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

DANIELLE PIERCE, AMANDA  
GLADSTONE, JANIE COMACK, and  
LACY SPICER,

Plaintiff,

v.

DEPARTMENT OF LICENSING, a  
Washington state agency, and  
TERESA BERNSTEN, in her official  
capacity as Director of the Department  
of Licensing,

Defendants.

NO. 20-2-02149-34

**PLAINTIFFS' OPENING BRIEF IN  
SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT**

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1 Introduction

2 In Washington, the punishment for a moving traffic violation is a monetary  
3 fine. But the State’s poorest residents lack the financial resources needed to pay  
4 these fines. Plaintiffs are four such residents.

5 If a driver fails to pay the fine, the court imposing it *must* report the non-  
6 payment to the Department of Licensing (DOL). By statute – RCW 46.20.289 –  
7 DOL *must* then suspend the individual’s driver’s license. DOL has no authority or  
8 discretion to determine whether the driver’s failure to pay was due to contumacy,  
9 which the State may constitutionally punish, or poverty, which the State may not.

10 DOL has suspended the licenses of hundreds of thousands of drivers in  
11 Washington State, including Plaintiffs. Between September 2018 and December  
12 2019 alone, DOL suspended nearly 210,000 licenses,<sup>1</sup> all without a hearing to  
13 assess whether the driver was contumacious or simply unable to pay. As a result,  
14 each driver may suffer a cascading series of adverse consequences. Among them,  
15 ironically, is the inability to lawfully drive to work to earn the very income needed  
16 to pay the fine.

17 The State may not constitutionally punish the poor just for being poor.  
18 Doing so violates the Due Process, Equal Protection and Excessive Fines Clauses  
19 of the Washington Constitution. Consequently, before punishing the failure to pay  
20 a court-ordered fine, the State *must* inquire whether non-payment is due to  
21 contumacy or indigence. Because RCW 46.20.289 *forbids* DOL from conducting  
22 this inquiry, and therefore *requires* DOL to punish *all* drivers as if they were

23 \_\_\_\_\_  
24 <sup>1</sup> Washington Department of Licensing Public Records – Email Correspondence December 2019  
25 (“Since September 2018, DOL has issued 336,389 notices of suspension for failure to appear, pay, or  
26 comply. 126,423 of those sanctions did not go into effect.”). *See also* Office of the Attorney General  
of Washington State, *Consolidating Traffic-Based Financial Obligations in Washington State:  
Recommended Plan and Program*, 33-34 (2017) (noting that approximately 190,000 suspensions  
went into effect in 2017 under RCW 46.20.289 for civil moving violations issued in Washington).

1 contumacious rather than indigent, it violates these Constitutional protections.  
2 Plaintiffs move for summary judgment, and seek a ruling that, as a matter of law,  
3 the automatic suspension of driver’s licenses for unpaid moving traffic violations  
4 under RCW 46.20.289 is unconstitutional.

### 5 Undisputed Facts

6 I. RCW 46.20.289 *requires* DOL to automatically suspend the driver’s license  
7 of any individual, regardless of means, who fails to pay a moving  
8 violation fine.

9 In Washington, a driver accused of a moving violation receives a court notice  
10 of a civil traffic infraction. The notice is “final unless contested.”<sup>2</sup>

11 RCW 46.63.070 gives a driver just 15 days to respond to the notice, and  
12 permits only three responses: (1) pay the fine in full, (2) contest the infraction and  
13 request a hearing, or (3) admit the offense and request a hearing to explain  
14 mitigating circumstances. It does not give the driver a fourth option: to request a  
15 hearing regarding the driver’s inability to pay the proposed fine.

16 If a driver appears at a hearing to contest the infraction or offer mitigating  
17 circumstances, and if the court determines that the driver committed the traffic  
18 infraction, the court will enter a judgment that imposes a fine, which becomes  
19 immediately payable.<sup>3</sup> If, on the other hand, a driver fails to respond to the notice  
20 of infraction or to appear at a requested hearing, a default judgment is entered,  
21 which also imposes a fine. Either outcome sets in motion a process that, for those  
22 unable to pay the fine, leads to a mandatory, indefinite driver’s license  
23 suspension.<sup>4</sup>

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24 <sup>2</sup> RCW 46.63.060(1).

25 <sup>3</sup> RCW 46.63.110(1) (“A person found to have committed a traffic infraction *shall* be assessed a  
monetary penalty.” (italics added)).

26 <sup>4</sup> RCW 46.63.070(6).



1           Once a driver is in default, RCW 46.63.070(6) and RCW 46.64.025 each  
2 provide that the court “shall” notify DOL of the default. If, alternatively, a driver  
3 appears at the requested hearing, is assessed a penalty, and subsequently fails to  
4 pay the monetary obligation in full by the time established for payment, RCW  
5 46.63.110(6)(a) and RCW 46.64.025 provide the court “*shall*” notify DOL of the  
6 driver’s payment delinquency.<sup>5</sup>

7           Once DOL receives this notice, RCW 46.20.289 provides that DOL “*shall*  
8 suspend all driving privileges.” A driver may avoid this outcome only by paying the  
9 judgment in full, or, if available, entering into and complying with a payment plan.

10          A driver may request an administrative review by DOL within 15 days of  
11 receiving the suspension notice, but RCW 46.20.245(2)(b) limits this review to two  
12 issues: (1) whether the records identify the correct person; and (2) whether the  
13 information transmitted by the court accurately describes the action taken by the  
14 court or any other reporting agency. By statute, therefore, DOL’s administrative  
15 review may *not* inquire into a driver’s ability to pay.

16          Post-suspension judicial review – available only if the driver files a petition  
17 in superior court within 30 days of the suspension<sup>6</sup> – is similarly restricted to  
18 whether the records relied on by the department are accurate.<sup>7</sup> The driver’s  
19 inability to pay, once again, goes unconsidered and unaddressed.

20          In sum, a court *must* notify DOL of a default or failure to pay a fine, after  
21 which DOL *must* automatically suspend the license. All without an opportunity for  
22 the driver to demonstrate his or her financial inability to pay the fine.

23 \_\_\_\_\_  
24 <sup>5</sup> RCW 46.63.110(6)(a), (b); RCW 46.64.025.

25 <sup>6</sup> RCW 46.20.245(2)(e) (noting that judicial review is available in the same manner as provided  
26 by RCW 46.20.308(8)).

<sup>7</sup> RCW 46.20.245(2)(e); RCW 46.20.308(8) (“The review must be limited to a determination of  
whether the department has committed any errors of law.”)

1 II. By punishing poverty, automatic license suspensions perpetuate poverty,  
2 especially in communities of color.

3 For those too poor to pay a traffic fine, license suspensions unleash a  
4 cascade of hardship and escalating financial obligations that follow the original  
5 fine as night follows day. Punishing poverty perpetuates poverty.

6 Equally concerning, license suspensions are disproportionately borne by  
7 communities of color,<sup>8</sup> who are disproportionately cited for traffic violations.<sup>9</sup>  
8 Poverty disproportionately plagues communities of color.<sup>10</sup> As a result, so do the  
9 collateral consequences of license suspensions.<sup>11</sup> This is the very definition of  
10 institutional and systemic racism.

