Hearing Date: 04/30/21
Hearing Time: 9:00 am
Judge/Calendar: Mary Sue Wilson

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

DANIELLE PIERCE, ET AL., PLAINTIFFS, V. DEPARTMENT OF LICENSING, ET AL., DEFENDANTS.	NO. 20-2-02149-34 DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

ATTORNEY GENERAL OF WASHINGTON
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Seattle, WA 98104
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TABLE OF AUTHORITIES

Cases

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Cases

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Cases

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Cases

Constitutional Provisions

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Statutes

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Statutes

Regulations

Rules

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

TABLE OF AUTHORITIES
(continued)

Other Authorities

ATTORNEY GENERAL OF WASHINGTON
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I. INTRODUCTION

The Legislature has enacted a reasonable statutory framework for moving violations, which includes such dangerous conduct as speeding and texting while driving. Courts set fines for such conduct and are also required to set up payment plans where the court determines a person does not have the ability to pay the fines. If a violator does not pay in accordance with the terms dictated by the court, the court sends the Department of Licensing (DOL) a notice and DOL suspends the person's license. There is nothing unconstitutional about this common-sense statutory practice.

Plaintiffs' claims should be dismissed. First, Plaintiffs' claims are not justiciable. Plaintiffs have not been directly damaged by the suspension statute's alleged deficiencies. Plaintiffs do not have an interest in DOL evaluating their ability to pay, before suspending licenses, because these Plaintiffs did not avail themselves of the courts' processes to evaluate their ability to pay, or when they did, did not follow through. Other Plaintiffs have had their driving privileges restored and therefore are not suffering harm caused by the statute. In addition, Plaintiffs cannot obtain relief from the Court because Plaintiffs do not challenge the statute they actually dislike, RCW 46.63.110(6), that gives the court discretionary authority to evaluate ability to pay. Neither can Plaintiffs ask the Court to strike down DOL's suspension statute for failing to evaluate a violator's ability to pay where DOL would be reviewing the municipal or district court's decisions that can only be reviewed by the superior court. Finally, the Court cannot provide relief where Plaintiffs do not challenge RCW 46.63.110(6)'s independent requirement that DOL suspend licenses upon receipt of notice of nonpayment from the court.

Second, Plaintiffs were afforded due process because Plaintiffs had the ability to present their financial status to the court that adjudicated their violations, obtain a plan for compliance, and modify it where needed. DOL gave them time to comply before suspensions took effect and an administrative review process to identify any mistakes in their identity or the amount owed.

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(206) 464-7676

Third, Plaintiffs' equal protection arguments fail for several reasons. The license suspension statute does not create a classification, or have the effect of burdening persons who cannot pay their fines, because it applies to all persons equally, regardless of income status. Courts have rejected the idea that the "poor" are a suspect class. Furthermore, the Court of Appeals has held that a driver's license is a privilege, rather than an important right for equal protection purposes. Regardless of the level of scrutiny that applies, DOL's long-established license suspension authority meets the test. Suspension of licenses promotes the safety of Washington's roads by providing an effective incentive to pay fines that deter moving violations and that help address the impacts of these violations.

Finally, DOL's statute does not impose an excessive fine because suspension of the driving privilege is not punishment and is only temporary.

II. RELIEF REQUESTED

Defendants Department of Licensing and Director Teresa Berntsen move under CR 56(b) for an order of Summary Judgment in their favor as there are no genuine issues of material fact and they are entitled to judgment as a matter of law. The Defendants also oppose Plaintiffs' Motion for Summary Judgment and request that it be denied.

III. EVIDENCE RELIED UPON

DOL relies upon the Declarations of Schuyler Rue (Rue Decl.), Carla Weaver (Weaver Decl.), Dionne Padilla-Huddleston (Huddleston Decl.), Haiping Zhang (Zhang Decl.), Declaration of Kevin Cottingham (Cottingham Decl.), and Court Administrators Marianne Boggie (Boggie Decl.), Suzanne Elsner (Elsner Decl.), Lea Garner (Garner Decl.), Rhonda Hanowell (Hanowell Decl), Deannie Martin (Martin Decl.), Paulette Revoir (Revoir Decl.), Bruce Van Glubt (Van Glubt Decl), and Sharon Whittaker (Whittaker Decl.).

ATTORNEY GENERAL OF WASHINGTON
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IV. FACTS IN SUPPORT OF MOTION

A. Courts Administer Fines and Payment Plans for Moving Violations Based Upon Ability to Pay and DOL Suspends Licenses After Offering Administrative Review

When a person commits a moving violation, the court determines the amount of the monetary penalty as set forth in RCW 46.63.110 and in Infraction Rule for Courts of Limited Jurisdiction (IRLJ) 6.2.[1] The fee is immediately payable. RCW 46.63.110(6). If the court determines in its discretion that the driver is unable to pay the amount in full, the court *must* enter into a payment plan with the driver.[2] *Id*. Importantly, the plans must be "reasonable" and "based on the financial ability of the person to pay." *Id.* The court may allow conversion of all or part of the monetary obligation if a community restitution program is available in the jurisdiction. *Id*. If payment is delinquent or the person fails to complete a community restitution program on or before the time established, the court must notify DOL of the noncompliance, unless the court determines good cause and adjusts the plan. *Id.*

The court's notice that a driver has failed to pay monetary obligations stemming from a moving violation triggers DOL's mandatory duty to suspend the driver's license. RCW 46.20.289; *see also* IRLJ 4.2(a). RCW 46.20.289 imposes a mandatory requirement on DOL to suspend the driving privilege after receiving notice from a court and provides as follows:

> Except for traffic violations committed under RCW 46.61.165, the department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a requested hearing for a moving violation, violated a written promise to appear in court for a notice of infraction for a moving violation, or has failed to comply with the terms of a notice of traffic infraction, criminal complaint, or citation for a moving violation….

Importantly, though Plaintiffs challenge only RCW 46.20.289, a different statute independently requires DOL to suspend the driving privilege unless all monetary obligations are paid or until

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[1] "Moving violation" is defined by rule. *See* RCW 46.20.2891 and WAC 308-104-160.

[2] If a driver has already been granted a payment plan with respect to the same monetary obligation, or is in noncompliance with any existing or prior payment plan, the court is not required to enter into a payment plan, but may instead exercise its discretion on whether to do so. RCW 46.63.110(6).

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
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Seattle, WA 98104
(206) 464-7676

DOL receives notice that the person has entered into a new payment plan or community restitution program. RCW 46.63.110(6).[3] RCW 46.64.025 also independently requires the court to notify DOL if a driver "fails to comply with the terms of a notice of infraction for a moving violation."

Suspensions under RCW 46.20.289 are referred to by DOL as failure to appear suspensions or "FTAs" regardless of the specific underlying reason for the suspension. Weaver Decl., ¶ 9. Here, Plaintiffs only challenge the portion of RCW 46.20.289 that requires DOL to suspend a driver's license when a driver has failed to pay a non-criminal moving violation. Compl. at ¶ 4.

