

1 Hearing Date: 4/30/21
2 Hearing Time: 9:00 a.m.
3 Judge/Calendar: Mary Sue Wilson
4
5
6
7

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR COUNTY OF THURSTON

10 DANIELLE PIERCE, AMANDA
11 GLADSTONE, JANIE COMACK, and
12 LACY SPICER,

13 Plaintiffs,

14 v.

15 DEPARTMENT OF LICENSING, a
16 Washington state agency, and
17 TERESA BERNTSEN, in her official
18 capacity as Director of the Department
19 of Licensing,

20 Defendants.
21
22
23
24
25
26

NO. 20-2-02149-34

PLAINTIFFS' REPLY BRIEF IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND BRIEF IN
OPPOSITION TO DEFENDANTS' CROSS-
MOTION FOR SUMMARY JUDGMENT

Table of Contents

1 Introduction 1

2 Statement of Undisputed Facts..... 2

3 1. DOL does not dispute that Plaintiffs are constitutionally indigent. 2

4 2. The State admits that DOL never conducts administrative hearings

5 regarding a driver’s ability to pay a fine either before or after it suspends the

6 driver’s license..... 2

7 3. The State admits that DOL’s license suspensions have left 249,022 drivers

8 with suspended licenses indefinitely, 70,811 drivers in just the year before

9 Plaintiffs filed this action. 3

10 4. No rules or standards permit or govern requests for an impartial judicial

11 officer to determine a driver’s ability to pay. 4

12 5. DOL suggests that negotiating a payment plan with a debt collector is a

13 viable substitute for a hearing. 6

14 6. The recent experiences of Danielle Pierce and Janie Comack demonstrate

15 the chaos and unfairness of the system. 9

16 7. Conclusion regarding the Statement of Facts 10

17 Argument..... 11

18 I. DOL’s automatic license suspension process violates due process..... 11

19 A. Neither DOL nor the courts provide a meaningful opportunity to be

20 heard before an impartial tribunal regarding a driver’s ability to pay before

21 suspending a license for failure to pay. 12

22 B. As the entity charged by law with suspending driver’s licenses, DOL

23 must first provide due process. 15

24 C. Due process requires a pre-deprivation hearing for suspension of

25 licenses..... 16

26 II. RCW 46.20.289 denies Equal Protection of the Law to a semisuspect class of

individuals who cannot afford to pay their traffic fines. 17

A. RCW 46.20.289 imposes classifications that, to be valid, must comport

with Equal Protection. 18

B. The automatic suspension of licenses to punish drivers who are unable to

pay traffic fines is subject to intermediate scrutiny. 19

C. RCW 46.20.289 does not pass intermediate scrutiny because it does not

further a substantial governmental interest..... 20

III. Indefinite suspension of a drivers’ license merely for failure to pay a fine is

an “Excessive Fine” because it is both punitive and grossly disproportionate. .. 21

IV. Plaintiffs’ claims are justiciable..... 23

Conclusion 25

Table of Authorities

Cases

1		
2		
3		
4	<i>Austin v. United States</i> , 509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993)	22
5	<i>Barnier v. City of Kent</i> , 44 Wn. App. 868, 723 P.2d 1167 (1986).....	24
6	<i>Bearden v. Georgia</i> , 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).....	12, 16
7	<i>Bearden, Tate v. Short</i> , 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed.2d 130 (1971)	12
8	<i>Bell v. Burson</i> , 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed.2d 90 (1971)	17
9	<i>Blake v. City of Grants Pass</i> , Case No. 1:18-cv-01823-CL, 2020 WL 4209227 (D. Or. July 22, 2020) at *11.....	23
10	<i>Burman v. State</i> , 50 Wn. App. 433, 749 P.2d 708, 712 (1988)	24
11	<i>City of Bellevue v. Lee</i> , 166 Wn.2d 581, 210 P.3d 1011 (2009).....	15
12	<i>City of Redmond v. Moore</i> , 151 Wn.2d 664, 91 P.3d 875 (2004)	passim
13	<i>Coleman v. Watt</i> , 40 F.3d 255 (8 th Cir. 1994).....	22
14	<i>Dixon v. Love</i> , 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed.2d 172 (1977)	16
15	<i>Goldberg v. Kelly</i> , 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).....	16
16	<i>Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake</i> , 150 Wn.2d 791, 83 P.3d 419 (2004)	24
17	<i>In re A.E.T.H.</i> , 195 Wn.2d 1013, 464 P.3d 196 (2020)	13
18	<i>Mackey v. Montrym</i> , 443 U.S. 1, 99 S. Ct. 1187, 61 L. Ed.2d 321 (1979).....	16
19	<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed.2d 18 (1976).....	11, 13
20	<i>Matter of Dependency of A.E.T.H.</i> , 9 Wash. App. 2d 502, 446 P.3d 667, <i>review denied sub nom</i>	13
21	<i>Matter of Mota</i> , 114 Wn.2d 465, 788 P.2d 538 (1990)	19, 20
22	<i>Merseal v. Dept. of Licensing</i> , 99 Wn. App. 414, 94 P.2d 262 (2000)	20
23	<i>Peters v. Kiff</i> , 407 U.S. 493, 92 S.Ct. 2163, 33 L. Ed. 2d 83 (1972).....	13
24	<i>Schroeder</i> , 179 Wn.2d 566, 316 P.3d 482 (2014)	20
25	<i>Southern Pac. Terminal Co. v. Interstate Commerce Comm'n</i> , 219 U.S. 498, 31 S.Ct. 279, 55 L. Ed. 310 (1911)	24
26	<i>State v. Blank</i> , 131 Wn.2d 230, 930 P.2d 1213 (1997)	12
	<i>State v. Dolson</i> , 138 Wn.2d 773, 982 P.2d 100 (1999).....	17, 20
	<i>State v. Johnson</i> , 179 Wn.2d 534, 315 P.3d 1090 (2014), as amended (Mar. 13, 2014).....	12, 14
	<i>State v. McClendon</i> , 131 Wn.2d 853, 935 P.2d 1334 (1997).....	22
	<i>State v. Phelan</i> , 100 Wn.2d 508, 671 P.2d 212 (1983).....	19
	<i>State v. Schaaf</i> , 109 Wn.2d 1, 743 P.2d 240 (1987)	19
	<i>State v. Scheffel</i> , 82 Wn.2d 872, 514 P.2d 1052 (1973)	22
	<i>Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County</i> , 77 Wn.2d 94, 459 P.2d 633 (1969).....	24
	<i>Williams v. Illinois</i> , 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed.2d 586 (1970)	12

