THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ADRIAN FOWLER and KITIA HARRIS, on behalf of themselves and others similarly situated, Plaintiffs, v. RUTH JOHNSON, in her official capacity as Secretary of State of the Michigan Department of State, Defendant.	Case No. 4:17-cv-11441 CLASS ACTION Honorable Linda V. Parker

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION AND RESPONSE BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Should the Court grant Plaintiff's Motion for a Preliminary injunction because Defendant has offered no valid justification for suspending the driver's licenses *of those unable to pay court debt*?
2. Should the Court deny Defendant's motion to dismiss because longstanding Supreme Court precedent — which Defendant has not rebutted — forbids converting a fine into a harsher penalty for those unable to pay the fine?
3. Are Plaintiffs' claims properly before this Court, given that Section 1983 confers federal jurisdiction over constitutional claims without any state court exhaustion requirement?
4. Is the *Rooker-Feldman* doctrine inapposite to this case, given that Plaintiffs are not challenging any state court outcomes but rather action by a state official?
5. Are the *Pullman* and *Younger* abstention doctrines inapplicable because Michigan's allegedly discriminatory is unambiguous and Plaintiffs do not seek to enjoin any state court proceeding?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Arizonans for Official English v. Arizona, 520 U.S. 43 (1997)

Bearden v. Georgia, 461 U.S. 660 (1983)

Bell v. Burson, 402 U.S. 535 (1971)

Colo. River Water Conservation Dist. v. United States, 424 U.S. 800 (1976)

Dixon v. Love, 431 U.S. 105 (1977)

England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964)

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005)

Griffin v. Illinois, 351 U.S. 12 (1956)

I. Introduction

This case is about whether the State of Michigan can convert a fine for a civil traffic infraction into a harsher penalty for those unable to pay. Currently, Michigan operates two different systems of justice: those with the ability to pay fines can violate traffic laws and continue driving, while drivers who are poor can lose their licenses after minor infractions solely because they cannot pay fines and fees. The Due Process and Equal Protection clauses do not permit such wealth-based discrimination of harsher penalties for people who are poor, and the Supreme Court has long forbidden converting fines into more onerous punishments for those unable to pay. By conditioning driving privileges on wealth-status, Michigan operates an unconstitutional license suspension scheme.

II. Discussion

This Court should reject both the (A) procedural and (B) substantive arguments raised by Defendant in her response brief, deny Defendant's request for dismissal, and grant Plaintiffs' request for a preliminary injunction.

A. There Is No Procedural Bar to Plaintiffs' Claims

The parties agree on the most important fact in this case: in Michigan, the Secretary of State will suspend the license of someone who is unable to pay her court debt. *See* Def.'s Opp'n to Prelim. Inj. 6, ECF No. 11 (admitting that, "under [] Michigan law, the [] outcome for failure to . . . comply with a court's judgment [including failure to pay fines] is suspension of driving privileges"). Although private companies may discriminate based on wealth-status (i.e., Ford and General Motors charge money for their cars), the Fourteenth Amendment does not permit a state to condition driving privileges on ability to pay fines. Plaintiffs in this case have access to vehicles, have passed their driving tests, and have not been adjudged a danger on the road. Their

minor infractions do not include suspension as a penalty, but their fine has been converted to a suspension solely because of their inability to pay. This case is ripe for resolution because (i) Plaintiffs have been penalized for inability to pay court debt, not for missing court, (ii) it is irrelevant whether Plaintiffs violated Michigan's traffic laws or whether the Secretary of State is following Michigan law by suspending the licenses of those unable to pay their court debt, (iii) *Rooker-Feldman* does not apply, (iv) Section 1983 has no exhaustion requirement, (v) *Pullman* and *Younger* abstention do not apply, and (vi) both injunctive and declaratory relief are appropriate remedies.

i. Plaintiffs Are Penalized for Their Inability to Pay Court Debt

As an initial matter, it must be clarified that Plaintiffs have not been penalized for missing court or being a danger on the road, but simply for being unable to pay court debt. Under Michigan law, the penalty for impeding traffic is a $150 fine. This infraction does not carry suspension as a possible penalty. Those who can pay the $150 fine can continue driving; those who cannot have their licenses suspended. Kitia Harris's license was not suspended because she impeded traffic (indeed, such a penalty is not permissible under Michigan law for such an infraction); her license was suspended because she was unable to pay her fine. Put simply, she was penalized for being too poor to pay a fine.

