CASE NO. 19-35506

In The

United States Court of Appeals

For the Ninth Circuit

CINDY MENDOZA; GLORIA BERMUDEZ; REBECCA HEATH; KARL WADE ROBERTS; CEKAIS TONI GANUELAS; LORI SPANO,

Plaintiffs-Appellants,

v.

MATTHEW L. GARRETT, in his official capacity as Director of the Oregon Department of Transportation; TOM MCCLELLAN, in his official capacity as Administrator of the Division of Motor Vehicles, Oregon Department of Transportation

Defendants-Appellees,

On Appeal from the United States District Court for Oregon, Portland Division

---

BRIEF OF *AMICI CURIAE* INSTITUTE FOR JUSTICE AND FINES AND FEES JUSTICE CENTER IN SUPPORT OF PLAINTIFFS-APPELLANTS

Lisa Foster
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, WA 98101
(206) 957-1300

Counsel for Amicus Curiae
Institute for Justice

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

Dated: September 25, 2019

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii
INTEREST OF AMICI CURIAE 1
ARGUMENT 2
I. The Rational Basis Test Does Not Countenance Irrational Laws 5
A. The Rational Basis Test Requires Analysis of Logic and Facts 6
i. A Law Must Be Logically Connected to the Government Interest Offered to Support It 8
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 Ninth Circuit's Application of the Rational Basis Test Also Requires Courts to Analyze Logic and Reality 13
C. The Sixth Circuit's *Fowler v. Benson* Decision was Wrongly Decided and Should Not Be Followed 16
II. Revoking Driver's Licenses of People Who Are Too Poor to Pay Their Court Debt Is Irrational and Harmful 18
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 18
B. Stripping the Poor of Their Ability to Drive Legally Significantly Harms Society 23
CONCLUSION 25

TABLE OF AUTHORITIES

Page

CASES

Allegheny Pittsburgh Coal Co. v. Cty. Comm'n,
488 U.S. 336 (1989) 6, 10

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

Ashker v. California Dept. of Corrections,
350 F.3d 917 (9th Cir. 2003) 13

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

Bell v. Burson,
402 U.S. 535 (1971) 19

Chappelle v. Greater Baton Rouge Airport Dist.,
431 U.S. 159 (1977) 7, 9

City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 6, 7, 9, 13

City of New Orleans v. Dukes,
427 U.S. 297 (1976) 8

F.C.C. v. Beach Commc'ns, Inc.,
508 U.S. 307 (1993) 11

Fowler Packing Company, Inc. v. Lanier,
844 F.3d 809 (9th Cir. 2016) 13

Fowler v. Benson,
924 F.3d 247 (6th Cir. 2019) 16, 17

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

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

J.W. v. City of Tacoma,
720 F.2d 1126 (9th Cir. 1983).....14

James v. Strange,
407 U.S. 128 (1972) 7, 10, 17

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

Lazy Y Ranch Ltd. v. Behrens,
546 F.3d 580 (9th Cir. 2008).....13

Lindsey v. Normet,
405 U.S. 56 (1972) 7, 11

Lockary v. Kayfetz,
917 F.2d 1150 (9th Cir. 1990)..... 14, 15

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

Manhattan Cmty. Access Corp. v. Halleck,
139 S. Ct. 1921 (2019).....18

Mayer v. City of Chicago,
404 U.S. 189 (1971) 7, 9

Merrifield v. Lockyer,
547 F.3d 978 (9th Cir. 2008)..... 13, 15

Metro. Life Ins. Co. v. Ward,
470 U.S. 869 (1985) 6, 7

Minnesota v. Clover Leaf Creamery Co.,
449 U.S. 456 (1981) 13

O'Neal v. City of Seattle,
66 F.3d 1064 (9th Cir. 1995) 14

Parks v. Watson,
716 F.2d 646 (9th Cir. 1983) 14

Petzak v. Nevada ex. rel. Department of Corrections,
385 Fed. Appx. 635 (9th Cir. 2010) 13

Plyler v. Doe,
457 U.S. 202 (1982) 7, 10

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

Reed v. Reed,
404 U.S. 71 (1971) 7, 11

Romer v. Evans,
517 U.S. 620 (1996) 6, 7, 12

Silveira v. Lockyer,
312 F.3d 1052 (9th Cir. 2002) 14

Turner v. Fouche,
396 U.S. 346 (1970) 7, 9

U.S. Dep't of Agric. v. Moreno,
413 U.S. 528 (1973) 7, 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

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

Weinberger v. Wiesenfeld,
420 U.S. 636 (1975) 13

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

Zobel v. Williams,
457 U.S. 55 (1982) 8, 9

STATUTES

Or. Rev. Stat. § 809.416..... *passim*

Or. Rev. Stat. § 809.416(2).....3

OTHER AUTHORITIES

Am. Ass'n of Motor Vehicle Admins., Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers* (2013)..... *passim*

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 (Deborah W. Smith ed., 2017).....19

Central Ind. Transit Task Force, *Summary Report on Transportation Alternatives in Central Indiana* (2010).....20

Jon A. Carnegie, *Driver's License Suspensions, Impacts and Fairness Study* (2007)..... 20, 21

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).....23

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)..... 20, 22, 24

Sandra Gustitus et al., *Access to Driving and License Suspension Policies for the Twenty- First Century Economy* (2008) 19, 21, 22

RULES

Fed. R. Evid. 201(b)(2) 18

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]

[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 indigent 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, Appellants have sufficiently pleaded that the Oregon law at issue here is unconstitutional.