11 Those consequences are many and serious. In addition to the penalty  
12 assessed for the original traffic infraction, courts may assess other fines and fees,  
13 including a \$52 “Failure to Appear or Respond” fee.<sup>12</sup> If a driver fails to promptly  
14 pay, the court may turn over unpaid traffic debt to collection agencies, which are

15  
16  
17 <sup>8</sup> The default rate for traffic infractions among Blacks between 2000 and 2005 was 62 percent  
18 compared to 32 percent for White drivers. City of Seattle, Office of Policy and Management,  
19 *Memorandum, re - DWLS and Traffic Infraction Revenues*, at p.2 (June 28, 2005).

20 <sup>9</sup> 2017 data show that Black and Latinx drivers in Seattle received 2.6 and 1.7 times more  
21 traffic infractions, respectively, than White drivers. Laura Bliss, *The Disparate Financial Impact of*  
22 *the American Justice System*, BLOOMBERG (Aug. 11, 2020), available at:  
23 [https://www.bloomberg.com/news/articles/2020-08-11/seattle-fines-and-fees-hit-black-residents-](https://www.bloomberg.com/news/articles/2020-08-11/seattle-fines-and-fees-hit-black-residents-harder)  
24 [harder](https://www.bloomberg.com/news/articles/2020-08-11/seattle-fines-and-fees-hit-black-residents-harder).

25 <sup>10</sup> In Seattle, White households have a median net worth of around \$450,000 compared to  
26 \$23,000 for Black households. Gene Balk, *Seattle household net worth ranks among top in nation –*  
*but wealth doesn't reach everyone*, THE SEATTLE TIMES (Feb. 19, 2019), available at:  
[https://www.seattletimes.com/seattle-news/data/seattle-household-net-worth-ranks-among-top-in-](https://www.seattletimes.com/seattle-news/data/seattle-household-net-worth-ranks-among-top-in-nation-but-wealth-doesnt-reach-everyone/)  
[nation-but-wealth-doesnt-reach-everyone/](https://www.seattletimes.com/seattle-news/data/seattle-household-net-worth-ranks-among-top-in-nation-but-wealth-doesnt-reach-everyone/).

<sup>11</sup> From 2000 to 2009, 37 to 46 percent of DWLS3 cases in Seattle Municipal Court involved  
Black drivers each year, though Blacks comprised under 8 percent of the population. City of  
Seattle, Office of Policy & Management, *SMC Traffic Cases*, PPT Presentation, slide 9 (Nov. 2009).

<sup>12</sup> Washington Courts, JIS Link Codes, available at: [https://www.courts.wa.gov/jislink/](https://www.courts.wa.gov/jislink/public/codes/CLJ/costfee.htm)  
[public/codes/CLJ/costfee.htm](https://www.courts.wa.gov/jislink/public/codes/CLJ/costfee.htm).

1 permitted to charge 12 percent interest annually,<sup>13</sup> plus a contingency fee up to 50  
2 percent of the principal.<sup>14</sup> Even if a driver ultimately is able to pay off her debt,  
3 she must then pay a \$75 “reissue fee” to DOL to have her license reinstated.<sup>15</sup>

4 The harms of license suspension are not limited to escalating fines and fees.  
5 Because a driver’s license is very often essential to access basic life needs such as  
6 gainful employment,<sup>16</sup> school, child and family care, and access to food and medical  
7 care, a license suspension has many other financial and emotional impacts.<sup>17</sup>

8 Those whose financial and life circumstances compel them to drive, risk  
9 being charged with Driving While License Suspended or Revoked in the Third  
10 Degree (DWLS3).<sup>18</sup> One of the most commonly charged crimes in Washington,<sup>19</sup>  
11 DWLS3 carries a penalty of up to 90 days in jail and a \$1,000 fine.<sup>20</sup> Of course,  
12 those unable to pay the fine that led to license suspension are invariably unable to  
13

14  
15 <sup>13</sup> RCW 19.52.020.

16 <sup>14</sup> RCW 19.16.500.

17 <sup>15</sup> RCW 46.20.311(3)(a).

18 <sup>16</sup> Alana Semuels, *No Driver’s License, No Job*, THE ATLANTIC (June 15, 2016), available at:  
<https://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/>.

19 <sup>17</sup> See, e.g., Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private*  
*versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles*  
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20 [https://www.state.nj.us/mvc/pdf/about/AFTF\\_final\\_02.pdf](https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf) (42% of suspended New Jersey drivers  
21 lost their jobs due to a driver’s license suspension, and 45% of those could not find another job;  
22 seniors and low-income individuals were most affected); Meghan Keneally, ‘It’s not America’: 11  
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23 <sup>18</sup> RCW 46.20.342(1)(c)(iv).

24 <sup>19</sup> ACLU WASHINGTON FOUNDATION, *Driven to Fail: The High Cost of Washington’s Most*  
*Ineffective Crime-DWLS III*, 4, 20 (Feb. 21, 2017), [https://www.aclu-wa.org/docs/driven-fail-high-](https://www.aclu-wa.org/docs/driven-fail-high-cost-washingtons-most-ineffective-crime)  
25 [cost-washingtons-most-ineffective-crime](https://www.aclu-wa.org/docs/driven-fail-high-cost-washingtons-most-ineffective-crime) (“When comparing DWLS III charges to arrest data, it’s  
26 apparent that there were more DWLS III filings in 2015 (37,754) than arrests for the most  
commonly cited crimes in 2015 - DUI (23,485), Larceny (22,912), Simple Assault (21,015).”).

<sup>20</sup> RCW 46.20.342(1)(c)(iv).

1 pay this second fine (plus the additional \$43 conviction fee).<sup>21</sup>

2 It is true that *if* a driver requests a hearing, the court *might* consider a  
3 driver's financial circumstances and *might* allow the driver to enter into a  
4 payment plan for an initial moving violation.<sup>22</sup> But this unlikely scenario is  
5 unattainable for most because it is predicated on a well-publicized, uniform  
6 payment plan system, something that does not exist, as practices vary  
7 significantly across the state.<sup>23</sup> Moreover, there is no requirement to create or  
8 modify a plan to make it affordable, or to create a new one if the first plan fails. No  
9 statute requires the consolidation of debts from various jurisdictions – a common  
10 situation – into a single plan.<sup>24</sup> If for any reason the driver fails to make the  
11 payments called for by the plan, DOL must, once notified, automatically suspend  
12 the individual's driving privileges.<sup>25</sup>

13 As the next section shows, this escalating series of consequences repeats  
14 itself in the experiences of each Plaintiff.

15 III. Each Plaintiff suffered the loss of her driving privilege because she was  
16 unable to pay a traffic fine.

17 Each Plaintiff has suffered from RCW 46.20.289's operation, facing the  
18 same wearying chain of consequences that unfolded as inexorably as a geometry  
19 proof. A traffic infraction for a moving violation led to a fine; the fine imposed an  
20 obligation that could not be paid; this inability to pay led to a failure to pay; the  
21 failure to pay led to a court notice to DOL; the notice to an automatic and

22 <sup>21</sup> Washington Courts, JIS Link Codes, available at: [https://www.courts.wa.gov/jislink/  
23 public/codes/CLJ/costfee.htm](https://www.courts.wa.gov/jislink/public/codes/CLJ/costfee.htm).

24 <sup>22</sup> RCW 46.63.110(6).

