No. 18-6121

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRED ROBINSON, ASHLEY SPRAGUE, AND JOHNNY GIBBS, on behalf of themselves and all others similarly situated,
Plaintiffs–Appellees,

v.

JEFF LONG, in his official capacity as Commissioner of the Department of Safety and Homeland Security;
Defendant–Appellant.

On Appeal from the United States District Court
for the Middle District of Tennessee, No. 3:17-cv-01263

BRIEF OF *AMICI CURIAE* INSTITUTE FOR JUSTICE, FINES AND FEES JUSTICE CENTER, LATINOJUSTICE PRLDEF, CHIEF DEFENDERS ASSOCIATION OF NEW YORK, HUMAN RIGHTS DEFENSE CENTER, SHRIVER CENTER ON POVERTY LAW, NATIONAL CENTER FOR YOUTH LAW, R STREET INSTITUTE, AND TZEDEK DC IN SUPPORT OF PLAINTIFFS–APPELLEES

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

Richard Hoover
INSTITUTE FOR JUSTICE
901 N. Glebe St, Suite 900
Arlington, VA 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

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

I certify that *amicus curiae* LatinoJustice PRLDEF 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/ Francisca Fajana
Francisca Fajana

I certify that *amicus curiae* the Chief Defenders Association of New York 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/ Timothy Donaher
Timothy Donaher

I certify that *amicus curiae* the Human Rights Defense 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/ Daniel Marshall
Daniel Marshall

I certify that *amicus curiae* the Shriver Center on Poverty Law 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/ Verónica Cortez
Verónica Cortez

I certify that *amicus curiae* the National Center for Youth Law 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/ Alice Abrokwa
Alice Abrokwa

I certify that *amicus curiae* the R Street Institute 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/ Nila Bala
Nila Bala

I certify that *amicus curiae* Tzedek DC 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/ Ariel Levinson-Waldman
Ariel Levinson-Waldman

Dated: November 13, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

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.

Fines and Fees Justice Center ("FFJC") is a national center for advocacy, information, and collaboration 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. FFJC has organized a national campaign to end debt-based suspensions of driver's licenses.

LatinoJustice PRLDEF is a national not-for-profit civil rights legal defense fund that advocates for and defends the constitutional rights of all Latinos under the law. Since its founding in 1972, LatinoJustice's mission has been to promote the civic participation of the greater pan-

Latino community, to cultivate new Latino community leaders, and to engage in and support law reform cases advancing the civil rights of all Latinos, particularly in the areas of criminal justice and employment.

LatinoJustice supports Appellees/Plaintiffs in this appeal because draconian driver's license suspension laws severely limit the ability of Latinos and other people of color to financially support their families, attain self-sufficiency, and engage in activities of daily living, such as driving to their places of worship, driving their children to school, attending to their medical needs and driving to the grocery store. Moreover, Tennessee's debt-based driver's license suspension law penalizes poor people who are disproportionately people of color.

The Chief Defenders Association of a New York ("CDANY") is an association of the leaders of indigent defense offices that represent tens of thousands of people each year in the criminal, family, and appellate courts of New York State. CDANY members represent thousands of persons each year who are criminally charged with operating a motor vehicle while their license was suspended due to their inability to pay a fine.

The Human Rights Defense Center ("HRDC") is a non-profit charitable corporation headquartered in Florida that advocates in furtherance of the human rights of incarcerated people and works to eliminate racism and classism in the criminal justice system. HRDC has spent decades advocating against unreasonable financial burdens in the criminal justice system that unduly burden poor Americans.

The Shriver Center on Poverty Law ("Shriver Center") is a national non-profit legal and policy advocacy organization based in Chicago. The Shriver Center litigates on behalf of individuals living in poverty across a range of issues with economic and racial justice at the center of every case.

The National Center for Youth Law ("NCYL") is a private, non-profit organization that uses the law to help children in need nationwide. NCYL has litigated to end unnecessary referral to the juvenile justice system in numerous states, and advocated at the federal, state, and local levels to reduce reliance on the justice systems to address the needs of youth, including eliminating juvenile fines and fees, decriminalizing normal adolescent behavior and improving children's access to adequate developmentally-appropriate treatment.