1 **Statutes and Legislation**

2 RCW 46.20.161(1)..... 20

3 RCW 46.20.245(2)..... 15

4 RCW 46.20.289..... passim

5 RCW 46.63.110(6)..... 1, 3, 13

6 Washington Legislature of Engrossed Second Substitute Bill 5226 25

7 **Rules**

8 Civil Rule 56 4

9 **Other Authorities**

10 “Helping every Washington resident live, work, drive, and thrive.” See

11 <https://www.dol.wa.gov/about/purpose-and-values.html>..... 16

12 Chelan County District court website, *available at*

13 <https://www.co.chelan.wa.us/district-court> 5

14 Everett Municipal Court website, *available at*

15 <https://www.everettwa.gov/316/Municipal-Court> 6, 7

16 Everson-Nooksack Municipal Court’s website, *available at*

17 https://www.ci.everson.wa.us/departments/municipal_court.php 6

18 <https://www.courts.wa.gov/forms/?fa=forms.home&dis=y>..... 4

19 Lynnwood Municipal Court website, *available at*

20 <https://www.lynnwoodwa.gov/Government/Municipal-Court> 6

21 Marysville Municipal Court website, *available at*

22 <https://marysvillewa.gov/144/Municipal-Court> 6

23 Sedro-Woolley Municipal Court website, *available at*

24 https://www.ci.sedro-woolley.wa.us/departments/municipal_court/index.php 6

25 Snohomish County District Court website, *available at*

26 <https://snohomishcountywa.gov/5165/District-Court-and-District-Court-Clerk>..... 6

Whatcom County District Court website, *available at*

<https://www.whatcomcounty.us/420/District-Court> 6, 8

Constitutional Provisions

WASH. CONST. art. I, § 12 18

1 Introduction

2 DOL’s mandatory and automatic suspension of driver’s licenses for those
3 who do not pay traffic fines violates the due process and equal protection
4 guarantees of the Washington Constitution because DOL does not distinguish
5 between the recalcitrant who will not pay, and the indigent who cannot. The State
6 admits that RCW 46.20.289 and RCW 46.63.110(6) each prohibit DOL from
7 making such ability-to-pay determinations before suspending licenses, and that
8 DOL does not do so. Moreover, the State affirmatively proves that the harm
9 caused by DOL’s mandatory license suspension scheme was not limited to the four
10 Plaintiffs, but instead has been systematically inflicted upon tens of thousands of
11 drivers licensed in Washington.

12 Lacking case law affirming the constitutionality of this practice, the State’s
13 main defense is an attempt to pass the blame to Plaintiffs and the buck to the
14 courts. These attempts to disown the State’s own constitutional responsibilities are
15 premised on the assumption that courts readily offer and regularly conduct
16 hearings regarding drivers’ ability to pay and, even if they do not, they offer
17 payment plans. Yet the State’s own factual materials contradict this assumption,
18 and instead reveal the lack of any objective procedures, rules and standards by
19 which courts evaluate a driver’s ability to pay. Nor does the State explain how the
20 “opportunity” to negotiate a payment plan with a for-profit debt collector, touted in
21 the declarations the State has submitted, provides the constitutionally-required
22 opportunity to be heard by an impartial decision-maker.

23 The State’s remaining arguments regarding the scope of the Constitution’s
24 Equal Protection and Excessive Fines protections for the poor frankly ignore case
25 law that stands in its way. Finally, the State leaves no room for doubt that its
26

1 scheme continues to threaten tens of thousands of indigent drivers with automatic
2 and indefinite suspension.

3 For all of these reasons, the State fails to come forward with facts or legal
4 authority that rebut Plaintiffs' demonstration that its automatic, mandatory
5 license suspense scheme is unconstitutional.

6 Statement of Undisputed Facts

7 The State's cross-motion presents pure questions of law. Indeed, by cross-
8 moving on exactly the same issues Plaintiffs raise in their motion, the State
9 acknowledges the absence of genuine issues of material fact.

10 This is true despite the State's attempt to show that Plaintiffs and all other
11 drivers are afforded genuine opportunities, before their licenses are suspended, to
12 reduce or eliminate their traffic fines based on their inability to pay. DOL's
13 evidence, far from creating an issue of fact or undermining Plaintiffs' position that
14 summary judgment is proper, shows instead that the "system" does not provide
15 anything resembling due process and in fact supports Plaintiffs' entitlement to
16 relief by establishing six points beyond dispute.

- 17 1. DOL does not dispute that Plaintiffs are constitutionally
18 indigent.

19 In their motion and declarations, Plaintiffs presented evidence that each of
20 them was indigent when they incurred traffic fines, and that their indigence made
21 it impossible to pay the fines in full on time. DOL does not dispute these facts.

- 22 2. The State admits that DOL never conducts administrative
23 hearings regarding a driver's ability to pay a fine either before
24 or after it suspends the driver's license.

25 The State confirms that DOL – not any court – is the entity that actually
26 suspends driver's licenses, and that it does not conduct administrative hearings

1 regarding a driver's ability to pay either before¹ or after² it suspends a driver's
2 license. The State acknowledges this is by statutory design, and that DOL is
3 barred by RCW 46.20.289 (as well as RCW 46.63.110(6)) from considering ability
4 to pay.³

5 3. The State admits that DOL's license suspensions have left
6 249,022 drivers with suspended licenses indefinitely, 70,811
7 drivers in just the year before Plaintiffs filed this action.

8 DOL also concedes the sheer scope of the problem. As of March 1, 2021,
9 DOL admits, 249,022 Washington drivers have suspended licenses for at least one
10 moving violation.⁴ In just the one year before Plaintiffs filed this lawsuit, DOL
11 issued 192,974 suspension notices.⁵ DOL acknowledges that of these, 37% involve
12 drivers who have not resolved their fines in a manner that permits the restoration
13 of their licenses.⁶ In other words, just in the last year alone, DOL admits that
14 70,811 driver's licenses have been indefinitely suspended.⁷

15 DOL lays blame for all of these suspensions at the feet of the drivers
16 themselves, accusing them of failing to obtain relief from the courts:

17 Had the Plaintiffs arranged for payment plans, followed
18 through, or renegotiated their plans, their driving privileges
19 would not have been suspended. And, if any of the Plaintiffs
20 had arranged for a payment plan after DOL suspended their
21 driving privileges . . . DOL would have rescinded their

22 ¹ Opp. 3:13-15.

23 ² Opp. 4 n.4.

24 ³ DOL mentions the possibility of judicial review of license suspensions, but
25 DOL concedes, as it must, that this review does not encompass consideration of a
26 driver's inability to pay the fine that led to the suspension. Opp. 4 n.4.

⁴ Weaver Decl. ¶10.

⁵ Weaver Decl. ¶11.

⁶ Weaver Decl. ¶11.

⁷ Weaver Decl. ¶11.

1 suspensions so long as Plaintiffs honored their obligations
2 under those plans.⁸

3 So engrained are DOL's habits that even with its suspension scheme in the
4 balance, DOL here does *exactly* what it may not constitutionally do: It assumes
5 that drivers with suspended licenses are in their predicament by virtue of their
6 own blameworthy disregard of court procedures and orders.

7 This claim necessarily rests on the assumption that a system exists in which
8 courts give indigent drivers a fair opportunity to be heard by an impartial tribunal
9 regarding their ability to pay. Drivers, the State argues, have only themselves to
10 blame for not seeking this relief. But the State's own factual submissions
11 contradict its rosy assumption, as the next section shows.

12 4. No rules or standards permit or govern requests for an
13 impartial judicial officer to determine a driver's ability to pay.

14 The State might perhaps be able to claim that DOL is constitutionally
15 excused from offering administrative ability-to-pay hearings if courts provided
16 these hearings before notifying DOL that the drivers had failed to appear, pay, or
17 comply with a notice of infraction. But the State's evidence shows that courts do
18 *not* routinely hold hearings to determine a person's ability to pay before sending
19 notice to DOL. In fact, the State's own evidence shows that there are no clear,
20 uniform, published rules, procedures, or standards that provide for ability-to-pay
21 hearings before an impartial judicial officer.⁹

22
23 ⁸ Opp. 7:14-18.