25 <sup>23</sup> See also Office of the Attorney General of Washington State, *Consolidating Traffic-Based  
26 Financial Obligations in Washington State: Recommended Plan and Program*, 5-7 (2017).

<sup>24</sup> *Id.* at 33-34.

<sup>25</sup> RCW 46.20.289.

1 mandatory license suspension; the suspension to further hardship. QED.

2 *Danielle Pierce.* A 33-year-old Everett resident, Pierce’s driver’s license was  
3 suspended after receiving a \$175.00 speeding ticket in 2011, when she was  
4 unemployed, homeless, without savings or cash, and living in her sister’s car.  
5 (Pierce Decl. ¶¶ 2-7.) Pierce was unable to pay the ticket. (*Id.* ¶¶ 5-6.) DOL  
6 automatically suspended her driver’s license without evaluating her ability to pay  
7 the ticket. (Answer ¶91.) Five DWLS3 convictions followed, each carrying  
8 additional fines. (Pierce Decl. ¶12.) So did traffic tickets for driving without  
9 insurance, which she could not obtain without a license. (*Id.*) She paid off several  
10 thousand dollars of this debt and, with over 100 hours of legal work from a civil  
11 aid attorney, she finally recovered her license in 2021. (*Id.* ¶¶17-18.) Even now,  
12 Pierce still owes over \$6,000 in traffic fines and costs and is on a payment plan she  
13 worries she cannot keep up with. (*Id.* ¶¶19-25.)

14 *Amanda Gladstone.* An enrolled member of the Nooksack tribe, Gladstone  
15 is a 29-year-old, single mother of three young children. (Gladstone Decl. ¶¶1-2.)  
16 She has never been a licensed driver. (*Id.* ¶3.) She has no real estate or savings,  
17 and until finding a job as a janitor in 2018, her primary income sources were state  
18 assistance and occasional treaty fishing income. (*Id.* ¶¶6 & 12.)

19 When she was 18 years old, she received a \$460 ticket for driving without a  
20 license, insurance, or vehicle registration, and her driving privilege was ultimately  
21 suspended without a hearing regarding her ability to pay. (*Id.* ¶¶4-5; Answer  
22 ¶127.) This led to additional traffic infractions and a DWLS3 conviction. (*Id.*)

23 Gladstone entered into a payment plan for some of her violations with  
24 Whatcom County District Court but could not afford to make the required  
25 payments and defaulted. (*Id.*) Her debt was then assigned to a collection agency,  
26 where it ballooned to approximately \$6,000 due to additional fees, costs, and

1 interest. (*Id.* ¶7.) The lack of a license prevents her from ending probationary  
2 employment status, from lawfully transporting her family to tribal cultural events,  
3 from exercising her treaty fishing rights, and from doing the day-to-day driving  
4 that is required to raise and care for her young children. (*Id.* ¶¶9-12.)

5 *Janie Comack.* Comack is a 31-year-old Sedro Woolley resident and enrolled  
6 member of the Upper Skagit tribe. (Comack Decl. ¶1.) With no real property, her  
7 main source of income is a \$6,500 annual tribal payment, plus food stamps. (*Id.*  
8 ¶8.) When she was 21, her driver's license expired, but she could not afford to  
9 renew it. (*Id.* ¶2.) With no viable local public transportation, she needed to  
10 continue driving to care for her grandparents and herself. (*Id.* ¶3.) In 2010, she  
11 was charged with driving without a valid license and insurance. (*Id.* ¶4.) Her  
12 inability to pay the ticket resulted in automatic suspension of her driving privilege  
13 by DOL without any consideration of her financial circumstances. (Answer ¶148.)  
14 She presently owes approximately \$1,234 in accumulated traffic fines, interest,  
15 and collections costs, which she cannot afford to pay. (Comack Decl. ¶9.) She is on  
16 a \$10 monthly payment plan, which will take her more than ten years to complete.  
17 (*Id.*) Her inability to lawfully drive has made it difficult for her to access substance  
18 abuse treatment or obtain stable employment. (*Id.* ¶¶12-14.)

19 *Lacy Spicer.* A 45-year-old Marysville resident, Spicer received a speeding  
20 ticket in 2012. (Spicer Decl. ¶2.) Just after receiving her ticket, Spicer underwent  
21 back surgery, and did not respond. (Spicer Decl. ¶2.) Her license was then  
22 automatically suspended. (Spicer Decl. ¶2; Answer ¶161.) Subsequent moves  
23 between 2012 and 2014 prevented her from receiving notice of the suspension and  
24 led to a 2014 charge for DWLS3. (*Id.* ¶4.) Health challenges, including pancreatic  
25 cancer and resulting diabetes, make it difficult for Spicer to earn enough to pay off  
26 her approximately \$12,000 in traffic debt and reinstate her license. (*Id.* ¶¶5-7.)

1 Though offered a well-paying job in September 2020, she learned that the position  
2 required a driver’s license; due to her license suspension, she lost the opportunity  
3 and remains unemployed. She lacks the savings or income needed to secure a  
4 payment plan with the collection agency that owns her debt. (*Id.* ¶¶8-9.)

## 5 Argument

6 Suspending a driver’s license to punish a driver’s inability to pay a traffic  
7 fine is unconstitutional. This simple tenet derives from two undeniable and long-  
8 settled propositions. First, the State may not punish someone just for being poor;  
9 that violates equal protection. Second, the State may not deprive someone of their  
10 “substantial”<sup>26</sup> and “important property interest” in a driver’s license without a  
11 hearing;<sup>27</sup> that violates due process.

12 This case arises at the intersection of these long-standing principles, at the  
13 corner of due process and equal protection, and from the closely-related safeguard  
14 against excessive fines. Plaintiffs seek a declaration that RCW 46.20.289’s denial  
15 of a pre-suspension hearing regarding a driver’s ability to pay a moving traffic fine  
16 is unconstitutional. This request is ripe for determination on summary judgment,  
17 as it raises purely legal questions.<sup>28</sup>

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21 <sup>26</sup> *City of Redmond v. Moore*, 151 Wn.2d 664, 671, 91 P.3d 875, 879 (2004); *see also Mackey v.*  
22 *Montrym*, 443 U.S. 1, 10-11, 99 S. Ct. 1187, 61 L. Ed.2d 321 (1979); *Dixon v. Love*, 431 U.S. 105,  
23 112–16, 97 S. Ct. 1723, 52 L. Ed.2d 172 (1977); *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25  
24 L. Ed. 2d 287 (1970) (requiring due process before revoking a driver’s license is “but an application  
of the general proposition that relevant constitutional restraints limit state power to terminate an  
entitlement whether the entitlement is denominated a ‘right’ or a ‘privilege’”).

25 <sup>27</sup> *State v. Dolson*, 138 Wn.2d 773, 776, 982 P.2d 100 (1999).

26 <sup>28</sup> *See Broulette ex rel. Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997), *as*  
*amended* (July 15, 1997); *see also* CR 56(c).

1 I. The State may not constitutionally punish poverty or discriminate against  
2 the poor.

3 Time and again, the United States and Washington Supreme Courts have  
4 recognized that “due process and equal protection principles converge”<sup>29</sup> to prevent  
5 the State from punishing poverty.

