the Commissioner, the statute violates equal protection and due process when applied against those unable to pay. The Plaintiffs contend that the Commissioner is a proper defendant to challenge the constitutionality of Va. Code § 46.2-395, both as written and as implemented, because (1) under any construction of the statute as written, the Commissioner has a significant and special role in enforcement and (2) regardless of the statute's terms, as it is actually implemented, the Commissioner issues suspensions pursuant to Va. Code § 46.2-395 without regard to the existence or non-existence of any court document ordering said suspension.

JURISDICTION AND VENUE

7. The named Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(3), because it seeks to redress the deprivation, under color of State law, of rights, privileges, and immunities secured to the named Plaintiffs and Class Members by the Constitution and laws of the United States.

9. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the named Plaintiffs' claims occurred in this judicial district, or a substantial part of the property that is the subject of this action (namely, Plaintiffs' driver's licenses) is situated in this judicial district.

PARTIES

Plaintiffs

11. Plaintiff Damian Stinnie is a 26-year-old African American man who lives in Charlottesville, Virginia.

12. Mr. Stinnie is indigent within the meaning of Va. Code § 19.2-159.

13. Plaintiff Adrainne Johnson is a 32-year-old African American woman who lives in

Charlottesville, Virginia.

14. Ms. Johnson is indigent within the meaning of Va. Code § 19.2-159.

15. Plaintiff Melissa Adams is a 35-year-old white woman who lives in Cascade, Virginia.

16. Ms. Adams is indigent within the meaning of Va. Code § 19.2-159.

17. Plaintiff Williest Bandy is a 30-year-old African American man who lives in Norfolk, Virginia.

18. Mr. Bandy is indigent within the meaning of Va. Code § 19.2-159.

19. Plaintiff Brianna Morgan is a 32-year-old African American woman who lives in Petersburg, Virginia.

20. Ms. Morgan is indigent within the meaning of Va. Code § 19.2-159.

Defendant

21. Defendant Richard D. Holcomb is the Commissioner of the Virginia Department of Motor Vehicles ("the DMV").

22. Mr. Holcomb is sued in his official capacity as Commissioner of the DMV.

23. The DMV is the entity responsible under Virginia law for the issuance, suspension, and revocation of driver's licenses. Va. Code §§ 46.2- 200 *et seq*.; *see also* Va. Code Ann. § 46.2-395.

24. As Commissioner of the DMV, Mr. Holcomb is the chief executive officer responsible for the supervision and management of the DMV and has authority to do all acts necessary or convenient

to carry out the powers and duties of the DMV. Va. Code § 46.2- 200 *et seq*.

25. At all times relevant to the events, acts, and/or omissions alleged in this Complaint, Mr. Holcomb has acted under color of State law, pursuant to his authority and responsibility as an official of the Commonwealth of Virginia.

FACTS

The Necessity of a Driver's License

26. In December 2017, there were more than 970,000 individuals whose licenses were then currently suspended for failure to pay court debt pursuant to Va. Code Ann. § 46.2-395, and nearly two-thirds of those were suspended *solely* for that reason.

27. By automatically suspending the licenses of those who cannot pay for reasons outside of their control, the state traps thousands of Virginians in a nightmarish spiral from which there is no apparent exit.

28. The indefinite suspension of driver's licenses for nonpayment of fines and costs disproportionately affects low-income persons and communities of color.

29. For example, African American people make up only twenty percent (20%) of Virginia's population, but receive nearly half of the orders of suspension for unpaid court debt.

30. In addition, African American people make up nearly sixty percent (60%) of convictions for driving with a suspended license where the reason for license suspension is unpaid court debt.

31. The indefinite suspension of the driver's licenses of low-income Virginians erects significant barriers to their ability to pursue a livelihood and meet basic human needs.

32. Eighty-six percent of Americans describe the use of a car as a "necessity of life," which is higher than the percentage of people who identified air conditioning, a cell phone, a computer, and other consumer items to be a life necessity.

33. A driver's license is a very common requirement to obtain employment, including most jobs that are available to people with limited educational attainment.

34. Nearly 87% of Virginians travel to work by car and only 4.4% travel to work by public transit.

35. Reliable, accessible public transit remains scarce in the state, where the vast majority of counties are rural. License suspensions make it difficult, or even impossible, to maintain employment.

36. Public transit services in urban areas of the Commonwealth also provide limited access to jobs.

37. For instance, in the Richmond and Tidewater areas, only 27% and 15%, respectively, of all jobs are accessible within 90 minutes of travel on public transportation.

38. For less urbanized areas, the share of accessible jobs is likely even lower.

39. The inability to secure employment further undermines any ability to pay

off court debt, which leads to the perpetual accrual of interest.

40. Then, when individuals drive on suspended licenses out of ignorance or desperation, they receive additional penalties and spiral further into insolvency.

The Commonwealth's License-for-Payment Law

41. Each year, the Commonwealth of Virginia imposes approximately half a billion dollars' worth of costs and fines in traffic and criminal court.

42. The number and amount of these fees have grown over time and now fund a wide range of basic government operations and services.

43. These fees include jury fees and court-appointed counsel fees for indigent defense, as well as courthouse construction fees, courthouse security fees, criminal justice academy training fees, fixed misdemeanor fees, electronic summons fees, more-time-to- pay fees, and jail admissions fees, among a host of others.

44. The stacking of these fees, along with interest, on top of offense-specific penalties, means that even a minor traffic violation can spiral out of control, to the tune of hundreds, or eventually thousands, of dollars.

45. State courts impose costs according to a fee schedule that does not allow a defendant's poverty to be taken into account in setting the amounts owed.

46. To coerce payment, the state

automatically suspends the driver's license each and every individual who "fails or refuses" to pay, regardless of the reason for the default. Va. Code § 46.2-395.

47. Suspensions are accomplished automatically pursuant to an algorithm contained within the court and DMV computer systems without any judicial determination or entry of an order of suspension. *See generally* Ex. 1, Decl. of Llezelle Dugger.

48. The Office of the Executive Secretary of the Supreme Court of Virginia maintains the state's Financial Management System ("FMS"), which is used by all of the General District Courts and almost all of the 120 Circuit Courts in the Commonwealth. *Id.* at ¶ 5.

49. When a scheduled payment toward court debt is not received within thirty days, or within ten days of the due date on a payment plan, the FMS automatically transmits an electronic record to the DMV indicating that an individual's account is in default. *Id.* at ¶ 6.

50. The DMV then updates the account holder's license status in its license database in accordance with the FMS electronic transmission, thereby issuing the suspension for all practical purposes, including for law enforcement, prosecutors, insurance companies, and other government entities.

51. Under Virginia law, as a matter of fact, and as the Commissioner has conceded, a person's license is not suspended until the court transmits a record of non- payment to the DMV, and

the DMV issues the suspension. *See Plummer v. Commonwealth*, 408 S.E.2d 765, 765-66 (Va. Ct. App. 1991); Ex. 2, "How to Pay Traffic Tickets and Other Offenses" ("Payments must be received within 30-days following your court date to prevent the suspension of your operator's/driver's license for failure to pay."); ECF Dkt. No. 55, Tr. of Hearing on Mot. to Dismiss at 15 ("There is no suspension there at all until the 30 days has lapsed and [the individual hasn't] paid.")

52. This system does not require a judge or clerk to issue or enter an order of license suspension for failure to pay court costs or fines in order to effectuate the suspension. Ex. 1, Decl. of Llezelle Dugger at ¶ 7.

53. In fact, the Commissioner issued suspensions on the licenses of several of the current and former named Plaintiffs for failure to pay even when the judges entered final orders in their cases and did not check the box indicating their licenses would, in the future, be suspended upon non-payment pursuant to Va. Code § 46.2-395. *See* Ex. 3, Examples of Virginia Uniform Summons.

54. No record is maintained in the court file reflecting that a person's license has been suspended for non-payment. Ex. 1, Decl. of Llezelle Dugger at ¶ 8.

55. Prior to the suspension, no notice is given to debtors apprising them of an alleged default.

56. No notice is given to debtors letting them know of their right to a hearing— or to any other remedies—to contest the validity of the

resulting suspension, either before or after the suspension occurs.

57. No such notices are given because Va. Code § 46.2-395 provides no such hearings or remedies; the only remedy is to pay money to both the courts (in full or by payment plan) and the DMV (in full), whether the debtor can afford to pay or not.

58. Virginia has suspended driver's licenses for unpaid court debt for many decades.

59. The modern statute Section 46.2-395 was dramatically expanded in 1994, less than one year after the legislature received a report finding that "[m]any offenders are poor and without obvious means to satisfy court judgments." Office of the Exec. Sec'y, *Assessing the Need for a Fines Amnesty Program for Virginia's District and Circuit Courts*, House Doc. No. 39 (1993), http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD391993/$file/HD39_1993.pdf.

60. At the same time, the 1994 legislation also removed language from the existing Virginia Code requiring the Commonwealth's Attorney to investigate the reasons for nonpayment of court debt and authorizing the Commonwealth's Attorney to proceed with collection efforts only if it appeared from that investigation that the debtor may be able to pay.

61. Thus, in removing all safeguards designed to differentiate those *unable* to pay from those *unwilling* to pay—and enacting Section 46.2-395 with full knowledge that the law's consequences would fall disproportionately on the poor—Virginia's legislature intentionally chose to discriminate against people on the basis of poverty.

The Commissioner's Role in Enforcing § 46.2-395

62. The Commissioner supervises and manages the DMV and is responsible for "the issuance, suspension, and revocation of driver's licenses." Va. Code § 46.2-200.

63. The Commissioner has express enforcement responsibilities under Section 46.2-395 to implement license suspensions and to reinstate licenses.

64. The Commissioner is the designated recipient and record-keeper of all records of nonpayment from all state courts.

65. The Commissioner maintains a database of individual driver profiles and updates their statuses based on information received from state courts.

66. Upon receipt of information indicating that a person has failed to pay court debt, the Commissioner enforces Section 46.2-395 by automatically issuing a suspension on the person's driver's license.

67. The Commissioner issues the automatic suspension without any order from the court.

68. The Commissioner does not conduct a review of a person's financial condition prior to—or indeed at any point related to—suspending a person's license for failure to pay, or otherwise inquire as to the reasons for the default.

69. The Commissioner is also the entity charged with reinstating licenses for those who have

complied with their payment obligations.

70. Once a person's license is suspended pursuant to Section 46.2-395, the DMV automatically assesses a reinstatement fee of at least $145 payable to the DMV.

71. The DMV reinstatement fee cannot be waived or paid in installments.

72. The DMV does not reinstate any suspended license until the driver has obtained an approved payment plan for each court in which they owe and paid the reinstatement fee in full to the DMV.

73. Pursuant to Section 46.2-395(B), the Commissioner is solely responsible for collecting license reinstatement fees, and the DMV derives revenue from collection of those fees.

74. The DMV reinstatement fee is at least $145 and is not imposed by the state courts.

75. The higher the number of suspensions issued, the more money is owed to DMV in reinstatement fees.

76. Some people have paid all of their court debt, but cannot afford the DMV reinstatement fee as a consequence of their poverty.

77. For individuals who have little to no income, the reinstatement fee alone deprives them of their ability to drive.

78. Pursuant to legislation enacted in 2015, the Commissioner is working on a system where a debtor can walk into a DMV customer service center and pay all court debt, and DMV will reinstate her license, without any court order or

involvement. *See* Ex. 4, Letter from Richard D. Holcomb and Karl R. Hade to members of the Virginia General Assembly (Dec. 1, 2015).

79. As the lead official for enforcement of §46.2-395's license suspension process and oversight of Virginia's licensing system and database, the Commissioner also effectuates the harmful consequences of automatic license suspension by making the information available and accessible (via its database) to the public and to law enforcement.

80. The Commissioner has conceded that law enforcement officers depend on the DMV database for enforcing licensing laws. *See* ECF Dkt. No. 55, Tr. of Hearing on Mot. to Dismiss at 11 ("[P]ractically speaking, when an officer pulls you over and they run your DMV and they pull up the little transcript, if that order has not been transmitted to DMV, it's not going to be reflected on the DMV thing the officer is looking at.")

81. Unlike time-limited suspensions ordered in open court, law enforcement officers have no way of knowing—independent of DMV's database—whether a person's license is suspended for failure to pay court debt because suspension and reinstatement reflect events that occur outside of court; namely, payment or non-payment of money to the courts and DMV.

82. When enforcing Virginia's laws prohibiting driving-while-suspended, prosecutors rely on the DMV transcript to prove that a person's license is, in fact, suspended.

83. Thus, without the Commissioner issuing the suspension and publishing it to its

database, the Plaintiffs would not have been penalized or incarcerated for continuing to drive and would still have the ability to drive to their work or to their medical appointments without being cited.

84. The Plaintiffs' and the putative class's injuries are traceable to the Commissioner because, without his actions, they would be able to drive without paying a reinstatement fee and without fear of being cited, fined, and possibly incarcerated for driving on a suspended license.

The Named Plaintiffs' Debts

85. Each of the named Plaintiffs is suffering (or will suffer) under the indefinite deprivation of their driver's licenses pursuant to Section 46.2-395 and is currently (or will be) unable to drive legally because they cannot afford to pay court debt, or to pay the DMV reinstatement fee.

86. Pursuant to Section 46.2-395, the Plaintiffs' licenses were suspended (or will be) automatically upon their default, without any inquiry—by either the courts or the DMV into their ability to pay or the reasons underlying their failure to pay.

87. The Commissioner will not reinstate the Plaintiffs' licenses until they satisfy their court debt entirely or obtain payment plans from each court to which they are indebted, and additionally pay the DMV a reinstatement fee of at least $145.

88. The Plaintiffs would pay their debts and reinstate their licenses if they could afford to do so, but have been (or will be) unable to pay and have suffered considerable additional hardship (driver's license suspension and its attendant problems) as a

result.

89. At times, the Plaintiffs have sacrificed their needs and the needs of their families in order to make payments to the courts that they could not afford.

90. The Plaintiffs' debts continue to (or will) increase daily, as interest accrues at an annual rate of 6% when someone is not in good standing in an active payment plan.

91. The Plaintiffs need to drive in order to meet their basic needs.

92. The Plaintiffs are not challenging any state court decisions.

93. They are not contesting their convictions, the applicability of the fines and fees assessed in traffic or criminal court adjudications, or their failure to make the required payments.

94. Rather, they are challenging the statutory scheme, as written and implemented, and its lack of process, as violating their due process and equal protection rights and the rights of those who are similarly situated.

Damian Stinnie

95. Plaintiff Damian Stinnie is 26 years old and lives in Charlottesville, Virginia. Mr. Stinnie and his twin brother grew up in the foster care system in Virginia.

96. Mr. Stinnie's license is currently suspended because he could not afford the costs and fines related to a driving-while-suspended conviction.

97. Mr. Stinnie has struggled to escape

the grip of debt-related suspensions since 2012, when his license was first suspended due to his inability to pay over $1,000 in fines and costs imposed as a result of three traffic infractions.

98. Unaware that his license had been suspended automatically when he failed to pay within 30 days, Mr. Stinnie continued to drive and, in 2013, received a citation for driving while suspended.

99. While his court case was pending, Mr. Stinnie was hospitalized with life-threatening lymphoma, and he missed his court date.

100. The court convicted him in his absence and imposed additional fines and fees.

101. Since 2012, Mr. Stinnie has struggled with serious illness, unemployment, and homelessness.

102. Between 2013 and 2016, while he recovered from lymphoma, Mr. Stinnie's only sources of income were food stamps and Supplemental Security Income ("SSI").

103. At times, Mr. Stinnie had no place to sleep but in his car.

104. His license has since been suspended multiple times for failure to pay court costs and fines related to traffic offenses.

105. In late 2016, Mr. Stinnie's health had improved enough that he could begin looking for employment.

106. He found a part-time job making under $12 per hour as a community service associate in December 2016, a position he still holds.

107. Despite working as many hours as his employer offered him, Mr. Stinnie never had enough money to meet all of his expenses.

108. He also applied for a loan from a new local non-profit organization that provides financial assistance to a limited number of individuals with outstanding court debt.

109. During this time, Mr. Stinnie faced the impossible choice of driving illegally to look for work, help out family members, and attend medical appointments, or not to drive and face continued unemployment, being late for work, and missing medical appointments.

110. On January 13, 2017, Mr. Stinnie received a citation for expired tags and driving on a suspended license.

111. Due to the possibility of incarceration, the court found Mr. Stinnie to be indigent and appointed an attorney to represent him.

112. Ultimately, the prosecutor dropped the charge for expired tags, but Mr. Stinnie was found guilty of driving on a suspended license and sentenced to 180 days in jail, of which 160 were suspended, and received additional fines and costs.

113. Due to the length of the active sentence and his desire to avoid disrupting his newfound employment, Mr. Stinnie filed a *de novo* appeal of his conviction for driving while suspended with the state circuit court.

114. While his appeal was pending, Mr. Stinnie's loan application was granted, and he used the money to pay all of his accrued court debt, as well as paying approximately $240 in reinstatement fees

to the DMV so that his license could be reinstated.

115. After enduring a cycle of debt, license suspension, and incarceration for nearly four years, Mr. Stinnie was finally able to overcome the substantial barriers created by the state to regaining the legal ability to drive, and he reinstated his license in December 2017.

116. Meanwhile, Mr. Stinnie's appeal was unsuccessful.

117. On February 23, 2018, he was convicted by the circuit court and sentenced to thirty days in jail, including a mandatory minimum of ten days, for driving on a suspended license for failure to pay his court debt.

118. He also received a statutory ninety-day license suspension and additional fines and costs in amounts to be calculated later by the clerk's office.

119. The court did not inquire into Mr. Stinnie's financial circumstances.

120. The court paperwork given to Mr. Stinnie on the day of his conviction stated:

"You have 30 days from today's date to make final payment or to make arrangements for a payment plan, otherwise the **Department of Motor Vehicles (DMV) will suspend** your driver's license." (Emphasis added.)

121. In early March 2018, he learned that he owed a total amount of $2,189 in fines and costs to the court as a result of his conviction for driving on a suspended license, which, at the time, was suspended for failure to pay court debts that Mr. Stinnie had since paid off using the loan.

122. Mr. Stinnie obtained a payment plan for $30 per month beginning May 20, 2018.

123. Less than a month later, however, the City of Charlottesville initiated a tax lien for unpaid personal property taxes on his car.

124. The tax lien garnished 100% of his wages for two months, and a significant portion of his check in the third month.

125. Mr. Stinnie advised the court, prior to the due date it had set for the first installment payment, that he had no income and would not be able to make the first installment payment and needed a plan modification.

126. The court denied his request for a modification.

127. Mr. Stinnie also asked the nonprofit for another modest loan to help him pay the first few installments while he waited for the tax lien to end, but he was told he could not be extended additional credit until he paid off the first loan.

128. On or about June 25, 2018, the court notified the DMV that Mr. Stinnie had defaulted on the court's payment plan, and the DMV issued a suspension of Mr. Stinnie's license effective June 21, 2018.

129. Mr. Stinnie's circuit court file contains no court order suspending his license for failure to pay court debt.

130. Mr. Stinnie no longer receives SSI, and his only income is from part-time employment.

131. Mr. Stinnie is facing another personal property tax lien, and also the possibility of

becoming homeless again if and when his current temporary living situation ends.

132. In order to get his license back, he must get on an approved payment plan with the court and pay $150 to the DMV.

133. Mr. Stinnie cannot afford to pay the amounts necessary to reinstate her license.

134. All told, Mr. Stinnie has paid thousands of dollars to the courts in fines and costs related to driving while suspended, paid $240 to the DMV in reinstatement fees, and spent dozens of days in jail for driving while suspended.

135. He would like to get more hours at work, but his employer requires him to have a valid driver's license in order to go full-time.

136. If he had his license, Mr. Stinnie could go full-time at work, make more money, and possibly pay his court debt off faster.

137. Mr. Stinnie would also be able to help out his family members and conduct day- to-day business—including getting to and from medical appointments—without fear of getting pulled over and going to jail.

Melissa Adams

138. Plaintiff Melissa Adams and her twelve-year-old son live in Cascade, Virginia, a rural community west of Danville.

139. The area where she lives is roughly twenty miles away from any public transportation.

140. Ms. Adams's license is currently suspended because she could not and cannot afford the costs and fines related to various traffic and

misdemeanor offenses, including driving on a suspended license.

141. In January 2013, Ms. Adams was diagnosed with a rare and serious blood disorder, which required her to be hospitalized on multiple occasions during the first several months of the year and necessitated outpatient chemotherapy treatment.

142. Prior to her illness, Ms. Adams held steady employment as a waitress.

143. Since her hospitalization, Ms. Adams has been unable to maintain steady employment, though she has worked on and off in low-wage jobs, typically earning between $8 and $10 per hour.

144. Shortly after Ms. Adams was released from the hospital in May 2013, she was involved in a minor accident and charged with failing to stop at the scene of an accident, operating an uninsured motor vehicle, and an expired registration.

145. Upon conviction, the court assessed $646 in fines and costs.

146. At the time, Ms. Adams was unemployed.

147. Initially, Ms. Adams was able to scrape together enough funds to make modest payments, but she could not sustain those payments while supporting herself and her son on a meager income.

148. She was given a deferred payment agreement that required her to pay the remaining $526 in full at the end of three months.

149. She was not able to pay that amount.

150. On March 25, 2014, the court notified the DMV that Ms. Adams had missed the deadline for paying her debts to the court, and the DMV issued a suspension of Ms. Adams's license effective March 18, 2014.

151. Forced to choose between losing her job and not being able to care for herself and her family, or driving on a suspended license and risking additional citations, Ms. Adams continued to drive.

152. Ms. Adams also needed to drive to get to and from chemotherapy appointments more than forty miles away.

153. As a result, she received multiple convictions for driving while suspended.

154. Each conviction led to additional costs and fines, another three-month deferred payment plan that Ms. Adams could not afford, and another suspension of her license immediately upon default.

155. At no time did either the court or the DMV inquire into Ms. Adams's financial circumstances or the reasons for her non-payment.

156. Upon her fourth conviction for driving while suspended, in June 2015, Ms. Adams served twelve days in jail, during which time she worried about the care and supervision of her young son.

157. Since then, Ms. Adams has refrained from driving, in order to avoid the risk of more incarceration.

158. Ms. Adams is trained as a CNA and has recently seen advertisements for jobs that she strongly believes she could obtain if she had her driver's license.

159. These jobs require her to have reliable transportation to and from the patient's home, which can be many miles away from where she lives, and there is no public transportation available to transport her back and forth.

160. Sometimes the job postings state that having a valid driver's license is a condition of employment.

161. Currently, Ms. Adams is unemployed and has no income.

162. She and her son receive food stamps.

163. She owes $300 a month in rent to her mother-in-law, which she pays when she can afford it.

164. She also pays for utilities and buys groceries and other necessities for herself and her son.

165. Ms. Adams is the sole source of support her son. She rarely has enough money to meet her and her family's basic needs.

166. Moreover, Ms. Adams's illness requires her to travel eighty miles away to see a specialist regularly.

167. She must pay the specialist $125 each visit. She also has thousands of dollars in outstanding medical bills.

168. Ms. Adams needs her license to get to medical appointments, seek and maintain employment, to go grocery shopping, and to keep appointments for her son.

169. She currently owes $2,975 in court debt. In order to get her license back, she must get

on an approved payment plan with the court and pay $260 to the DMV in reinstatement fees.

170. Ms. Adams recently contacted both courts to which she owes money.

171. One court told Ms. Adams that she would need to pay $25 per month, even though she currently has no income.

172. The other told Ms. Adams that she would need to come physically to the court clerk's office and show proof of income in order to get on a payment plan.

173. Without a driver's license, Ms. Adams cannot readily get herself to the clerk's office, and she has no income to show the court to qualify for a plan.

174. Even if she could get on payment plans with both courts, Ms. Adams does not think she could keep up with the monthly payments, and she has no idea how she could save up enough money to pay the DMV reinstatement fee.

175. Ms. Adams cannot afford to pay the amounts necessary to reinstate her license.

Adrainne Johnson

176. Ms. Johnson is 34 years old. She lives in Charlottesville, Virginia with her fifteen-year-old daughter and twelve-year-old son.

177. Ms. Johnson's license is currently suspended because she cannot afford the costs and fines related to various traffic and criminal offenses, including driving on a suspended license.

178. In 2013, Ms. Johnson was working as a Certified Nursing Assistant (CNA), helping to take

care of people in their homes, and earning $8.86 per hour.

179. In April of that year, Ms. Johnson was convicted of a drug-related charge.

180. Ms. Johnson did not have enough money for a lawyer, so the court found her to be indigent and appointed an attorney to represent her.

181. The court did not give Ms. Johnson active jail time or fines, but did sentence her to pay $865 in court costs, with the biggest single court cost being to pay for her court- appointed attorney.

182. The court put Ms. Johnson on a payment plan, and she tried to make the payments at first, but she could not afford to keep up with it and missed a payment.

183. On June 2, 2016, the court notified the DMV that Ms. Johnson had missed the deadline for paying her debts to the court, and the DMV issued a suspension of Ms. Johnson's license effective May 31, 2016.

184. Since that time, Ms. Johnson continued to work on and off in low-wage jobs, typically earning between $7.25 and $10 per hour.

185. Ms. Johnson tried a couple of times to establish new payment plans for the 2013 court debt, but could not afford to make every payment, and her license was re-suspended multiple times, most recently in June 2018.

186. Ms. Johnson continued to drive in order to take care of her family, to get to and from jobs, and to take her daughter to medical appointments.

187. In November 2017, Ms. Johnson was convicted of driving on a suspended license.

188. The court sentenced Ms. Johnson to a $100 fine and $139 in court costs.

189. The judge did not check the box indicating that Ms. Johnson license would be suspended upon failure to pay. *See* Ex. 3, Virginia Uniform Summons for Case No. GT17- 11266.

190. At the time, Ms. Johnson was making minimum wage and struggling to pay for her basic living expenses.

191. The court put Ms. Johnson on a payment plan that required her to pay her debt in full within six months, which she could not afford to do.

192. As soon as Ms. Johnson missed a payment, her license was suspended again around May 2018.

193. Upon information and belief, there is nothing in Ms. Johnson's court files suspending her license for failure to pay.

194. Neither the court nor the DMV asked Ms. Johnson about her financial circumstances or the reasons for her non-payment, before or after suspending her license.

195. After the November 2017 conviction, Ms. Johnson decided she could not take the risk of going to jail, and she stopped driving.

196. Ms. Johnson and her children live in an overcrowded rental unit with another family, doubling-up to be able to split rent.

197. In addition to her monthly rental

payment, Ms. Johnson has to pay for food and utilities and other basic living expenses.

198. Ms. Johnson has very little, if anything, left over each month. She also has an outstanding child support obligation and debt to a previous landlord.

199. If she had her license, Ms. Johnson would get a higher-paying job (which often requires a license), or take on a second job so that she could meet her expenses and pay back her court debt.

200. Ms. Johnson would also be able to get to the grocery and medical appointments.

201. Ms. Johnson currently owes roughly $900 in court debt to two different courts.

202. In order to get her license back, Ms. Johnson must get on approved payment plans with the courts and pay $150 in reinstatement fees to the DMV.

203. Ms. Johnson recently contacted both courts where she owes money.

204. One told Ms. Johnson that she would need to pay $35 down and $25 per month.

205. The other told Ms. Johnson that she would need to pay $25 down and would need to travel in person to the court clerk's office (roughly 38 miles from where she lives) to determine the other terms of a possible payment plan.

206. Without a license, Ms. Johnson does not know how and when she can get to the court to work out a payment plan.

207. Even if she can get payment plans with both courts, she worries she will not be able to

keep up with monthly payments, and she has no idea how she could save up enough money to pay the DMV's reinstatement fee.

208. Ms. Johnson cannot afford to pay the amounts necessary to reinstate her license.

Williest Bandy

209. Williest Bandy is 30 years old and lives in Norfolk, Virginia.

210. Mr. Bandy lives with his girlfriend and their four children, ages 8, 4, 2, and 1.

211. From 2011 to 2018, Mr. Bandy's license was suspended under 46.2-395 for failure to pay court debt.

212. At present, there are no court debt suspensions on Mr. Bandy's license.

213. Nonetheless, Mr. Bandy's license is in a precarious state, and will likely be suspended in the near future, due to his inability to pay outstanding court debt in accordance with a payment plan he cannot sustain.

214. In 2011, Mr. Bandy was convicted of several traffic charges, including an expired inspection, failure to carry license, failure to appear, and speeding.

215. As a result of those convictions, Mr. Bandy was charged a cumulative total of $1,820 in court debt.

216. Mr. Bandy was unable to pay those amounts.

217. When Mr. Bandy failed to pay his fines and costs, his license was suspended.

218. Neither the court nor the DMV asked Mr. Bandy about his financial circumstances or the reasons for non-payment, before or after suspending his license.

219. After Mr. Bandy's license was suspended, in late 2011, he tried to drive as little as possible.

220. Not being able to drive has been a serious burden for him and his family.

221. Not having a license meant that Mr. Bandy's employment options have been seriously limited.

222. He couldn't have a second job, which he has wanted and would help his family financially, because he did not have enough time to travel to and from two jobs using public transportation.

223. It has been hard to get to doctors' appointments and do other basic things, like grocery shopping.

224. Mr. Bandy currently owes well over $2,000 in court debt.

225. Mr. Bandy recently contacted the courts to which he owes court debt.

226. One court gave him a community service plan, by which he needs to complete 75 hours within the next six months.

227. Mr. Bandy works on most weekdays, but is very motivated to complete these hours and believes he can find placements to work off the hours on weekends.

228. The other courts said they will not permit community service, despite Mr. Bandy's

financial situation.

229. They told him, via a collections agency that those courts jointly use, that he would need to pay $75 per month.

230. Mr. Bandy did not select that monthly installment amount, and does not believe he can sustain it.

231. Mr. Bandy started this payment plan because he was desperate to get his license back, to improve his family's financial situation.

232. After setting up plans with the courts, Mr. Bandy was able to scrounge money together to pay the DMV reinstatement fees.

233. Mr. Bandy presently has a learner's permit, and expects to have a full and active driver's license soon, after waiting out a 60-day permit period and passing driver's license tests.

234. Mr. Bandy's family's income is extremely limited.

235. Mr. Bandy's girlfriend is disabled and gets Supplemental Security Income ("SSI") of $750 per month.

236. Mr. Bandy himself works as a personal care assistant (PCA), roughly 35 to 40 hours per week at $8 per hour.

237. Mr. Bandy's family gets food stamps. His girlfriend gets a modest TANF payment (he believes of $100-200 per month), and occasionally can get a few hours of work.

238. Other than these modest amounts, which leave them well below the poverty line, Mr. Bandy's family has no other sources of income.

239. Mr. Bandy's family of six has a lot of expenses, including rent, utilities, transportation, house supplies, food, and clothes for the children.

240. Money is extremely tight for Mr. Bandy's family.

241. Mr. Bandy's family has no savings, and they struggle to pay all of their bills.

242. Mr. Bandy has struggled to make the first monthly payment of $75 to the courts.

243. Mr. Bandy had to contact the power company recently to tell them he couldn't pay his electricity bill on time, to try to hold money aside for the courts.

244. Mr. Bandy is very worried that he cannot keep up with monthly court debt payments.

245. For example, he foresees that he may not be able to pay both for his water bill and make his court debt payment, and he has determined that he needs to keep the water on at his family's apartment.

246. Mr. Bandy does not want to default on the payment plan, because he badly needs his license to support his family and try to improve their meager finances.

247. However, in reality, Mr. Bandy believes that he will soon default on the payment plan due to not having enough money to keep up with monthly payments.

248. With a full and active license, Mr. Bandy's employment options will improve.

249. It will be possible to get a second job,

which Mr. Bandy wants to do.

250. Moreover, Mr. Bandy will be able to pursue a wider range of jobs, such as PCA jobs that require a license as a condition of employment and potentially jobs requiring a CDL license (for which having a regular driver's license is a prerequisite).

251. However, if his license is suspended (based on his inability to keep up with court debt payments), Mr. Bandy's employment options will be much more limited, and it will be more or less impossible to get a second job.

252. In addition, it will be hard to get around, and do basic things like get to doctors' appointments and go grocery shopping.

253. Mr. Bandy's license (and the significance it holds to his family, in trying to escape poverty) is held hostage for court debt payments that he cannot afford, and he daily lives with the imminent threat of being stripped of his license due to his inability to pay.

Brianna Morgan

254. Brianna Morgan is 32 years old and lives in Petersburg, Virginia.

255. Ms. Morgan is a single parent of three children, ages 4, 12, and 13.

256. All three children live with her full-time.

257. Ms. Morgan's license was suspended for several years, until just three days ago, and may soon be suspended again, because she cannot afford the costs and fines related to traffic and criminal offenses.

258. In June 2014, Ms. Morgan was convicted for operating an uninspected vehicle. The court sentenced her to pay $35 in fines and $144 in costs.

259. At the time, Ms. Morgan was in a high-risk pregnancy and living with relatives.

260. Other than food stamps, Ms. Morgan had no income.

261. The court assigned Ms. Morgan a deferred payment plan.

262. Ms. Morgan borrowed money to make a few payments, but it was not enough.

263. Ms. Morgan could not make any substantial payments to the court and also support her family.

264. When Ms. Morgan failed to pay her fines and costs, her license was suspended.

265. On or about July 17, 2015, the court notified the DMV that Ms. Morgan had defaulted on the court's payment plan, and the DMV issued a suspension of Ms. Morgan's license effective July 15, 2015.

266. Neither the court nor the DMV asked Ms. Morgan about her financial circumstances or the reasons for non-payment, before or after suspending her license.

267. After Ms. Morgan's license was suspended, she stopped driving.

268. Not being able to drive was very hard for her and her family.

269. Ms. Morgan could not regularly visit

her father in a nursing home, or attend medical appointments with him to make sure he got the care he needs.

270. Ms. Morgan also had difficulty doing basic things like grocery shopping or picking her son up from school when he has issues with his asthma.

271. Ms. Morgan has gone without needed medical visits due to being unable to get to her doctors' offices.

272. Ms. Morgan has a disabling stomach condition and cannot work.

273. Ms. Morgan receives $665 in SSI benefits and $187 in TANF benefits, and food stamps.

274. Ms. Morgan rarely has enough money to meet her family's basic needs.

275. Ms. Morgan recently contacted both courts where she owes money.

276. She currently owes $452 in court debt to different courts.

277. In order to get her license back, she had to get on approved payment plans with both courts and also pay $155 in reinstatement fees to the DMV.

278. One court converted her debt into 44 hours of community service, to be completed by February 2019.

279. The community service will take some time to complete because she needs to find a nonprofit willing to host and certify her work.

280. The other court offered her a

payment plan that she could not afford without giving up basic needs.

281. She had to forgo her family's basic needs, including toilet paper, in order to pay the down payment to get on a payment plan.

282. Luckily, Ms. Morgan borrowed $155 from a friend to pay the DMV reinstatement fee but she is expected to pay this money back, and she does not have any idea of how or when she can.

283. Nonetheless, Ms. Morgan's license is in a precarious state, and will likely be suspended in the near future, due to her inability to pay outstanding court debt in accordance with a payment plan she cannot sustain.

284. Ms. Morgan is very worried that she cannot keep up with monthly court debt payments.

285. Ms. Morgan typically does not have $25 left over at the end of the month, so making a payment to the Court will mean not meeting basic needs of her family.

286. Ms. Morgan does not want to default on the payment plan, because she badly needs her license to support her family and try to improve their meager finances.

287. However, in reality, Ms. Morgan's is one unexpected expense away from default on the payment plan.

288. If her license is suspended (based on her inability to keep up with court debt payments), Ms. Morgan's employment options will be much more limited, and it will be more or less impossible to get a second job.

289. In addition, it will be hard to get around, and do basic things like get to doctors' appointments and go grocery shopping.

290. Ms. Morgan's license (and the significance it holds to her family, in trying to escape poverty) is held hostage for court debt payments that she cannot afford, and she daily lives with the imminent threat of being stripped of her license due to her inability to pay.

The Plaintiffs' Requested Relief

291. The Plaintiffs seek a ruling declaring Section 46.2-395 to be unconstitutional, both as written and as implemented by the Commissioner, to enjoin the Commissioner from enforcing its terms against them and those similarly situated in the future, and to restore their licenses to the status they would be in prior to the Commissioner's unconstitutional actions against them without paying a reinstatement fee.

292. The relief requested by the Plaintiffs would functionally restore their ability to drive without fear of punishment.

293. The Plaintiffs and putative class members would no longer be stopped, charged, and convicted of driving on a suspended license and would not incur additional fines and fees for driving.

294. The Plaintiffs and putative class members would be able to drive and use their licenses again without fear of penalty or incarceration, and without payment of the DMV reinstatement fees—a tangible benefit.

295. Thus, granting the requested relief

would dismantle the system responsible for trapping the Plaintiffs and those similarly situated in a vicious cycle of fines, unemployment, and incarceration.

CLASS ACTION ALLEGATIONS

296. The named Plaintiffs bring this action for themselves individually and on behalf of all others similarly situated, pursuant to the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

297. A class action is the only practicable means by which Plaintiffs and unknown Class Members can challenge the Commonwealth's unlawful court debt collection scheme.

298. The named Plaintiffs seek to certify two classes:

a. a **Suspended Class** consisting of all persons whose drivers' licenses are currently suspended due to their failure to pay court debt pursuant to Section 46.2-395; and

b. a **Future Suspended Class** consisting of all persons whose drivers' licenses will be suspended due to their failure to pay court debt pursuant to Section 46.2-395.

299. The named Plaintiffs seek certification pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure in order to represent classes of persons requesting declaratory and injunctive relief to declare Section 46.2-395 unconstitutional as applied to Plaintiffs and Class Members, to enjoin the Commissioner from enforcing Section 46.2-395 against Plaintiffs and the Future Class Members

until such time as the Commonwealth implements a system that complies with the United States Constitution, and to remove any suspensions imposed pursuant to Section 46.2-395 from Plaintiffs' and Suspended Class Members' DMV records without requiring payment of DMV reinstatement fees.

300. The Commissioner has acted, or failed and/or refused to act, on grounds that apply generally to the proposed Classes, such that final injunctive and declaratory relief is appropriate with respect to the Classes as a whole.

301. As set forth more fully in the following paragraphs, this action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23.

Numerosity

302. In 2015, DMV reported that 914,450 individual DMV customers have at least one suspension on their DMV transcripts for nonpayment of court costs and fines related to criminal and traffic convictions.

303. By December 2017, there were more than 970,000 individuals whose licenses were then currently suspended for failure to pay court debt pursuant to Section 46.2-395, and nearly two-thirds of those were suspended *solely* for that reason.

304. Upon information and belief, a large proportion of those individuals holding suspended licenses are too poor to pay their court debt without imposing manifest hardship on themselves and their families.

305. The Commissioner issues over

360,000 driver's license suspensions for nonpayment of court costs and fines each year, affecting thousands of individual debtors.

306. Historically, approximately 60% of those suspensions remain in place twelve months later, suggesting that a large percentage of suspensions were issued to people without the means to pay to get the suspension removed.

307. Accordingly, the proposed class is so numerous that the joinder of all Class Members is impracticable.

Commonality

308. All persons comprising the proposed classes are equally subject to the provisions of Section 46.2-395, which deprives individuals of their driver's licenses for their failure to pay court debt without regard to whether such failure was willful, or instead caused by their inability to pay.

309. Thus, common questions of law and fact exist as to all Class Members.

310. Among the most important, but not the only, common questions of fact are:

- Whether Section 46.2-395 empowers the DMV to issue suspensions, and/or whether the DMV has a practice of issuing suspensions, against a license for non-payment without requiring a pre-deprivation (or post-deprivation) hearing; and

- Whether Section 46.2-395 empowers the DMV to issue suspensions, and/or whether the DMV has a practice of issuing suspensions, against a license for non-payment

without requiring an inquiry into a motorist's ability to pay and determining that the motorist's non-payment was willful.

311. Among the most important, but not the only, common questions of law are:

- Whether Section 46.2-395 violates due process and fundamental fairness by punishing those who owe money to the state for sheer inability to pay;
- Whether Section 46.2-395 strips the Plaintiffs and those like them of a constitutionally protected property interest—their driver's licenses—without the guaranteed safeguards of notice and a hearing;
- Whether Section 46.2-395 violates equal protection by treating those who are willing but unable to pay more harshly than those who are willing and able to pay, when the only difference between them is their poverty;
- Whether suspending licenses for delinquent court debt pursuant to Section 46.2-395 fails even the most minimum constitutional standards, as applied to debtors who lack ability to pay, because it is not rationally related to legitimate state interests; and
- Whether Section 46.2-395 subjects the Plaintiffs and those like them to harsher collection practices than those for civil debtors, in violation of equal protection.

Typicality

312. The named Plaintiffs' claims are typical of the claims of the proposed Classes as a

whole.

313. As summarized in the above allegations, Plaintiffs suffered injuries from the failure of the Commonwealth, acting by and through the Commissioner, to comply with the basic constitutional provisions detailed below.

314. The answer to whether Section 46.2-395 is unconstitutional will determine the claims of the named Plaintiffs and every other Class Member.

315. The named Plaintiffs and Class Members have suffered direct injuries, and will continue to be directly injured, due to the state's unlawful and unconstitutional pattern and practice of suspending driver's licenses without due process and without consideration of the hardship imposed on people who cannot afford to pay.

Adequacy

316. The named Plaintiffs will fairly and adequately represent the interests of the proposed Class.

317. The named Plaintiffs have no interests separate from or in conflict with those of the Classes as a whole and seek no relief other than the declaratory and injunctive relief, which is sought on behalf of the entire Class.

318. The named Plaintiffs are represented by competent legal counsel with substantial experience in complex civil rights litigation matters, including class actions.

319. Plaintiffs' counsel have devoted enormous time and resources to becoming intimately familiar with the Commonwealth's court

debt system and with all of the relevant state and federal laws and procedures that govern it.

320. Counsel has also developed relationships with many of the individuals and families victimized by the Commonwealth's practices.

321. Accordingly, the interests of the members of the Classes will be fairly and adequately protected by the Plaintiffs and their attorneys.

CLAIMS FOR RELIEF

Count I: Violation of Procedural Due Process (Lack of Ability-to-Pay Hearing)

322. The Plaintiff incorporate the allegations in Paragraphs 1-321 above with the same force and effect as if herein set forth.

323. A person's driver's license and its attendant government-sanctioned ability to drive has been recognized by the Supreme Court and the Fourth Circuit as a property interest that may not be taken away without due process of law.

324. Due process requires the Commonwealth to conduct ability-to-pay inquiries at each stage in a case, including the point at which it proposes to take coercive action to punish nonpayment.

325. Section § 46.2-395 of the Virginia Code automatically and mandatorily suspends the drivers' license of all persons who "fail[] or refuse[] to pay all or part" of any fines or costs owed to the court—without permitting any inquiry into the reasons for nonpayment or consideration of whether the requirement to repay will exact manifest

hardship on a person or a person's family, and without consideration of the total amount owed to one or more courts or any less restrictive alternatives.

326. It is common for a person's financial circumstances to fluctuate throughout his or her lifetime, and a person who is not indigent at the time of trial may become indigent prior to satisfying all financial obligations to various courts. And even for those deemed indigent at the time of trial, Section 46.2-395 does not take indigency into account.

327. Prior to enforcing Section 46.2-395, the Commissioner provides no notice, oral or written, to the debtor of his or her right to an ability-to-pay determination evaluating his or her present financial condition.

328. Moreover, the Commissioner conducts no independent review of the debtor's ability to pay, including the amounts owed to all courts in the Commonwealth and the debtor's present financial condition, prior to—or indeed, after—taking the harsh enforcement action of suspending the debtor's driver's license.

329. The purpose of the Commonwealth's license-for-payment system is to coerce payment, and not to protect public safety on the roads; therefore, Plaintiffs are entitled to pre-deprivation notice and a hearing prior to license suspension.

330. In the absence of notice and hearing, which do not presently exist under Virginia law in relation to driver's license suspensions for unpaid court debt, the risk is very high that a debtor will be deprived of his or her driver's license for reasons attributable to his or her poverty.

331. Thus, as written and as implemented by the Commissioner, Section 46.2-395 strips the Plaintiffs and those like them of a constitutionally protected property interest—their driver's licenses—without the guaranteed safeguards of notice and a hearing in violation of the Due Process Clause of the U.S. Constitution.

Count II: Violation of Due Process (Fundamental Fairness)

332. The Plaintiff incorporate the allegations in Paragraphs 1-331 above with the same force and effect as if herein set forth.

333. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

334. The Due Process Clause prohibits the state from subjecting individuals to processes and penalties that fail to comport with principles of due process and fundamental fairness.

335. The United States Supreme Court has repeatedly held that punishing a person solely for his or her inability to pay, rather than willful refusal to pay or make bona fide efforts to acquire the resources to pay, violates principles of due process and fundamental fairness.

336. Section § 46.2-395 of the Virginia Code automatically and mandatorily suspends the driver's license—a constitutionally protected interest—of all persons who "fail[] or refuse[] to pay all or part" of any fines or costs owed to the court,

without permitting any inquiry into the reasons for nonpayment or consideration of whether the requirement to repay will exact manifest hardship on a person or a person's family, and without consideration of the total amount owed to one or more courts or any less restrictive alternatives.

337. As written and as implemented by the Commissioner, Section 46.2-395 violates due process and fundamental fairness by depriving persons owing money to the state of a constitutionally protected property interest for sheer inability to pay.

338. Accordingly, as applied to those who cannot afford to pay, the Commonwealth's license-for-payment system, as written and as implemented, violates the Due Process Clause of the U.S. Constitution.

Count III: Violation of Equal Protection Clause (Equal Justice and Punishing Poverty)

339. The Plaintiff incorporate the allegations in Paragraphs 1-338 above with the same force and effect as if herein set forth.

340. The United States Supreme Court has held that state court debt recoupment laws, notwithstanding the state interests they may serve, may not blight the hopes of indigent people for self-sufficiency and self-respect.

341. The fundamental principle of "equal justice" requires states to consider the differential impact of harsh enforcement action on people who are impoverished.

342. Section § 46.2-395 of the Virginia Code automatically and mandatorily suspends the

drivers' license of all persons who "fail[] or refuse[] to pay all or part" of any fines or costs owed to the court—without permitting any inquiry into the reasons for nonpayment or consideration of whether the requirement to repay will exact manifest hardship on a person or a person's family, and without consideration of the total amount owed to one or more courts or any less restrictive alternatives.

343. Section 46.2-395 inevitably results in enforcing financial obligations against people who lack the foreseeable ability to meet them.

344. The resulting cascade of hardship—job loss, mounting interest, convictions for driving while suspended, additional costs and fines, and even jail time—keeps low- income people in a perpetual state of disadvantage, a state that people with means can avoid simply by paying in full.

345. Indeed, Virginia's legislature expanded and automatized the Commonwealth's license-for-payment system with full knowledge that the impact would fall most heavily on debtors who were too poor to pay their debts to the court.

346. Accordingly, as applied to those who cannot afford to pay, Section 46.2-395 violates the Equal Protection Clause of the United States Constitution by treating those who are willing but unable to pay more harshly than those who are willing and able to pay, when the only difference between them is their poverty.

Count IV: Violation of Due Process Clause (No Rational Basis)

347. The Plaintiff incorporate the

allegations in Paragraphs 1-346 above with the same force and effect as if herein set forth.

348. Section 46.2-395 is not rationally related to any legitimate governmental objective because suspending driver's licenses for nonpayment of court debt makes highways less safe, impedes reentry of convicted persons, and is counterproductive as applied to people who need a driver's license to obtain or maintain employment in order to meet their financial obligations to the court.

349. The Due Process Clause protects against arbitrary and capricious government action even when the decision to take action follows adequate procedures.

350. A person has protected property and liberty interests in a driver's license and its attendant government-sanctioned ability to drive.

351. A driver's license is often essential in the pursuit of a livelihood, and its suspension threatens important interests of the people who hold them.

352. The purpose of licensing drivers is to promote safety on Virginia's roads and highways by keeping drivers off the roads who present a danger behind the wheel.

353. Suspending licenses for non-driving reasons produces no traffic safety benefit, and distracts law enforcement resources from investigating criminal and traffic violations that present true threats to public safety.

354. For people returning to their communities from jails and prisons, lack of a driver's license threatens their successful reentry when they

cannot obtain or maintain stable employment.

355. For low-income debtors, avoidance of driver's license suspension does not operate as an incentive to pay when they must choose between paying the court and paying rent, buying medications, putting food on the table, and meeting other necessary expenses.

356. Indeed, as to people who lack the ability to pay court debt, a suspended license is not only not rational, but instead fundamentally irrational and counterproductive; suspension not only fails as an incentive (because such people are unable to avoid suspension under current law), but also (by making it harder for people to earn money) makes it less likely— rather that more likely—that they will be able to pay court debt.

357. Thus, Section 46.2-395, as written and as implemented, fails even the most minimum constitutional standards, as applied to debtors who lack ability to pay, because it is not rationally related to legitimate state interests.

Count V: Violation of the Equal Protection Clause (Extraordinary Collection Efforts)

358. The Plaintiff incorporate the allegations in Paragraphs 1-357 above with the same force and effect as if herein set forth.

359. The United States Supreme Court has held that, when governments seek to recoup the costs of prosecution from indigent defendants, they may not take advantage of their position to utilize unduly harsh methods of debt collection solely because the debt is owed to the government and not

to a private creditor.

360. Unlike fines, which are imposed as a penalty for unlawful behavior, or restitution, which is imposed to compensate a victim, court costs assessed to subsidize the court proceedings (such as, *e.g.*, court-appointed attorney fee reimbursement) are no different in character than ordinary private consumer debts incurred for services rendered.

361. When a private creditor seeks to enforce a judgment against a debtor via garnishment or lien, the law provides procedural and substantive protections for poor debtors against being deprived of certain basic necessities and the ability to maintain a livelihood.

362. The private creditor may coerce payment only to the extent permitted by those protections.

363. Section 46.2-395 does not treat indigent defendants, to the extent that they owe court costs, like other judgment debtors because it provides for suspension of the debtor's driver's license and the possibility of imprisonment for driving on a suspended license.

364. When the Commonwealth, acting through the Commissioner, takes advantage of its position at the controls of the machinery of government to peremptorily strip debtors of their driver's licenses, it denies court debtors owing court costs the procedural and substantive statutory protections that other Virginia debtors may invoke against a private creditor in ordinary debt collection proceedings in order to maintain a livelihood and meet his or her basic needs.

365. The severe and coercive collection scheme enacted by Section 46.2-395, as written and implemented, constitutes invidious discrimination and violates the fundamental principle of equal protection of the laws embedded in the United States Constitution.