If DOL proposes to withhold a driver's license, and the action is a "mandatory suspension" under chapter RCW 46.20.289, the driver has the opportunity to challenge DOL's proposed action. RCW 46.20.245(1), (2). DOL's mandatory suspension notice informs the driver of the proposed suspension action, the reason for that action, and the options available to the driver in response to the notice. RCW 46.20.245(2); Weaver Decl., Attach. 5. The options available to the driver are: resolving the non-payment with the reporting court within 45 days; accepting the license sanction; or contesting the Department's action via an administrative review.[4] RCW 46.20.245(2). Failure to timely request a review forfeits the person's right to review, unless DOL finds good cause. *Id*. None of the Plaintiffs here sought administrative review of DOL's suspension notices. Weaver. Decl., ¶¶ 5-8.

DOL does not have authority to change the fee the court imposes or to create a payment plan. If DOL affirms the suspension, the driver can seek judicial review before superior court. RCW 46.20.245(2)(e); *see also* RCW 46.20.308(9). The appeal is limited to a review of whether the Department has committed any errors of law. RCW 46.20.245(2)(e); RCW 46.20.308(8).

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[3] If the court administers the payment plan, the court may charge a reasonable administrative fee to be retained by the city or the county, not to exceed $10 per infraction or $25 per plan, whichever is less. RCW 46.63.110(6)(c), (7). The court may contract with outside entities to administer its plan. In those cases, the court may charge a fee. RCW 46.63.110(6)(d).

[4]The only issues addressed at the administrative review are: (1) whether the records DOL relied upon correctly identified the driver and (2) whether the information transmitted from the court or other reporting entity to DOL accurately describes the action taken by the court or entity. RCW 46.20.245(2).

ATTORNEY GENERAL OF WASHINGTON
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Seattle, WA 98104
(206) 464-7676

A suspension does not take effect if, prior to the effective date of suspension, DOL receives a certificate from the court that the driver is back in compliance with the monetary obligations. RCW 46.20.289(6); *see also* IRLJ 4.2(c). Once the suspension takes effect, however, it remains in place until DOL receives a certificate from the court that the case has been adjudicated or the driver is back in compliance with their monetary obligations. *Id.*

B. Suspensions are an Important Incentive Along With Fines to Discourage Dangerous Moving Violations

Moving violations fall into two categories: criminal and non-criminal. Weaver Decl., Attach. 6. There are approximately 60 different non-criminal moving violations. *Id*. Non-criminal moving violations that could result in a suspended driving privilege for failure to pay include such serious offenses as speeding, RCW 46.61.400; WAC 308-104-160(21)-(23); using a cell phone while driving, RCW 46.61.672; WAC 308-104-160(75); and improper lane change or travel, RCW 46.61.140; WAC 308-104-160(28).

One in every three fatal crashes between 2015 and 2017 involved speeding. Huddleston Decl., Ex. 2, p. 72. Speeding fatalities often involve other violations. Between 2015 and 2017, there were 485 fatalities and 1,579 serious injuries involving speeding. *Id*., Ex. 2, p. 74. Seventy-percent of those fatalities also involved lane departure. *Id*. In 2019, there were 538 total traffic fatalities in Washington including 152 fatalities where speeding was involved. *Id.*, Ex. 1. That same year there were 648 vehicle crashes where a cell phone was involved, five of which resulted in fatalities. *Id*., Ex. 3.

There are a significant number of Washington drivers suspended for failing to pay fines for offenses related to bad or dangerous driving. As of March 1, 2021, there are 317,858 Washington licensed drivers who are suspended. Weaver Decl., ¶ 10. Of that total number of suspended drivers, 249,022 drivers have at least one FTA under RCW 46.20.289. *Id*. Of the total number of drivers suspended because of FTA, 192,444 are suspended because of one FTA and 56,578 are suspended for other reasons in addition to at least one FTA. *Id*. Drivers suspended for highway safety-related

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
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(206) 464-7676

violations (generally moving violations) have a higher percentage of crashes as opposed to non-suspended licensed drivers.[5] Rue Decl., Ex. 1, p. 9, 11.

Most Washingtonians respond with compliance when their licenses are suspended. For example, there were 192,974 suspension notices issued by DOL between October 12, 2019, and October 12, 2020 (the date that Plaintiffs filed this lawsuit). Weaver Decl., ¶ 11. The number of drivers who resolved their court fees and costs *before* the suspension notice went into effect was 72,620 (38% of the total suspension notices). *Id*. The number of drivers who resolved their court fees and costs *after* the suspension went into effect was 49,543 (26% percent of the total suspension notices). *Id*. The total number of drivers that ultimately complied with their court ordered fees and costs was 122,163 (63% of the total suspension notices). *Id.*

Though the Legislature has made a number of changes to applicable statutes and DOL's license suspension authority over the last three decades, it has retained DOL's authority to suspend licenses for FTA for bad or dangerous driving. Prior to the statute's enactment in 1993, failure to respond, appear, or comply with a traffic infraction was criminal conduct. Final Bill Report for SHB 1741, Laws of 1993, ch. 501; *see* Huddleston Decl., Exs. 4-5. RCW 46.20.289 decriminalized this conduct and instead made those offenses infractions for which DOL must suspend the driving privilege. *Id*. The statute was amended again in 2012 to remove DOL's authority to suspend licenses for FTA for *non-moving violations*, such as parking, equipment, and paperwork violations, deemed less threatening to public safety. ESSB 6284, Laws of 2012, ch. 82; *see* Huddleston Decl., Ex. 6-8. That the Legislature retained DOL's authority to suspend for FTA for *moving violations* reflects its concern that this important deterrent remain in effect. *Id*.

[5] Plaintiffs generally assert that driver license suspensions imposed under RCW 46.20.289 are not a "safety issue" and rely in their Complaint on a July 2014 study, *Road Safety in the Individual U.S. States: Current Status and Recent Changes*. This study uses 2012 data that only analyzes traffic fatalities per miles traveled and population and does not examine *why* these states have better than average fatality outcomes. Fatality is only one measure of traffic safety. Zhang Decl., ¶ 4.

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
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C. Courts Had Payment Plans Available Upon Request But Plaintiffs Did Not Request Them, or If They Did, Did Not Follow Through

Courts that handled most of Plaintiffs' citations had well publicized payment plans, available at the time of the violations, that allowed for monthly payments that could be renegotiated for more time or lower amounts, even after referral to collections. Elsner Decl., ¶¶ 1-7 (Marysville); Garner Decl., ¶¶ 1-10 (Chelan); Hanowell Decl., ¶¶ 1-8 (Everson-Nooksack); Martin Decl., ¶¶ 1-6 (Skagit County); Revoir Decl., ¶¶ 1-8 (Lynnwood); Van Glubt Decl., ¶¶ 1-8 (Whatcom County); Boggie Decl., ¶¶ 1-8 (Snohomish County).[6] However, it is undisputed that three of the Plaintiffs made no attempt to arrange for payment plans at the time of their citations. Pierce Decl., ¶¶ 5-8; Comack Decl., ¶¶ 4-5; Spicer Decl., ¶ 2; Martin Decl., ¶ 7 (Comack); Garner Decl., ¶ 11-14 (Spicer). The fourth, Amanda Gladstone, signed a payment plan for a violation she committed in 2009, but defaulted. Gladstone Decl., ¶ 4. She signed a payment plan for a violation in 2013, and then signed an agreement to enter into another payment plan for a violation she committed in 2017, but she took no further action in either case until 2019. Hanowell Decl., ¶¶ 9-13. Had the Plaintiffs arranged for payment plans, followed through, or renegotiated their plans, their driving privileges would not have been suspended. And, if any of the Plaintiffs had arranged for a payment plan *after* DOL suspended their driving privileges, upon notice from the court, DOL would have rescinded their suspensions so long as Plaintiffs honored their obligations under those plans. RCW 46.20.289(6).