6 Three U.S. Supreme Court cases are seminal. *Bearden v. Georgia* held that  
7 the government may not punish the failure to pay a fine or to pay restitution by  
8 revoking probation, unless the sentencing court first “inquire[s] into the reasons  
9 for the failure to pay” and, specifically, if the parolee “could not pay despite  
10 sufficient bona fide efforts to acquire the resources to do so.”<sup>30</sup> *Tate v. Short* held  
11 that a State may not convert a fine into a jail term solely because the defendant is  
12 indigent and cannot immediately pay the fine in full.<sup>31</sup> Finally, *Williams v. Illinois*  
13 held that states may not subject convicted defendants to a period of imprisonment  
14 beyond the statutory maximum solely because they are too poor to pay the fine.<sup>32</sup>  
15 Emerging from these cases is a clear principle: The State may not constitutionally  
16 punish the failure to pay a court-ordered fine without first determining whether  
17 the failure was willful or due to indigence.

18 The Washington Supreme Court has consistently applied this principle. In  
19 1992, *State v. Curry* held that an indigent defendant cannot be jailed for failure to  
20 pay a mandatory victim penalty “unless the violation is willful.”<sup>33</sup> Five years later,  
21 *State v. Blank* held that although an indigent defendant may be ordered to pay  
22 appellate costs under a recoupment statute, “before enforced collection or any

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23 <sup>29</sup> *Bearden v. Georgia*, 461 U.S. 661, 665, 103 S. Ct. 2064, 76 L. Ed.2d 221 (1983).

24 <sup>30</sup> 461 U.S. 661, 672, 103 S. Ct. 2064, 76 L. Ed.2d 221 (1983).

25 <sup>31</sup> 401 U.S. 395, 91 S. Ct. 668, 28 L. Ed.2d 130 (1971).

26 <sup>32</sup> 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed.2d 586 (1970).

<sup>33</sup> 118 Wn.2d 911, 829 P.2d 166, 169 (1992).



1 sanction is imposed for nonpayment, there must be an inquiry into ability to  
2 pay.”<sup>34</sup> In 2014, *State v. Johnson* established that the Constitution prohibits “the  
3 state from invidiously discriminating against, or arbitrarily punishing”<sup>35</sup> the poor,  
4 who for equal protection purposes, are a semi-suspect class.<sup>36</sup>

5 II. Suspending a driver’s license for failing to pay a traffic ticket – without a  
6 hearing to determine whether the failure was due to contumacy or  
7 indigence – violates the article 1, section 3 right to Due Process.

8 Article I, section 3 of the Washington Constitution provides that “no person  
9 shall be deprived of life, liberty, or property, without due process of law.”<sup>37</sup> Due  
10 process requires an “opportunity to be heard at a meaningful time and in a  
11 meaningful manner.”<sup>38</sup> To determine whether existing procedures satisfy this  
12 requirement, courts must balance: (1) the private interest to be protected; (2) the  
13 State’s interest, including the fiscal and administrative burdens that additional or  
14 substitute procedural requirements would entail; and (3) the risk of an erroneous  
15 deprivation of the private interest and the probable value, if any, of additional or  
16 substitute procedural safeguards.<sup>39</sup>

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17 <sup>34</sup> 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). This judicial concern extends beyond punishment  
18 for failing to pay fines to punishment through financial obligations more generally. In *State v.*  
19 *Blazina*, for instance, the Supreme Court held that a trial court may not impose such obligations  
20 without first inquiring into a defendant’s ability to pay. 182 Wn.2d 827, 830, 344 P.3d 680 (2015).  
21 Though the opinion rests on statutory grounds, much of it reviews nationwide research  
22 highlighting the inequities in various systems that impose legal financial obligations. *Id.* at 835-37.

23 <sup>35</sup> *State v. Johnson*, 179 Wn.2d 534, 552, 315 P.3d 1090, 1099 (2014), *as amended* (Mar. 13,  
24 2014).

25 <sup>36</sup> *See, e.g., Matter of Mota*, 114 Wn.2d 465, 474, 788 P.2d 538, 542 (1990); *State v. Schaaf*, 109  
26 Wn.2d 1, 18, 743 P.2d 240 (1987); *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983).

<sup>37</sup> Despite some differences in language, the state constitution’s due process clause is  
considered coextensive with the federal constitution’s due process clause; cases applying the federal  
due process clause are therefore instructive when applying the state due process clause. *State v.*  
*Jordan*, 180 Wn.2d 456, 462, 325 P.3d 181 (2014).

<sup>38</sup> *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)).

<sup>39</sup> *Id.*

1 Like their federal counterparts, Washington courts recognize that a driver's  
2 license is an important property interest, deprivation of which requires due  
3 process.<sup>40</sup> And because the State may not punish poverty, due process requires a  
4 hearing to determine whether a driver's failure to pay a court-ordered fine was due  
5 to indigence rather than contumacy.<sup>41</sup> By requiring the automatic suspension of a  
6 driver's license without any such hearing, RCW 46.20.289 violates due process.

7 A. An individual's driver's license is an "important" and "substantial"  
8 property interest, the deprivation of which requires due process.

9 A driver's interest in his or her driving privileges is a "substantial"<sup>42</sup> and  
10 "important property interest."<sup>43</sup> This is so, at least in part, because continued  
11 possession of a license "may become essential" to an individual's ability to pursue  
12 employment and earn a living.<sup>44</sup> Accordingly, license suspension implicates one of  
13 the most important common-law rights of citizenship: the right to work and earn a  
14 living.<sup>45</sup> Both federal and state courts recognize that deprivation of a license

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15 <sup>40</sup> *Id.* at 670-71.

16 <sup>41</sup> See *Blank*, 131 Wn.2d at 242; *State v. Curry*, 118 Wn.2d at 829; see also *Bearden v. Georgia*, 461 U.S. at 667-68.

17 <sup>42</sup> *E.g.*, *Moore*, 151 Wn.2d at 671; see also *Mackey*, 443 U.S. at 10-11; *Dixon*, 431 U.S. at 112-16.

18 <sup>43</sup> *State v. Dolson*, 138 Wn.2d 773, 776, 982 P.2d 100 (1999).

19 <sup>44</sup> *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed.2d 90 (1971); *Moore*, 151 Wn.2d at 670.

20 <sup>45</sup> *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902). The right to gainful employment is not, of  
21 course, the right to work in whatever profession one chooses. See *Amunrud v. Bd. of Appeals*, 158  
22 Wn.2d 208, 219, 143 P.3d 571, 577 (2006). But Plaintiffs assert no such right here, and the Court  
23 need not address whether the "important" right to gainful employment is also "fundamental." See  
24 *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 475 P.3d 164, 186 (2020) (Stephens,  
25 J., dissenting) ("Most of us acquire money, income, and wages by working. It therefore stands to  
26 reason that Washingtonians have a fundamental common law right to work and earn a wage..."  
(citing *Vance*, 29 Wash. at 458)); see also *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 793,  
317 P.3d 1009, 1022 (2014) (Stephens, J., dissenting) ("fundamental rights" under the Washington  
Constitution's privileges and immunities clause are not limited "to those deserving heightened  
scrutiny under federal law" because rights under the privileges or immunities clause are "more  
prosaic than the 'fundamental rights' guaranteed by due process"); Clark Neily, *Judicial  
Engagement Means No More Make-Believe Judging*, 19 GEO. MASON L. REV. 1053, 1069-70 n.71  
(2012) (U.S. Supreme Court has described the right to pursue a particular calling as "one of the

1 profoundly impacts this right.<sup>46</sup> Possession of a driver’s license is not a matter of  
2 grace: Washington residents are entitled to a license once they meet certain  
3 statutory qualifications.<sup>47</sup>

4 Indeed, as noted above, deprivation of an indigent driver’s license exposes  
5 the driver to further fines, fees, and costs, as well as arrest, conviction, and  
6 incarceration for DWLS3, all of which compound the difficulty of paying off traffic  
7 debt and regaining the driver’s license.<sup>48</sup> This criminalization of poverty directly  
8 impairs the liberty interests of those who cannot pay fines.