Contrary to Defendant's assertion, failure to appear in court is not relevant to this case; Plaintiffs are challenging the law that suspends a license solely for failure to pay. Michigan law is unambiguous on the fact that failure to pay a fine results in a suspension: "after a person . . . fails to comply with an order . . . including, but not limited to, paying all fines, . . . the secretary of state shall suspend the person's [driver's] license." Mich. Comp. Laws Ann. § 257.321a(2). Importantly, the statute uses the disjunctive "or" to highlight that a suspension will follow *either*

failure to appear *or* failure to pay fines. Defendant incorrectly uses the conjunctive "and" when describing the conditions for license suspension, but the statute makes clear that either failing to appear in court or failing to pay fines leads to a suspension. The question before this court is whether the suspension penalty can constitutionally be imposed solely for failure to pay fines, even where the failure is due to inability to pay.

Also contrary to Defendant's assertion, Kitia Harris has never missed court. Her license was suspended solely for being unable to pay her original $150 fine (which has now increased to $276 due to late fees). Compl. 9, ECF No. 1. The only thing standing between Ms. Harris and her license is $276 that she cannot afford. Similarly, Adrian Fowler's license was suspended for lack of payment (although she missed a court date, it was after her suspension). In both cases, suspension is not a punishment for a traffic offense, but for nonpayment.

ii. This Case Does Not Require Assessment of Whether Plaintiffs Violated Michigan's Traffic Laws or Whether the Secretary of State Follows Michigan Law, and It Is Thus Ripe for Resolution

This Court should refuse Defendant's request that this "Court should conclude that Plaintiffs violated Michigan law" because this case is not about whether Plaintiffs did or did not violate Michigan law. Def.'s Opp'n 8, ECF No. 11. Plaintiffs are not seeking to litigate their minor traffic infractions in federal court, nor is it relevant whether Plaintiffs actually "impeded traffic" or committed any other traffic infraction. What is relevant is whether the Secretary of State can constitutionally penalize people for being unable to pay court debt.

Suffice it to say, it is simply irrelevant whether the Secretary of State is merely following Michigan law, because Plaintiffs are challenging the laws that the Secretary of State enforces. What is at issue is whether Michigan's wealth-based suspension laws — and the Secretary of State's enforcement of those laws — are consistent with the federal Constitution.

iii. *Rooker-Feldman* Is Inapplicable Because Plaintiffs Are Not Challenging Any State Court Judgment

The *Rooker-Feldman* doctrine is inapposite to this case because Plaintiffs are not challenging any state court outcomes. The *Rooker-Feldman* doctrine is designed to prevent federal courts from acting as appellate courts for state court judgments, *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) (holding that the *Rooker-Feldman* doctrine limits "appellate jurisdiction to reverse or modify a state-court judgment [to the United States Supreme] Court"), but Plaintiffs do not seek federal appellate review of any state court decision. Neither Plaintiff is attacking the underlying basis for a traffic infraction, and neither Plaintiff is contesting liability for a traffic infraction. For example, Ms. Harris does not dispute that she "impeded traffic," nor does she dispute that $150 is the statutorily prescribed fine. Ms. Harris does not dispute anything a court has declared. Rather, she only challenges the Secretary of State's action and the state law that directs suspension of her license solely for her inability to pay a court debt. Ms. Harris is not asking for her record to be erased, for her infraction to be reversed, or for her court-imposed fine to waived. She is asking for her license to be reinstated.