24 ⁹ For example, there are no analogs to Civil Rule 56, nor are there publicly
25 available forms comparable to those prepared for other proceedings where
26 individuals frequently appear without representation, such as those for family law
and protection order proceedings. For an index with links to court-issued forms,
see <https://www.courts.wa.gov/forms/?fa=forms.home&dis=y>.

1 True, Washington courts have uniform Infraction Rules for Courts of
2 Limited Jurisdiction. Yet none of these rules establish procedures and standards
3 for presenting and determining ability-to-pay issues. Consequently, there are no
4 clear, public, and objective procedures, standards or rules that inform an indigent
5 driver how to obtain a hearing on the driver's ability to pay, or that guide and limit
6 a court's discretion in conducting such hearings or deciding the issues presented.

7 Indeed, so balkanized and ad hoc are judicial practices that DOL is forced to
8 submit declarations from employees of eight different courts to describe the
9 idiosyncratic practices in each. These eight declarations are strong evidence not of
10 a fair system of determining ability to pay readily available to the Plaintiffs, but
11 rather a stark demonstration of a lack of any sensible, understandable, uniform
12 practice or standards.

13 The declarations uniformly confirm the absence of an understandable,
14 transparent, and fair judicial process in several respects. They affirmatively reveal
15 the absence of any consistent practice of granting ability-to-pay hearings in
16 accordance with clear rules, procedures and standards.

17 Each declarant offer conclusory assurances that drivers in his or her
18 jurisdiction are informed of their right to request a hearing regarding inability to
19 pay a fine and that each court considers a driver's ability to pay on request. Yet
20 not one declarant authenticates or produces copies of the notices their courts
21 allegedly give drivers. Nor does any declarant produce the rules that govern such
22 procedures. Notably, several declarants tout their courts' websites as one means
23 by which their courts advise drivers of their option to seek a hearing regarding his
24 or her ability to pay a fine. Yet none of the courts' websites,¹⁰ inform viewers of the

25 _____
26 ¹⁰ Chelan County District court website, *available at*
<https://www.co.chelan.wa.us/district-court>; Everett Municipal Court website,

1 option to request a hearing regarding their ability to pay a proposed fine, let alone
2 disclose the process for doing so.¹¹ And DOL's evidence leaves out information
3 about other courts that have imposed fines on some Plaintiffs, and that provide
4 even less information.¹²

5 5. DOL suggests that negotiating a payment plan with a debt
6 collector is a viable substitute for a hearing.

7 Absent evidence of rule-based, ability-to-pay hearings before a judge or
8 administrative judge, DOL suggests that it does not need to satisfy its

9 _____
10 available at <https://www.everettwa.gov/316/Municipal-Court>; Everson-Nooksack
11 Municipal Court's website, available at
12 https://www.ci.everson.wa.us/departments/municipal_court.php; Lynnwood
13 Municipal Court website, available at
14 <https://www.lynnwoodwa.gov/Government/Municipal-Court>; Marysville Municipal
15 Court website, available at <https://marysvillewa.gov/144/Municipal-Court>;
16 Snohomish County District Court website, available at
17 <https://snohomishcountywa.gov/5165/District-Court-and-District-Court-Clerk>;
18 Whatcom County District Court website, available at
19 <https://www.whatcomcounty.us/420/District-Court>; Skagit County District Court
20 website, available at [https://skagitcounty.net/Departments
21 /DistrictCourt/main.htm](https://skagitcounty.net/Departments/DistrictCourt/main.htm).

22 ¹¹ The websites consistently refer to two types of hearings that a driver may
23 request. The first is a Mitigation Hearing, where the driver admits they committed
24 the violation, but wish to explain the circumstances of the infraction to the judge.
25 The second is a Contested Hearing, where the driver does not believe they
26 committed the infraction. No court website indicated that a driver's ability to pay
would be considered at either type of hearing, or at any other point. *See id.*

The one arguable but transitory exception to this bleak picture is Skagit
County's website, which contains a link to a temporary Covid-related relicensing
program. Far from exonerating DOL, however, this temporary program illustrates
some of the features that one must incorporate into a system that furthers the
State's interests while protecting the poor from unconstitutional punishment. It
further shows that a fair system that complies with due process could be fashioned
without great trouble. Yet DOL has not done so and neither have the courts.

¹² For example, Sedro Wooley Municipal Court, https://www.ci.sedro-woolley.wa.us/departments/municipal_court/index.php, which Plaintiff Comack
has had to deal with.

1 constitutional obligations because payment plans are available. Indeed, the chief
2 point of each of the eight declarations by court personnel is to show the existence
3 of “well publicized payment plans.” But DOL’s declarations show that none of
4 these eight jurisdictions has a system for ensuring that each payment plan is
5 arrived at during a hearing before an impartial tribunal, in which a driver’s ability
6 to pay is considered and decided in accordance with clear, defined, uniform rules,
7 procedures, and standards. Rather, six of the eight jurisdictions—Chelan County
8 District Court,¹³ Everett Municipal Court,¹⁴ Everson-Nooksack Municipal Court,¹⁵
9 Lynnwood Municipal Court,¹⁶ Marysville Municipal Court,¹⁷ and Snohomish
10 County District Court¹⁸ — simply abandon the driver to negotiate a payment plan
11 with one of several for-profit collection agencies: AllianceOne Receivables
12 Management, Inc. (and its Signal Management Services division),¹⁹ LGBS,²⁰ and
13 Armada Corp.²¹ The chick is left to negotiate its fate with the fox.²²

14
15
16 ¹³ Garner Decl. ¶¶7-9 (Armada).

17 ¹⁴ Whittaker Decl. ¶ 4; Everett Municipal Court, *Payment Information*,
18 available at <https://www.everettwa.gov/317/Payment-Information> (Signal Credit
19 Services, a division of AllianceOne).

20 ¹⁵ Hanowell Decl. ¶¶4-5 (Signal Management, a division of AllianceOne).

21 ¹⁶ Revoir Decl. ¶¶4-5 (LGBS).

22 ¹⁷ Elsner Decl. ¶4 (Signal Management, a division of AllianceOne).

23 ¹⁸ Boggie Decl. ¶4 (Signal Management, a division of AllianceOne).

24 ¹⁹ Boggie Decl. ¶4; Elsner Decl. ¶4; Hanowell Decl. ¶5.

25 ²⁰ Revoir Decl. ¶¶4-5.

26 ²¹ Garner Decl. ¶7-9.