The R Street Institute is a non-profit, nonpartisan, public-policy research organization. R Street's mission is to engage in policy research and educational outreach that promotes free markets, as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

Tzedek DC is a nonprofit organization dedicated to safeguarding the rights and interests of low- and moderate-income families facing debt-related crises. Headquartered at the University of the District of Columbia David A. Clarke School of Law, Tzedek DC's work is aided by law students and other volunteers. Tzedek DC and our client communities have a substantial interest in ensuring that the rules governing the revocation of drivers' licenses comply with constitutional requirements and basic principles of fairness.[1]

[1] No party or party's counsel authored this brief in whole or in part, and not party or party's counsel contributed money intended to find the preparation or submission of the 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.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court granted in part a preliminary injunction enjoining the Commissioner of the Tennessee Department of Safety and Homeland Security (the "Commissioner") from suspending driver's licenses based on unpaid traffic debts pursuant to Tenn. Code Ann. § 55-50-502(a)(1)(H)-(I) (the "Statute"). *Robinson v. Purkey*, No. 3:17-CV-01263, 2018 WL 5023330, at *18 (M.D. Ten. Oct. 16, 2018). In a decision filled with significant findings of fact, the court correctly held that the Statute violates substantive due process and equal protection under the rational basis test. On appeal, the Commissioner asserts that the Statute survives rational basis review. Specifically, the Commissioner argues that *Fowler v. Benson*, 924 F.3d 247 (6th Cir. 2019) and *Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010), dictate the outcome of the case. *See* Br. of Def. Appellant at 9, Doc. 37 ("Defendant's Brief").

The Commissioner's argument should fail for the simple reason that the traditional rational basis test should not apply here. 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. Under this standard, Tennessee's law is unconstitutional.

Nonetheless, even if this Court employs rational basis review, the law is still unconstitutional because when a plaintiff have demonstrates that a statute is facially irrational, does not achieve any legitimate governmental goal, and ultimately causes significant societal harm, it does not, and cannot, satisfy the rational basis test. The Commissioner

essentially argues that rational basis review requires a court to go beyond deferring to the legislature's judgments to affirmatively ignoring facts, data, and reality. Under the Commissioner's view of the rational basis test, every law—no matter how irrational, harmful, useless, or counterproductive it is—would be constitutional so long as the government can provide some justification for it. The rational basis test does not require the government to ignore reality, however.

Both the United States Supreme Court and this Court have struck down laws under the rational basis test when there is no logical connection between the regulated activity and the purported government interest, and when the regulated activity imposes a harm that vastly outweighs any plausible benefit. The Statute—and laws like it—fail under the rational basis test when evidence establishes that they are irrational and unable to achieve their goals, all while imposing significant harm to individuals and society.

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 why the Statute fails that test.

ARGUMENT

I. The rational basis test is a check on irrational laws.

The Commissioner argues that "there is nothing irrational about the Statute" and that it is constitutional under rational basis review. Defendant's Brief at 10, 19. This goes far beyond current precedent, and seeks to set a standard which would allow nearly any law challenged under the rational basis test to be found constitutional with even a hypothetical—and imaginative—justification by the Government.

Although a lower standard of review than that of intermediate or strict scrutiny, the rational basis test requires the application of some actual standards, and a law should not immediately be considered constitutional when it faces lower scrutiny. The rational basis test requires looking at actual facts and data to discover if a law is "rational" or not. Here, the plaintiffs have demonstrated, and the district court concluded, that the law is irritational and causes substantially more harm than any purported benefit. Under a correct reading of the rational basis test, this Statute is unconstitutional.

A. The rational basis test involves analysis of logic, facts, and evidence.

In analyzing cases under the rational basis test, the U.S. Supreme Court relies on evidence, not imagination. It is not rational or logical to ignore facts showing the irrationality of a law and simply applying rational basis review is not an immediate victory for the government. This is demonstrated by the fact that plaintiffs have won more than 20 rational basis cases at the Supreme Court since 1970.[2] It is a constitutional error for the Commissioner, and, in turn, the courts, to turn a blind eye to facts, data, and statistics that prove the irrationality and harmful nature of a law.

Reviewing the opinions in which plaintiffs have prevailed in rational basis cases shows that the Supreme Court invalidates

---

[2] *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).

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. In considering these factors, the Court evaluates the challenged action in the context of the record and wider statutory background. In other words, when a plaintiff proves that a law is not logically connected to the government interest offered to support it or is affirmatively harmful, the Court should strike it down.

i. A law must be logically connected to the Government interest offered to support it.

