No. 18-5766

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES THOMAS, DAVID HIXSON,
Plaintiffs–Appellees,

v.

BILL HASLAM, governor of Tennessee, in his official capacity; DAVID W. PURKEY, Commissioner for the Department of Safety and Homeland Security, in his official capacity;
Defendants–Appellants.

On Appeal from the United States District Court
for the Middle District of Tennessee, Nashville Division
No. 3:17-cv-00005, Aleta Arthur Trauger, Judge Presiding

BRIEF OF *AMICI CURIAE* INSTITUTE FOR JUSTICE AND FINES AND FEES JUSTICE CENTER IN SUPPORT OF PLAINTIFFS–APPELLEES AND AFFIRMANCE

Lisa Foster
Joanna Weiss
FINES AND FEES JUSTICE CENTER
185 W. Broadway, Suite C-538
New York, New York 10013
(619) 994-0504

William R. Maurer
INSTITUTE FOR JUSTICE
600 University St., Suite 1730
Seattle, Washington 98101
(206) 957-1300

Andrew H. Ward
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, Virginia 22203
(703) 682-9320

FRAP 26.1 STATEMENTS

I certify that *amicus curiae* Institute for Justice is not a publicly held corporation and does not have any parent corporation and that no publicly held corporation owns 10 percent or more of its stock.

/s/ William R. Maurer
William R. Maurer
Counsel for Amicus Curiae
Institute for Justice

I certify that *amicus curiae* Fines and Fees Justice Center is not a publicly held corporation and does not have any parent corporation and that no publicly held corporation owns 10 percent or more of its stock.

/s/ Lisa Foster
Lisa Foster
Counsel for Amicus Curiae
Fines and Fees Justice Center

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TABLE OF CONTENTS

Page

INTERST OF *AMICI CURIAE* 1

ARGUMENT 2

I. The Rational Basis Test Does Not Countenance Irrational Laws 5

A. The Rational Basis Test Involves Analysis of Logic, Facts, and Evidence 5

i. A Law Must Be Logically Connected to the Government Interest Offered to Support It 7

ii. The Plausible Public Benefit of a Challenged Law Cannot Be Vastly Outweighed by the Demonstrable Public Harm 9

iii. The Supreme Court Evaluates the Logic, Proportionality, and Legitimacy of the Government Interest in Light of Record Evidence 11

B. The Sixth's Circuit's Application of the Rational Basis Test Also Requires Courts to Acknowledge Facts 13

II. Revoking Driver's Licenses of People Who Are Too Poor to Pay Their Court Debt Is Irrational and Harmful 16

A. Stripping Driver's Licenses of Those Who Are Too Poor to Pay Court Debt in Order to Get Them to Pay Court Debt Is Irrational 17

B. Stripping the Poor of their Ability to Drive Legally Significantly Harms Society 23

CONCLUSION 25

CERTIFICATE OF COMPLIANCE 27

CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Page

Cases

Allegheny Pittsburgh Coal Co. v. County Commision,
488 U.S. 336 (1989) 6, 9, 10

Armour v. City of Indianapolis,
566 U.S. 673 (2012) 12

Bearden v. Georgia,
461 U.S. 660 (1983) 2

Bell v. Burson,
402 U.S. 535, 539 (1971) 17

Berger v. City of Mayfield Heights,
154 F.3d 621 (6th Cir. 1998) 13, 14

Bower v. Village of Mount Sterling,
44 F. App'x 670 (6th Cir. 2002) 13

Chappelle v. Greater Baton Rouge Airport District,
431 U.S. 159 (1977) 6, 9

City of Cleburne v. Cleburne Living Center,
473 U.S. 432 (1985) 6, 8, 12

City of New Orleans v. Dukes,
427 U.S. 297 (1976) 7

Craigmiles v. Giles,
312 F.3d 220 (6th Cir. 2002) 13, 15

Curto v. City of Harper Woods,
954 F.2d 1237 (6th Cir. 1992) 13, 15, 16

Davis v. Weir,
497 F.2d 139 (5th Cir. 1974) 14

Eastman v. University of Michigan,
30 F.3d 670 (6th Cir. 1994) 13, 14

F.C.C. v. Beach Communications, Inc.,
508 U.S. 307 (1993) 11

Golden v. City of Columbus,
404 F.3d 950 (6th Cir. 2005) 13, 14, 15

Griffin v. Illinois,
351 U.S. 12 (1956) 2

Hooper v. Bernalillo County Assessor,
472 U.S. 612 (1985) 6

James v. Strange,
407 U.S. 128 (1972) 6, 10

Lawrence v. Texas,
539 U.S. 558 (2003) 6

Lee v. City of Newport,
947 F.2d 945 (6th Cir. 1991) 13

Lindsey v. Normet,
405 U.S. 56 (1972) 6, 10

Loesel v. City of Frankenmuth,
692 F.3d 452 (6th Cir. 2012) 13, 16

M.L.B. v. S.L.J.,
519 U.S. 102 (1996) 2

Mayer v. City of Chicago,
404 U.S. 189 (1971) 6, 9

Metropolitan Life Insurace Co. v. Ward,
470 U.S. 869 (1985) 6

Minnesota v. Clover Leaf Creamery Co.,
449 U.S. 456 (1981) 12

Peoples Rights Organization v. City of Columbus,
152 F.3d 522 (6th Cir. 1998) 13, 14