9 Because the State “will not be able to make a driver whole for any personal  
10 inconvenience and economic hardship suffered by reason of any delay in redressing  
11 an erroneous suspension through post-suspension review procedures,”<sup>49</sup> the State  
12 “must afford notice and opportunity for hearing appropriate to the nature of the  
13 case *before* the termination becomes effective.”<sup>50</sup> Post-suspension hearings are  
14 permissible only for suspensions “designed to keep off the roads those drivers who  
15 are unable or unwilling to respect traffic rules and the safety of others.”<sup>51</sup> This  
16 circumstance does not apply to Plaintiffs, whose suspensions derive from their  
17 failure to pay a fine, not from any threat to public safety.<sup>52</sup>

18 \_\_\_\_\_  
19 most fundamental rights” protected by the U.S. Constitution’s Privileges and Immunities clause,  
20 even though it considers the same right to be non-fundamental under the Due Process and Equal  
21 Protection clauses of the Fourteenth Amendment (citing *Supreme Court of New Hampshire v.*  
*Piper*, 470 U.S. 274, 281, 105 S. Ct. 1272, 1277, 84 L. Ed.2d 205 (1985)).

21 <sup>46</sup> *Bell*, 402 U.S. 535 at 539; *Moore*, 151 Wn.2d at 670.

22 <sup>47</sup> RCW 46.20.161(1) (“The Department [upon payment of applicable fee] *shall* issue to every  
qualifying applicant a driver's license...”) (emphasis added).

23 <sup>48</sup> RCW 46.20.342(c)(iv).

24 <sup>49</sup> *Moore*, 151 Wn.2d at 671 (quoting *Mackey*, 443 U.S. at 11).

25 <sup>50</sup> *Bell*, 402 U.S. at 542 (emphasis added).

26 <sup>51</sup> *Dixon*, 431 U.S. at 114-15.

<sup>52</sup> The duration of a potential wrongful deprivation of a property interest is also an “important  
factor in assessing the impact of official action on the private interest involved.” *Moore*, 151 Wn.2d

1 B. Because the State may not punish those who lack the means to pay  
2 court-ordered fines, due process requires a pre-suspension hearing  
3 regarding a driver’s ability to pay.

4 In its 2014 decision in *State v. Johnson*,<sup>53</sup> the Washington Supreme Court  
5 recognized these twin principles: that suspension of a license requires due process  
6 and that due process in turn requires an ability-to-pay hearing. In considering an  
7 appeal from a DWLS3 conviction, the Court explained why an ability-to-pay  
8 hearing was required. The State, it reasoned, violates the Constitution when it  
9 “sanctions an indigent individual without demonstrating contumacious failure to  
10 pay.”<sup>54</sup> Therefore, “a trial court must inquire as to a defendant’s ability to pay  
11 before imprisoning the defendant in order to ensure the failure to pay is  
12 contumacious—that is, stubbornly disobedient—and not due solely to a lack of  
13 means.”<sup>55</sup> This was so, the *Johnson* Court reasoned, because *Bearden*, *Tate*, and  
14 *Williams* establish that due process restricts the State “from invidiously  
15 discriminating against, or arbitrarily punishing, indigent defendants for their  
16 failure to pay fines they cannot pay.”<sup>56</sup>

17 *Bearden*, *Tate*, *Williams* and their state law progeny – *Curry*, *Blank* and  
18 *Johnson* – are dispositive here. Though the State may suggest otherwise, *City of*

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19  
20 at 670 (citing *Mackey*, 443 U.S. at 11). Once a suspension under RCW 46.20.289 takes effect, it  
21 remains in effect until the driver pays the accumulated fines, interest, and costs. RCW 46.20.289  
22 (suspension “remains in effect until the department has received a certificate from the court  
23 showing that the case has been adjudicated, and until the person meets the requirements of RCW  
24 46.20.311”).

25 <sup>53</sup> *State v. Johnson*, 179 Wn.2d 534, 553, 315 P.3d 1090 (2014), as amended (Mar. 13, 2014).

26 <sup>54</sup> *Id.* at 553; *Blank*, 131 Wn.2d at 242 (“[B]efore enforced collection or any sanction is imposed  
for nonpayment, there must be an inquiry into ability to pay.”).

<sup>55</sup> *Johnson*, 179 Wn.2d at 553.

<sup>56</sup> *Id.* at 552 (citing *Bearden*, 461 U.S. at 665). As discussed below, the Court determined that  
Johnson’s unencumbered ownership of a \$300,000 house precluded him from arguing he was  
unable to pay a \$260 fine.

1 *Bellevue v. Lee*<sup>57</sup> did not uphold DOL’s failure to inquire into a driver’s ability to  
2 pay. Rather, *Lee* addressed the sufficiency of DOL’s procedure – spelled out in  
3 RCW 46.20.245 – for determining whether its records “identify the correct person”  
4 and “accurately describe[] the action taken by the court or other reporting agency  
5 or entity.”<sup>58</sup> *Lee* held that this limited records review did not require an in-person  
6 hearing “to adequately address the risk of ministerial errors.”<sup>59</sup> *Lee* did not permit  
7 DOL to dispense with a hearing on a driver’s ability to pay.

8 In sum, the Constitution *requires* DOL to inquire into a driver’s ability to  
9 pay a fine before punishing the failure to do so “in order to ensure the failure to  
10 pay is contumacious—that is, stubbornly disobedient—and not due solely to a lack  
11 of means.”<sup>60</sup> Yet RCW 46.20.289 *requires* DOL not to. The statute’s conflicting  
12 mandate must give way to the Constitution.

13 C. An interest in administrative expedience does not excuse the State’s  
14 obligation to conduct an ability-to-pay inquiry.

15 RCW 46.20.289 is not saved by a countervailing State interest. In  
16 suspending a driver’s license under RCW 46.20.289, the State’s sole interest is in  
17 “the efficient administration of traffic regulations” and “in ensuring offending  
18 drivers appear in court, pay applicable fines, and comply with court orders.”<sup>61</sup>  
19 These interests, though “important,” are far less vital than the State’s compelling  
20 interest in keeping dangerous drivers off the road, which this case does not  
21 implicate. The latter interest may justify a post-suspension hearing; the former do  
22 not, and certainly do not justify the wholesale refusal to grant any hearing at all

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23 <sup>57</sup> 166 Wn.2d 581, 210 P.3d 1011 (2009).

24 <sup>58</sup> *Id.* at 584 (citing RCW 46.20.245).

25 <sup>59</sup> *Id.* at 587, 589.