²² Collection agencies often require substantial down payments not based on
ability to pay simply to enroll in a payment plan. This means many poor people
can’t access a payment plan at all. *See Spicer Decl. ¶7.*

1 Some of the declarants hint at court limits on debt collectors, none provide
2 any evidence of court rules or orders. But a review of these payment plans reveals
3 that minimum monthly payment is not based on the driver’s ability to pay. Rather,
4 monthly payments are formulaically set at 10% of the balance for balances under
5 \$1,000 or 5% of the balance for balances over \$1,000, with a minimum payment of
6 \$25 a month regardless of the balance.²³ This does not include administrative fees,
7 which range from \$4.75-\$11.25 a month, plus a one-time application fee ranging
8 from \$10-\$15.²⁴

9 The two remaining jurisdictions—Skagit County District Court and
10 Whatcom County District Court—leave payment arrangements to negotiations
11 between the driver and court administration,²⁵ in which court personnel act not as
12 impartial judicial decision-makers, but as creditors. Whatcom County has an
13 electronic form on its website that allows the driver to do only one thing: apply for
14 a \$25 per month payment plan, so long as it is within 30 days of the violation
15 date.²⁶ Skagit County District Court’s website says that a driver may “send or

16 ²³ Everson/Nooksack Time-Payment Application, *available at*
17 [https://cms8.revize.com/revize/eversonwa/Document_Center/Department/Municipal](https://cms8.revize.com/revize/eversonwa/Document_Center/Department/Municipal%20Court/Everson%20Municipal%20Time%20Payment.pdf)
18 [l%20Court/Everson%20Municipal%20Time%20Payment.pdf](https://cms8.revize.com/revize/eversonwa/Document_Center/Department/Municipal%20Court/Everson%20Municipal%20Time%20Payment.pdf); Lynnwood Municipal
19 [Court, Pre-Collection Time Payment Application, available at](https://www.lynnwoodwa.gov/files/sharedassets/public/municipal-court/collections/fillable-pre-collect-tp-application-english.pdf)
20 [https://www.lynnwoodwa.gov/files/sharedassets/public/municipal-](https://www.lynnwoodwa.gov/files/sharedassets/public/municipal-court/collections/fillable-pre-collect-tp-application-english.pdf)
21 [court/collections/fillable-pre-collect-tp-application-english.pdf](https://www.lynnwoodwa.gov/files/sharedassets/public/municipal-court/collections/fillable-pre-collect-tp-application-english.pdf); Marysville
22 [Municipal Court, Time-Payment Collection Application, available at](https://marysvillewa.gov/DocumentCenter/View/4357/MARYSVILLE-SIGNAL-APPLICATION)
23 [https://marysvillewa.gov/DocumentCenter/View/4357/MARYSVILLE-SIGNAL-](https://marysvillewa.gov/DocumentCenter/View/4357/MARYSVILLE-SIGNAL-APPLICATION)
24 [APPLICATION](https://marysvillewa.gov/DocumentCenter/View/4357/MARYSVILLE-SIGNAL-APPLICATION); Snohomish County District Court, Time-Payment Collection
25 [Application, available at](https://snohomishcountywa.gov/DocumentCenter/View/4670/SignalManagement-ServicesTime-Pay-Application-PDF)
26 [https://snohomishcountywa.gov/DocumentCenter/View/4670/SignalManagement-](https://snohomishcountywa.gov/DocumentCenter/View/4670/SignalManagement-ServicesTime-Pay-Application-PDF)
[ServicesTime-Pay-Application-PDF](https://snohomishcountywa.gov/DocumentCenter/View/4670/SignalManagement-ServicesTime-Pay-Application-PDF)

24 ²⁴ *Id.*

25 ²⁵ Van Glubt Decl. ¶¶4-7; Whittaker Decl. ¶4.

26 ²⁶ [https://www.whatcomcounty.us/427/Online-InfractionsPayment-Plan-](https://www.whatcomcounty.us/427/Online-InfractionsPayment-Plan-Requests)
Requests

1 deliver a written request for time pay to the court within the 15 day time period,”
2 but provides no form to complete or additional direction on where to send the
3 request.²⁷

4 As with other matters, the State and its declarants identify no standards
5 that govern the setting of such plans, or the extent to which a driver’s ability to
6 pay is objectively evaluated. Indeed, court websites clearly indicate that the
7 driver’s ability to pay is *not* evaluated. Thus, despite the reality that many drivers
8 cannot afford their traffic fines, the declarants reveal that courts *in all eight*
9 *jurisdictions* offer no clear avenue or rules for seeking relief from an impartial
10 judicial officer whose decisions are governed by clear, defined, and objective rules,
11 procedures, and standards. Instead, courts routinely wash their hands of the
12 matter, leaving drivers to the tender mercies of debt collectors.

13 6. The recent experiences of Danielle Pierce and Janie Comack
14 demonstrate the chaos and unfairness of the system.

15 Despite the obstacles caused by a lack of an administrative or judicial
16 hearing on a driver’s ability to pay prior to suspension, some drivers do eventually
17 find their way to a judge, as Plaintiffs Danielle Pierce and Janie Comack did.

18 *Danielle Pierce.* Pierce is now under several payment plans, which have
19 permitted reinstatement of her driver’s license after nearly nine years of being
20 without a license and falling thousands of dollars into traffic-related debt.²⁸ But
21

22
23 ²⁷ As noted above Skagit has implemented a temporary relicensing program
24 in response to COVID-19, but this is only applicable *after* the driver’s traffic
25 infraction fine is already in collections and the license is already suspended. It
26 requires the driver to file a motion with the court to recall their case from
collections to participate in the Re-Licensing Clinic.

²⁸ Pierce Decl. ¶¶9 & 18.

1 this reinstatement is provisional, subject to revocation if Pierce is unable to meet
2 the plan.²⁹

3 *Janie Comack.* After ten years with her license suspended, Comack has
4 paid and negotiated her remaining traffic-related debt down from over \$8,000 to
5 just over \$1,200.³⁰ Four of her five fines were imposed precisely because she lacked
6 either a driver's license or because she lacked proof of insurance she could not
7 obtain without a license.³¹ Like Pierce, Comack was only able to achieve this result
8 after she obtained legal representation of a civil legal aid lawyer.³²

9 7. Conclusion regarding the Statement of Facts

10 The State's attempts to demonstrate that Plaintiffs and others who live in
11 poverty are provided due process put the issues before this Court in sharp focus.
12 Its submissions highlight the uncontested material issues of fact on which this
13 court can and should grant summary judgment:

- 14 • DOL – the entity that actually suspends driver's licenses – suspends
15 licenses for failure to appear, pay or comply without conducting any pre-
16 or post- suspension inquiry concerning the persons' ability to pay.
- 17 • Before suspending a driver's license, DOL neither requests nor receives
18 information from courts that confirms whether and how the courts have
19 determined a driver's ability to pay.

20 ²⁹ Pierce Decl. ¶¶18-20. The reason Pierce was able to obtain relief was
21 because she received representation from a civil legal aid lawyer from the
22 Northwest Justice Project, who devoted over 100 hours to her case. *Id.* ¶¶16-17. To
23 finder her way through the courts' byzantine processes, she needed legal counsel,
24 was too poor to pay one, and was fortunate to obtain a legal aid lawyer to navigate
25 the labyrinth.

26 ³⁰ Comack Decl. ¶¶8-9.

³¹ Weaver Decl. ¶7; Comack Decl. ¶4.

³² Comack Decl. ¶9.

- 1 • There is no uniform, clear, impartial, and coherent statewide system
2 under which courts apply objective rules and standards to determine
3 ability to pay before sending a default notice to DOL.
- 4 • While some courts offer payment plans, all but one of the courts that are
5 the subject of the State’s declarations fail to consider the driver’s ability
6 to pay when setting payment amounts, while nearly all of these courts
7 leave drivers to negotiate payment plans with private, for-profit, debt
8 collection agencies.
- 9 • Under this “system,” nearly one-quarter of a million Washingtonians are
10 prevented from reinstating their licenses due to RCW 46.20.289. DOL
11 annually suspends literally tens of thousands of Washington residents’
12 drivers’ licenses each year for failure to appear, pay or comply without
13 obtaining or having *any* information about whether those residents have
14 the ability to pay.