To illustrate why Plaintiffs are not challenging a court order, consider a state like New Jersey, which does not suspend licenses for inability to pay court debt. N.J. Rev Stat § 39:4-203.1 (2013) (allowing waivers or payment plans upon a showing of inability to pay). An indigent person in New Jersey who impedes traffic might be given the same $150 fine Ms. Harris received. If such a person could not afford $150, rather than having her license suspended, she might be placed on a payment plan or authorized to do community service. The *court* processes in New Jersey may be the same as in Michigan; what is different in Michigan is that, after imposition of a fine by a court, the Secretary of State suspends licenses for those unable to pay. In New Jersey, where state officials do not suspend licenses for those unable to pay, Plaintiffs'

claims could not be brought. In Michigan, where the Secretary of State takes action beyond what happens in court, Plaintiffs challenge their wealth-based suspension.

Plaintiffs do not seek any relief or remedy that would upset a state court judgment. They do not seek reversal of any traffic infraction or fine imposed. They simply seek a declaration and injunction that the Secretary of State's actions and Michigan's laws are unconstitutional inasmuch as they entail suspension of licenses for those unable to pay court debt.

Contrary to Defendant's claims, Plaintiffs are not "asking a federal court to in effect wipe away fines." Def's Opp'n 9, ECF No. 11. Defendant's fundamental mistake is her belief that the only possible consequence for being unable to pay court debt is license suspension. In many other states, Secretaries of States (or other analogous officials) do not suspend licenses for failure to pay court debt. Instead, state officials in those states pursue other possible remedies, such as payment plans, community service, or scaling of fines based on ability to pay. Far from asking this Court to "wipe away fines," Plaintiffs merely ask that the Secretary of State take constitutional actions in response to unpaid court debt rather than penalizing people who are simply too poor to pay their court debt.

Defendant also misapplies *Rooker-Feldman* when she argues that, because the Secretary of State takes action only after a court order has not been paid in full, Plaintiffs are effectively challenging a court order. Again, the fact that the Secretary of State's decisions take place after a court order does not mean that Plaintiffs are challenging a court order. Plaintiffs are saying that, even in light of the court order they received and given their inability to pay, the Secretary of State should not have suspended their licenses. Defendant obscures the issue by failing to separate court orders imposing fines from the Secretary of State's action against those who cannot pay such fines.

Several states provide explicit protections from license suspension for those unable to pay their court debts. *See, e.g.*, N.J. Rev Stat § 39:4-203.1 (2013); N.H. Rev Stat § 263:56-a(b) (2015). The existence of states that do not suspend licenses for inability to pay court debt suffices to illustrate that Plaintiffs are not seeking reversal of any state court judgment. Plaintiffs simply ask the Secretary of State to do what state officials in many other states do and stop suspending licenses based solely on inability to pay.

iv. Section 1983 Carries No Exhaustion Requirement

Despite Defendant's complaints that Plaintiffs failed to pursue post-deprivation administrative remedies at the state level, Section 1983 carries no exhaustion requirement, and Plaintiffs are not required to pursue state court relief before bringing a federal suit. *Monroe v. Pape*, 365 U.S. 167, 183 (1961) ("The federal [Section 1983] remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.").

Although Defendant may prefer to litigate this matter in state court, Defendant's suggestion that Plaintiffs should have pursued it first in state court would undermine access to justice for all Class Members who are, by definition, indigent victims of Michigan's wealth-based suspension scheme. As a practical reality, indigent individuals like Ms. Fowler and Ms. Harris are unable to afford counsel, and Michigan does not appoint counsel to challenge license suspensions. The only realistic resource for indigent victims of Michigan's wealth-based suspension scheme is *pro bono* non-profit organizations like Equal Justice Under Law. Indeed, despite an estimated over 100,000 wealth-based suspensions by the Secretary of State, Plaintiffs are not aware of (and Defendant does not cite) a single state or federal case raising these constitutional claims in Michigan. The very purpose of Section 1983 is to allow victims of civil

rights abuses to have their claims heard in federal court. *Monroe*, 365 U.S. at 180 (rejecting a requirement that Section 1983 plaintiffs pursue their claims in state court because "one reason the legislation was passed was to afford a federal right in federal courts"). The Supreme Court's longstanding precedent in *Monroe* highlights that Section 1983 unambiguously creates a federal court right of action with no exhaustion requirement. *Id.* at 183. Both Section 1983 and *Monroe* are founded on an important federal policy promoting access to justice; many individuals (like Plaintiffs) would be denied justice altogether if they were prevented from raising their claims in federal court. The fact that Plaintiffs have filed in federal court instead of state court cannot and should not be held against them.