REQUESTED RELIEF

Wherefore, the Plaintiffs respectfully request that this Court provide the following relief:

a. Issue an order certifying this action to proceed as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2);

b. Approve the undersigned to serve as class counsel pursuant to Fed. R. Civ. P. 23(a)(4) and 23(g);

c. Issue a judgment declaring that, as written and as implemented, Section 46.2-395 of the Virginia Code is unconstitutional on its face and as applied to the Plaintiffs and Class Members;

d. Issue a judgment declaring that the Commissioner's policies, practices, acts, and/or omissions as described herein are unlawful and violate Plaintiffs' and Class Members' rights under the Constitution and laws of the United States;

e. Preliminarily and permanently enjoin the Commissioner, his subordinates, agents, employees, representatives, and all others acting or purporting to act on his behalf from enforcing Section 46.2-395 against Plaintiffs and the Future Suspended Class until such time as the Commonwealth implements a system that complies with the United States Constitution;

f. Preliminarily and permanently issue an injunction

ordering the Commissioner to remove any suspensions imposed pursuant to Section 46.2-395 from Plaintiffs' and Suspended Class members' DMV records and permit reinstatement without payment of the DMV reinstatement fees;

g. Award Plaintiffs their reasonable attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1988 and other applicable law; and

h. Grant all such other and further relief as this Court may deem necessary and/or appropriate in the interests of justice.

DATED: September 11, 2018
Respectfully submitted,

By : ***/s/Angela A. Ciolfi***

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES, Defendant.	Civ. No: 3:16-cv-00044

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Nearly a million Virginians are currently without a driver's license because of unpaid court

costs and fines. Roughly one in six drivers in the Commonwealth cannot legally drive to work, medical appointments, the grocery store—or anywhere else for that matter. Plaintiffs Damian Stinnie, Melissa Adams, Adrainne Johnson, Williest Bandy and Brianna Morgan, seek to represent classes of persons whose licenses are currently or will be suspended automatically when they fail to meet payment deadlines for court-related debt.

Defendant, Commissioner Richard D. Holcomb, carries out this suspension process under Section 46.2-395 of the Virginia Code with no meaningful notice, without a hearing, and without consideration of these persons' inability to pay.

* * *

LEGAL STANDARD

The four-part test for preliminary injunctive relief in *Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7 (2008), applies in the Fourth Circuit. *See Metro Reg'l Info. Sys. v. Am. Home Realty Network, Inc.,* 722 F.3d 591, 595 (4th Cir. 2013); *Real Truth About Obama, Inc., v. FEC,* 575 F.3d 342, 346 (4th Cir. 2009), vacated on other grounds, 559 U.S. 1089 (2010). To obtain a preliminary injunction, the moving party must establish that: (1) a likelihood of success on the merits; (2) it has suffered and will continue to suffer irreparable harm without preliminary injunctive relief; (3) a balancing of equities weighs in its favor; and (4) issuing a preliminary injunction follows the public interest. *Winter*, 550 U.S. at 20.

ARGUMENT

I. <u>Plaintiffs are likely to prevail on their claims.</u>

The Court should award Plaintiffs a preliminary injunction because they can make a "clear showing" that they are is likely to succeed on the merits of their claims. *Di Biase v. SPX Corp.,* 872 F.3d 224, 230 (4th Cir. 2017). This "clear showing" standard does require Plaintiffs to show that they are certain to succeed. *Pashby v. Delia,* 709 F.3d 307, 321 (4th Cir. 2013) ("plaintiffs need not show a certainty of success").

Section 46.2-395 of the Virginia Code is unconstitutional on its face for mandating automatic license suspension without notice or a hearing. This defect violates the procedural due process rights of every driver whose license is suspended under Section 46.2-395.

Additionally, as written and as implemented,[7] Section 46.2-395 is unconstitutional

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[7] In its Order setting a schedule for filing an amended complaint, the Court asked Plaintiffs to clarify whether their suit presents "facial or factual challenges (or both)" to the statute. ECF Doc. 81. One of Plaintiffs' claims is a facial challenge that conforms to the highest standard imposed by the Supreme Court on facial challenges: that the challenged law be unconstitutional in all of its applications. United States v. Salerno, 481 U.S. 739, 745 (1987). Virginia Code § 46.2-395 unconstitutionally violates procedural due process on its face by revoking driver's licenses— constitutionally protected property interests—without notice or a hearing. In this regard, every enforcement of the provision is unconstitutional. Plaintiffs' other claims challenge the statute as applied to people who are unable to pay: both as written in the Code and

as applied to people who cannot afford to pay because of their modest financial circumstances. Schemes punishing people who are *unable* to pay violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Bearden v. Georgia*, 461 U.S. 660, 668 (1983). The Virginia license-for-payment system is just such a scheme. Virginia law automatically deprives individuals of their licenses upon any "failure or refusal" to pay court debt. Va. Code Ann. § 46.2-395(B). By its own terms, Virginia law is indifferent to the crucial distinction between "failure" and "refusal" to pay.

Plaintiffs bring this action for themselves and on behalf of all others similarly situated. Plaintiffs seek relief from the Commonwealth's unconstitutional scheme that unfairly traps Virginians in a vicious cycle of debt, unemployment, and incarceration.

In its Memorandum Opinion, this Court noted that the automatic suspension of driver's licenses for inability to pay court-related debt as alleged in the Complaint "may very well violate Plaintiffs' constitutional rights to due process and equal protection." ECF No. 56 at 35. Within the past

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as implemented by the Commissioner, the statute violates equal protection and due process when applied against those unable to pay. The Plaintiffs contend that the Commissioner is a proper Defendant to challenge the constitutionality of Section 46.2-395, both as written and as implemented, because (1) under any construction of the statute as written, the Commissioner has a significant and special role in enforcement and (2) regardless of the statute's terms, as it is actually implemented, the Defendant issues suspensions pursuant to Section 46.2-395 without regard to the existence or non-existence of any court document ordering said suspension.

year, several courts have enjoined comparable license suspension statutes. *E.g.*, *Hixson v. Haslam*, No. 3:17-cv-00005, 2018 U.S. Dist. LEXIS 114622 (M.D. Tenn. July 2, 2018) (granting summary judgment and enjoining revocation of licenses for failure to pay non-traffic court debt); *Fowler v. Johnson*, No. 17-11441, 2017 U.S. Dist. LEXIS 205363 (E.D. Mich. Dec. 14, 2017) (enjoining suspension of licenses for non-payment); *Robinson v. Purkey*, No. 3:17-cv- 1263, 2017 U.S. Dist. LEXIS 165483 (M.D. Tenn. Oct. 5, 2017) (granting TRO reinstating licenses suspended for non-payment of traffic tickets, pending ruling on preliminary injunction).[8]

Section 46.2-395 violates the Constitution in at least five ways. *First*, it strips all affected drivers of a constitutionally protected property interest—their driver's licenses—without the guaranteed safeguards of notice and a hearing. *Second*, it violates due process and fundamental fairness by punishing those who owe money to the state for sheer inability to pay. *Third*, it violates equal protection by treating those who are willing but unable to pay more harshly than those who are willing and able to pay, when the only difference between them is their wealth. *Fourth*, suspending licenses for delinquent court debt fails even the most

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[8] These decisions misapplied the judicial standard under *Bearden v. Georgia*, 461 U.S. 660, 664 (1983). *Fowler* concluded that *Bearden* did not apply, while *Robinson* and *Hixson* applied a lower rational basis analysis in deference to dicta from the Sixth Circuit. As discussed below, this was error. But even under the lowest standard of judicial review, these courts concluded that Tennessee and Michigan's license revocation statutes did not pass constitutional muster.

minimum constitutional standards because it is not rationally related to legitimate state interests. Indeed, by siphoning away law enforcement resources and preventing Plaintiffs from earning a living, it undermines the state's asserted interests in advancing highway safety and prompting repayment. *Fifth*, the license-for-payment scheme subjects Plaintiffs and those like them to harsher collection practices than those for other civil debtors, violating equal protection.

A. The Commissioner's enforcement of Section 46.2-395 violates procedural due process.

The Fourteenth Amendment provides that no State can "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1. Driver's licenses are protected property interests and "are not to be taken away without that procedural due process required by the Fourteenth Amendment." *Bell v. Burson*, 402 U.S. 535, 539 (1971); *see also Scott v. Williams*, 924 F.2d 56, 58 (4th Cir. 1991) ("[A] driver's license is a property interest protected by the fourteenth amendment and, once issued, a driver's license may not be taken away without affording a licensee procedural due process."); *Plumer v. Maryland*, 915 F.2d 927, 931 (4th Cir. 1990) ("It is well settled that a driver's license is a property interest that may not be suspended or revoked without due process.").

"The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (internal quotation marks

omitted). When suspension of a driver's license is at stake, the state "must afford notice and opportunity for hearing." *Bell*, 402 U.S. at 542. Likewise, the Fourth Circuit has recognized that revocation or suspension of a driver's license requires "notice and an opportunity to be heard." *Plumer*, 915 F.2d at 931. Section 46.2-395 fails to provide either notice or a hearing.

Notice. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice *reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action* and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (emphasis added). Thus, "when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing [the recipient] might reasonably adopt to accomplish it." *Id.* at 315.

Plaintiffs here received no notice about an impending license suspension; instead, their licenses were suspended automatically upon default. At most, at the time of trial on the underlying traffic or criminal offense, Plaintiffs might receive a standard court form suggesting that future nonpayment would result in automatic suspension. General language about the possibility of a hypothetical suspension upon a future default is not "reasonably calculated . . . to apprise interested parties of the pendency of the action." *Mullane*, 339 U.S. at 314. Indeed, at that stage there is no action pending of which Plaintiffs could be apprised.

Similarly, the requirement of notice is closely related to requirement of a hearing. Not only should notice "apprise interested parties of the pendency of the action," but it also helps "afford them an opportunity to present their objections." *Id.*; *see also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14 (1978). It is logically impossible for Plaintiffs to receive sufficient notice in this regard, because they are also denied a hearing.

A Hearing. Due process here also requires a hearing before deprivation. In *Bell v. Burson*, where a driver's license was suspended to encourage posting of monetary security, the Supreme Court held, "except in emergency situations (and this is not one) due process requires that when a State seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective." 402 U.S. at 542; *see also Dixon v. Love*, 431 U.S. 105, 114 (1977) (endorsing *Bell*'s determination that a pre-deprivation hearing is required when the "only purpose" was to obtain monetary security); *Zinermon v. Burch,* 494 U.S. 113, 127 (1990) (stating that generally "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.").

Section 46.2-395 does not provide for a hearing of any kind. Suspensions are automatic upon default, with no "opportunity to be heard," *Plumer* 915 F.2d at 931. This lack of a hearing violates the requirements laid down by the Supreme Court in *Bell* and adhered to by the Fourth Circuit.

Plumer v. Maryland, 915 F.2d 927 (4th Cir.

1990), is instructive by comparison. There, the Fourth Circuit upheld a Maryland suspension scheme against a challenge by a plaintiff whose license was suspended after a drunk driving conviction and refusal to take a breathalyzer test. *Id.* at 928. The court held that due process requires "that a licensee be informed of the evidence on which the agency is relying, and be given a chance to rebut such evidence." *Id. at* 931. Due process was satisfied because:

> [The Motor Vehicle Administration] cannot suspend any license without *first* making available a hearing prior to the suspension. Such a hearing is held only after written notice is given to the licensee setting forth the time and place of the hearing, and the factual basis for the suspension action. Finally, the licensee has the right to inspect and copy all evidence, as well as call witnesses and present rebuttal evidence.

Id. at 932 (internal citations omitted) (emphasis in original).

None of these protections exist here. There is no hearing before suspension—or at any time. The relevant statutory language provides: "No appeal shall lie in any case in which the suspension or revocation of the license or registration was mandatory except to determine the identity of the person concerned when the question of identity is in dispute." Va. Code Ann. § 46.2-410. Thus, for an accurately identified debtor, there is no opportunity for post-deprivation hearing either. There is no

written notice "setting forth the time and place" of the non-existent hearing. *Plumer,* 915 F.2d at 932. And the licensee has no similar rights of inspection and rebuttal, because again there is no hearing. Because Section 46.2-395 includes *none* of the protections the Court found relevant in *Plumer*, it cannot meet the minimum requirements of due process.

B. The Commissioner's enforcement of Section 46.2-395 violates due process and fundamental fairness.

a. Section 46.2-395 impairs substantial property interests in Plaintiffs' licenses.

Suspension of a driver's license implicates the Due Process Clause's guarantee that the state may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV s. 1. As the Supreme Court has held and the Fourth Circuit has recognized, "it is well settled that a driver's license is a property interest that may not be suspended or revoked without due process." *Plumer*, 915 F.2d at 931 (citing *Bell v. Burson*, 402 U.S. 535 (1971)). That a driver's license is a protected property interest is sufficient to support Plaintiffs' due process and equal protection claims.[9]

But a driver's license is not only a protected property interest. In modern society, it is essential

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[9] In his Motion to Dismiss the original Complaint, the Commissioner acknowledge that a driver's license is a constitutionally protected property interest, the deprivation of which must comport with Fourteenth Amendment guarantees. ECF Doc. 10 at 31.

to the exercise of several fundamental rights. For one, it implicates "the right . . . to engage in any of the common occupations of life." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Plaintiffs have a substantial property interest in their driver's licenses because they rely on their licenses as a means of economic survival. *See Mackey v. Montrym*, 443 U.S. 1, 11 (1979). A person's means of support enjoys heightened significance as a property interest. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 539 (1985); *Bell*, 402 U.S. at 539; *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). A driver's license is "essential in the pursuit of [ ] livelihood," *Bell*, 402 U.S. at 539; *see also Miller v. Anckaitis*, 436 F.2d 115, 120 (3rd Cir. 1970) (license indispensable "for virtually everyone who must work for a living"). Individuals' interest in their driver's license is therefore "substantial." *Scott v. Williams*, 924 F.2d 56, 59 (4th Cir. 1991). Indeed, once driver's "licenses are issued . . . their continued possession may become *essential in the pursuit of a livelihood*." *Bell*, 402 U.S. at 539 (emphasis added).

Additionally, for most Virginians, exercise of "the fundamental right of interstate movement," realistically speaking, requires a driver's license. *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969). As the Virginia Supreme Court observed:

> The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and

> safety. It includes the right in so doing to use the ordinary and usual conveyances of the day; and under the existing modes of travel includes the right . . . to operate an automobile thereon, for the usual and ordinary purposes of life and business. It is not a mere privilege . . . which a city may permit or prohibit at will.

Thompson v. Smith, 155 Va. 367, 377 (1930).

Finally, for many voters around the Commonwealth, the "fundamental matter" of "the right to exercise the franchise" also turns on the ability to drive. *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964). Because "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard," serious constitutional issues are raised when access to the vote is effectively denied by suspending driver's licenses on the same basis. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966).

Considerations like these compelled Justice Powell's observation: "Serious consequences also may result from convictions not punishable by imprisonment.....Losing one's driver's license is more serious for some individuals than a brief stay in jail." *Argersinger v. Hamlin*, 407 U.S. 25, 48 (1972) (Powell, J., concurring).

Simply, "[s]uspension of issued licenses involves state action that adjudicates important interests of the licensees." *Bell*, 402 U.S. at 539. It matters not that a driver's license has sometimes been characterized as a "privilege." *Walton v.*

Commonwealth, 255 Va. 422, 428 (1998). The Supreme Court has rejected the distinction in the driver's license context: "relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege.'" *Bell*, 402 U.S. at 539. A state seeking to deprive an individual of a driver's license must comport with the Fourteenth Amendment.

b. The license-for-payment law is fundamentally unfair.

"Fundamental fairness" in the administration of justice is "the touchstone of due process." *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973). Decisions affecting the "life, liberty, or property" interests protected by the due process clause must comport with the principles of due process and fundamental fairness. The Supreme Court has repeatedly held that it offends due process and fundamental fairness for the state to deprive people of constitutionally protected interests for failing to pay fines or costs that they cannot pay.

Take *Bearden v. Georgia*, 461 U.S. 660 (1983). There, the Supreme Court held that "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it." *Id.* at 667–68. Thus, when the state in *Bearden* revoked defendant's probation for failure to pay a fine—with no inquiry into whether he was financially capable of paying the fine and no inquiry into alternative remedies—the Court found a violation of due process. *Id.* at 668–69.

Consider also *Tate v. Short*, 401 U.S. 395 (1971), and *Williams v. Illinois*, 399 U.S. 235 (1970). In these cases, the Court held that punishing a defendant who was unable to pay a fine violated due process and fundamental fairness. *Tate*, 401 U.S. at 398 (converting a fine into a prison sentence for those unable to pay violates due process); *Williams*, 399 U.S. at 241–42 (imprisoning the defendant past the statutory maximum for failure to pay a fine violates due process).

Tate and *Williams* (like *Bearden*) involved constitutionally protected liberty interests. Section 46.2-395 deprives drivers of their constitutionally protected property interest in their driver's licenses. In fact, the Supreme Court has invalidated more minor infringements on due process for reasons of fundamental fairness. Take the example of *Mayer v. City of Chicago*, when the Court held that requiring an "impecunious medical student" to pay for a transcript in the context of prosecution for non-felony charges punishable only by fine violated due process. 404 U.S. 189, 196–97 (1971). It was "arbitrary" and fundamentally unjust for the penalty to hinge on ability to pay:

> The practical effects of conviction of even petty offenses of the kind involved here are not to be minimized. *A fine may bear as heavily on an indigent accused as forced confinement. The collateral consequences of conviction may be even more serious,* as when (as was apparently a possibility in this case) the impecunious medical student finds himself barred from the practice of

> medicine because of a conviction he is unable to appeal for lack of funds.

Id. at 197 (emphasis added). Subjecting citizens to penalties—and their practical effects—simply because they cannot pay is fundamentally unfair and offends due process.

In such cases, the distinction between "willful refusal to pay a fine" and inability to pay is "of critical importance." *Bearden*, 461 U.S. at 668. When there is willful refusal, the state may impose punishment. "But," the Court warned in the context of *Bearden*, "if the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available." *Id.* at 668–69.

The logic of these cases is clear: state penalties affecting constitutionally protected interests should not turn on how much money a person has in her pocketbook. Other courts recognize this lesson and have invalidated schemes that disregard inability to pay.

The Fifth Circuit, for example, long ago recognized that a fixed-bond schedule, "without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements." *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978). Many recent decisions have similarly held that penalties turning on ability to pay violate due process, as well as equal protection. *Walker v. City of Calhoun*, Civ. A. No.

4:15-CV-0170-HLM, 2016 WL 361612, at *11 (N.D. Ga. Jan 28, 2016); *see also United States v. Flowers*, 946 F. Supp. 2d 1295, 1301 (M.D. Ala. May 22, 2013); *Jones v. City of Clanton*, Civ. A. No. 2:15cv34-MHT, 2015 WL 5387219, at *2 (M.D. Ala. Sept. 14, 2015); *Cooper v. City of Dothan*, No. 1:15-CV-425-WKW, 2015 WL 10013003, at *2 (M.D. Ala. June 18, 2015); *State v. Johnson*, 315 P.3d 1090, 1099, as amended Mar. 13, 2014, cert. denied, 135 S. Ct. 139 (2014); *State, Dep't of Revenue, Child Support Enf't Div. v. Beans*, 965 P.2d 725, 729 (Alaska 1998).

Virginia's license-for-repayment law does exactly this. Section 46.2-395(B) deprives drivers of a constitutionally protected interest when they fail to pay fines, fees, and costs within the requisite time (usually 30 days after traffic or criminal conviction, or after missing a single payment on an installment plan). Suspension occurs automatically, with no inquiry into the individual's ability to pay. Because there is no such inquiry, there is also no consideration of remedies other than driver's license suspension. Automatically suspending driver's licenses for outstanding court debt, with no consideration of ability to pay, violates principles of due process and fundamental fairness.

C. The license-for-payment scheme violates equal protection by punishing poverty.

The license-for-payment scheme fails equal justice. The Supreme Court has repeatedly held infringing constitutional interests for lack of ability to pay violates the Equal Protection Clause. *See, e.g.*, *Griffin v. Illinois,* 351 U.S. 12, 16-17 (1956) (holding that denying criminal appeal for inability to pay associated costs violated the Equal Protection

Clause); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970) (same for imprisonment for inability to pay criminal fines and court costs); *Tate v. Short*, 401 U.S. 395, 399 (1971) (same for imprisonment for inability to pay traffic fines); *Mayer v. City of Chicago*, 404 U.S. 189, 196-97 (1971) (same for appeal of non-felony charges punishable by fine); *Bearden v. Georgia*, 461 U.S. 660, 662 (1983) (holding that revoking probation for failure to pay fines and restitution, without assessing ability to pay, violated the Fourteenth Amendment).[10]

Likewise, the Fourth Circuit has recognized that inability to pay a fine or restitution is improper grounds for punishment "if the default results from a condition beyond [defendant's] control such as poverty." *United States v. Boyd*, 935 F.2d 1288 (4th Cir. 1991) (unpublished opinion). In the context of a statute requiring certain indigent defendants to pay costs associated with appointed counsel, the Fourth Circuit held, "The state's initiatives in this area naturally must be *narrowly drawn* to avoid either chilling the indigent's exercise of the right to counsel, or creating *discriminating terms of repayment based solely on the defendant's poverty*." *Alexander v. Johnson,* 742 F.2d 117, 123-24 (4th Cir. 1984) (emphasis added).

Plaintiffs here are willing but unable to pay their court debt. Thus, they are similarly situated to others who are willing to pay. But unlike those who are willing and *able* to pay, Plaintiffs lack the means

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[10] These cases rest on both due process and equal protection grounds. See M.L.B. v. S.L.J., 519 U.S. 102, 120 (1996) ("As we said in Bearden v. Georgia, in the Court's Griffin-line cases, 'due process and equal protection principles converge.'").

to discharge their court debt. It is precisely because of their *inability to pay* that they face additional penalties not faced by those who pay: license suspension and the attendant consequences. Plaintiffs therefore are treated differently from others with whom they are similarly situated just because of their poverty. The Commonwealth has not narrowly drawn its statute to avoid infringing on Plaintiffs' constitutionally protected interest in their licenses. Section 46.2-395, and the Commissioner's enforcement of that statute, violates Equal Protection.

D. Suspending licenses of those who cannot pay does not pass rational basis scrutiny.

Section 46.2-395 embeds inequality and lack of due process into the Commonwealth's justice system. Because it punishes people for their inability to pay, it should be enjoined. The Commonwealth will presumably argue that rational basis review applies to this case. But decisions applying a deferential form of rational basis review are no more relevant to the current case than they were to *Gideon v. Wainwright*, 372 U.S. 335 (1963), or to the many cases cited above dealing with the justice and fundamental fairness of the state's own system of justice.

Even so, Section 46.2-395 cannot survive even rational basis review. The Due Process Clause protects against arbitrary and capricious government action even when the decision to act follows adequate procedures. Due process requires a challenged law to have a reasonable relation to a proper purpose and to be neither arbitrary nor

discriminatory. *See, e.g.*, *Walton v. Commonwealth*, 24 Va. App. 757 (1997). Meanwhile, rational basis analysis in the Equal Protection context requires that there be "a rational relationship between the disparity of treatment and some legitimate governmental purpose." *King v. Rubenstein*, 825 F.3d 206, 221 (4th Cir. 2016). Section 46.2-395(B) fails these standards. Taking away a driver's license because the personal is unable—not unwilling—to pay court debt is, at bottom, irrational. There is no rational relation between the inability to pay court debt and Plaintiffs' constitutionally protected property rights in their driver's licenses and the attendant liberty interests in being able to drive. At the least, Plaintiffs are entitled to establish the irrationality of this scheme at trial.

Virginia's automatic suspension law makes it harder for the people who owe the Commonwealth money to find or maintain employment, which irrationally undercuts the Commonwealth's goal of debt collection. The National Center for State Courts recently observed, "Even when people can reach work sites without a car, many jobs require a valid driver's license," either because driving is an essential job duty, or because employer's see driver's licenses as indicators of reliability.[11] One study of New Jersey drivers found that 42% of drivers lost their jobs after their driving privileges were suspended.[12] Of those drivers, 45% were

[11] Ex. 17, Andrea M. Marsh, "Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees," Nat'l Ctr. on State Courts (2017), available at https://www.ncsc.org/~/media/Microsites/Files/Trends%202017/Rethinking-Drivers-License- Suspensions-Trends-2017.ashx.

[12] Ex. 18, Jon A. Carnegie, et al., Driver's License Suspensions,

unable to find new employment. *Id.* This evidence highlights what is already obvious: taking away transportation options makes it harder to pay court debts and is thus directly contrary to any rational interest.

Moreover, suspensions under Section 46.2-395(B) are unrelated to the Commonwealth's interest in promoting highway safety. Defendant suspends driver's licenses not as a result of traffic offenses, but as a result of unpaid court debt. Even when the underlying conviction relates to traffic offenses, the suspension arises not from that conviction but purely from the later inability to pay fines and costs. And of course, a person with a perfect driving record can have his license suspended for unpaid debt for a non-traffic conviction, while anyone who pays can continue to drive, regardless of his or her safety record.[13]

Not only is the Commonwealth's automatic suspension system unrelated to traffic safety, but the American Association of Motor Vehicles (AAMVA) concluded that suspension of driver's

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Impacts and Fairness Study 56 (2007). http://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf.

[13] Suspensions for court debt are disproportionate with penalties imposed for traffic offenses. A person convicted of reckless driving risks no more than a six-month driver's license suspension. See Va. Code Ann. § 46.2-393(A). If a driver who kills someone as a result of reckless driving may have her license suspended for up to twelve months. See id. § 46.2-396. In contrast, the Commissioner suspends a debtor's license for failure to pay court costs and fines indefinitely, and for as long as the debtor is in arrears by any amount. It is common for such suspensions to last for years. Such a system is unreasonable.

licenses for non-traffic related reasons *increases* the threat to public safety.[14] When law enforcement identifies a driver as driving on a license suspended for court debt, officers have to cite the person, and possibly to arrest and book them, even to confine them before trial.[15] All of this takes time and money, which diverts resources away from investigating violations that present true threats to public safety.[16] For this reason, the AAMVA has concluded that enforcing debt-related suspensions strains state budgets and detracts from public safety priorities and has recommended the repeal of those policies.[17] Promoting highway safety is thus not a credible interest here, let alone one rationally advanced by the statute's operation.

Section 46.2-395(B) is not rationally related to a legitimate state interest. But more than that, this law undermines the state's stated objectives and is fundamentally perverse. First, driver's license suspension inhibits ability to pay. The loss of a license often means the loss of reliable transportation to and from work—which can mean losing one's job. *See supra* Fact Section II; *supra* nn. 12-13. For those who are unemployed or who lose their job, the inability to drive makes the job search exponentially harder. In many parts of the Commonwealth, public transportation options are

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[14] Ex. 19, Suspended/Revoked Working Grp., Am. Ass'n of Motor Vehicle Adm'rs, Best Practices Guide to Reducing Suspended Drivers, at 2, 4-5 (2013), available at http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/.

[15] *Id.* at 2.

[16] *Id.*

[17] *Id.* at 3.

limited or non-existent. *See supra* Fact Section II. All of this makes it less likely—not more likely—that the debtor will be able to pay the court. If the purpose is to prompt individuals to pay court debt, taking away their driver's licenses cuts them off at the knees.

Second, the license-for-payment scheme is particularly counter-productive for goals of successful reentry after incarceration. For people returning to their communities from jails and prisons, finding a job is a crucial element to successful reentry. But being unemployed and getting reestablished puts those individuals at high risk for not meeting court debt obligations. When their licenses are suspended for court debt, their ability to obtain or maintain stable employment is greatly reduced, and with it their chances of successful reentry. This cycle undermines the Commonwealth's own reentry, rehabilitation, and safety objectives.

Other federal courts have recognized as much in recent decisions:

> The damage that the lack of a driver's license does to one's employment prospects is just the beginning. Being unable to drive is the equivalent of a recurring tax or penalty on engaging in the wholly lawful ordinary activities of life—a tax or penalty that someone who was convicted of the same offense, but was able to pay his initial court debt, would never be obligated to pay. When the State of Tennessee takes away a person's right to drive, that person does

> not, suddenly and conveniently, stop having to go to transport oneself and family members to medical appoints, stop having to report to court dates, or stop having to venture into the world to obtain food and necessities. Maybe public transportation will work for some of those activities some of the time, and maybe it will not. Similarly, while some individuals with suspended licenses may be able to rely on family or charitable assistance for some purposes, there is no reason to conclude that such options will be available or adequate in most cases. What, then, is a person on a revoked license to do? The lawful options are simple: she can simply forgo the life activities, no matter how important, for which she cannot obtain adequate transportation, or she can incur additional transportation expenses—making himself that much less likely ever to satisfy her court debt.

Robinson v. Purkey, No. 3:17-cv-01263, 2018 U.S. Dist. LEXIS 97659, at *130)M.D. Tenn. June 11, 2018); *see also id.* at *131 ("If the purpose of such a scheme were to make an indigent driver's first traffic violation her entrée into an endless cycle of greater and greater debt, it could be said to serve that purpose well."); *id.* at *134 ("There is substantial reason to doubt that imposing driver's license suspensions on indigent debtors makes any sense at all as a tool for collecting traffic debt.").

Thus the license-for-payment scheme of Section 46.2-395(B) is not rationally related to the Commonwealth's objectives. It in fact undermines them.

E. The Commissioner's extraordinary collection efforts violates equal protection.

As for collection efforts, the Equal Protection Clause ensures (1) that debtors to the Commonwealth are not treated differently from civil creditors and (2) that debtors to the Commonwealth have protection for basic necessities and the means of making a living. Virginia's license-for-repayment scheme fails in both these regards.

In *James v. Strange*, 407 U.S. 128 (1972), the Supreme Court struck down a Kansas statutory scheme for recouping the costs of providing court-appointed counsel to indigent defendants. Under the statute, an indigent defendant with appointed counsel became obligated to repay the state for this expense within 60 days. The Court explained:

> If the sum remains unpaid after the 60-day period, a judgment is docketed against defendant for the unpaid amount. Six percent annual interest runs on the debt from the date the expenditure was made. The debt becomes a lien on the real estate of defendant and may be executed by garnishment or in any other manner provided by the Kansas Code of Civil Procedure. The indigent defendant is not, however, accorded any of the exemptions provided by that code for

> other judgment debtors except the homestead exemption.

Id. at 131. The list of exemptions denied to indigent defendants included "restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books, and tools of trade." *Id.* at 134.

Because the statute "strip[ped] from indigent defendants the array of protective exemptions . . . erected for other civil judgment debtors," it violated the Equal Protection Clause. *Id.* at 135. While recognizing that "state recoupment statutes may betoken legitimate state interests," the Supreme Court explicitly held that "these interests are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors…..State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect." *Id.* at 142-43. It is unconstitutional when the state "strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes." *Id.* at 139.

Since *James*, federal courts have endorsed these same principles. For instance, the Supreme Court upheld Oregon's state recoupment scheme precisely because it insulated indigent debtors from any obligation to repay. *See Fuller v. Oregon*, 417 U.S. 40, 46 (1974) (recognizing that statute is constitutional because "[d]efendants with no

likelihood of having the means to repay are not put under even a conditional obligation to do so, and those upon whom a conditional obligation is imposed are not subjected to collection procedures until their indigency has ended"). Similarly, in *Alexander v. Johnson*, the Fourth Circuit held that, for reimbursement programs to be constitutional, the indigent defendant "cannot be exposed to more severe collection practices than the ordinary civil debtor." 742 F.2d 117, 124 (4th Cir. 1984).

James and its progeny inarguably place specific requirements on state debt collection schemes: (1) they must not expose the indigent debtor to "more severe collection practices than the ordinary civil debtor," *id.*, and (2) they must not strip the person of the basic necessities of life and means of making a living. Section 46.2-395 does precisely what this line of cases protects against: (1) it subjects indigent court debtors to a punishment unavailable for civil creditors, and, in the process, (2) it denies these debtors the procedural and substantive protections they would receive if this were a civil debt.

First, Section 46.2-395 automatically suspends driver's licenses for unpaid court debt. Nearly all civil debtors are not exposed to this penalty.[18] And under *James* and its progeny, the

[18] The only civil judgments for which driver's licenses may be suspended appear to be unpaid judgments relating to traffic accidents for which the defendant was at fault. See Va. Code Ann. § 46.2-417 ("Suspension for failure to satisfy motor vehicle accident judgment"). This rule for a sub-variety of civil debtor does not change that Section 46.2-395 exposes the indigent debtor to "more severe collection practices than the ordinary civil debtor." Alexander, 742 F.2d at 124.

indigent defendant "cannot be exposed to more severe collection practices than the ordinary civil debtor," *Alexander*, 742 F.2d at 124, the application of Section 46.2-395 is unconstitutional.

Second, the Commonwealth's driver's license suspension, much like the scheme in *James*, fails to afford the indigent defendant basic protections for necessities and livelihood. In Virginia, the "Poor Debtor's Exemption" shields civil debtors from creditors' attempts to claim certain basic belongings. Va. Code Ann. § 34-26. These belongings include clothing, home furnishings, firearms, pets, medically prescribed health aids, *motor vehicles*, and "*[t]ools, books, instruments, implements, equipment, and machines, including motor vehicles, . . . which are*

necessary for use in the course of the householder's occupation or trade not exceeding $10,000 in value." Va. Code Ann. § 34-26(4)-(8) (emphasis added). The purpose of these exemptions is to allow the debtor "to provide for herself and her family." *See* Doug Rendleman, *Enforcement of Judgments and Liens in Virginia* § 3.3[B] (2017).

Section 46.2-395 gives no such protections. By suspending driver's licenses under this provision, the Commissioner deprives Plaintiffs of the means to provide for themselves and their families—as surely as repossessing a car or the tools of their trade. "Once [driver's] licenses are issued . . . their continued possession may become *essential in the pursuit of a livelihood*." *Bell v. Burson*, 402 U.S. 535, 539 (1971) (emphasis added). As civil debtors, Plaintiffs could keep a motor vehicle of modest value, but as debtors to the Commonwealth they

automatically lose the license required the drive the vehicle in the first place. Such a scheme "strips the indigent defendant of the very exemptions designed primarily to benefit debtors of low and marginal incomes," and "blight[s] . . . the hopes of indigents for self-sufficiency and self-respect." *James*, 407 U.S. at 139, 142-43.

Virginia's driver's license suspension scheme fails to afford the indigent defendant basic protections for necessities and livelihood in another way. Civil garnishees in Virginia can count on at least two key protections against garnishment of minimal income. Virginia law completely provides at least $290 per week in income (or roughly $1,243 in monthly income) from garnishment by creditors. Va. Code Ann. § 34-29(a). And federal law provides that "none of the moneys paid" under the Social Security Act can be "subject to execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a). These crucial protections of a minimum financial existence are impliedly stripped from debtors facing driver's license suspension for unpaid court debt, violating *James* and later cases.

Civil debtors receive notice, can mark these and other protections on a Virginia court form (DC-454), and receive a hearing. But Virginia's license suspension scheme under Section 46.2-395 provides no statutory floor against collection, no notice, and no hearing. The Commissioner tells even the poorest Virginia citizens to pay or lose their driver's licenses.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DAMIAN STINNIE, *et al.*,

Plaintiffs,

v. **Civil Action No. 3:16-cv-44**

RICHARD D. HOLCOMB,
in his official capacity as the
Commissioner of the VIRGINIA
DEPARTMENT OF MOTOR VEHICLES,

Defendant.

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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October 26, 2018

* * *

A. Likelihood of Success on the Merits

A plaintiff seeking preliminary injunctive relief must establish likelihood of success on the merits, and this element must be shown by "clear and convincing [evidence] on the part of the plaintiff."[37] Procedurally and substantively, Plaintiffs cannot establish, by clear and convincing evidence, that they are likely to prevail on the merits of the amended complaint.

1. The Rooker-Feldman doctrine bars adjudication of this dispute.

As this Court previously found, the *Rooker-Feldman* doctrine[38] precludes this Court from exercising jurisdiction over the claims in the amended complaint. Under this doctrine, "a 'party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court.'"[39] The

[37] *Mycalex Corp. of Am. v. Pemco Corp.*, 159 F.2d 907, 912 (4th Cir. 1947).

[38] See *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

[39] *Am. Reliable Ins. Co. v. Stillwell*, 336 F.3d 311, 316 (4th Cir. 2003) (quoting *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994)).

Fourth Circuit treats *Rooker-Feldman* "as jurisdictional,"[40] reasoning that "Congress . . . vested the authority to review state court judgments in the Supreme Court alone," and federal district courts are only empowered to exercise original—not appellate—jurisdiction.[41] "The *Rooker-Feldman* doctrine, therefore, preserves a fundamental tenet in our system of federalism that, with the exception of habeas cases, appellate review of state court decisions occurs first within the state appellate system and then in the United States Supreme Court."[42] Accordingly, "[a] litigant may not circumvent these jurisdictional mandates by instituting a federal action which, although not styled as an appeal, 'amounts to nothing more than an attempt to seek review of [the state court's] decision by a lower federal court.'"[43] Also, a plaintiff "may not escape the jurisdictional bar of *Rooker- Feldman* by merely refashioning its attack on the state court judgments as a § 1983 claim."[44] Rather, if, "'in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered *or must take action that would render the judgment ineffectual*,' *Rooker-Feldman* is

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[40] *Id.; see also Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 196 (4th Cir. 2002); *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997); *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 197 n.5 (4th Cir. 1997).
[41] *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 198-99 (4th Cir. 2000).
[42] *Stillwell*, 336 F.3d at 316
[43] *Id.* (quoting *Plyler*, 129 F.3d at 733) (second alteration in original).
[44] *Jordahl*, 122 F.3d at 202; *see also Liedtke v. State Bar*, 18 F.3d 315, 317 (5th Cir. 1994).

implicated."[45]

As articulated by the Supreme Court, "in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge."[46] But rather than challenge the court orders that imposed fines and costs in conjunction with their various convictions, Plaintiffs again seek an indirect appeal of otherwise valid state court judgments, with which the Commissioner merely complied. Specifically, Plaintiffs ask this Court to prohibit the DMV from administratively inputting *any* new license suspension orders and to reinstate all licenses suspended for failure to pay court fines and costs. In other words, Plaintiffs want to undo all of their existing orders of suspension, constructively invalidating those presumptively valid state court orders. This is precisely the type of federal intervention *Rooker-Feldman* was designed to avoid.

As before, this Court should reject Plaintiffs' attempt to circumvent state-court review of Virginia's license suspension statute through this *de facto* appellate challenge to their underlying state court decisions. Plaintiffs are not likely to succeed on the merits of their suit because the complaint should be dismissed, under the *Rooker-Feldman* doctrine, for lack of jurisdiction.[47]

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[45] *Id.* (quoting *Ernst v. City of Youth Servs.*, 108 F.3d 486, 491 (3d Cir. 1997) (emphasis added).

[46] Cardinale v. Louisiana, 394 U.S. 437, 439 (1969).

[47] See *Normandeau v. City of Phoenix*, No. CV-11-1629, 2012 U.S. Dist. LEXIS 23438, at *12-13 (D. Ariz. Feb. 24, 2010); cf. *Younger v. Harris*, 401 U.S. 37, 44-45 (1971) ("[T]he National

2. The Plaintiffs Lack Article III Standing.

Article III of the Constitution requires, at a minimum, that a plaintiff demonstrate: "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."[48] As this Court has previously held, Plaintiffs do not meet the second or third Article III standing requirements in this suit against the Commissioner.

As to the second prong of the Article III analysis, "[t]raceability is established if it is likely that the injury was caused by the conduct complained of and not by the independent action of some third party not before the court."[49] Because "the state courts suspend licenses under [Code § 46.2-395], . . . the injury Plaintiffs complain of was caused not by the Commissioner, but by the independent action of some third party—in this case, the Virginia judiciary."[50] Or "[p]ut differently, assuming the suspensions were unconstitutional, they were unconstitutional due to something the

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Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.").

[48] *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

[49] *Doe v. Va. Dep't of State Police*, 713 F.3d 745, 755 (4th Cir. 2013).

[50] Mem. Op. (ECF No. 59), at p. 27 (quotations and citation omitted).

state courts (which are not parties here) did or failed to do."[51] Plaintiffs challenge, as before, the perceived unfairness of the strict payment plans, lack of ability to pay analysis, and failure to provide community service options to avoid license suspension. But the DMV is not responsible for any of these issues.

The Plaintiffs' claims fail under the third prong, too. As this Court has reasoned, "[a] judgment in Plaintiffs' favor against the Commissioner would not redress the injury of their suspensions; only an order invalidating the state court suspensions would do that."[52] That is, "[e]ven if—notwithstanding traceability difficulties—this Court ordered the Commissioner to reinstate Plaintiffs' licenses, that ruling would (at most) protect them from prosecution for driving without a valid license. But reinstatement would not cure Plaintiffs' suspensions. It would not undo the state courts' suspension orders. And it would not allow Plaintiffs to legally drive on the Commonwealth's roads, because they would still possess suspended licenses."[53]

Plaintiffs, therefore, are not likely to succeed on the merits of their litigation because they have not remedied their lack of Article III standing.

3. The Commissioner is immune from suit.

In *Ex parte Young*, the Supreme Court created an exception to Eleventh Amendment immunity, permitting private litigants to file suits against state officials that seek only prospective

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[51] *Id.*
[52] *Id.*
[53] *Id.* at p. 30 (citations omitted).

injunctive or declaratory relief.[54] However, the *Ex parte Young* exception to Eleventh Amendment immunity applies only if the defendant state officer, by virtue of his office, has the authority to address the allegedly unconstitutional act.[55] Accordingly, federal courts have refused to apply *Ex parte Young* where the officer who is sued has no authority to enforce the challenged statute.[56] For this reason, "[t]he Fourth Circuit has read *Ex parte Young* to require "a 'special relation' between the state officer sued and the challenged statute to avoid the Eleventh Amendment's bar.'"[57] The special relation requirement ensures that any "injunction will be effective with respect to the underlying claim."[58]

As this Court previously held, the Commissioner is entitled to immunity under the Eleventh Amendment[59] because he does not have a special relation to the state statute requiring courts to impose fines and costs or to order the suspension of driver's licenses for failure to pay those fines and

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[54] *Ex parte Young*, 209 U.S. 123 (1908).
[55] *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1341 (11th Cir. Ala. 1999).
[56] *Id*. (citations omitted).
[57] *Harris v. McDonnell*, 988 F. Supp. 2d 603, 606 (W.D. Va. 2013) (citing *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001))
[58] *Id*. at 607.
[59] See McBride v. Virginia, 2:08-cv-367, 2008 U.S. Dist. LEXIS 112438 (E.D. Va. Sept. 23, 2008) (dismissing a § 1983 challenge to Va. Code § 46.2-395 because the suit was barred by the Eleventh Amendment); Tinsley v. Virginia, 3:00-cv-670, 2001 U.S. Dist. LEXIS 25249, *9-15 (E.D. Va. Feb. 15, 2001) (dismissing a § 1983 claim challenging a driver's license suspension under Va. Code § 46.2-395 and holding that the Department of Motor Vehicles was entitled to immunity under the Eleventh Amendment).

costs. The Commissioner has no role in developing payment plans, community service schemes, or the extent to which an individual's ability to pay is considered by any of the various courts in the Commonwealth. As previously discussed, when a debtor fails to pay fines and costs or to make deferred or installment payments, "the *court* shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth."[60] A license suspended under this statute shall continue to be suspended until the fines and costs are paid in full, unless the individual enters into an agreement to make deferred or installment payments "that [are] acceptable to the *court*."[61]

Thus, it is not the DMV (or the Commissioner) who suspends a driver's license based upon nonpayment of fines and costs. The decision to suspend is made at the court level. As a result, an injunction against the Commissioner would not redress Plaintiffs' injury because the Commissioner is not empowered to grant the relief that Plaintiffs seek. The Commissioner has no authority to conduct an ability-to-pay hearing after a state court has entered a presumptively valid order, nor does the Commissioner have the authority to intervene, pre-suspension, and insist upon the hearing Plaintiffs request.

Because the Commissioner lacks the authority to convene a pre- or post-deprivation hearing or otherwise undo the challenged license suspension, he does not stand in a special

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[60] Va. Code § 46.2-395(B) (emphasis added).
[61] *Id.*

relationship to the allegedly unconstitutional statute. For this reason, *Ex Parte Young* does not apply, and the Commissioner is entitled to Eleventh Amendment immunity.[62]

4. Plaintiffs are not likely to succeed on their procedural due process claim.

As the Commissioner previously acknowledged, suspension of a driver's license implicates a state-created property interest, and "[d]ue process [typically] entitles an individual to notice and some form of hearing before state action may finally deprive him or her of a property interest."[63] Although the due process clause generally requires notice and an opportunity to be heard, it does not mandate that a state provide a hearing prior to the initial deprivation. As a result, courts apply the balancing test from *Mathews v. Eldridge* to determine "the specific dictates of due process in any given case."[64] These four considerations are: (1) the private interest that will be affected by the official action; (2) the risk of any erroneous deprivation of such interest through the procedures used, (3) the probable value, if any of additional or substitute procedural safeguards; and (4) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[65] Because the Virginia statutory scheme appropriately safeguards against the risk of erroneous

[62] See Mem. Op. (ECF No. 59), at pp. 31-33; *Summit Med. Assocs. v. Pryor*, 180 F.3d 1326, 1341 (11th Cir. 1999).
[63] *Cryder v. Oxendine*, 24 F.3d 175, 177 (11th Cir. 1994).
[64] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
[65] *Id*.

deprivation, Plaintiffs are not likely to succeed on their procedural due process claim.

First, the Supreme Court and the Fourth Circuit have recognized that the private interest in a driver's license, although important, is not "'vital and essential.'"[66] Established precedent therefore provides that the pre-deprivation, ability-to-pay hearing Plaintiffs seek is not constitutionally-required.[67]

Second, the Virginia statutory scheme appropriately minimizes the risk of *erroneous* deprivation. Criminal defendants are given multiple notices and opportunities to be heard, both at the time the fees and costs are assessed, and at the time a court issues a license suspension for failing to pay those fines and costs. Specifically:

- Notice of the possibility of suspension for nonpayment of fines and costs is first given in the form of the publicly-available Virginia statute expressly stating that a driver's license will be suspended upon nonpayment of financial obligations.[68]

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[66] *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1235 (4th Cir. 1985) (quoting *Dixon v. Love*, 431 U.S. 105, 113 (1977)).
[67] *Dixon*, 431 U.S. at 115 (upholding Illinois law allowing for summary revocation of a license and holding that due process did not require a pre-deprivation hearing); *see also Tomai-Minogue*, 770 F.2d at 1236 (where appellant's license was suspended based on default judgment in another jurisdiction, she had no right to pre-deprivation hearing).
[68] See *City of West Convina v. Perkins*, 525 U.S. 234, 241 (1999) ("No similar rationale justifies requiring individualized notice of state-law remedies which, like those at issue here, are established by published, generally available state statutes and case law."); *cf. Reetz v. Michigan*, 188 U.S. 505, 509 (1903) ("When a statute fixes the time and place of [an event], no special notice to parties interested is required. The statute is itself sufficient
notice.").

- Notice is next given in court at the time of conviction, and then through the written notice provided at that time or mailed by the clerk within the 30-day grace period.[69]
- Opportunity to be heard is given at the time of sentencing, and again if the defendant files a petition with the court setting forth his financial condition.[70]
- Another opportunity to be heard attaches to the defendant's ability to appeal the criminal conviction and sentence.[71]
- Another opportunity to be heard exists through the statutory mechanism that allows the sentencing court to reduce or forgive the debt if the defendant has made a good faith effort to pay the fines and costs.

The multiple notices and opportunities to be heard "provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible government official warrants them to be."[72] For this reason, the *reliability* of the

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[69] "Under most circumstances, notice sent *by* ordinary mail is deemed reasonably calculated to inform interested parties that their property rights are in jeopardy." Evans, 308 F. Supp. 2d at 326 (quotation omitted) (holding that a notice of suspension mailed to an individual who had not paid a court-imposed fine was sufficient to satisfy due process).

[70] Va. Code § 19.2-355(A).

[71] *See Evans v. City of New York*, 308 F. Supp. 2d 316, 326-27 (S.D.N.Y. 2004) (upholding a license suspension following failure to pay a court-imposed fine, noting that "the plaintiff was afforded a hearing on his underlying speeding violation," that he "could have appealed his conviction on that offense, but chose not to do so," and "was given fourteen days to pay the fine imposed as a result of his conviction," reasoning that, all things considered, "[t]he plaintiff was given notice, by means reasonably calculated to reach him, that his license would be suspended if he failed to pay the fine by the specified date").

[72] *Mackey v. Montrym*, 443 U.S. 1, 13 (1979).

suspension mechanism—meaning, has the court correctly determined that an individual did not pay court-ordered fines and costs?— would not be enhanced by the addition of further pre-deprivation remedies.[73] Balancing all available procedural safeguards, the Virginia statutory scheme appropriately protects against erroneous deprivation of an individual's driver's license based upon nonpayment of court- imposed fees and costs.

With respect to the third *Mathews* factor, additional or substitute procedural safeguards would add little to the existing scheme. With the enactment of Rule 1:24, and the codification of Va. Code § 19.2-354.1, courts are already required to take a debtor's ability to pay into account, make payment plans available, and offer non-monetary alternatives such as community service. And courts already have the continuing authority to modify or cancel a court-created debt altogether. Adding in an additional hearing or notice level would add virtually nothing to the procedural safeguards already in place.[74]

Finally, with respect to the fourth *Mathews* factor, inserting an additional evidentiary hearing at the administrative agency level would add substantial fiscal and administrative burdens on the government. Courts are already required to

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[73] *See id.* at 17 ("We fail to see how reliability would be materially enhanced by mandating the presuspension 'hearing' deemed necessary by the District Court.").

[74] See *Dixon v. Love*, 431 U.S. 105, 113 (1977) (concluding that, although a subsequent evidentiary hearing "might make the licensee feel that he has received more personal attention, [] it would not serve to protect any substantive rights"); *see also Tomai-Minogue*, 770 F.2d at 1236.

consider a debtor's ability to pay when making payment alternatives available. And the Commissioner does not have the statutory authority to conduct the ability-to-pay hearings that Plaintiffs evidently request. Considering that the requested hearing is beyond the scope of authority that the Virginia legislature has granted to the Commissioner, the burden imposed on DMV would be particularly unwarranted.

As one court has noted, "[r]egulatory schemes providing for automatic suspension of licenses on non-payment of mandated fees have been [routinely] upheld."[75] Considering the four procedural due process factors identified by the Supreme Court in *Mathews*, Plaintiffs have not alleged sufficient facts to lift their situation out of this general rule, and they are not likely to succeed on their procedural due process claim.[76]

5. Plaintiffs are not likely to succeed on their claim that Code § 46.2-395 is unconstitutional because it is "fundamentally unfair."