Plyler v. Doe,
457 U.S. 202 (1982) 6, 9

Quinn v. Millsap,
491 U.S. 95 (1989) 6, 9

Reed v. Reed,
404 U.S. 71 (1971) 6, 10

Romer v. Evans,
517 U.S. 620 (1996) 6, 11

Seal v. Morgan,
229 F.3d 567 (6th Cir. 2000) 13, 14, 15, 16

Stemler v. City of Florence,
126 F.3d 856 (6th Cir. 1997) 13

Tanner v. Weinberger,
525 F.2d 51 (6th Cir. 1975) 13

Turner v. Fouche,
396 U.S. 346 (1970) 6, 9

U.S. Department of Agriculture v. Moreno,
413 U.S. 528 (1973) 6, 9

United States v. Carolene Products Co.,
304 U.S. 144 (1938) 12

United States v. Lopez,
514 U.S. 549 (1995) 6

United States v. Morrison,
529 U.S. 598 (2000) 6

United States v. Windsor,
570 U.S. 744 (2013) 6

Village of Willowbrook v. Olech,
528 U.S. 562 (2000) 6

Wagner v. Haslam,
112 F. Supp. 3d 673 (M.D. Tenn. 2015) 5

Weinberger v. Wiesenfeld,
420 U.S. 636 (1975) 12

Williams v. Vermont,
472 U.S. 14 (1985) 6, 8, 9

Zobel v. Williams,
457 U.S. 55 (1982) 6, 7, 8

Constitutional Provisions

U.S. Const. amend. XIV 4

Statutes

Tenn. Code Ann. § 40-24-105(b) ..... *passim*

Other Authorities

American Association of Motor Vehicle Administrators, Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers* (2013) 18, 20, 21, 23, 24

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Central Indiana Transit Task Force, *Summary Report on Transportation Alternatives in Central Indiana* (2010) 19

Jon A. Carnegie, *Driver's License Suspensions, Impacts and Fairness Study* (2007) 19, 20

Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt* (2017) 22

Ryan T. Schwier & Autumn James, *Roadblock to Economic Independence: How Driver's License Suspension Policies in Indiana Impede Self-Sufficiency, Burden State Government & Tax Public Resources* (2016) 19, 21, 23, 24

Sandra Gustitus et al., *Access to Driving and License Suspension Policies for the Twenty-First Century Economy* (2008) 17, 18, 19, 20, 21

INTEREST OF *AMICI CURIAE*

The Institute for Justice ("IJ") is a nonprofit public-interest law firm that litigates for greater judicial protection of individual rights. These include the right to earn an honest living and acquire and enjoy property without unreasonable governmental interference. Many of IJ's cases involve legal challenges to unconstitutional systems of fines, fees, and forfeitures imposed on the poor and vulnerable. This case thus falls squarely within a core area of concern for IJ.

The Fines and Fees Justice Center ("FFJC") is a national center for advocacy, information, and collaborations on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.[1]

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[1] No party or party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person—other than *amici curiae*—contributed money that was intended to fund the preparation or submission of this brief. Under Federal Rule of Appellate Procedure 29(a)(2), counsel for *amici* state that all parties have consented to the filing of this brief.

ARGUMENT

In a line of cases stretching from *Griffin v. Illinois*, 351 U.S. 12 (1956), to *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), the U.S. Supreme Court has held that when the justice system treats people more harshly solely because they are poor, due process and equal protection principles converge in ways that defy the rote application of the Court's traditional tiers of judicial scrutiny. In *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court set out the more nuanced approach it uses for considering economic disparities in the justice system. This approach requires the Court to examine (1) the nature of the individual interest affected, (2) the extent to which it is affected, (3) the rationality of the connection between the legislative means and purpose, and (4) the existence of alternative means to effectuate this purpose. *Id.* at 666. Because this case concerns a penalty that falls more heavily on the poor than on the rich simply because they are poor, this Court should analyze the statute here using the principles set out in cases like *Bearden* instead of the tiered approach used in due process and equal protection cases unrelated to the criminal justice system. As the Plaintiffs–Appellees point out, under this standard, the Tennessee law at issue here is unconstitutional.