V. ARGUMENT

A. Standard of Review

Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. CR 56(c); *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). "A material fact is one that affects the outcome of the litigation." *Id.* at 370, n. 8. All facts and evidence are considered in the light most favorable to the

[6] Everett Municipal Court Administrator Sharon Whittaker could not verify the existence of payment plans prior to 2019 when she began her employment there. Whittaker Decl., ¶ 3. We were also unable to obtain any historical information from Sedro-Wooley Municipal Court.

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

nonmoving party. *Id.* at 368. Statutes are presumed to be constitutional, and the burden is on the challenger to establish their unconstitutionality beyond a reasonable doubt. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006). A party can claim a statute is unconstitutional either as-applied or facially. Though Plaintiffs allege that RCW 46.20.289 is unconstitutional on its face, Complaint at 39-40, they provide no argument for how it is facially invalid as opposed to invalid as-applied to Plaintiffs. Instead, it appears they raise an as-applied challenge because they cannot realistically claim facial unconstitutionality, which requires a higher burden of proving that "no set of circumstances exists in which the statute, as currently written, can be constitutionally applied." *City of Redmond v. Moore*, 151 Wn.2d 664, 668-669, 91 P.3d 875 (2004) (citation omitted). Plaintiffs have failed to make out a facial challenge since the statute can be applied to motor vehicle code violators without raising constitutional issues where the violators have the ability to pay fines. In a circumstance where the Court finds a statute is unconstitutional as-applied, it "prohibits future application of the statute in a similar context, but the statute is not totally invalidated." *Woods v. Seattle's Union Gospel Mission*, No. 96132-8, 2021 WL 821959, at *3 (Wash. Mar. 4, 2021) (internal citation omitted).

Similarly, Plaintiffs' Complaint seeks declaratory and injunctive relief, but their motion does not request injunctive relief. Where they do not make any argument for why injunctive relief would be appropriate, the court should not grant such relief. *West v. Thurston Cty.*, 168 Wn. App 162, 187, 275 P.3d 1200 (2012).[7]

B. Plaintiffs' Claims Are Not Justiciable

Plaintiffs' claims do not invoke the Court's subject matter jurisdiction under the Uniform Declaratory Judgment Act (UDJA), chapter 7.24 RCW, by failing to satisfy the third and fourth factors of the justiciability test. A court lacks jurisdiction under the UDJA if no justiciable

[7] DOL does not have current statutory authority to make an ability to pay determination and, if Plaintiffs prevail here, which they should not do, the entire statutory scheme authorizing suspensions, including Chapter 46.63 RCW, Chapter 46.64 RCW, and Chapter 46.20 RCW would need to be amended to authorize DOL to make that determination. In the meantime, no driver committing a non-criminal moving violation could be suspended.

ATTORNEY GENERAL OF WASHINGTON
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controversy exists. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). A justiciable controversy is defined as:

> (1) … an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Id. (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). These requirements encompass the doctrines of standing, mootness, and ripeness, as well as the federal case-or-controversy requirement. *To-Ro*, 144 Wn.2d at 411.[8] All four factors must be met to ensure that a court does not step into the prohibited area of advisory opinions. *Diversified Indus. Dev.*, 82 Wn.2d at 815.

Plaintiffs' claims do not satisfy the third justiciability factor because they fail to show they "will be *directly damaged* in person or in property by [DOL's]… enforcement" of the suspension statute without first evaluating ability to pay. *De Cano v. State,* 7 Wn.2d 613, 616, 110 P.2d 627 (1941) (emphasis added); *see also Walker v. Munro,* 124 Wn.2d 402, 412, 879 P.2d 920 (1994) (finding that petitioners' failure to identify any "actual, concrete harm" caused by Initiative 601 precluded declaratory action). The undisputed facts show Plaintiffs did not seek payment plans or follow through at the time of their violations:

- Spicer received a citation in Everett in 2011 and did not respond until 2021. Whittaker Decl., ¶ 7. She received a speeding ticket in February 2012 and did not respond to the ticket. Spicer Decl., ¶ 2. She received a ticket in 2015 in Chelan County for which she did not respond. Garner Decl., ¶ 11.
- Pierce received a speeding ticket in 2011 but after receiving a reduced fine, she did not pay the ticket or request a payment plan. Pierce Decl., ¶¶ 2-9. She had seven traffic citations in Snohomish County District Court beginning in 2011 for which she failed to respond until 2020. Boggie Decl., ¶ 10. She was sentenced in Lynnwood Municipal Court in March 2016 and did not enter into a payment plan or make any payments until 2020.

[8] Standing requires "a personal injury fairly traceable to the challenged conduct and likely to be redressed by the requested relief," and a claim that falls within the zone of interests protected by the statute or constitutional provision at issue. *State v. Johnson*, 179 Wn.2d 534, 315 P.3d 1090 (2014).

ATTORNEY GENERAL OF WASHINGTON
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(206) 464-7676

Revoir Decl., ¶¶ 9-11. She had five citations in Everett from 2017 for which she did not arrange a payment plan until 2020. Whittaker Decl., ¶ 6.

- Comack received a citation July 2010 that went to collections. Comack Decl. ¶ 4. In October 2020, she paid off her fines in Sedro-Wooley Municipal Court. *Id.,* ¶ 9. In 2011 and 2012, she received three citations in Skagit County. Martin Decl., ¶ 7. The District Court mailed two summonses to Comack that were returned and the cases were sent to collections until 2020 when she obtained a payment plan for $10 a month. *Id.* at ¶ 8.
- Gladstone received the first of nine citations in 2009 in Whatcom County. Van Glubt Decl., ¶ 9; Gladstone Decl., ¶ 4. She entered into a payment plan but was delinquent in her payments for eight of the nine citations; two were appealed and written off. The remaining six were consolidated into a payment plan for $10/mo. in January 2021 but she defaulted in March 2021. Van Glubt Decl., ¶ 10-12. She signed a payment plan in Everson-Nooksack Municipal Court for violations in 2013 and never made her $25 payment under the plan. Hanowell Decl., ¶¶ 9-11. She further signed a payment plan agreement for a 2017 violation but took no further action to pay under the agreement. *Id.* at ¶ 12. In 2019, the Judge waived all non-mandatory fees, moved the cases from collections, offered community service, and instituted a payment plan. Gladstone made one $25 payment and made no further payments. *Id*. at ¶ 13. Gladstone had another citation in 2018 in front of Snohomish County District Court. She failed to appear. Finally, in 2019, she entered into a payment plan but no payments were made. Boggie Decl., ¶ 9.