To the extent that Plaintiffs assert Code § 46.2-395 is unconstitutional because it is "fundamentally unfair" for the Commissioner to "enforce" the statute against them, this does not state an independent due process or equal protection claim. The "fundamental fairness" line of cases come into play when a criminal defendant challenges a decision that has been made in the

[75] *Magnum Towing & Recovery, LLC v. City of Toledo*, 430 F. Supp. 2d 689, 698 (N.D. Ohio 2006).
[76] See *Evans v. Rhodes*, 2016 U.S. Dist. LEXIS 126677, at *11-12 (N.D. Fla. Feb. 29, 2016).

context of a criminal prosecution—such as application of a particular criminal penalty or other criminal rule of procedure.[77] As the Supreme Court recently explained, whether a litigant was "exposed to a procedure offensive to a fundamental principle of justice" concerns, "for example, the allocation of burdens of proof and the type of evidence qualifying as admissible" in a criminal prosecution.[78] Where, by contrast, a litigant challenges a collateral "deprivation of property," rather than a part of the criminal trial itself, "*Mathews* 'provides the relevant inquiry.'"[79] For this reason, if these Plaintiffs wish to challenge as "fundamentally unfair" the suspension of their driving privileges as a part of their criminal convictions, that is an argument that must be raised in a direct challenge to the criminal sentence imposed by the convicting court—an action Plaintiffs have avoided.

Regardless, as the Supreme Court has noted, the "fundamental fairness" inquiry is "far less intrusive" that the due process framework "approved in *Mathews*."[80] The "narrower" analytical approach is intended to afford "substantial deference to legislative judgments" in the areas of "criminal procedure and the criminal process."[81] As discussed above, the Commonwealth of Virginia has set forth multiple procedural steps to safeguard the deprivation of the property interest at issue here. Those procedural protections

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[77] *See Medina v. California*, 505 U.S. 437, 445-46 (1992).
[78] *Nelson v. Colorado*, 137 S. Ct. 1249, 1255 (2017).
[79] *Id*. (quoting *Kaley v. United States*, 571 U.S. 320, 350 n.4 (2014)).
[80] *Medina*, 505 U.S. at 446.
[81] *Id*. at 445-46.

satisfy the requirements of *Mathews* and the Due Process Clause. Because the *Mathews* test is satisfied, it follows that the "narrower" and less intrusive "fundamental fairness" inquiry is, too. That plaintiffs do not like the final outcome—or believe it to be "unfair"—does not state a separate constitutional claim under these circumstances.[82]

6. Plaintiffs are not likely to succeed on their equal protection claim.

"To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination."[83] "Once this showing is made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny."[84]

Here, Plaintiffs are not likely to succeed on their claim that they have been treated differently from other, similarly-situated individuals. The thrust of the equal protection inquiry is whether the plaintiff can "identify persons materially identical to him or her who ha[ve] received

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[82] See, e.g., *Bearden v. Georgia*, 461 U.S. 660, 665 (1983) ("[W]e generally analyze the fairness of relations between the criminal defendant and the State under the Due Process Clause, while we approach the question whether the States has invidiously denied one class of defendants a substantial benefit available to another class of defendants under the Equal Protection Clause.").

[83] *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001).

[84] *Id.*; *see also Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 818-19 (4th Cir. 1995).

different treatment."[85] To pass the similarly-situated threshold, "the 'evidence must show a high degree of similarity'"[86]—that is, "'apples should be compared to apples.'"[87]

Plaintiffs cannot show that they are treated differently than individuals who engage in identical conduct. Under Virginia's statutory scheme, *any* individual who fails to pay court- imposed fines and costs will have his driver's license suspended, regardless of income, race, gender, nationality, or other trait. For this reason, Virginia's statutes do not provide dissimilar treatment to equally-situated individuals. And absent dissimilar treatment, the equal protection clause is not implicated.

Further, Plaintiffs cannot establish that any difference in treatment is a result of intentional or purposeful discrimination. In order to state an equal protection claim, Plaintiffs must set forth "specific, non-conclusory factual allegations that establish improper motive."[88] They have not done so here. Because the complaint does not allege intentional or purposeful discrimination, Plaintiffs have not stated a plausible equal protection violation.

Finally, even if Plaintiffs could establish unequal treatment and intentional discrimination, any difference in treatment between Plaintiffs and

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[85] *Kolbe v. Hogan*, 813 F.3d 160, 185 (4th Cir. 2016) (Agee, J., concurring).

[86] *Id.* (quoting *LaBella Winnetka, Inc. v. Village of Winnetka*, 628 F.3d 937, 942 (7th Cir. 2010).

[87] *Id.* (quoting *Barrington Cove Ltd. P'ship v. R.I. Hous. & Mortg. Fin. Corp.*, 246 F.3d 1, 8 (1st Cir. 2001).

[88] *Williams v. Hansen*, 326 F.3d 569, 584 (4th Cir. 2003).

other individuals would survive rational-basis review. "[W]hen a state regulation or policy is challenged under the Equal Protection Clause, unless it involves a fundamental right or a suspect class, it is presumed to be valid and will be sustained 'if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.'"[89] Because Plaintiffs' allegations do not implicate a fundamental right,[90] and because indigent individuals are not a suspect class,[91] the license suspension statute need only survive rational-basis review.

"Under rational basis review, courts generally uphold governmental decisions that are rationally related to a state interest. This is a deferential standard, placing the burden on [the aggrieved party] 'to negate every conceivable basis which might support' the governmental action."[92] Rational basis requires only "a constitutionally minimal level of rationality; it is not an invitation to scrutinize either the instrumental rationality of the chosen means (i.e., whether the classification is the best one suited to accomplish the desired

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[89] *Veney v. Wyche*, 293 F.3d at 731 (quoting *Heller v. Doe*, 509 U.S. 312, 319-320 (1993)).

[90] Although Plaintiffs point to a "fundamental principle of 'equal justice'," the Complaint does not implicate a fundamental *right*, for the purposes of an equal protection analysis. *Burson*, 402 U.S. at 539; *Ellett*, 174 Va. at 414.

[91] *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973) (stating that "wealth discrimination alone" does not "provide[] an adequate basis for invoking strict scrutiny").

[92] *Stevens v. Holder*, 966 F. Supp. 2d 622, 642 (E.D. Va. 2013) (citation omitted); *see Giarratano v. Johnson*, 521 F.3d 298, 302-03 (4th Cir. 2008).

result), or the normative rationality of the chosen governmental purpose (i.e., whether the public policy sought to be achieved is preferable to other possible public ends)."[93]

These rational objectives were affirmatively identified by the Virginia Supreme Court and the General Assembly. In adopting Rule 1:24, and codifying 19.2-354.1, both noted that the suspension of a driving privilege for non-payment of costs and fines furthered governmental interests in facilitating the payment of court-related debt, collecting monies due to the government, and ensuring payment of restitution to victims of crime.[94] By imposing a motivation to accomplish what an individual might otherwise be disinclined to do (*i.e.*, pay money to the court), the suspension of driver's licenses for non-payment of court-imposed fees and costs is rationally-related to these legitimate government purposes.

Similar purposes have been upheld by other courts under rational-basis review.[95] Considering the presumption of validity that attaches to duly-enacted legislation, Plaintiffs are not likely to succeed on their claim that Code § 46.2-395 offends the equal protection clause. Indeed, carried to its

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[93] *Van Der Linde Hous., Inc. v. Rivanna Solid Waste Auth.*, 507 F.3d 290, 295 (4th Cir. 2007); see also *Heller v. Doe*, 509 U.S. 312, 320 (1993); *FCC v. Beach Comm'ns*, 508 U.S. 307, 313 (1993) (legislation that does not burden fundamental rights survives rational basis review if "there is any reasonably conceivable state of facts that could provide a rational basis" for the legislation).

[94] Va. Code § 19.2-354.1; Va. Sup. Ct. R. 1:24.

[95] *City of Milwakee v. Kilgore*, 193 Wis. 2d 168 (1995); *In the Interest of M.E.G.*, 13-01-117-CV, 2002 Tex. App. LEXIS 1948, at *5 (Tex. Ct. App. Mar. 14, 2002).

logical conclusion, allowing Plaintiffs to avoid payment of fines and costs because they allegedly cannot pay them could potentially carry over into other, unintended spheres—such as allowing indigent individuals to avoid paying sales taxes on groceries or clothing because those taxes disproportionately impact the poor. Extending the equal protection clause to that extent would be both unprecedented and unwarranted.[96]

7. The Commissioner does not engage in "extraordinary collection efforts" that might violate the Equal Protection Clause.

Plaintiffs also argue that the Commissioner engages in collection efforts that are inherently coercive, and that therefore violate the Equal Protection Clause. As discussed at length in the Court's prior opinion, and in this submission, the Commissioner does not impose any license suspensions for failure to pay fines and costs. The Commissioner does not "coerce" anyone. Any challenge to the allegedly coercive nature of a license suspension based on failure- to-pay needs to be taken up with the entity that imposes that suspension: the state court, and its attendant order of conviction.

Regardless, Virginia law affords wide latitude towards indigent defendants who cannot

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[96] *Cf. Douglas v. California*, 372 U.S. 353, 361-62 (1963) (Harlan, J., dissenting) ("Every financial exaction which the State imposes on a uniform basis is more easily satisfied by the well-to-do than by the indigent. Yet I take it that no one would dispute the constitutional power of the State to levy a uniform sales tax, to charge tuition at a state university, [or] to fix rates for the purchase of water from a municipal corporation.").

afford to pay their fines and costs. Individuals whose driving privileges have been suspended can apply to the court for a restricted license, which would allow them to travel to and from work. They can enter into a deferred or installment payment plan. They can have their licenses reinstated by paying off court debt through community service, and they can have their debt forgiven by the court if they cannot satisfy the terms of a payment plan. This is a far cry from the restrictions at issue in *James v. Strange*, 407 U.S. 128 (1972), which *denied* exemptions to indigent defendants that were allowed to other judgment debtors. By contrast, Code § 46.2-395 affords *additional* avenues for satisfaction of fines and costs, up to and including forgiveness of the debt. Plaintiffs, then, are not exposed "to more severe collection practices than the ordinary civil debtor."[97] If anything, they are *less* severe. For these reasons, Plaintiffs are not likely to succeed on the merits of their claim that Code § 46.2-395 violates the Equal Protection Clause.

* * *

[97] *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984).

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DAMIAN STINNIE,
individually and on behalf of all others
similarly situated, et al.,

Plaintiffs,

vs.

RICHARD D. HOLCOMB, in his
official capacity as the Commissioner of the Virginia
Department of Motor Vehicles,
Defendant.

CIVIL ACTION 3:16-CV-00044
NOVEMBER 15, 2018, 1:32 P.M.
CHARLOTTESVILLE, VA
PRELIMINARY INJUNCTION HEARING
VOLUME I OF I

Before:
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UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF VIRGINIA

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(Proceedings commenced, 1:32 p.m.) THE COURT: Good afternoon.

MR. BLANK: Good afternoon, Judge.

MS. O'SHEA: Good afternoon, Your Honor.

THE COURT: Call the case, please.

THE CLERK: Yes, Your Honor. This is Civil Action Number 3:16-CV-44, *Damian Stinnie and others versus Richard B. Holcomb.*

COURT: Plaintiffs ready?

CIOLFI: Yes, your Honor.

COURT: Defendants ready?

MS. O'SHEA: Yes, sir.

THE COURT: All right. You may proceed.

MS. CIOLFI: Good afternoon, Your Honor. Angela Ciolfi for the plaintiffs. With me here is Jonathan Blank, Leslie Kendrick, Alyssa Pazandak, and Ben Abel for the plaintiffs. We are here on the plaintiffs' motion for a preliminary injunction.

Your Honor, we welcome the opportunity to be back in front of this Court. We have carefully read and re-read the Court's opinion on the motion to dismiss and Judge Gregory's opinion on the appeal, and we have made every effort to satisfy the Court's concerns. And that's critically important because since we filed the complaint in 2016, the Commonwealth has suspended hundreds of thousands of licenses for failure to pay and hundreds of thousands of people have been convicted and/or gone to jail for driving while suspended where the underlying reason for the suspension was solely failure to pay.

So what has changed since we were last before you?

Two federal courts in Tennessee and Michigan have issued statewide injunctions against the future enforcement of similar statutes, and in ruling on a motion to stay the Sixth Circuit said the state was unlikely to succeed on the merits of this appeal, challenging the District Court's ruling on procedural due process.

Judge Gregory, who is the only judge from the Fourth Circuit who examined the jurisdictional issues on this appeal, said unequivocally that this court has jurisdiction, and we have amended our complaint in several significant ways, including alleging clearly and unequivocally that, despite what the statute says, the Commissioner issues the automatic suspension without any order from the Court.

We've alleged clearly and unequivocally that the electronic transmission that goes to the DMV from the courts is just a notification of an unpaid account, no more and no less. And we are ready to present testimony today to establish the truth of those allegations.

We've also added plaintiffs whose licenses were suspended well after any appeal deadlines had run and they defaulted on payment plans.

And finally, we clarified that the relief we are seeking is an order declaring the statute unconstitutional and enjoining the DMV officer from enforcing it.

This statewide enforcement scheme is devastating to individuals and families in every jurisdiction in the Commonwealth. Today we plan to

present evidence demonstrating that a narrowly crafted preliminary injunction should issue in order to prevent further devastation, but first we would like to address some of the procedural issues raised by the defendant.

First, this Court has and cannot abrogate jurisdiction based on *Rooker-Feldman*, because no state court has heard or decided plaintiffs' constitutional claims and because any role the state courts play in plaintiffs' suspension is purely ministerial. *Rooker-Feldman* only bars federal courts from reviewing decisions where the state court actually weighs the issues and renders a decision.

The plaintiffs also have standing because the Commissioner is at least partly responsible for their injuries, which is all we need to show for causation and because an order to the Commissioner would address most, if not all, of the plaintiffs' injuries.

As Judge Gregory pointed out, if the Court issues an injunction, it would be because the suspensions were effectuated pursuant to an unconstitutional process, and so the plaintiffs' licenses would no longer be suspended even in a legal, technical sort of sense, but also because an order waiving the reinstatement fee alone is enough to confer standing to these plaintiffs.

Finally, the Commissioner is not entitled to Eleventh Amendment immunity because the Commissioner has express enforcement responsibilities under 46.2-395 and is, in fact, the only state official responsible for reinstatement of licenses. No more is required to apply the *Ex Parte Young* exception.

Your Honor, fundamentally, the

Commonwealth's arguments on jurisdiction boil down to three words: It wasn't me. They point the finger at the courts. They would like this court to focus on what I will call time one, which is the time of conviction. They want you to do that because time one is messy, dealing with payment plans and community service and what the judges do versus what the clerks do.

But we simply didn't challenge what happens at time one. We challenged what happens at time two, which is the time of default; and at time two, this case is very simple, because there is no due process.

At the time of default, there is no notice of alleged default. There is no ability-to-pay hearing. There is no determination of willfulness, no process at all. There is just an electronic transmission from the court computer to the DMV computer and, zap, there goes your license, and in many cases, for many of our plaintiffs, their livelihood.

Nothing in the Commonwealth's briefs or Ms. Ford's declaration attached thereto contradicts that.

Perhaps the Commonwealth would like us to sue hundreds of court clerks and hundreds of judges, but putting aside the waste of judicial resources that would entail, if we sue the courts they are likely to say exactly the same thing that the DMV Commissioner is now saying: We are immune and, hey, it wasn't us, it was the DMV.

And we know that's what they'll say because that's what the clerk of the Circuit Court for the City of Charlottesville says: It's the DMV. And that's what the chief judge of the Albemarle General District Court says: It is the DMV, in his policy regarding payment plans, which was attached to our

reply brief at footnote 3.

We never said the courts had no role to play. Sure they do. They track payments on court debt and input deadlines into the computer system, but that role is purely ministerial, and nothing this court could do would upset any judicial decision-making.

There is no rule that says that we have to sue everybody responsible for the plaintiffs' suspensions, but we chose to sue the DMV Commissioner. And why did we do that?

Because he is the single statewide actor who represents the Commonwealth's interests in this uniform statewide enforcement scheme. Because we aren't contesting what the courts do with respect to payment plans or community service, however flawed they may be, and because he is the proximate cause of the plaintiffs' injuries. He is the one who maintains the database that the police check when they decide whether to pull someone over for driving while suspended. He produces the driving transcripts that prosecutors and courts rely on for driving while suspended convictions, and he imposes the $145 reinstatement fee. An order against the Commissioner would prevent all of those injuries, and more.

Your Honor, you need look no further than Ms. Ford's declaration submitted by the defendant at paragraph 5 to see that the DMV Commissioner has a special relationship to the statute that we're challenging. She says, "I have specific knowledge of the process mandated by Virginia Code 46.2-395 and DMV's responsibilities thereunder. In addition, I have been instrumental in working with the Office of the Executive Secretary of the Supreme Court, OES,

to implement those policies and procedures." She then goes on to describe all of the activities that DMV engages in to enforce the statute.

So this is the point: The Commonwealth enacted a statute that mandates license suspension for unpaid court debt. The Commonwealth tasked the OES and the DMV to set up a system to enforce that statute as automatically and as administratively efficiently as possible.

All that the Ford declaration proves is that the enforcement scheme works exactly as it was intended to work: Automatically, mandatorily, and with utter disregard for whether people are unwilling or simply unable to pay. It is the Commonwealth that chose to set it up that way, and although the evidence we present today will demonstrate that the DMV suspends the licenses without a court order, ultimately it doesn't matter whether the court initiates the suspension or not, because the Commonwealth cannot deny that the Commissioner is absolutely indispensable to the enforcement scheme. It simply doesn't work without him. And it's clear that the Commissioner is a proper defendant so long as an order against him would provide meaningful relief to the plaintiffs.

With the Court's indulgence, we are prepared to put on evidence today to demonstrate we're likely to succeed on the merits, that the plaintiffs will continue to suffer irreparable harm in the absence of an junction, and that the balance of the equities are in the plaintiffs' favor and an injunction is in the public interest. Such an order would bring this court into alignment with the other two federal courts that have looked at this issue, found that the federal courts did have jurisdiction and that the plaintiffs

had established likelihood of success on the merits on at least one of their claims, which is all we need for preliminary injunctive relief.

You'll hear from Ms. Adrainne Johnson, mother of three, who recently lost her job because she could not get to and from the new location she was assigned to across town without a license; Llezelle Dugger, the clerk of the court for the City of Charlottesville Circuit Court, and Julie Moats, a former general district court clerk, who will both testify that all they do on the court side is enter a payment due date and that licenses are suspended not by any clerk or judge, but by the DMV after the court computer talks to the DMV computer, transmitting a record of nonpayment; Dr. Diana Pearce, who is an expert in poverty and economic inequality, will testify that each of the named plaintiffs, and others like them, cannot afford to meet their basic needs while also making payments to the court; and Dr. Steven Peterson, an economist who will testify that license suspension disparately impacts Virginia's poor, limits their ability to work, and also makes it more difficult to pay their costs and fines to the court.

Under Rule 43, we are also prepared to offer declarations from Jon Carnegie and Robert Fuentes, experts on the relationship between reliance on driving and access to economic opportunities.

At the close of the evidence we'll ask this Court to enter a preliminary injunction enjoining the Commissioner from enforcing Section 46.2-395 against the plaintiffs and the future suspended class unless and until the Commissioner, or another state actor, determines through a hearing and adequate notice thereof that their failure to pay was willful,

and ordering the Commissioner to remove any current suspensions imposed under the statute against the individual named plaintiffs without charging a reinstatement fee.

The relief we are asking for here is modest. The Commonwealth simply can't claim it is administratively burdensome to remove three suspensions from their database and not to process future suspensions. Their burden is insignificant, especially compared to the burden on the plaintiffs.

As Judge Trauger in the Middle District of Tennessee observed, "Every day without adequate transportation is a day in which a person is likely to be pulled more deeply into poverty; to grow more isolated from family and community; and to fail to receive needed medical care or perform necessary tasks. A person cannot merely put his participation in life on hold for months or years at a time and hope to return no worse for wear."

After the Commonwealth responds, we'd like to be able to put on evidence in support of our motion.

Thank you, Your Honor.

THE COURT: All right.

MS. O'SHEA: Good afternoon, Your Honor. Margaret O'Shea on behalf of Commissioner Holcomb.

In light of the fact that the plaintiffs are intending to present evidence to the Court for consideration of the preliminary injunction, the Commissioner will reserve our substantive arguments for closing in the interest of moving things along this afternoon.

THE COURT: All right.

MS. O'SHEA: Thank you.

THE COURT: Maybe you can agree to some of the -- what they're putting on evidence for.

MS. O'SHEA: Yes, Your Honor, and we have.

Considering that this is a motion for preliminary injunction, we've stipulated that the documentary evidence can be entered to the Court without need to go through hearsay exceptions and so on and so forth. Yes, sir.

THE COURT: All right. Call your first witness, then.

MS. CIOLFI: Plaintiffs call Ms. Adrainne Johnson.

ADRAINNE JOHNSON, CALLED BY PLAINTIFFS, SWORN

DIRECT EXAMINATION

BY MS. CIOLFI:

[14]

Q Good afternoon, Ms. Johnson.

[15]

A Good afternoon.

Q Please state your name.

A Adrainne Johnson.

Q And how old are you?

A 34.

Q And where do you live?

A Charlottesville, Virginia.

Q How long have you lived here?

A All my life.

Q Do you have any children?

A Yes.

Q How many?

A Three.

Q And what are their ages?

A 15, 14, and 12.

Q Can you tell us what the status of your driver's license is?

A Suspended.

Q And how long has it been suspended?

A Off and on since 2016.

Q Why is it suspended?

A For court fines and costs.

Q And for nonpayment of court costs and fines?

A Yes.

Q And why didn't you pay your court costs and fines?

[16]

A I went on -- I tried to pay it. I was on a payment arrangement agreement, and my expenses as far as with my income didn't work out. It left me with nothing to have to pay on it.

Q What is your income now?

A My income now is only $9 an hour.

Q And about how many hours do you work a week?

A 37.

Q Do you have any money left over at the

end of the week?

A No.

Q Do you have any savings?

A No.

Q Do you have any debts?

A Yes.

Q And can you tell us about those?

A To a previous landlord.

Q And how much?

A It's over a thousand dollars.

Q And do you know how much you owe to the courts?

A A little over a thousand.

Q Can you afford to pay that now?

A No.

Q Did you have a hearing at the time that your license was suspended?

A No.

[17]

Q And has your license been suspended more than once for failure to pay court costs and fines?

A Yes.

Q And did you have a hearing at any time?

A Yes.

Q I'm sorry. Did you have a hearing at any time when it was suspended?

A No.

Q Has anyone from the courts or the DMV ever asked you what you could afford to pay?

A No.

Q What is it like not to have a license?

A It's very stressful. It's very inconvenient to me and to my children. I have my daughter who has medical issues, and she has to see a counselor, and it's not on the bus line.

And my son, he plays sports, and I'm unable to take him or to go to any of his games. And he doesn't understand. It's very -- it hurts him very bad. It's very emotional to him and myself.

Q How has not having a license affected your employment options?

A With me not being able to have my license, I have lost a job. I have also been to the point where I went through interviews and was offered a job, but without my license, I could not accept the job, because my license was suspended.

[18]

Q How far did you get in the process when you were not getting the job because of your license?

A All the way to the end, to the point where, if my license wasn't suspended, I would have had the job.

Q And you mentioned that you lost a job because of not having a license. Can you tell us more about that?

A Yes. I was working for a company and our hours got cut back, and I went to my manager complaining about it. And they reached out to another store, where the other store had opportunity

for me to get some hours there, but it was not in the bus route. It was all the way past out Ivy Road, and I explained to them that I did not have the transportation to get there. And when I didn't go, they gave me a no call, no show, and I got terminated.

Q And when was that?

A Beginning of October.

Q Of this year?

A Yes, sir -- ma'am.

Q And were you unemployed then, after that happened?

A Yes.

Q And how long were you unemployed?

A I was unemployed for two to three weeks.

Q And were there any consequences to being unemployed?

A Yes. I fell behind in my rent. And then I received a 30-day eviction notice.

[19]

Q Are you employed now?

A Yes.

Q And how do you get to work?

A I have two job locations. The store that I work for has two locations; one on Cherry Avenue, one on Pantops. If I work the Cherry Avenue store, I will walk. If I work Pantops, I have to catch the bus, and I will have to leave home a whole hour to hour and a half before my scheduled shift.

Q And when you walk, about how long

does it take?

A Like, 20 to 25 minutes.

Q Do you have any opportunities for advancement at your current job?

A Yes, I do.

Q Can you tell us about that?

A My manager has spoke with me about being the manager for the Pantops store. And with that position I would have to -- I am required to do bank deposits. And I can't do bank deposits without having a license, because I can't drive.

And if I don't -- can't do that, I won't be able to take the position.

Q And would that position pay more?

A Yes, it will.

Q How do you buy food?

A I buy food every two weeks, and I try to get enough to [20] last for two weeks; but by the end of the second week, we're running out.

I have to sit there and get -- try to find a ride. If I don't have a ride, because I don't have the income to pay someone to take me, I don't -- I have to walk to the grocery store. I have to walk to the grocery store, and I'm only limited to getting a little bit of stuff because of not being able to carry all the bags and stuff.

Q Can you tell us about your current housing situation?

A My current housing situation is overcrowded. It's a shared housing. It's overcrowded.

Q And would your housing situation be any different if you had a driver's license?

A Yes, it would be.

Q How is that?

A Because with my driver's license, I will be able to have a better paying job, where I can afford to be somewhere with me and my kids where they have their own privacy and we wouldn't have to be in a shared housing.

Q Have you ever driven while your license was suspended?

A Yes, I have.

Q And what happened?

A I got pulled over. And when I got pulled over, the officer asked me for my driver's license; I gave it to him. He went back to his vehicle, he came back, and he said, Well, [21] Ms. Johnson, your license is suspended. Are you aware of that?

And at the time, I was not aware. And then it was a second time. But the first time, he gave me a paper where I had to surrender my driver's license to him, and he gave me a paper stating that I surrendered my driver's license, and then he also told me that my license was suspended.

Q And you said there was a second time?

A Yes.

Q And so why did you -- and were you charged with driving while suspended the second time?

A Yes.

Q And convicted?

A Yes.

Q And as a result of that, what happened?

A More court costs and court fines.

Q And why did you keep driving when you knew your license was suspended?

A Because I needed to get to work so that I could be able to provide for my kids and myself. And where I was living at at the time did not have no public transportation.

Q And do you drive now?

A No.

Q Why not?

A Because I don't want to go to jail and I don't want to [22] leave my kids.

Q How would your life be different if you had a license?

A If I had a license, I would be -- my life would be different because I would be able to have a better paying job so that I could be more able to provide for my kids and myself better. And I also would be able to pay my court costs and my court fines because of a better paying job instead of a low-paying job.

MS. CIOLFI: Thank you, Ms. Johnson.

CROSS-EXAMINATION

BY MS. O'SHEA:

Q Good afternoon, Ms. Johnson.

A Good afternoon.

Q My name is Margaret O'Shea. I'm going to ask you a few questions about the testimony that

you have just given.

You testified that you live here in Charlottesville, and that you're able to walk to one of your jobs and take a bus to a different location; is that correct?

A Yes.

Q And you said that you work for a store?

A Yes.

Q What type of store is that?

A It's Boost Mobile. It's Tower Associates.

Q Okay. So, like, an electronics-type store, then?

A Uh-huh.

[23]

Q Okay.

A Cellular phones.

Q Okay. What other sort of job opportunities would you be interested in pursuing apart from the job that you currently have?

A A driving job.

Q Like what?

A Driving, like, a shuttle bus for a hotel. Or even I wanted to drive the bus; not the school bus, but the city bus.

Q What are the qualifications for being able to drive a city bus?

A You have to have a license and then you have to get your CDLs.

Q Well, are you able to obtain those things with a prior felony conviction?

A Yes.

Q Are you sure about that?

A Yes.

Q Apart from driving a city bus or a shuttle bus, what other sorts of jobs would you be interested in pursuing?

A Umm, I don't know.

Q How much money would you get paid if you drove a city bus?

A I don't remember off the top of my head.

[24]

Q How much money would you get paid for driving a shuttle bus for a hotel?

A With my interviews, it was $12 an hour.

Q How many hours a week?

A 40.

Q Now, you agree that there's a bus system here in Charlottesville, correct?

A Yes.

Q There are taxis, too, right?

A Yes.

Q There are bike paths, correct?

A Uh-huh.

Q Would you agree that there's a large student population here in Charlottesville that's able to get around without a car on campus?

A I mean, I can't speak on that one.

Q I'm going to ask you a few questions now about your driving history and some things that have

come up in the past here in Virginia. All right?

A Uh-huh.

Q So it appears that back in 2008, going back to 2008, you got some traffic infractions here in Charlottesville in general district court.

Do you recall that?

A Uh-huh.

[25]

Q And you were assessed fines and costs as a result of those traffic infractions, correct?

A Yes.

Q And you were able to pay those, right?

A Yes.

Q And you did, in fact, pay those, right?

A Yes.

Q Okay. And then the next time that you ended up with a traffic infraction was in Albemarle General District Court, and that was in 2011.

Do you recall that?

A Yes.

Q And you were assessed fines and costs as a result those traffic infractions, too, right?

A Yes.

Q And you paid those, right?

A Yes.

Q And then the next time that you had some traffic infractions, there was one here in Charlottesville in 2012, correct?

Do you recall that?

A (Shaking head.)

Q For failing to obey a stop sign?

A Yes.

Q Okay. And again you were assessed fines and costs as a [26] result of that traffic infraction, right?

A Yes.

Q And you paid those, right?

A Yes.

Q The next time that you were brought before the court was not for a traffic infraction; that was for your prior felony conviction in Brunswick Circuit Court, correct?

A Yes.

Q And that was the felony for delivering drugs to a prisoner?

MS. CIOLFI: Objection, Your Honor, the relevance of the type of felony.

THE COURT: What is it?

MS. O'SHEA: It goes to employability. It was a felony for delivering drugs to a prisoner.

MS. CIOLFI: Your Honor, there's --

THE COURT: I don't think it's particularly relevant. I mean, it may keep her from getting certain jobs, but not all jobs.

MS. O'SHEA: Correct.

THE COURT: All right. It just makes it harder for her to get a job.

BY MS. O'SHEA:

Q All right. And as a result of that

conviction in 2013 in Brunswick County, you were assessed court costs in the amount [27] of $865?

A Yes.

Q Did you have any other costs associated with that conviction other than that $865?

A No.

Q Okay. And what did you do when you got that felony conviction and you were assessed the $865 in terms of paying that off? For example, did you get a payment plan or installment plan with the Brunswick Circuit Court?

A Yes.

Q And you were, in fact, able to make payments for about three years on that particular -- on those outstanding court costs, correct?

A Yes.

Q Do you know how much of that $865 you paid off during the three years that you were on the payment plan?

A No.

Q Do you know how much of that $865 is left today?

A I think it's 700-and-something.

Q At any time before or after you defaulted on the payment plan that you got, did you go to the Brunswick Circuit Court and file anything with the court or ask them to change that payment plan?

A No. What happened was I spoke with the clerk.

Q So did you physically go to the clerk, or did you call [28] them up on the phone?

A Phone.

Q And so when you talked to the clerk, what did you tell the clerk?

A I explained to her about my situation and my income.

Q Okay.

A And she advised me that my payments, they couldn't go no lower than what I was already on at the time.

Q How much were you paying?

A I was doing $100 a month.

Q So you paid $100 a month for three years and it only took off --

A No.

Q I'm confused. Help me with the math.

A That was my payment arrangement, was $100 per month.

Q For the entire three years that you were on the payment plan?

ANo.

QOkay. What was it when you started on the payment plan?

A$100.

Q Okay.

A And then I lost my employment, so the payment plan had stopped.

Q The payment plan stopped, meaning the court stopped offering the payment plan –

[29]

A No.

Q -- or meaning that you stopped making your payments under the payment plan?

A Yes, because I didn't have no income.

Q I guess my question is: At what point in time did that happen? Was that 2016, or was that before 2016?

A It was, like, 2016.

Q Okay. So my question is: Between 2013 and 2016, were you continuously making your payments during that time period?

A Yes, I was making payments, but it wasn't for the $100.

Q Okay. So how much were those payments during that three-year period of time?

A $75. And then I got knocked off of the payment plan because of not being able to pay because I lost employment.

Q No, I understand. I just -- I'm having some problems with the math here. Because you were convicted in 2013, and you're saying you got knocked off in 2016, but you were paying -- making payments, monthly payments, during those three years. I'm just trying to figure out how much those payments added up to.

Okay. So at one point it was $75 a month, and at a different time it was $100 a month? Yes?

A Yes.

Q So after you lost your job, you said that you called the [30] clerk's office, correct?

A Yes.

Q All right. And what, if anything, did the clerk's office from Brunswick County advise you?

A What she had told me was that she would have to get back with me to let me know if I could restart a payment plan because of the payment plan, being that I didn't complete it. And so she never -- I never had heard nothing back from her, so I reached back out to her. And when I reached back out to her, she said that they can restart my payment plan, but I would have to pay a certain amount down and this is the amount that I would have to pay each month.

Q And have you, in fact, restarted a payment plan in Brunswick County?

A No, I haven't.

Q Have you gone to the Brunswick County courts and asked them to give you a restricted driver's license?

A No, because I wasn't eligible at the time because my license -- I didn't have a job when I spoke with her.

Q You have a job now, though, right?

A Yes, I do.

Q And when did you get this job?

A On Halloween. I started on Halloween.

Q October of this year?

A Yes.

[31]

Q Is this the first time that you've been employed in the past 12 months?

A No.

Q What job did you hold before this?

A It was at a gas station.

Q And when did you hold that job?

A For, like, six months. I started there approximately August.

Q 2018?

A Yes.

Q And how long were you at the gas station for?

A Approximately six months.

Q Well, August -- do you mean August 2017?

A No. It was May -- sorry, sorry. April. It was April. April until the beginning of October.

Q So from April of 2018 until October 2018, you were employed at a gas station?

A Yes.

Q And then in October of 2018, after Halloween, or on Halloween, right about Halloween, is when you got the job that you have now?

A Uh-huh. Yes.

Q Make sure you say yes or no for the court reporter.

Prior to working at the gas station in April of 2018, what was the last job you had before that?

[32]

A I used to do home health.

Q And when was the last time you had a

job in home health?

A 2016.

Q How long did you -- did you stop in 2016 or start in 2016?

A I stopped in 2016.

Q So between 2016 and April of 2018, you were unemployed?

A Yes.

Q What was your source of income during those two years?

A I had no income.

Q What did you do for money?

A I had tried to file unemployment, but I couldn't get unemployment.

Q Did you have any other source of funding at all?

A No, I didn't have any income. I mean, my kids had income, but I didn't have income personally myself.

Q Do you receive child support for your children?

A No, I don't receive child support for my children.

Q Do your children receive child support for them?

A No, they don't. My daughter received an SSI check, but she doesn't receive that anymore.

Q The oldest daughter, the 15-year-old?

A Yes. I only have one daughter.

Q So your family, your household, during

those two years, the only money that was coming into it was through your [33] daughter's social security check?

A Yes.

Q So I think we agreed that you haven't gone to the Brunswick County Circuit Court to ask them to issue you a restricted license.

Have you gone to the Brunswick County Circuit Court to ask them if you could convert your payments to them into a community service obligation?

A No. I wasn't aware of any of that. And how am I going to get to Brunswick? I have no license.

Q But the answer, though, is no –

A Yes.

Q -- you haven't done that?

Have you ever asked the Brunswick County Circuit Court to forgive the debt?

A No.

Q Before your license was suspended in 2016, were you aware that it could be suspended if you didn't pay the money that you owed the court?

A Yes.

Q The job you have right now, how much money do you believe that you can pay on a monthly basis from your existing income towards a payment plan? Like, $5 a month? $10 a month? Are you able to say?

A No. I don't have anything left over after my expenses [34] with my household and my kids. I

have nothing left because I also -- I have a child support obligation that I pay out, too.

Q Is that for a child who is not presently physically living with you?

A Yes.

Q How much is your child support obligation?

A 264.

Q What other monthly expenses do you have apart from that child support obligation? For example, do you have a phone bill?

A Yes, I do.

Q How much is that?

A $100 a month.

Q Is that for your phone and your children -- and phones for your children, or just for you?

A No, me and my children.

Q Do you have a cable bill, like television, television cable bill?

A No. I don't have cable. We don't have cable.

Q Apart from your monthly child support obligation and your $100 a month cell phone bill?

A Rent.

Q Rent. How much is your monthly rent?

A Currently my rent is $200 right now.

[35]

Q Do you have any other recurring monthly expenses that are set like that? So apart from, like, groceries, like, do you have a set electricity

bill or water bill or anything like that?

A Just groceries.

Q Now, you mentioned that you were pulled over at one point and you were unaware that your license was suspended so the officer let you know that it was.

Where was that?

A In Waynesboro.

Q Okay. So that was in Waynesboro. And that was in 2017, September 2017?

A No. September 2017 is when I got the summons for court. It was before that.

Q I'm sorry. When did that happen, the prior action?

A I don't remember the exact date, but I know that I was on my way to work and he pulled me over.

Q So if you were on your way to work, would it be fair to say that was probably back in 2016?

A Uh-huh.

Q Or before that, but right around 2016?

A Uh-huh.

Q So your testimony is you were on your way to work, you got pulled over, the officer informed you that you were suspended for -- did he tell you why you were suspended, or [36] did he just tell you you were suspended?

A He just told me that my license was suspended. He asked was I aware my license was suspended, and I told him no, I was not aware.

Q And at that time you were on your way to work?

A Yes, ma'am.

Q So you still had an income at that point, but you apparently then defaulted on your payment plan already?

A Yeah. Before I got that job, yeah.

Q Now, you mentioned the 2017 incident. And that was in Augusta County General District Court; is that correct?

A Yes.

Q And that's when you had the infraction for driving on a suspended license, right?

A Yes.

Q And you were assessed a $100 fine and $139 in court costs? Does that sound right?

A Yes, that's what the papers said.

Q So it's a $239 total that you owe to that jurisdiction, correct?

A Yeah. It's more than that; but yeah.

Q You say that you think it's more than that. How much do you think it is?

A It's like -- when I checked it, it was, like, three-something. I think it was, like, three-something with [37] interest or something.

Q So in the neighborhood of $300 owed to Augusta General District Court?

A Yes, ma'am.

Q And then you still owe, you said, you think about $700 to the Brunswick County Circuit

Court, correct?

A Yes.

Q Okay. Are those the only two financial obligations that you're aware of that you owe to courts in the Commonwealth of Virginia right now?

A Yes.

MS. O'SHEA: If I could have just one moment, Your Honor.

BY MS. O'SHEA:

Q Now, isn't it also true, Ms. Johnson, that you are currently facing new felony charges in Albemarle Circuit Court?

A Yes.

Q And those felony charges are set to go before the Grand Jury on December the 3rd, correct? Yes?

A Yes.

Q Okay. And those are for felony failure to return bail property; is that correct?

A Yes.

Q But you're out of custody on that right now on a personal [38] recognizance bond, right?

A Yes.

Q Do you have any knowledge of what a conviction in that case would do to your employment prospects?

MS. CIOLFI: Objection, Your Honor.

THE COURT: Sustained.

MS. O'SHEA: Thank you, Judge. I don't have any other questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MS. CIOLFI:

Q Ms. Johnson, Ms. O'Shea ran through a number of minor traffic infractions from earlier in the 2000s where you paid your court costs and fines.

Did you try to pay when you could?

A Yes, I did.

Q And for the most recent charges, have you always tried to pay when you could?

A Yes.

Q When you -- when the Brunswick County Circuit Court gave you a $100 payment plan, did they ask you how much you could afford?

A No.

Q Could you afford that amount?

A No.

[39]

Q Did anyone tell you in either Brunswick County or in Amherst County about the availability of a restricted license?

A No.

Q How did you know about it?

A I looked it up myself.

Q And you determined you were ineligible because you were unemployed; is that right?

A Yes.

Q And at the time that you were employed, would you have been able to pay the $145

reinstatement fee --

A No.

Q -- in order to get the restricted license?

A No.

Q Did anybody at either of those courts tell you about community service being available?

A No.

Q And when you missed payments on your payment plan to Brunswick County, what happened?

A My license was re-suspended.

Q And did you get a hearing?

A No.

Q Did you get notice of it?

A No, I didn't receive any notice.

Q Have you tried to get on a payment plan recently?

[40]

A Yes.

Q And what happened?

A I couldn't get on it because I had lost my job. And without me having a job, I can't pay on something.

Q And when did you try to get on a payment plan?

A It was the beginning -- it was, like, the end of September, beginning of October. Right when I lost my job.

Q And did either court -- so you called both courts, correct?

A Yes, I did.

Q And what did the courts say?

A Brunswick told me that they could restart me on a payment plan, I would pay the $35 to start off, and then I would have to pay $50 every two weeks on my payment arrangement.

And then I told the clerk that I would not be able to afford the $100, $50 every two weeks. And she told me that she was going to check and see if she could do something about it.

So when I reached back out to her, she had told me that -- asked me if I could pay $25. I told her yes.

But Augusta, when I called Augusta Court, they told me that I have to come in there, I would have to bring in my compliance letter from DMV, and I would have to come in there before they can do anything about a payment arrangement.

Q And you would have to come in person?

[41]

A In person to the court.

Q How far away is that?

A It's like 45 minutes.

Q And back to the Amherst County, where they said you could pay $35 down and $25 a month, why didn't you do that?

A Because I didn't have it. I don't have it. Like, the job that I have is, like, a low-paying job. And with a low-paying job, with me having my obligations with my children, child support, my obligations with taking care of my other two kids and being able to provide for them, it just leaves me with nothing, nothing at all.

MS. CIOLFI: Thank you, Ms. Johnson.

THE COURT: All right. Is that all?

MS. O'SHEA: Yes.

THE COURT: Thank you. You may step down. Call the next witness.

MS. CIOLFI: Judge, at this time I'd like to approach and give you this binder, which is the exhibits we've given to the Commonwealth, so you can follow along.

THE COURT: All right.

MS. CIOLFI: I'll pass that up.

Your Honor, before I call the next witness, in the exhibits that we just handed you, the first five exhibits are the declarations from the plaintiffs. You just heard from Ms. Johnson, Damian Stinnie, Melissa Adams, Williest Bandy, and Brianna Morgan.

And again, their statements are very similar to Ms. Johnson. Their licenses were suspended for failure to pay court fines and costs; none of them were asked by anyone at the court about their ability to pay; and all of them suffer, and continue to suffer, the immediate injury because of their license suspension. They're attached to the complaint as well, but we wanted to put them into evidence.

The next is the declaration of Llezelle Dugger, but I'll call Llezelle Dugger to the stand.

LLEZELLE A. DUGGER, CALLED BY THE PLAINTIFFS, SWORN

DIRECT EXAMINATION

BY MR. BLANK:

[42]

Q Please state your name for the Court.

A Llezelle Agustin Dugger.

Q And what's your current employment?

A I'm the clerk of court for the Charlottesville Circuit Court.

Q And how long have you been the clerk of the court?

A Since January 1st, 2012.

Q So that's approximately?

A Seven years.

Q Excellent. In your position as the clerk of the court, do you have knowledge of Virginia Code Section 46.2-395 and defendants' -- license suspensions because of defendants' [43] failure to pay court debts and costs?

A I do.

Q In your position as clerk of the court, what is your job responsibility with regard to creating and maintaining court files, financial records, preparing court orders, charging and collecting fees due to the court, and preparing financial and other reports required to be submitted to state and local agencies?

A All of the above.

Q Tell us just a little bit more than "all of the above."

A When a case comes into the circuit court, myself, as well as the staff I have, we will enter it into what we call the Circuit Case Management System, which we call CCMS. It is a case management

system run by the Supreme Court.

In addition, if there are any filing fees or bond that comes up from, say, general district court, we will receipt that into what we now call FAS. It used to be FMS. They upgraded -- "they" being the Supreme Court -- upgraded to the Financial Accounting System. Those two systems are intertwined in many ways.

For purposes of this hearing, when we have a criminal case that finishes at sentencing, my deputy clerk on the bench or myself, whoever is doing the case, will then enter the disposition in Case Management, and then also enter what the costs they're assessed, meaning the felony fixed fee or [44] any add-ons, which then get transferred into FAS, which creates the financial accounting for the individual account.

Q You had submitted a declaration that we had put into the evidence before you stepped up. There you discuss FMS versus FAS.

Can you explain to the Court how FMS is different or the same as FAS?

A So when I started in 2012, the circuit court, the general district court, and the juvenile courts are all on FMS, which is Financial Management System. It's a DOS-based program written in Fortran code, which means I look at an amber screen with green letters on it, that I hadn't seen since before I got to college. So that was the first learning curve as a clerk, was relearning DOS and Fortran.

Last year, year and a half, the Supreme Court finally started rolling out a Java overlay on that program. And what they call the system now is FAS,

which is Financial Accounting System.

I understand all our circuit courts that are with the Supreme Court are using it. I'm not quite sure if the District Courts have completely rolled out onto FAS. They may still be using FMS.

Q And how is FMS -- I think you started to say this. How is FMS integrated with the Case Management System, or CMS?

A I guess in layman's terms, they talk to each other. So [45] when I and my deputies enter court costs into the Case Management System, it says this is how much we're assessing this defendant for this type of felony and any add-ons that the statute requires. That then gets transmitted to FMS, so then there's what's called an individual account that's created in FMS. When you type in a defendant's name, that will pull up how much they owe the court and for what.

We've got three number systems. You know, one is the felony fixed fee. One is internet crime that we collect, the fees; all the add-ons that we would do for court costs.

Q When a person fails to pay court costs or fines, what order is entered by a clerk or a judge with regard to a driver's license suspension for failure to pay court fines and costs?

A You mean at the time that they default?

Q Correct.

A When they're supposed to pay, my judge does not enter a separate order.

Q Does the clerk enter an order?

A No, sir.

Q How does the FMS system transmit the record of nonpayment to DMV?

A So at sentencing hearing, my judge will, or if we have a substitute judge, the substitute judge will say that the defendant is ordered to pay court costs and fines. My deputy [46] clerk, through a chart, we have what those costs are. We assess them, and depending on what the Court says when the due date is -- so in our court, our judge will typically say the defendant is ordered to pay court costs and fines during the period of supervised probation.

So let's take, for example, the defendant gets a one-year sentence and he's placed on two years' supervised probation upon release from incarceration. My clerk will then put -- there's a field in FMS and in CCMS that has the due date. So we will look at one year, plus the two years supervised probation, and the due date we put into our system will be three years from the date of sentencing, because that's the time period that the judge is deferring the payment of court costs for the defendant.

Q And then when that time hits, do you enter anything if somebody doesn't make a payment, or does it automatically go to DMV?

A So when the due date approaches, and passes, if no payment is made, DMV's computer system pings our systems, and it will then go to DMV that this person has failed to pay court costs. And then that person will then get a letter from DMV saying their license has been suspended for failure to pay court costs.

Q But your court doesn't enter an order that says that the license has been suspended?

[47]

A Not at the time of default, no.

Q And you don't send a letter as the clerk that says your license is suspended?

A No, sir.

Q Ms. Ford from DMV, I think, is here. You don't know Ms. Ford, do you?

A No, sir.

Q Okay. Did you read her affidavit?

A I did.

Q In paragraph 6 of her affidavit, Ms. Ford states that DMV never receives physical paper copies of any orders.

Again, there are no orders that come; is that correct?

A Not at the time where someone fails to pay court costs, no.

Q And in paragraph 11, Ms. Ford states the clerk office inputs an indicator into the system to DMV that the court has suspended the driver's license of that person.

What is your response to that, the accuracy of that statement?

A So there's not any run-of-the-mill felony, but in a run-of-the-mill felony that is not driving-related, we just enter what -- the costs we enter. There's no field that says the license is suspended.

You compare that with a felony for -- or it could be a misdemeanor -- DUI or a drug conviction. In that, you will [48] have a field that says: Is this DMV

reportable? And it is, because under the statute there's a six months' loss of license under drug conviction. And depending what type of DUI it is, it's either a year, three years, or indefinite.

And that does have a yes/no field for us that says, sent to DMV. And my deputies or I would put in yes if it's a drug conviction, if it's a DUI conviction. Leaving the scene of a crime after a car accident, that also is reportable.

But let's say grand larceny, when someone gets convicted of a grand larceny and we get to sentencing, there's no field there that we put that this is DMV reportable. That's different from the court costs.

And so no, I don't know what field she would be talking about, at the circuit court level, at least.

Q And she indicates in her affidavit there's a field 14.

Do you have any knowledge of what a field 14 is?

A We don't have numbers on our fields of the screens we see.

Q In paragraph 14, Ms. Ford states that DMV must assume if the clerk included such indicator that the Court issued a suspension.

What's your response to that?

A I don't issue a suspension, and my judge hasn't given me an order of suspension.

MR. BLANK: No further questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MS. O'SHEA:

[49]

Q Good afternoon, Ms. Dugger.

A Good afternoon.

Q Just to follow up on a few questions, you would agree that there are different types of license suspensions that occur in the Virginia system, right?

A Yes.

Q I mean, there are mandatory suspensions by statute for different types of things?

A Yes.

Q And under some circumstances, DMV is the entity that makes the decision whether or not a suspension should be made, right?

A Yes.

Q So, like, for a DUI third offense, I think it is, you know, DMV will suspend a license upon entry of that conviction, right?

A Yes. And my judge also orders from the bench that -- let's just take a DUI first. He'll order from the bench: Your punishment is one year loss of license. So he actually orders a suspension, loss of license. He orders a $500 fine; suspends $350 of it if they go to VASAP; and then a 30-day jail sentence, all suspended, is the typical first DUI [50] sentence.

Q So all that information has to be communicated to DMV, right?

A It goes into our Case Management System, and then there's a field that says, yes/no, DMV.

If it's one of those -- drug, DUI, leaving the scene of the accident; anything that has that

mandatory DMV suspension -- we put in a yes. And that's a field that comes up. So yeah, those would get to DMV via our computer.

We don't transmit the final sentencing order to DMV. We transmit it to DOC. We transmit it to the sentencing commission and the parties involved, Commonwealth Attorney and defense attorney, but we don't typically send the final sentencing order for those types of cases. For any type of cases, actually.

Q So the order the judge signs never goes out, but the information is sent, is my question; right?

A Depending on the case, yes, the information goes electronically.

Q Correct. Does it also go to, like, the state police to populate a VCIN, or to the FBI to populate a NCIC?

A So CCMS, and I believe also the general district court system, has an interface with DMV, and it also has an interface with the state police. They are currently working on an interface with DOC.

[51]

Q So let's say you get back an order in one of these mandatory license suspension cases; a DUI third offense, for example. The Court has entered an order suspending an individual's driver's license for a year. You pull it up on your database. Is there, like, a specific code that keys to these different traffic felonies?