Nonetheless, even if this Court examines this law under rational basis review, the law is still unconstitutional because a statute that is facially irrational, does not achieve any legitimate governmental goal, and ultimately causes significant societal harm does not, and cannot, satisfy the rational basis test.[2]

The law at issue here, Tenn. Code Ann. § 40-24-105(b) ("Section 105(b)") mandates that the Tennessee Commissioner for the Department of Safety and Homeland Security (the "Commissioner") revoke the driver's license of any person who has failed to pay fines, costs, and litigation taxes associated with a criminal conviction for a year or more. The Commissioner asserts that this law is clearly related to the state's interest in defraying the costs of prosecution and conviction: "Revoking a driver's license when fines, taxes, and court costs go unpaid provides a powerful incentive to pay them." (Br. Def.–Appellant 25 ("Comm'r Br.")). As such, the Commissioner argues, the law does not violate the Fourteenth Amendment's guarantee of equal protection and due process because it is rationally related to a legitimate interest.

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[2] *Amici* agree with Plaintiffs–Appellees that the law at issue here also deprives members of the class of procedural due process. However, *amici*'s focus here is whether the law violates equal protection and substantive due process.

In making this argument, the Commissioner deploys a version of the rational basis test that goes beyond deferring to the legislature's judgments to affirmatively ignoring reality. Under the Commissioner's view of the rational basis test, every law—regardless of how irrational, harmful, useless, or counterproductive it is—would satisfy the test so long as the government can provide some justification for it. However, a law's constitutionality does not depend on how imaginative the government can be in justifying it.

Instead, both the U.S. Supreme Court and this Court strike down laws under the rational basis test when there is no logical connection between the action and the governmental interest and when the action imposes a harm that vastly outweighs any plausible benefit. Section 105(b) and laws like it fail the rational basis test, as it is properly understood, when evidence establishes that they are facially irrational, are unsuccessful in achieving their goals, and impose significant harm to society. Under relevant Supreme Court and Sixth Circuit precedent, this means that such laws violate the guarantees of equal protection and due process in the Fourteenth Amendment.

The first portion of this brief lays out the proper version of the rational basis test as used by both the U.S. Supreme Court and this Court. The second portion of the brief applies the proper version of the test and describes how laws like Section 105(b) fail that test.

I. The Rational Basis Test Does Not Countenance Irrational Laws.

The Commissioner argues that a law meets the rational basis test even when it is unreasonable, counter-productive, and contrary to evidence. (Comm'r Br. 23 (quoting *Wagner v. Haslam*, 112 F. Supp. 3d 673, 692 (M.D. Tenn. 2015))). This reading goes far beyond what the U.S. Supreme Court and this Court have said about the test. Although the rational basis test is deferential, it does require the application of some actual standards.

A. The Rational Basis Test Involves Analysis of Logic, Facts, and Evidence.

Under the standard urged by the Commissioner, every law would satisfy the rational basis test so long as the government could think of a justification for it. If government justifications needed no factual foundation whatsoever, the only limit on government power would be human imagination. That standard would be meaningless—no plaintiff

would ever win a rational basis case. But plaintiffs have won more than 20 rational basis cases before the Supreme Court since 1970,[3] so there is more to rational basis review than the Commissioner suggests.

Reviewing the opinions in which plaintiffs have prevailed in rational basis cases demonstrates that the Supreme Court invalidates government action under rational basis review in two circumstances: (1) when there is no logical connection between the action and the proffered government interest and (2) when the action imposes a harm that vastly outweighs any plausible benefit.[4] In considering these factors,

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[3] *See United States v. Windsor*, 570 U.S. 744, 774 (2013); *id.* at 793–94 (Scalia, J., dissenting) (noting that the Court relied on rational basis review); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *United States v. Morrison*, 529 U.S. 598, 614–15 (2000); *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000) (per curiam); *Romer v. Evans*, 517 U.S. 620, 634–35 (1996); *United States v. Lopez*, 514 U.S. 549, 567 (1995); *Quinn v. Millsap*, 491 U.S. 95, 108 (1989); *Allegheny Pittsburgh Coal Co. v. Cty. Comm'n*, 488 U.S. 336, 345 (1989); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 449–50 (1985); *Hooper v. Bernalillo Cty. Assessor*, 472 U.S. 612, 623 (1985); *Williams v. Vermont*, 472 U.S. 14, 24–25 (1985); *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 880 (1985); *Plyler v. Doe*, 457 U.S. 202, 230 (1982); *Zobel v. Williams*, 457 U.S. 55, 61–63 (1982); *Chappelle v. Greater Baton Rouge Airport Dist.*, 431 U.S. 159 (1977) (per curiam); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *James v. Strange*, 407 U.S. 128, 141–42 (1972); *Lindsey v. Normet*, 405 U.S. 56, 76–78 (1972); *Mayer v. City of Chicago*, 404 U.S. 189, 196–97 (1971); *Reed v. Reed*, 404 U.S. 71, 76–77 (1971); *Turner v. Fouche*, 396 U.S. 346, 363–64 (1970).