Plaintiffs do not show they are damaged by DOL not evaluating their ability to pay. Plaintiffs have incurred debts and suspensions, but not because DOL did not evaluate their ability to pay. Rather, it was because Plaintiffs did not seek an evaluation of their ability to pay in court or respond to their citations. Or, when the court did evaluate their ability to pay and offer them payment plans, they did not follow through. Even if DOL had offered an evaluation of ability to pay, there is no evidence that Plaintiffs would have taken advantage of that process either.[9]

In addition, Plaintiffs Pierce and Comack have no direct interest in DOL evaluating their ability to pay because their privileges to drive have been restored:

- Danielle Pierce's citations are now all paid or under a payment plan in Marysville Municipal Court. Elsner Decl., ¶ 8. Her fines were waived in 2020 and her case was closed in Lynnwood Municipal Court. Revoir Decl., ¶ 11. She currently has a driver's license. Weaver Decl., ¶ 5.
- Janie Comack is currently eligible to apply for a license. Weaver Decl., ¶ 7.

[9] For the same reasons Plaintiffs do not satisfy the closely related standing requirement that they must show a personal injury fairly traceable to the challenged conduct.

ATTORNEY GENERAL OF WASHINGTON
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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

The second reason the claims fail is that they do not satisfy the fourth justiciability factor, requiring the court to be able to make a judicial determination that is final and conclusive. Plaintiffs' true complaint is that the statute that authorizes courts to levy fines for moving violations gives the court *discretion* to determine that a person is not able to pay their fines rather than *requiring* it. *See* RCW 46.63.110(6). But, Plaintiffs do not expressly challenge RCW 46.63.110 in this action.[10]

Moreover, Plaintiffs are asking for relief from RCW 46.20.289 on the improper grounds that DOL should review the Court's ability to pay determinations, which DOL cannot legally do. If DOL conducted an ability to pay inquiry before suspending the driving privilege, DOL would be improperly reviewing, setting aside, or amending an order of the court when that authority to review the municipal or district court's determination rests with the superior court. RALJ 2.2; *See Brown v. Owen*, 165 Wn.2d 706, 720–21, 206 P.3d 310 (2009) (under separation of powers, one branch may not interfere with another branch where doing so "'threatens the independence or integrity or invade the prerogatives of another'" branch) (quoting *Zyltra v. Piva*, 85 Wn.2d 743, 750, 539 P.2d 823 (1075)).

Finally, even if this Court found RCW 46.20.289 unconstitutional, Plaintiffs ignore RCW 46.63.110(6)'s identical requirement that DOL must suspend licenses of violators upon receipt of the Court's notices of failure to pay. Thus, even if this Court struck down RCW 46.20.289, Plaintiffs' alleged injuries would not be redressed because DOL would still be required to suspend under RCW 46.63.110 upon receipt of the notice from the court.[11] Thus, Plaintiffs' case does not present claims for which the Court can make a final and conclusive

[10] DOL does not concede that should Plaintiffs bring a claim alleging RCW 46.63.110 is unconstitutional, they would succeed.

[11] For the same reasons Plaintiffs do not satisfy the closely related standing requirement that they must show injury likely to be redressed by the requested relief.

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

determination that would provide the Plaintiffs the relief they seek. Plaintiffs do not satisfy the fourth justiciability factor.[12]

Because Plaintiffs do not bring justiciable claims, they have failed to invoke the subject matter jurisdiction of the Court and Plaintiffs' claims must be dismissed.

C. Due Process is Satisfied by the Court's and DOL's Overall Enforcement Process for Moving Violations That Includes Evaluation of a Violator's Ability to Pay

The overall statutory process the Legislature enacted for levying fines and suspending the driving privilege provides Plaintiffs with due process.[13] When a person is found to have committed a moving violation, the court imposes a fine in accordance with RCW 46.63.110(1). At the time the municipal or district court imposes the fine, the violator is afforded the opportunity to pay the fine, seek a payment plan or perform community service. RCW 46.63.110(6). If after entering into a payment plan, a violator is unable to make the payments, or complete community service, they can seek to modify the plan. RCW 46.63.110(6)(a). If the violator disagrees with the district or municipal court's disposition of the case, they may seek further relief. *See* IRLJ 5.1, 6.7; CRLJ 60(b)(11); RALJ 2.2. If the lower court's decision is upheld, and they still fail to make payments, the Court must notify DOL that they are FTA. RCW 46.63.110(6)(b). When DOL receives the FTA notice from the court, it must take action to suspend the license. *Id*. DOL's administrative process begins by notifying the violator that their license is going to be suspended 45 days after the notice. RCW 46.20.245(1). The violator can seek a pre-suspension administrative hearing to point out

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[12] ESSB 5226 has passed the Washington State Senate and is pending before the House. This Legislation, if enacted, has a March 1, 2022, effective date. It would require payment plans, eliminate license suspensions for failure to pay moving violations, authorize suspensions when a person fails to comply with a payment plan or fails to appear and show evidence of ability to pay. It would authorize DOL to reinstate suspended license for reasons that are no longer grounds for suspensions. If enacted, the Plaintiffs' claims would become moot and they would not satisfy the first justiciability factor.

[13] When evaluating whether there has been a due process violation, the Court balances (1) the private interest affected by the government action, (2) the risk of erroneous deprivation of that interest under existing procedural protections, and (3) the countervailing government interest, including the potential burden of additional procedures. *See City of Bellevue v. Lee*, 166 Wn.2d 581, 589, 210 P.3d 1011 (2009) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

any errors made concerning the debt owed. RCW 46.20.245(2). The violator can appeal that decision to superior court to determine if DOL made an error of law. RCW 46.20.245(2)(e), RCW 46.20.308(8).

Plaintiffs take issue with the step in this process where DOL notifies a violator that their license is to be suspended, arguing that DOL must include an evaluation of their ability to pay. But, violators are already afforded that opportunity earlier in the process when the court that adjudicates their violation gives them the opportunity to seek the Court's evaluation of their financial situation. A person who has just had their violation adjudicated at the municipal or district court level can seek review of the court's determination in superior court including its determination of the fine, the person's eligibility for a payment plan, and the plan itself. DOL's pre-suspension administrative review process, and the subsequent judicial appeal process, ensures that the court's notice of non-payment to DOL is accurate.[14] The overall process provided to a person who commits a moving violation just described satisfies due process under the *Mathews v. Eldridge* test.