15 Against this factual backdrop, the cross-motions present the same question
16 of law: Can such an opaque, chaotic “system” satisfy Due Process, provide Equal
17 Protection, and protect against Excessive Fines?
18

19 Argument

20 I. DOL’s automatic license suspension process violates due 21 process.

22 A statutory scheme that requires the automatic suspension of a driver’s
23 license for failure to appear, pay or comply with a traffic infraction notice violates
24 due process absent an “opportunity to be heard at a meaningful time and in a
25 meaningful manner”³³ on the issue whether the person’s failure to pay was due to
26 contumacy or indigence.

Rather than address the overwhelming case law cited in Plaintiffs’ Motion,
DOL lodges three legal arguments along with their factual submissions, none
sufficient to rebut the facial constitutional defects of RCW 46.20.289 and the
State’s automatic suspension process. Specifically, DOL asserts:

³³ *City of Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004) (citing
Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed.2d 18 (1976)).

- 1 (1) Plaintiffs had the opportunity to request a payment plan or
2 have their payment plan modified if they could not afford the
3 penalty.
- 4 (2) DOL has no responsibility to avoid punishing the indigent for
5 failing to pay traffic fines because that is the exclusive province
6 of the courts.
- 7 (3) The procedural safeguards against punishing poverty that
8 *Bearden v. Georgia*³⁴ recognized and upheld do not apply to
9 DOL's deprivation of driver's licenses because driver's licenses
10 are "of lesser importance than a person's physical freedom."

11 A. Neither DOL nor the courts provide a meaningful opportunity to
12 be heard before an impartial tribunal regarding a driver's ability
13 to pay before suspending a license for failure to pay.

14 Washington courts have applied *Bearden, Tate v. Short*,³⁵ *Williams v.*
15 *Illinois*,³⁶ and their state law progeny, *State v. Blank*,³⁷ to require a pre-
16 deprivation hearing before the suspension of a driver's license. In *State v.*
17 *Johnson*,³⁸ the Washington Supreme Court reviewed these authorities, which
18 together bar DOL from sanctioning a "constitutionally indigent" individual for
19 failure to pay a fine "without a showing that the nonpayment was
20 contumacious[.]"³⁹ The State dismisses *Johnson's* review of the case law as

21 ³⁴ 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).

22 ³⁵ 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed.2d 130 (1971).

23 ³⁶ 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed.2d 586 (1970).

24 ³⁷ 131 Wn.2d 230, 242, 930 P.2d 1213 (1997).

25 ³⁸ 179 Wn.2d 534, 315 P.3d 1090 (2014), *as amended* (Mar. 13, 2014).

26 ³⁹ *Id.* at 552-53; *see also City of Redmond v. Moore*, 151 Wn.2d 664, 670-71,
91 P.3d 875 (2004) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893,

1 unimportant since the Court ultimately concluded that Johnson lacked standing.
2 But the Court made clear that “we do not question that the State may not punish
3 an indigent defendant for the fact of his or her indigence,”⁴⁰ which is precisely why
4 the Court was compelled to address whether Johnson was indigent before deciding
5 whether he had standing to appeal.)

6 The State admits that it suspends licenses under RCW 46.20.289 (and RCW
7 46.63.110(6)) without ensuring that the driver has had an opportunity to be heard
8 before an impartial tribunal to ensure that that the non-payment was
9 contumacious. Its only “defense” is its suggestion – grounded in faith rather than
10 fact – that courts routinely and regularly provide the ability-to-pay hearings that
11 Due Process requires.

12 But the State offers no evidence that this is so. “Due process requires a
13 competent and impartial tribunal,” and “even if there is no showing of actual bias
14 in the tribunal, . . . due process is denied by circumstances that create the
15 likelihood or the appearance of bias.”⁴¹ Yet the State points to no rules, no
16 standards, no public notices, no statistics – nothing – to support its claim that
17 “competent and impartial tribunals” adjudicate ability-to-pay issues under
18 objective, publicly available rules and standards. The State cites payment plan
19 negotiations, but since when are court administrative staff and collection agencies

20
21
22 _____
23 47 L. Ed. 2d 18 (1976)) (possession of a driver’s license is an important property
24 interest, deprivation of which requires due process).

25 ⁴⁰ 179 Wn.2d at 555.

26 ⁴¹ *Peters v. Kiff*, 407 U.S. 493, 501-02, 92 S.Ct. 2163, 33 L. Ed. 2d 83 (1972);
Matter of Dependency of A.E.T.H., 9 Wash. App. 2d 502, 517, 446 P.3d 667,
676, review denied sub nom. *In re A.E.T.H.*, 195 Wn.2d 1013, 464 P.3d 196 (2020)
(citing *Peters*).

1 “tribunals,” and since when were collection agencies “impartial” in their desire to
2 be paid?

3 The State suggests that the recent experience of two Plaintiffs shows that
4 the system works.⁴² This conveniently overlooks that each Plaintiff had the
5 assistance of civil legal aid lawyers who devoted hundreds of hours to improving
6 their clients’ situations, and even then were unable to exorcise the specter of
7 further suspensions. Moreover, the State concedes that nearly a quarter of a
8 million drivers currently have suspended Washington driver’s licenses. Where
9 they can all find legal help, the State does not explain.

10 Unlike the plaintiff in *Johnson*, who was ultimately found by an impartial
11 tribunal not to be “constitutionally indigent” and therefore lacked standing to
12 challenge his DWLS3 conviction based on an underlying license suspension,
13 Plaintiffs in this action are not homeowners, and rely on the ability to drive for
14 transportation to employment opportunities, critical healthcare appointments, and
15 in some cases, a place to sleep at night. Even a \$25 monthly payment, plus
16 mandatory administrative fees,⁴³ may be more than the indigent can shoulder. The
17 State nowhere disputes that pre-deprivation hearing would reveal that each
18 Plaintiff was indigent at the time of the proposed suspension.

19 The same is surely true of tens of thousands of others. For all of its claims
20 about ability-to-pay hearings and for all of the statistics it provides the Court, the
21 State is unable to provide perhaps the most important statistics: of the nearly
22 250,000 drivers with indefinitely suspended licenses, how many are indigent, and
23
24

25 ⁴² *See supra* at 9-11.

26 ⁴³ *See supra* at 5-9.

1 how many had a hearing before an impartial decision-maker to determine whether
2 they were indigent?

3 If the State were operating a constitutional system, it could readily answer
4 these straightforward questions, just as easily as it can report how many licenses
5 were suspended, and when, and for how long. Yet it does not, because it cannot.

6 B. As the entity charged by law with suspending driver's licenses,
7 DOL must first provide due process.

8 The State next argues that “[i]f such an inquiry [regarding a driver’s ability
9 to pay] were proper *and* the Plaintiffs are in fact constitutionally indigent, *the trial*
10 *court*, not DOL, is the appropriate entity to make that determination.”⁴⁴ But it is
11 DOL, not the courts, that suspends licenses. That is why the Supreme Court has
12 already rejected DOL’s argument, recognizing that DOL may not constitutionally
13 suspend a driver’s license without a judicial or administrative hearing to
14 determine the propriety of doing so.