[4] The Supreme Court also invalidates state actions when they are based on an illegitimate interest. *See, e.g.*, *Ward*, 470 U.S. at 878 (economic favoritism); *Romer*, 517 U.S. at 635 (anti-gay animus); *Cleburne*, 473 U.S. at 450 (anti-disabled animus). For the sake of argument, *amici* assume that collection of court debt is a legitimate governmental interest.

the Court evaluates the challenged action in the context of the record and wider statutory background.

This section discusses the Court's approach in these two circumstances and discusses the fact that, in doing so, the Court relies on evidence, not imagination.

i. A Law Must Be Logically Connected to the Government Interest Offered to Support It.

At the outset, it is important to remember that to survive the rational basis test, a law must be "*rationally related* to a legitimate state interest." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (emphasis added). Put another way, an irrational law fails the rational basis test. Accordingly, the Supreme Court invalidates a statutory classification if there is no logical connection between the classification and the government interest offered to support it. This is because law without logic is, at best, arbitrary.

Zobel v. Williams illustrates this principle. 457 U.S. 55, 56–58 (1982). There, a state program distributed oil money to Alaskans based on the length of their state residency. Residents who lived in the state since long before the law was enacted received considerably more than those who moved to Alaska later. The Court struck down the program

because Alaska's asserted rationales provided no logical support for the law. For example, Alaska justified the law, in part, by arguing that the law would encourage settlement in the sparsely populated state. The Court rejected this justification because it was illogical to pay long-term residents more than recent ones if the goal was to encourage people to move to Alaska. *Id.* at 62.

The no-logical-connection principle underlies the Supreme Court's reasoning in other rational basis decisions. In *City of Cleburne v. Cleburne Living Center*, for example, the Court recognized that a city could in some cases validly deny a permit to a proposed group home if the home would be too big. But the Court found no logical connection between that principle and the City's actions, given that similarly-sized homes were routinely granted permits. 473 U.S. 432, 449–50 (1985). And in *Williams v. Vermont*, Vermont taxed cars purchased out of state to encourage its residents to purchase cars in the state, but the Court found no logical connection between that interest and taxing cars that were

purchased out of state *before* their owners moved to Vermont. 472 U.S. 14, 24–25 (1985).[5]

ii. The Plausible Public Benefit of a Challenged Law Cannot Be Vastly Outweighed by the Demonstrable Public Harm.

A statutory classification also fails rational basis review when the challenged law causes a public harm far greater than any plausible public benefit. For example, in *Plyler v. Doe*, the government argued that denying public education to the children of illegal immigrants could help save the government money. 457 U.S. 202, 207 (1982). The Court rejected this argument, noting that the alleged benefit was "wholly insubstantial in light of the costs involved to these children, the State, and the Nation" of creating a subclass of illiterates. *Id.* at 230. Similarly, in *Allegheny Pittsburgh Coal Co. v. County Commission*, the Court struck down a West Virginia statute that assessed property taxes based on the most recent

[5] *See also Quinn*, 491 U.S. at 108 (finding no logical connection between an individual's ability to understand politics and an individual's ownership or non-ownership of land); *Chappelle*, 431 U.S. at 159 (same); *Moreno*, 413 U.S. at 534 (finding no logical connection between stimulating the agricultural economy and providing food stamps to only households containing people who are related to one another); *Mayer*, 404 U.S. at 196 (finding that, where the government had adopted a policy that inability to pay was not a sufficient reason to deny a transcript to a felony defendant, there was no logical reason that policy should not extend to a misdemeanor defendant*); Turner*, 396 U.S. at 363–64 (finding no logical connection between fitness for political office and property ownership).

sale price. 488 U.S. 336, 343–46 (1989). This method resulted in gross disparities in tax liability between similar properties arbitrarily based on how long ago the property had been sold. *Id.* at 344. The Court held that the tax violated the Equal Protection Clause because the asserted public benefit—administrative convenience for the government—was trivial compared to the manifest injustice of assigning tax liability arbitrarily.