In addition to impairing access to justice and contravening Supreme Court precedent, Defendant's preference to litigate in state court would undercut judicial efficiency. None of the provisions highlighted by Defendant allows for class action relief for Plaintiffs' injunctive claims. Taken to its logical conclusion, Defendant would ask each and every victim of wealth-based suspension to challenge the Secretary of State through post-deprivation administrative procedures. Such a requirement is not only practically impossible for the over 100,000 proposed Class Members, but it would needlessly clog the courts with duplicative litigation. An injunctive class — like the one Plaintiffs seek — is the most efficient way to provide finality for Class Members and the Secretary of State.

v. This Court Should Not Abstain under *Pullman* or *Younger*

A federal court's obligation to hear cases within its jurisdiction is "virtually unflagging," and this case is squarely within the purview of this Court's jurisdiction. *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013). Abstention is only appropriate in "exceptional categories" of cases, but Defendant has not provided any adequate basis on which this Court should abstain

from hearing the merits of this case. *Id.* at 588; *see also Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976) ("Abstention from the exercise of federal jurisdiction is the exception, not the rule."). As an initial matter, Defendant again mischaracterizes the relief being sought: Plaintiffs are not asking this Court to decide "what fines stick and who gets driving privileges." Plaintiffs have not challenged their (or anyone's) underlying fines, the various procedures for passing driving tests in Michigan, nor any driving-related suspensions (such as suspensions for driving under the influence). Plaintiffs simply allege that wealth-based suspension is unconstitutional.

A hypothetical example should suffice to illustrate why this Court should not abstain from the merits of this case. Suppose Michigan law made as a penalty for impeding traffic a $150 fine plus a requirement to run a marathon — and that if someone did not or could not run a 26.2 mile race, the Secretary of State would suspend the driver's license until the person did so. A valid challenge could be brought under the federal Constitution for discrimination based on age or disability; such a challenge would not be asking this Court to decide "who gets driving privileges." Issuing an injunction against discriminatory practices by the Secretary of State is squarely within the jurisdiction and purview of this Court.

Where a challenged state law is alleged to be discriminatory in violation of the federal Constitution, no abstention doctrine prevents this Court from reaching the merits. Because Michigan's wealth-based suspension laws are unambiguous, *Pullman* abstention is inappropriate. *See Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 512 (1972) (holding that *Pullman* abstention is only appropriate where state law is ambiguous and is "sufficiently likely" to be interpreted differently in state courts). Defendant has not offered and cannot offer an alternative interpretation of state law, because state law unambiguously dictates suspension for all those

who do not pay court fines, even where inability to pay is the sole reason for failure to pay. *See* Mich. Comp. Laws Ann. § 257.321a(2) (requiring suspension for unpaid court fines without any inquiry into ability to pay). Despite the fact that the Supreme Court has made clear its preference that the certification process be employed rather than *Pullman* abstention, Defendant does not even suggest that this Court certify a question to the Michigan Supreme Court, implicitly conceding that there is no ambiguity in Michigan law. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 75 (1997) ("Certification today covers territory once dominated by a deferral device called '*Pullman* abstention'."). Because Michigan law unambiguously requires suspension for failure to pay court debt, *Pullman* abstention cannot apply.