Plaintiffs' reliance on *State v. Blazina,* 182 Wn.2d 827, 344 P.3d 680 (2015), is misplaced because *Blazina* actually supports DOL's position that any evaluation of ability to pay must occur at the court imposing the fine. In finding a violation of due process, the *Blazina* Court found that the *trial court* failed to make an individualized inquiry into the defendant's ability to pay discretionary legal financial obligations prior to imposing them at sentencing. *Blazina*, 182 Wn.2d at 830, 838.

Similarly, Plaintiffs cannot rely on *State v. Johnson,* 179 Wn.2d 534, to assert that more is required of DOL. The *Johnson* Court did not reach the merits of whether DOL could suspend a license for failure to pay a fine, because the Plaintiff did not have standing to bring his claim.

[14] DOL's administrative review process for licenses suspensions was previously upheld when it was challenged on grounds it provided insufficient notice and opportunity to be heard. *Lee*, 166 Wn.2d at 586 (finding DOL's review procedure in RCW 46.20.245 satisfies due process because it allows for administrative and judicial review before suspensions takes effect).

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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

Id. at 553-554. However, the Court quoted the Wisconsin Supreme Court that found that those claiming indigence in the face of traffic fines cannot satisfy the definition, stating: "in traffic cases, it is difficult to find an inability to pay when a defendant owns an automobile and seemingly has money to buy gasoline or has the ability to borrow." *Id.* at 554 [internal citation omitted]. If such an inquiry were proper *and* the Plaintiffs are in fact constitutionally indigent, *the trial court*, not DOL, is the appropriate entity to make that determination.

Plaintiffs' reliance on *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983) and its progeny to claim that the State cannot punish poverty, is also oversimplified and misplaced. Pls.' Mot. for Summ. J. at 10. *Bearden* addressed whether "a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate." *Bearden,* 461 U.S. at 665. *Bearden* and its progeny are distinguishable because a privilege to drive is an interest of lesser importance than a person's physical freedom. Moreover, Plaintiffs in this case have been provided the opportunity to establish their inability to pay through the court's process. Pierce Decl., ¶ 20; Gladstone Decl., ¶ 8; Comack Decl., ¶ 9; Elsner Decl., ¶¶ 3-7; Garner Decl., ¶¶ 3-14. Finally, as in *Blazina*, and here, the Plaintiffs in *Bearden* argued that the court, not an administrative agency, was required to evaluate the defendant's ability to pay.

Plaintiffs in this case have not met their burden of establishing that their inability to challenge their fines at the point of suspension violates Plaintiffs' due process rights, and those claims should be dismissed.

D. DOL's Suspension Authority Does Not Violate Equal Protection Under Washington Constitution Article I, Section 12

DOL's suspension statute is not subject to equal protection clause analysis because it does not make a classification on its face or in effect. If equal protection analysis does apply,

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Seattle, WA 98104
(206) 464-7676

DOL's suspension statute is not subject to intermediate scrutiny but rather rational basis review. Regardless of which test applies, DOL's statute easily meets the test.

1. Equal protection analysis does not apply to DOL's statute because it does not create a classification on its face or have the effect of burdening a suspect class

Equal protection analysis applies only to government classifications that impose a burden or confer a benefit on one class of persons to the exclusion of others. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620, 631, 116 S. Ct. 1620, 1627, 134 L. Ed. 2d 855 (1996); *Orr v. Orr*, 440 U.S. 268, 283, 99 S. Ct. 1102, 1113–14, 59 L. Ed. 2d 306 (1979).[15] If the classification is facial or has the effect of distributing burdens or benefits unequally, equal protection requirements must be satisfied. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (durational residency requirements were classifications in effect).[16]

Equal protection analysis is not triggered in the present case because DOL's license suspension statute, RCW 46.20.289, does not create a classification on its face. It applies to any person who is the subject of a report from the court for failing to respond, appear or comply with the terms of a violation. RCW 46.20.289. Anyone, whether they have means or not, who falls into these categories, including those who do not pay their fines under RCW 46.63.110(6), becomes the subject of the notice from the court to DOL.

Further, there is no evidence that any burden on Plaintiffs was *caused* by the suspension statute. Rather, as explained above, the undisputed evidence is that the courts that adjudicated

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[15] "The Equal Protection clause of the Washington State Constitution, article I, section 12 ... require[s] that 'persons similarly situated ...' receive like treatment." *Aji P. by & through Piper v. State*, __ Wn.2d. __, 480 P.3d 438, 455 (2021) (quoting *State v. Coria*, 120 Wn.2d 156, 169, 839 P.2d 890 (1992)), aff'd on other grounds, 169 Wn.2d 81, 233 P.3d 853 (2010).

[16] In general, the Washington Supreme Court has construed Const., art. I, § 12 as "substantially similar" to the federal equal protection clause. *See Schroeder v. Weighall*, 179 Wn. 2d 566, 571, 316 P.3d 482, 485 (2014). Plaintiffs do not provide any argument that this case confers benefits that "constitute a 'privilege' or 'immunity' implicating fundamental rights for purposes of the independent article 1, section 12 analysis under the Washington Constitution. *Id.* at 573. Moreover, the issues Plaintiffs raise do not implicate the sort of fundamental rights subject to that test. *See Am. Legion Post #149 v. State Dep't of Health,* 164 Wn. 2d 570, 600, 192 P.3d 306, 322 (2008) (Fundamental liberty interests include the right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion).

ATTORNEY GENERAL OF WASHINGTON
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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

the Plaintiffs' fines offered payment plans and/or community service at the time of the Plaintiffs' offenses and continue to offer them today. Plaintiffs' assertions to the contrary are conclusory and unpersuasive. *See* Pls.' Mot. for Summ. J. at 6, n.23 (claiming court practices "vary significantly throughout the state" but citing only the identical conclusory statement in a report prepared for the purposes of recommending consolidation of traffic fines). Accordingly, the only admissible evidence in the record demonstrates that Plaintiffs' suspensions resulted from their violations of the motor vehicle code and failure to avail themselves of, or follow through with, the payment and community service options offered by the courts. DOL's suspension statute does not apply to individuals who seek payment plans and follow through. RCW 46.63.110(6). Therefore, Plaintiffs have not demonstrated a burden on a suspect class and equal protection analysis is not triggered.

2. If equal protection applies, DOL's statute is subject to rational basis review, but even if intermediate scrutiny applies, DOL's statute satisfies both tests

a. Rational basis review applies, not intermediate scrutiny

If the equal protection analysis applies, there are three independent reasons why rational basis, and not an intensified form of scrutiny, is appropriate here.[17] First, there is no *purposeful* semi-suspect classification. *Pers. Adm'r v. Feeney*, 442 U.S. 256, 272, 274, 279, 281, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979) (finding no unconstitutional discrimination where effect of statute giving veterans preference for public employment did not have purpose of discriminating against women); *Macias v. Dep't of Labor and Indus.,* 100 Wn. 2d 263, 267, 668 P.2d 1278 (1983) (disparate impact on a minority ethnic group alone does not trigger strict scrutiny, absent evidence of purposeful discrimination or intent). DOL's suspension statute was enacted in 1993

[17] To determine whether a statute violates equal protection, the appropriate standard of review depends on the nature of the classification of the rights involved. *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242 P.3d 876 (2010). There are at least three levels of scrutiny. Strict scrutiny applies only when a government action threatens a fundamental right or affects a suspect class. *State v. Manussier,* 129 Wn.2d 652, 672–73, 921 P.2d 473 (1996). Intermediate scrutiny applies where the statute implicates both an important right and a semi-suspect class not accountable for its status. *Am. Legion Post #149,* 164 Wn. 2d at 600. Finally, minimum scrutiny applies when the statutory classification neither involves a suspect or semi-suspect class nor threatens a fundamental or important right. *Merseal v. Dep't of Licensing*, 99 Wn. App. 414, 420, 994 P.2d 262, 266 (2000).