Of particular relevance is *James v. Strange*, which held that the state funds saved by denying indigent defendants exceptions to the enforcement of debt judgments was grossly disproportionate to the harms it inflicted on debtors. 407 U.S. 128, 141–42 (1972). Similarly, as discussed below, the Tennessee statute here causes grossly disproportionate harm to the poor when compared to the meager (or, more accurately, nonexistent) benefit provided to the public.[6]

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[6] *See also Lindsey*, 405 U.S. at 77–78 (holding that deterring a few frivolous appeals did not justify a surety requirement that allowed many frivolous appeals, blocked many meritorious appeals, and showered a windfall on landlords); *Reed*, 404 U.S. at 76–77 (holding that attempting to reduce the workload of the probate courts by excluding women from service as administrators in certain cases would be unconstitutionally arbitrary).

iii. The Supreme Court Evaluates the Logic, Proportionality, and Legitimacy of the Government Interest in Light of Record Evidence.

The preceding subsections described two circumstances under which the Supreme Court invalidates challenged laws under rational basis review. This subsection explains that the Court uses evidence when it applies the test. This clarification is necessary because dicta describing the test sometimes suggest that actual facts do not matter. *See F.C.C. v. Beach Commc'ns*, 508 U.S. 307, 315 (1993). But judicial suggestions that facts are irrelevant do not square with how the Supreme Court actually adjudicates rational basis cases.

To be sure, the government does not have an affirmative evidentiary burden. But the Supreme Court does allow plaintiffs to adduce evidence to refute the government's asserted justifications. As the Court stated in *Romer v. Evans*, a classification must be "narrow enough in scope and *grounded in a sufficient factual context* for us to ascertain some relation between the classification and the purpose it served." 517 U.S. 620, 632–33 (1996) (emphasis added). In that case, as in other rational basis decisions, the Supreme Court structured its analysis

around the actual facts in the record, not just around the government's imagined possibilities.

The ability to tender evidence that refutes purported rationales is long-standing. In the seminal case of *United States v. Carolene Products Co.*, the Court stated:

> Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry, and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.

304 U.S. 144, 153 (1938) (citations omitted).[7] In other words, the rational basis test does not require the court to accept what is false as if it were true.

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[7] *See also Armour v. City of Indianapolis*, 566 U.S. 673, 681 (2012) (the assumption that a law rests upon some rational basis may be precluded "in the light of the facts made known or generally assumed" (quoting *Carolene Products*, 304 U.S. at 152)); *Cleburne*, 473 U.S. at 449 (citing the district court's post-trial findings of fact and appellate court's reliance on those findings); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981) ("In equal protection analysis, this Court will assume that the objectives articulated by the legislature are actual purposes of the statute, unless an examination of the circumstances forces us to conclude that they could not have been a goal of the legislation." (internal quotation marks omitted)); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975) ("This Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation.").

B. The Sixth Circuit's Application of the Rational Basis Test Also Requires Courts to Acknowledge Facts.

This Court has likewise applied a version of the rational basis test distinct from that urged by the Commissioner. Indeed, since 1970, this Court has deemed state action invalid under that standard at least a dozen times.[8]

In *Golden v. City of Columbus*, this Court made clear that state action in this Circuit must relate to a government interest not just conceivably, but rationally. 404 F.3d 950 (6th Cir. 2005). *Golden* considered a city's practice of cutting off water service to tenants whose landlords were delinquent on their water bills. Of course, the Court was aware that shutting off people's water had some relationship to debt collection: conceivably, the tenants might pay themselves (or convince their landlords to pay). But this Court nonetheless deemed the scheme

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[8] *See Loesel v. City of Frankenmuth*, 692 F.3d 452, 465–66 (6th Cir. 2012); *Golden v. City of Columbus*, 404 F.3d 950, 960–63 (6th Cir. 2005); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Seal v. Morgan*, 229 F.3d 567, 575–79 (6th Cir. 2000); *Berger v. City of Mayfield Heights*, 154 F.3d 621 (6th Cir. 1998); *Peoples Rights Org. v. City of Columbus*, 152 F.3d 522, 531–32 (6th Cir. 1998); *Stemler v. City of Florence*, 126 F.3d 856, 873–74 (6th Cir. 1997); *Eastman v. Univ. of Mich.*, 30 F.3d 670, 673–74 (6th Cir. 1994); *Curto v. City of Harper Woods*, 954 F.2d 1237, 1243–44 (6th Cir. 1992) (per curiam); *Tanner v. Weinberger*, 525 F.2d 51 (6th Cir. 1975); *Bower v. Vill. of Mt. Sterling*, 44 F. App'x 670, 677–78 (6th Cir. 2002); *Lee v. City of Newport*, 947 F.2d 945 (6th Cir. 1991) (table).

unconstitutional because terminating a tenant's water service was not "a *rational* means of collecting" from landlords: it was "divorce[d] … from the reality" of who owed the debt. *Id.* at 961–62 (emphasis added) (second quotation from *Davis v. Weir*, 497 F.2d 139, 144 (5th Cir. 1974)).