In addition to being inapplicable, Defendant's invocation of *Pullman* abstention would only cause needless delay. *Harrison v. NAACP*, 360 U.S. 167, 177 (1959) (holding that *Pullman* abstention does not "involve the abdication of jurisdiction, but only the postponement of its exercise"). After any supposed certification (or other process) in state court, Plaintiffs would return to federal court for resolution of their claims. *See England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 417 (1964) (explaining that a party has the right to return to federal district court for a final determination of its federal claim once the party has obtained the authoritative state court construction of the state law in question). Thus, *Pullman* abstention is inappropriate for challenges to an unambiguous state law and would only to delay these proceedings.

Just as *Pullman* abstention is inappropriate, so too is Defendant's attempted invocation of *Younger* abstention. As an initial matter, *Younger* is intended to bar injunctions against state court proceedings, and Plaintiffs do not seek to enjoin any state court proceeding. *See Younger v. Harris*, 401 U.S. 37, 44, 91 (1971) (basing its holding on the desire "for restraining [federal]

courts of equity from interfering with [state] criminal prosecutions"). Moreover, none of *Younger*'s three prongs is satisfied in this case: (1) there is no ongoing state court proceeding, (2) there is no ongoing state proceeding that implicates important state interests, and (3) there is no ongoing state proceeding in which to raise Plaintiffs' constitutional claims. *See Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (outlining *Younger*'s three requirements of (1) an ongoing state court proceeding that (2) implicates important state interests and (3) affords an adequate opportunity to raise constitutional challenges). The initial prong of *Younger* is not met because there is simply no ongoing state proceeding. As already explained, Plaintiffs are not challenging or seeking an injunction against any state court proceeding; they are seeking an injunction against a state official's conduct in enforcing a state statute.

Because there is no ongoing state court proceeding that Plaintiffs seek to enjoin, no further *Younger* analysis is needed. However, it is worth noting that the final prongs of *Younger* do not warrant abstention in this case. The Secretary of State's action in suspending licenses of those too poor to pay court debt does not further any legitimate state interest. This matter is more fully argued on the merits, but it simply does not benefit the state to penalize those who, through no fault of their own, cannot afford to pay court debt. Finally, the Secretary of State's automatic suspensions do not afford an adequate opportunity to raise constitutional challenges, because the only way to avoid suspension is to pay the fine, which Plaintiffs and other Class Members cannot afford to do.

Defendant's preference that Plaintiffs initiate a state proceeding in which to raise these constitutional claims gets *Younger* exactly backwards. In effect, Defendant is asking Plaintiffs to initiate a state court proceeding that raises federal constitutional claims and Plaintiffs' own

ability to pay. But neither *Younger* nor Section 1983 requires a federal litigant to create a state court proceeding just because the opposing party desires it. Michigan law does not involve an ability-to-pay analysis before the Secretary of State suspends a license, and nothing in *Younger* or Section 1983 requires Plaintiffs to create the state proceeding that the state should have provided in the first place.

vi. Injunctive and Declaratory Relief Are Appropriate

In arguing against declaratory relief, Defendant misconstrues Plaintiffs' claims. Plaintiffs are not asking this Court to entangle itself with state courts or to reverse state court judgments. Instead, Plaintiffs only seek declaratory and injunctive relief against the actions of the Secretary of State and against the wealth-based suspension statutes she enforces.

B. Plaintiffs Have Met the Requirements for a Preliminary Injunction

Given the inapplicability of Defendant's procedural defenses, this Court can reach the merits of this case and find that Plaintiffs have met the requirements for a preliminary injunction because (i) Plaintiffs are likely to succeed on the merits, and (ii) the balance of harms and public interest tip in Plaintiffs' favor.

i. Plaintiffs Are Likely to Succeed on the Merits

Plaintiffs are highly likely to succeed on the merits of their claims for all of the reasons articulated in their opening brief: (a) it is fundamentally unfair to penalize someone solely for being too poor to pay a court debt, (b) Michigan's wealth-based suspension infringes on the right to intrastate travel without being narrowly tailored to a compelling interest, (c) it is irrational to penalize someone who has no ability to pay a court debt, (d) Michigan unlawfully employs extraordinary debt collection tactics by suspending licenses, and (e) the non-emergency suspensions at issue in this case require a pre-deprivation hearing that considers ability to pay.

a. Suspending the License of Someone Who Cannot Afford to Pay Her Court Debt Is Fundamentally Unfair

Defendants do not and cannot contest a basic principle of fundamental fairness: no person should be punished by the government because she is poor. Defendant is correct that driving costs money, and private auto makers and private gas companies charge prices for their products. But the money charged by private companies is different from the state's practice of penalizing drivers who cannot afford to pay their court debt.