A Well, if done correctly, once it gets into our -- so DUI third is a felony, so there would have been a preliminary hearing down in general district court. So at the general district court level, from the magistrates, all the information regarding the

statute he was charged under, whether it was a misdemeanor or a felony, would have all been entered. It comes up to our system from general district court once it gets certified. So all that is typically all filled in when we get there.

What my clerks and I will then fill in is the disposition --

Q Correct.

A -- that the Court orders from the bench. So, you know, one year loss of license will go in. There's a field -- in there, when you pull up that statute, there's a field in there that says "operator license suspended." Then you put in what period of time it's suspended.

Q Right. So then you finish filling out these fields, right?

[52]

A Yes, ma'am.

Q And so then how is it that the finalized record is transmitted out, like, to DMV or to the other authorities that you're talking about your computer is interfacing with?

A So my understanding is that DMV's computer will ping the state system at regular intervals. And these will then come up to DMV to show -- particularly when we say, yes, this goes to DMV, then it will go to the DMV computer system, and they do with it what they need to do with it.

Q You said that's your understanding, this pinging. Is that something you've talked about to somebody, or is that your assumption of how it happens?

A It's -- no, it's not an assumption. It's what they -- so as a new clerk or as a deputy clerk, we have new training, ongoing training. So at our training we are taught by OES what the interface means.

So, for example, the state police interface, that pings every 15 minutes. That will pick up stuff, particularly sex offense crimes. So that has a faster ping rate than the DMV.

Q So when you say "ping," do you mean kind of like prodding your system to put out any new information that's been entered since the last time it was prodded?

A It's computer talking to computer, basically.

Q So I'm trying to figure out what your understanding is, though, of this pinging. Is that the outside system telling [53] your system to transmit any new information that's been entered? Is that what it is?

A That would be my understanding. But the programmers at OES are probably the better folks to ask how the mechanics work. We enter the information, and at some point it goes to DMV electronically.

Q Okay. So then you were testifying before about a fines and costs situation in a non-traffic felony. So let's say we've got a grand larceny, assessed fines and costs; your judge gave them three years to pay; the three years has come up. And you testified that DMV's computer pings your computer.

A So when we put in a due date -- so what's today? November 15th, 2018. So, three years,

I'm going to put in a due date that your court costs are due November 13th, 2021. If you don't make a payment when that due date passes, it goes into a report, I guess, for lack of a better term. And it will be 30 days -- well, now it's 40, because the law changed. 40 days it will sit there to see if someone pays.

If nothing happens, if no payment is made or nothing, if they don't enter into a payment plan or do something, on day 41, that report is automatically transmitted to DMV stating that someone has failed to pay their court costs.

Q And what form does that report take?

A I -- there's no -- there's a report called IN05. And [54] that tells me when you look at it which ones were sent off to DMV.

What DMV receives in terms of their report, I can't speak to that.

Q Is that something that you review before it's transmitted?

A Yes. Just in case someone did make a payment, someone did enter a payment plan and it mistakenly got into this report, I have a deputy, and my chief deputy and I review that to make sure, as much as possible, we don't have someone's license suspended by DMV that shouldn't be.

Q So as a clerk, you want to make sure that your recordkeeping is accurate --

A Correct.

Q -- so that you're not sending stuff off to DMV that's not true?

A Correct.

Q All right. So when you're looking over this report that reflects, you know, an individual hasn't paid their fines and costs, as a clerk's office, do you send another letter to that individual letting them know that their driver's license is about to be suspended?

A No, ma'am.

Q Do you or anyone in your office call that individual or take any steps to let them know that their license is about [55] to be suspended?

A No.

Q Reach out to them, do anything at all to see why they haven't paid their fines and costs?

A No, ma'am.

Q Would you agree that the authority for creating installment plans and payment plans is with your office? You're able to do that, right?

A It's with the court. So the judge actually has to sign the order on payment plans. But my judge has given our office some discretion, up to a certain point. If someone owes less than, I think it's $2,500, we can sign off on that. But anything above that, our judge likes to review the payment plan.

Q So is that the order from November 1st, 2015 that delegated certain responsibility to your office for different payment plans? Is that what you're referring to?

A Yes.

Q I have handed you a document that reads something along the lines of "Guidelines for Installment Payment Plan Options," correct?

A Yes, ma'am.

Q And there's a judge's signature there on that form, correct?

A Yes.

[56]

Q And then your signature appears on that form as well, right?

A Yes.

Q And is that the guidelines that you were talking about in terms of your office and your authority to set up installment payment plans without having to go to a judge first?

A Correct.

Q If you've got a situation that falls outside the scope of those particular guidelines there, and you said the judge wants to review it, how does that happen?

A So anytime someone comes into our office wanting to set up a payment plan, they will typically meet with either Ms. Pugh, Mr. Schmidt, or myself, because the form, application, the petition for payment plan, has detailed information regarding what's your take-home pay, what are your expenses, and things like that. So we go over it with them to make sure it's accurate. We don't want all zeros.

If it doesn't fall within the parameters that my office has discretion to sign off on it, we then submit that petition up to the judge, and the judge will review it, and then we'll -- in the bottom part, in the order part, we'll order "approved" or put in whatever payment plan conditions he may require.

Q Okay. And once the judge has done that, approved or modified a payment plan that's

been submitted to him for [57] consideration, how is the debtor notified that the payment plan has been approved?

A So if a payment plan comes back down from the judge's office, Ms. Pugh, she runs point on it. She will call the person and say, We have a certified copy of the payment plan for you to come pick up. Because they need to take that to DMV so that they can show DMV that they have an active payment plan so that DMV can unsuspend or unrestrict -- unsuspend their license.

Once we have the order, we also enter all that information into their individual account, and we put in that it's under a TTP, which is a time-to-pay plan. And then we put in whatever due date is next. So we would probably say January 1st, 2019, your first payment of $50 a month is due, or whatever date the judge wants to put in there.

And so that's how that individual account is then created for that payment plan.

Q So when someone goes on an installment payment plan that's been either approved through your office or approved through the judge, either way, let's say they make payments for a certain period of time -- six months, a year -- and then they stop making payments.

What steps are taken by your court or by your office to let the debtor know that they are missing payments?

A Nothing. We have over 1,500 cases any given year. We [58] have probably over 700 folks on payment plans, if not more, at any given day. And the computer does all of that.

If there is no payment made by the due date, it goes into that 40-day window. And if nothing happens in 40 days, day 41, DMV is then electronically sent that this person has paid -- has failed to pay their court costs.

Q So the situation where someone who has been on an installment plan and then defaulted, they also appear on that 40-day report that you were talking about earlier?

A Yes, ma'am.

Q Does your office -- does your jurisdiction offer community service as an option for remitting fines and costs?

A On a case-by-case basis. That's completely within the judge's purview.

Q Are you -- do you have any knowledge of how this system operated before we had these computers that talk to each other?

A No. The computers were there when I started as a clerk. Prior to that, as a defense attorney, I had no clue how all that would work.

Q Fair enough. Would you agree, though, that somebody has to make this information available for DMV to even know that there are outstanding fines and costs that have not been paid?

A Yes. And the report, like I said, once the due date has [59] passed, that's the report that goes to DMV; so that's how DMV gets notified electronically through the computer systems.

Q And would you agree that when you look at the statute, the language of the statute actually says "the Court shall suspend," right?

A That's what the statute says.

MS. O'SHEA: If I can just have a moment.

THE COURT: If a person makes a partial payment, say they're supposed to pay $50 a month and they pay $25, is there an exception made automatically by you with regard to sending the report to DMV?

THE WITNESS: My staff would have the discretion to ask Judge Moore if this is something we could do and then change the due date to say that something has been paid.

I've been fortunate that both Judge Moore and Judge Hogshire before him have been very liberal in helping folks make their court costs possible, and their payments. And so there is a lot more liberalness in my court, and I understand that. And that's because I've worked for two judges, with two judges, that really do believe folks need their driver's license.

BY MS. O'SHEA:

Q Would you agree that -- if you know. The system that you have in place in Charlottesville, you know, you have intimate knowledge of that. Would you agree that it's different from [60] jurisdiction to jurisdiction to jurisdiction around the Commonwealth?

A So every -- I'm just going to talk about circuit courts.

Every circuit court except Fairfax and Arlington are on the Case Management System and on the Financial Accounting System that the Supreme Court has.

Q Do you mean Arlington or Alexandria?

A Alexandria. I'm sorry. I get the As confused.

Q I'm not talking about the computers. I'm talking about your mechanisms for installment plans and approval for the judges, and what you offer, and so on and so forth.

A Correct. So the Supreme Court promulgated a rule saying each circuit court should have available installment or deferred payment plans for defendants to enter into one.

We've always had it, even before then. We just put it into writing once that rule was promulgated.

But as people like to say, there's 120 different ways to do things in Virginia because there are 120 different circuit courts. And each clerk is elected. Each clerk has a different judge. So it literally varies from circuit court to circuit court.

Q Right. So, like, a deferred payment plan that might be okay or acceptable in Charlottesville might not be okay in Augusta County or Harrisonburg or somewhere else?

A Yes, that's correct.

[61]

Q Ms. Dugger, you serve on the advisory board for the Legal Aid Justice Center here in Charlottesville; is that correct?

A I do, for about five years now.

MS. O'SHEA: Okay. Very nice. Thank you. I don't have any other questions.

THE WITNESS: Do you want your exhibit back?

MS. O'SHEA: If I could have that marked and

admitted as Defendant's Exhibit 1.

MR. BLANK: No objection.

THE COURT: It will be admitted. (Defendant's Exhibit 1 admitted)

REDIRECT EXAMINATION

BY MR. BLANK:

Q Ms. Dugger, just a short follow-up. I heard about the 120 jurisdictions and circuit courts and that the payment plans may be a little bit different, but once a person defaults, once a default has occurred, the process is the same for every jurisdiction with regard to the FMS, FAS system, and CMS?

A Yes. Once the due date passes or the time-to-pay date has passed, the report will go to DMV on day 41.

Q And then DMV will suspend, correct?

A That's when they will get the suspension letter from DMV, yes.

MR. BLANK: Thank you.

Oh, Your Honor, if we could have one second. (Counsel conferring)

BY MR. BLANK:

[62]

Q And on that $25, if there was a change, that would have to go to DMV in order for there to be a change in the due date?

A We would do a -- and that's why it has to go up to Judge Moore. We need to do a new payment plan.

Q And it will go to DMV by default unless

you change the due date?

A Yes. If a due date comes and I haven't or one of my staff members has not changed it, the computer will automatically send it to DMV.

MR. BLANK: Okay.

THE COURT: All right. Thank you.

MR. BLANK: Judge, before I call Ms. Moats to the stand, I'd like to turn your attention to tab 7 and tab 8 in the book, specifically tab 7 to start with, Your Honor. And you have to go pretty far back in the back, but it's on page 6-4. And what you're looking at, Your Honor, this is a record, it's from the Virginia Commonwealth auditor of accounts -- excuse me, Auditor of Public Accounts. It's in our brief. There's a website link that you can access to actually see this.

But if you go to page 6-4, this is the audit of a circuit court, and it says, "All unpaid accounts are submitted to the Department of Motor Vehicles for license suspension and each unpaid case must be submitted to the Department of Taxation for set-off debt collection for at least three years."

Again, we want to note that the agency, the Auditor of Public Accounts, is stating that the Department of Motor Vehicles is the one that suspends the license.

Second, Judge Moon, we'd like to turn your attention to tab 8, and that is a 2000 report. It's a special report. It's a review of Virginia courts management unpaid fines and costs, again the Auditor of Public Accounts. And if you go on the top of page 5 -- and this goes to this statement of FMS and CMS. And the acronyms get a little bit fuzzy for

me, but if you look at the top of page 5, the system also interfaces with the Department of Motor Vehicles for automated submission of license suspension. And that goes back to Ms. Ford's affidavit, paragraph 8, that says, "DMV receives no information via the financial management system."

It's clear these systems are talking to each other. At this time we'll call Ms. Moats.

JULIE MOATS, CALLED BY THE PLAINTIFF, SWORN

DIRECT EXAMINATION

BY MR. BLANK:

[63]

Q Can you state your name for the record, please?

[64]

A Julie Moats.

Q And where do you currently work, Ms. Moats?

A At the Charlottesville Circuit Court.

Q And what's your job title?

A Deputy clerk.

Q And how long have you been in that position?

A I've been there a little over two years.

Q Excellent. And before you were deputy clerk of the circuit court, where did you work?

A I was at the Charlottesville General District Court.

Q And how long did you work at the --

what was your title there?

A I was deputy clerk.

Q And how long did you work at the general district court?

A That was actually a little over two years.

Q I -- did I -- did you have an opportunity to review Ms. Ford's affidavit in this case?

A Yes.

MR. BLANK: And I just want to let the record show, Your Honor, that I correctly grabbed the ring of the Elmo instead of the top of it.

THE WITNESS: As you so practiced earlier.

BY MR. BLANK:

Q And this document was attached to Ms. Ford's affidavit. It's titled "CASINQ Inquire CAIS Original Transaction."

[65]

As a deputy clerk for the circuit court and deputy clerk of the general district court, have you ever seen this document before?

A No, I have not.

Q As a deputy clerk for the general district court or the circuit court, did you ever fill out this document or screen?

A No, I have not.

Q When Ms. Ford put in her affidavit, paragraph 11 and 12, that the clerk's office inputs an indicator in the system in identified field 14, CTORNIND -- which, Judge, is right there on the document -- what is your knowledge of such

indicator?

A I have none.

Q And what is your knowledge of field 14?

A I have no knowledge of a field 14. None of our fields have numbers, or at the general district court, either.

Q From your observation and knowledge as a general district court clerk, who suspends a driver's license for failure to pay court fines and costs? The court, the clerk, or DMV?

MS. O'SHEA: Your Honor, I'm going to object to the extent that requires a legal conclusion.

THE COURT: Well, she can testify as to what they do, but not more.

THE WITNESS: DMV.

THE COURT: I'll accept it as evidence, a lay opinion.

MR. BLANK: Understood, Your Honor.

BY MR. BLANK:

[66]

Q Does the judge enter a suspension order for a driver's license for failure to pay court costs and fines?

A Not for failure to pay court costs and fines, no.

Q Does the clerk?

A No.

Q How long after the conviction did DMV -- how long after the conviction would it take before DMV suspended a license for failure to pay court

fines and costs?

A On the 41st day. It used to be 30, and then it increased to 40; and on the 41st day.

Q And how did that happen in the general district court? As you heard Ms. Dugger describe how it does in the circuit court, tell us how it happened in the district court.

A When someone does not pay their fines and costs, they had that time period in which to pay, and if they didn't pay on the 41st day, the computers would talk to each other and DMV would suspend their license.

Q And was there ever an order on that 41st day from the general district court ordering you to suspend the license? A No, I didn't -- we didn't suspend their license.

MR. BLANK: No further questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MS. O'SHEA:

[67]

Q Good afternoon, Ms. Motts. I'm going to talk –

A Moats.

Q Moats. Sorry. Moats.

I'm going to talk specifically about general district court and traffic court in Charlottesville.

A Okay.

Q All right. Traffic court is held in general district court, right?

A Yes.

Q So people come to general district court and they've been charged with a set of traffic infractions, right?

A Uh-huh.

Q Okay. And they show up for their hearing and they come before the judge, and let's say the judge elects to adjudicate them guilty of the traffic infractions, right?

A Sure.

Q And the judge assesses a particular sentence or fines or costs, or whatever he elects to do for those fines and costs, from the bench in general district court, right?

A He generally has to follow the laws, yes.

Q Okay. So he will say, for example, I'm going to, you know, convict you of speeding, I'm going to impose a statutory fine and costs; something like that, right?

A Yes.

[68]

Q And then before him he's going to have a uniform summons, usually, right?

A Yes.

Q Or some sort of warrant of arrest?

A Talking about traffic infractions, it would be a uniform summons.

Q So he's going to note his disposition, usually, on that document, correct?

A Uh-huh. Uh-huh.

Q And then when the Court assesses whatever that sentence is, the individual is in court usually, but not necessarily always, right?

A Correct.

Q Because there are certain traffic infractions for which you can be found guilty in absentia?

A Yeah, you can be found guilty of all of them in absentia.

Q For the traffic infractions, but not the traffic misdemeanors?

A Well, if you're not there, you're going to get a capias; but yeah.

Q So in any case, I'm talking about a situation when the person is present in court. All right?

A Okay.

Q And hears the judge pronounce sentence. Okay?

A Okay.

[69]

Q And then that document gets taken to the clerk's office in general district court in some manner of speaking, right?

A Okay.

Q Either there's a -- well, if I'm wrong, tell me. Don't assume.

So there's probably the clerk sitting in the courtroom who gets the documents from the judge, right?

A Yes.

Q And then someone in the clerk's office is responsible for inputting that information into your computerized system, right?

A Yes.

Q So you look at what the judge has ordered, and you put it in the system, right?

A Yes.

Q So let's say the court has imposed a certain amount of fines and costs in a particular case, the individual has been given the 30 days, 40 days, however you want to phrase it, to pay, right?

A That's not ordered by the judge. That's an automatic. That's a state law.

Q But that's automatic?

A Yeah.

Q So the Court imposed fines and costs. You input into your system whatever it is the Court ordered?

[70]

A Yes, the amount that they owe.

Q Right. So let's say day 40 rolls around and the individual who has been assessed the fines and costs hasn't paid their fines and costs. Now, we heard from Ms. Dugger with respect to circuit court that, basically, they generate an order, review it, and then send it on to DMV.

MR. BLANK: Objection, Judge. That's not what she testified to.

THE COURT: Well, just ask her –

THE WITNESS: Yeah, I'm confused.

BY MS. O'SHEA:

Q So you're saying the person --

THE COURT: Just rephrase the question.

MS. O'SHEA: Okay.

BY MS. O'SHEA:

Q Day 40 rolls around, the person hasn't paid. What does the general district court do with that information?

A Nothing.

Q Do you generate a report?

A No.

Q Do you contact the individual who has defaulted?

A No.

Q Do you take any measures to go back and look at the accounting and make sure that the person who hasn't paid, that it's not just been entered incorrectly at some point in [71] the system?

A I as a deputy clerk, no.

Q Anybody in the office?

A I can't speak on the clerk herself.

Q Okay. To your knowledge, does anybody do that doublecheck of the failure to pay on day 40?

A Not to my knowledge.

Q Are deferred payment plans and installment payment plans offered in the Charlottesville General District Court?

A Yes.

Q Is community service offered as an option in the Charlottesville General District Court?

A I do not deal typically with payment plans, but I have heard that they are up to the judge.

Q If somebody wants to go on a deferred payment plan in the general district court as opposed to the circuit court, what are they supposed to do?

A They would ask.

Q Ask who?

A They would just come to the clerk's office and say, I want to enter a payment plan. And then we have them fill out the financial form and we -- they go in to talk to the judge, and the judge puts them under oath regarding their financial status and sets them up on a plan.

It's usually -- down at the general district court, Judge [72] Downer is usually very generous. He does not want anyone to not have a license.

Q Okay. So the person -- that's the process: The judge puts them under oath and the judge decides what the payment plan is going to be?

A Yes.

Q With respect to the Charlottesville General District Court, is there a minimum monthly payment, an amount that has to be on that installment plan?

A I cannot speak to that. I don't have anything to do with the plans in Charlottesville Circuit Court. I'm in land records at the circuit court.

Q What about when you were in general district court? My questions are all focused on general district court.

A Oh, at general district court?

Q Yes, ma'am.

A What was the question about?

Q Was there a minimum amount that had to be paid per month in order to enter into a deferred payment plan in general district court, or an installment payment plan?

A To my recollection, Judge Downer would, depending on their finances, sometimes ask for a certain amount down and then a certain amount a month. And then if they couldn't afford that for whatever reason, to -- asked him to reduce it or he would renegotiate or redo their financial plan.

[73]

Q So it varied according to the circumstances?

A Yes.

Q Now, with respect to someone who has been found guilty in absentia, so they didn't show up in court --

A Okay.

Q -- and the Court just imposed, say, the statutory fine for a speeding offense and then, like, a $25 court cost on top of that. All right?

A Uh-huh.

Q How is the information relative to that sentence communicated to the person who didn't show up in court?

A How do they know that they owe money?

Q Correct.

A The next day after trial, when someone has been tried in absence, the court mails out a 225.

Q What is a 225?

A It's a DC225. It's a notice to pay, which tells them they have 40 days to pay, or enter into a payment plan.

Q Or their license will be suspended?

A I don't -- I'm not sure if it says that. I just know it says that they owe fines. I'm not sure exactly of the wording of it. It's a 225. I don't know the wording of it precisely.

Q Okay.

A Sorry.

[74]

Q And that 225 form is going to be mailed to the person's last known address of record, correct?

A Which would have been what's on the summons that was on their driver's license.

Q Do you ever get those returned as, you know, the recipient not found, recipient unavailable?

A Occasionally.

Q If those were returned, you know, the person wasn't at the address that was written down on the uniform summons, what, if anything, does your office do with that information?

A You know, I wasn't in charge of anything that had to do with those, so I'm not sure exactly what they did with them.

Q And you said that you work in land records now in circuit court?

A Uh-huh. Yes.

Q In your position in circuit court, have you ever been responsible for inputting information

relative to criminal convictions?

A No, ma'am.

MS. O'SHEA: Thank you. I don't have any other questions.

THE COURT: Is that all?

MR. BLANK: She's free to go. Thank you, Ms. Moats.

Judge, if you follow along in the -- in the notebook that we submitted, there are four documents that we wanted to draw attention to the Court. They're behind tab 9, 10, 11, and 12. These are screenshots from four District Courts.

One is from Charlottesville. And if you go to the second page, in all caps bold: "IF YOUR AMOUNT HAS NOT BEEN PAID IN FULL OR AN EXTENSION HAS NOT BEEN GRANTED, YOUR DRIVER'S LICENSE WILL BE SUSPENDED BY DMV." That's one.

Number two is Albemarle. Not in bold, but it's in there, and it says: "If payment in full is not made by the due date, your driver's license will be suspended by DMV."

11 is from Chesterfield County. And in Chesterfield County, on page 1: "Notification is sent to the Department of Motor Vehicles for suspension of defendant's operator's license."

And then Henrico County, which is the smallest print -- I know it's in here because I wrote it out. It says, "You will have 30 calendar days to pay" -- I'm looking for it, Judge. Why can't I find it? I think I'm missing a page on mine, Judge. We'll go back and find it. My notes say: "You will have 30 calendar days to pay all fines and costs owed to the

court. Failure to pay your fines and costs will result in your privilege to drive being suspended or revoked by the Virginia Department of Motor Vehicles."

Your Honor, at this time, I'll pass the podium over to Ms. Pazandak.

Was that the correct pronunciation, or was I close?

MS. PAZANDAK: Pazandak.

MR. BLANK: Pazandak. I apologize. She's been pro hac'd into this court. She's with McGuire, Woods, and she will take the examination of Diana Pearce.

THE COURT: All right.

MS. PAZANDAK: Plaintiffs call Dr. Diana Pearce.

MS. O'SHEA: Your Honor, to the extent it's helpful, before Ms. Pearce testifies we're certainly willing to stipulate that driving is an important part of people's lives and that it's harder to get to work when you don't have a driver's license. If that's basically what Ms. Pearce is going to testify to, we're happy to stipulate that if this will move things along.

THE COURT: Well, you can take that as agreed to, admitted, and not touch on those matters -

MS. PAZANDAK: Okay.

THE COURT: -- any further.

MS. PAZANDAK: Understood.

DIANA PEARCE, Ph.D., CALLED BY THE PLAINTIFFS, SWORN

DIRECT EXAMINATION

BY MS. PAZANDAK:

[76]

Q Dr. Pearce, can you please state your name?

A Diana Pearce.

Q And where do you live?

A Seattle, Washington.

[77]

Q And where are you currently employed?

A University of Washington.

Q What's your title at the University of Washington?

A I'm a senior lecturer and director of the Center for Women's Welfare.

Q How long have you held that position?

A I've been at the university for 20 years.

Q And what are your current job responsibilities?

A I direct the Center for Women's Welfare and teach as required, and the center conducts research.

Q What is the subject of your research?

A Basically, what we do is we calculate and write reports and analyze data using a measure that I developed called The Self-Sufficiency Standard.

Q And where did you work before the University of Washington?

A I was in Washington, DC. I had an independent project called the Women in Poverty Project associated with wider opportunities for

women.

MS. PAZANDAK: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. PAZANDAK:

Q Dr. Pearce, I'm handing you a stack of documents, and we'll go through them. I'll put them on the screen.

[78]

Can you identify the first document in front of you?

A It's my curriculum vitae.

Q And Dr. Pearce, is this a true and accurate copy of your CV?

A Yes, it is.

Q Where did you go to college, Dr. Pearce?

A I went to the College of Wooster in Wooster, Ohio.

Q And what degree did that lead to?

A Bachelor's degree in sociology and history.

MS. O'SHEA: Your Honor, is there some sort of -- are we leading up to a request to certify as an expert? So if you can tell me the field, because I may be able just to stipulate to that so we don't have to walk through the entire CV.

MS. PAZANDAK: Sure. We would like to qualify Dr. Pearce as an expert in The Self-Sufficiency Standard, which is a standard that she created. It talks about whether someone's income is adequate to meet their basic needs for housing, food,

healthcare, other basic costs. We'd also like to qualify her as an expert witness in the self-sufficiency standard as compared to the federal poverty level and the self-sufficiency standard for the Commonwealth of Virginia.

MS. O'SHEA: So you want to qualify her as an expert in the standard that she created, basically?

MS. PAZANDAK: Yes.

[79]

MS. O'SHEA: And what is the relevance of that standard to this litigation?

MS. PAZANDAK: We think it's a more appropriate measure than the federal poverty level to say whether someone has enough income to be able to meet their basic needs and pay court costs and fines or make payments on a payment plan.

MS. O'SHEA: Your Honor, I'm not sure that it's relevant, Your Honor, but I certainly stipulate that she's an expert in the standard that she has created and published about.

THE COURT: All right. You may proceed.

BY MS. PAZANDAK:

Q Okay. Dr. Pearce, can you tell us what The Self-Sufficiency Standard is?

A The Self-Sufficiency Standard is a measure of income adequacy based on a basic needs budget. It varies by where you live and it varies by your family composition, including the number of adults and children and the ages of children, because costs differ by age of children, such as childcare.

Q And when was it developed?

A I developed it and first calculated it in

1996 for the State of Iowa under a grant from The Women's Bureau, the United States Women's Bureau.

Q And why was the standard developed?

A The standard was developed because I was doing research [80] on the performance standards used in job training programs, which at that time were called JTPA and now are called WIOA, Workforce Investment Opportunity Act.

They measured -- the performance standard was self-sufficiency, but they measured it by averaging together all the participants in a program's wages. It didn't take into account what it took to be self-sufficient.

So a single person would need much less income to be self-sufficient than, say, a person with children to support. And by putting everybody together, you ignored that and you weren't really measuring self-sufficiency. So I was asked to develop that.

So I drew upon a number of sources, looking at the various critiques of the federal poverty level, as well as others who had developed a similar thing. But not really developed it, just had, you know, put out some ideas for doing this by building it up from the various basic needs.

Q Okay. So how did you go about developing the standard?

A So the way I -- you mean how do I calculate it?

Q Yes.

A What we do is we take basic needs -- housing, food, childcare, transportation, healthcare,

plus, of course, and miscellaneous, which covers things like clothing and personal necessities, household necessities like soap, and as well as taxes and tax credits, because everybody has to pay taxes – [81] and then we look at those costs using credible government sources, such as Census Bureau, Housing and Urban Development for housing costs, the food budgets from the United States Department of Agriculture.

So we use credible sources that also distinguish those costs by geography and by age, as appropriate.

Q And how is The Self-Sufficiency Standard different from the federal poverty level?

A Well, the federal poverty level was developed in the 1960s by Mollie Orshansky. At the time, the only standard we had for what you needed to meet your basic needs was nutrition standards from those USDA food budgets.

So she used a food budget, and at that time people spent about a third of their income on food; the average family spent a third of their income on food. So she just multiplied food times three. Well, that froze -- and it's only been updated for inflation since then. So that froze in place that relationship between food and other things. And, of course, food is one of the things that's increased the least of all. As everybody knows, housing and healthcare have increased enormously, particularly in recent years.

So what we do is allow each of those costs to increase independently of each other. So there's not a fixed ratio of one-to-three like there is in the federal poverty level.

Also, the federal poverty level, she didn't have

the [82] data. It doesn't vary geographically, so it doesn't take account of the very different costs of living.

We take account of the different costs of living to the lowest geographical area that we -- that is available, that's accurate and available, and standardize across the country.

Q When did you first develop the standard for the Commonwealth of Virginia?

A First developed that in 2002.

Q And when was it last updated?

A 2018. This year.

Q How was it updated for 2018?

A Well, it turns out that IKEA was using this data to vary their starting wages by where their stores were located so it would reflect the local cost of living. And they noted that it had not been updated in some states as regularly, because we're dependent upon our partners in each state. And so they paid for updating the standard in 27 states where there's IKEA stores.

Q Would you look at the second document I handed you?

A Yes.

Q And will you identify that document, please?

A That's the Methodology Appendix for The Self-Sufficiency Standard for Virginia in 2012.

MS. PAZANDAK: And, Your Honor, this is in your notebook behind tab 13.

BY MS. PAZANDAK:

[83]

Q What agency of the Commonwealth of Virginia requested the 2012 calculation?

A This was prepared for -- in 2012 for the Virginia Department of Social Services.

Q And is this a fair and accurate copy of the Methodology Appendix?

A Yes, it is. And it specifies our data sources, assumptions, and our calculation methods for Virginia, which is standardized but gives us specifics for Virginia.

Q Would you identify this next document?

A This is a Technical Brief for The Self-Sufficiency Standard for 2018 for the -- all the standards that were calculated under the IKEA project.

Q And is this a fair and accurate copy of that methodology?

A Yes, it is.

Q So you were going into this before, but what are these appendices? What do they show?

A They show where our data sources are, what assumptions are made; basically tells you how we calculated, where we get the numbers, how we -- the methodology and the sources of the data.

Q Are there any significant differences between the two?

A No significant differences. There's -- you know, we do some fine-tuning.

[84]

Unlike the poverty standard, which got frozen

in the 1960s based on what data that was available then, if we get data that provides a more accurate way of calculating something, then we will refine it. But, basically, it's the same categories and the same sources.

Q Dr. Pearce, do you have an opinion as to whether the suspension of licenses for failure to pay court debts and fines disproportionately impacts individuals in Virginia that do not meet self-sufficiency standards?

A Yes.

MS. O'SHEA: I'm going to object to that; that the basis of that is not in evidence and it's beyond the scope of her expertise, which is in self-sufficiency, it's not in legal fields.

THE COURT: What was the question again?

BY MS. PAZANDAK:

Q Do you have an opinion as to whether the suspension of licenses for failure to pay court debts and fines disproportionately impacts individuals in Virginia that do not meet The Self-Sufficiency Standard?

A Yes.

THE COURT: I understand the objection. I'll let her answer and explain her answer.

BY MS. PAZANDAK:

Q Okay. So why don't you tell us your opinion?

[85]

A My opinion is that it does affect them, because they are not able to meet their basic needs as it is, so taking away their driver's licenses obviously

makes it impossible to earn an income to meet their basic needs.

Q Okay. And what's the basis of your opinion?

A The basis of my opinion is my research on the standard.

Q Dr. Pearce, have you reviewed any information related to Adrainne Johnson?

A Yes, I have.

Q What have you reviewed?

A I've looked at her income, benefits, which provide a source of resources to meet her basic needs, and compared these to the standard. So her income and benefits and expenditures.

Q Is there a way to zoom out?

Do you have an opinion as to whether Adrainne Johnson meets The Self-Sufficiency Standard?

A No, she does not. Yes, I have an opinion.

Q Do you hold that opinion to a reasonable degree of certainty in your field of expertise?

A Yes.

Q And what is that opinion?

A She does not. She's not able to meet her basic needs, given her income and benefits.

Q And what is the basis of that opinion?

[86]

A From reviewing, again, her income, benefits, and expenditures versus The Self-Sufficiency Standard.

Q Okay. And if you'll turn to the fourth document I handed you, which is also up here on the screen, can you please identify that document?

A That's a demonstrative for Adrainne Johnson.

Q And can you explain what that demonstrative shows?

A So this compares the amounts in The Self-Sufficiency Standard for housing and food to what she spends for those standards, and then shows what the shortfall for the surplus is for each of these items.

So, for example, for housing, we used the fair market rents, which is what the Department of Housing and Urban Development has determined is the minimum you need to spend to meet, minimally meet -- you know, adequately meet your need for housing. So this includes housing. This includes both the rent and utilities.

So in Charlottesville, Virginia, you should be spending $1,179.

She's only spending $200. She's doubled-upped. And she didn't quite say it, but basically she's sharing housing, where she and her two children share a room, and they have a shared kitchen and shared bath, and it's not acceptable, you know, living conditions. It's both overcrowded and not clean.

[87]

And so she's way spending under what she needs to meet her basic needs. I mean, she doesn't have any extra income for other things, because she's not even meeting what she should be, what the government thinks, because the fair market rents are

established for people receiving housing assistance. So this is what low-income people who do not have enough income to meet their housing need, this is the level at which the rent, including -- and plus utilities, they get from HUD.

And the same thing for food. So for food, again, this is what the USDA gives people who are getting stamps, getting the full benefit from food stamps, for people who don't have any income to pay for their food stamps. So, again, it's the minimum.

And it only covers groceries. It doesn't cover a pizza or lattes. It's a very bare minimum of what you need to meet your food needs if you have an adult, a school-aged child, and a teenager. This is where age makes a difference.

She's spending less than half that, so clearly she is not able to meet her family's nutrition needs on her income. So even just, you know, these two things aren't enough to meet -- you know, these two items in the basic needs budget is less than -- is more than her income.

MS. O'SHEA: I'm going to object to that last bit of testimony of finding that somebody is not getting sufficient [88] nutrition based on the amount of money that's spent on groceries. I certainly think the doctor can testify about what people normally spend on groceries versus what was spent on groceries here, but unless she has personal knowledge of what's in those grocery bags when they come home from the grocery store, I think that's beyond the scope of her knowledge and expertise.

THE WITNESS: This is what the United States Department of Agriculture has determined is the minimum you need to meet your nutritional

needs, looking at all, you know, the vitamins and minerals and protein that we need.

And they do a market basket; they determine what it costs to meet those needs. One survey found that, using this budget, only about 30 percent of people were able to meet their basic needs.

THE COURT: With that information, thank you, that's sufficient. The Court can decide whether it's nutritious or not.

BY MS. PAZANDAK:

Q If you'll turn to the next page in your demonstrative, Dr. Pearce, can you tell us what this chart shows?

A This is just a way of showing graphically what I've been saying in terms of numbers.

So she's only spending about 17 percent of what HUD thinks you need to spend to minimally meet your needs for [89] housing. She's clearly spending a great deal less than that. And she should spend more than that. If she had more dollars, she would spend more to better meet her --

MS. O'SHEA: I object to that as speculative.

THE COURT: Go ahead.

BY MS. PAZANDAK:

Q And can you tell us what this final demonstrative shows, Dr. Pearce?

A Again, it's the food. So she's spending 39 percent of what the USDA food budget says should be spent to meet your nutritional needs for this size and age of children. It says family and age of children.

Q Dr. Pearce, have you been given

information about the other four named plaintiffs in this matter?

A Yes, I have.

Q And what type of information have you been given?

A Similar information on their income, expenditures, and benefits.

Q Do you have an opinion as to whether any of those meet The Self-Sufficiency Standard?

A Yes, I do.

Q And do you hold that opinion to a reasonable degree of certainty in your field of expertise?

A Yes.

Q And what is that opinion?

[90]

A All of them are well below The Self-Sufficiency Standard. They are not able, with their current income, to meet their basic needs. So, basically, asking them to pay court fines is taking milk away from babies.

Q And do you have an opinion as to whether any of the named plaintiffs can afford a payment plan to get their license back and still meet The Self-Sufficiency Standard for their locality?

A I can say that they would not be able to meet their basic needs using The Self-Sufficiency Standard as a measure of that.

Q And if they were put on a payment plan, what would that mean for them and their families?

A I assume it would mean being deeper in

the hole and less able to meet their basic needs.

MS. O'SHEA: I'm going to object to that as speculative as well.

THE COURT: Okay. Well, they don't have enough money now and, of course, if you take what little they've got from them, it's pretty obvious, I mean.

MS. O'SHEA: We don't need expert testimony, Your Honor, frankly.

THE COURT: What I'm saying is it's not prejudicial.

It's just stating. The facts she is telling the Court are sufficient for the Court to reach the same conclusion as she's reaching. So her information is helpful to the Court. Her opinion, no one would disagree with it, with all these facts, I wouldn't think.

MS. O'SHEA: I was objecting to the extent that she was opining as to some contingencies that may depend on facts and circumstances that aren't before the Court.

THE COURT: All right.

MS. PAZANDAK: That's our final question. Thank you, Dr. Pearce.

THE COURT: Okay. You may cross. Do you want to cross?

MS. O'SHEA: Yes, sir.

THE COURT: Okay.

CROSS-EXAMINATION

BY MS. O'SHEA:

[91]

Q Good afternoon. Is it Pearce?

A Yes.

Q Dr. Pearce?

A Yes. Thank you.

Q Okay. I'm just going to ask you just a few follow-up questions with respect to the information that underlies the opinions that you've arrived at for this case.

All right?

A Okay.

Q You testified that you were given information about [92] Ms. Johnson and her finances and circumstances, correct?

A Yes.

Q How did you get that information?

A By computer. I mean, I'm not sure what you mean, how did I get that information.

Q Was it communicated to you from Ms. Johnson or from Ms. Johnson's counsel?

A Both.

Q Were you given financial statements and invoices and W-2s and receipts, or were you just kind of given a different type of information?

A I wasn't given documents, if you're asking that.

Q So you weren't given documents. So then were you told, this is what Ms. Johnson's income is?

A Yes.

Q Were you told what her source of income was, where she was getting the income from?

A Yes.

Q So you were given a figure and you were given a source, correct?

A Yes.

Q Okay.

A I mean, not a specific employer or anything like that.

Q I understand. So you were told that she was working for a certain hourly wage and a certain number of hours per week, [93] right?

A Right.

Q And is that the figure that you used to come up with the current income of $1,399 per month?

A Yes. That's her new job.

Q Right. Now, with respect to expenditures, a similar question. Were you just told, this is what her monthly expenditures are for groceries?

A Yes.

Q So that was reported to you. Did that come from Ms. Johnson herself, or did that come through her attorney?

A It came through her attorney.

Q Did you ever speak with or interview Ms. Johnson?

A Yes.

Q Was that in person or over the phone?

A Both.

Q And have you been to the residence where she's currently living?

A No.

Q Did you interview her children?

A No, I did not.

Q Did you speak to her children in school about whether or not they obtain, like, free lunches through school programs?

A No, I did not.

Q Did you speak with her -- the people that she lives with?

[94]

A No, I did not.

Q Okay. So you have this self-reported here expenditure of $320 for groceries per month, correct?

A Yes.

Q Did you inquire as to whether or not she had any other fixed expenditures?

A Yes.

Q And what were those?

A She has child support, the rent. I mean -- I mean, to some extent food is a fixed expenditure, a necessary expenditure. I don't know what you mean exactly by "fixed."

Q Like a cell phone bill, for example.

A Yes, I did use a telephone bill, too.

Q So there's a phone bill, rent, groceries. Did you ask her about her eating habits, how often they eat out or ordered food out?

A No.

Q Did you ask about things like if they go

to the movies?

A No.

Q Or have entertainment expenses?

A No.

Q So based on the numbers that were given to you, you calculated that she had an income of $1,399 a month, right? Correct?

A Correct.

[95]

Q Okay. And then from that, with that starting figure, you take out the $200 in rent, right?

A Yes.

Q Okay. And then the $320 that she reported in groceries, right?

A Yes.

Q And the math on that, if you take approximately $1,400 and you subtract $520, that leaves you with what? Sorry. I'm trying to do the math here. $880, right? Correct?

A From 1994, 520?

Q No. I'm saying, she reported an income of $1,399 a month, right?

A Oh, okay.

Q And then if you take that as her budget, and you take out the $200 in rent, and you take out the $320 in groceries, you are left with $880, right?

A Yes.

Q All right. And from that $880, then out of that comes the child support payment, correct?

A Yes.

Q And then the only other fixed budget item that she reported was a $100 phone bill, right?

A There were several others, actually. I think we have some other -- there were several other costs, I think. There [96] was a Y membership and a number of other costs.

Q A wine membership?

A I can't remember exactly.

Q Oh, you said "Y," like YMCA. I thought you said "wine," like alcohol.

A No, I said "Y," YMCA. I'm sorry.

Q Thank you. I misheard. All right. Thank you.

So other than the YMCA membership, can you remember any other specific recurring monthly costs?

A Well, of course she has transportation.

Q Like a bus pass?

A Well, she can't always get places by bus, so she would have to take other things as well if she's going to get to -- you know, get to her employment.

Q Were you in the courtroom when she testified before?

A Yeah.

Q You heard her testify?

A She also takes a bus.

Q Correct.

A Yeah.

Q So do you know how much a bus pass is in the City of Charlottesville?

A I think it's $20.

Q Per month or per year?

A Per month.

[97]

Q So if she has a bus pass, that's an additional $20, correct?

A Right.

Q Okay. So would you agree, then, that taking out these other sorts of fixed sources, that it appears that she still has around 400 or $500 in cash every month left over of the amount that she earns?

A Yes.

Q Now, you testified before, your exact language was, if I recall correctly, that it's impossible for people who are below the self-sufficiency threshold to pay back their fines and costs.

Was that your testimony?

A I said that if they did so, they would be taking it out from meeting their basic needs.

So if she has additional, you know, income now that she has a current job, she should be spending that towards her housing and towards her food, because she's not spending enough now to meet her nutritional needs or to meet her housing needs. Living in one room with two children is not meeting a basic need.

Q Would you agree that if you have a house, a roof over your head, heat, water, aren't those life's basic necessities?

A Not if you're living in housing that's overcrowded. It [98] affects your health. It affects

your children's. I mean, by basic needs, they have no more than two people in a bedroom, and children and adults do not share a bedroom. That's a basic rule for HUD in every housing, public housing, that they subsidize, and not to be sharing a housing unit that was meant for one family with two families.

Q Would you agree that everyone's ability to pay certain recurring expenses is going to be dependent upon their own unique factual circumstances?

A No. I think the whole point of developing something like The Self-Sufficiency Standard is to say that, yes, you have to meet some arbitrary decisions, but you do come up with some numbers that say, this is the minimum people need to meet their basic needs.

And the government, in fact, does that when they do that for housing assistance, when they do it for childcare assistance, when they do it for food assistance.

Q So I understand you've got a general rule. The general rule is, this is the amount of money people should have in order to meet their basic needs. I get that that's basically what your standard says.

But what I'm saying is: Don't you also have to look at the individual circumstances of the person to decide whether or not their needs are being met and whether or not they might have extra income that could go to pay things like [99] their court-ordered fines and costs?

A It's not extra income. It's income that is now available, maybe, to begin to meet her basic needs.

But you can't count on the fact that people will find wonderful housing for $200 a month. Maybe a few people could, but you can't count on that. And when you look at what people can afford, you have to give some credence to what basically government agencies have said is necessary to meet your basic needs.

Q So, then, your testimony is basically, regardless, some people might get lucky?

A You can't count on luck.

Q You can't count on luck, but some people do?

A Right.

Q So if you're got somebody and you're trying to assess whether or not they have enough money to meet their needs, don't you need to look at things like that that are unique to each circumstance?

A I think that becomes essentially arbitrary.

MS. O'SHEA: All right. I don't have any other questions. Thank you, Judge.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. PAZANDAK:

Q Dr. Pearce, just a couple more questions. Do you believe [100] that Adrainne Johnson got lucky with her housing situation?

A Not at all.

That's crooked.

Q Sorry.

Can you identify the document up on the screen?

A That is a document looking at Adrainne Johnson's expenses in all different areas and compared to the standard, and again looking at benefits.

Q So before we were just looking at an example?

A Yeah. Just a couple of the items, yeah.

Q A couple items?

A Because those items alone are, you know --

Q So certainly, although you couldn't recall all them from memory, Ms. Johnson has a number of other expenses --

A Right.

Q -- is that correct?

A Right.

Q And in your opinion, is Ms. Johnson meeting her family's basic needs with the income that she has now?

A No.

Q Are any of the named plaintiffs?

A No.

MS. PAZANDAK: That's all.

THE COURT: Okay. Let's take about a ten-minute recess.

MR. BLANK: Thank you, Your Honor.

THE MARSHAL: All rise.

(Recess, 3:36 to 3:47 p.m.)

THE COURT: All right.

MR. BLANK: Your Honor, we're going to ask Mr. Abel to call Mr. Peterson.

Judge, just to make it clear for the record, because speaking to the court reporter, my expectation at the end of our presentation is to put in our notebook as one exhibit to make it easy on the court reporter. I understand from the Commonwealth they're okay with that. The only exception is, I didn't have Ms. Adrainne Johnson, the last one. We'll put that in as Exhibit 2.

So the whole notebook will be 1, with everything.

We'll put the additional demonstrative in as Exhibit 2.

THE COURT: Thank you.

MR. BLANK: Thank you.

MR. ABEL: Your Honor, plaintiffs will call Dr. Steven Peterson.

STEVEN PETERSON, Ph.D., CALLED BY THE PLAINTIFFS, SWORN

DIRECT EXAMINATION

BY MR. ABEL:

[101]

Q Good afternoon. Would you state your name for the record?

A My name is Steven Robert Peterson.

[102]

Q Where do you live?

A I live in Arlington, Massachusetts.

Q Where are you currently employed?

A I work for Compass Lexicon.

Q What is Compass Lexicon?

A Compass Lexicon is an economic consulting firm that specializes in finance and competition issues, and so we provide expert testimony and other analysis for law firms, corporations, and the government.

Q What's your title at Compass Lexicon?

A I'm an executive vice president.

Q How long have you been an executive vice president?

A I believe I was promoted to that level in April 2013.

Q As an executive vice president, what do your job duties include?

A I serve my clients and do economic studies and provide expert testimony. I supervise expert testimony that will be given by others, and write reports, draft reports. And I share responsibility for managing the Boston office.

Q How long have you been employed by Compass Lexicon?

A I started working for a predecessor to Compass Lexicon in 1990, while I was still in graduate school.

Q Where did you go to college?

A I went to the University of California Davis.

Q What degree did you receive from them?

[103]

A I received a bachelor's degree in economics.

Q What other degrees do you hold?

A In 1992, I received a Ph.D. in economics from Harvard University.

Q Do you teach?

A I teach when I have the time, yes.

Q Where have you taught?

A Well, I taught in graduate school, obviously; and over the last six or seven years, I've taught at Northeastern University in Boston.

Q What have you taught at Northeastern?

A I've taught Principles of Economics, but I more generally would teach a class called Government and Business, which covers antitrust, economic regulation, the political economy of regulation, which is sort of the theory of where regulations come from economically, and other aspects of government policy.

I also created a course with a colleague called Image Economics and Policy, which we've taught together there a few times.

Q Within economics, what's your field of expertise?

A I'm a microeconomist.

Q What is microeconomics?

A Well, in general, microeconomics is the study of the incentives that people face and how they respond to them. [104] And I guess that would cover people and firms.

Q What specialty do you have within

microeconomics?

A Well, my work at Compass Lexicon involves using data, typically large amounts of data, to understand markets and the incentives that firms face.

Q Do you work with large datasets as part of that work?

A Frequently we do, yes. For example, I'm currently working with data for an airline matter. One client -- one party has 200 million tickets and 500 million individual flight coupons, and so we're working on that data. Other datasets have, you know, more or less.

Q As part of your work at Compass Lexicon, do you routinely make economic inferences based on those large datasets?

A Yes. We try to characterize markets and apply economic principles to what we see to make economic inferences. We also test economic inferences and, you know, validate them with the data.

Q Have you published in your field?

A I have.

Q What --

MS. O'SHEA: I'm sorry, I didn't mean to cut you off. We're happy to stipulate that he's an expert in the field of economics, with a subspecialty in microeconomics, if that will facilitate matters.

THE COURT: All right.

MR. ABEL: For purposes of the record, Your Honor, I'll just show Dr. Peterson.

BY MR. ABEL:

[105]

Q Do you recognize that document?

A That's my curriculum vitae, yes.

MR. ABEL: For the Court's reference, that's at tab 14A within the binder.

THE COURT: All right.

BY MR. ABEL:

Q Dr. Peterson, what were you asked to address today?

A I was asked to address two primary questions, and the first is whether the loss of a driver's license for failure to pay court fines would have a negative impact on an individual's ability to obtain work and maintain employment.

And I was also asked to address the question of whether suspending licenses for failure to pay would disproportionately affect poor people rather than more affluent people.

Q In answering that first question, what research did you do to prepare to answer it?

A Well, the first thing I wanted to do was determine the importance of being a legal driver for employment, and so I think we have some data from the Department of Transportation --

Q Sure.

[106]

A -- that shows that.

Q Based on your review and that research, did you create a series of demonstratives for the Court?

A Yes, I did. My staff created them under

my direction.

MR. ABEL: And, Your Honor, these demonstratives, for the record, begin at tab 14B within the binder.

BY MR. ABEL:

Q Dr. Peterson, is this the first of those demonstratives?

A It is.

Q And what does this demonstrative show?

A This shows the different categories of work, you know, the type of jobs that require driving. And for our purposes here, in general, all jobs are reported to require, on average, 30 -- it shows that, of all jobs, 30 percent require some type of driving.

MR. ABEL: Your Honor, if I can approach the witness, just because it seems like we might be having some zoom issues, just so I can hand him up a copy of the demonstrative so he can view it in full?

THE COURT: All right.

THE WITNESS: Thank you.

BY MR. ABEL:

Q Dr. Peterson, did you and your team create a second demonstrative for the Court?

A Yes, we did.

[107]

Q Is this that demonstrative?

A It is.

Q What does this demonstrative show?

A Well, this just shows that most people

use private vehicles in order to commute to work nationally and in Virginia. The red bars represent Virginia.

So over 75 percent drive to work alone, and not quite 10 percent carpool. And, notably, relatively small numbers of people use public transportation or walk or use other transportation.

Q So in answering that first question, how did this information help you answer that?

A Well, what it shows is that the usual experience of people is that a car is useful for getting to work. And we heard today what is economic common sense, I suppose; that if a job is distant from a bus line or something like that, there will be jobs that people cannot readily reach.

And so here we see a car is important for a lot of people to reach jobs; and the more jobs you can reach, the better your employment opportunities are. And so this gives support for that economic conclusion.