An irrational law is unconstitutional because a law must be rationally related to the legitimate state interest under the rational basis test. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). In other words, the rational basis test requires rationality and an irrational law is, at best, arbitrary. For instance, in *Zobel v. Williams*, the U.S. Supreme Court found that an Alaskan state program was irrational as there was no logical support for a law which determined the amount of oil money distributed to Alaskans based on the length of their state residency. 457 U.S. 55, 56-58 (1982). The court noted that "Alaska has shown no valid state interests which are rationally served by the distinction it makes

between citizens." *Id.* at 65. Similarly, in *City of Cleburne v. Cleburne Living Center*, the Supreme Court noted that "The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." 473 U.S. 432, 445. And in *Williams v. Vermont*, Vermont taxed cars bought 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.

The connection between goals and action must also be supported by facts within the record and any illogical connection may thus be refuted by facts. The ability to tender evidence to refute purported rationales is long-standing, and supported in *United States v. Carolene Products Co.* when the Court held:

> 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).

ii. The purported public benefit of a law cannot be vastly outweighed by demonstrable public harm.

A law is irrational and cannot survive rational basis review if it causes more substantial harm than good upon the public. This argument is based in logic and also in Supreme Court precedent. In *Plyler v. Doe*, the Government argued that denying public education to the children of undocumented immigrants could help save the Government money. 457 U.S. 202, 207. The Court rejected this argument, stating 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 *Romer v. Evans*, the Court noted that a particular amendment imposed a special disability upon homosexuals alone, where they would have been forbidden the safeguards that others enjoy without restraint. 517 U.S. 620, 631 (1996). A desire to harm a particular group is never a legitimate governmental interest. *Id.* at 634-35 ("Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them

immediate, continuing ,and real injuries that outrun and belie any legitimate justifications that may be claimed for it.").

Likewise, 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 sale price. 488 U.S. 336, 343–46 (1989). This method created 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. *Id.*

Factually similar to this case is *James v. Strange*, where the U.S. Supreme Court found that a state recoupment statute was unconstitutional in that 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). This is analogous to the present case because the Tennessee law is a recoupment statute to recover outstanding court costs and debts.

B. The Sixth Circuit's application of the rational basis test requires courts to acknowledge facts.

With one notable exception discussed in the next section, this Court also has a history of applying the rational basis test in a way that is distinct from the version advanced by the Commissioner. Since 1970, this Court has found state action invalid under this standard at least a dozen times.[3]

In particular, *Golden v. City of Columbus* found that state action in this Circuit must be related to a governmental interest not only conceivably, but rationally. 404 F.3d 950 (6th Cir. 2005). There, a law was stricken down because it was divorced from reality. *Id.* at 961-62. *Seal v. Morgan* also held that a school's zero-tolerance policy for contraband would have no rational basis without a *mens rea* requirement because it was irrational to punish students for unknowingly possessing contraband. 229 F.3d 567, 575-80 (6th Cir. 2000).

---

[3] *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, 224 (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).

Courts—including this Court—have held that statutes can be unconstitutional under rational basis review where plaintiffs have put facts into the record rebutting the rationality and public policy goals of the statute. *See generally Hadix v. Johnson*, 230 F.3d 840 (6th Cir. 2000) (stating that a law is so unrelated to a legitimate purpose it is irrational) (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979)); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *State v. Brenan*, 772 So.2d 64, 72-76 (La. 2000) (holding that the state's obscene-devices statute fails rational basis review after taking notice of medical evidence introduced).

C. *Fowler v. Benson* should not control here.

As discussed in the Brief for Plaintiffs-Appellees ("Plaintiffs' Brief"), the plaintiffs here demonstrated, and the district court found, that (i) an overwhelming majority of Tennesseans drive to work, (ii) the state has suspended the driver's licenses of more than a quarter million Tennesseans for failing to pay court debt, (iii) this number increases year-by-year, (iv) over 140,000 of these suspensions remain unresolved, (v) this system traps drivers in a cycle of repeated violations and mounting debt, (vi) the system disproportionately harms the poor, (vii) there are few, if any alternatives, to driving available to many Tennesseans, and

(viii) a significant number of driver's license suspensions are never resolved. Plaintiffs' Brief 2-3, 5-8, 9-12, 20-22.

The Commissioner does not contest any of these points on appeal and instead argues that this Court's decision in *Fowler* dictates the outcome of this case. Defendant's Brief 17. To be sure, *Fowler* held that Michigan's driver's license suspension law passed rational basis review, 924 F.3d 247, 262 (6th Cir. 2019), but the court in *Fowler* did not have the kind of proof plaintiffs have provided here. While the court in *Fowler* noted that the Michigan law at issue there was "unwise, [or] even counterproductive," *id.* at 262-63, it did not have unchallenged evidence before it that the statute was irrational. Quite simply, the plaintiffs have proven, and the district court correctly found, that Tennessee's law is, as a matter of fact, not rationally related to a legitimate government interest.