Similarly, in *Seal v. Morgan*—a case about a student expelled despite his claim that he did not know there was a knife in his car—this Court held that a school's zero-tolerance policy for contraband would have no rational basis without a *mens rea* requirement. 229 F.3d 567 (6th Cir. 2000). Certainly one can imagine reasons a strict-liability contraband policy might benefit schools. But the Court recognized that students cannot avoid (let alone use) contraband they do not know about, and that it makes no sense to punish people for circumstances they cannot change. *Id.* at 575–80. There was thus no *rational* basis to punish students for unknowing possession of contraband.[9]

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[9] *See also, e.g.*, *Berger*, 154 F.3d at 624–26 (deeming ordinance requiring only lots with less than 100 feet of street frontage to be totally cleared not rationally related to various environmental interests); *Peoples Rights*, 152 F.3d at 531–32 (deeming assault-weapon ban irrational when it had exception for weapons registered under vague statute); *Eastman*, 30 F.3d at 673–74 (holding that a duration-of-residency requirement could not rationally be imposed on a true domiciliary).

Both *Golden* and *Seal* hinged on the fact that the law punished people who could not resolve the issue the government wanted resolved. Tennessee's revocation of driver's licenses does the same: Section 105(b) tries to force people (drivers who cannot pay their court debt) to do something they cannot do (pay their court debt) and inflicts a substantial penalty for their failure to comply (revocation of their driver's licenses).

This Court has also based its decisions in rational basis cases on real-world evidence. In *Craigmiles v. Giles*, casket sellers challenged a Tennessee law requiring that they become funeral directors, which involved two years of education and training largely irrelevant to caskets. 312 F.3d 220 (6th Cir. 2002). Rather than conduct a purely hypothetical analysis, this Court relied on "evidence that funeral home operators [sold] caskets at prices substantially over total costs" and on the lack of record evidence that licensed funeral directors were selling more protective caskets. *Id.* at 224–26. That record led the Court to the obvious conclusion that the law was motivated by economic protectionism and was hurting, rather than protecting, Tennessee consumers. Reliance on evidence has also led this Court to remand a rational basis claim "for further development of the record," *Curto v. City of Harper Woods*,

954 F.2d 1237, 1244 (6th Cir. 1992) (per curiam), and to approve a fact-intensive jury determination that a zoning ordinance lacked a rational basis, *Loesel v. City of Frankenmuth*, 692 F.3d 452, 465–66 (6th Cir. 2012).[10]

If the Commissioner were correct that the government could win every rational basis case by stating any justification it could imagine, the government would have won each of these cases. But the government did not. Thus, in this Circuit as in the Supreme Court, the rational basis test does require meaningful analysis. Deference to the state's rational decisions "does not mean that [the Court] must, or should, rationalize away [the state's] irrational decisions." *Seal*, 299 F.3d at 579.

II. Revoking Driver's Licenses of People Who Are Too Poor to Pay Their Court Debt Is Irrational and Harmful.

Under these standards, Section 105(b) fails. Both Plaintiffs–Appellees and the district court correctly analyzed the facts produced by the parties before that court. *Amici* here discuss additional facts that reinforce these conclusions. The issue of stripping driver's licenses is one

[10] *See also Seal*, 229 F.3d at 579 (noting the importance of evidence in determining whether the state acted rationally).

that a number of researchers and analysts have examined. Their findings bolster the conclusion that Section 105(b) is unconstitutional.[11]

A. Stripping Driver's Licenses of Those Who Are Too Poor to Pay Court Debt in Order to Get Them to Pay Court Debt Is Irrational.

Almost 50 years ago, the U.S. Supreme Court noted that "[o]nce [driver's] licenses are issued … their continued possession may become essential in the pursuit of a livelihood." *Bell v. Burson*, 402 U.S. 535, 539 (1971). Time has changed "may become" to "is." Eighty-six percent of Americans drive to work. Andrea Marsh, *Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees*, in *Trends in State Courts: Fines, Fees, and Bail Practices: Challenges and Opportunities* 20, 22 (Deborah W. Smith ed., 2017), *available at* https://www.ncsc.org/~/media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx. The percentage of Tennesseans who drive to work is even higher—93.4%. (Order, RE113 PageID#1205). "Access to driving—including a reliable, affordable vehicle and a valid driver's license—is vital to economic security, strong communities, and a healthy economy." Sandra Gustitus

[11] The facts discussed in this section are drawn from scholarly studies or other analyses based on public data and sources. As such, this Court may take notice of them under Fed. R. Evid. 201(b)(2).

et al., *Access to Driving and License Suspension Policies for the Twenty-First Century Economy* 4 (2008), *available at* http://www.kidscount.org/news/fes/sep2008/driverslicense.pdf ("*Access to Driving*"). Stripping a defendant of his or her driver's license thus directly interferes with a defendant's ability to travel to work to earn money to pay for court debt the government seeks. For instance, one study of New Jersey found that "42% of drivers lost their job after their driving privilege was suspended. Of those drivers, 45% were unable to find new employment. Of those that were able to find another job, 88% reported a decrease in income." Am. Ass'n of Motor Vehicle Admins., Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers* 6 (2013), *available at* https://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/ ("*Best Practices*").