MR. ABEL: Your Honor, for the record, I'll state that a study from which this demonstrative comes is attached as Exhibit 12 to the memorandum in support of the motion for preliminary injunction?

THE COURT: All right.

BY MR. ABEL:

[108]

Q Dr. Peterson, in addition to the data and the figures we've discussed already, did you review any studies to answer that first question?

A I reviewed a number of studies. And we have a third demonstrative, I think, where I

extracted a quote from a study by the National Center for State Courts.

Q Is this that demonstrative?

A It is.

Q What does this demonstrative show?

A Well, this study would support the previous two conclusions: that jobs require driving and that driving makes more jobs accessible for people.

But it also reached this additional conclusion, and it basically points out -- the last phrase here is that, "Some employers view having a valid driver's license as an indicator of reliability."

So a valid driver's license is, in a sense, a screen for employability with at least some employers, and so not having a valid driver's license could hurt the opportunity to obtain a job, even if you can reach it.

MR. ABEL: Your Honor, for the record, I'll state that the Center for State Courts study is attached in full to the memorandum in support of the motion for the preliminary injunction at Exhibit 17.

THE COURT: Thank you.

BY MR. ABEL:

[109]

Q Dr. Peterson, in addition to this study, did you review any other studies?

A There is one other study that I found interesting and supportive of what we have already talked about, and that is a study from the Voorhees Center for Transportation at Rutgers University that was done in conjunction with the New Jersey

Department of Transportation.

Q What did that study show?

A Well, that study used a number of different methodologies to address the issue of what happens when you suspend licenses for failure to pay. And one thing that they did was just ask people who had their licenses suspended, and what they found was that between 40 and 45 percent of people with suspended licenses reported losing their jobs. And approximately 45 percent, as I recall, of the people who lost their jobs reported having some difficulty in finding another job or reported not being able to find another job.

And finally, they report that, even for the people who found another job, 88 percent experienced a reduction in income.

So that shows that, you know, the immediate effect for a large number of people was a reduction in income. The [110] immediate effect of losing a driver's license is a reduction of income. And, of course, you know, for others, if they have a change in circumstance or something, then their flexibility to change jobs is affected as well.

MR. ABEL: Your Honor --

THE WITNESS: I should say successfully change jobs.

MR. ABEL: Your Honor, for the record, I'll state that the Voorhees study is attached in full in the memorandum in support of the motion for preliminary injunction as Exhibit 18.

THE COURT: Thank you.

BY MR. ABEL:

Q Dr. Peterson, you heard Ms. Johnson testify here today; is that correct?

A That's right.

Q Before you testified here today, were you able to speak to any of the other named plaintiffs in this case?

A I was.

Q Do you remember which named plaintiffs you spoke with?

A Let's see. Ms. Abrams. Is that --

Q Adams.

A Adams. I'm sorry. And Brianna –

Q Does Morgan sound right?

A Morgan.

Q Based on -- were you able to talk to Ms. Johnson before [111] her testimony here today?

A I was.

Q Based on Ms. Johnson's testimony here today, as well as the conversations you had with other named plaintiffs before your testimony here today, what did those conversations and that testimony do to help you to answer that question, the first question you were asked?

A Well, we heard directly from Ms. Johnson that she lost a job because of an inability to reach work. So that's consistent with what we're finding in the studies here and the evidence showing the importance of driving as related to employability and reaching work.

We also heard that she would like to get jobs that require driving, and even has an opportunity to

raise her income if she could drive and take receipts to the bank as a manager.

So her experiences are very consistent with what we're hearing here. And other people basically reported continuing to drive because they had to support their families, and so driving was an important aspect of their being able to maintain employment and support their families.

Q Dr. Peterson, based on your review of the data, the information that you've shown the Court so far in the demonstratives, and in listening to the testimony of

Ms. Johnson, as well as the conversations you had with the [112] other named plaintiffs before today, were you able to form an opinion as to the first question you were asked to answer here today?

A I was.

Q And were you able to form that opinion within a reasonable degree of certainty in your field of expertise?

A Yes.

Q And what is that opinion?

A My opinion is that the loss of a driver's license for failure to pay court fines adversely affects people's ability to gain employment and maintain employment, and that the loss of a driver's license can readily lead to a reduction in income from the loss of employment or from having to take a less desirable job.

Q Dr. Peterson, I want to turn to that second question you were asked to answer here today.

In addressing that second question, did you seek out any information?

A I did.

Q What information did you seek out?

A Well, first I wanted to understand the scale of the problem, and so I sought out information on the number of people with suspended driver's licenses in the state of Virginia and, in particular, the number of people with suspended driver's licenses for failure to pay court fines [113] and costs.

Q Were you able to find that information?

A I was.

Q Where were you able to find that information?

A It was contained in an e-mail that I understand to be part of this case.

Q Does this look like that e-mail?

A It does.

Q What does this e-mail show?

A Well, what's important to me is what's blown up and highlighted, and that's that there are basically 978,000 people in Virginia with suspended licenses, and 647,000 or 648,000 of those are suspended only as a result not paying fines and costs.

Q Did you review any other information in seeking to answer the second question?

A I did.

Q What information is that?

A I was able to obtain information showing the results of court cases in Virginia over the period 2010 through 2017.

Q Can you describe that dataset in more detail to the Court?

A Sure. As I understand it, the state of Virginia posts the results of its hearings and court cases and citations on the internet, with people's names and some identifying [114] information, and this is present on different systems across the Commonwealth.

A computer scientist named Ben Schoenfeld wrote software to basically scrape all of that information off of all of the different websites and pull it together into a common database.

And what's notable about this is it has identifying information, so we can match records. And it shows what the charge was. It shows hearing dates. It shows the results of the hearing, what fines were assessed, whether they've been paid, what the payment date is, jail days that have been sentenced and suspended, and so forth.

So we have, basically, a row of information for each charge.

Q And how many individual pieces of data are included in Mr. Schoenfeld's dataset?

A For the years I looked at, there were approximately 14 million records.

Q Have you spoken to Mr. Schoenfeld about this data?

A I have.

Q Did you and your team create a series of demonstratives for the Court based on your review of that data?

A I have.

Q	Is this the first of those demonstratives?

A	It is.

[115]

Q	What does this demonstrative show?

A	This is a subset of the data for Adrainne Johnson. So this shows, you know, the charge, as written in the data. There's a free-form field that describes the charge. There's a code section, offense date, file date, and the costs and the fines that were imposed. There would also be jail time and other information in each record.

Q	Did you prepare another demonstrative for the court based on your review of Mr. Schoenfeld's data?

A	Yes. I was interested in understanding, given that there are, call it 650,000 or so people who are suspended with -- with a suspended license for failure to pay, how often are they entering the system and being charged with driving with a license suspended?

And so I was able to calculate, basically just count, those cases in Mr. Schoenfeld's dataset, or in our version of it.

And what I should say is these are DWLS cases related to the failure to pay. We can observe license suspensions in the data as well. And so for offense dates that would fall inside of a license suspension, we didn't count those.

Q	Is this that demonstrative?

A	It is.

Q	What does this demonstrative show?

A	It shows the prevalence of these DWLS

cases for failure [116] to pay fines and costs. And between 2015 and 2017, there have been roughly 50 to 54,000 DWLS cases per year, affecting 40 to 44,000 individuals a year.

Q In addition to DWLS cases, were you able to see other offenses appear in Mr. Schoenfeld's data?

A Yes.

Q Being able to see other offenses other than DWLS, what did that allow you do?

A Well, it allowed us to make a comparison of payment rates for DWLS. And we chose speeding as what we thought would be sort of an equal-opportunity offense that would be committed by, you know, affluent and less affluent people together.

MR. ABEL: Your Honor, I'll just mention that the demonstrative shown before, there was a change in the order, so I just wanted to call that out.

BY MR. ABEL:

Q Based on that comparison that you and your team did, Dr. Peterson, did you create another demonstrative for the Court?

A Yes.

Q Is that this demonstrative?

A It is.

Q What does this demonstrative show?

A This demonstrative shows the share of DWLS fines that were paid within 60 days and the share of speeding fines that [117] were paid within 60 days. So we see a dramatic difference, where over 85 percent of speeding fines are paid off in 60 days, but

over these years, only a little over 8 to 10 percent of DWLS charges or fines were paid in 60 days.

Q What did that disparity tell you?

A Well, this is exactly the results you would expect if the people who are suspended for failure to pay also have trouble paying the fine related to a DWLS charge.

I mean, I suppose this isn't surprising, because if their license was suspended for a failure to pay previous fines, you know, it's not surprising that this fine wouldn't be paid as well, at a high rate.

Q Did you create another demonstrative for the Court based on your review of Mr. Schoenfeld's data?

A I did.

Q Is this that demonstrative?

A It is.

Q What does this demonstrative show?

A This demonstrative answers another question that I had with regard to answering the second question about the focus of suspensions on -- the effect of suspensions on poor people.

And so I wanted to understand if, you know, people are treading water and paying off fines while they're getting DWLS offenses, as we're sampling some of these people with [118] suspended licenses, or if they're going deeper into debt.

So the way we did that was we looked in 2016, and we chose 2016 because it was late in the database and -- but likely to have complete data. And that gave us a history, a potential history, for each individual back through 2010, which is the first year

that we downloaded. And we looked in 2016 for people who, in 2016, were having their first DWLS offense, and we found that they had $709 of unpaid court fees and fines and debt at the time of their DWLS.

For people having their second DWLS in 2016, their outstanding debt was $982.

And for the third DWLS, for people with the third in 2016, they had accumulated nearly $1,400 worth of debt.

And then for people with four or more in 2016, we see over $2,000 worth of debt, nearly $2,200 worth of debt.

My conclusion from this is that there are people here who, you know, are continuing to drive and are falling further behind. They're not able -- you know, they are not paying off their debts to the court.

Q Did you create another demonstrative for the Court based on your review of Mr. Schoenfeld's data?

A I did. I wanted to understand, you know, what the incentives were to pay off this debt, particularly for this group of people who were driving. And I understand that, with a third DWLS offense, there's a mandatory jail sentence. [119] And so I -- I was able to look at DWLS cases that resulted in jail time, and we find there are about 9,600 to 11,500 of those in 2017 to 2015 where people were getting 23 to 26 days of jail. And I show the total jail days here.

And I should just note, we don't observe jail time served. What we observe in this dataset is

sentenced jail time and less -- we subtracted out suspended jail time. So that's what's shown here.

Q Dr. Peterson, based on everything we've discussed here today, including the studies and data contained in the demonstratives you've shown the Court, were you able to form an opinion as to question number two you were asked?

A I was.

Q Were you able to form that opinion within a reasonable degree of certainty in your field of expertise?

A Yes.

Q What is that opinion?

A That opinion -- well, I think it's important to recognize how all this data fits together in reaching that opinion.

So going back to the beginning, what we observed is that the loss of a driver's license hurts people's income, and so you would expect that people would pay, you know, their traffic fines and things like that rather than suffer the income from the loss of a license.

And, of course, for those who continue to drive, we see [120] that they are at risk of being cited for driving with a suspended license. And that's a path that people really shouldn't want to go down, because it ultimately ends up with jail time.

And upon going to jail in Virginia and being released, I understand that people's fines are not extinguished. So there is no benefit to going to jail. So we don't even have to assess whether there are people who are going to jail as a way to extinguish court debt.

So what we have to conclude is that suspending licenses for failure to pay is affecting poor people, because the economic incentives are to pay the debt, if you can. And, of course, that's consistent with the incentives that are built into the sanction of not paying debt.

Suspending a driver's license is supposed to be a strong incentive to pay that debt; and for the people who don't respond to that incentive, the economic conclusion is that they're going to have difficulty paying that debt or sustaining a payment plan, or something like that.

Q Dr. Peterson, I want to draw your attention first back to demonstrative 8, the data contained there, and then to demonstrative 9, jail time.

Looking at those two numbers together, what is that able to tell you?

A Well, for me, you know, people going to jail are going to [121] jail for relatively small amounts of money, you know, if $1,300 is a small amount of money.

Now, if you're making $1,399 a month, $1,370 is not a small amount of money. But for, you know, people working in an office or something like that, executive assistants or whatever, I think that that is an amount of money that you would not expect someone to go to jail over.

Q Dr. Peterson, you heard Ms. Johnson testify here today?

A I did.

Q You heard her say that after her second violation, or being pulled over the second time for

driving with a license suspended, she didn't drive anymore because she didn't want to go to jail.

Do you remember that?

A I do.

Q How did that factor into your analysis of the second question?

A Well, it warmed my economist's heart, because it shows that she was responding to incentives. As the potential sanction for driving without a license changed, her behavior changed. So she was behaving in a perfectly rational way.

Based on my conversation with her, her primary goal is to take care of her family, and she can't do that if she goes to jail. And so driving without a license for a while was one way to take care of her family and accept some risks, and [122] when the risks grew, she changed her behavior.

And so that supports the economic inferences that we would draw from that data, or from this data. That is an example of why the economic inferences we're drawing are correct.

MR. ABEL: Your Honor, no further questions at this time.

CROSS-EXAMINATION

BY MS. O'SHEA:

[122]

Q I just have a couple of follow-up questions about your underlying data, Dr. Peterson. Is it Peterson?

A Yes.

Q So referring to your demonstrative

number 2, where you report people across the United States versus people in Virginia who choose to drive alone in order to go to work, and the data here, it says 77.4 percent of people in the United States versus -- I can't tell which number is which -- versus 76.4 choose to drive alone in a car to work?

A Virginia is in red.

Q Oh. My copy is in black and white.

A Oh. I'm sorry.

Q So hence the difficulty.

A The left-hand bars are Virginia, then.

Q Thank you.

So my question is: Do you know, the study that these [123] numbers were pulled for, were the people asked if they had to drive alone to go to work versus they chose to drive alone to go to work? Was that information included?

A I don't know. And I assume that they're choosing, because, obviously, if you want to round up a carpool, you're able to do that. So as an economist, that question isn't really very important to me.

This is how -- people want the flexibility. This is evidence that people, when they are able to, want the flexibility of driving to work alone, for schedule and getting to the specific location that they need to go.

Q Certainly. I choose to drive to work alone. But I could get a carpool out of my neighborhood if I wanted to. I'd still like not to.

But so how, if at all, does the difference between people who choose to drive to work alone versus people who have to drive to work alone, how

does that plug into your ultimate conclusion that not having a driver's license makes it so that those people have problems getting to work?

A Well, certainly when we see more than three-quarters of people driving to work alone, it suggests that people may have trouble getting a carpool.

I mean, we heard from Ms. Johnson -- or, actually, we spoke to her, and she has different start times at work, I believe. So it can depend on which store she works at. So I [124] think a car -- you know, she would have to find someone with matching -- a matching schedule. And matching is always difficult. We know that in economics, right? So carpools are often difficult, would be difficult to assemble, because they require a confluence of timing and location for work in order to not be extremely inconvenient. So I don't see this as an important consideration.

We see what people are choosing to do, and also, we also see that it largely -- you may not have to drive, but, you know, private transportation is very important for people commuting to work.

Q So is this -- back to the report that pulled these figures on the manner in which people choose to go to work, did it break down at all different localities within the Commonwealth of Virginia, or did it just lump together everyone from Virginia?

A The data we have is for Virginia as a whole.

Q And would you agree that, then, these numbers might vary depending on from location to location; urban center versus a rural center, for example?

A I would expect there to be some variations, yes.

Q Or if you live in a city like Charlottesville that has a bus line, versus you live in a different city that doesn't have a bus line, that might be different, too, right?

A Well, if there's no bus line, then I expect the public [125] transportation bars would go down.

Q Right. So going to my point, then, it's going to vary from locality to locality within the Commonwealth of Virginia, right?

A Well, these particular results will vary, but the overall principle, the economic principle that this speaks to, is that more -- when people are trying to do the best they can, having a wider range of opportunities allows them to do better. And so not having a driver's license limits their range of ability, their opportunity to get to particular places and to perform certain jobs. And so that's the overarching conclusion here.

Q Fair enough.

A And so some of those details -- someone might be lucky and find a good job in walking distance to work, but that isn't, you know, the regular experience.

Q Depending on location? I mean, if you live in a place like Alexandria, where there's a ton of things within walking distance, it might be easier, right?

A I guess that might be easier. And the relevance would depend on the cost of living in downtown Alexandria, I suppose.

Q Certainly.

I'm going to ask you now about the dataset that you reviewed from the -- I think you said through the Virginia [126] courts?

A Yes. It was data that was compiled by Ben Schoenfeld.

Q All right. And so it references in the graphics that you put together convictions for driving while on a suspended license, correct?

A Correct.

Q Are you aware that, in Virginia, driver's licenses can be suspended for lots of different reasons?

A Yes.

Q Right. It's not just failure to pay fines and costs; it can be for failing to pay child support; it can be because you have a felony traffic offense, something along those lines? Right?

A Right.

Q And are you aware that people in Virginia can have their driver's licenses suspended -- have multiple suspensions in effect at the same time?

A That's right.

Q So you can be suspended for three or four different reasons all over the same period, right?

A Correct.

Q Now, you said that you were looking at information from the website or the dataset that you were given on convictions for driving while on a suspended license, while your license is suspended.

[127]

Now, are you also aware that the code section

in Virginia law for driving on a suspended license doesn't differentiate between the reasons that you are suspended?

A My data analysis assumes that.

Q So I guess my question is how -- when you're reporting your data, you're making -- you're reporting, like, this number of people who are convicted for driving while on a suspended license. How are you able to make the leap that the people who were convicted of driving on a suspended license were suspended solely for failure pay fines and costs, when the crime that you're charged with doesn't differentiate between the reason that you're charged? Does that make sense?

A Yes. I thought I explained this on direct, but the dataset also shows license suspension times. And so I can see a DWI where an individual is suspended for 365 days, for example, and so from the hearing date that we see, if we see a suspension, a DWLS offense in the year following that hearing date, we don't count it here.

So if we see evidence of a suspension in the data, we can determine the time when that suspension should be in effect. And we did not count DWLS charges that took -- that occurred when another suspension was in effect.

Q Okay. So you lifted out all of the driving while suspended convictions that you were able to determine [128] corresponded to something other than a suspension for failure to pay fines and costs?

A That's right. So the suspensions -- the DWLS offenses that we are observing here are those that occurred when there is no evidence of a suspension for a driving-related reason; where that is

part of your sentence, if you will.

Q Understood.

I don't think it was available to you, but I'm asking just to make sure. Things like the average income of the individuals whose driver's licenses were suspended for failure to pay fines and costs, that's not data that's available to you, correct?

A No, we do not have data that would allow us to identify those specific individuals or anything like that. And we don't -- there's no income information. It's purely data related to the court proceeding; the fields I described, generally.

MS. O'SHEA: All right. Thank you. I don't have any other questions.

THE WITNESS: Thank you.

MR. ABEL: Just a second, Your Honor. That's all we have, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. BLANK: Your Honor, I've got three more -- four more pieces of evidence. Three are going to be very short. One is going to be about ten minutes, but I just need to ask him one question.

I was checking. He has a flight to catch. I didn't want him to miss his flight.

Your Honor, the next piece of evidence that we would put in are two declarations -- excuse me, two affidavits.

One of them is behind tab 15, which is the affidavit of Robert Fuentes. His résumé is attached, as is one of his studies.

The second affidavit is of Jon Carnegie, with

his résumé; the AAMVA Best Practices Guide to Reducing Suspended Licenses; and an AAMVA video, which I will play in a second.

Just to summarize for Your Honor, but you can read the affidavits, Mr. Fuentes puts in his affidavit that: Virginia has limited public transportation. 87 percent of Virginians travel to work by car. Lack of public transportation and license cuts off job opportunities for low-income individuals. And Virginia Code Section 46.2-395 deprives workers of economic opportunities. That's a general synopsis of it.

For Mr. Carnegie, his affidavit testifies that suspending driver's licenses for failure to pay court debt potentially undermines traffic safety; in the local communities, employers experience negative consequences from the license suspension because those who have licenses have more stable employment.

Your Honor, we have attached as a video to our -- we cited to it, and with your indulgence -- I know we've run over. It is about ten minutes. I'd like to play it for Your Honor so that you can see it so you don't have to go back and look at it, and then we will wrap up shortly with our case in chief on the preliminary injunction.

Mr. Abel, if you will play it.

This is the video from AAMVA that Mr. Carnegie authenticates.

(Video played)

MR. BLANK: Thank you, Your Honor, for indulging us in the video.

Two more pieces of evidence. One is behind

tab 17, and this is the -- from the AAMVA website, and it's the Board of Directors. And our defendant, Mr. Holcomb, is a Board Director of AAMVA. Just to legitimize, if needed to, AAMVA's legitimacy, our defendant is on the Board of Directors of AAMVA. That's behind tab 17.

And behind tab 18, while a different issue, is a letter that's been issued by the Attorney General to Senator Obenshain dealing with the issue of bail bonds. And while it is a different issue, the issue dealing with whether or not low-income defendants and those with money could raise equal protection questions, that is addressed in his letter. So the Attorney General himself, both in this letter and then we cited to an interview that he gave in the last three weeks, where he does expressly address that, tying these issues to low-income defendants, those with money could raise equal protection concerns.

Your Honor, with that, that is the plaintiffs' case on our preliminary injunction. We at this time ask for the notebook to be admitted as Exhibit 1. And if I can approach the clerk, I'll hand the supplemental Adrainne Johnson demonstrative as Exhibit 2.

THE COURT: All right.

MR. BLANK: I think, Your Honor -- I have the notebook, an additional notebook to hand to the clerk. What is missing, and I can ask the Commonwealth, is behind tab 16 there is a thumb drive in cellophane, and I would like to have the thumb drive back.

THE COURT: There is a thumb drive in the back of the one I have.

MR. BLANK: That's correct, Your Honor. I didn't know if the Court -- we were going to give one to the clerk and one for you to have. So yours has a

thumb drive in it as well.

THE COURT: Okay.

(Plaintiff's Exhibits 1 and 2 admitted)

MR. BLANK: Let me -- Your Honor, we will pass the baton to the Commonwealth.

THE COURT: All right.

MS. O'SHEA: Thank you, Your Honor. The defendant calls Millicent Ford, please.

THE COURT: Okay.

MILLICENT FORD, CALLED BY THE DEFENDANT, SWORN

DIRECT EXAMINATION

BY MS. O'SHEA:

[132]

Q Good afternoon, Ms. Ford.

A Good afternoon.

Q Would you please introduce yourself to the Court?

A Your Honor, I'm Millicent Ford. I'm the Assistant Commissioner for Driver, Vehicle, and Data Management Services at DMV.

Q What are your responsibilities as the Assistant Commissioner?

A I am responsible for executive level oversight, guidance, and direction to the driver services, vehicle services, and data management services administrations at DMV, including major initiatives and efforts related to process improvements, policies and procedures related to those areas, driver licensing, vehicle titling and

registration, suspensions, conviction processing.

I'm also responsible for the implementation of special projects, legislation -- any process improvements, really -- as [133] well as delivering presentations to judges, Commonwealth's attorneys, and serving as liaison with our various stakeholders related to those areas.

Q How long have you had your current position?

A I've been in my current position for approximately two years.

Q And how long have you been with the Department of Motor Vehicles?

A I've been with the Department of Motor Vehicles since May of 1991.

Q During the course of your employment at the Department of Motor Vehicles, have you had any sort of relationship with the Office of the Executive Secretary, the OES?

A Yes, I have.

Q Would you describe that for the Court, please?

A My primary responsibility was serving and has been serving as a liaison with the Supreme Court Office of the Executive Secretary, working primarily with the Court Services Managers that -- related to the interface that exists between the courts, OES, and DMV.

Q So you are the liaison between DMV and OES?

A Yes.

Q Now, you brought up the computer

systems, so I will ask you about those now.

How long has the current system been in place, if you [134] know?

A The current system has been in place since -- for about three years, but there have been gradual improvements in that process.

Q Okay. Currently under the DMV system -- the computer system, as opposed to receiving papers -- under the computer system, how do you receive notification that an individual in a jurisdiction has not paid court-ordered fines and costs?

A We receive that information electronically, except for two courts that exist that transmit paper court orders to us. But we receive that information electronically from the courts, through OES, to DMV.

Q So when you say you receive it electronically from OES –

A Yes.

Q -- what is the system called where it's sent from OES to DMV?

A It's referred to as the Court Automated Information System, and it's basically a system-to-system, a server-to-server process that exists.

Q Now, do you know whether there is a different system or some other way that the courts get their information to OES, the individual trial courts?

A Based on my work with OES over the years, the court clerks enter the information into their system. OES has worked, along with DMV, to

program and -- program the [135] transmission of the data so that certain information ultimately gets to DMV from the courts through OES so that we can populate a driver's record. And that might be conviction information, suspension information, including suspensions for failure to pay fines and costs.

Q Now, do you know whether the -- were you in the courtroom when Ms. Dugger was testifying earlier?

A Yes.

Q And she referenced the CCMS system, or the Court Case Management System?

A Yes.

Q Is that a system that you are familiar with?

A I've heard of the system, the system referred to as the Case Management System, yes, over the years.

Q Okay. Do you know whether the CCMS system is different than the Court Automated Information System that you were referring to, CAIS?

A I think it's -- I believe the Case Management System that she referred to feeds into the Court Automated Information System, again moving data from the courts through OES to DMV.

Q And when that data is transferred from CCMS, the Court Case Management System, to CAIS, the Court Automated Information System, is that something that -- you know, is DMV a middleman in that at all?

A No. We simply wait to receive information from the [136] courts through that system.

Q So you only get your information through the Court Automated Information System, or CAIS?

A Yes.

Q From the Office of the Executive Secretary?

A Yes.

Q Now, would you explain to the Court how it is you know that there has been a suspension issue for nonpayment of fines and costs?

A There is an electronic -- the process that exists in Case includes an electronic notification regarding court indicators; first, that the person has -- that the Court is ordering a suspension for failure to pay fines and costs; that they were either in person at the time of that notification of that suspension, or that the court has mailed that notification to them via the DC225, that process; or that no notice was given at all.

But once that indicator regarding that fines and costs order comes to us, it comes to us along with an effective date. So the fines and costs indicator, along with the -- along with the suspension effective date, is what DMV uses and receives as an order from the Court for us to implement and record that on the customer's record.

Q So, then, when you run the DMV transcript or the driver history transcript, the suspension for failure to pay fines [137] and costs will show up?

A Yes.

Q If you didn't receive this information from the courts electronically, does DMV have the discretion to go in and enter a fines and costs suspension anyways?

A No.

Q Do you ever get in an order from the courts and say, hey, maybe this shouldn't be a fines and costs suspension, and kick it back?

A No.

Q Do you ever receive any information about how much money somebody owes in fines and costs?

A We get that information. I don't believe it's a mandatory field, but we -- but we never -- that's not a field that we use. It's just a part of the information that we receive related to the conviction, and it comes in as a part of the conviction record. But that's not anything that DMV acts upon or takes any action.

Q So some courts might send it in and other courts might not?

A Right.

Q Okay. Now, with respect to -- are there different types of suspensions that are entered by DMV administratively as opposed to through this Court Automated Information System?

A Yes.

[138]

Q Okay. What are those types of suspensions?

A There are suspensions for non-motor-vehicle-related drug violations. There are suspensions for DUIs. There are suspensions for driving while suspended, when you're suspended for a DUI-related offense.

Those are just examples of times when DMV is required to take administrative action based upon receipt of the conviction.

Q So even if the Court hadn't included a suspension in its order, DMV will administratively suspend it based on those specific statutes?

A Yes.

Q But, again, the difference here is, if the court doesn't send you the information about nonpayment of fines and costs, DMV has no discretion to go in and suspend anyone?

A That's correct.

Q Okay. And once you receive this fines and costs indicator and the effective date from the court, it then gets updated on the driving transcript, correct?

A That's correct.

Q And who is that transcript made available to?

A Transcripts are made available to law enforcement, courts, attorneys; insurance companies have the ability to get transcripts; and individuals, for personal use.

Q Now, we talked about the computer systems and how [139] information gets funneled through OES electronically and then is brought to DMV.

Now, you mentioned that there are two jurisdictions that don't use the computer system, right?

A Yes.

Q It's Alexandria and Fairfax?

A Yes.

Q How do you receive information regarding nonpayment of fines and costs from those jurisdictions?

A Those courts send us paper documents directly. They send -- they mail their paper documents directly to DMV.

Q I've handed you a sample form that's labeled at the top "Abstract of Conviction."

Is this an example of the type of form that you might receive from those two -- the court systems that don't transmit information electronically?

A Yes, it is.

Q Okay. So you receive these in the mail?

A Yes.

Q And what do you do with them when you receive them?

A We update the record, update the record to reflect what's noted on the document.

Q Now, if you look in the lower right-hand corner of that form, there is a specific field regarding fines and costs; is that correct?

[140]

A Yes.

Q And what is the purpose of that little

box down there?

A The purpose of that box is to -- is to indicate whether the Court has ordered a suspension for failure to pay court fines and costs, and when they want DMV to make that suspension effective.

Q If that box isn't filled out from those courts that are sending you in these paper documents, would DMV suspend a driver's license or update a transcript to show a suspension?

A No.

Q From DMV's perspective, is a suspension for nonpayment of fines and costs done by the court at the time of the conviction, or is it done administratively by the Department of Motor Vehicles?

A It's done by the courts, not administratively by DMV. MS. O'SHEA: I don't have any other questions.

Thank you.

THE COURT: Who adds the $145 reinstatement fee?

THE WITNESS: I'm sorry, Judge?

THE COURT: The reinstatement fee of $145, does the court have anything to do with it?

THE WITNESS: That is -- by statute, it requires DMV to impose $145 reinstatement fee whenever a person is suspended for nonpayment of fines and costs. And there's a few other suspensions that relate to that. But that's [141] specifically directed by statute.

THE COURT: All right. Okay. Another question.

THE WITNESS: Yes.

THE COURT: What does it cost to get your initial driver's license? The fee, what fee do you pay when you go in and --

THE WITNESS: I believe now -- it went up recently, but I believe it's $32; $8 per year.

THE COURT: Does it cost any more to process the initial driver's license than it does to reinstate?

THE WITNESS: Umm.

THE COURT: Or any less?

THE WITNESS: For reinstatement it's -- it's -- when you're reinstating your driving privilege, there's a process of all the compliance transactions that we have to handle in addition to the -- if the person, if they're testing, if there's testing involved, that has to be completed as well.

It's a little longer process –

THE COURT: Okay.

THE WITNESS: -- depending upon how long they've been suspended.

THE COURT: All right. Okay.

MR. BLANK: The Commonwealth would like to ask another question based on what you said. I don't mind you going --

THE COURT: All right. Go ahead.

BY MS. O'SHEA:

[142]

Q Do you know what happens to that DMV reinstatement fee?

A Yes. By statute the -- yes.

Q What happens to it?

A The statute specifically directs DMV to retain $45 of that, and $100 of that goes to the Trauma Center Fund.

THE COURT: To the what fund?

THE WITNESS: Trauma Center Fund.

BY MS. O'SHEA:

Q Do you know what the Trauma Center Fund is?

MR. BLANK: Judge, I have to object. I don't know what relevance that could possibly have.

THE COURT: Well, I mean, it doesn't have -- it's another way of the state collecting revenue --

MS. O'SHEA: Right.

THE COURT: -- to pay other costs that the Commonwealth incurs.

THE WITNESS: I'm not positive of that.

THE COURT: It's sort of like the lottery that goes to the education fund. It has nothing to do -- I mean, you don't have anything to do with it, I know.

THE WITNESS: No.

THE COURT: But the $100 is just earmarked by the legislature, I'm sure, to pay –

[143]

MS. O'SHEA: Correct. The point of the question was just that only the $45 stays at DMV, and that's commensurate with the --

THE COURT: I understand.

MS. O'SHEA: -- amount for the initial license.

THE COURT: The driver has to pay it; doesn't

make any difference what it's for.

All right. I'm sorry. Go ahead.

MS. O'SHEA: Thank you. No, that was the only question I had. Thank you.

THE COURT: Okay. Go ahead.

MR. BLANK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BLANK:

Q Ms. Ford, thank you for your time. You're not -- you've never been employed by a district court, have you?

A I have not.

Q You've never been employed by a circuit court?

A I have not.

Q You've never been behind a desk dealing with the computer screens that Ms. Moats testified about?

A I have not.

Q And you haven't been in a circuit court dealing with the screens that Ms. Dugger was testifying about?

A I have not.

[144]

Q In fact, you've not gone and looked at any of the court records for any of these plaintiffs, correct?

A The court records?

Q Yes.

A No, I have not.

Q And you haven't looked at any court records for anybody that's driving while suspended, or had their license suspended for failure to court debts and fines, have you?

A No, I don't have access to that.

Q You don't have access to the court records, correct? You don't have access to the court records; is that what you said?

A Just as it relates to the information that's been transmitted by the court.

Q You don't -- you're not -- you have no idea whether or not there's a court order that suspends the license in the court record, do you?

A Only based upon the information; but no.

Q You haven't seen it?

A No.

Q You haven't seen it?

A I haven't seen it.

Q And, in fact, in your affidavit, you said you assume that it's there.

You're just making an assumption of what's in that court [145] record, correct?

A Based upon what the court has submitted to us.

Q But you haven't gone and looked at the record?

A No.

Q And Ms. Dugger said there's no order in

the court file. You have nothing to refute that, do you?

A No.

Q And Ms. Moats said there's no court order. You have nothing to refute that?

A No, just based upon what the Court said.

Q You're not saying that the DMV doesn't have anything to do with the license suspension, are you?

A I'm saying that, by statute, certain suspensions are ordered by the Court and certain suspensions are ordered by DMV; and fines and costs isn't one.

Q That's not my question.

A Oh.

Q Let's refine it. For court suspensions -- excuse me, for license suspensions for failure to pay court debts and fines -- let's focus on that, because that's what this case is about.

A Okay.

Q You're not saying that DMV has anything to do with license suspensions, are you?

A The ordering of a suspension, yes, that's what I'm [146] saying.

Q No, no, I'm not talking -- you're parsing words.

A Okay.

Q I'm talking about any part of it. DMV has got something to do with license suspensions, correct?

A Correct.

Q And they have something to do with license suspensions for failure to court debts and fines; something?

A Reinstating them, yes.

Q Even the actual computer system that you talked about has something to do with the actual suspension. Not reinstatement; I'm talking about suspension. Those computer systems are talking to each other.

Your system and the court system and the OES system, they're interfaced, correct?

A There's an interface, yes.

Q So if DMV wasn't there, it couldn't happen, could it? There couldn't be a suspension, could there, for failure to pay court debts and costs?

A We act on what the court sends us, yes.

Q But you have to be there for it to be suspended, correct?

A We put it on the record, yes, sir.

Q If DMV didn't exist, would a license be suspended for failure to pay court debts and fines?

A We would not do it based upon -- I –

[147]

Q If DMV didn't exist –

A Uh-huh.

Q -- could you suspend a license for failure to pay court debts and fines?

A No. The record would not show it.

MR. BLANK: No further questions, Your Honor.

THE WITNESS: Wow.

THE COURT: All right. Thank you.

REDIRECT EXAMINATION

BY MS. O'SHEA:

[147]

Q Would you agree that there's a difference between the record reflecting a suspension and the entity that issues the suspension in the first instance?

A Yes, there is.

Q So when the court issues a suspension, is it effective from the moment that the court issues it, regardless of whether or not it's ultimately updated on somebody's transcript?

A Yes.

MR. BLANK: Objection to the question, Judge, because it definitely calls for a legal conclusion. She's not in the court system to make --

THE COURT: Well, that's covered by the statute. I mean, the law makes it effective as stated, right?

MS. O'SHEA: Correct.

MR. BLANK: Your Honor, we disagree with that interpretation, which we can deal with.

THE COURT: Okay.

MR. BLANK: And I think the testimony -

THE COURT: It's a legal question.

MR. BLANK: I think the testimony so far is that it doesn't happen until 41 days, and it's after

the failure to pay.

THE COURT: Right.

MR. BLANK: So I think she testified that it's day one, and I don't think that's what the evidence shows.

THE COURT: Okay.

BY MS. O'SHEA:

[148]

Q So if there's been a court-ordered suspension, let's say, in a different context -- somebody is convicted of a DUI third and the Court suspends their license for 90 days, all right, and it's an actual court conviction, or the judge signs an order that says, I am suspending your license --

Right?

A Yes.

Q -- does DMV have to receive a copy of that order before the suspension is real, or is it real from the moment that the judge signs his name on the bottom line?

MR. BLANK: Objection. Again, I'm not sure she can testify to that, but --

THE COURT: Well, I think when the judge suspends it and the person is there, it's effective right then. Isn't that the point you're making?

MS. O'SHEA: It is, Judge. So if Your Honor is satisfied with that, then I won't --

THE COURT: Yeah, there's no question about that.

MS. O'SHEA: I won't walk down that path any further, then.

BY MS. O'SHEA:

[149]

Q So you were asked, as well, if you had been in court or in the court clerk's offices.

In your role as liaison to OES and your job as Assistant Commissioner, though, do you interact at all with the court clerks?

A In past years in roles prior to this, I attended clerk's conferences, circuit court conferences, as well as general district court conferences.

Q Were you involved in any training at all with the court clerks?

A Yes, when they had regional conferences, regional meetings, which involved presentations from DMV, as well as the all-state conferences.

Q Did any of those presentations or trainings revolve around this information communication from the clerk's offices to DMV through the computer system?

[150]

A Yes, because we wanted the clerks to understand how the process works so that when there were questions about what DMV received and why a customer may be in front of us saying, you know, the Court suspended, we would -- they would understand how the process worked and how we knew what we had on the record was correct or incorrect.

MS. O'SHEA: Okay. Thank you.

And, Your Honor, at this time I'd also like to

move to admit the blank sample document that I handed up to the witness earlier, and that would be Defense Exhibit 2.

MR. BLANK: No objection.

THE COURT: Okay. It will be admitted. (Defendant's Exhibit 2 admitted)

MS. O'SHEA: Thank you. I don't have any other questions.

THE COURT: Thank you. You may step down.

MS. O'SHEA: No further evidence or witnesses from the defense, sir. Just argument.

THE COURT: Okay. Would y'all like to argue just for a few minutes?

MR. BLANK: Judge, I know it's a little abnormal, but I have a specific presentation that I would like to make, and then Ms. Ciolfi would like to address some specific issues that were brought up today in terms of payment plans, statute interpretation, and redressability. So we'd like to split up the argument briefly.

THE COURT: All right.

MR. BLANK: And I won't take too long in opening, Your Honor.

Judge, why are we here today? That's always a question that I know you ask yourself and ask me. And I'll start basically with our order that we're asking.

We're asking for a preliminary injunction. We're asking for an order that during the pendency of this action -- because we're not at motion to dismiss; we're not at ultimate issue; we're at

pendency of action right now --

that the Commissioner is enjoined from enforcing 46.2-395 of the Virginia Code against the plaintiffs, and the putative class, unless and until defendant or another entity determines through a hearing, with adequate notice thereof, that the failure to pay was willful, not excusable because of inability to pay. We think that you should stop this practice of just automatically suspending without asking people: Can you pay?

The Commissioner also should remove the current suspension of the five plaintiffs, because you have the evidence in their declaration to show that they've got irreparable and immediate harm and that their constitutional rights have been deprived. So we would ask to remove the suspension for them.

And then we ask that the Commissioner's enjoined from charging the fee to reinstate them.

That's the three things we're asking. But why? Why are we asking that?

It's not often that I get to come here and argue constitutional law. I spent a lot of time preparing for it. But to answer the question of why we're here: We're here because the Constitution of the United States of America guarantees that the Commonwealth of Virginia may not deprive any person of life, they may not deprive them of liberty or property, without due process of law. We learned it in elementary school up through high school and college. We're here. It is real. It is real because of Ms. Johnson and it is real because of the other people that are in this Commonwealth that are suffering.

We're here because the United States Supreme Court in *Bearden* tells you, and tells us, you cannot

punish a person because they lack the resources to pay a debt, like Ms. Johnson told you.

We're here because the United States Supreme Court in *Bell*, the Fourth Circuit in *Scott* and *Plummer*, told us that a driver's license is a property -- protected property right that can't be taken away without procedural due process. It can't be taken away without a form of a

pre-deprivation hearing, with notice and opportunity to be heard.

And the evidence in this case is uncontradicted that that doesn't happen. That doesn't happen before the default.

When Ms. Ciolfi said T1, that's not what we're talking about. We're talking about T2. T2, Time 2, when that default happens, nobody gets any notice. Ms. Johnson testified to it. No Court asks you: Can you pay? Can you not pay? That is just what is just diametrically wrong and diabolically wrong with this system.

We're here because the Supreme Court, in *Griffin* and *Williams* and *Tate* and *Meyer* and *Bearden*, this history of court cases, they made it clear you can't treat people who are unable to pay differently from people who are able to pay.

We're here because this is the modern-day debtors' prison. We've got close to a million people, or 700,000 prisoners, who are facing captivity in our system that requires a driver's license. You heard Mr. Peterson, you heard -- excuse me, Dr. Peterson, you heard Dr. Pearce, that, again, our system requires this driver's license to have specific jobs, to get to jobs, to take your kids, to go see them in a

sporting event. It is there as a protected property right. And we've got hundreds -- we've got thousands of people that, through this system, end up in jail; hundreds of thousands of days of jail time.

We're here because Justice Gregory told the Commonwealth in oral argument -- you can go back and you can listen to it -- the Commissioner is doing it. He's carrying out the will of the state. It's a question of whether or not it's constitutional in terms of economic justice.

Almost nearly a million Virginians, many of whom because of their poverty can't drive, poverty alone. And there's no differentiation between someone who is recalcitrant, refusal to pay, versus the inability to pay, because our system doesn't ask that question.

We're here because the Tennessee federal judge, less than a month ago, and earlier in June, took the exact same arguments that I expect you're going to hear from the Commonwealth -- and you saw it in their briefs -- and she rejected every single one of them. It's on appeal to the Sixth Circuit, granted, but she rejected them because they are constitutional principles that do not support the argument to defend this system based on the *Rooker-Feldman* or the abstention doctrine or immunity. There's constitutional violations going on.

A separate Michigan judge, separate from the Tennessee judge, looked at those statutes that are similar to ours and entered injunctions stopping the state from continuing the practice.

We're here because our named plaintiffs, Ms. Johnson included, and 700 of our fellow citizens, are being harmed immediately and irreparably by 46.2-

395 in an unconstitutional and an un-American way. We're here to ask you to stop that practice. Stop the practice to allow people who are unable to pay to have the license to take care of their kids. Let them drive to a job. Let them go to a medical appointment. Let them take their kids to a medical appointment. Let them have the opportunity to lift themselves up so that they can pay the fine, so that Virginia can get the money.

We're here to ask you to take the action based on your statement. With all due respect, Judge, you put it in your opinion in the last pages. You said on your statement on Virginia Code 46.2-395, "Automatic suspension of a driver's license for nonpayment of court fees and fines, regardless of inability to pay, may very well violate plaintiffs' rights to due process and equal protection."

That goes to the very first prong, the elements for the motion for a protective order -- for preliminary injunction. Excuse me. Are we likely to prevail on plaintiffs' claims? We don't have to prove all of them. We don't have to prove them today. We have to show that we're likely to be successful on the merits.

And you even said it yourself. Taking aside the jurisdictional question that, according to you and according to the Tennessee judge, according to Justice Gregory, according to Michigan, we are likely to prevail on the legal side, the legal discussion on these constitutional deprivations, on the fact that there's a fundamental fairness, a due process, that's been violated; that there's a procedural due process leg to the deprivation claim, substantive due process of taking away a property right, equal protection of treating people different because they're unable to pay versus unwilling to pay; equal protection because

it treats debtors in the Commonwealth differently from those with civil debts.

We are likely to succeed, I think, on all of it, but we are certainly likely to succeed on one of them; and that's the criteria that we're here today on.

Look at the physical evidence that we brought before you, the physical evidence. Again, Ms. Johnson testified in terms of wanting to be able to do this; the inability to pay, what it does to her; the likelihood that she should be able to succeed on the merits because she was not given the opportunity at the default time, not later, not earlier, but at the time of default, to be asked -- and Ms. Ciolfi asked her: Were you asked could you pay? How could you pay?

Could you do community service? Those things, nobody asked her, because it doesn't exist in our system. It doesn't exist at that time, the time before default.

You heard Dr. Peterson testify, $1,200 to get out of jail, no rational person would not pay that money unless they were unable to pay. That's the uncontroverted evidence from a Harvard Ph.D. economist that came here from Arlington, Massachusetts, outside of Boston. That's his testimony.

You heard Dr. Pearce that, again, basic needs, the inability to pay for basic needs, if you put one more dollar on the payment plan, that person is going to not -- these people can't even afford their basic needs, but you're going to add to it.

Again, the inability to pay is fundamental to these constitutional rights. If you're just going to set up that system that automatically does it, it's just not there.

You heard irreparable harm. You heard it from Ms. Johnson. You heard it from Dr. Pearce. You heard it from Dr. Peterson. Those caught up in this vicious cycle, they continue to suffer immediate and irreparable harm.

And I don't know how the Commonwealth can come up and say that those people aren't being harmed on a daily basis, in a society that we should not do that. We should be giving people an opportunity to lift themselves up. We shouldn't be forcing them down.

That may sound like a political speech, but that's a constitutional fundamental fairness if it's based on inability to pay versus ability to pay.

We're not saying get rid of the system for people that can pay. If somebody -- if you have this injunction that's in place, it's not getting rid of any of the things that the state has the ability to do. Let them ask the person: Can you pay? Test it. Can you pay? Because I'm going to pay if I have the money. I'm not going – as Dr. Peterson says, I'm not going to put myself in jeopardy of going to jail. I'm not going to put myself in jeopardy of going to court.

If you have that pre-deprivation hearing, the constitutional rights will be acknowledged. The equities are clearly in favor. The Commissioner has no hardship enforced upon him by following this constitutional standard. If you are following the Constitution, again, by asking this question, are people unable to pay versus able to pay, again, that is not a hardship on a Commissioner when close to a million Virginians or, again, if it's the 700,000, have been stripped of their right because they're too poor.

The Attorney General, who they work for, said

in his interview we cannot have a justice system that determines fairness and freedom based on wealth and means.

That is the system we have with an automatic suspension of licenses.

And, again, Judge Moon, you said yourself in that opinion, it may very well violate plaintiffs' constitutional rights to due process and equal protection.

You should stop it today. Stop it today, until we find out the ultimate issue in this case of the violation of the plaintiffs' constitutional rights to due process and equal protection.

We put on all of this evidence. It's overwhelmingly in our favor to enter this injunction now so that it doesn't continue to happen to more Virginians, to put them in this vicious cycle that could ultimately end up in jail time. But even if it doesn't, it's keeping them from having a protected property right, keeping them from satisfying the basic needs that they need to support their families and to be a productive part of this society.

We ask you today to stop it today, and then we can go on, we can have whatever hearings we want, we can come in and we can deal with the constitutional issues, but this should stop today.

I pass it to Ms. Ciolfi and she can answer the three specific questions that came up with regard to the payment plan, redressability, and interpretation.

Thank you, Your Honor.

MS. CIOLFI: Your Honor, I really appreciate the time that the Court has given us to put on our case today, and I just want to address a few matters

that came up during the testimony.

You heard a lot about payment plans today. And as an initial matter, it is important to stress that the plaintiffs are not challenging the availability of payment plans, the availability of community service and debt forgiveness.

The availability, or lack thereof, of these alternatives does nothing to change the fact that when a payment is due and not received, the nonpayment is assumed by the Commonwealth to be willful for the purpose of license suspension.

And so putting aside the questions, serious questions, about whether plaintiffs -- or whether defendants in criminal traffic cases receive adequate notice of the availability of these alternatives, their hypothetical availability of payment plans or community service is no substitute for a pre-deprivation hearing or a determination of willfulness, which is required before the state can take action to punish nonpayment.

And, in fact, Ms. O'Shea's questioning of Dr. Pearce about an individualized determination of ability to pay only demonstrates the need for that kind of inquiry before the state takes action to penalize a person for nonpayment.

In rejecting a similar defense from the Tennessee Commissioner Judge Trauger in the Middle District of Tennessee says, "What the plaintiffs seek is not merely the opportunity to throw themselves upon the mercy of the Court in a proceeding in which indigence may be one factor of many for the Court to consider or disregard; they seek the right to a pre-deprivation hearing in which they are allowed to demonstrate their eligibility for an

exception based on indigence."

I also want to address the references to debt forgiveness, which came up during Ms. Johnson's testimony and also has been in the Commonwealth's briefs. Those references to Virginia Code 19.2-358(C) are misleading. The forgiveness of court debt is available only upon the issuance of a show cause by a Court or a prosecutor for failure to pay which may result in the defendant's confinement or the imposition of an additional fine.

So it's simply not the case that one of our plaintiffs could walk into court and ask for debt forgiveness. And it's only in the event of a successful defense to the show cause does the Court even have the option of considering debt forgiveness. And the show cause statute doesn't address license suspension at all.

There have been amendments to the code regarding payment plans, but those ultimately have nothing to do with the plaintiffs' challenge to the automatic suspension statute. They didn't amend the suspension statute. And the lack of a meaningful alternative can be inferred from the fact that the Commissioner continued to suspend licenses each month for failure to pay court costs and fines from February 2017, when first the Supreme Court ruled, and then later that year, in July, the statute which made those amendments to payment plans. The Commissioner continued to suspend licenses, tens of thousands of licenses each month, for failure to pay. And as of December 2017, ten months after the rule went into effect, there were still nearly a million licenses suspended.

I suspect the Commissioner is going to rely

heavily on the wording of the statute where it says "The Court shall forthwith suspend" and cleave to the Court's previous holding that every conviction involving the assessment of court debt immediately triggers a court-ordered suspension of the defendant's license that is a legal reality without involvement by the Commissioner.

But this interpretation simply fails to make sense of the text of that statute. It renders the statute inconsistent with related statutes, which clearly gives

30 days to pay in order to avoid license suspension, and conflicts with the interpretation of that statute, the authoritative interpretation of that statute, by two distinct Courts of Appeals, Virginia Courts of Appeals, in *Plummer* and *Carew*.

And, in fact, under the statute as interpreted by the Virginia courts and as alleged in the amended complaint, payment is due 30 days after sentencing, not immediately upon assessment. The suspension of the driver's license is triggered by the failure to pay within 30 days, not at the moment of conviction. And the suspension is not effective until it is implemented by the DMV and the debtor receives notice of that implementation.

It's just not plausible that everyone who is convicted of an offense is walking around with a latent license suspension hanging over their heads. That's not, in fact, what the Commonwealth said in 2017 when we were back here arguing the motion to dismiss, and it's not what two different Virginia Courts of Appeals have held.