To the extent that *Fowler* does control, moreover, it stands in stark opposition to the rational basis test applied by the United States Supreme Court and ignores the reality of the data and facts admitted into evidence by the trial court. Rational basis review cannot be a rubberstamp on government action. This Court must look at reality and

consider the wealth of U.S. Supreme Court precedent. Because the record is more complete in the present case, this Court is obligated under U.S. Supreme Court and Sixth Circuit precedent to examine that evidence and determine whether the state's policy is irrational.

As this Court failed to apply the proper level of scrutiny demanded by rational basis under Supreme Court precedent, *Fowler* does not control here.

II. Suspending driver's licenses of people who are too poor to pay their court debt is irrational and harmful.

As the plaintiffs have proven, it is irrational and harmful to suspend the driver's licenses of Tennessee residents who do not pay fines and costs associated with traffic violations. Under the Tennessee statute, the reason for nonpayment is entirely disregarded; and there is no consideration of a person's ability to pay. Even if a person cannot afford to pay their court debt, their license is suspended, and they lose their ability to drive, earn a living, and pay what they owe. And without a license, people cannot care for themselves or their families. The preliminary injunction should be affirmed as (1) there is no logical connection between the law and the purported governmental interest;

and (2) the marginal public benefit of the law is vastly outweighed by demonstrable public harm.

A. There is no logical connection between the Statute and any governmental interest.

Under rational basis review, courts must first determine there is any logical connection between the law and the purported government interest. Here, there is no such connection. The purported government interest put forward by the Commissioner is "a legitimate interest in collecting traffic debt" and deterrence for would-be violators. Defendant's Brief 20-21. Even so, as the law effectuates immediate suspensions for anyone who cannot pay court costs without any consideration of the reason for nonpayment, it does not and cannot effectuate those goals. Indeed, it is irrational to suspend licenses from people who are indigent and unable to pay court costs.

A suspension for a *willful* refusal to pay could be rational, but that is not the situation here. The district court was correct in holding that there is "simply no reasonably conceivable factual basis for believing that suspending the driver's license of an indigent traffic debtor serves the

legitimate government purpose of collecting the debt." RE222, PageID # 4013.

This case is like *Seal v. Morgan*. There, this Court found that the question is "not whether the Board *could* have made a decision that would have been rationally related to a legitimate state purpose, but whether it actually did so." *Seal*, 229 F.3d at 579. The statute there, like the Tennessee licensing statute challenged here, is similar in that both have no *mens rea* requirement. In *Seal*, there was no inquiry into the reason a person possessed contraband and this was found to be irrational. Here, there is no inquiry into the reason a person cannot pay their court debt and whether it is a *willful* refusal to pay or whether the person is unable to pay because of indigence. Like *Seal*, this is irrational.

The plaintiffs and the district court are not alone in determining that there is no rational connection between the arbitrary suspension of driver's licenses and securing court debt or deterrence. "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." Am. Ass'n of Motor Vehicle Admins., Suspended/Revoked

Working Group, *Best Practices Guide to Reducing Suspended Drivers* 4 (2013), available at https://www.aamva.org/suspended-and-revoked-drivers-working-group/ [hereinafter "Best Practices"].

In fact, there is a positive and statistically significant correlation which links the number of poor people in a county to a higher number of suspensions in that county. RE 173-2, PageID # 2694, ¶ 13.

Further, depriving people of their ability to drive only because they cannot pay court costs "results in people being less likely to pay court debts." 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-byDollars.pdf. If people cannot drive to work, they can't earn the money they need to pay their court fines and fees.

When looking at unreinstated suspensions, those who could afford to reinstate their license did so, even though "virtually all persons in Tennessee with unreinstated suspensions are poor." *Id.* It is hard to

conceive of a more irrational system. For this reason, the Statute fails the rational basis test.

B. The demonstrable public harm of the Statute vastly outweighs the public benefit.

Not only is the Statute irrational, it also harms individuals, families, and communities. In *Bell v. Burson*, the United States Supreme Court held that the continued possession of a driver's license is essential to pursue a person's livelihood. 402 U.S. 535, 539 (1971). Indeed, as the trial court found, greater than 90% of Tennessee residents who work in the Chattanooga, Clarksville, Cleveland, Jackson, Johnson City, Knoxville, Memphis, and Nashville metro areas drive to work. RE 19, PageID # 115, ¶ 7. As a whole, 93.4% of Tennessee residents drive to work. *Id.* ¶ 6.