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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

to replace criminal sanctions with suspensions, in order to deter violations of the motor vehicle code in the interest of public safety. Final Bill Report for SHB 1741, Laws of 1993, ch. 501; *see* Huddleston Decl., Exs. 4-5. There is no evidence in the statute, or its legislative history, that its purpose was to harm the poor. The Plaintiffs offer no argument that the Legislature had a purpose contrary to public safety.

Second, "the poor" are not a semi-suspect class.[18] The Supreme Court has rejected invitations to identify the poor as a semi-suspect class. *Harris v. McRae*, 448 U.S. 297, 323, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980) ("this court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis").

Nor in any of the indigent-prisoner cases that Plaintiffs cite, has the Washington Supreme Court held that the "poor" are a semi-suspect class. Rather these cases are confined to "a deprivation of a [physical] liberty interest [by imprisonment] due to indigency". *See Matter of Mota*, 114 Wn. 2d 465, 543, 788 P.2d 538 (1990); *State v. Phelan*, 100 Wn. 2d 508, 512, 671 P.2d 1212 (1983). The other cases Plaintiffs cite similarly do not raise the issue of whether the poor are a semi-suspect class. *State v Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987) (juvenile's right to jury trial); *Schroeder v. Weighall,* 179 Wn. 2d 566, 573, 316 P.3d 482, 486 (2014) (right of plaintiff, injured as a minor, to bring common law claim under tolling statute); *Plyler v. Doe,* 457 U.S. 202, 216-18, 102 S. Ct. 2382, 2395, 72 L. Ed. 2d 786 (1982) (right of illegal-alien children to education).

Plaintiffs misapply *Plyler's* test for intermediate scrutiny when they baldly state without argument that "the poor" are semi-suspect because they are "individuals of a discreet class who

[18] The Supreme Court has recognized only certain classifications as semi-suspect. *See, e.g., Craig v. Boren*, 429 U.S. 190, 97 S. Ct. 451, 50 L. Ed. 2d 397 (1976) (gender); *Clark v. Jeter*, 486 U.S. 456, 465, 108 S. Ct. 1910, 100 L. Ed. 2d 465 (1988) (illegitimacy). Even higher than intermediate scrutiny is strict scrutiny, where the statute classifies based upon race, ethnicity or national origin; and resident alienage. *See, e.g.*, *City of Richmond v J.A. Croson Co.*, 488 U.S. 469, 506, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989) (race); *Sugarman v. Dougall*, 413 U.S. 634, 642, 646, 93 S. Ct. 2842, 37 L. Ed. 2d 853 (1973) (alienage).

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
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are not fully accountable for their status." Pls.' Mot. for Summ. J. at 18.[19] People who violate the motor vehicle code and cannot pay their fines are distinct both from *Mota's* and *Phelan's* incarcerated prisoners, and children not legally admitted in the United States, who "can affect neither their parents' conduct nor their own status." *Plyler*, 457 U.S. at 220. In contrast, three out of four of the Plaintiffs--Gladstone, Comack and Pierce--have affected "their own status" by making substantial headway toward paying off their traffic offenses debt. Gladstone Decl., ¶¶ 7-8; Comack Decl., ¶¶ 7, 9; Martin Decl., ¶¶ 8-9 (Comack); Pierce Decl., ¶¶ 14, 18-20; Elsner Decl., ¶¶ 8-9 (Pierce/Spicer); Revoir Decl., ¶ 11 (Pierce). Gladstone and Pierce are working. Gladstone Decl. ¶ 11; Pierce Decl., ¶ 23. Spicer has worked off and on, and was recently offered employment. Spicer Decl., ¶ 6. Plaintiffs do not constitute a semi-suspect class.

Third, the court of appeals has held that a driver's license is not an "important right" for purposes of equal protection analysis, but is rather a "privilege." Division II controlling authority holds that for purposes of equal protection analysis, driver's licenses are not important interests. *Merseal,* 99 Wn. App. at 420 (citing *Crossman v. Dep't of Licensing,* 42 Wn. App. 325, 329, 711 P.2d 1053 (1985) (suspension of a driver's license does not demand heightened scrutiny). No Washington case since *Merseal* has held otherwise. The issue in *Merseal* was whether a statute violated equal protection where it entitled private drivers but not commercial drivers to an occupational permit after suspension. In rejecting the plaintiff's claim that intermediate scrutiny was warranted, the court confirmed that "[o]perating a commercial vehicle on public highways is a privilege; it is not a right." The *Merseal* court found that needing a driver's license to maintain one's current job did not "alter the nature of the license extended by the State," … "[i]t remains a privilege." *Merseal*, 99 Wn. App. at 420-21. The court's holding is directly

[19] Plaintiffs argue "the poor" are a semi-suspect class, describing them only as those who cannot afford to pay their moving violation fines at the time they are received. Pls.' Mot. for Summ. J. at 4. They assert people of color are disproportionately poor and cited for traffic offenses, but do not allege that DOL's statute classifies based upon race or explain how their assertions are relevant to the equal protection analysis. Therefore, the state does not respond to the allegations concerning people of color but reserves its right to do so. *Id.*

ATTORNEY GENERAL OF WASHINGTON
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800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

applicable to the driver's license interest in the equal protection context of this case. In contrast, Plaintiffs cite exclusively inapplicable due process cases. *See* Pls.' Mot. for Summ. J. at 10, 18.

b. DOL's statute meets either the minimum scrutiny or intermediate scrutiny tests

Finally, DOL's statute satisfies minimum scrutiny under either the rational basis test or the substantial interest test. When examining a statute under the rationale basis test, the statute is presumed constitutional and the party challenging it has a heavy burden of proof. *Merseal,* 99 Wn. App. at 420. The court upholds the classification if the government points to a rational relationship between the classification and the legislative purpose. *Id.* at 421-422; *Craig,* 429 U.S. at 221-222 (rational basis is offended only if statute is wholly irrelevant to the achievement of the state's objective and upheld if any state of facts reasonably may be conceived to justify it).