15 In *Moore*,⁴⁵ for example, the Court struck down the then-existing version of
16 RCW 46.20.289 because it did “not provide adequate procedural safeguards to
17 ensure against the erroneous deprivation of a driver’s interest in the continued use
18 and possession of his or her driver’s license.”⁴⁶ Likewise, in *City of Bellevue v.*
19 *Lee*,⁴⁷ the Supreme Court analyzed the sufficiency of DOL’s procedures for

20 ⁴⁴ Opp. 14 (emphasis in original); *see also id.* at 13.

21 ⁴⁵ 151 Wn.2d 664, 91 P.3d 875 (2004).

22 ⁴⁶ *Id.* at 677. The Court did not expressly require a pre-suspension hearing,
23 though that was the import of the Court’s conclusion that no compelling safety
24 interest underlay the statute. *Moore* effectively stopped DOL from suspending
25 licenses until the legislature amended chapter 46.20 RCW. The legislature did so
by providing an opportunity for a driver to request an administrative review
within 15 days of receiving the suspension notice. *See* RCW 46.20.245(2).

26 ⁴⁷ 166 Wn.2d 581, 210 P.3d 1011 (2009).

1 determining whether its records “identify the correct person” and “accurately
2 describe[] the action taken by the court or other reporting agency or entity” prior
3 to suspension pursuant to RCW 46.20.289.⁴⁸ In each case, the Court recognized
4 that DOL had its own obligation to provide due process and did not allow DOL to
5 pass the buck and the blame to the judicial branch.

6 By statute, DOL is charged with suspending driver’s licenses. Therefore,
7 DOL – and DOL alone – is responsible for ensuring that due process accompanies
8 the exercise of this significant power over the lives of Washington drivers. It has
9 no license to ignore this responsibility.

10 C. Due process requires a pre-deprivation hearing for suspension
11 of licenses.

12 DOL argues – with no authority whatsoever – that *Bearden* and its progeny
13 “are distinguishable because a privilege to drive is an interest of lesser importance
14 than a person’s physical freedom.”⁴⁹ This argument conflicts with constitutional
15 due process requirements that courts long ago laid down.⁵⁰

16 Since the late 1970s, the United States Supreme Court has recognized that
17 the suspension of a driver’s license “implicates a protectable property interest”
18 that is “substantial.”⁵¹ Continued possession of a license “may become essential in
19

20 ⁴⁸ *Id.* at 584 (citing RCW 46.20.245).

21 ⁴⁹ Opp. 14.

22 ⁵⁰ It is also rather inconsistent with DOL’s stated purpose: “Helping every
23 Washington resident live, work, drive, and thrive.” See
<https://www.dol.wa.gov/about/purpose-and-values.html>.

24 ⁵¹ See, e.g., *Mackey v. Montrym*, 443 U.S. 1, 10-11, 99 S. Ct. 1187, 61 L.
25 Ed.2d 321 (1979); *Dixon v. Love*, 431 U.S. 105, 112–16, 97 S. Ct. 1723, 52 L. Ed.2d
26 172 (1977); *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970))
(requiring due process before revoking drivers’ license is “but an application of the
general proposition that relevant constitutional restraints limit state power to

1 the pursuit of a livelihood” and, therefore, is “not to be taken away without that
2 procedural due process required by the Fourteenth Amendment.”⁵² The Court has
3 pronounced it “fundamental” that “except in emergency situations” the state “must
4 afford notice and opportunity for hearing appropriate to the nature of the case
5 *before* the termination becomes effective.”⁵³ The Washington State Supreme Court
6 has applied these maxims in its own jurisprudence, recognizing that a driver’s
7 license “represents an important property interest”⁵⁴ that is “protected by
8 procedural due process.”⁵⁵

9 The case law is conclusive and dispositive: before DOL suspends a driver’s
10 license for failing to pay a traffic fine, the driver is entitled to a pre-deprivation
11 hearing before an impartial judicial officer to determine whether the non-payment
12 is due to contumacy or indigence. Does leaving the driver to negotiate with a debt
13 collector comport with due process? What about an opaque and byzantine system
14 of haphazard, inconsistent, and purely discretionary judicial determinations,
15 untethered from any rules, standards, or clear procedures that are consistently
16 and transparently applied? How far we have fallen that these questions must now
17 be debated?

18 II. RCW 46.20.289 denies Equal Protection of the Law to a
19 semisuspect class of individuals who cannot afford to pay their
20 traffic fines.

21 In addition to violating the due process rights of the poor, the suspension of
22 _____
23 terminate an entitlement whether the entitlement is denominated a ‘right’ or a
24 ‘privilege’”).

25 ⁵² *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed.2d 90 (1971).

26 ⁵³ *Bell*, 402 U.S. at 542 (citations omitted).

⁵⁴ *State v. Dolson*, 138 Wn.2d 773, 776, 982 P.2d 100 (1999).

⁵⁵ *Moore*, 151 Wn.2d at 670 (“It is well settled that driver’s licenses are
property interests protected by procedural due process.”).

1 driver's licenses without a pre-deprivation hearing discriminates between those
2 who can afford to pay fines and those who cannot, and therefore violates the equal
3 protection guarantee in Article I, Section 12 of the Washington Constitution.
4 DOL's purely legal arguments to the contrary fail, and therefore, summary
5 judgment should be granted to Plaintiffs.

6 First, Washington courts engage in intermediate or heightened scrutiny of
7 "semisuspect" classifications such as those based on poverty, as well as the
8 deprivation of "substantial" and "important property interests," of which driver's
9 licenses are one. Second, DOL's proffered public safety interests are illusory and
10 therefore not in furtherance of a "substantial interest" because the license
11 suspension is related only to the failure to appear, pay, or comply with a traffic
12 infraction notice, *not* to the underlying traffic infraction.

13 A. RCW 46.20.289 imposes classifications that, to be valid, must
14 comport with Equal Protection.

15 DOL argues that the Court does not have to analyze Article I, Section 12's
16 equal protection guarantee because automatic, mandatory license suspension does
17 not facially burden any class of persons differently than another.⁵⁶ This is untrue
18 for the same reason that RCW 46.20.289 violates the due process guarantee: the
19 application of the statute has a significantly harsher consequence on people who
20 lack the financial ability to pay a fine or comply with a payment plan. Poor people
21 lack a meaningful choice to pay a fine to maintain their right to drive. Yet they are
22 punished with indefinite license suspension, together with a risk of criminal
23 enforcement and incarceration if they continue to drive thereafter.

24
25
26 ⁵⁶ See Opp. 15-16.

1 B. The automatic suspension of licenses to punish drivers who are
2 unable to pay traffic fines is subject to intermediate scrutiny.⁵⁷

3 1. "The poor" constitute a semisuspect class for equal
4 protection purposes.