26 <sup>60</sup> *Johnson*, 179 Wn.2d at 552 (citing *Bearden*, 461 U.S. at 668-89).

<sup>61</sup> *Moore*, 151 Wn.2d at 677.

1 on ability to pay.<sup>62</sup> The State's interest in assessing and collecting traffic fines,  
2 therefore, does not outweigh the need for a pre-suspension hearing concerning a  
3 driver's ability to pay before suspending a license for failure to pay.<sup>63</sup>

4 DOL may protest the fiscal and administrative burdens these hearings pose.  
5 But the State may not cashier the Constitution for its own convenience. Justice  
6 may be speedy and efficient, but it must be justice.

7 Furthermore, declaring RCW 46.20.289's automatic suspension requirement  
8 unconstitutional imposes no burden on DOL. Gone with the statutory authority to  
9 suspend licenses, is the burden of doing so. This leaves the Legislature to fashion a  
10 system that meets constitutional standards, or perhaps to abandon license  
11 suspensions as a penalty for failing to pay moving violation fines.<sup>64</sup>

12 III. Suspending a driver's license because the driver is unable to pay a traffic  
13 fine violates the Equal Protection Guarantee of article I, section 12.

14 By mandating license suspensions for all who do not pay moving violation  
15 fines, RCW 46.20.289 discriminates between those who can afford to pay fines and  
16 those who cannot. This violates the equal protection guarantee in article I, section  
17 12 of the Washington Constitution, which provides:

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18 <sup>62</sup> *Id.* (comparing license suspension under a former iteration of RCW 46.20.289 to license  
19 suspension described in *Stauffer v. Weedlun*, 188 Neb. 105, 195 N.W.2d 218 (1972)).

20 <sup>63</sup> *Moore*, 151 Wn.2d at 670 ("It is well settled that driver's licenses may not be suspended or  
21 revoked 'without that procedural due process required by the Fourteenth Amendment.'" (quoting  
*Dixon v. Love*, 431 U.S. 105, 112, 97 S. Ct. 1723, 52 L.Ed.2d 172 (1977) & citing *City of Redmond v.*  
*Arroyo-Murillo*, 149 Wn.2d 607, 612, 70 P.3d 947 (2003)).

22 <sup>64</sup> The facts cast doubt on any suggestion that crafting a process to assess a person's indigence  
23 is beyond the government's ken. Indigence is regularly evaluated in other contexts. For instance,  
24 individuals who receive various forms of needs-based, means-tested public assistance qualify as  
25 indigent for purposes of waiving court fees in civil court cases. GR 34(3)(A). Additionally, those  
26 with a post-tax household income of less than 125% of the federal poverty guideline are considered  
per se indigent, as are individuals with a household income that exceeds 125% of the federal  
poverty guideline where basic living expenses nonetheless render them unable to pay for court-  
related fees. GR 34(B) & 34(C). Similar tests apply to determine whether an individual qualifies for  
public defense services in the criminal court context. In short, the State has already amply proven  
its capability of conducting a uniform ability-to-pay analysis.

1 No law shall be passed granting to any citizen, class of citizens, or  
2 corporation other than municipal, privileges or immunities which  
3 upon the same terms shall not equally belong to all citizens, or  
corporations.

4 Though phrased differently than the federal Equal Protection Clause, it includes  
5 an equal protection component “substantially similar” to its federal counterpart,<sup>65</sup>  
6 and “requires that persons similarly situated receive like treatment.”<sup>66</sup>

7 A. The Equal Protection guarantee requires “heightened” scrutiny of RCW  
8 46.20.289, because it affects a “semisuspect” class and impairs an  
“important” right.

9 To survive equal protection scrutiny, most statutory distinctions need only  
10 have a rational relationship to some legitimate state end,<sup>67</sup> while those that  
11 disadvantage a “suspect” class or impair a “fundamental” right must pass “strict  
12 scrutiny.”<sup>68</sup>

13 In between are distinctions that disadvantage a “quasi-suspect” or  
14 “semisuspect” class or involve an “important” right.<sup>69</sup> These are subject to  
15 “intermediate” or “heightened” scrutiny.<sup>70</sup> Because Plaintiffs belong to a “semi-  
16 suspect” class, and because RCW 46.20.289’s discrimination affects an important  
17 right,<sup>71</sup> heightened scrutiny is required.

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19 \_\_\_\_\_  
20 <sup>65</sup> *Schroeder v. Weighall*, 179 Wn.2d 566, 571, 316 P.3d 482 (2014).

21 <sup>66</sup> *Matter of Mota*, 114 Wn.2d 465, 473, 788 P.2d 538 (1990).

22 <sup>67</sup> *E.g., McGinnis v. Royster*, 410 U.S. 263, 270, 93 S. Ct. 155, 35 L. Ed.2d 282 (1973).

23 <sup>68</sup> *Macias v. Dep’t of Labor & Indus.*, 100 Wn.2d 263, 267-69, 668 P.2d 1278 (1983); *Mota*, 114  
24 Wn.2d at 474.

25 <sup>69</sup> *Schroeder*, 179 Wn.2d at 577 (intermediate scrutiny applies to laws that burden an  
26 “important” right, such as an article I, section 12 privilege); *see also Amunrud*, 158 Wn.2d at 221-  
222 (recognizing that the right to work is part of the liberty provided to all citizens, without  
addressing whether it warrants intermediate, equal protection, scrutiny).

<sup>70</sup> *Macias*, 100 Wn.2d at 267-69; *Mota*, 114 Wn.2d at 474.

<sup>71</sup> *Schroeder*, 179 Wn.2d at 577-578; *Mota*, 114 Wn.2d at 474.

1 Poverty creates a semi-suspect class for equal protection purposes.<sup>72</sup> In  
2 *Matter of Mota* the Washington Supreme Court explained, “The poor, while not a  
3 suspect class, are not fully accountable for their status. Situations involving  
4 discrete classes not accountable for their status invoke intermediate scrutiny.”<sup>73</sup>

5 Moreover, deprivation of driver’s licenses also implicates a “substantial” and  
6 “important property interest.”<sup>74</sup> As noted above, it exposes the poor to further  
7 fines, fees, and costs, as well as criminal liability for DWLS3 if circumstances  
8 require them to drive<sup>75</sup> – making it still more difficult to pay their debt and regain  
9 their licenses.

10 Thus, the deprivation of a driver’s license merely for inability to pay a traffic  
11 fine, and its effective criminalization of poverty, impairs several important liberty  
12 and property interests. It discriminates between those who can pay—and therefore  
13 suffer no deprivation of their license, no restriction on their ability to work, no  
14 threat of criminal charges simply for driving—and those who cannot, who suffer  
15 all of these harms.

16 B. Automatic license suspension under RCW 46.20.289 does not further a  
17 substantial governmental interest.

18 Because RCW 46.20.289 disadvantages a semi-suspect class *and* impairs  
19 important interests, it cannot survive heightened scrutiny unless the State proves  
20 that it furthers a substantial governmental interest.<sup>76</sup> This, the State cannot do.

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22 <sup>72</sup> See, e.g., *Mota*, 114 Wn.2d at 474; *State v. Schaaf*, 109 Wn.2d 1, 18, 743 P.2d 240 (1987);  
23 *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212 (1983).