Here, Plaintiffs cannot meet their burden to demonstrate the statute is unconstitutional because the suspension of licenses bears a rational relationship to the Legislature's purpose. The Motor Vehicle Code, RCW Title 46, including RCW 46.20.289, establishes rules that are intended to promote public safety on the roadways of Washington State. *See e.g.,* Driver's licenses (chapter 46.20 RCW); Rules of the road (chapter 46.61 RCW). RCW 46.20.289's suspension authority impacts FTAs associated with criminal and non-criminal moving violations. The roughly 60 or so non-criminal moving violations that would be impacted by this lawsuit include violations that impact safety on the roads such as texting while driving, speeding, and passing a stopped school bus. Weaver Decl., Attach. 6.

Fines are a deterrent to moving violations. Fines double for particularly egregious driving to provide greater deterrence for the more serious violations. *See, e.g.*, *Washington Driver Guide,* pp. 3-16, 4-23, available at https://www.dol.wa.gov/driverslicense/docs/driverguide-en.pdf (fines double for speeding in an emergency zone where emergency assistance is being rendered; and when passing a school bus). Persons who are inclined to violate the motor vehicle code feel

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Seattle, WA 98104
(206) 464-7676

the consequence of doing so when a fine is levied against them, rich and poor alike. The fine is a deterrent because no one likes to part with money as the result of a traffic offense that could be used for something else.

License suspensions ensure that fines have a deterrent effect. Courts in other jurisdictions have found they are critical to public safety. *See Motley v. Taylor*, 451 F. Supp. 3d 1251, 1288 (M.D. Ala. 2020) (citing cases recognizing deterrent effect of traffic fines and associated revocation for nonpayment); *Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1174-75 (D. Or. 2018) (recognizing that without a compliance mechanism for traffic fines, "the fine is toothless and without deterrent effect."). Of the 192,974 suspension notices issued by DOL from October 12, 2019 to October 12, 2020, thirty-eight percent of drivers resolved their court fees and costs before the suspension notices went into effect; twenty-six percent resolved them after the suspension went into effect, and sixty-three percent ultimately complied sometime after receiving their suspension notices. Weaver Decl., ¶ 11. Suspensions can inspire people to make an effort to pay their fines rather than lose their privilege to drive. In addition, these fines support traffic-accident related impacts and the enforcement of traffic offenses. RCW 46.63.110(7)-(8) (fines support emergency medical services, trauma care systems, traumatic brain injury accident account, state treasurer, and general fund). To the extent suspensions incentivize up to 63 percent of violators to pay fines that would otherwise not be paid, the revenue collected for these purposes can be expected to be substantially reduced. Cottingham Decl.; Weaver Decl., ¶ 11.

The Legislature has clarified and retained DOL's authority to suspend for moving violations evidencing its importance in fulfilling the Legislature's purpose of keeping people safe on the roads. *See* Huddleston Decl., Exs. 4-5 (SHB 1741) (first enacting RCW 46.20.289); Exs. 10-12 (SB 5374) (clarifying DOL's suspension authority for failing to *pay* tickets for traffic offenses); Exs. 7-9 (ESSSB 6284) (removing DOL's suspension authority for lesser offenses, such as parking, equipment, and "paper violations" (no insurance, registration, license) but retaining it for moving violations). In 2012, there was support for ESSSB 6284 expressly because

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(206) 464-7676

it did not remove DOL's authority to suspend for moving violations. *Id*. at Ex. 7 (citing safety, deterrence and accountability reasons for retaining suspension authority for moving violations).

Suspensions help keep unsafe people off the road. Individuals who have been suspended for traffic safety (moving) violations make up a higher percentage of crashes than those suspended for paper violations, and those who have not been suspended. Rue Decl., Ex. 1 at 9, 11. Though some continue to drive after their licenses are suspended, many do not. Weaver Decl., ¶ 11

Federal courts have upheld licensing statutes similar to Washington's under the rational basis test. The Sixth Circuit upheld Michigan's comparable license suspension framework. *Fowler v. Benson*, 924 F.3d. 247 (6th Cir. 2019) (finding that wealth based classifications are not suspect and driver's licenses are property, not liberty interests). The court applied rational basis review and concluded plaintiffs were unlikely to prevail on the merits of their equal protection claims. *Id.* at 260-263. A number of federal district courts have reached similar conclusions. [20]

If the Court concludes intermediate scrutiny applies, *Am. Legion Post #149,* 164 Wn. 2d at 600, "the challenged law must be seen as furthering a substantial interest of the state." *See, e.g.*, *Phelan,* 100 Wn.2d at 508 (applying intermediate scrutiny to state's policy of not crediting time served to indigent prisoners); *Merriam Webster's Third New International Dictionary*, Unabridged (Online edition 2019 available at https://unabridged.merriam-webster.com) (defining "substantial" as not imaginary or illusory; important, essential).

For the same reasons DOL's statute satisfies the rational basis test, the statute satisfies intermediate scrutiny. The State's interests discussed above are important, and not merely casual

[20] Numerous federal district courts have similarly refused to find equal protection violations where driver suspension statutes are applied without evaluating violators' ability to pay. *Mendoza*, 358 F. Supp. 3d at 1174-75; *Johnson v. Jessup*, 381 F. Supp. 3d 619 (M.D.N.C. 2019); *White v. Shwedo*, No. 2:19-CV-03083-RMG, 2020 WL 2315800 (D.S.C., May 11, 2020); *Wright v. Family Support Div. of Mo. Dep't of Soc. Servs*., 458 F. Supp. 3d 1098(E.D. Mo. 2020); *Motley*, 451 F. Supp. 3d 1251.

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

or illusory goals. Through its suspension statute, the State protects residents on the roads from serious injuries and deaths occurring in Washington each year. *See, e.g.,* Huddleston Decl., Ex. 1, Ex. 2, p. 72-74; Ex. 3. Moreover, the State has demonstrated that license suspensions further that interest sufficient to satisfy intermediate scrutiny. Weaver Decl., ¶ 11; *see Motley*, 451 F. Supp. 3d at 1288; *Mendoza*, 358 F. Supp. 3d at 1174-75; *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53, 70, 121 S. Ct. 2053, 2064, 150 L. Ed. 2d 115 (2001) ("None of our gender-based classification, equal protection cases have required that the statute under consideration must be capable of achieving its ultimate objective in every instance.").

For the foregoing reasons, DOL's suspension statute does not violate equal protection.

E. RCW 46.20.289 Does Not Violate the Excessive Fines Clause Because a License Suspension is Not Punitive and the Suspension is Not Permanent

Plaintiffs do not meet their burden of demonstrating that DOL's mandatory suspension of their licenses under RCW 46.20.289 violates the Excessive Fines Clause of the Eighth Amendment.

The Eighth Amendment to the United States Constitution provides that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." The amendment serves as a limitation on the "government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Timbs v. Indiana*, __ U.S. __, 139 S. Ct. 682, 687, 203 L. Ed. 2d 11 (2019); *Austin v. United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993). Although Plaintiffs assert that article I, § 14 of the Washington Constitution "may" provide greater protection than the Eighth Amendment, they acknowledge that the Eighth Amendment jurisprudence provides the relevant analysis. Pls.' Mot. for Summ. J. at 19.[21] They make no specific argument that article I, § 14 provides broader protection in this specific case.[22]

[21] The Eight Amendment applies to states through the Fourteenth Amendment's due process clause. *Timbs v. Indiana*, — U.S. —, 139 S. Ct. 682, 687, 203 L. Ed. 2d 11 (2019).