5 Washington courts have determined that the poor represent a semisuspect
6 class, to which intermediate or heightened scrutiny must apply in the equal
7 protection context.⁵⁸ The State attempts to confine *Mota* to cases involving
8 incarceration and its impact on "physical liberty."⁵⁹ This artificial restriction is the
9 State's own invention; the Washington Supreme Court has applied no such
10 grudging and crabbed limitations on its protections for the poor:

11 The poor, while not a suspect class, are not fully accountable for their
12 status. Situations involving discrete classes not accountable for their
13 status invoke intermediate scrutiny. Accordingly, the denial of a
14 liberty interest due to a classification based on wealth is subject to
intermediate scrutiny. Under intermediate scrutiny, the state must
prove the law furthers a substantial interest of the state.⁶⁰

15 In addition, liberty interests *are* implicated by the automatic suspension statute in
16 a way that discriminates against poor people. Individuals who lack the means to
17 pay a fine or comply with a payment plan face arrest for DWLS3, a risk that is
18 very real for those who, like Plaintiffs, must choose between using their car to
19 drive to necessary medical appointments, to work, to access childcare, and to find a

20 ⁵⁷ In arguing for mere rational basis review, DOL argues that there is no
21 "purposeful" semisuspect classification found in the statute. Opp. 16-17. However,
22 the cases cited by DOL relate to strict scrutiny review, and no case cited by DOL
requires plaintiffs to shoulder the burden of showing "purposeful" discrimination
for intermediate scrutiny equal protection analysis involving a semisuspect class.

23 ⁵⁸ See, e.g., *Matter of Mota*, 114 Wn.2d 465, 474, 788 P.2d 538 (1990); *State*
24 *v. Schaaf*, 109 Wn.2d 1, 18, 743 P.2d 240 (1987); *State v. Phelan*, 100 Wn.2d 508,
514, 671 P.2d 212 (1983).

25 ⁵⁹ See Opp. 17.

26 ⁶⁰ *Mota*, 114 Wn.2d at 474 (internal citations omitted).

1 place to sleep on the one hand, or complying with the DOL’s suspension of their
2 driver’s license on the other.

3 2. A driver’s license is an important property interest.

4 Intermediate scrutiny also applies to classifications that involve substantial
5 or important property interests.⁶¹ As described above, a driver’s license represents
6 a substantial property interest.⁶² It is both necessary for most to access their jobs
7 and life’s essentials, and a statutory right that DOL “*shall* issue to every
8 qualifying applicant[.]”⁶³

9 DOL cites outdated or implicitly overruled authority from Division II of the
10 Court of Appeals, *Merseal v. Dept. of Licensing*,⁶⁴ to the effect that a driver’s
11 license is a “privilege” rather than an important right for equal protection
12 purposes.”⁶⁵ However, in addition to being outdated and overruled, *Merseal*
13 concerns the very specific “privilege” of “operating a commercial vehicle on public
14 highways,” not the right to a personal driver’s license that is necessary for so many
15 basic needs.⁶⁶ On-point case law confirms that suspension of a driver’s license
16 directly impacts important property rights.⁶⁷

17 C. RCW 46.20.289 does not pass intermediate scrutiny because it
18 does not further a substantial governmental interest.

19 DOL’s final argument is that the automatic suspension of licenses satisfies

20 ⁶¹ See *Schroeder*, 179 Wn.2d 566, 577-578, 316 P.3d 482 (2014); *Mota*, 114
21 Wn.2d at 474.

22 ⁶² See *supra* at 16-17; *Dolson*, 138 Wn.2d at 776 (1999); *Moore*, 151 Wn.2d at
23 670 (2004).

24 ⁶³ RCW 46.20.161(1) (emphasis added).

25 ⁶⁴ 99 Wn. App. 414, 94 P.2d 262 (2000).

26 ⁶⁵ Opp. 18.

⁶⁶ *Id.*, 99 Wn. App. at 420.

⁶⁷ See *supra*, at 16-17.

1 both rational and intermediate scrutiny because it is “intended to promote public
2 safety on the roadways of Washington State.”⁶⁸ Here DOL misleads.

3 RCW 46.20.289 does not require DOL to suspend the licenses of certain
4 drivers because they drive dangerously. Rather, it requires DOL to suspend the
5 licenses of certain drivers *because they fail to pay traffic fines*.

6 If DOL suspended licenses due to safety concerns, then it would not spare
7 those who are able to pay their traffic fines. But under RCW 46.20.289, only
8 drivers who fail to appear, pay, or comply with a notice of traffic infraction suffer
9 this penalty, as DOL concedes when it describes SB 5374 as “clarifying DOL’s
10 suspension authority for failing to *pay* tickets for traffic offenses.”⁶⁹

11 Because license suspension under RCW 46.20.289 are motivated by fiscal
12 rather than safety concerns, they cannot survive equal protection scrutiny.
13 Administrative interests are not sufficiently “substantial” to justify unequal
14 treatment of a semisuspect class, particularly when it involves a substantial or
15 important property right.⁷⁰ Such a statutory scheme must yield to equal protection
16 of the law.

17 III. Indefinite suspension of a drivers’ license merely for failure to
18 pay a fine is an “Excessive Fine” because it is both punitive and
grossly disproportionate.

19 DOL incorrectly claims that Plaintiffs’ license suspensions are not excessive
20 fines because they are not punitive or, if punitive, not grossly disproportionate to
21 the failure to pay a simple traffic ticket.⁷¹ However, these license suspensions are
22 both punitive and grossly disproportionate, and therefore unconstitutional.

23 ⁶⁸ Opp. 19.

24 ⁶⁹ Opp. 20 (citing Huddleston Declaration Ex. 10-12 (SB 5374)).

25 ⁷⁰ See Motion 15-16.

26 ⁷¹ Opp. 22-25.

1 DOL repeatedly asserts that the license suspensions at issue here serve as a
2 “deterrent.”⁷² But this concedes that suspensions are punitive, for in *Austin v.*
3 *United States*,⁷³ United States Supreme Court held a civil forfeiture scheme was
4 punitive largely *because* “Congress understood those provisions as serving to
5 deter.”⁷⁴ *Austin* teaches that a sanction is punitive, even though it may have some
6 remedial purpose, if it “can only be explained as serving *in part* to punish,” i.e., as
7 serving retributive or deterrent purposes.⁷⁵

8 Neither is RCW 46.20.289 purely “remedial,” as DOL suggests. Purely
9 remedial license suspensions are those issued due to a clear public safety
10 imperative to remove from the road all drivers who commit certain kinds of
11 offenses.⁷⁶ That remedial purpose is not present here.

12 DOL also claims that a penalty for excessive fines purposes must be a
13 permanent deprivation, citing a single federal case that held that the temporary
14 impoundment of a car, unlike a forfeiture, was not punitive.⁷⁷ But the license
15 suspensions at issue here are not so temporary as some transitory impoundment.

16
17 ⁷² Opp. 6:21; 17:1; 20:4-9; 21:2.

18 ⁷³ 509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993).

19 ⁷⁴ *Id.* at 622. Footnote 14 from the same page in *Austin*, cited by DOL, does
20 not change this, as it simply says that “a fine that serves purely remedial
21 purposes” cannot be excessive, but makes clear that “purely remedial” means in
22 that context payments designed to pay the government back for the costs of
23 enforcement and that actions that go beyond this may properly be viewed as
24 punitive. The license suspensions in this case do not repay the government; they
25 are a separate punishment of the plaintiffs for failure to pay fines they cannot pay.

26 ⁷⁵ *Id.* at 610 (emphasis added).