24 <sup>73</sup> *Mota*, 114 Wn.2d at 474 (citing *Phelan*, 100 Wn.2d at 514).

25 <sup>74</sup> See *supra* Sec. II(A).

26 <sup>75</sup> RCW 46.20.342(c)(iv).

<sup>76</sup> *Mota*, 114 Wn.2d at 474 (citing *Plyler v. Doe*, 457 U.S. 202, 217-18, 102 S. Ct. 2382, 2395  
(1982); *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987)).



1 As described in section II(C) above, the State's interests, largely  
2 administrative, do not justify the inequality inflicted by RCW 46.20.289, which  
3 imposes significant penalties and legal jeopardy on individuals who cannot afford  
4 to pay traffic tickets, while sparing those who can. Indeed, one can reasonably  
5 question how imposing fines on those who cannot afford to pay, while prohibiting  
6 them from driving to work to earn the very income needed to pay the fine, serves  
7 the State's interests.

8 The State's interests do not justify this unequal treatment. Accordingly,  
9 RCW 46.20.289's mandatory license suspension scheme violates article I, section  
10 12.

11 IV. Indefinitely suspending a driver's license for an unpaid traffic fine is an  
12 unconstitutionally excessive punishment.

13 Article I, section 14 of the Washington Constitution provides that "Excessive  
14 bail shall not be required, excessive fines imposed, nor cruel punishment inflicted."  
15 It closely tracks the Eighth Amendment's provision that "Excessive bail shall not  
16 be required, nor excessive fines imposed, nor cruel and unusual punishments  
17 inflicted." While article I, section 14 "on its face, may offer greater protection" than  
18 its federal counterpart, Washington courts nevertheless look to Eighth  
19 Amendment jurisprudence.<sup>77</sup>

20 The Eighth Amendment's purpose, apart from the bail clause, is to limit the  
21 government's power to punish.<sup>78</sup> Its prohibition on excessive fines, which applies to  
22 both civil and criminal penalties,<sup>79</sup> "limits the government's power to extract  
23

24 \_\_\_\_\_  
25 <sup>77</sup> *State v. Dodd*, 120 Wn.2d 1, 21, 838 P.2d 86 (1992).

26 <sup>78</sup> *Austin v. United States*, 509 U.S. 602, 609, 113 S. Ct. 2801 (1993).

<sup>79</sup> *Austin*, 509 U.S. at 610.

1 payments, whether in cash or in kind, ‘as punishment for some offense.’”<sup>80</sup> The  
2 indefinite forfeiture of one’s right to drive in order to punish the inability to pay a  
3 moving violation fine is an “in-kind” punishment subject to excessive fines  
4 analysis.

5 In evaluating excessiveness, “[t]he touchstone of the constitutional  
6 inquiry. . . is the principle of proportionality: The amount of the forfeiture must  
7 bear some relationship to the gravity of the offense that it is designed to punish.”<sup>81</sup>  
8 This entails a two-step inquiry: (1) Is the forfeiture punitive?; and (2) If punitive, is  
9 it “grossly disproportional” to the underlying offense?<sup>82</sup>

10 RCW 46.20.289’s suspension is undeniably punitive. Just as forfeiture of a  
11 vehicle for criminal activity is punitive, so is the forfeiture of the license to drive a  
12 vehicle for failure to pay a fine. Though suspension perhaps is coercive for those  
13 who can pay, it is pure punishment for those who, like Plaintiffs, cannot.

14 The next inquiry is whether this punishment is grossly disproportionate to  
15 the gravity of the offense.<sup>83</sup> The “amount of the forfeiture must bear some  
16 relationship to the gravity of the offense it is designed to punish.”<sup>84</sup> This analysis  
17 focuses on proportionality to the “offense” of failure to pay a traffic fine, not to the  
18 amount of the underlying ticket.<sup>85</sup> The court must evaluate the nexus between the  
19 property being forfeited and the offense committed, and weigh the seriousness of  
20 the offense (including the nature and extent of the offense, whether it is related to

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21 <sup>80</sup> *Timbs v. Indiana*, 139 S.Ct. 682, 687 (2019) (citing *United States v. Bajakajian*, 524 U.S. 321,  
22 327-28, (1998)).

23 <sup>81</sup> *Seattle v. Long*, 13 Wn. App. 709, 730, 467 P.3d 979 (2020) (quoting *Bajakajian*, 524 U.S. at  
24 334).

25 <sup>82</sup> *Bajakajian*, 524 U.S. at 334.

26 <sup>83</sup> WASH. CONST. art. I, § 14; *Bajakajian*, 524 U.S. at 334.

<sup>84</sup> *Bajakajian*, 524 U.S. at 334.

<sup>85</sup> *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (9th Cir. 2020).

1 other illegal activity, whether other penalties may be imposed, and the extent of  
2 the harm caused by the offense) against the severity of the punishment.<sup>86</sup>

3       Regarding the seriousness of the offense, Plaintiffs' license suspensions all  
4 stem from the civil offense of failing to pay a fine for a moving violation. The  
5 suspension bears no nexus to the offense of failure to pay. It has no connection to  
6 the driver's abilities or safety record; it is only a result of a fine that the driver did  
7 not, or in many instances, cannot pay. This failure is not a criminal offense, and  
8 poses no great threat to the safety of fellow wayfarers or to the coffers of the State.  
9 Moreover, as set forth above, the State may not constitutionally punish those who  
10 are unable to pay fines. Put another way, those who lack the means to pay have no  
11 culpability for failing to pay.<sup>87</sup> Therefore, the gravity of the offense of failing to pay  
12 the fine is minimal; indeed where indigence precludes payment, there is no offense  
13 at all.

14       Conversely, suspending the license of a driver, particularly for one who  
15 lacks the means to reinstate it, constitutes a serious punishment. It is a state-  
16 imposed forfeiture of a valuable property right<sup>88</sup> as a consequence of failure to pay  
17 a fine that, as demonstrated above, undermines employment prospects, effectively  
18 outlaws many routine but essential daily activities,<sup>89</sup> and subjects the licensee to  
19 criminal prosecution.

20       Highlighting the excessive nature of license suspensions for failure to pay  
21 traffic fines is the comparative seriousness of other offenses that result in lesser  
22 license suspensions. For example, vehicular homicide results in a fixed two-year

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23 <sup>86</sup> *Bajakajian*, 524 U.S. at 340, n. 15; *Pimentel*, 974 F.3d at 921; *State v. Timbs*, 134 N.E.3d 12,  
24 36 (Ind. 2019).

25 <sup>87</sup> See *Blake v. City of Grants Pass*, 2020 WL 4209226, at \*11 (D. Or. July 22, 2019).

26 <sup>88</sup> See *supra* Sec. II.A, at 12-13.

<sup>89</sup> *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586 (1971).

1 suspension of a driver’s license; vehicular assault and driving under the influence  
2 in a fixed one-year suspension.<sup>90</sup> These offenses are far more serious than failing  
3 to pay a traffic fine and have a direct, safety-related connection to the punishment.  
4 Even so, these suspensions last just one or two years, but the suspension for  
5 failure to pay traffic fines can live forever. The reality for indigent drivers like  
6 Plaintiffs is that their licenses are suspended for years – decades for some – long  
7 after drivers convicted of vehicular homicide have regained their driving  
8 privileges.