And on what the Commonwealth said, quoting from the transcript of the motion to dismiss hearing

at page 15, Ms. O'Shea, in response to the Court's questioning, said, "I'm talking about at the time of your criminal conviction and the Court says, 'You owe us $500. Pay us $500. You have 30 days to pay under the statute.' There is no suspension at all until the 30 days has lapsed and you haven't paid, and that's when the suspension goes into effect."

Your Honor, *Plummer* and later in -- as recently as 2013, in *Carew*, the Virginia Court of Appeals has made it clear that it is the DMV, not the sentencing court, that suspends the driver's license, and that the suspension is not self-executing but occurs after the DMV executes the suspension.

That makes it different from the colloquy that Your Honor had with Ms. O'Shea earlier about licenses that are suspended for driving reasons, where the person has actually been tried and convicted of a driving offense and is standing right there in the court when the Court orders the suspension.

And then, finally, to address some of the standing issues, the plaintiffs, of course, contend that it's the DMV that actually suspended their licenses, but even if one relies on the statutory language to conclude it's the courts, the plaintiffs' injuries are nevertheless directly traceable to the Commissioner's conduct in implementing those suspensions, which cannot be accomplished legally, according to the Court of Appeals in *Plummer* and *Carew*, without action by the DMV, regardless of any upstream activity by the courts.

And in a case, an opinion issued just a couple of weeks after this Court rendered its decision in the motion to dismiss in 2017, in *Lamar versus Ebert*, the

Fourth Circuit made it absolutely clear that in challenging a statute's constitutionality, the fact that the defendant, quote, "is but one of several persons or entities in charge of implementing it is not controlling," unquote, so long as there's a causal connection. That's *Lamar versus Ebert*, which is cited in our briefs. It's 2017 WestLaw 1040450, at page 5.

The amended complaint at paragraphs 62 to 84 describe the Commissioner's role in enforcing the statute, that's corroborated by Ms. Ford here today, including the Commissioner's overall responsibility for the issuance and suspension of driver's licenses, the Commissioner's specific role in working with OES to develop and implement an automated system to enforce the statute, the Commissioner's maintenance of an database of individual driver profiles that are updated based on information received from the state, and the fact that, as you'll see from Exhibit 3 of the amended complaint, that the Commissioner issues automatic suspensions without confirming the existence of a Court order and, in many cases, when there is no evidence thereof.

The Commissioner further will not reinstate the plaintiffs' licenses until they satisfy their court debt entirely or obtain payment plans and then, should the plaintiffs ever become eligible to reinstate, the Commissioner would first have to be paid $145, at least, possibly more if they have multiple orders.

Turning to redressability, and then I'll wrap up: Redressability turns on whether an order from this Court would provide meaningful relief to the plaintiffs. And it would. If the plaintiffs are successful in proving that the suspension process is constitutionally flawed, this Court could declare

Virginia Code 46.2-395 unconstitutional, which would invalidate the suspensions flowing from it.

Moreover, the Court could order the Commissioner to remove the unconstitutional suspensions from DMV's database and enjoin the Commissioner from participating in future enforcement of the statute.

It's, again, the DMV that makes these suspensions meaningful because everyone, including law enforcement and the courts -- I don't think there's any disagreement about that -- relies solely on the information maintained by the DMV to document license suspensions.

Once those suspensions are removed from the database, the plaintiffs would not have to pay reinstatement fees, they would not be arrested for driving on suspended licenses, and they would be able to provide proof of a valid license to employers.

In other words, removal of these invalid suspensions from the database would free most of the plaintiffs from the terrible dilemma they now face: driving illegally and risking incarceration, or staying at home and failing to pay off their court debt or meet the needs of their families.

Importantly, none of these changes would affect the manner in which Virginia courts go about the business of assessing and collecting fines and costs. The Courts could still enter judgments imposing fees and costs; court clerks could continue to enter payment information into the system, which would continue to flag accounts in default.

The Court could also issue orders to show cause for failure to pay, make contempt findings, impose fines or jail time, garnish wages, impose liens

on personal property, and obtain hold-backs from the tax department from federal and state tax refunds. All of the remedies currently available to the courts to enforce judgments, assessing fees and costs, would remain available to them. The only thing that would not happen is that the DMV would no longer issue a driver's license suspension upon receiving notice of nonpayment.

And, finally, perhaps the best proof that the courts need not be part of any relief is that the Commissioner is currently working on a system where a debtor can walk into a DMV customer service center and pay all of their court debt, and DMV will reinstate their license without any court involvement. That is a system that is being worked on and reported on by the Commissioner. And you'll see that is attached to our -- the letter from Commissioner Holcomb to the General Assembly is attached to our amended complaint at Exhibit 4.

And the point is, if the Commissioner's customer service representatives can accept payment from the plaintiffs and remove their suspensions that were issued under the Virginia Code 46.2-395, and reinstate their licenses upon payment of the $145 fee, all without any action by the convicting courts, then certainly the Commissioner could comply with an order from this Court to remove the unconstitutional license suspensions.

Thank you.

THE COURT: Okay.

MS. O'SHEA: Good afternoon, Your Honor.

Mr. Blank stood up before the Court and he gave you a litany of reasons why he believes that we are here in the courtroom today. I would submit to

the Court that there is a question on the part of the DMV Commissioner as to why we are here in the courtroom today.

In the Court's detailed prior opinion, the Court let the plaintiffs know, with no uncertainty, that they had sued the wrong defendant. The DMV Commissioner does not suspend licenses for failure to pay fines and costs. They are seeking a remedy against a defendant who is not empowered to grant the relief that they seek. There are other forums.

There are policymaking forums and there are the courts.

THE COURT: If the Commissioner did not make available to the police the records, then that would go a long ways toward --

MS. O'SHEA: Well, not necessarily. I still don't think that that wouldn't erase the fact that the Court issued the suspension in the first place.

The analogy I would make would be to, like, a VCIN, or an NCIC report, the criminal records that are made available by computer to a police officer. VCIN, for example, is run through the state police, the Virginia state police. And so a police officer pulls over somebody or interacts with somebody, pulls up their VCIN, and sees what their criminal record is.

This Court could order, perhaps, the Department of the State Police to take a conviction off of that abstract so it would no longer be available to the officer who was looking to see what a person's prior convictions were. For example, maybe he's trying to see if they have prior petty larceny convictions to make a petty larceny third.

Taking a conviction off the transcript doesn't

make the conviction go away. It still exists. It's still on the Court order. It may not be available to as many people. The record of it might not be disseminated as freely to the public and other law enforcement agencies, but the conviction still exists.

THE COURT: Well, if the Court should rule that the process is unconstitutional and say that the Commissioner cannot do anything to enforce the law, I mean, the ruling would affect the courts, too.

MS. O'SHEA: Well, Your Honor, I think that relies on the faulty supposition that the Commissioner enforces the order. The Commissioner is the record-keeper for these suspensions; he puts it on the transcript, but he doesn't enforce them. He updates the information and puts it on the database, certainly, but he's not the enforcing entity. The courts are. The court clerks are, not the Commissioner.

The plaintiffs are asking this Court to judicially rewrite the statute, to give the Commissioner a role he does not have and the General Assembly has not seen fit to give him.

In this role specific to fines and costs, suspensions, he is a record-keeper and not an actor. They need to bring their suit against an actor.

THE COURT: What is the remedy of the debtor when the license is suspended and he sends the -- he gets the letter, I guess, from the court, some form comes from the court, saying your license has been suspended because you did not pay the fine and costs. Okay?

MS. O'SHEA: Yes.

THE COURT: What is his remedy then?

MS. O'SHEA: To go to the court that issued the suspension and talk to the Court, go in and talk to the judge in chambers, like you heard one of the witnesses talk about; enter into a payment plan; apply for a restricted license; do all of those things that are made available to you as a judgment debtor under Virginia law. But to go to the courts.

If you were to show up at DMV headquarters and say, hey, the Court suspended my license for nonpayment of fines and costs, there's nothing the DMV Commissioner can do for you.

THE COURT: But even if he paid the court costs, all he gets is a right to go to DMV to pay another $145 to get his license.

MS. O'SHEA: To get his license completely restored, yes, but not to undo the suspension. The suspension is undone upon the payment, and then it's marked as restored once you pay the reinstatement fee.

THE COURT: Right. But he can still be convicted in between the time he pays his court fees and the time that -- if he drives, in between the time he pays his court fees and pays the $145.

MS. O'SHEA: Not for driving on a suspended license.

It would be for driving without a license, which is different.

So it's different, Your Honor. The suspension is undone once you pay that to the court. You don't have an effective license, but you also don't have a suspended license, which implicates different principles.

THE COURT: But if you're poor, maybe you

can pay the court all your money, but then you can't -
- you don't have the $145 to pay the Commissioner.

MS. O'SHEA: But you're not suspended.

THE COURT: But you're still hurt, because if you pay the court all your money to get rid of the fines and costs, you still owe the $145, and you might not be able to pay it.

MS. O'SHEA: You do owe the $145 to the Department of Motor Vehicles to get an effective license.

THE COURT: There's no forgiveness there. I mean, right?

MS. O'SHEA: I don't believe so. That's the statute that was set up by the General Assembly. The Commissioner doesn't have any discretion there, either.

THE COURT: Well, I know, because the state can't just charge people money without some sort of process.

MS. O'SHEA: Well, but the state can condition the granting of a privilege upon the payment of money. That's what they do with going to get your driver's license in the first place. You don't get a driver's license for free.

There are other privileges that you don't get for free, either. The state can condition --

THE COURT: But the DMV then is getting the advantage of what the plaintiff says is an unconstitutional process.

MS. O'SHEA: What they say is an unconstitutional process.

THE COURT: Well, that will be determined.

MS. O'SHEA: Right.

THE COURT: But still, if it's an unconstitutional process that the state has imposed on the courts, that requires the courts to act in an unconstitutional way through the statute, then they're getting a second crack at it by requiring the Commissioner to collect $145 and send them $100 and the Commissioner takes -- keeps $45. Or I guess it goes in the general fund as a matter of accounting, but still, the Commissioner is getting the -- the Commissioner is enforcing the $145 extra charge.

MS. O'SHEA: Right. But the $145 is separate and apart from the suspension. It's not part and parcel.

THE COURT: It wouldn't be there except for the suspension having occurred.

MS. O'SHEA: I'm not a hundred percent certain that that's true. Like, if I allow my driver's license to lapse and I don't get it renewed, I don't know if there's --

THE COURT: That's not this situation, though. Your license is suspended because you didn't pay the fines and costs.

MS. O'SHEA: Right. What I'm saying is, I don't know if this $145 is only for people who seek reinstatement after suspension, or it's for anybody who seeks reinstatement after a license stops being effective.

THE COURT: Well, everybody -- you have to do something to owe the $145.

MS. O'SHEA: Correct.

THE COURT: But here, taking the plaintiffs' case, unconstitutionally the defendant, the debtor, is

put in a position where he owes the $145.

MS. O'SHEA: If -- but --

THE COURT: Or he loses a property right, which is his driver's license, or is not able to have it restored to him.

MS. O'SHEA: Correct. So the argument there, A, it presupposes that there was an unconstitutional deprivation in the first place, which the Commissioner contests; and B, I'm not aware of any case law that says that the Commonwealth can't --

THE COURT: Well, if it's not unconstitutional, there's no problem.

MS. O'SHEA: There's no problem.

THE COURT: So, I mean, just presuming for the -- assuming hypothetically that it's an unconstitutional process, either the courts did it all in -- I don't want to say "cahoots," but following the directions of the legislature, still there's a separate -- the debtor still has to pay this other $145, which comes about because of the unconstitutional process in the court.

MS. O'SHEA: Right, assuming that it's an unconstitutional process in the court.

THE COURT: Okay.

MS. O'SHEA: Right.

THE COURT: And Judge Gregory was quite impressed with that fact, as I recall.

MS. O'SHEA: Right, Judge Gregory and only Judge Gregory.

THE COURT: Well, you don't know. The others said they didn't -- they didn't say they

disagreed with Judge Gregory in that respect.

MS. O'SHEA: They elected not to reach the issue.

THE COURT: Right.

MS. O'SHEA: But I wanted to address, though, Your Honor, the two Court of Appeals cases that were brought up from the Virginia Court of Appeals.

THE COURT: Right.

MS. O'SHEA: The *Plummer* case was from 1991. And in 1991, the statutory suspension mechanism gave the Commissioner the authority to suspend for fines and costs.

The statute was amended in 1994. So the version of the statute that was being construed by the Court of Appeals in 1991 included the Commissioner as a suspending entity.

The General Assembly took that out in 1994. And so to the extent that *Plummer* at all stands for the rather tenuous proposition that DMV is the suspending entity, the General Assembly changed the statute. So *Plummer* can no longer be considered good authority for that particular proposition.

The other Virginia Court of Appeals opinion that was cited was *Carew v. Commonwealth* from 2013. That case dealt with an administrative DMV suspension, a suspension that is done by DMV. And the DMV will admit that they do. So you can't take *Carew* out of context and say, based on *Carew*, now the Virginia Court of Appeals thinks that DMV does all license suspensions. That is too big of a stretch.

So, Your Honor, the Commissioner maintains,

for all of the arguments that we raised initially and that we've raised now in this current iteration of the litigation, that he is immune from suit, that he's not the right person to have sued here.

And even setting aside that, *Rooker-Feldman* still applies, from the Commissioner's perspective, because they're still challenging an aspect of the initial Court order of conviction, and rather than doing that through the state courts, they've elected to bring it to the federal court system.

I mean, one of these plaintiffs, according to his allegations in the complaint, Mr. Stinnie, the lead named plaintiff, was just convicted for driving on a suspended license. For a defense, rather than appealing that up through the Virginia state court systems and raising his arguments anew, he didn't. He's here in federal court.

THE COURT: Well, if you don't pay the fine, then you go back to the Court and ask the Court to reduce, give you a different payment plan, and you disagree with what the Court did, what's the procedure for appealing that?

MS. O'SHEA: For appealing the Court not changing the fine? Well, I think that you have to --

THE COURT: For not giving you a payment plan that you can get along with.

MS. O'SHEA: I don't know that you can appeal the payment plan, but what you can appeal is your criminal sentence at the time it's given.

I mean, in Mr. Stinnie's case, a jury elected to find him --

THE COURT: Well, that seems to be the problem. The defendant may think he's able to pay

at the time, he's waiting for a payday loan on Saturday or he's going to -- you know, expecting a bonus or a gift over the weekend, and then that doesn't come through.

Can they -- you know, I guess you've got ten days. You used to have ten days to appeal. But anyway, after the appeal time has gone by, something might intervene and he's not able to pay. I don't see that that -- doesn't seem he has any appeal from that.

MS. O'SHEA: He could, under Virginia state law precedent, file a petition for modification.

THE COURT: Right.

MS. O'SHEA: And if the Court denied the petition for modification, then there is a denial of a request that would form the basis for a resulting appeal.

THE COURT: Good luck on getting a lawyer that would be cheaper than paying the fines and costs.

MS. O'SHEA: It could be, but that doesn't mean that remedy is not there.

THE COURT: Right.

MS. O'SHEA: If you've got a problem with the way the courts are structuring the payment plans, you need to raise that in the courts and give the Virginia state courts a chance to fix that.

You heard testimony from the two court clerks today that it's different across the Commonwealth. Different court clerks are going to offer different payment plans and they're going to administer them in different manners. And to the extent that there's a problem with the way in which the payment plans are offered and administered, that's an issue that

needs to be taken up with the courts and the court clerks.

The Commissioner doesn't even know how much money people owe in fines and costs. He has no idea if a payment plan has been offered or has been appropriately structured. That's not --

THE COURT: At this point, though, if the -- he knows what the process is, and if the process is unconstitutional on its face, then -- in particular, on its face, then he would not -- he couldn't enforce an unconstitutional process, or should not.

MS. O'SHEA: Well, he's not enforcing it.

But to the broader question, the statute is not unconstitutional on its face. In order to make a facial challenge to a statute, you have to show that the statute cannot be constitutional under any application.

And all the plaintiffs said in a footnote in their complaint that they were bringing a facial challenge to the statute. In argument today they seem to have conceded that there are circumstances under which the statute can operate constitutionally, meaning when someone who has the ability to pay and deliberately fails to do so has their license suspended. They haven't raised any sort of plausible argument that that scenario would violate the Constitution.

THE COURT: Well, why wouldn't even that person be entitled to notice and the right to be heard?

MS. O'SHEA: They get notice. They have notice.

In fact, Ms. Johnson testified today that she knew that if she didn't pay her fines and costs, her license was going to be suspended. Notice is --

THE COURT: Well, what's the right to be heard, then?

MS. O'SHEA: The right to be heard exists at the time of your criminal sentence. The right to be heard attaches --

THE COURT: Well, that's before you have the problem.

MS. O'SHEA: "Before you have the problem" meaning your inability to pay fines and costs?

THE COURT: Right.

MS. O'SHEA: There's an ability to be heard and a mechanism that the Virginia General Assembly has set up in the statutes that says that you can petition for modification, that says that you can go to the Court after the fact and say, hey, I can't afford this, I need a change.

The Virginia Supreme Court enacted in Rule 1:24, and that the General Assembly codified just last year, that you have the opportunity to be heard, and that opportunity is in the courts. The opportunity is not before the DMV Commissioner, who has no ability or authority to convene a pre-deprivation or post-deprivation ability-to-pay hearing with respect to fines and costs, that he doesn't even know how much they are. That's not his role. That's not his bailiwick. This is not an issue that he can redress.

I'm happy to talk more about the specifics of the equal protection analysis or the procedural due process analysis, if the Court wishes. I've spelled it all out in the briefs, Your Honor.

THE COURT: Yeah.

MS. O'SHEA: I did want to note with respect to the out-of-circuit precedents that have been cited

by the plaintiffs, the cases from Tennessee, the case from Michigan, the Tennessee cases have been stayed pending appeal. That case is notable in that the DMV -- the Tennessee statute for suspension for nonpayment of fines and costs, the person who suspends there is the Commissioner; and that's why they sued the Commissioner of the DMV, because that's what the Tennessee statute says.

It's the same in Michigan. In Michigan, the Secretary of State suspends for nonpayment of fines and costs. And so the Court in Michigan, in a suit brought against the Michigan Secretary of State, said, well, the Secretary of State needs to have some sort of ability-to-pay hearing.

So those cases are distinguishable from these circumstances both in that it deals with different statutes and in that the person who is responsible for the enforcement mechanism and the determination of the ability to pay was, in fact, before the Court. And that's not what we have here.

By contrast, I did want to point out that the Eleventh Circuit recently affirmed Florida's statute, very similar to Virginia's, against a due process challenge that was raised in that jurisdiction. And that Eleventh Circuit Court case is *Evans v. Rhodes*. We had cited to an earlier version of it, but now it was affirmed earlier this year.

And the cite for the Eleventh Circuit case is 735 Federal Appendix 986.

So the Eleventh Circuit, to my knowledge, is the first federal Court of Appeals to address this issue. They addressed it and they affirmed the judgment of the district court that upheld the Florida statute against a very analogous due process that

was brought by courts -- brought in courts in that jurisdiction.

Just briefly touching on the irreparable harm question, this Court should not presume irreparable harm, particularly not as to an entire class of individuals who are not before the Court.

For example, Ms. Johnson, who came up and testified today, said that she is being irreparably harmed because she might be able to get other jobs that might pay her more, but I would note that she has not applied for a restricted license, which is available to her under the terms of Virginia law. And I would also note she also testified that she has other miscellaneous expenses, like a $100 phone fee, that could easily be taken and applied to a court payment plan.

So I would hesitate to presume irreparable harm in this particular context. And I think that the Fourth Circuit has expressly said that you don't presume irreparable harm, even in a constitutional context, outside of cases involving the First Amendment and the Fourth Amendment right to privacy in your home.

So the bottom line on irreparable harm, they're basically just alleging economic injuries; and that, by its very definition, is not irreparable.

With respect to the public policy prong of the injunction analysis, I wanted to note that if this Court says, hey, Commonwealth of Virginia, Department of Motor Vehicles, whatever entity is bound by this particular Court order, you can no longer enforce Code Section 46.2-395, you can't do it, Virginia basically would be left with no enforcement mechanism as to its fines and costs.

Despite what the plaintiffs argue, the only other alternative that would be available would be a show cause, leading to incarceration. Incarceration is surely a much harsher measure. And I believe the United States Supreme Court has said that you can't incarcerate where someone refuses to pay fines -- or cannot pay fines and costs and is indigent, that you're implicating their liberty interest at that point.

THE COURT: Well, what's wrong with if the only person you would incarcerate would be that one that willfully was not paying?

MS. O'SHEA: Because the Commonwealth still needs to have an enforcement. You have a line there between people who are willfully not paying -- okay, fine, incarcerate those individuals -- and individuals who claim that they can't pay. But there's a bit of a question mark associated with that.

THE COURT: Back in my time in state court, I mean, there was sort of an assumption that if someone didn't pay their child support, if you put them in jail, probably by the end of the week the family -- somewhere the money would show up. It wouldn't necessarily be from the person in jail, but all the family would feel bad and get together and pay it.

But that's not proper, to put people in jail in the hope that somebody will come along.

MS. O'SHEA: Well, I agree. And that's why incarceration is a last-ditch effort. That's not what the courts want to resort to doing, if they can.

THE COURT: Well, but here you're taking their property.

MS. O'SHEA: Which is a lesser measure.

THE COURT: Well, I know it, but you're

taking their property when they cannot -- they cannot pay. They shouldn't be punished if they cannot pay.

MS. O'SHEA: I would argue it's not punishment, at least not in the constitutional context, when you take away someone's privilege to drive. That's not punishment. That is giving them --

THE COURT: Well, if you charge them an extra $145, I mean, that's --

MS. O'SHEA: I don't know that you can call that punishment, either, Your Honor, at least not within the constitutional context.

THE COURT: Well, if it's keeping you from having your car --

MS. O'SHEA: My point, Your Honor, is that there are fact-finders, there are juries, that impose these fines, and they impose them for a reason, and they become part and parcel of a criminal order of conviction. And the Commonwealth of Virginia has an interest in continuing to have some enforcement mechanism to go with those fines that have been assessed by the juries, by the voices of the people who live in the Commonwealth of Virginia.

The Court shouldn't strip them of what is one of their only ways of trying to incentivize people to comply with these Court orders, because otherwise, the only option that's going to be left to the Court is incarceration. And nobody wants that.

So I also wanted to note, Your Honor, that enjoining the Commissioner from updating DMV transcripts -- because that's basically what that would be. It would be saying, record-keeper, when you get a suspension notice from the court, don't put

it in your system. It's not going to stop the courts from issuing those orders. And the plaintiffs admitted as much. The injunction they're seeking, then, isn't tailored to the actual outcome they want. Not having updated DMV transcripts isn't going to change the fact that these licenses have been suspended for nonpayment of fines and costs. It's not going to stop the Commonwealth from being able to charge these individuals with driving on a suspended license. All it's going to change is the type of proof that is offered in those conviction proceedings.

Rather than being a DMV transcript, you're going to get certified Court orders. It's not going to change anything.

I would note, to the extent that the plaintiffs have asked this Court to order full restoration of the five plaintiffs' driver's licenses, two of the plaintiffs have their driver's licenses; they're not suspended right now.

Well, actually, one is not suspended and the other has a learner's permit. It's not clear that he ever even had a valid driver's license. And that would be Williest Bandy from Norfolk.

With respect to the other three, if the Court is entertaining this at all, then I would submit that there would be need to be some inclusion in the Court order for restoration only to the extent that they are otherwise eligible, because I don't know -- for example, they might have enough points on their license or other things outside the context of fines and costs that would also bar them from having a valid driver's license.

THE COURT: Well, the Court couldn't do anything but what's connected with this case. If they

can't drive for other reasons, that's --

MS. O'SHEA: I understand

THE COURT: -- that's not --

MS. O'SHEA: But to the extent that they've asked for a broad injunction, saying nobody should be suspended in the future for payment of fines and costs, period, like, starting now, moving on, DMV, if you get these orders, don't update the transcripts, I would submit that that's not narrowly tailored to the issues present in this particular dispute. That's saying under no circumstances, regardless of ability to pay versus, you know, just inability to pay, don't enforce the statute. And that's overbroad. It paints too far.

Ultimately, Your Honor, it's the plaintiffs' burden of showing entitlement to a preliminary injunction. And they're asking for extraordinarily equitable relief, and they need to show that they are likely to succeed on the merits and all of the other elements that go part and parcel with a preliminary injunction. They have not. They have not met their burden.

The injunction would be ineffective. It would not stop the suspension orders from coming. It would presumably bind or affect parties who are not before the Court to state their interests, like the court clerks, who are involved in all of this very intimately at the clerk's office.

Now, I will certainly concede from a personal perspective, if not from that of the Commissioner, that there may very well be more effective ways to handle this problem. I get that. I think the Court gets that. I think everybody sitting in this courtroom gets that. But the fact that there might be more

effective ways, from a policy perspective, of handling the issue of indigent individuals who cannot pay their fines and costs does not mean that they are entitled to the preliminary injunction they seek.

Their arguments should be for the General Assembly. Their economic experts should go to the General Assembly and talk to the General Assembly or, at the very least, bring these issues up through the state courts, who would be empowered to actually address this issue.

As before this Court, this federal court is not the appropriate forum. This defendant, the Commissioner of the DMV, is not the appropriate defendant.

This Court should -- in the exercise of its discretion, the Court should stay its hand, let the case develop, and deny the request for a preliminary injunction.

THE COURT: All right. Thank you.

MR. BLANK: We're way over time, Judge, so I'm going to be brief. I'm not going to address all the things, but I do want to address two specific points. It really ends where we started.

THE COURT: Let me ask you one thing.

MR. BLANK: Yes, sir.

THE COURT: Does the Court have to first decide not likely to prevail and that sort of thing? With regard to the jurisdictional issues, does the Court have to decide that the case -- jurisdictionally the case can proceed?

MS. CIOLFI: Judge, I don't think so, because that's not actually before you today. The preliminary injunction is before you. Their jurisdictional issues

are not.

THE COURT: Well, but if I don't have jurisdiction, I mean, that -- is there any law, I mean, what --

MR. BLANK: Your Honor, it may be the case where you order the injunction and then say, I want to then, you know, go to a jurisdictional hearing and deal with the jurisdictional issue. But I don't -- again, at this point in time, that issue is not before you.

THE COURT: Okay.

MR. BLANK: If we're going to deal with that, we can deal with it, but I don't think you have to deal with that up front. I agree with you jurisdiction is always the issue, but that's not what is at issue in this hearing.

THE COURT: Okay.

MR. BLANK: Again, if there's immediate need and irreparable harm, you can stop the practice; and then if they come back and raise this issue on jurisdiction, we can address it.

But, Judge, again, I want to deal with two quick issues. One is where we started -- sort of where we ended with Judge Gregory in the Commonwealth and where we started with Ms. Ciolfi today, and it's the "it's not me" argument. They want to say, it's not me; it's the clerks, it's the payment plan, it's the judges. That's just not -- that's not true and it's not required. And first I want to say what's not true.

There's not a shred of evidence before you that there are orders by the Court to suspend the licenses for failure to pay. There's not a shred of evidence. They didn't bring it. We had a circuit court clerk say

that it didn't happened. We had a district court clerk say there's no orders. We had Ms. Ford say she didn't see any orders. We had before you the auditor of public accounts say that the DMV suspends. We have four district court websites to say it's the DMV. And we have no Court orders.

And you -- again, Judge, back in the Court of Appeals, and we cited to it, *McBride versus Commonwealth of Virginia*, and it's time-honored, a Court speaks through its orders and those orders are presumed to be accurate.

There is no Court order, so this idea when she -- when my learned opposition stands up and says, it's not the DMV, it's the Court, the Court orders, Courts speak through orders, and there are no orders. And there's not a scintilla of evidence that there's orders here.

What we have is a DMV that is directly involved in the license suspension for failure to pay court debts and fines. You can say the court has something to do with it, as Ms. Ciolfi said; you can say the DMV has all of it; but you cannot say that the DMV is not involved in license suspension.

And I made the point on cross -- again, it may have seemed silly at the time, but I didn't think it was silly -- it doesn't happen without the DMV. And the computers don't talk to each other without the DMV. And the convictions don't get abstracted without the DMV. And the $145 doesn't get collected without the DMV. And the suspension doesn't happen without the DMV.

The DMV is involved. You can say how much, but you cannot refute that they are involved. And without a Court order, without any evidence of a

Court order, and with all the evidence that we put in from the public record that it is the DMV, again, that issue shouldn't even be on the table in terms of the order that you can enter.

And go back to the last two points. There's not a hint of due process, not a hint of it, with regard to that time of default. It's just not there. There's nobody asking the question of the ability to pay. It doesn't exist. The default happens. There's no due process. It's not fair.

It shouldn't be -- in America, it shouldn't be -- if it's not constitutional, this Court should stop that process. And our order that we request is narrowly tailored to that.

"During the pendency of the action, the Commissioner is enjoined from enforcing Section 46.2-395 against plaintiffs and future suspended class members unless and until defendant or another entity determines through a hearing, with adequate notice, that their failure to pay was willful."

That doesn't exist with what we've got right now. She says that they should do it at the time of conviction. There isn't even -- as you said, they could be waiting for the payday loan. It's 30 or 41 days down the path. That is not the time. The time is T2. And until we have a system that says that that inability to pay versus willfulness to pay, then you do not have a hint of due process. We are likely to prevail on its merits. And the other issues and the other elements, if you look at the totality of the evidence that we presented today, is overwhelmingly in the favor of the plaintiffs.

We ask you to enter this injunction. Stop this process now. It is unconstitutional.

Thank you, Your Honor.

THE COURT: All right. Thank you all. We'll recess court.

THE MARSHAL: All rise.

(Proceedings adjourned, 6:01 p.m.)

CERTIFICATE

I, JoRita B. Meyer, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ JoRita B. Meyer Date: 11/19/2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, *ET AL*, *Plaintiffs,* v. RICHARD D. HOLCOMB, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE VIRGINIA DEPARTMENT OF MOTOR VEHICLES, *Defendant.*	CASE NO. 3:16-CV-00044 MEMORANDUM OPINION JUDGE NORMAN K. MOON

The plaintiffs in this putative class action have sued the Commissioner of Virginia's Department of Motor Vehicles, challenging the constitutionality of Virginia Code § 46.2-395 ("§ 46.2-395"), which requires the automatic suspension of drivers' licenses for failure to pay state court fines and costs. Plaintiffs have moved for a preliminary injunction to: (1) enjoin the Commissioner from enforcing § 46.2-395; (2) remove current suspensions of Plaintiffs' driver's licenses imposed under § 46.2-395; and (3) enjoin the Commissioner from charging a fee to reinstate

Plaintiffs' licenses where there are no other current restrictions on their licenses. The parties briefed the motion, and the Court held an evidentiary hearing and oral argument. Based on the current record, the Court concludes that Plaintiffs are likely to succeed on the merits of their procedural due process claim because the Commissioner suspends licenses without an opportunity to be heard. The motion for a preliminary injunction will therefore be granted.

I. Background

This case was first filed with this Court in July 2016 and was dismissed without prejudice. (Dkt. 57). The Fourth Circuit dismissed Plaintiffs' appeal for lack of appellate jurisdiction. *Stinnie v. Holcomb*, 734 F.App'x 858, 869 (4th Cir. 2018). The Fourth Circuit explained that this Court's "grounds for dismissal [did] not clearly indicate that no amendment in the complaint could cure the defects in the plaintiff's case." *Id.* at 861 (internal quotations omitted). Accordingly, on remand, in September 2018, Plaintiffs[1] submitted an amended complaint, alleging that § 46.2-395 "as written and

[1] The plaintiffs named in the amended complaint are Damian Stinnie, Melissa Adams, Adrainne Johnson, Williest Bandy, and Brianna Morgan ("Plaintiffs"). They bring this action "for themselves individually and on behalf of all others similarly situated," seeking the certification of two classes: (1) a "Suspended Class" consisting of all persons whose drivers' licenses are currently suspended due to their failure to pay court debt pursuant to § 46.2-395 and (2) a "Future Suspended Class" consisting of all persons whose drivers' licenses will be suspended due to their failure to pay court debt pursuant to § 46.2-395. (Dkt. 84 ¶¶ 296–298).

as implemented by the [Virginia Department of Motor Vehicles ("DMV") Commissioner Richard D. Holcomb ("Commissioner")] . . . is unconstitutional on its face for failing to provide sufficient notice or hearing to any driver before license suspension." (Dkt. 84 ¶ 5). Plaintiffs also allege § 46.2-395 is "unconstitutional as applied to people who cannot afford to pay due to their modest financial circumstances." (*Id.*).

In their motion for preliminary injunction, Plaintiffs request that this Court: "(1) enjoin the Commissioner from enforcing Section 46.2-395 against Plaintiffs and the Future Suspended Class Members without notice and determination of ability to pay; (2) remove any current suspensions of [Plaintiffs'] driver's licenses imposed under Section 46.2-395; and (3) enjoin the Commissioner from charging a fee to reinstate the Plaintiffs' licenses if there are no other restrictions on their licenses." (Dkt. 90 at 2).

II. Findings of Fact

In assessing the appropriateness of this relief, the Court finds the following facts from the preliminary injunction record.

A.

1. Plaintiffs are Virginia residents whose licenses have been suspended due to failure to pay court fines and costs. (Dkt. 90 at 5).

2. Plaintiff Adrainne Johnson, a resident of Charlottesville, Virginia, is the mother of three children. (Dkt. 113 (Hr'g Tr.) at 15).

3. Johnson's license has been suspended "off and on since 2016," and is currently suspended for

nonpayment of court fines and costs. (*Id.*).

4. Due to her lack of a license, Johnson struggles to get to the grocery store or meet her daughter's medical needs, and cannot take her son to, or attend, any of his sporting events. (*Id.* at 17, 19).

5. Johnson's lack of a license has impacted her employment, causing her to lose a job, preventing her from being hired, and frustrating her opportunities for advancement. (*Id.* at 17– 19).

6. Johnson and her children currently share a single family home with another family, but with a better paying job, she would be able to improve her living situation. (*Id.* at 18).

7. Johnson's current income does not leave her with any money after necessary expenses each week. (*Id.* at 16).

8. At no time did any court inquire how much Johnson could afford to pay or inform her about the availability of alternatives to payments, and she has been unable to provide the requested amount. (*Id.* at 38–41).[2]

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[2] The convictions associated with Johnson's court fines and costs occurred before the codification of Supreme Court of Virginia Rule 1:24 and Va. Code § 19.2-354.1. Va. Code § 19.2-354.1 requires state courts to "give a defendant ordered to pay fines and costs written notice of the availability of deferred, modified deferred, and installment payment agreements." That code section also requires state courts to "offer any defendant who is unable to pay in full the fines and costs within 30 days of sentencing the opportunity to enter into a" payment agreement. Va. Code § 19.2-354.1(B). Rule 1:24 "is intended to ensure that all courts approve deferred and installment payment agreements consistent with §§ 19.2-354,

9. Plaintiffs Stinnie and Adams find themselves in similar circumstances. (*See* Dkt. 90-3 and 90-4).

10. Stinnie describes a "cycle of debt, license suspension, and more debt and incarceration for driving while suspended" that prevents him from improving his employment situation or meeting basic needs, such as medical treatment and housing. (Dkt. 90-3 at 2).

11. Adams's license is currently suspended because she cannot afford to pay court fines and costs. (Dkt. 90-4 at 1).

12. Adams's "rare and serious blood disorder" has prevented her from maintaining steady employment, and although she initially made payments on her court debt, she could not "keep [them] up and support [herself] and [her] son on [her] limited income." (*Id.*).

13. At no time before the suspension of their licenses were Stinnie or Adams asked about their financial circumstances or reasons for non-payment. (Dkt. 90-3 at 3; dkt. 90-4 at 2).

14. Plaintiffs Bandy and Morgan's licenses were suspended for several years and were recently reinstated, but both face imminent suspension because they cannot afford the payments required by their payment plans. (Dkt. 90-6 at 1; dkt. 90-7 at 1).

15. Bandy and Morgan are currently on installment plans established to pay state court fines and costs, but they face the decision of

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19.2-354.1."

providing necessities for their families, such as water and electricity, or paying monthly installments. (Dkt. 90-6 at 2; dkt. 90-7 at 4).

16. There was no inquiry into Bandy or Morgan's financial circumstances before or after their licenses were suspended. (Dkt. 90-6 at 1; dkt. 90-7 at 1–2).

B.

17. Loss of a driver's license adversely affects people's ability to gain and maintain employment, often leading to a reduction in income. (Hr'g Tr. at 112).

18. When suspension occurs pursuant to § 46.2-395, neither a judge nor a clerk enters an order suspending the license or notifies the debtor of a license suspension. (*Id*. at 45–47, 66).

19. Rather, DMV inputs suspensions based on electronic data automatically transmitted from state court computers to DMV. (*Id*. at 46, 146–7).

20. At sentencing hearings in Virginia state courts, the presiding judge assesses court fines and costs as well as their due date. (*Id*. at 45–46)

21. At (or within five days of) sentencing, a criminal defendant is provided with a notice indicating possible license suspension if he or she does not pay assessed costs by a designated date. (*Id*. at 45; 67; 73; § 46.2-395(C)).

22. After sentencing, the court's disposition, assessed costs, and the due date of any assessed costs are entered into the Circuit Case Management System ("CCMS") and the Financial Accounting

System ("FAS").[3] (Hr'g Tr. at 43–44, 46, 113).[4]

23. The date that costs become due may be years after the date of sentencing. (*Id*. at 46,

24. If a person fails to pay assessed costs within 40 days of the designated date, a fines and costs indicator is automatically, electronically transmitted to DMV.[5] (*Id*. at 46, 66).

25. This information is transmitted from CCMS to the Court Automated Information System, a "system-to-system" process between DMV and the Supreme Court Office of the Executive Secretary ("OES") that allows DMV to routinely receive data from state courts. (*Id*. at 52, 134).

26. Data goes from CCMS to the Court

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[3] FAS is an updated version of the Financial Management System ("FMS") that has been implemented in Virginia court systems over the last year and a half. (Hr'g Tr. at 44). For current purposes, the systems perform the same function: recording individuals' court debt. (*Id*. at 44–45). CCMS and FAS are integrated systems: when a clerk enters information in CCMS, the data relevant to an individual's financial account is transmitted to FAS. (*Id*.)

[4] There are two instances where a due date may be years after the underlying conviction. First, where a defendant is sentenced to imprisonment and/or placed on supervised probation the payment may be deferred until after the completion of the sentence. (Hr'g Tr. at 46). Additionally, where individuals establish payment plans with the state court, they are not in danger of default until they fail to make a payment, which can be years after the fines and costs were initially assessed. (*Id*. at 113 (establishing that Plaintiff Johnson made payments via a payment plan for years before her license was suspended)).

[5] This is true for all but two counties in Virginia, Alexandria and Fairfax, where courts send paper documents regarding nonpayment of fines and costs directly to DMV. (*Id*. at 139).

Automated Information System through OES without any action by the courts. (*Id.*).

27. At the time of default, neither the judge nor the clerk enters an order regarding a driver's license suspension for failure to pay fines and costs. (*Id.* at 45).

28. At the time of default, no notice is sent to the licensee regarding the pending license suspension. (*Id.* at 47, 70).

29. Through a computer-generated report, the state court clerk's office is able to review information sent to DMV, but the court does not contact defaulted individuals to inform them of license suspensions. (*Id.* at 54–55).

30. The computer-generated report is used only to ensure that payments or non-payments are appropriately recorded. (*Id.* at 56).

31. Upon receipt of information regarding non-payment of court fines and costs, DMV records a license suspension and sends a letter informing the defaulted individual that his or her license has been suspended for failure to pay court debt. (*Id.* at 46).

32. The driving transcript updated by DMV is made available to law enforcement, courts, and attorneys, and can be obtained by insurance companies, as well as individuals. (*Id.* at 138).

33. Without DMV's actions, an individual's driving record would not reflect a suspension. (*Id.* at 147).

34. State courts have the authority to create installment payment plans to aid individuals struggling to pay court fines and costs. (*Id.* at 112);

Va. Code § 19.2-354.1.

35. DMV can remove a license suspension based on failure to pay court fines and costs where a debtor provides a certified copy of a court-approved payment plan. (Hr'g Tr. at 57).

36. The court does not take any action to notify a debtor that he is missing payments, and once a payment is missed, the individual's information is transmitted to DMV through the process described above. *See supra* ¶¶ 25–32; (Hr'g Tr. at 58).

37. The process of establishing payment plans differs among Virginia courts, but in all jurisdictions, when a payment is missed, a debtor's data is automatically transmitted to DMV through OES and the Court Automated Information System. (Hr'g Tr. at 61).

38. When a license is suspended for nonpayment of fines and costs, it cannot be reinstated until the individual pays DMV's $145 reinstatement fee. (*Id*. at 140).

39. DMV has sole responsibility for the collection of the reinstatement fee. (*Id.*)

40. DMV retains $45 of the reinstatement fee, and the remaining $100 goes to the Trauma Center Fund. (*Id*. at 142).

41. Without DMV's actions, a license could not be suspended under § 46.2-395. (*Id*. at 147).

III. Commissioner's Jurisdictional Arguments

In response to Plaintiffs' motion for a preliminary injunction, the Commissioner argues

that this Court lacks jurisdiction for three reasons: (1) the *Rooker-Feldman* doctrine precludes this Court from exercising jurisdiction over the claims; (2) Plaintiffs lack Article III standing; and (3) the Commissioner is immune from suit under the Eleventh Amendment.

A. The *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine precludes federal district courts from exercising appellate jurisdiction over a state court's final judgment in a judicial proceeding. *See District of Columbia Courts of Appeals v. Feldman*, 460 U.S. 462, 481–82 (1983). The doctrine does not apply "if a plaintiff in federal court does not seek review of the state court judgment itself but instead presents an independent claim." *Thana v. Bd. of License Comm'rs for Charles Cty., Md.*, 827 F.3d 314, 320 (4th Cir. 2016) (internal quotations omitted). The evidence shows that Plaintiffs do not suffer the challenged injury due to a state court judgment. Rather, Plaintiffs contest the actions of a state executive officer—the Commissioner—in suspending their driver's licenses. Insofar as the state court acts at all, Plaintiffs do not challenge that action but bring an independent claim.

The "essence of a judicial proceeding" is the adjudication and rejection of a party's arguments. *Feldman*, 460 U.S. at 480–81. There is no judicial proceeding surrounding license suspension under § 46.2-395. The court's only action is the assessment of fines and costs associated with an underlying conviction. Forty days after payment of those costs is due, without notification to affected individuals and without entrance of a court order, data is

automatically, administratively, and electronically transmitted to DMV. *DMV*, in turn, enters a suspension on the debtor's driving record. The suspension is an administrative action, and "state administrative decisions, even those that are subject to judicial review by state courts, are beyond doubt subject to challenge in an independent federal action." *Thana*, 827 F.3d at 321.

Additionally, the *Rooker-Feldman* doctrine does not bar this Court's review of a facial challenge to the statute because Plaintiffs present an independent claim. "A state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). Accordingly, where an individual challenges the constitutionality of a statute, rather than the judgment enforcing the statute, they have brought an independent claim to which *Rooker-Feldman* does not apply. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 282 (2005). ("If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction.").

Plaintiffs do not contest their convictions or the fines and costs assessed by the state court, (Dkt. 90 at 1). Therefore, the outcome of this case will not affect those judgments. Plaintiffs challenge the constitutionality of a statute that, they claim, violates their rights to due process and equal protection under the law. (*Id.* at 1–2). There has been no state court ruling on the constitutionality of this statute, and therefore no state judgment that

would bar this Court's review of Plaintiffs' claims. *See also Stinnie,* 734 F.App'x at 870 (Gregory, C.J., dissenting) ("The absence of a reviewable state judgment, by definition, means *Rooker-Feldman* cannot apply, for it precludes only appellate review by district courts."). For these reasons, the *Rooker-Feldman* doctrine does not bar jurisdiction over Plaintiffs' claims.

B. Article III Standing

To satisfy Article III standing requirements, Plaintiffs must show that (1) they suffered an actual or threatened injury that is concrete, particularized, and not conjectural; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a favorable decision. *Doe v. Va. Dep't of St. Police*, 713 F.3d 745, 753 (4th Cir. 2013). The Commissioner argues that Plaintiffs fail to demonstrate traceability or redressability. (Dkt. 99 at 11). However, the evidence shows that the Commissioner is at least partially responsible for Plaintiffs' harms, and Plaintiffs' requested relief would eliminate most, if not all, of the harms caused by § 46.2-395.

i. Traceability

To establish that their injuries are "fairly traceable" to the Commissioner, Plaintiffs must show that the challenged action is "at least in part responsible for frustrating" their constitutional rights. *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 315 (4th Cir. 2013). Plaintiffs need not show that the Commissioner's actions "are the very last step in the chain of causation." *Judd*, 718 F.3d at 316. Rather, the Supreme Court has "recognized the concept of concurrent causation as useful in

evaluating whether the pleadings and proof demonstrate a sufficient connection between plaintiff's injury and the conduct of the defendant." *Id.*

Consistent with these principles, in *Doe*, the Fourth Circuit held that an injury was fairly traceable to a defendant who implemented an allegedly unconstitutional statute. 713 F.3d at 757–758. In that case, the plaintiff filed suit due to her inclusion on a Virginia sex offender registry, and the Court held that she had standing to bring her due process claim against the police superintendent whose only role was publishing the registry. *Id.* at 751. The superintendent was not responsible for the classification decisions affecting the plaintiff, but the Court reasoned that, where the injury was directly traceable to the defendant's implementation of the challenged statute, the plaintiff met the requirements of traceability and redressability. *Id.* at 757–58.

The facts here are similar to those in *Doe*. The Commissioner has no discretion as to whose license is suspended, but he records the suspension, and without that action, Plaintiffs' driving records would not reflect a suspension. (Hr'g Tr. at 146–47). Additionally, the Commissioner is solely responsible for the reinstatement of licenses and collection of the $145 reinstatement fee. (Hr'g Tr. at 140). For individuals who have little to no income, the reinstatement fee alone may deprive them of their ability to drive due to their inability to pay. Without the Commissioner's actions, not only would Plaintiffs be able to drive without fear of being cited, fined, or possibly incarcerated, but they would not

face the additional, and possibly insurmountable, burden of the reinstatement fee. Accordingly, Plaintiffs have established that their injury is fairly traceable to the actions of the Commissioner.

ii. Redressability

To establish redressability, Plaintiffs must show that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167 (2000). An injury is redressible where a favorable ruling would frustrate the implementation of a challenged statute or action. *See, e.g., Cooksey v. Futrell*, 721 F.3d 226, 238 (4th Cir. 2013) (finding the redressability requirement met where a decision favoring the plaintiff "would mean the [defendant] would be enjoined from enforcing" an alleged unconstitutional statute, "and/or [the statute] would be deemed unconstitutional."); *Metro Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 265 (1991) (finding redressability requirement satisfied where invalidation of a board's veto power would prevent the enactment of the allegedly harmful plan.).

Here, Plaintiffs seek to prevent the Commissioner from implementing § 46.2-395, which would restore (or preserve) their ability to drive without fear of punishment, affording them the ability to improve their financial, home, and health conditions. Specifically, Plaintiffs request that the Commissioner be ordered to reinstate their licenses without imposing a reinstatement fee and that he be enjoined from taking further action that results in the suspension of licenses through an allegedly

unconstitutional scheme. This would return Plaintiffs Stinnie, Adams, Johnson, and members of the putative Suspended Class to the position they would have been in but for the allegedly unconstitutional suspension—*i.e.*, their licenses would be returned without imposition of a burdensome fee. For Plaintiffs Bandy, Morgan, and the putative Future Suspended Class, who are facing imminent suspension under § 46.2-395, this would prevent an allegedly unconstitutional deprivation of their licenses.

Without the Commissioner's actions, it would be impossible to effectuate a license suspension. (Hr'g Tr. at 147). Accordingly, granting Plaintiffs' request would allow them to "find full redress," as their ability to drive "would be restored without fear of penalty." *Cooksey*, 721 F.3d at 238. For these reasons, the alleged injuries are redressible.

C. Eleventh Amendment Immunity

Generally, the Eleventh Amendment bars suits against states, state entities, and state officials. *Gray v. Lewis*, 51 F.3d 426, 431 (4th Cir. 1995). However, *Ex Parte Young* provides an exception, permitting suits challenging state officials who have some duty regarding enforcement of an allegedly unconstitutional act. 209 U.S. 123, 130–131 (1908). In such cases, citizens can bring suits against a state officer, in his official capacity, where he has a "special relation" to the challenged act. *Id.* at 201. To meet the "special relation" requirement, the challenged official must have "proximity to and responsibility for the challenged state action," ensuring "that a federal injunction will be effective with respect to the underlying claim."

South Carolina Wildlife Federation v. Limehouse, 549 F.3d 324, 332–33 (4th Cir. 2008). This test does not require that the challenged statute specify the official's role, but where there are express obligations, the officer's duty is made more clear. *Ex Parte Young*, 209 U.S. at 453. Ultimately, the "important and material fact" is that "the state officer, by virtue of his office, has some connection with the enforcement of the act." *Id*. Because the Commissioner has obligations under § 46.2-395, he has the special relationship required by *Ex Parte Young*, and Plaintiffs' action is not barred by the Eleventh Amendment.

The Commissioner not only has express duties under § 46.2-395, but the evidence presented emphasizes his key role in creating, administering, and enforcing license suspensions. First, the Commissioner is the designated recipient and record-keeper for notices of unpaid court costs. § 46.2-395(C). Receipt of this notice alone permits the Commissioner to effectuate a license suspension. Second, an individual's license will not be reinstated until the Commissioner is presented with evidence establishing that debt has been paid in full or a payment plan has been implemented. § 46.2-395(D). Finally, the Commissioner is responsible for collecting the $145 license reinstatement fee, which must be paid before a suspension is lifted. §46.2-395(C); (Hr'g Tr. at 140). Given these duties, the Commissioner clearly has the proximity and responsibility necessary to establish "some connection" with the challenged statute. *Ex Parte Young*, 209 U.S. at 453; *see*, *e.g.*, *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014) (holding that circuit court clerk bore the requisite connection to the

enforcement of state marriage laws because the plaintiffs could trace the denial of their rights to the defendant's role in enforcing the allegedly unconstitutional law); *cf. Hutto v. South Carolina Ret. Sys.*, 773 F.3d 536, 551 (4th Cir. 2014) (holding plaintiffs could not sue named state officials to enjoin collection of pension contributions because the officials "actually ha[d] no role" in the collection process). For these reasons, Plaintiffs' suit is not barred by the Eleventh Amendment.

IV. Preliminary Injunction Factors

With the threshold issues decided, the Court turns to the merits of the preliminary injunction. The four-part test from *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7 (2008) governs. *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 188 (4th Cir. 2013). To obtain a preliminary injunction, the moving party must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 550 U.S. at 20. The plaintiff "need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." *Di Biase v. SPX Corp.*, 872 F.3d 244, 230 (4th Cir. 2017).