This misery is not spread equally. For people living in densely populated, vibrant metropolitan areas with public transportation options, losing one's driver's license might be barely an inconvenience. For people in rural and exurban areas, mass transit options simply do not exist. "For those without regular access to a car, access to jobs, medical care, and leisure are incomplete, inefficient and inconvenient."

See Ryan T. Schwier & Autumn James, *Roadblock to Economic Independence: How Driver's License Suspension Policies in Indiana Impede Self-Sufficiency, Burden State Government & Tax Public Resources* 33 (2016), *available at* https://mckinneylaw.iu.edu/practice/clinics/_docs/DL_Rpt_2-1-16.pdf ("*Roadblocks*") (quoting Central Ind. Transit Task Force, *Summary Report on Transportation Alternatives in Central Indiana* 3 (2010)) (discussing the effect that loss of a driver's license has on Indianans)). People who live in depressed urban areas also lose their ability to travel to areas where jobs are more plentiful. As with many things, these policies affect low-income residents more than the rich, because those who are less able to pay fines and fees are often concentrated in these kinds of urban areas. Jon A. Carnegie, *Driver's License Suspensions, Impacts and Fairness Study* 3 (2007), *available at* https://www.state.nj.us/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf ("*Fairness Study*").

Even if public transportation is an option in a particular geographic area, not having a driver's license can completely foreclose a defendant's ability to work in certain fields altogether. "[S]ome employers, particularly in the construction and health care fields, require a driver's

license as a precondition for employment—either because driving is part of the job, or as a way to screen applicants." *Access to Driving* 9. For construction workers, cab drivers, ambulance drivers, auto salespeople, or even people who supplement their income driving for Uber or Lyft, losing their driver's license can mean, at best, a decrease in income, and, at worst, the loss of the ability to work at all.

To this, one must add that losing a driver's license comes with considerable costs. "[Driver's license] suspension results in increased financial obligations through new requirements such as reinstatement fees, court costs and other penalties." *Best Practices* 6. In one study, "[t]wo-thirds of respondents with a history of suspension reported experiencing other costs (in addition to increased costs for insurance) resulting from their suspension. Approximately three-quarters of these respondents indicated they could not afford the additional costs." *Fairness Study* 56.

Cars play an integral role not only in a driver's economic life but also in modern American life generally. "86 percent of *all* trips are made in a car. People have many other important needs for transportation [besides getting to work], including care of family members, participation

in community and civic activities, and travel to school, worship, health care, and shopping." *Access to Driving* 4–5 (footnote omitted). Thus, "many drivers continue to drive even after their licenses are suspended." *Id.* at 9. Because driving is so important, people are willing to break the law in order to continue to do it: "According to a 2003 report from the National Cooperative Highway Research Program, an estimated 75% [of] motorists with suspended or revoked driver's licenses simply continue driving." *Roadblocks* 20. Laws like Section 105(b) thus "dramatically increase[] the number of suspended drivers on our roads resulting in a tremendous burden on law enforcement, departments of motor vehicles, the courts, and local communities." *Best Practices* 4.

This irrational system would have a better chance of surviving rational basis review if there were some connection between the policy and its goal of forcing drivers to pay their court debt. There is no such connection, however. "The common belief that a driver license suspension provides effective, sustainable motivation to encourage individuals to comply with court ordered or legislated mandates to avoid suspension is not supported by empirical evidence." *Best Practices* 4. Indeed, the District Court here found that Section 105(b) is "powerfully

counterproductive." (Order, RE113, PageID#1200). *Amici* have searched for and have been unable to find, a single study, analysis, article, or discussion that demonstrates that depriving a driver of his or her license makes that driver more likely to pay outstanding court debt.

Put simply,

> license-for-payment systems irrationally tend to deprive vulnerable people of the means by which they can pay their debts and take care of themselves and their families, and create a vicious cycle. People cannot afford to pay, so they lose their licenses. When they lose their licenses, they cannot legally drive to work, so they lose their jobs or cannot find jobs. Even those who can find another job may experience a decrease in pay. All of these forces result in people being less likely to pay court debts, which can lead to additional court involvement.

Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt* 4 (2017) (footnote omitted), *available at* https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf. Section 105(b) does this while manifestly failing to do what it was intended to do. (*See* Order, RE113, PageID#1199 (only 7% of the drivers who had their license revoked had their license reinstated)). It is difficult to conceive of a more irrational system. For this reason, Section 105(b) fails the rational basis test.

B. Stripping the Poor of their Ability to Drive Legally Significantly Harms Society.

Laws like Section 105(b) are not only irrational and ineffective, they are affirmatively harmful to society. The harm to drivers who lose their licenses is discussed above. Unfortunately, the harm caused by this misguided policy does not stop there.

Among those harmed by this policy are other drivers and the law enforcement personnel entrusted to keep them safe. "Police officers spend countless hours citing, arresting, and processing persons found driving on suspended licenses. This not only imposes a significant strain on law enforcement budgets and other resources, but also detracts from highway and public safety priorities." *Roadblocks* 35. Police officers must make the effort to write the ticket for driving without a license and often arrest the driver but also must appear in court for the ticket. This can leave the officer's patrol area unattended and also makes the officer unavailable for enforcement activities that actually make the public safer:

> When a law enforcement officer encounters a suspended driver, their ability to help ensure the safety of drivers on the roadways and their availability to respond to calls for service are reduced. The officer must take appropriate action for the violation and later appear in court for adjudication of the ticket(s). While the officer is in court, there may be little or no enforcement presence in their patrol area. Officers are made

> unavailable for 911 responses, crash investigation, criminal interdiction, and other enforcement activities, potentially increasing the threat to public safety.

Best Practices 2–3.

Moreover, the sheer number of drivers driving with revoked or suspended licenses means that they make up a substantial portion of trial court dockets and consume limited judicial resources. *Roadblocks* 36. In some cases, driving without a license can lead to incarceration in state prison, an absurd and harmful outcome in many instances for the driver, prison security, the state budget, and state taxpayers. *Roadblocks* 26 (noting that 200 people are incarcerated in state prison in Indiana for driving without a license).

Stripping drivers of their licenses also has the perverse effect of making that punishment less effective. That so many drivers continue to drive with suspended or revoked licenses dilutes the effectiveness of the punishment, while increasing the burden on law enforcement and the criminal justice system. "Consequently, law enforcement, courts and society in general view suspensions less seriously. As a result, the system is less effective in keeping dangerous drivers off the road, which was the original intent of driver license suspensions." *Best Practices* 5.

In sum, it is difficult to identify who is *not* harmed by this irrational system. Laws like Section 105(b) make people poorer, damage families, increase reliance on social welfare programs, prevent the police from protecting the public, consume limited prosecutorial, judicial, and penal resources, and encourage people to break the law. Section 105(b) does this in order to force people to pay debt they cannot pay in the first place. Not only is this policy not rational, it is barely sane. It simply does not pass the rational basis test.

CONCLUSION

The Supreme Court and this Court have been clear that rational basis review is meaningful, and this Court should resist the Commissioner's request for blind deference. Instead, this Court should recognize that, for many people in Tennessee and elsewhere, a driver's license is essential to earning a living. Punishing people by interfering with their livelihoods and harming society with this misguided law are not rational ways to effect Tennessee's interest in collecting court debt. For that reason, this Court should affirm.

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Respectfully submitted,

/s/ William R. Maurer

Lisa Foster
Joanna Weiss
FINES AND FEES JUSTICE CENTER
185 W. Broadway, C-538
New York City, NY 10013
(619) 994-0504

Counsel for Amicus Curiae
Fines and Fees Justice Center

William R. Maurer
INSTITUTE FOR JUSTICE
600 University St., Suite 1730
Seattle, Washington 98101
(206) 957-1300

Andrew H. Ward
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, Virginia 22203
(703) 682-9320

Counsel for Amicus Curiae
Institute for Justice

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation in Federal Rules of Appellate Procedure 32(a)(7)(B) and 29(a)(5) because it contains 5,434 words, as determined by the word-count function of Microsoft Word for Office 365, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1).

This brief complies with the font requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface (Century Schoolbook) and a 14-point font.

/s/ William R. Maurer
William R. Maurer
Counsel for Amicus Curiae
Institute for Justice

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January, 2019, the foregoing Brief of *Amici Curiae* Institute for Justice and Fines and Fees Justice Center in Support of Plaintiffs–Appellees and Affirmance was served through the Court's CM/ECF system on counsel for all parties required to be served.

/s/ William R. Maurer
William R. Maurer
Counsel for Amicus Curiae
Institute for Justice