9 For these reasons, the indefinite suspension of a person’s license, so  
10 frequently imposed on the indigent, is grossly disproportionate to the minimal  
11 offense of failure to pay a fine for a moving violation,<sup>91</sup> and violates the  
12 Washington State Constitution’s prohibition against excessive fines.

13 V. This case presents a justiciable controversy.

14 DOL’s answer pleads two affirmative defenses that go to the justiciability of  
15 Plaintiffs’ claims. Neither precludes judicial relief.

16 A. Plaintiffs have standing to bring this suit.

17 DOL argues that Plaintiffs lack standing to bring their constitutional  
18 challenge to RCW 46.20.289. But their claims clearly fall within the zone of  
19 interests protected by the Washington Constitution’s Due Process, Equal  
20 Protection, and Excessive Fines clauses.<sup>92</sup> A constitutional violation occurs when  
21 the State sanctions an indigent individual without demonstrating a contumacious

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22 <sup>90</sup> See RCW 46.20.285.

23 <sup>91</sup> *Timbs v. Indiana*, 139 S.Ct. 682 (2019) (“[N]o man shall have a larger [fine] imposed upon  
24 him, than his circumstances or personal estate will bear ....”) (quoting 4 W. BLACKSTONE,  
COMMENTARIES ON THE LAWS OF ENGLAND 372 (1769)).

25 <sup>92</sup> *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419  
26 (2004) (describing the court’s two-part test to determine whether a plaintiff has standing to seek a  
declaratory judgment).

1 failure to pay.<sup>93</sup> Further, each Plaintiff experienced “a personal injury fairly  
2 traceable to the challenged conduct and likely to be redressed by the requested  
3 relief.”<sup>94</sup>

4 DOL may point to *State v. Johnson*, the previously mentioned appeal from a  
5 DWLS3 conviction. Johnson argued that his conviction stemmed from the  
6 suspension of his license without a hearing on his ability to pay his initial \$260  
7 fine. To overturn the conviction on this ground, Johnson needed to establish his  
8 inability to pay, which Johnson tried to prove by pointing to his receipt of  
9 government benefits. Since he owned a \$300,000 house with no mortgage, the  
10 Court concluded that he could afford the \$260 fine, and therefore lacked standing  
11 to collaterally attack the underlying license suspension.<sup>95</sup>

12 *Johnson* is distinguishable. Unlike Johnson, Plaintiffs seek no relief that  
13 requires them to prove their indigence. The harm they claim is the suspension of  
14 their license without a hearing, which DOL admits it did not conduct.<sup>96</sup>  
15 Meanwhile, the remedy they seek is a pre-suspension hearing. No authority  
16 requires them to establish that they will prevail at that hearing as a pre-condition  
17 to requesting one.<sup>97</sup>

18 Only at such a hearing will Plaintiff’s indigence be at issue. Given each  
19 Plaintiff’s indigence, there can be little doubt of the hearing’s outcome. But until  
20  
21

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22 <sup>93</sup> *State v. Johnson*, 179 Wn.2d 534, 553, 315 P.3d 1090 (2014), *as amended* (Mar. 13, 2014).

23 <sup>94</sup> *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986).

24 <sup>95</sup> *Johnson*, 179 Wn.2d at 554.

25 <sup>96</sup> Answer ¶¶ 91, 127, 148 & 161.

26 <sup>97</sup> Even if proof of indigence were required, each Plaintiff had no job, no home, no savings, and no other assets she could have used to pay her traffic fines and avoid suspension. (Pierce Decl. ¶¶5-9; Gladstone Decl. ¶¶1-5; Comack Decl. ¶¶8-9; Spicer Decl. ¶3.)

1 that hearing happens, DOL lacks the constitutional power to suspend their  
2 driver's licenses.

3 B. DOL is not immune from liability for its license suspension decisions.

4 DOL also claims quasi-judicial immunity. But quasi-judicial immunity  
5 applies to governmental agencies only “[w]hen an administrative action resembles  
6 *judicial action*” and conferring immunity is necessary to protect the agency’s “need  
7 for independent and impartial decision making.”<sup>98</sup> Courts consider various factors  
8 in determining whether an agency’s act resembles “judicial action,” including  
9 whether the agency held a hearing to resolve an issue, whether the agency’s  
10 determination involved the exercise of discretion or, instead, was ministerial in  
11 nature, and whether safeguards exist to protect against errors.<sup>99</sup>

12 These factors uniformly weigh against finding that DOL’s automatic license  
13 suspensions resemble judicial action. First, as RCW 46.20.289 requires, DOL holds  
14 no hearings regarding a driver’s ability to pay before suspending a license for  
15 failure to pay a fine. Second, RCW 46.20.289 grants DOL no discretion to decide  
16 whether license suspension is appropriate, and instead tasks DOL with a purely  
17 ministerial function. Finally, no safeguards prevent DOL from suspending the  
18 licenses of those who lack the means to pay traffic fines.

19 In sum, DOL’s automatic suspension of licenses for failure to pay traffic  
20 fines does not resemble judicial action that warrants judicial immunity. The  
21 purpose of quasi-judicial immunity is to preserve a non-judicial actor’s

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23 <sup>98</sup> *Taggart v. State*, 118 Wn.2d 195, 205, 822 P.2d 243 (1992) (italics added).

24 <sup>99</sup> *Id.* at 205, 248; *Lallas v. Skagit Cty.*, 167 Wn.2d 861, 865, 225 P.3d 910 (2009) (“a functional  
25 approach” is applied to determinations of whether immunity exists, with consideration of “the  
26 function being performed instead of the person who performed it”); *Martin v. City of Seattle*, 125  
Wash. App. 1041 (2005) (“Discretionary governmental acts are immune from liability, but  
operational or ministerial acts are not.”); *see also Mauro v. Kittitas Cty.*, 26 Wn. App. 538, 540, 613  
P.2d 195 (1980) (no immunity for an act that was not discretionary but ministerial).

1 independent and impartial judgment when acting in a discretionary manner.<sup>100</sup>

2 Because DOL exercised no judgment or discretion, it has no immunity.

3 **Conclusion**

4 RCW 46.20.289's mandatory and automatic driver's license suspensions  
5 indiscriminately punish those who lack the means to pay traffic fines. This the  
6 Constitution forbids. This Court should declare RCW 46.20.289 unconstitutional to  
7 the extent it requires automatic suspension of driver's licenses for failure to pay  
8 moving violation fines, without a hearing to determine whether the driver's failure  
9 to pay was due not to contumacy, but indigence.


10 DATED this 17th day of February, 2021.

11  
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25 <sup>100</sup> *Taggart*, 118 Wn.2d at 205 (“the rationale behind granting judges immunity—the need for  
26 independent and impartial decision making—applies” only when “an administrative action  
resembles judicial action”).

1  
2 **CERTIFICATE OF SERVICE**

3 I, Elizabeth Gossman, certify under penalty of perjury under the laws of the State of  
4 Washington that, on February 17, 2021, I caused to be served on the persons listed below in the  
5 manner shown:

6 **Plaintiffs' Opening Brief in Support of Motion for Summary Judgment**

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20 Dated at Seattle, Washington, this 17th day of February, 2021.

21 *s/Elizabeth Gossman*

22 Elizabeth Gossman