Despite Defendant's refrain that "driving is a privilege," a driver's license is an important property right that the state may not take with impunity. *Bell v. Burson*, 402 U.S. 535, 539 (1971) ("[R]elevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege'."). Defendant's "driving is a privilege" mantra trivializes the discrimination claim in this case and the fact that it is fundamentally unfair to restrict driving based on wealth status. If Defendant required all drivers who impeded traffic to run a marathon and then suspended the licenses of those who did not run a marathon — even those who are *unable* to do so because of age, disability, or otherwise — it would be no defense to say that "driving is a privilege." By creating two systems of justice, Michigan is fundamentally treating poor drivers unfairly. The notion that driving is a privilege does not justify wealth-based discrimination by the government (or any other kind of discrimination, for that matter).

Defendant cannot punish someone for not doing something she is unable to do. Just as it would be fundamentally unfair to suspend the license of someone whose age or disability prevents her from following a court order, so too is it fundamentally unfair to suspend the license of someone who indigency prevents her from following a court order. At no point does Defendant engage with this basic notion.

By highlighting the underlying infractions behind Plaintiffs' original fines, Defendant insinuates that those who cannot afford to pay traffic tickets should drive more carefully. But this argument is exactly the kind of unequal justice prohibited by fundamental fairness. Our justice system should not be premised on the notion that those who can afford it get to buy their way out of trouble while the poor live under the constant threat of suspension for not using a turn signal.

Defendant does not and cannot rebut longstanding Supreme Court precedent that prohibits a state from converting a fine into a harsher penalty for those unable to pay. *See, e.g.*, *Bearden v. Georgia*, 461 U.S. 660, 660 (1983) (holding that it is fundamentally unfair to revoke probation because a probationer is unable to pay fines and restitution); *see also Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (holding that it is fundamentally unfair to deny access to an appeal solely because of inability to pay court costs); *Tate v. Short*, 401 U.S. 395, 395 (1971) (holding that it is fundamentally unfair to jail a person for inability to pay a fine); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970) (holding that it is fundamentally unfair to imprison a person beyond the maximum period fixed by statute solely because he cannot pay fines or court costs). Indeed, Defendant does not even cite, much less rebut, the Supreme Court's pronouncements in *Bearden*, *Griffin*, *Tate*, or *Williams*. The principle from these cases is simple: it is fundamentally unfair to convert a fine to a harsher penalty for those unable to pay the fine.

Michigan's wealth-based suspension is all the more fundamentally unfair because it makes no inquiry whatsoever into an individual's ability to pay. *See, e.g.*, *Powers v. Hamilton County Public Defender Com'n*, 501 F.3d 592, 608 (6th Cir. 2007) (holding that the automatic incarceration of an arrestee due to his failure to pay a fine violates due process if it is not preceded by a hearing to determine his ability to pay). Although Defendant suggests that

Plaintiffs should have sought their own ability-to-pay hearing, such a gesture is not only inconsistent with state law — which directs the Secretary of State to suspend licenses for unpaid court debt regardless of ability to pay — but it also improperly places the burden on indigent, unrepresented drivers who are not trained in constitutional law. *See Bearden*, 461 U.S. at 668 ("[The] distinction [between] the reasons for nonpayment is of critical importance.").