⁷⁶ *State v. Scheffel*, 82 Wn.2d 872, 514 P.2d 1052 (1973) (suspension of
license for habitual traffic offenders); *State v. McClendon*, 131 Wn.2d 853, 870, 935
P.2d 1334 (1997) (suspension for driving while intoxicated).

⁷⁷ *Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994).

1 Plaintiffs have each suffered indefinite suspensions that have lasted for many
2 years, longer than many, if not most, jail terms.

3 The suspensions in this case are also uniquely punitive, unlike the examples
4 DOL tries to rely on, in another important way: They punish poverty. Thus, they
5 are much more like the fines for camping in public found to be constitutionally
6 excessive because the fines “serve[d] no remedial purpose and were intended to
7 deter homeless individuals from residing in [the city].”⁷⁸

8 An indefinite license suspension for mere inability to pay a fine is grossly
9 disproportionate to the offense of nonpayment, and unconstitutionally excessive.

10 IV. Plaintiffs’ claims are justiciable

11 DOL concedes that Plaintiffs have experienced actual, concrete harm, but
12 argues their claims are not justiciable for two reasons.

13 First, DOL argues, Plaintiffs’ harm is self-inflicted.⁷⁹ “Plaintiffs have
14 incurred debts and suspensions,” DOL lectures, “because Plaintiffs did not seek an
15 evaluation of their ability to pay in court or respond to their citations.”⁸⁰ But as
16 noted above, DOL fails to establish that any Plaintiff had a meaningful way to
17

18 ⁷⁸ *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, 2020 WL
19 4209227 (D. Or. July 22, 2020) at *11.

20 ⁷⁹ DOL also claims that Plaintiffs allege an as-applied challenge, but later
21 concedes that Plaintiffs present the hallmarks of a facial challenge because if they
22 prevail, “the entire statutory scheme authorizing suspensions, including Chapter
23 46.63 RCW, Chapter 46.64 RCW, and Chapter 46.20 RCW would need to be
24 amended.” Opp. 8 n.7. *See also Moore*, 151 Wn.2d at 669 (facial constitutional
25 challenge when “[t]he essence of their argument is that RCW 46.20.289 violates
26 due process because it fails to afford *any* driver facing suspension of his or license
under that statute an opportunity for an administrative hearing with DOL prior to
or after each suspension.”).

⁸⁰ Opp. 10.

1 avoid fines they simply could not afford to pay. This alone shows an actual,
2 concrete harm giving rise to this lawsuit.

3 Second, DOL contends that Pierce’s and Comack’s recently acquired
4 eligibility for reinstatement of their licenses moots their claims. But both face the
5 very real possibility of a license suspension in the near future should either lose
6 the ability to make timely payments. Thus, their claims remain justiciable, along
7 with those of the other two Plaintiffs, because they have been harmed by their
8 prior suspensions and, further, because the harm is “capable of repetition, yet
9 evading review.”⁸¹

10 Moreover, as the Washington Supreme Court has explained, Washington
11 courts are “willing to take a ‘less rigid and more liberal’ approach to standing”
12 when “a controversy is of substantial public importance, immediately affects
13 significant segments of the population, and has a direct bearing on commerce,
14 finance, labor, industry, or agriculture.”⁸² Here, DOL concedes the magnitude of
15 the issue before the Court: 249,022 Washington driver’s licenses are currently
16 suspended for nonpayment.⁸³

17 Finally, DOL challenges Plaintiffs’ standing to demand that “DOL should
18 review the Court’s ability to pay determination.”⁸⁴ But Plaintiffs make no such

19 ⁸¹ *Burman v. State*, 50 Wn. App. 433, 439, 749 P.2d 708, 712 (1988) (quoting
20 *Southern Pac. Terminal Co. v. Interstate Commerce Comm’n*, 219 U.S. 498, 515, 31
S.Ct. 279, 283, 55 L. Ed. 310 (1911)).

21 ⁸² *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791,
22 803, 83 P.3d 419, 424 (2004) (citing *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1*
23 *of Snohomish County*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969); *Barnier v. City of*
24 *Kent*, 44 Wn. App. 868, 873, 723 P.2d 1167 (1986) (“where the case presents an
issue of broad overriding public import, the court may consider the issue even
though these four elements are not present.”)

25 ⁸³ Opp. 5.

26 ⁸⁴ Opp. 11

1 demand. They do not seek DOL’s “review” of any court order issued after an
2 ability-to- pay hearing. Nor do they seek DOL review of a court order directing
3 DOL to suspend a license because the courts do not issue such orders. It is the
4 Legislature, not the courts, that compels the license suspensions at issue here.
5 Plaintiffs seek no greater relief than past plaintiffs have successfully obtained,
6 requiring DOL to provide due process when it suspends driver’s licenses.⁸⁵

7 In sum, all four Plaintiffs have standing, and their claims are justiciable.⁸⁶

8 Conclusion

9 For the foregoing reasons, this Court should grant Plaintiff’s summary
10 judgment motion, deny the State’s cross-motion, declare RCW 46.20.289 on its
11 face, and enjoin DOL from suspending driver’s licenses without first inquiring into
12 the reasons for a driver’s failure to pay a fine, including whether the driver was
13 contumacious or simply indigent.

14 DATED this 13th day of April, 2021.

15 FOSTER GARVEY PC

16
17 By 
18 Donald B. Scaramastra, WSBA #21416

19
20
21 ⁸⁵ See *Moore*, 151 Wn.2d at 670 (“It is well settled that driver’s licenses may
22 not be suspended or revoked without that procedural due process required by the
Fourteenth Amendment.”) (internal quotations and citations omitted).

23 ⁸⁶ Plaintiffs acknowledge the pendency of Engrossed Second Substitute Bill
24 5226, which, if enacted, would make some changes to the system at issue here. But
25 the bill, if passed, will not moot Plaintiffs’ claims. That said, it is premature to
26 address the bill’s effect unless and until it passes. The bill’s progress is available at
<https://app.leg.wa.gov/billsummary?BillNumber=5226&Year=2021&Initiative=false>.

1 **CERTIFICATE OF SERVICE**

2 I, Elizabeth Gossman, certify under penalty of perjury under the laws of the State of
3 Washington that, on April 13, 2021, I caused to be served on the persons listed below in the
4 manner shown:

5 **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY**
6 **JUDGMENT AND BRIEF IN OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR**
7 **SUMMARY JUDGMENT**

8 United States Mail, First Class

9 By Legal Messenger

10 By Facsimile

11 By E-Mail per Agreement to:

12 LALSeaEF@atg.wa.gov

13 Dionne Padilla-Huddleston: dionnep@atg.wa.gov

14 Jeremy Gelms: Jeremy.Gelms@atg.wa.gov

15 Leslie Seffern: Leslie.Seffern@atg.wa.gov

16 Lisa Nowlin: lnowlin@aclu-wa.org

17 Mark Cooke: mcooke@aclu-wa.org

18 John Midgley: jmidgley@aclu-wa.org

19 Tracie Hooper-Wells: twells@aclu-wa.org

20 Eryn Hoerster: eryn.hoerster@foster.com

21 Kelly Mennemeier: Kelly.mennemeier@foster.com

22 Hathaway Burden: hathawayb@summitlaw.com

23 Dated at Seattle, Washington, this 13th day of April, 2021.

24 *s/Elizabeth Gossman*
25 _____
26 Elizabeth Gossman