V. Plaintiffs' Likelihood of Success on the Merits

Plaintiffs assert that the Commissioner carries out the suspension process under § 46.2- 395 "with no meaningful notice, without a hearing, and without consideration of the persons' inability to pay." (Dkt. 90 at 1). They argue that they, "and

hundreds of thousands of Virginians like them, lost their licenses for the simple reason that they could not afford the fines and costs imposed on them . . . offend[ing] the Fourteenth Amendment guarantees of due process and fundamental fairness, as well as equal protection under the law." (*Id.* at 1–2). Plaintiffs advance several theories as to how their claims will succeed, but all that is necessary for preliminary injunctive relief is establishing the likelihood of success on at least one of their claims. (Hr'g Tr. at 12); *see League of Women Voters of N.C. v. N.C.*, 769 F.3d 224 (4th Cir. 2014) (remanding with instructions to enter a preliminary injunction where plaintiffs were likely to succeed on at least one of their claims); *Forest City Daly Housing, Inc. v. Town of North Hempstead*, 175 F.3d 144, 151 (2d Cir. 1999) ("At the preliminary injunction stage, plaintiffs need to show a likelihood of success with respect to only one of [the three challenged] statutes."). The inquiry into likelihood of success requires Plaintiffs to "make a clear showing that they are likely to succeed . . . [but they] need not show a certainty of success." *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013). Because Plaintiffs have met this burden regarding their procedural due process claim, they have satisfied the first prong of *Winter*.

Plaintiffs assert that § 46.2-395 "is unconstitutional on its face for mandating automatic license suspension without notice or a hearing," and that "[t]his defect violates the procedural due process rights of every driver whose license is suspended under Section 46.2-395." (Dkt.

90 at 14).[6] The Fourteenth Amendment provides that no State can "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV § 1. For Plaintiffs' motion for preliminary injunction to succeed based on their procedural due process claim, they must demonstrate that, at trial, they are likely to show (1) they have been deprived of life, liberty or property, and (2) that such deprivation occurred without the due process of law. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

A "driver's license is a property interest protected by the Fourteenth Amendment and, once issued, a driver's license may not be taken away without affording a licensee procedural due process." *Scott v. Williams*, 924 F.2d 56, 58 (4th Cir. 1991); *Plumer v. Maryland*, 915 F.2d 927, 931 (4th Cir. 1990) ("It is well settled that a driver's license is a property interest that may not be suspended or revoked without due process."). Accordingly, the

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[6] The Court notes that "if the arguments and evidence show that a statutory provision is unconstitutional on its face, an injunction prohibiting its enforcement is 'proper.'" *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292, 2306 (2016) (quoting *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 333 (2010)). In *Whole Woman's Health*, the Supreme Court found the district court's award of facial relief appropriate where petitioners asked for as-applied relief, and "such other and further relief as the Court may deem just, proper, and equitable." *Id.* (internal quotations omitted). In this case, Plaintiffs ask this Court for as-applied relief and "further relief as this Court may deem necessary and/or appropriate in the interests of justice." (Dkt. 84 at 44). Accordingly, where Plaintiffs' "evidence and arguments convince[] the District Court that the provision [is] unconstitutional across the board," it is within this Court's power to enjoin the enforcement of § 46.2-395.

Court turns to whether § 46.2-395 provides due process.

"At bottom, procedural due process requires fair notice of impending state action and an opportunity to be heard." *Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014) (citing *Mathews*, 424 U.S. at 333). Notice and hearing are two distinct features of due process, and thus governed by different standards. *Id.* Notice is "'an elementary and fundamental requirement of due process,' and must be reasonably calculated to convey information concerning a deprivation." *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The hearing prong is governed by the three-step inquiry set forth in *Mathews*, which determines the adequacy of the opportunity to be heard. *Id.* (citing *Mathews*, 424 U.S. at 335). The Court will evaluate each of these elements in turn.

A. Notice

Notice must be provided in a manner that would be employed by one who was "desirous of actually informing" the affected party of the pending deprivation of property. *Mullane*, 339 U.S. at 657. A "mere gesture" will not suffice. *Id.* The "reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Id.* Ultimately, notice is meant to "apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* "Personal service has not in all circumstances been regarded as indispensable to the process due," and "[t]he

Supreme Court has routinely recognized that the use of mail satisfies the notice element of due process." *Mullane*, 339 U.S. at 314; *Snider Int'l Corp.*, 739 F.3d at 146. Furthermore, individual notice has not been found necessary where it is "established by published, generally available state statutes and case law." *City of West Covina v. Perkins*, 525 U.S. 234, 241 (1999) (holding individualized notice was not required where generally available statutes contained state-law remedies).

Here, § 46.2-395(C) provides that written notice regarding license suspension upon failure to pay court costs "shall be provided to the person at the time of trial or shall be mailed by first-class mail" to the person's current mailing address. While these forms of notice may comport with due process, *see Snider Int'l Corp.*, 739 F.3d at 148, the evidence presented reveals two substantive problems. First, license suspension is merely a possibility at the time notice is given. *See* Section I, ¶ 23. This is not necessarily a fatal flaw. For example, in *Snider Int'l Corp.*, a corporation and individual recipients of traffic citations challenged the use of first class mail to deliver notice of violations and associated penalties. 739 F.3d at 143. The citations carried a civil penalty of no greater than forty dollars, but non-payment and failure to contest liability *could* lead to the suspension of the vehicle's registration. *Id*. In the case at hand, license suspension may occur years after the state court's assessment of fines and costs, *see supra* Section I, ¶ 14, and no notice is sent to licensees at the time of default. *See supra* Section I, ¶ 23. In contrast, the notice at issue in *Snider Int'l Corp.* was provided no more than 30

days after a violation occurred. 739 F.3d at 143, n. 3. This temporal disconnect makes it at least questionable whether the means of notice employed here are more than a "mere gesture." *Mullane*, 339 U.S. at 315.

Second, for notice to be sufficient, it must not only provide interested parties with information regarding the pendency of the action, but also "afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314. For instance, in *Snider Int'l Corp.*, the Fourth Circuit found that a traffic citation sent by first-class mail provided adequate notice of a recipient's violation where the recipient could elect a trial in lieu of paying a penalty. 739 F.3d 140. Additionally, in *City of West Covina*, the Supreme Court held that notice was satisfied by the presence of a generally available statute where the owner of seized property could turn to those statutes "to learn about the remedial procedures available to him." 525 U.S. at 241. In contrast, § 46.2-395 does not give notice to licensees about opportunities to air objections regarding license suspension for failure to pay fines and costs, because no such process is available. *See infra* Section IV.B.

Again, "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action *and afford them an opportunity to present their objections*." *Mullane*, 339 U.S. at 314 (emphasis added). The evidence before the Court suggests that Plaintiffs may succeed on showing notice is deficient in this case. However, the Court need not reach a

definitive conclusion on this issue because Plaintiffs have made a clear showing that they are likely to establish that they are not provided an opportunity to be heard.

B. Hearing

Even if the notice provided here was more than a mere gesture, Plaintiffs are likely to show § 46.2-395 does not provide *any* hearing, much less one that satisfies due process. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333 (internal quotations omitted). A meaningful hearing serves the Due Process Clause's purpose of protecting persons "from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). In making determinations about the sufficiency of process, *Mathews* requires the consideration of three factors: (1) the private interest involved; (2) the risk of erroneous deprivation through the procedures used; and (3) the government's interest. *Id.* at 335. The Court determines that Plaintiffs are likely to succeed because the procedures in place are not sufficient to protect against the erroneous deprivation of the property interest involved. Indeed, § 46.2-395, on its face, provides no procedural hearing at all.

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In considering the private interest involved here, the Supreme Court has held "that when a State seeks to terminate an interest such as [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 v. Burson*, 402 U.S. 535, 542 (1971) (emphasis added). The Fourth Circuit requires that a licensee be given some sort of opportunity to contest the suspension. *Plumer*, 915 F.2d at 931. In *Plumer*, the Fourth Circuit held that a licensee must "be given a chance to rebut" any evidence against him. *Id.* In this case, the Commissioner enters a suspension based on a failure to pay court fines and costs in full or in part. (Hr'g Tr. at 147). At no time are Plaintiffs given any opportunity to be heard regarding their default, nor do they have the opportunity to present evidence that they are unable to satisfy court debt. This is not sufficient in light of the "degree of potential deprivation that may be created." *Mathews*, 424 U.S. at 341.

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The Commissioner argues that Plaintiffs are given three opportunities that prevent the "risk of an erroneous deprivation." *Mathews*, 424 U.S. at 333. First, at the time of sentencing or through a petition contesting the assessment of court costs; second, upon an appeal of defendant's criminal conviction; and finally, through "the statutory mechanism that allows the sentencing court to reduce or forgive" court debt. (Dkt. 99 at 15–16). These are not procedures that are tailored "'to the capacities and circumstances of those who are to be heard,'" nor do they ensure that licensees are "given a meaningful opportunity to present their case." *Id.* at 349 (quoting *Golberg v. Kelly*, 397 U.S. 245, 268–69 (1970)).

The first two instances present the same issues: (1) they address the underlying conviction

and assessment of costs, not the license suspension; and (2) they occur at a time well before the licensee is in default, a time when the licensee may, in good faith, believe he has the ability to pay. License suspension occurs 40 days after the assessed due date, which can be years after sentencing, *see supra* Section I, ¶ 14, but an appeal must occur within 10 days of a criminal conviction in a general district court, (Va. Code. § 16.1-132), and within 30 days of a conviction in a circuit court. (Va. Code § 8.01-675.3). Similarly, for those who have their licenses suspended for failure to make payments according to a payment plan, the time to appeal has long since passed. (*See* Hr'g Tr. at 113). At the time of appeal, as at the time of sentencing, license suspension is not a certainty, nor is the licensee aware of unforeseen circumstances that might make him unable to satisfy debt when it is due.

Finally, the statutory mechanism that allows a sentencing court to reduce or forgive court debt addresses the imposition of fines and costs, but does not provide Plaintiffs with an opportunity to be heard on the fact of license suspension. Va. Code § 19.2-354.1. Suspension will still occur if the licensee fails to pay the reduced amount prescribed by the court. Additionally, if the court forgives already-defaulted debt, the licensee would still have to provide the Commissioner with proof of satisfaction and pay DMV's $145 reinstatement fee. There is no evidence that DMV provides a process that allows for waiver of this fee due to inability to pay. Because none of these procedures allow Plaintiffs to be heard on their alleged default and later suspension, the procedures fail to present the necessary opportunity to contest the suspension. Accordingly, Plaintiffs are

likely to show the second *Mathews* factor weighs in their favor.[7]

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The final *Mathews* factor, the government's interest, also weighs in Plaintiffs' favor. The Commissioner argues that "the Commonwealth of Virginia has an interest in continuing to have some enforcement mechanism to go with those fines that have been assessed by the juries." (Hr'g Tr. at 185). There is no indication that a loss of license will incentivize individuals to pay court fines and costs where those individuals simply cannot afford to pay. In practice, the loss of a driver's license adversely affects people's ability to gain and maintain employment, often resulting in a reduction of income. (Hr'g Tr. at 106; 112). This deprives individuals of means to pay their court debt, hindering the fiscal interests of the government. Were procedural due process to be afforded, the Commissioner would be able to ascertain the effectiveness of his chosen enforcement mechanism, *i.e.*, license suspension, and thus establish a more reliable way to ensure the collection of court fines

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[7] Defendant argues that codification of Supreme Court of Virginia Rule 1:24, requiring courts to give written notice of the availability of deferred and installment payment plans helps to prevent erroneous deprivation. (Dkt. 99 at 5). This is not persuasive. While enrollment in a payment plan does suggest the consideration of financial hardship, an individual who fails to make the established payments will still have her license suspended pursuant to § 46.2-395. This may delay suspension, but it does not prevent, or allow a licensee to object to, a license suspension for failure to pay court fines and costs.

and costs.

"The essence of due process is the requirement that 'a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.'" *Mathews*, 424 U.S. at 348–49 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171–72 (1951) (Frankfurter, J., concurring)). Here, the private interest at stake plainly merits some pre-deprivation process, *Bell*, 402 U.S. at 542, and the evidence presented highlights the importance of a driver's license in Virginia specifically.[8] There are no mechanisms in place that allow individuals to be heard regarding their inability to pay court fines and costs, and the government's stated interest is not supported where license suspension causes a decrease in debtors' income. Accordingly, the Court concludes that § 46.2-395, on its face, does not provide a meaningful opportunity to be heard regarding license suspension. Therefore, Plaintiffs demonstrate a likelihood of success on their claim that § 46.2-395 violates procedural due process.[9]

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[8] Not only does Plaintiffs' testimony emphasize their need for a driver's license to meet non-economic needs, such as medical care for themselves and their families, (*see, e.g.,* Hr'g Tr. at 17–18; dkt. 90-4 at 2), but evidence also shows that the majority of Virginians rely on cars to travel to work, and that the lack of a license reduces job opportunities. (Hr'g Tr. at 129).

[9] The Court notes that Plaintiffs present a host of constitutional claims, but because it has found Plaintiffs are likely to succeed on the merits of their procedural due process claim, it need not reach those issues. *See Fowler v. Johnson*, No. 17-11441, 2017 WL 6379676 (E.D. Mich. 2017) (granting a preliminary injunction enjoining the Michigan DMV from enforcing an allegedly unconstitutional license suspension scheme based only on the likelihood of success on plaintiffs'

Other *Winter* Factors

The remaining factors governing a request for a preliminary injunction—irreparable harm, the balance of equities, and the public interest—weigh in favor of Plaintiffs. First, where Plaintiffs' constitutional rights are being violated, there is a presumption of irreparable harm. *Davis v. District of Columbia*, 158 F.3d 1342, 1343 (4th Cir. 1998) (citing *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987)). Irreparable harm is clearly demonstrated through the facts surrounding Plaintiff Stinnie. (Dkt. 90-3). Plaintiff Stinnie received a loan and paid the court debt underlying his initial license suspension. (*Id*. at 2). However, before receiving the loan that allowed him to pay his court fines and costs, he drove to essential medical appointments, resulting in a conviction for driving on a suspended license. (*Id*. at 2–3). He appealed his conviction, but lost, resulting in his current license suspension, despite the fact that he has paid the initial underlying court debt. (*Id*.). Money could not solve the injury Plaintiff Stinnie suffered, the suspension of his license made it impracticable, if not impossible, for him to carry out necessary tasks, and payment of underlying court fines and costs did not alleviate his situation.

The other plaintiffs suffer similar harm. For example, Plaintiff Johnson testified that she is unable to take her daughter to necessary medical appointments, or attend her son's athletic events, causing stress for both her and her children. (Hr'g Tr. at 17). She further testified that, because of her suspended license she has lost a job and been denied

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due process claim).

another. (*Id.*). Similarly, without driving, Plaintiff Adams could not travel to and from work, her chemotherapy appointments, or her son's medical specialist. (Dkt. 90-4 at 2). Money alone would not alleviate Plaintiffs' harms or release Plaintiffs from the cycle of hardships caused by § 46.2-395. The only remedy for Plaintiffs' injury is the restoration of their licenses and the prevention of further suspensions under § 46.2-395.

As for the remaining factors, the balancing of the equities and public interest, Fourth Circuit precedent "counsels that 'a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.'" *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 191 (4th Cir. 2013) (citing *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)). The harm § 46.2-395 poses to Plaintiffs outweighs any harm the issuance of a preliminary injunction would cause others. While the Court recognizes the Commonwealth's interest in ensuring the collection of court fines and costs, these interests are not furthered by a license suspension scheme that neither considers an individual's ability to pay nor provides him with an opportunity to be heard on the matter. *See Fowler v. Johnson*, No. 17- 11441, 2017 WL 6379676, at *12 (E.D. Mich. Dec. 14, 2017) ("The State's and public's interests may in fact be served by an injunction, as restoring the driver's licenses of individuals unable to pay their traffic debt may enable them to obtain and retain employment, which will make them more likely to pay that debt.").

VI. Conclusion

For the reasons discussed, the Court finds it likely that Plaintiffs will succeed in establishing that § 46.2-395 violates procedural due process. The remaining factors relevant to the issuance of a preliminary injunction also weigh in favor of Plaintiffs. Accordingly, Plaintiffs' motion for preliminary injunction will be granted.

An appropriate order will issue, and the Clerk of the Court is hereby directed to send a certified copy of this memorandum opinion and the accompanying order to all counsel of record.

Entered this 21st day of December, 2018.

NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERKS OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED
12/21/2018
JULIA C. DUDLEY, CLERK
BY: /s/ J. JONES
DEPUTY CLERK

DAMIAN STINNIE, *ET AL*,
Plaintiffs,

v.

RICHARD D. HOLCOMB, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE VIRGINIA DEPARTMENT OF MOTOR VEHICLES,
Defendant.

CASE NO. 3:16-CV-00044

PRELIMINARY INJUNCTION

JUDGE NORMAN K. MOON

In accordance with the accompanying memorandum opinion, Plaintiffs' Motion for Preliminary Injunction, (dkt. 88), is **GRANTED**.[1] As

[1] At this time the Court has made no determination as to Plaintiffs' Motion to Certify Class. (Dkt. 85). Until the Court determines "that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole," Fed. R. Civ. P. 23(b)(2), this Order applies only to named Plaintiffs: Damian Stinnie, Melissa Adams, Adrainne Johnson,

used in this preliminary injunction, the term "Plaintiffs" means Damian Stinnie, Melissa Adams, Adrainne Johnson, Williest Bandy, and Brianna Morgan. Defendant, Richard D. Holcomb, the Commissioner of the Virginia Department of Motor Vehicles ("Commissioner") is hereby **ORDERED** as follows:

(1) The Commissioner is preliminarily enjoined from enforcing Virginia Code § 46.2- 395 against Plaintiffs unless or until the Commissioner or another entity provides a hearing regarding license suspension and provides adequate notice thereof;

(2) The Commissioner shall remove any current suspensions of the Plaintiffs' driver's licenses imposed under Va. Code § 46.2-395; and

(3) The Commissioner is enjoined from charging a fee to reinstate Plaintiffs' driver's licenses if there are no other restrictions on their licenses.

It is so **ORDERED**.

The Clerk of Court is hereby directed to send a certified copy of this Order to all counsel of record.

Entered this 21st day of December, 2018.

NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

Williest Bandy, and Brianna Morgan.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DAMIAN STINNIE, *et al.*,

Plaintiffs,

v. **Civil Action No. 3:16-cv-44**

RICHARD D. HOLCOMB,
in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES,

Defendant.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS CASE AS MOOT OR, IN THE ALTERNATIVE, FOR A STAY OF PROCEEDINGS

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INTRODUCTION

Standing below a Legal Aid banner and beside Defendant Commissioner Holcomb and Legal Aid's executive director (and counsel for Plaintiffs in this litigation), Governor Northam announced budget amendment #33, which provides, "notwithstanding the provisions of § 46.2-395 of the Code of Virginia, no court shall suspend any person's privilege to drive a motor vehicle for failure to pay any fines, court costs." Counsel for Plaintiffs "[t]he Legal Aid Justice Center said if the amendment is passed, then the [present] lawsuit would effectively be moot."[1] The amendment has passed and the case is now moot.

The General Assembly's budget amendment goes into effect July 1, 2019. As of that date, Plaintiffs face no existing harm and no probable expectation of a future harm. Therefore, this case is moot and should be dismissed.

In addition to mootness in the constitutional sense, this case is moot for prudential reasons: Plaintiffs can no longer justify their claims for equitable relief. Through the budget amendment, Plaintiffs have now obtained the relief they ultimately desire in this litigation: reinstatement of their driver's licenses and a prohibition on future suspensions for inability to pay. Equitable relief is not needed currently, and any suggestion that it ***might*** be needed in the future is too speculative to justify continued

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[1] Carly Kempler, *Gov. Northam Wants to End Driver's License Suspensions for Unpaid Fees*, NBC29 (Apr. 8, 2019), https://www.nbc29.com/story/40196512/gov-northam-to-stop-in- charlottesville-tuesday.

litigation.

At a minimum, proceedings in this case should be stayed until April 7, 2020 pending the outcome of Virginia's 2020 legislative session. A stay would prevent the Court and the parties from wasting considerable resources litigating the constitutionality of a statute that both parties to this litigation are committed to repeal and, at a minimum, is likely to be unenforced through the next two-year budget cycle. A stay would not prejudice Plaintiffs, who are protected by the budget amendment through June 2020. And a stay would prevent unnecessary adjudication of the difficult and sensitive constitutional issues at the center of this case.

Finally, the Commissioner respectfully requests that the Court decide this motion before ruling on the two other currently pending motions: Plaintiffs' motion for class certification and the Commissioner's motion to dismiss. Because a favorable ruling on this motion would render adjudication of those other motions unnecessary, deciding this motion first would promote judicial economy.

APPLICABLE FACTS

A. Virginia's Statutory Scheme.

This Court has exhaustively analyzed Code § 46.2-395 and related statutes in its prior memorandum opinion.[2] In sum, the relevant statutes provide:

- If a defendant fails to pay fines or costs

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[2] Mem. Op. (ECF No. 59) at 10–18.

assessed against him by a convicting court, "the court shall forthwith suspend the person's privilege to drive . . . ."[3]

- The "clerk of the court that convicted the person" must "provide or cause to be sent to the person written notice of the suspension" before advising the DMV of the suspension.[4]

- If payment is not paid in full within 30 days, or if the defendant does not enter into a payment plan, the previously-noticed suspension takes effect and a "record of the license suspension shall be sent to the Commission" of the DMV by the court.[5] Similarly, if a defendant cannot pay the fines and costs within 30 days of sentence, "the court shall order the defendant to pay such [fines and costs] which the defendant may be required to pay in deferred payments or installments."[6]

- A defendant whose license is suspended for failure to pay court-imposed fines and costs may petition the court to issue a restricted license,[7] to allow the defendant to discharge the debt through community service,[8] or to forgive the debt in its entirety.[9]

- Pursuant to Virginia Supreme Court Rule 1:24, courts "must" provide deferred, modified or installment payment plan options to "[a]ny

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[3] Va. Code § 46.2-395(B).
[4] *Id.* § 46.2-395(C).
[5] *Id.*
[6] Va. Code § 19.2-354(A); *see also* Va. Code § 19.2-354.1; Va. Sup. Ct. R. 1:24.
[7] Va. Code § 46.2-305(E).
[8] Va. Code § 19.2-354(C).
[9] *Id.* §19.2-358(C).

defendant who is unable to pay fines and costs . . . ."[10] Courts "shall give" written notice of payment alternatives, as well as the availability of a community service option.[11] In addition, "a court must take into account the defendant's financial resources in light of the defendant's financial obligations, including defendant's indigence," when determining the amount of time that a defendant should receive to pay fines and costs.[12]

- The trial court possesses the authority to reconsider and modify, upon its own motion or on the motion of a party, its order concerning the payment of fines and costs.[13]

As these statutes make clear, "the suspension is a legal reality that preexists any involvement whatsoever from the Commissioner."[14]

B. Governor Northam's Recent Budget Amendment.

On January 9, 2019, Senator William Stanley introduced SB 1013 to repeal Code § 46.2-395.[15] SB 1013 was met with "overwhelming

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[10] Va. Sup. Ct. R. 1:24(b).
[11] *Id.*
[12] Va. Sup. Ct. R. 1:24(d).
[13] *Ohree v. Commonwealth*, 494 S.E. 2d 484, 490 (Va. Ct. App. 1998) ("Therefore, a defendant who finds that his or her financial condition has prevented or will prevent him or her from complying with a deferral or installment plan ordered under Code § 19.2-354 may petition the trial court for a modification of its prior order embodying that plan.").
[14] Mem. Op. (ECF No. 59) at 13.
[15] Virginia's Legislative Information System, SB 1013, Full Text, http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+SB1013.

approval" in the Senate,[16] passing by a vote of 36 to 4.[17] The House was prevented from voting on SB 1013, however, when four members of a subcommittee voted to pass by the bill indefinitely.[18]

On March 26, 2019, after working closely with Legal Aid, Governor Ralph Northam announced a budget amendment "to eliminate driver's license suspensions for nonpayment of court fines and costs."[19] Governor Northam explained that it was "past time we end" the practice of suspending a person's driver's license for nonpayment of court fines and costs.[20] The amendment (#33) ends the practice by (1) reinstating any driver's license suspended solely for failure to pay court fines and costs under Code § 46.2-395, without any reinstatement fee, and (2)

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[16] Paul Collins, *Four Republicans who Comprise Henry/Patrick Legislative Delegation Explain their Successes (Tax Cuts) and their Frustrations (Executive Branch Turmoil)* (Mar. 11, 2019), https://www.martinsvillebulletin.com/news/local/four-republicans-who-comprise-henry-patrick- legislative-delegation-explain-their/article_1800dee5-e727-57ac-a0bb-e398003bd72e.html.

[17] Virginia's Legislative Information System, SB 1013, January 25, 2019 Senate Vote, http://lis.virginia.gov/cgi-bin/legp604.exe?191+vot+SV0181SB1013+SB1013.

[18] Virginia's Legislative Information System, SB 1013, February 11, 2019 House Subcommittee Recommendation, http://lis.virginia.gov/cgi-bin/legp604.exe?191+vot+H0801V0134+SB1013.

[19] Press Release, Governor Ralph Northam, *Governor Northam Announces Budget Amendment to Eliminate Driver's License Suspensions for Nonpayment of Court Fines and Costs* (Mar. 26, 2019), https://www.governor.virginia.gov/newsroom/all-releases/2019/march/headline-839710- en.html.

[20] *Id.*

prohibiting Virginia courts from suspending driver's licenses under Code § 46.2-395.[21]

On April 3, 2019, Governor Northam's budget amendment #33 passed in the Virginia legislature by wide margins: 70 to 29 in the House, and 30 to 8 in the Senate.[22] The amendment is effective through the second year of Virginia's two-year budget cycle: July 1, 2019 through June 30, 2020.[23]

A permanent repeal of Code § 46.2-395 is likely to be back on the legislative agenda in 2020. After the repeal bill died in the House subcommittee earlier this year, Senator Stanley promised that "for sure" he could "guarantee" he would reintroduce this legislation in the 2020

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[21] Virginia's Legislative Information System, HB 1700 at Am. 33, https://budget.lis.virginia.gov/amendment/2019/1/HB1700/Enrolled/GE/ ("In the second year, notwithstanding the provisions of § 46.2-395 of the Code of Virginia, no court shall suspend any person's privilege to drive a motor vehicle solely for failure to pay any fines, court costs, forfeitures, restitution, or penalties assessed against such person. The Commissioner of the Department of Motor Vehicles shall reinstate a person's privilege to drive a motor vehicle that was suspended prior to July 1, 2019, solely pursuant to § 46.2-395 of the Code of Virginia and shall waive all fees relating to reinstating such person's driving privileges."). Notably, the amendment recognizes that ***courts***, not the ***Commissioner***, actually suspends driver's licenses.

[22] Virginia's Legislative Information System, HB 1700, Summary, https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=HB1700 ("04/03/19 House: House concurred in Governor's recommendation #33 (70-Y 29-N)"); *id.* ("04/03/19 Senate: Senate concurred in Governor's recommendation #33 (30-Y 8-N)").

[23] *Id.*

legislative session.[24] Representatives of the Legal Aid Justice Center also indicated they would attempt to introduce such legislation next year.[25]

Plaintiffs' public statements reflect the profound impact the amendment has on this case. Following Governor Northam's announcement, Plaintiffs' attorneys told the press that the proposed amendment, if passed, would "render the lawsuit moot."[26]

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[24] *See* Paul Collins, *Four Republicans who Comprise Henry/Patrick Legislative Delegation Explain their Successes (Tax Cuts) and their Frustrations (Executive Branch Turmoil)* (Mar. 11, 2019), https://www.martinsvillebulletin.com/news/local/four-republicans-who-comprise-henry- patrick-legislative-delegation-explain-their/article_1800dee5-e727-57ac-a0bb-e398003bd72e.html.

[25] NBC29.com, *LAJC Continuing Fight to End Driver's License Suspension Due to Fees* (Feb. 13, 2019), https://www.nbc29.com/story/39959526/lajc-drivers-license-fee-fight-02-13-2019 ("If court proceedings don't go in favor of the Legal Aid Justice Center, they tell us they will push again for something to happen in the General Assembly Next Year."). The 2020 legislative session will run from January 8 to March 7. *See* Va. Const. Art. IV Sec. 6 (requiring each annual legislative session to begin the second Wednesday in January and end within 60 days on even- numbered years).

The Governor will have until April 6, at the latest, to endorse or veto any relevant legislation. The Virginia Constitution requires the Governor to sign, veto, or propose amendments to a bill within seven days after it is presented to him. Art. V Sec 6(b). If the bill is presented with less than 7 days remaining in the legislative session, however, the Governor has to act within 30 days from the adjournment of the legislative session. *Id.* Sec. 6(c). Thirty days from March 7 is April 6.

[26] Katherine Knott, *Northam Proposes End to Driver's License Suspensions Over Court Fees*, Daily Progress (Mar. 26, 2019), https://www.dailyprogress.com/news/local/northam- proposes-

C. This Lawsuit.

On July 6, 2016, four plaintiffs brought a putative class action against the Commissioner challenging the constitutionality of Code § 46.2-395. This Court dismissed the complaint,[27] and the plaintiffs appealed. The Fourth Circuit affirmed.

For reasons unknown to the Commissioner, three of the four original plaintiffs voluntarily dismissed their claims in this suit upon the filing of the Amended Complaint. In the Amended Complaint, five plaintiffs ("Plaintiffs") allege that Code § 46.2-395 is unconstitutional. Three of the plaintiffs allege that their licenses currently are suspended for failure to pay court debt;[28] two allege that they fear such a suspension in the future.[29] Among other things, Plaintiffs request (a) declaratory judgments stating that both Code § 46.2-395 and the Commissioner's actions are unconstitutional; and (b) injunctions ordering the Commissioner to remove any suspensions imposed under that provision without a reinstatement fee, and prohibiting the Commissioner from suspending

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end-to-driver-s-license-suspensions-over-court/article_e1ad41de-4ff2-11e9-91e7- 9bb242da381c.html ("[Director of the Legal Aid Justice Center Angela] Ciolfi said if the General Assembly passes Northam's amendment, then that would render the lawsuit moot."). *See also* Carly Kempler, *Gov. Northam Wants to End Driver's License Suspensions for Unpaid Fees*, NBC29 (Apr. 8, 2019), https://www.nbc29.com/story/40196512/gov-northam-to-stop-in- charlottesville-tuesday ("The Legal Aid Justice Center said if the amendment is passed, then the lawsuit would effectively be moot.").

[27] Order (ECF No. 57); Corrected Mem. Op. (ECF No. 59).

[28] Am. Compl. (ECF 84) ¶¶ 96, 140, 177.

[29] *Id.* ¶¶ 253, 257.

licenses under that provision in the future.[30]

Besides this present motion, two others currently are pending before the Court: Plaintiffs' motion for class certification and the Commissioner's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Under the current case schedule, discovery

closes May 16, 2019.[31] Dispositive motions must be filed by June 3, 2019 and trial is scheduled to begin August 5, 2019.[32]

ARGUMENT AND AUTHORITIES

A. This Lawsuit is Moot.

As plaintiffs publicly conceded,[33] Governor Northam's budget amendment has mooted this case. Federal courts are constitutionally prohibited from adjudicating cases that become moot during the course of litigation. That is because "[t]o qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed."[34]

Where, as here, the lawsuit concerns the constitutionality of a statute, the Fourth Circuit has held that the amendment or repeal of that statute can moot the case.[35] This is true "even where re-enactment of the statute at issue is within

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[30] *Id.* p. 45.
[31] Joint Consent Order (ECF No. 123).
[32] *Id.*
[33] *See* n. 26, *supra*.
[34] *Brooks v. Vassar*, 462 F.3d 341, 348 (4th Cir. 2006) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks omitted)).
[35] *Id.*

the power of the legislature."[36] That is because, under Fourth Circuit precedent, "[o]nly if reenactment is not merely possible but ***appears probable*** " is the case not mooted.[37] Where the evidence does not suggest probable reenactment, the Fourth Circuit has consistently held that the underlying case is moot.[38]

Plaintiffs' counsel expressed that their "greatest wish" is two-fold—"for this practice [of license suspension] to end and for the one million people to get their licenses back."[39] That is "all [they] are really asking for in the lawsuit."[40]

Consistent with this "greatest wish," and the relief sought in the Amended Complaint, Plaintiffs seek an injunction ordering the Commissioner to reinstate driver's licenses without any reinstatement fee,[41] and an injunction prohibiting the Commissioner from issuing or processing future orders of driver's license suspension for unpaid court debt.[42] ***Governor Northam's budget***

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[36] *Id.* (quoting *Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601, 606 (4th Cir.2001)).
[37] *Id.* (internal quotation marks and citation omitted) (emphasis added).

[38] *See, e.g., Central Radio Co. Inc. v. City of Norfolk, Va.*, 811 F.3d 625, 632 (4th Cir. 2016); *Brooks*, 462 F.3d at 348; *Am. Legion*, 239 F.3d at 606.
[39] Katherine Knott, *Northam Proposes End to Driver's License Suspensions Over Court Fees*, Daily Progress (Mar. 26, 2019), https://www.dailyprogress.com/news/local/northam-proposes-end-to-driver-s-license-suspensions-over-court/article_e1ad41de-4ff2-11e9-91e7- 9bb242da381c.html.
[40] *Id.*
[41] Am. Compl. (ECF 84) pp. 53–54.
[42] *Id.*

amendment provides both forms of relief. The DMV will reinstate the driver's licenses, without charge, of all those whose licenses are suspended pursuant to § 46.2-295, and Virginia courts will be prohibited from issuing future suspensions under that statute.

Moreover, given the overwhelming political hostility to Code § 46.2-395—as evidenced by the House and Senate votes on the budget amendment—resumed enforcement does not "appear ***probable***."[43] A proposal for permanent repeal passed in the Virginia Senate by a vote of 36 to 4, and the budget amendment passed by votes of 70 to 29 in the House and 30 to 8 in the Senate. Senator Stanley has committed to sponsoring another repeal bill in 2020.[44] At the very least, there is likely to be ample support for the continued suspension of enforcement through the 2020–2022 budget cycle. At best, resumed enforcement of Code § 46.2-395 is speculative; but, in any event, resumed enforcement is certainly not "probable." This case is moot, and should be dismissed.

B. Plaintiffs No Longer Qualify for Equitable Relief.

This case should be dismissed for a second, independent reason: plaintiffs can no longer prove entitlement to equitable relief. It is "well

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[43] *Brooks*, 462 F.3d at 348 (emphasis added).

[44] Given the overwhelming House support for the budget amendment, and given that all 100 seats in the House are up for election in 2019, there is a significant likelihood that one of the four obstructing votes in the House committee will change—either because a delegate bows to mounting political pressure or is not re-elected.

established" that courts possess "[t]he discretionary power to withhold injunctive and declaratory relief for prudential reasons, even in a case not constitutionally moot."[45]

It remains the plaintiff's burden throughout a case to show that "there exists some cognizable danger of recurrent violation, ***something more than the mere possibility*** which serves to keep the case alive."[46] For declaratory judgments, the plaintiff must "show that there is a substantial controversy, between parties having adverse legal interests, of ***sufficient immediacy and reality***."[47] Thus, regardless of whether a case is moot in the constitutional sense, it is the plaintiff's burden to "satisfy the court that relief is needed"—i.e., that relief would serve a useful purpose.[48] And that is not possible when the plaintiff has already obtained "the ultimate object of their action for injunctive and declaratory relief."[49]

The Fourth Circuit's decision in *Spangler* is

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[45] *S-1 v. Spangler*, 832 F.2d 294, 297 (4th Cir. 1987) (citing *United States v. W.T. Grant*, 345 U.S. 629 (1953)).

[46] *W. T. Grant*, 345 U.S. at 633 (1953) (emphasis added).

[47] *Catawba Riverkeeper Found. v. North Carolina Dept.*, 843 F.3d 583, 589 (4th Cir. 2016) (quoting *Preiser v. Newkirk,* 422 U.S. 395, 402 (1975)) (emphasis added).

[48] *W.T. Grant*, 345 U.S. at 633.

[49] *Spangler*, 832 F.2d at 297. A district court's discretion to deny equitable relief on prudential grounds is "necessarily broad and a strong showing of abuse must be made to reverse it." *Id*. In any appeal, Plaintiffs would have to demonstrate that there was "no reasonable basis" for this Court's decision. *Id.* at 634.

instructive. The plaintiffs there sued various state and local officials after a North Carolina school board claimed it lacked the authority to reimburse them for the costs of placing their handicapped children in private school.[50] Plaintiffs alleged that state regulations unlawfully prohibited the local board from providing this relief.[51] They sought reimbursement of these costs, or, in the alternative, equitable relief—a declaratory judgment stating that the state's regulations were unlawful and an injunction requiring the local board to hold a hearing on the plaintiffs' reimbursement claims.[52] In the midst of litigation, plaintiffs received tuition reimbursements but not the equitable relief they requested.[53] The Fourth Circuit held that, "for prudential reasons," these claims for equitable relief were no longer justified.[54] It did not decide whether the claims were moot, but held there was "no present need" for equitable relief because the plaintiffs had already obtained "the ultimate object of their action for injunctive and declaratory relief."[55]

Similarly, in *Lyons*, the Supreme Court found that although a case was not "moot," changed circumstances precluded equitable relief.[56] There, the defendant police department imposed a temporary moratorium on allegedly

[50] *S-1 v. Spangler*, 832 F.2d 294, 295 (4th Cir. 1987).
[51] *Id.* at 296.
[52] *Id.* at 296.
[53] *Id.*
[54] *Id.* at 297.
[55] *Id.*
[56] *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983).

unconstitutional restraint holds.[57] The Court explained that the moratorium did not "moot" the action because it could be lifted at "any time."[58] But it did prevent the plaintiff from obtaining equitable relief.[59] The Court reasoned that the plaintiff's fear of future injury—that the moratorium would be lifted and that he would be again subjected to this restraint hold—was simply too speculative to warrant equitable relief.[60]

Here, as in *Spangler* and *Lyons*, Plaintiffs can no longer justify a need for equitable relief. As in *Spangler*, Plaintiffs here already have obtained "the ultimate object of their action"—reinstatement of their driver's licenses and a prohibition on future suspensions based on their inability to pay. As in *Spangler*, Plaintiffs' request for a declaratory judgment and a hearing was only a stepping stone to an ultimate goal that they have now achieved. Because Plaintiffs already have what they ultimately wanted, equitable relief is no longer needed or justified.

Additionally, as in *Lyons*, any claim that equitable relief is still needed to protect Plaintiffs from future harm is too speculative to justify such relief. As explained above, resumed enforcement of Code § 46.2-395 is unlikely—that alone renders any

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[57] *Id.* at 100.
[58] *Id.* Here, the suspended enforcement of Code § 46.2-395 cannot be lifted at "any time"—it will continue at least through July 2020.
[59] *Id.* at 109 ("[T]he issue here is not whether [the plaintiff's] claim has become moot but whether [the plaintiff] meets the preconditions for asserting an injunctive claim in a federal forum.")
[60] *Id.*

future harm overly speculative. But even in the unlikely event that enforcement resumes, Plaintiffs can only speculate that in July 2020 they will still owe court costs they are unable to pay.

C. In the Alternative, this Court Should Stay the Case Pending the Next General Assembly Session.

If this Court opts against dismissing this case in its entirety, it should, at a minimum, exercise its discretionary authority to stay proceedings pending the outcome of Virginia's next legislative session. A stay would prevent the Court and the parties from wasting resources litigating the constitutionality of a statute that is not currently in effect and appears likely to be repealed in the coming months. There is no downside to this approach—Plaintiffs' and putative class members' driver's licenses would be protected throughout by Governor Northam's budget amendment.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."[61] Accordingly, the decision to grant a stay is "generally left to the sound discretion of district courts."[62] When determining how to exercise this discretion, district courts must "balance the various factors relevant to the expeditious and comprehensive disposition of the

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[61] *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

[62] *Ryan v. Gonzales*, 568 U.S. 57, 74 (2013) (internal quotation marks and citations omitted).

causes of action on the court's docket."[63] District courts in the Fourth Circuit "have identified these various factors to include the interests of judicial economy, the hardship and inequity to the moving party in the absence of a stay, and the potential prejudice to the non- moving party in the event of a stay."[64] "The party seeking a stay must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative."[65]

Judicial Economy

A stay here would serve the interest of judicial economy. There is a significant likelihood that Code § 46.2-395 will be repealed in the coming legislative session—or, at the very least, that enforcement will be suspended again through the next two-year budget cycle. If this were to occur, any resources expended by this Court adjudicating the constitutionality of this statute—in addition to addressing potential discovery disputes[66]—would be wasted.

Additionally, a stay would avoid wasting further resources adjudicating class certification, since by July 2020 Plaintiffs may no longer adequately represent the interests of the classes. By July 2020, some or all of the Plaintiffs may well

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[63] *Maryland*, 729 F.3d at 375.

[64] *Yadkin Riverkeeper, Inc. v. Duke Energy Carolinas, LLC*, 141 F. Supp. 3d 428, 452 (M.D.N.C. 2015). *See also Henry v. N. C. Acupuncture Licensing Bd.*, 1:15CV831, 2017 WL 401234, at *8 (M.D.N.C. Jan. 30, 2017) (collecting cases).

[65] *Williford v. Armstrong World Industries, Inc.*, 715 F.2d 124, 127 (4th Cir. 1983).

[66] Plaintiffs recently asked the Commissioner for a meet and confer regarding discovery issues.

have paid their court debt. Plaintiffs admit that their financial circumstances are constantly in flux, and that they are sometimes able to pay their debts and sometimes not.[67] When Plaintiffs amended their complaint only two years into this lawsuit, three of the four original plaintiffs voluntarily withdrew their claims.[68] Over the next 14 months, some or all of the current Plaintiffs may pay their debts and decide to do the same. Or Plaintiffs may satisfy their court debts by July 2020 through other means. For example, Plaintiff Williest Bandy testified that he expected one of his court debts to be forgiven once he completed 75 hours of community service, which he expects to do by May of 2019.[69] Courts also have the authority to forgive Plaintiffs' debt in its entirety.[70] Without court debt, Plaintiffs would have no reason to fear imminent suspension of their driver's licenses and would therefore make poor representatives for the proposed classes.

In addition, even if Plaintiffs retain their court debt in July 2020, their ***ability*** to pay that debt may have changed. Plaintiffs' financial

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[67] *See* Am. Compl. (ECF 84) ¶ 413 ("It is common for a person's financial circumstances to fluctuate throughout his or her lifetime."); Ex. A (W. Bandy Dep. Tr.) at 33–34 (testifying that he was not able to make monthly payments on his deferred payment plan in November 2018, but expected to make these payments a month later); Ex. B (A. Johnson Dep. Tr.) at 15 (testifying that she could pay her fines in 2012, but could not pay them by 2018 because her financial circumstances changed "dramatically").

[68] *Compare* Compl. (ECF 1) *and* Am. Compl. (ECF 84).

[69] *See* Ex. A (W. Bandy Dep. Tr. at 35–36); Decl. of W. Bandy (ECF No. 87-5) ¶ 11.

[70] *Id.* §19.2-358(C).

circumstances could change, as they often have, or courts could decrease payments under their deferred payment plans.[71] In either case, Plaintiffs would be ill-situated to represent the classes with respect to at least the as-applied challenges, which apply only to those who are unable to pay.

A stay would therefore serve the interests of judicial economy.

Hardship and Inequity to the Commissioner

A stay here would minimize hardship and inequity to the Commissioner and, ultimately, Virginia taxpayers. The Commissioner, and the office of the Virginia Attorney General, have expended considerable time, energy, and financial resources litigating the constitutionality of a statute that soon will not be enforced and is likely to be fully repealed. A stay would prevent wasting further resources on this matter.

Lack of Prejudice to Plaintiffs and Putative Class Members

Plaintiffs and putative class members will not be prejudiced by a stay. The named plaintiffs already are protected by the Court's preliminary injunction order and, starting July 1, 2019, putative class members will be protected by the Governor's

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[71] *See, e.g.*, Decl. of D. Stinnie (ECF No. 87-2) ¶ 25; Decl. of M. Adams (ECF No. 87-3) ¶ 7; Decl. of A. Johnson (ECF No. 87-4) ¶ 8; Decl. of W. Bandy (ECF No. 87-5) ¶¶ 11–12; *see also, e.g.*, ECF 128-3 (B. Morgan Dep. Tr.) at 29:24–30:2 (explaining that Ms. Morgan was only able to make two monthly payments on her payment plan); ECF 128-4 (A. Johnson Dep. Tr.) at 23:23–25:10, 27:5–29:7 (explaining that Ms. Johnson was given several payment plans).

Budget Amendment. Neither Plaintiffs nor these class members will be in danger of further suspension under Code § 46.2-395 until at least July 2020. Any fear of future suspensions is predicated on speculation about failures of the political process. Such concerns can be raised if and when that speculation becomes reality. Until then, a stay will not prejudice Plaintiffs or others who seek to benefit from this lawsuit.

* * *

If this Court is not inclined to dismiss this case, the Commissioner asks that it stay this action until April 7, 2020. By March 9, the legislature will have concluded its 2020 session, and will have had a chance to either repeal Code § 46.2-395 or, at a minimum, extend the stay of its enforcement through the 2020–2022 budget cycle.[72] By April 6, at the latest, the Governor will have had an opportunity to endorse for veto any such legislation.[73] The Commissioner also proposes that the parties submit a joint status report in January 2020 advising the Court of whether legislation has been proposed either repealing or continuing to stay the enforcement of Code § 46.2-395,[74] and another status report by March 10 advising the Court of whether any such legislation has passed the general assembly.

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[72] *See* n. 25, *supra*.

[73] *See id.*

[74] In 2019, the deadline for submission of all bills and joint resolutions was January 18. http://dls.virginia.gov/pubs_calendar.html at "2019 Session Calendar." The submission deadline for 2020 does not appear to have been set. http://dls.virginia.gov/pubs_calendar.html.

CONCLUSION

This case should be dismissed because it is moot both as a constitutional and a prudential matter. As Legal Aid told the press, once "the amendment is passed, then the lawsuit would effectively be moot." The amendment has passed and this case is now moot. At the very least, the Court should stay this matter until April 7, 2020 pending the outcome of Virginia's 2020 legislative session, through which Code § 46.2-395 will likely be repealed or enforcement of that provision further suspended. In any case, the Court should decide this motion before the other two that are currently pending, because a favorable ruling on the present motion would render adjudication of the others unnecessary.

April 23, 2019

Respectfully submitted,
RICHARD D. HOLCOMB

/s/ Maya M. Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April 2019, I electronically filed the foregoing Memorandum in Support of Motion to Dismiss Case as Moot or, in the Alternative, for a Stay of Proceedings with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF participants:

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COMMONWEALTH of VIRGINIA
Department of Motor Vehicles
2300 West Broad Street

Richard D. Holcomb
Commissioner

Post Office Box 27412
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January 10, 2020

The Honorable William M. Stanley. Jr., Senator
Pocahontas Building Room #E504
900 E. Main Street
Richmond, Virginia 23219

Dear Senator Stanley:

The Department of Motor Vehicles (DMV) has reviewed your SB 1 and would like to share some thoughts with you on the legislation. While the legislation covers most of the substantive pieces in repealing § 46.2-395, the Department would like to offer for your consideration an amendment in the form of a substitute that honors your legislation, but incorporates some minor clean-up necessary for the effective repeal of § 46.2-395.

First, the Non-resident Violators Compact (NRVC) will need to be repealed. The NRVC ensures that a non-resident receiving a traffic citation in a member jurisdiction fulfills the terms of that citation or faces the possibility of license suspension in the motorist's home state until the terms of the citation are met. Member jurisdictions are required to forward the suspension for failure to appear, pay, or comply to

the driver's home jurisdiction, provided the jurisdiction is a member of the NRVC. As a result, the home state will suspend the driving privilege of that person until it receives notice that the individual has complied with the terms of the traffic citation in the other member jurisdiction. Members to the Compact suspend a resident's driving privilege for failure to comply with the terms of a traffic citation in another member jurisdiction and another member jurisdiction will suspend their resident's driving privilege for failure to comply with the terms of a Virginia traffic citation. In almost all instances, the "failure to comply" is the failure to appear in court or the failure to pay court fines and costs. Thus, the Compact is essentially another mechanism by which Virginia can suspend an individual's driving privilege for a failure to pay fines and costs. As a result of the amendments to the 2019 Appropriation Act overriding the provisions of § 46.2-395, the Department no longer participates in the NRVC. The Department has taken appropriate steps to withdraw from the Compact and is no longer a signatory. If § 46.2-395 is permanently repealed in the 2020 session, the NRVC should be repealed as well.

Second, DMV will need an emergency enactment clause requiring that provisions of the legislation go into effect upon signing by the Governor. As you are aware DMV is currently a party to the *Stinnie v. Holcomb* case, in which the issue under consideration is driver's license suspensions for failure to pay court fines and costs pursuant to § 46.2-395. On June 28, 2019, the Court stayed the litigation until after the close of

the 2020 General Assembly Session to allow the legislature to repeal § 46.2-395. An emergency enactment clause is needed to demonstrate to the Court that matters at issue in the *Stinnie v. Holcomb* litigation have been addressed by the General Assembly. This should result in the pending litigation being dismissed, relieving the Department from continuing to incur costly legal fees.

Third, § 46.2-361 deals with the restoration of a driver's license for failure to furnish proof of financial responsibility or to pay the uninsured motorist fee. The legislation strikes a cross reference to § 46.2-395 in subsection C, but does not strike other language prohibiting the restoration of licenses for habitual offenders until the individual has paid court fines and costs in subsections B and D. DMV sees the prohibition on restoration of a license for failure to pay court fines and costs to be the same as a suspension for failure to pay court fines and costs; therefore, such language should also be struck from the *Code.*

Fourth, § 46.2-203.1 creates a presumption that when an individual signs a summons issued to them by a police officer, they acknowledge that their failure to appear and failure to pay court fines and costs will result in a suspension of their license. If the legislation passes, Courts will no longer suspend licenses for failure to pay court fines and costs, and such presumption will no long be necessary. As such, this language should be struck from the *Code.*

Fifth, under § 46.2-383, Courts are required to send DMV the abstract of an individual's record upon failure or refusal to pay court fines and costs.

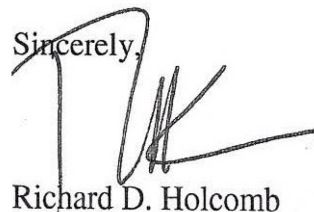
If the legislation passes, Courts will no longer suspend licenses for a failure to pay court fines and costs, so Courts will no longer need to send DMV those suspension abstracts. As such, this language should be struck from the *Code*.