Defendant's brief — just like the statute Defendant enforces — consistently describes failure to pay as a violation of a court order, but Supreme Court precedent makes clear that inability to pay is different from willful violation of court orders. *See Tate*, 401 U.S. at 398 ("[T]he Constitution prohibits the State from . . . automatically converting [a fine] into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."). Plaintiffs in this case have not willfully refused to pay; they are unable to pay due to their indigence.

b. Defendant's Suspension Scheme Infringes Upon the Right to Intrastate Travel Without Being Narrowly Tailored to a Compelling Government Interest

Whether Plaintiffs' right to travel is infringed is a fact-specific inquiry, and thus Defendant's citations to outdated precedent from other jurisdictions are irrelevant. In Michigan, suspension of a driver's license infringes on the fundamental right to intrastate travel. Unlike other states, Michigan has refused to invest in public transportation, and Detroit's system stands out as one of the worst in the country. *See* Ryan Felton, *How Detroit Ended up with the Worst Public Transit*, Detroit Metro Times (Mar. 11, 2014), *available at* http://www.metrotimes.com/detroit/how-detroit-ended-up-with-the-worst-public-transit/Content?oid=2143889. These facts make deprivation of a valid license in Michigan very different from suspensions elsewhere. On the uncontested facts before this Court, there is

sufficient basis to hold that suspension of Plaintiffs' licenses is an infringement of the right to intrastate travel.

Defendant's suspension scheme is not narrowly tailored to any compelling government interest. At no point in her brief does Defendant explain why she suspends the license of those *unable* to pay court debt. License suspension may very well be a valid penalty for those who willfully choose to avoid paying court debt, but where non-payment is not willful, license suspension makes no sense. Michigan's scheme would be more appropriately tailored to recovering court debt if it limited the suspension penalty to willful non-payers.

c. Michigan's Scheme Is Irrational

In addition to the fundamental unfairness and unjustified infringement on intrastate travel, Michigan's wealth-based suspension scheme is irrational. Through suspensions, Michigan traps individuals in a cycle of poverty by making it harder for debtors to find and maintain employment, thus preventing any possibility of future repayment. Having a driver's license "is a very common requirement for the sorts of job that can actually lift people out of poverty." 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/. In fact, Adrian Fowler had to turn down a higher paying job because she is not able to drive herself there. Compl. 8–9, ECF No. 1.

Compounding the employment barriers created by Michigan's scheme, traveling around to fulfill everyday obligations becomes more expensive without a license. Kitia Harris, whose only income is government assistance, is forced to pay other people to drive her to her many medical appointments, an extra expense that she has incurred because Michigan suspended her license for being too poor to pay her court debts.

Rather than making life harder and more expensive for indigent debtors, Michigan should be providing Plaintiffs with the tools they need to repay their debt. Instead of automatically suspending their licenses, the state could offer modest repayment plans (as low as $5 per month) or community service as an alternative. In these ways, Michigan would recoup some of its debt without contributing to the cycle of poverty.

Although Defendant believes it is rational to assume that suspending a license will incentivize a debtor to pay court debt, this point fails to address the irrationality of suspending the licenses of those who are unable to pay. Plaintiffs concede that suspensions for willful non-payment may be rational. What is irrational is a penalty for non-willful non-payment.

d. Michigan Employs Extraordinary Debt Collection

Defendant attempts to obscure its wealth-based debt collection scheme by referring to it as a "generally applicable motor vehicle code provision," but this description is misleading. Just as a hypothetical license suspension rule that requires running a marathon is not "generally applicable" because it conditions a license on physical abilities, so too is a rule that conditions licenses on ability to pay discriminatory. Michigan law effectively tells all drivers who impeded traffic: if you can pay $150, you can keep driving, and if you cannot afford $150, your license is suspended. The law divides those who can afford to pay from those who cannot, and it is in this way discriminatory.