[22] Their failure to provide argument waives the issue. *Sprague v. Spokane Valley Fire Dep't*, 189 Wn.2d 858, 876, 409 P.3d 160 (2018).

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676

In determining whether a forfeiture violates the Eight Amendment, courts ask (1) whether the forfeiture constitutes a punishment, and (2) if so, whether that punishment is excessive. *City of Seattle v. Long*, 13 Wn. App. 2d 709, 730, 467 P.3d 979 (2020); *Timbs*, 139 S. Ct. at 687. A fine is excessive if it is "grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 336-37, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). However, to qualify as a fine, the deprivation must be intended to be permanent, as in the case of civil forfeitures. *Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994). "The party challenging the constitutionality of a forfeiture bears the burden of demonstrating" a violation. *Long*, 13 Wn. App. 2d at 730.

To date, the Supreme Court has limited its application of the Excessive Fines Clause to the criminal forfeiture context. *Pimentel v. City of Los Angeles*, 974 F.3d 917 (9th Cir. 2020) (summarizing Supreme Court jurisprudence). The Ninth Circuit has gone further and applied the Excessive Fines Clause to civil monetary penalties arising under federal law, and recently held that the Eight Amendment applies to municipal parking fines. *Id*. But DOL is aware of no cases holding that the Excessive Fines Clause operates to limit DOL's driver's license suspensions that are only temporary. As explained above, courts—and not DOL—order fines for traffic infractions, and Plaintiffs challenge DOL's statutory process but not statutes for court actions.

Indeed, Plaintiffs cite cases that do not support their novel claim that a license suspension is punitive or a forfeiture subject to the Excessive Fines Clause. Pls.' Mot. for Summ. J. at 20; *See, e.g., Long*, 13 Wn. App. at 730-31 (finding no Eighth Amendment violation where city impounded truck used as owner's home and levied a fee); *Pimentel*, 974 F.3d at 922 (finding no Eight Amendment violation where City imposed parking fine); *Blake v. City of Grants Pass*, 2020 WL 4209227 at *11 (D. Or. July 22, 2020) (finding that fines for unauthorized camping in city parks violated the Eighth Amendment because it punished people for basic acts of living like sleeping).

ATTORNEY GENERAL OF WASHINGTON
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Seattle, WA 98104
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Instead, a civil sanction that is solely remedial is not punishment, and thus does not violate the Excessive Fines Clause. *See Austin,* 509 U.S. at 620 n. 14. It has "almost universally been held that the suspension or revocation of a driver's license is not penal in nature and is not intended as punishment, but is designed solely for the protection of the public in the use of the highways." *State v. Scheffel*, 82 Wn.2d 872, 879, 514 P.2d 1052 (1973).[23] Here, license suspensions arising under RCW 46.20.289 are a critical part of the legislative framework governing driver accountability for moving traffic violations and, consistent with that purpose, serve to protect the public.[24] Further, unlike the underlying fine for the infraction, the suspension is not permanent because the driving privilege is reinstated once payment is made. Indeed, a suspension is not the type of permanent deprivation, limited to fines or forfeitures, falling within the protection of the Excessive Fines Clause. *Coleman*, 40 F.3d at 263.

Even if the Court determines that the license suspensions were punitive, which it should not do, there is no violation unless Plaintiffs can show that the suspension is grossly disproportionate to the offense. *Bajakajian*, 524 U.S. at 334. Judgment about the appropriate punishment for an offense belongs in the first instance to the Legislature. *Id*. at 322. There is thus a strong presumption that the penalties are not excessive. *Long*, 13 Wn. App. 2d at 731. Here, Plaintiffs cannot overcome this strong presumption. The Legislature and the courts used their discretion to set the amount of the infraction. RCW 46.63.110. The license suspension is directly related to the underlying traffic offenses, and its duration lasts only as long as a fine remains outstanding. By paying the underlying obligation, or entering into and staying complaint with a payment plan agreement, the driver can obtain relief from the suspension. RCW 46.20.289.

In contrast, cases finding a violation of the Excessive Fines Clause have turned on a lack of proportionality. In *Bajakajian*, for instance, the Court held that forfeiture of $357,144 was

[23] Further, *State v. McClendon*, 131 Wn.2d 853, 870, 935 P.2d 1334 (1997) (Talmadge concurring), contains a summary of the jurisdictions finding license suspensions remedial in nature.

[24] *See Motley v. Taylor*, 451 F. Supp. 3d at 1288; *Mendoza v. Garrett*, 358 F. Supp. 3d at 1174-75.

ATTORNEY GENERAL OF WASHINGTON
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grossly disproportional to the crime of failing to report the removal of the currency from the United States. *Bajakajian,* 524 U.S. at 337. The Court explained that the amount of the forfeiture varied dramatically depending on the amount an individual failed to report. *Id*. at 323. Nevertheless, in each case the crime was the same and involved minimal harm to the United States. *Id*. Here, the license suspension is proportional to the driver's failure to meet the obligation of a traffic offense and every driver experiences the same consequence—suspension.

Finally, the license suspensions are not excessive for non-criminal moving violations when compared to criminal moving violations with mandatory suspension terms of one or two years. Plaintiffs fail to acknowledge that while all moving violations threaten public safety, the ultimate consequence for non-criminal moving violations is less severe because violators, upon compliance, can immediately reinstate their licenses unlike individuals suspended for criminal violations. RCW 46.20.289.

The Plaintiffs have failed to carry their burden of demonstrating RCW 46.20.289 violates the Excessive Fines Clause under the Eighth Amendment.

VI. CONCLUSION

Because there are no genuine issues of material fact and Defendants are entitled to summary judgment as a matter of law, Defendants respectfully request that the Court grant Defendants' Motion for summary judgment and dismiss Plaintiffs' claims.

DATED March 26, 2021.

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I, Dionne Padilla-Huddleston, certify that I caused to be served a copy of **Defendants' Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment**, **Declarations of Schuyler Rue, Carla Weaver, Dionne Padilla-Huddleston, Haiping Zhang, Kevin Cottingham, Marianne Boggie, Suzanne Elsner, Lea Garner, Rhonda Hanowell, Deannie Martin, Paulette Revoir, Bruce Van Glubt, and Sharon Whittaker** on all parties or their counsel of record on the date below as follows:

Via SFT Transfer to https://sft.wa.gov, user name: atg-laloly-folder9, and Email notification to:

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E-filed with (*except proposed Order)*

LINDA ENLOW, CLERK
THURSTON COUNTY SUPERIOR COURT
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OLYMPIA, WA 98502-6001

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 26th day of March 2021 at Seattle, WA.

s/Dionne Padilla-Huddleston
DIONNE PADILLA-HUDDLESTON
WSBA # 38356
Assistant Attorney General