Finally, the proposed legislation includes an enactment clause requiring the Department to reinstate all driver's licenses that were suspended prior to July 1, 2020 without requiring individuals to pay the reinstatement fee. As a result of the 2019 Appropriation, Act all licenses suspended for failure to pay court fines and costs were reinstated without requiring the individuals to pay a reinstatements fee. Additionally, the Appropriation Act language prohibited the future suspension of licenses for failure to pay. As such, no individual in the Commonwealth is suspended for failure to pay court fines and costs, and such language is unnecessary. As such, the enactment clause should be removed from the draft.

DMV would like to offer a substitute incorporating all of the changes addressed above for your consideration. Again, we appreciate your consideration of our proposed substitute language. Please note that the issues raised above are based only upon DMV's review of your legislation; to our knowledge, the administration has not yet reviewed or taken a position on your bill. If you would like to discuss any questions or concerns you may have over this matter, or if there is anything else that DMV can do to help you during this legislative session, please do not hesitate to contact me at 367-6606.

RDH: crf

Sincerely,



Richard D. Holcomb

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES,	Civ. No: 3:16-cv-00044

STIPULATION OF DISMISSAL

The parties state as follows for their agreed Stipulation of Dismissal:

1. On September 11, 2018, Plaintiffs filed their First Amended Class Action Complaint, alleging Virginia Code § 46.2-395 to be unconstitutional and seeking certain declaratory and injunctive relief, as well as attorneys' fees and costs pursuant to 42 U.S.C. § 1988. *See* Dkt. 84.

2. During its 2020 regular session, the Virginia General Assembly passed (and Governor

Northam signed into law) legislation that, effective July 1, 2020, eliminates § 46.2-395 from the Code of Virginia and requires the DMV Commissioner to reinstate, without payment of fees, driving privileges that had been suspended by courts under § 46.2-395. *See* 2020 Va. Acts ch. 965.

3. The parties agree that this case is moot and hereby stipulate that the case should be dismissed.

4. In addition, Plaintiffs assert that they are entitled to attorneys' fees in this matter. Defendant disputes that contention. Accordingly, the parties further stipulate and respectfully request that this Court retain jurisdiction to determine whether to award attorneys' fees and, if so, in what amount. The parties' proposed order regarding these issues is attached hereto as Exhibit A. This stipulation is not intended to and does not waive or foreclose any argument by the parties as to whether Plaintiffs are "prevailing parties" under 42 U.S.C. § 1988 and under *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res.*, 532 U.S. 598 (2001), and additional cases.

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2020, I electronically filed the foregoing Stipulation of Dismissal with the Clerk of Court using the CM/ECF System, which will send a notification of such filing to all registered users, including counsel for Defendant.

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES, Defendant.	Civ. No: 3:16-cv-00044

[PROPOSED] ORDER

The Court has reviewed and hereby ADOPTS the parties' Stipulation of Dismissal filed on May 7, 2020. This action is DISMISSED as MOOT. The Court RETAINS JURISDICTION to decide the issue of whether to award attorneys' fees, and, if so, in what amount.

The Court ORDERS that briefing on

attorneys' fees shall be BIFURCATED. First, the parties will brief whether Plaintiffs are entitled to attorneys' fees. Second, if the Court determines that Plaintiffs are entitled to attorneys' fees, the parties will brief the amount and reasonableness of any fees.

The Court further ORDERS that the parties shall file papers on the attorneys' fee issues in accordance with the following briefing schedule: Plaintiffs shall file any petition or motion for attorneys' fees along with their brief in support of entitlement to such fees within sixty (60) days of the date of entry of this Order. Defendant shall file his response brief within sixty (60) days of the date of filing of Plaintiffs' brief. Plaintiffs shall file any reply within thirty (30) days of the date of the filing of Defendant's response.

If this Court determines that Plaintiffs are entitled to an award of attorneys' fees, Plaintiffs shall file papers setting forth their requested amount with supporting documentation and briefing within sixty (60) days of the entry of the Order of this Court granting the request for fees. Defendant shall file his response within sixty (60) days of the date of the filing of Plaintiffs' papers. Plaintiffs shall file any reply within thirty (30) days of the date of the filing of Defendant's response.

SO ORDERED, this the _ day of May, 2020.

____

Judge Norman K. Moon

WE ASK FOR THIS:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERKS OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED
05/07/2020
JULIA C. DUDLEY, CLERK
BY: /s/ J. JONES
DEPUTY CLERK

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES, Defendant.	Case No. 3:16-cv-00044

ORDER

The Court has reviewed and hereby **ADOPTS** the parties' Stipulation of Dismissal filed on May 7, 2020. This action is **DISMISSED** as **MOOT**. The Court **RETAINS JURISDICTION** to decide the issue of whether to award attorneys' fees, and, if so, in what amount.

The Court **ORDERS** that briefing on attorneys' fees shall be **BIFURCATED**. First, the parties will brief whether Plaintiffs are entitled to attorneys' fees. Second, if the Court determines that

Plaintiffs are entitled to attorneys' fees, the parties will brief the amount and reasonableness of any fees.

The Court further **ORDERS** that the parties shall file papers on the attorneys' fee issues in accordance with the following briefing schedule: Plaintiffs shall file any petition or motion for attorneys' fees along with their brief in support of entitlement to such fees within sixty (60) days of the date of entry of this Order. Defendant shall file his response brief within sixty (60) days of the date of filing of Plaintiffs' brief. Plaintiffs shall file any reply within thirty (30) days of the date of the filing of Defendant's response.

If this Court determines that Plaintiffs are entitled to an award of attorneys' fees, Plaintiffs shall file papers setting forth their requested amount with supporting documentation and briefing within sixty (60) days of the entry of the Order of this Court granting the request for fees. Defendant shall file his response within sixty (60) days of the date of the filing of Plaintiffs' papers. Plaintiffs shall file any reply within thirty (30) days of the date of the filing of Defendant's response.

SO ORDERED, this the 7th day of May, 2020.

NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

[* * *]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

DAMIAN STINNIE, MELISSA ADAMS, and ADRAINNE JOHNSON, individually, and on behalf of all others similarly situated; WILLIEST BANDY, and BRIANNA MORGAN, individually, and on behalf of all others similarly situated, Plaintiffs, v. RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the VIRGINIA DEPARTMENT OF MOTOR VEHICLES, Defendant.	Civ. No: 3:16-cv-00044

PLAINTIFFS' PETITION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

COME NOW Plaintiffs, by counsel, and hereby request reasonable attorneys' fees and all other litigation expenses and costs to which they are entitled pursuant to 42 U.S.C. § 1988 or any other applicable rule or statute. Pursuant to this Court's Order addressing briefing (ECF 232) and in support of this Petition, Plaintiffs incorporate herein their contemporaneously filed Memorandum

demonstrating their status as prevailing parties, which entitles them to recover.

Plaintiffs respectfully ask that this Court (1) grant this Petition, (2) hold that Plaintiffs are prevailing parties and their attorneys are entitled to fees and other expenses and costs under 42 U.S.C. § 1988, (3) enter the Proposed Order attached as Exhibit A, and (4) invite the parties to submit briefing on the reasonableness and amount of fees and expenses and costs to be awarded on a schedule consistent with this Court's Order dated May 7, 2020. If this Court grants the instant Petition, Plaintiffs will file additional papers concerning the requested amount, with detailed supporting documentation and briefing, within sixty days of the entry of such Order. (*See* ECF 232 at 2.)

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2020, I electronically filed the foregoing Plaintiffs' Petition for Attorneys' Fees and Litigation Expenses with the Clerk of Court using the CM/ECF System, which will send a notification of such filing to all CM/ECF participants, including counsel for the Defendant.

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No. 21–1756

In the
United States Court of Appeals
For the Fourth Circuit

Damian Stinnie, *et al.*, *Appellants*,

v.

Richard Holcomb, *Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
(The Honorable Norman K. Moon)

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August 31, 2022

* * *

VI. In recognition of the impact of the preliminary injunction, a bi-partisan majority in the Virginia General Assembly repealed § 46.2-395.

The entry of the preliminary injunction was a critical event that raised the profile of this litigation in the General Assembly. For example, less than a month later, Senator William M. Stanley, who sponsored the legislation repealing § 46.2- 395, remarked: "Hopefully with the preliminary injunction being granted, anybody who has doubts about [the bill to end the required license suspensions for nonpayment of court debt] will remove them. I hope the House of Delegates will join the Senate in fixing this problem." Matthew Chaney, *Virginia License Suspension Law Faces New Challenges*, Va. Law. Wkly., Jan. 9, 2019, https://valawyersweekly.com/2019/01/09/va-license-suspension-law-faces-new- challenges/ (last visited Aug. 30, 2022).

After the preliminary injunction hearing and the blockage of repeal by the House of Delegates, Governor Northam proposed Budget Amendment No. 33 (the "Budget Amendment") to provide temporary relief to individuals whose driver's licenses had been automatically suspended for failure to pay court debt. Office of Virginia Governor, *Gov. Northam Announces Budget Amendment to Eliminate Driver's License Suspensions for Nonpayment of Court Fines and Costs* (Mar. 26, 2019), http://bit.ly/GovNorthamBudget (last visited Aug. 30, 2022). The General Assembly passed the Budget Amendment in the House of Delegates by a vote of

seventy to twenty-nine, and in the Senate by a vote of thirty to eight. *See* Virginia Legis. Info. Sys., Va. HB 1700 Budget Bill, 2019 Sess., https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB1700. The Budget Amendment suspended the operation of § 46.2-395 from July 1, 2019, to June 30, 2020 (one budget cycle). *See* Virginia Legis. Info. Sys., Va. HB 1700, *Governor's Recommendation*, 2019 Sess., http://lis.virginia.gov/cgi-bin/legp604.exe?191+amd+HB1700AG (last visited Aug. 30, 2022). It also waived associated reinstatement fees for driver's licenses otherwise eligible for reinstatement. *See id.*, *Adjustments and Modifications to Fees*. The General Assembly's passage of the Budget Amendment was undoubtedly influenced by this litigation. *See* Mel Leonor, *Northam seeks to halt license suspensions for unpaid court fees*, Richmond Times- Dispatch (Mar. 26, 2019), https://www.richmond.com/news/local/government-politics/northam-seeks-to-halt-license-suspensions-for-unpaid-court-fees/article_8ed0c8dd-9445-5f7e-bbb4-f7fe0c7169f7.html (quoting Delegate and then-House Appropriations Chair Chris Jones as saying, "[w]e took what I thought was a conservative approach by leaving the money in to respond to any potential judicial action that would invalidate the existing statute").

Twenty days after the General Assembly passed the Budget Amendment, the Commissioner again moved to dismiss the case as moot or, alternatively, to stay the case to allow the General Assembly an additional chance to pass a permanent repeal. (JA845–91.) Plaintiffs opposed the motion.

(JA924–41.) Plaintiffs contended that the General Assembly might not repeal § 46.2-395, noting that it had failed to do so for years, and that staying the action would waste time. (JA937–39.) Plaintiffs wanted "their day in court" without delay. (JA939.) On June 28, 2019, the District Court denied the motion to dismiss but granted the motion to stay pending the General Assembly's 2020 session. *Stinnie v. Holcomb*, 396 F. Supp. 3d 653, 661 (W.D. Va. 2019); (JA955–56). The same day, the Court canceled the bench trial that had been scheduled for August 2019. (JA23.)

During its 2020 regular session, the General Assembly considered proposed legislation to permanently eliminate the statute's unconstitutional mandate. *See* Virginia Legis. Info. Sys., Va. SB 1, 2020 Sess., https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb1 (last visited Aug. 30, 2022). One of those bills was SB1 introduced by Senator Stanley on November 18, 2019. *See id.* On January 10, 2020, the Commissioner sent a letter to Senator Stanley regarding the legislation. (JA968–1000.) In the letter, the Commissioner gave advice about how to repeal § 46.2-395 effectively. (*Id.*) The Commissioner also recognized the direct impact this case was having on the legislative process:

> As you are aware DMV is currently a party to the *Stinnie v. Holcomb* case, in which the issue under consideration is driver's license suspensions for failure to pay court fines and costs pursuant to § 46.2-395. On June 28, 2019, *the Court stayed the litigation until after the close of the 2020 General Assembly Session to allow the legislature to repeal § 46.2-*

> *395.* An emergency enactment clause is needed to demonstrate to the Court that matters at issue in *Stinnie v. Holcomb* litigation have been addressed by the General Assembly. *This should result in the pending litigation being dismissed*, relieving the Department from continuing to incur costly legal fees.

(JA968–69 (emphases added).) The Commissioner even went so far as to "offer a substitute" bill that had all of his recommended changes. (JA969–1000.) In other words, the Commissioner was actively calling for a repeal in order to stem his losses in this litigation from continuing to defend a law the District Court had already concluded likely violated procedural due process.

The General Assembly passed SB1ER on February 26, 2020, with an overwhelming majority in both the House and Senate. *See* Virginia Legis. Info. Sys., Va. SB 1, 2020 Sess., https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201& typ=bil&val=sb1 (showing SB1ER passed both chambers with the support of at least three-quarters of each chamber's members). Governor Northam signed SB1ER in April, and it took effect on July 1, 2020. *See id.*

SB1ER repealed § 46.2-395. Virginia Legis. Info. Sys., Va. SB 1, 2020 Sess., http://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB1ER+pdf, at lines 1244–45 (last visited Aug. 30, 2022). It also required the Commissioner to reinstate driving privileges suspended solely because of § 46.2-395:

> [T]he Commissioner of the Department

> of Motor Vehicles shall reinstate a person's privilege to drive a motor vehicle that was suspended prior to July 1, 2019, solely pursuant to § 46.2-395 of the Code of Virginia and shall waive all fees relating to reinstating such person's driving privileges. Nothing in this act shall require the Commissioner to reinstate a person's driving privileges if such privileges have been otherwise lawfully suspended or revoked or if such person is otherwise ineligible for a driver's license.

Id. at lines 1246–51.

* * *

3. Even under the *Dearmore* test, Plaintiffs are prevailing parties.

Third, even if this Court were to adopt the *Dearmore* test, Plaintiffs would prevail. *First*, Plaintiffs won a preliminary injunction. *Compare Dearmore*, 519 F.3d at 524, *with Stinnie*, 355 F. Supp. 3d 514 (granting a preliminary injunction to Plaintiffs). *Second*, that preliminary injunction was "based upon an unambiguous indication of probable success on the merits of the plaintiff's claims[.]" *Compare Dearmore*, 519 F.3d at 524, *with Stinnie*, 355 F. Supp. 3d at 531 (stating that "Plaintiffs demonstrate a likelihood of success on their claim that § 46.2-395 violates procedural due process").

Third, Plaintiffs' win on the preliminary injunction led to the Commissioner's motion asking the Court to stay this case to allow the General Assembly time to repeal the statute. *See Dearmore*,

519 F.3d at 524. Shortly after issuance of the District Court's preliminary injunction opinion, the General Assembly passed Budget Amendment No. 33 (the "Budget Amendment"), which provided temporary relief. *See* Virginia Legis. Info. Sys., Va. HB 1700 Budget Bill, 2019 Sess., http://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB1700 (last visited Aug. 30, 2022). The Commissioner also began asking the District Court to stay the action. (*See* JA864–868 (using the Budget Amendment and the possibility of a full repeal to argue that District Court should stay the action); JA892–894 (using the Budget Amendment to argue in favor of pausing the case); JA957-JA960 (noting the repeal effort in the General Assembly).)

Arguing against a finding of causation before a panel of this Court, the Commissioner tried to have it both ways. The Commissioner credited Plaintiffs' counsel's lobbying efforts for "assisting in that long process" of the repeal of § 46.2-395, but he discredited Plaintiffs' litigation efforts as leading to the repeal of § 46.2-395. (Resp. Br. 18.) Of course, to say that this impact litigation was not part of a coordinated effort of reform and political opposition strains credulity.

In fact, in the *very first sentence* of the Commissioner's motion to dismiss or stay the case, the Commissioner noted that Governor Northam appeared with Plaintiffs' counsel from the Legal Aid Justice Center ("LAJC") to call for Budget Amendment #33. (JA852 ("Standing below a Legal Aid banner and beside Defendant Commissioner Holcomb and Legal Aid's executive director (and counsel for Plaintiffs in this litigation), Governor Northam announced budget amendment #33 . . . .").) The event to which the Commissioner refers was

reported in the media at the time. Lisa Provence, *UPDATE: Northam calls for end of automatic driver's license suspensions*, C-VILLE Weekly, Mar. 26, 2019, https://www.c-ville.com/license-suspension-scheme (last visited Aug. 30, 2022). Despite the Commissioner's attempt to disassociate the preliminary injunction with the political process, the press put two and two together. *See id.* (noting that Governor Northam was speaking at LAJC, which had "filed suit against the commissioner of the Department of Motor Vehicles for the automatic suspensions that don't consider someone's ability to pay"). At that event, Plaintiff Brianna Morgan spoke about how losing her license negatively impacted her ability to take care of her family. *See id.* ("She was unable to take her father, who'd had a stroke, to doctor's appointments. When her son had an asthma attack at school, it took an hour on the bus to get there."). The Commissioner cannot simultaneously use Governor Northam's standing with LAJC and Plaintiff Morgan to obtain a stay before the District Court, then run from the implication of those facts once it becomes inconvenient on appeal.

At bottom, after entry of the District Court's preliminary injunction, it became clear that either the legislature could repeal § 46.2-395, or the District Court itself would act—again. Only days after entry of the preliminary injunction, Senator Stanley, a Republican[5] from southside/southwest Virginia,

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[5] The repeal effort was a bipartisan one, garnering support from both Democrats and Republicans. *See* Virginia Legis. Info. Sys., Va. SB 1, 2020 Sess., https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1(last visited Aug. 30, 2022). For example, Attorney General Jason Miyares, then

commented on the preliminary injunction. *See* Matthew Chaney, *Virginia License Suspension Law Faces New Challenges*, Va. Law. Wkly., Jan. 9, 2019, https://valawyersweekly.com/2019/01/09/va-license-suspension-law-faces-new-challenges/ (last visited Aug. 30, 2022). He remarked that it was his hope that after Plaintiffs' preliminary injunction win, the legislators who had doubts about the repeal efforts would remove them. *See id.*

The Commissioner's letter to Senator Stanley also helps show this litigation's effect on the legislative process. (*See* JA968–69 (noting the District Court's stay to allow the political process to repeal the legislation along with a request to add an "emergency enactment clause" to the legislation).) Why else would the Commissioner ask Senator Stanley to add an *emergency* enactment clause to the repeal legislation? By early 2019, it was becoming clear that the General Assembly's time to repeal the statute before the Plaintiffs completed their march to trial was dwindling. The District Court would not have stayed the case indefinitely. (*See* JA955 (ordering that the stay would only remain in effect "fourteen days following the conclusion of the [2020] General Assembly's session").) In other words, the facts of the attempt to rush the repeal legislation further demonstrate Plaintiffs' satisfaction of

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representing the 82nd District in Virginia Beach, voted for the repeal. *See id.* at https://lis.virginia.gov/cgi-bin/legp604.exe?201+vot+HV1516+SB0001 (last visited Aug. 30, 2022). Similarly, amici for Plaintiffs on this attorneys' fee issue includes both conservative and liberal non-profit organizations. (*See* Brief of ACLU *et al.*, of Va., in Support of Appellants, *Stinnie v. Holcomb*., No. 21-1756 (4th Cir. Nov. 22, 2021), DE 21.)

Dearmore's third prong.

* * *

No. 21–1756

In the
United States Court of Appeals
For the Fourth Circuit

Damian Stinnie, et al., *Appellants*, v.
Richard Holcomb, *Appellee.*

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF VIRGINIA
(The Honorable Norman K. Moon)

MOTION FOR ATTORNEYS' FEES PURSUANT TO 42 U.S.C. § 1988 AND LOCAL RULE 46(e)

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August 21, 2023

Plaintiffs-Appellants Damian Stinnie, Melissa Adams, Adrainne Johnson, Williest Bandy, and Brianna Morgan (collectively, "Plaintiffs") move for their appellate attorneys' fees and costs incurred before the Court under Local Rule 46(e), Federal Rule of Appellate Procedure and Local Rule 39, and 42 U.S.C. § 1988.

INTRODUCTION

Plaintiffs' counsel successfully fought the well-funded Commonwealth in high-stakes, protracted Section 1983 litigation. As prevailing parties obtaining a first of its kind preliminary injunction that corrected civil rights violations relating to suspending licenses for failure to pay court debt, Plaintiffs are entitled to petition for fees which include two appeals of the District Court's rulings to this Court. The first appeal allowed Plaintiffs to overcome procedural hurdles erected by the state and to continue their civil rights fight, as part of the pathway to the preliminary injunction win. The second appeal required both panel and en banc proceedings to establish Plaintiffs' status as prevailing parties.

Without the effort of Plaintiffs' attorneys, Plaintiffs' freedom from the binds of the suspension regime would not have been possible. It is therefore consistent with the purposes of Section 1988 for the Court to award Plaintiffs their attorneys' fees and expenses for litigating the appellate stages of this case. Plaintiffs' requested fee award is consistent with the *Johnson/Barber* factors and would compensate their attorneys for four years of appellate litigation.

For these reasons, and under the

Johnson/Barber test discussed below, the Court should award Plaintiffs their appellate attorneys' fees and expenses.

FACTUAL AND PROCEDURAL BACKGROUND

I. Section 46.2-395 punished those unable to pay court debt for their poverty without due process.

For years, the Commonwealth of Virginia denied Plaintiffs procedural due process by, among other things, automatically suspending driver's licenses for failure to pay court debt without holding a hearing or invoking any process to determine ability to pay. *See* Va. Code § 46.2-395 (Repealed 2020).

In July 2016, Plaintiffs filed this Section 1983 action. JA27–172. The Commissioner moved to dismiss, JA173–75, and the District Court dismissed the case based on the *Rooker-Feldman* doctrine, Article III, and Eleventh Amendment immunity. *Stinnie v. Holcomb*, Case No. 3:16-cv-00044, 2017 WL 963234, at *20 (W.D. Va. Mar. 13, 2017). Plaintiffs appealed the dismissal. JA223–25.

II. This Court allowed the case to go forward, remanding with instructions to permit Plaintiffs to amend their Complaint.

On appeal, this Court determined that it "lack[ed] jurisdiction to consider Plaintiffs' appeal because the district court's dismissal without prejudice was not a final order." *Stinnie v. Holcomb*, 734 F. App'x 858, 861 (4th Cir. 2018). Importantly,

this Court awarded Plaintiffs what they sought. Reply Brief of Appellants, No. 17–1740, Dkt No. 50 at pg. 21; *see also* Oral Argument – January 23, 2018, https://www.ca4.uscourts.gov/OAarchive/mp3/17-1740-20180123.mp3 starting at 15:55. The Court "remand[ed] the case to the district court with instructions to allow Plaintiffs to amend their complaint" because it concluded Plaintiffs could cure any deficiencies that the Court identified in its dismissal order. *Stinnie*, 734 F. App'x at 860–63.

Chief Judge Gregory did not join the majority because he would have reached the merits and determined that the District Court had improperly dismissed the action. *See id.* at 866-68 (Gregory, C.J, dissenting). His well-reasoned opinion also highlighted Plaintiffs' merits arguments. *See id.* at 863–64 (detailing Virginia's driver's license scheme did "not differentiate between those *unable* to pay from those *unwilling* to pay"; *id.* at 864–65 (noting the disastrous impact the statute had on Virginians).

As a result of their appellate victory, Plaintiffs won the ability to continue their suit before the District Court. Their fight continued, and Chief Judge Gregory's views on both jurisdiction and the merits foreshadowed the later successful preliminary injunction.

III. Plaintiffs returned to the District Court and obtained a hard-fought preliminary injunction.

The District Court proceeding was equally hard-fought. Plaintiffs' preliminary injunction evidence included supporting documents, a Harvard Ph.D. economist, the foremost expert on poverty self-sufficiency, and one of the named plaintiffs, who

endured intense cross-examination. USDC Dkt. No. 113 at 3. On December 21, 2018, the Court granted the preliminary injunction and enjoined the Commonwealth from enforcing the statute against Plaintiffs. JA820-844.

At the Commissioner's request, and over Plaintiffs' objections, the District Court stayed the litigation to give the General Assembly an opportunity to repeal the statute, which it did. JA945-54. After the repeal, the District Court then retained the question of prevailing party status for purpose of attorneys' fees. JA1017. The magistrate and District Court judges decided that they were bound by *Smyth*. JA1128-1155, 1256-1265. Plaintiffs appealed that determination.

JA1266.

IV. Relying on *Smyth*, a panel of this Court ruled for the Commissioner, but the concurrence noted that *Smyth* was an outlier that "allows defendants to game the system."

A three-judge panel of this Court affirmed the District Court based on *Smyth* remaining binding authority. *See* Dkt. No 52 at 11. Judge Harris joined in the panel's opinion, but wrote a concurrence noting that this Court "may wish" to reconsider *Smyth*. *See id.* at 13 (Harris, J., concurring).

V. This Court takes the appeal en banc and grants a full victory in favor of Plaintiffs.

After this Court reheard the appeal en banc, which involved another round of supplemental en banc briefing and oral argument, the Court ruled in Plaintiffs' favor. In doing so, this Court held that a

party is a prevailing party when:

> a plaintiff obtains a preliminary injunction that (a) provides her with concrete, irreversible relief on the merits of her claim by materially altering the parties' legal relationship, and (b) becomes moot before final judgment such that the injunction cannot be "reversed, dissolved, or otherwise undone" by a later decision.

Dkt. No. 86 at 29. The Court overturned *Smyth* and concluded that Plaintiffs met those criteria. *Id. at 18*; *see also id.* at 3 ("the plaintiffs here 'prevailed' in every sense needed to make them eligible for a fee award").

LEGAL STANDARD

Under Local Rule 46(e), this Court "may award attorney's fees and expenses whenever authorized by statute." As the Court held in its en banc opinion, Plaintiffs are eligible for fees and expenses here pursuant to 42 U.S.C. § 1988. By design, § 1988 encourages private attorneys to take on civil rights litigation to protect the voices of the unheard, litigate the causes of the ignored, and guarantee the liberties promised to all. *Cf. Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 559 (1986) ("Section 1988 was enacted to insure that private citizens have a meaningful opportunity to vindicate their rights protected by the Civil Rights Acts."). "Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *Riverside v. Rivera*, 477 U.S. 561, 576 (1986); *see Brandon v. Guilford Cty. Bd. of Elections*, 921 F.3d 194, 198 (4th

Cir. 2019) (Congress enacted § 1988 "in furtherance of the policy of facilitating access to judicial process for the redress of civil rights grievances."). Just as Congress intended, § 1988 makes a plaintiff into a "private attorney general." *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989).

It does so by granting courts the discretion to "allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.'" *Hensley v. Eckerhart*, 461 U.S. 424, 426 (1983) (citation omitted). Under § 1988, "a prevailing plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Id.* at 429 (internal quotations and citation omitted).

This Court uses the lodestar method to determine attorney fees:

> in calculating an appropriate attorneys' fee award, a district court must first determine the lodestar amount (reasonable hourly rate multiplied by hours reasonably expended), applying the *Johnson/ Barber* factors when making its lodestar determination. . . .
>
> > This court has summarized the *Johnson* factors to include: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6)

> the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

Grissom v. The Mills Corp., 549 F.3d 313, 320–21 (4th Cir. 2008).

"[T]he extent of a plaintiff's success is 'the most critical factor' in determining a reasonable attorneys' fee under § 1988." *Doe v. Kidd*, 656 F. App'x 643, 657 (4th Cir. 2016) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)); *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) ("[T]he most critical factor in determining the reasonableness of a[n] [attorney] fee award is the degree of success obtained.").

ARGUMENT

I. Plaintiffs are prevailing parties and are therefore entitled to recover reasonable attorneys' fees and expenses.

Plaintiffs seeking fees qualify as prevailing parties under § 1988 if "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit."

Hensley, 461 U.S. at 433.

To determine whether Plaintiffs here qualify as prevailing parties, the Court need look no further than to its en banc opinion reversing and remanding the decision of the District Court. Plaintiffs' preliminary injunction win (which was made possible by the remand they sought and obtained by the first appeal) makes them prevailing parties. *Stinnie, et al., v Holcomb,* Case No. 21-1756, Dkt. No. 86 at 33 ("[W]e have reconsidered *Smyth* . . . and replaced it with a standard under which the plaintiffs qualify as prevailing parties eligible for fees."). Plaintiffs arrived at this Court facing longstanding circuit precedent that forbade them from recovering any fees. They now head back to the District Court with that precedent reversed and a remand with orders to consider not ***whether*** Plaintiffs are entitled to recover attorneys' fees, but ***how much*** to award them. Obtaining the preliminary injunction and then a reversal based on overturning *Smyth* no doubt qualifies as "succe[ss] on a[] significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley*, 461 U.S. at 433. Indeed, it is hard to imagine a more resounding victory. Since Plaintiffs qualify as prevailing parties—by the first appeal to this Court that laid the groundwork for the preliminary injunction, and by the second appeal that overturned *Smyth*—the Court should award them reasonable attorneys' fees and expenses.

II. The Court should award Plaintiffs $768,491.70 in attorneys' fees and expenses incurred during their successful appeals to the Fourth Circuit.

In this case, Plaintiffs seek to recover for the hours that their McGuireWoods and LAJC attorneys spent litigating the two appeals to the Fourth Circuit discussed above. As described in the attached declarations of Jonathan Blank and Angela Ciolfi, many timekeepers supported Plaintiffs' successful appellate efforts. *See* **Exhibit 1**, Blank Decl.; **Exhibit 2**, Ciolfi Decl. Those timekeepers billed at different rates over different years based on their varied experience and the tasks they performed.

In the expert opinion of Mark Stancil, a partner Willkie Farr & Gallagher LLP, the fees Plaintiffs seek are reasonable. Mr. Stancil serves as the Co-Chair of his firm's Strategic Motions & Appeals Practice Group. *See* **Exhibit 3**, Stancil Decl. ¶ 1. Mr. Stancil has "brief[ed] and argu[ed] numerous appeals before the U.S. Courts of Appeals for the First, Second, Third, Fourth, and Ninth Circuits. *Id.* ¶ 2. He has also argued five cases before the Supreme Court of the United States, briefed many more, and filed scores of briefs at the certiorari stage."[1] *Id.* After carefully reviewing this case's history, including the appeals before this Court, Mr. Stancil's opinion is that the fees and costs incurred by Plaintiffs related to legal services provided in the U.S. Court of Appeals for the Fourth Circuit are reasonable under the *Johnson/Barber* test. *Id.* ¶ 10.

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[1] *Mark T. Stancil*, WILKIE, https://www.willkie.com/professionals/s/stancil-mark.

III. The *Johnson/Barber* factors support Plaintiffs' fee request.

a. *Johnson/Barber* Factor 1: Plaintiffs' attorneys' time and labor litigating these appeals were reasonable.

The appeals before this Court were complicated, lengthy, and ultimately groundbreaking. In the first appeal, Plaintiffs won the relief requested and ensured an opportunity to litigate before the District Court, which laid the groundwork for the preliminary injunction.

And as for the second appeal, because the relief Plaintiffs sought required this Court to overturn over twenty years of precedent, Plaintiffs needed to proceed all the way to an en banc rehearing.

As a result, Plaintiffs' attorneys spent considerable time and effort strategizing, briefing, and arguing the various stages of the appeals processes. These efforts included consulting legal experts on each claim, and navigating the appeals to this Court, both regarding panel review and the en banc hearing. Ciolfi Decl. ¶ 62. The results that Plaintiffs achieved demonstrate that the time their attorneys spent on their case was warranted and reasonable.

i. McGuireWoods Attorneys and Staff

- Jonathan Blank is McGuireWoods' Business & Securities Litigation Department chair. His experience and qualifications, and the experience and qualifications of the attorneys that he supervised, are set out in his declaration. *See* Blank Decl. Mr. Blank spent 50.3 hours on appellate work. Blank Decl., Exs. A1, A2, D.

- Tennille Checkovich was a McGuireWoods partner and lead appellate attorney. Before leaving McGuireWoods, she spent 403.9 hours on appellate work. *Id.*, Ex. A1. She spent many more hours after she left that are not requested. *See infra.*
- Tom Beshere (former partner and then counsel) spent 37.2 hours on appellate work. *Id.*, Ex. A1.
- John Woolard (associate) spent 173.9 hours on appellate work. *Id.*, Ex. A2, D.
- Michael Stark (former associate and current deputy general counsel at Smithfield Foods, Inc. ("Smithfield")) spent 33.1 hours on appellate work before leaving McGuireWoods. *Id.*, ¶ 9, Ex. A1.
- Dylan Bensinger (associate) spent 15.10 hours on appellate work. *Id.*, Ex. D.
- Jakarra Jones (former associate) spent 52.4 hours on appellate work. *Id.*, Ex. A1.
- Martina Liu (paralegal) spent 31.8 hours on appellate work. *Id.*, Ex. A2.
- Nancy von Bargen (paralegal) spent 68.6 hours on appellate work. *Id.*, Ex. A2.
- Connor Symons (paralegal) spent 34.4 hours on appellate work. *Id.*, Ex. A1.

In all, Plaintiffs seek to recover a total of $633,979 in attorneys' fees (including the time spent preparing this Motion for Attorneys' Fees) and $1,402.70 in expenses for the time McGuireWoods spent on these appeals. As reinforcement of the reasonableness, Plaintiffs do not seek to recover time spent by a host of additional McGuireWoods partners, associates, counsel, summer associates,

and paralegals. *Hensley*, 461 U.S. at 434 ("prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary."). The attorneys and legal staff spent a total of 283.3 additional hours on these appeals. Blank Decl. ¶ 11. Plaintiffs' decision against seeking that time reduces the total MW hours for which they seek to recover by about 24%. *See id.* ¶ 8, Exs. B1, B2.

ii. Smithfield Attorneys

Nor do Plaintiffs seek any fees for the ***substantial*** time that attorneys Checkovich and Stark spent on this litigation after leaving McGuireWoods and began working as Smithfield in-house counsel. Checkovich led the appellate efforts, spent significant time drafting briefs, developing case strategy, and arguing every appellate oral argument. Stark also spent substantial time on the strategy and briefs during the appeals. Though their efforts were integral to success, for reasons outside this litigation, they do not seek their attorneys' fees for time after they left McGuireWoods.

iii. LAJC Attorneys

- Angela Ciolfi is the Executive Director of LAJC. Her experience and qualifications, and the experience and qualifications of the attorneys that she supervised on this matter, are set out in her declaration, attached as Exhibit 3. She spent 66 hours on these appeals. Ciolfi Decl. ¶ 41.
- Pat Levy-Lavelle is a Legal Aid Justice Center Senior Attorney . He spent 93.6 hours on these appeals. Ciolfi Decl. ¶ 51.

- Leslie Kendrick is a University of Virginia School of Law professor and former clerk to the U.S. Court of Appeals for the Fourth Circuit and Supreme Court of the United States. She affiliated with LAJC for providing legal services on this case. She spent 64 hours on these appeals. Ciolfi Decl. ¶ 60.

Like McGuireWoods, LAJC and Kendrick significantly reduced the number of hours for which Plaintiffs seek compensation. Ciolfi Decl. ¶¶ 62-70. They do not seek to recover for any time spent on clerical work, travel not dedicated solely to work on these appeals, or any of the time spent on the appeals by the many attorneys other than Ciolfi, Levy-Levelle, and Kendrick. These decisions represent good-faith billing discretion by LAJC to reduce the amount of fees they seek. Ciolfi Decl. ¶ 67. In all, Plaintiffs seek to recover $133,110 for the time spent on this case by their LAJC attorneys. *Id.* ¶¶ 66-68. Given the nature of these appeals, and the effort required, their time is reasonable. Stancil Decl. ¶¶ 10-19.

b. *Johnson/Barber* Factors 2 and 3: These appeals concerned novel and difficult legal questions that required significant skill to litigate.

The legal issues in these appeals were complex and required significant skill. To successfully challenge the driver's license suspension statute, Plaintiffs' attorneys had to overcome myriad jurisdictional and other challenges. *See* Ciolfi Decl. ¶ 17.

Crafting Plaintiffs' legal claims and arguments on appeal required an understanding and application of jurisprudence arising out of the Fifth and Fourteenth Amendments. To avoid duplication

and ensure an efficient use of time for legal research, Plaintiffs' attorneys consulted civil rights experts, Fourth Circuit appellate litigators, and faculty at the University of Virginia School of Law. *Id.* ¶ 18.

The first appeal concerned difficult jurisdictional questions, the *Rooker- Feldman* doctrine, and the finality of a district court's order. *See Stinnie,* 734 F. App'x at 862. Plaintiffs won the remand they had sought, that disposed of the jurisdictional barriers that the state had raised, and ordered the district court to permit an amended complaint. The first appeal victory laid the groundwork for the preliminary injunction win.

The second appeal concerned even more fraught and novel issues. Plaintiffs sought to recover their reasonable attorneys' fees even though longstanding precedent, *Smyth*, stood in their way. Despite the Panel's determination that *Smyth* controlled, Plaintiffs continued. After successfully petitioning for rehearing en banc, Plaintiffs undertook the difficult task of convincing the full Court to overturn *Smyth* and harmonize circuit precedent with other circuits around the country. Plaintiffs' attorneys' skill and effort led to a landmark opinion. This is no small feat, and it took no small amount of effort and skill to achieve it.

***c. Johnson/Barber* Factor 4: Plaintiffs' counsel's engagement involved a substantial opportunity cost.**

Had McGuireWoods not spent considerable time on this appeal, it would have spent that time working on sophisticated national litigation. In other words, had McGuireWoods chosen not to represent Plaintiffs here, it could have spent—and been

compensated for—its time working on other matters. *See W.A.K. ex rel. Karo v. Wachovia Bank*, N.A., No. 3:09CV575-HEH, 2010 WL 3074393, at *3 (E.D. Va. Aug. 5, 2010) (where case preparation required substantial time, work on case precluded attorneys from work on other matters).

These appeals also required a significant investment of LAJC's limited resources. Ciolfi Decl. ¶ 19-20. Every hour that LAJC dedicated to this constitutional challenge was an hour less that it dedicated to seeking justice for its other clients, who often have nowhere else to go. The opportunity cost to LAJC must be measured better in lost opportunities to assist other vulnerable Virginians. LAJC decided to represent these Plaintiffs to challenge this statute because it harmed Plaintiffs (and others across Virginia) in profound ways, including by depriving them of right to drive to work, school, medical appointments, and religious worship, and subjecting them to further sanctions (including imprisonment) if and when they drove on suspended licenses. *Id.* ¶¶ 19-20.

c. *Johnson/Barber* Factor 5: Plaintiffs' fee request tracks the customary fee for sophisticated appellate work.

The hourly rates that Plaintiffs seek for time spent by their McGuireWoods attorneys is consistent with, if not below, the rates charged by peer firms for complicated appellate work. Stancil Decl. ¶ 18.

Although LAJC does not charge their clients a typical hourly fee (indeed, their clients pay nothing), the hourly rates that Plaintiffs seek for LAJC attorneys' time are based on customary hourly rates that attorneys with their qualifications, experience,

and skill charge in private practice. Ciolfi Decl. ¶ 32-33. Indeed, "Congress did not intend the calculation of fee awards to vary depending on whether plaintiff was represented by private counsel or by a nonprofit legal services organization." *Blum v. Stenson*, 465 U.S. 886 (1984). The statute and legislative history establish that "reasonable fees" under § 1988 must be calculated according to prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel. *Id.* As noted in the LAJC attorneys' individual biographies set out in the Ciolfi Declaration, each has extensive experience and valuable skills suited to working on this case. *Id.* ¶¶ 37-61.

Indeed, in Mr. Stancil's expert opinion and experience, the hourly rates that McGuireWoods and LAJC charged are "significantly below what similarly skilled attorneys and paraprofessionals charge" for similar complex appellate work.

Stancil Decl. ¶ 18

The hourly rates sought by both McGuireWoods and LAJC attorneys are thus reasonable, and this factor favors awarding Plaintiffs the fees they request.

d. *Johnson/Barber* Factor 6: Plaintiffs' attorneys did not expect payment from their clients, but hoped to recover their fees from the government.

Plaintiffs' counsel took this matter on pro bono and took no retainer. They recorded their time with the understanding that, if they prevailed, the government as the wrongdoer would bear the costs of

litigation. Because Plaintiffs did prevail, they now seek their fees.

e. *Johnson/Barber* Factor 7: The time limitations imposed by the circumstances support the fee request.

The time limitations imposed by the circumstances support Plaintiffs because of the nature of the injunctive relief requested. At worst, the factor is neutral for purposes of the request for appellate fees and should be considered by the district court.

f. *Johnson/Barber* Factor 8: Plaintiffs' complete victory at the Fourth Circuit justifies awarding them their entire fee demand.

Plaintiffs could not have achieved a more complete appellate victory. In the first appeal, the Court awarded what Plaintiffs sought and remanded the case to the District Court so that Plaintiffs could amend their complaint and continue their civil rights battle. *Stinnie v. Holcomb*, 734 F. App'x 858, 863 (4th Cir. 2018). That appeal was a precursor to Plaintiffs' preliminary injunction victory. In the second appeal, the en banc Court overturned longstanding precedent and declared Plaintiffs to be prevailing parties entitled to attorneys' fees and expenses under § 1988. *See Stinnie, et al., v. Holcomb,* Case No. 21-1756, Dkt. No. 86.

In short, Plaintiffs accomplished everything they set out to do before the Fourth Circuit. Because the degree of success during the proceedings is the "most critical factor" when determining the reasonableness of a fee award, *Farrar*, 506 U.S. at

114, this factor weighs ***heavily*** in favor of awarding Plaintiffs the entire amount of fees that they seek.

g. *Johnson/Barber* Factor 9: Plaintiffs' counsel's experience, reputation and ability supports the fee request.

Plaintiffs' counsel have diverse experiences, perspectives, and skillsets. *See* Blank Decl. ¶ 7; Ciolfi Decl. ¶¶ 37-61. They include former federal district, circuit court, and Supreme Court clerks, a law professor, a Fortune 500 corporation's general counsel, the head of LAJC, and a Virginia practitioner with decades of experience. Checkovich and Stark have also handled prior pro bono matters before this Court and obtained favorable results. Blank Decl. ¶ 7. Plaintiffs' counsel enjoy well-earned reputations in the legal community for being zealous and capable advocates. As explained by Mr. Stancil, this experience, reputation, and ability supports Plaintiffs' fee request. Stancil Decl. ¶¶ 15, 18-19.

District courts in this circuit have recognized that large fee awards are appropriate when "[t]he nature of the services, . . . the vigorousness of the [representation], and the level of skill required to achieve victory justify the number of hours incurred." *Brucker v. Taylor*, No. 1:16-CV-1414-GBL, 2017 WL 11506335, at *6 (E.D. Va. Sept. 1, 2017); *Danville Grp. v. Carmax Bus. Servs.*, LLC, No. 1:20-CV-696 (LO/TCB), 2021 WL 1647680, at *3 (E.D. Va. Apr. 27, 2021) (concluding that attorneys with similar credentials from a peer firm reasonably charged comparable hourly rates).

h. *Johnson/Barber* Factor 10: The undesirability of the case within the legal community in which the suit arose counsels in favor of the fee request.

This was no ordinary civil rights litigation. Plaintiffs sought to overturn an unconstitutional statute that resulted in hundreds of thousands of license suspensions, as well as overturning a twenty-year old precedent that impeded the prosecution of civil rights litigation. Plaintiffs needed lawyers who could fund and execute years-long litigation against a state government that retained one of the biggest and most well-respected law firms in the Commonwealth to represent the Commonwealth in the litigation. *Dauphin v. Jennings*, No. 1:15CV149, 2017 WL 2543847, at *6 (E.D. Va. May 5, 2017), report and recommendation adopted, No. 1:15-CV-149, 2017 WL 2525138 (E.D. Va. June 8, 2017), *aff'd sub nom. Dauphin v. Hennager*, 727 F. App'x 753 (4th Cir. 2018) ("The undesirability of this case is evidenced by its contentious and prolonged nature.").

There are only a handful of firms and organizations equipped to fund and maintain a years-long dispute with the government. Many smaller firms would be outpaced by the Commonwealth's resources, which included not only the capable attorneys in both Solicitor General and the Attorney General's Offices but also a team of elite attorneys in private practice. Victory was far from certain. The team of McGuireWoods and LAJC was uniquely situated to tackle this case.

i. *Johnson/Barber* Factor 11: The nature and length of the professional relationship between attorney and client also counsels in favor of the fee request.

This litigation was not a quick-hit lawsuit in which Plaintiffs desired to cash out through an unearned fee award. To the contrary, Plaintiffs' attorneys have represented Plaintiffs for years against the well-funded Commonwealth. The appeals alone have spanned four years. Blank Decl. ¶ 4.

As a result, this factor favors awarding Plaintiffs their fees and expenses. *Lorillard Tobacco Co. v. California Imports, LLC*, No. 3:10CV817-JAG, 2012 WL 5423830, at *4 (E.D. Va. Nov. 6, 2012) (awarding fees when the client was "a long-term client of counsel's firm, and th[e] representation confirmed the value of the firm to [the client]."); *Weyerhaeuser Co. v. Yellow Poplar Lumber Co., Inc.*, No. 1:13CV00062, 2017 WL 2799316, at *8 (W.D. Va. June 28, 2017) (holding that this factor favored a fee award based on an attorney-client relationship of only four years).

j. *Johnson/Barber* Factor 12: There is no other truly comparable case in which to compare attorneys' fees awards.

Given the unique nature of this over half-decade long litigation requiring two appeals and an en banc rehearing, this fee request deserves special consideration. Plaintiffs went against a state government that battled them at every corner to defend its unconstitutional statute. At the very least, this factor should *not* weigh *against* awarding Plaintiffs their fees and expenses.

k. Under the *Johnson/Barber* test, the total lodestar is a reasonable figure given the circumstances.

Once the Court determines the reasonable number of hours that Plaintiffs' attorneys have worked and the reasonable hourly rate that those attorneys should charge, it can calculate the lodestar. Plaintiffs seek 905.1 hours of McGuireWoods's time at various hourly rates, for a total of $633,979 in fees. Blank Decl. ¶ 6. Plaintiffs also seek $1,402.70 for McGuireWoods' litigation-related expenses.[2] Plaintiffs seek to recover 223.6 hours of LAJC's time at various hourly rates, for a total of $133,110. The total lodestar that the Court should award Plaintiffs is therefore $768,491.70.[3]

CONCLUSION

The Court should award Plaintiffs $767,089 for their attorneys' fees and $1,402.70 for their expenses for work performed in both appeals before the United States Court of Appeals for the Fourth Circuit.[4]

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[2] Plaintiffs also set out $2,140.16 in expenses incurred by their LAJC attorneys. *See* Ciolfi Decl. ¶ 68. While Plaintiffs do not seek to recover those expenses here, they recognize that such expenses may be recoverable before the district court. *See* 4th Cir. L.R. 39(c).

[3] Plaintiffs are fully preserving their rights to seek the attorneys' fees, costs, and expenses incurred in the District Court at the District Court. The instant motion relates solely to work before the Fourth Circuit.

[4] Alternatively, as requested in Plaintiffs' Transfer, Dkt. No. 88, the Court should transfer the proceedings related to Plaintiffs' attorneys' fees and expenses to the United States District Court for the Western District of Virginia so that Court can make a single, global determination of the amount of fees and expenses to which Plaintiffs are entitled for their attorneys' work at the trial and appellate levels.

Dated: August 21, 2023

Respectfully submitted,

	/s/ Jonathan T. Blank
John J. Woolard	Jonathan T. Blank
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	Charlottesville, VA 22902

* * *

FILED: August 23, 2023

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 21-1756
(3:16-cv-00044-NKM-JCH)

DAMIAN STINNIE; MELISSA ADAMS; ADRAINNE JOHNSON; WILLIEST BANDY; BRIANNA MORGAN, individually, and on behalf of all others similarly situated

Plaintiffs - Appellants

v.

RICHARD D. HOLCOMB, in his official capacity as the Commissioner of the Virginia Department of Motor Vehicles

Defendant - Appellee

- -

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, ET AL

Amicus Supporting Appellant

INSTITUTE FOR JUSTICE

Amicus Supporting Rehearing Petition

O R D E R

Upon consideration of appellant's unopposed motion to transfer appellate attorneys' fees, costs, and expenses proceedings to district court, the court grants the motion and transfers all remaining proceedings related to attorneys' fees, costs, and expenses to the United States District Court for the Western District of Virginia.

The clerk is directed to forward a copy of this order to the district court.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

DAMIAN STINNIE, et al.,
Plaintiffs,

v. ORDER

RICHARD D. HOLCOMB,
Defendant. Civil Action No. 3:16cv00044

By: Joel C. Hoppe
United States Magistrate Judge

This matter is before the Court on the Parties' Joint Status Update submitting their proposed schedule for briefing Plaintiffs' petition for attorney's fees and litigation expenses. ECF No. 276; *see* ECF Nos. 234, 269 to 273. The parties agree that they should have a certain amount of time to file their respective briefs, but they disagree about when the briefing schedule should commence. ECF No. 276, at 1. Defendant asks the Court to delay briefing at least until "after the United States Supreme Court rules on [his] forthcoming petition for a writ of certiorari," *id.*, which he expects to file by November 6, 2023, *id.* at 4. *See id.* at 1–6. Plaintiffs oppose a stay. *See id.* at 6–15.

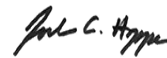
The power to postpone or stay "proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Having considered the relevant factors, the Court concludes it is appropriate to delay

entry of a briefing schedule until the Supreme Court of the United States resolves Defendant's forthcoming petition for a writ of certiorari. *Cf. Taylor v. Clarke*, No. 7:22cv158, 2023 WL 2761141, at *1–2 (W.D. Va. Mar. 31, 2023) (staying discovery and summary judgment briefing until the court resolved defendant's Rule 12(b)(6) motion); *Hill v. Warden of Lee County, U.S.P.*, No. 7:18cv166, 2020 WL 908125, at *1 (W.D. Va. Feb. 25, 2020) (noting that the court previously granted respondent's request for a stay pending the U.S. Supreme Court's decision whether to grant or deny certiorari in a similar case).

Defendant shall file written notice with this Court within **ten days** of the date on which he files, or decides not to file, his petition for a writ of certiorari. Additionally, if Defendant does file such a petition, he shall file written notice with this Court within **ten days** of the date on which the U.S. Supreme Court enters an order granting or denying the petition. Briefing on Plaintiffs' petition for attorney's fees and litigation expenses, ECF No. 276, is hereby **STAYED** pending further order of this Court. The case is not stayed.

It is so ORDERED.

ENTERED: October 5, 2023



Joel C. Hoppe
United States Magistrate Judge