The ability of people to drive is vital to individual economic security; when that individual is also supporting a family, losing the ability to drive threatens that entire family's security. But driving also fosters strong communities. A license allows people to work, access medical care, transport children to school, purchase groceries, votes, and pursue leisure activities. Sandra Gustitus 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. Losing a driver's license deprives communities of that economic activity and critical civic engagement.

It also imposes additional costs that cause further harm to individuals and families. Once a license is suspended, financial obligations increase as people confront reinstatement costs, court costs, and other penalties. Best Practices 6. These added costs then become harder to pay because people cannot access their primary method of transportation.

Suspending the driver's license of people who cannot even pay court costs in the first place penalizes poverty. Licenses are withheld from people for lack of payment without considering whether they even can make payments. This causes tens or hundreds of thousands of people to suffer indefinite and long-lasting deprivation of their ability to drive a car, go to work, and pursue a livelihood. An indigent person with no means to pay has no way to avoid this sanction, while a person with financial means can do so simply by paying the fines and fees they owe. This traps indigent persons into an everlasting cycle of repeated violations and building debt. These indigent people "will be just as unable

to pay the new debt, and the cycle will begin again, only with the driver further in the red." RE 222, PageID # 4002-03. A single traffic ticket, therefore, can keep these people "off of the road and out of productive economic life" for years. *Id.* at PageID # 4003.

More harm is done to society and the individual than any good is accomplished. As discussed above, the licensing scheme does not even promote the payment of existing court costs and fees, but rather leads to further outstanding debt and money owed.

On its facts, *James v. Strange* is analogous because the statute here is a recoupment statute to recover court costs and fees. In *James*, the Court found a Kansas recoupment statute unconstitutional because of the burden it placed upon indigent persons.

> State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect. The statute before us embodies elements of punitiveness and discrimination.

James, 407 U.S. at 141–42. In *James*, the Kansas recoupment statute was designed to recover court costs for legal representation provided by the Kansas Aid to Indigent Defendants Act. *Id.* at 129. Similar to the Tennessee statute imposing penalties of further fines, the Kansas statute

issued a penalty of a court judgement to anyone who cannot pay his court costs for the legal representation. *Id.*

As the U.S. Supreme Court found the recoupment statute in *James* unconstitutional, so should this Court find the Tennessee recoupment statute unconstitutional as both impose financial penalties upon indigent persons to recover court costs.

The Tennessee statute harms the poor, damages families, and causes even more court costs and enforcement proceedings effectuated by the government. In fact, losing one's driver's license can cause more harm to some than being placed in jail. *Argersinger v. Hamlin*, 407 U.S. 25, 48 (1972) (Powell, J., concurring).

Conclusive facts have been placed into the record proving the irrationality of the law and the extent of the harm caused. The Statute forces people to pay court debts which they could never pay in the first place and causes substantial harm to individuals, families, and communities because of their indigency. Not only is this irrational, but it is barely sane. It simply does not pass the rational basis test.

CONCLUSION

The U.S. Supreme Court—and this Court—have been clear that rational basis review is meaningful, and this Court should resist the Commissioner's request to affirmatively deny reality. 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 accomplish Tennessee's interest in collecting court debt. For that reason, this Court should affirm the district court.

Dated: November 13, 2019

Respectfully submitted,

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

Richard Hoover
INSTITUTE FOR JUSTICE
901 N. Glebe Rd., Suite 900
Arlington, Virginia 22203
(703) 682-9320
Counsel for Amicus Curiae

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

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 4958 words, as determined by the word-count function of Microsoft Word, 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

CERTIFICATE OF SERVICE

I hereby certify that on this November 13, 2019, the foregoing BRIEF OF AMICI CURIAE INSTITUTE FOR JUSTICE, FINES AND FEES JUSTICE CENTER, LATINOJUSTICE PRLDEF, THE CHIEF DEFENDERS ASSOCIATION OF NEW YORK, THE HUMAN RIGHTS DEFENSE CENTER, THE SHRIVER CENTER ON POVERTY LAW, THE NATIONAL CENTER FOR YOUTH LAW, THE R STREET INSTITUTE, AND TZEDEK DC IN SUPPORT OF PLAINTIFFS–APPELLEES 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