Debtors who have their licenses suspended lack protections private debtors would have, and Michigan employs a drastic measure not available to private creditors when it suspends licenses for failure to pay. These actions are not consistent with the Fourteenth Amendment's guarantee of Equal Protection.

e. Michigan's Post-Deprivation Remedies Are Inadequate

Defendant incorrectly maintains that a post-deprivation hearing is acceptable, but binding Supreme Court precedent makes clear that non-emergency suspensions must involve a pre-deprivation hearing that includes an assessment of ability to pay. In *Bell v. Burson*, 402 U.S. 535 (1971), the Supreme Court noted that drivers have a property interest in their licenses because "continued possession [of the license] may become essential in the pursuit of a livelihood." *Id.* at 539. The Court held that, where there is no emergency circumstance, Due Process requires a driver to be provided with a meaningful opportunity to be heard *before* a suspension. *Id.* at 540–42. This non-emergency situation contrasts with other instances where an immediate suspension is necessary for public safety on the roads. *See, e.g.*, *Dixon v. Love*, 431 U.S. 105, 113–15 (1977) (upholding a post-deprivation process for a driver who was repeatedly involved in accidents or convicted of traffic offenses). The key distinction in Supreme Court precedent is whether exigency requires immediate suspension; because the challenged suspensions in this case carry no exigency, a pre-deprivation hearing is required. *See Bell*, 402 U.S. at 542 ("Except in emergency situations (and this is not one)[,] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective.") (internal quotation marks omitted); *see also Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("[T]he Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.").

Contrary to Defendant's uncited references to a pre-deprivation process, there simply is no pre-deprivation process in Michigan. There is no hearing to determine whether non-payment is willful or non-willful before suspension occurs, and the statute thus violates the pre-deprivation requirement of Due Process.

ii. The Balance of Harms and Public Interest Weigh in Favor of Plaintiffs

At this preliminary stage, the balance of harms weighs strongly in favor of Plaintiffs. Over 100,000 Michiganders are prevented from driving solely because they cannot pay court debt. They are not a threat on the road; they have not been judged too dangerous to sit behind a steering wheel. Many of them, like Adrian Fowler and Kitia Harris, are single parents struggling to make ends meet. Many of them, like Ms. Harris, are on a limited income of government assistance. They are trapped — by their state government — in a cycle of poverty, unable to drive themselves to work and forced to incur burdensome transportation expenses. Plaintiffs' ability to drive is not only an urgent necessity for themselves, but it will also benefit the state of Michigan. By increasing the ability of individuals to work and save money, Michigan will promote the economy, help break the cycle of poverty, and eventually enable Plaintiffs to repay their court debt.

Michigan's suspension policy is bad for Michigan. It strips away employment prospects from those who need it most. While a suspension policy targeted at willful nonpayment might incentivize the rich scofflaws who are trying to get out of paying court debt, Michigan's policy indiscriminately punishes those whose non-payment is not willful and who are simply too poor to pay court debt. A policy that covers non-willful non-payers hurts Michigan and the many indigent Michiganders who cannot drive. The state's scheme has resulted in millions of dollars of unpaid court debt from an estimated more than 100,000 drivers whose licenses have been suspended. Trapping these Class Members in a cycle of poverty is not good for the Plaintiffs, it is not good for Michigan, and it is not in the public interest.

Michigan is not going to lose money as a result of the requested preliminary injunction. Plaintiffs' injunction says nothing about what Michigan can do to willful non-payers. The

requested injunction would not prevent Michigan from suspending the licenses of willful non-payers. Because the requested injunction is targeted at non-willful non-payers, it will not prevent Michigan from continuing its efforts to recoup debts from those who can afford to pay them.

Plaintiffs are not seeking monetary damages from the state. They want what every person would want to further their own economic well-being: the right to drive that they have legitimately earned by passing a driving test and have not jeopardized through excessive dangerous driving. Plaintiffs' self-interest is aligned with Defendant's interest: to help more Michiganders break the cycle of poverty, seek and maintain employment, and pay off their court debts.

III. Conclusion

For all of the reasons above and in Plaintiffs' opening brief, Plaintiffs respectfully request that this Court grant the requested preliminary injunction and deny Defendants' motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 30, 2017, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to the counsel of record.

/s/ Phil Telfeyan
Attorney for Plaintiffs