However, even if this Court does not apply *Bearden*'s principles here and instead examines Appellants' allegations under the traditional rational basis analysis, it should still find that Appellants have stated a plausible claim for relief. That is

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, Or. Rev. Stat. § 809.416 ("O.R.S. 809.416"), permits Oregon courts adjudicating traffic violations to issue a notice of suspension of a driver's license to the Oregon Department of Motor Vehicles ("the DMV")[3] when a traffic violation fine remains unpaid. When a notice of suspension is issued by an Oregon court, suspension of a driver's license by the DMV is mandatory. The driver's license remains suspended until: (1) the person presents the department with a notice of reinstatement issued by the court showing that the person (a) is making payments or has paid the fine or (b) has enrolled in a preapprenticeship program or is a registered apprentice; or (2) twenty years have passed since the date of the traffic violation. *See* O.R.S. 809.416(2).

In reviewing Appellants' challenge, the district court found that the government had a legitimate interest in "enforcing the payment of traffic fines." Op. Order 8, ECF 55 (hereinafter, "MTD Opinion"); ER 9. The fact that the government

[2] *Amici* agree with Appellants that Oregon's law also violates procedural due process. However, *amici*'s focus here is whether the law satisfies the rational basis test.

[3] The DMV includes the Oregon Department of Transportation (ODOT) and the Oregon Transportation Commission.

can posit a legitimate interest does not end the inquiry, however. The means chosen by the government must have some connection to the ends it seeks to achieve. Given that the issue was before the court on a motion to dismiss, the district court should have accepted the facts pleaded by Appellants at ER 86-95 as true and concluded that the means chosen by the state here are counterproductive and illogical. Instead, based only on the government's assertion that the suspension of driver's licenses would incentivize the indigent to pay their traffic fines, the court held that a rational relationship existed between the law's purpose and means, despite the numerous facts alleged by Appellants to the contrary.

The lower court's application of rational basis review erred in two fundamental ways. First, the court failed to acknowledge that Appellants had alleged facts demonstrating that Oregon's law was an irrational means to achieve payment of court debt. Under the rational basis test, a law must be logically connected to a legitimate government interest, and the benefits of the law cannot be vastly outweighed by the demonstrable public harm. Moreover, the fact that the government may occasionally achieve its goals despite, and not because of, its chosen means does not make a policy rational.

Second, the lower court's method of analysis foreclosed a full analysis of the facts in a trial or at summary judgment and considering evidence here is necessary

because there is significant evidence that the government's assertions are simply not true. Misapplication of the rational basis test at the motion to dismiss stage should not be a mechanism for a court to affirmatively ignore reality.

If the district court was correct, every suit challenging a law under the rational basis test would not survive a motion to dismiss, regardless of how irrational, harmful, useless, or counterproductive the law at issue is. However, 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. The Appellants have stated a plausible claim that O.R.S. 809.416 fails the rational basis test, as it is properly understood, and consideration on the merits is necessary.

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 discusses why this case should proceed to a consideration of the merits under the proper version of the rational basis test: namely, that the district court's conclusion is contrary to significant evidence that laws like O.R.S. 809.416 are irrational, counterproductive, and affirmatively harmful.

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

The district court employed a version of the rational basis test that holds that

a law is assumed to be rational even when Appellants' well-pleaded facts allege that it creates barriers to accomplishing the government's legitimate purpose. This interpretation is far more permissive than 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 Requires Analysis of Logic and Facts.

Under the standard articulated by the lower court, every challenge to a law under the rational basis test would not survive a motion to dismiss when the government could posit a justification for the law at issue. If that were the case, the government's power would be limited only by the ability of the government to imagine a connection—regardless of how absurd—between its goal and the means it has chosen. 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,[4] so there is more to rational basis review than the

[4] *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.*

lower court's opinion 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.[5] 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 alleges sufficient facts to show that a law is not logically connected to the government interest offered to support it or is affirmatively harmful, the court should consider the law's constitutionality on a full record.

This section discusses the Court's approach in these two circumstances and

---

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).

[5] 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.

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 a test for rationality. 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, a case decided on summary judgment, 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 non-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. at 449–50. 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).[6]

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,

[6] *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).

in *Plyler v. Doe*, a case decided after "an extensive hearing on plaintiffs' motion for permanent injunctive relief," the government argued that denying public education to the children of undocumented immigrants could help save the government money. 457 U.S. at 206-07. 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 sale price. 488 U.S. at 343–46. 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. at 141–42. Similarly, as discussed below, the statute here causes grossly disproportionate harm to the poor when compared to the meager (or, more accurately, nonexistent) benefit provided to the public.

These cases did not end once the government posited a justification for its law. Nor did they rest on the fact that there might have been instances where the government, despite its policies, achieved the outcome it sought. In fact, the opposite was true. *See 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). And in each case, the Court did not simply close its eyes to irrationality.[7]

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, Inc.*, 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. It also does not mean that dismissal is appropriate when the plaintiff sufficiently alleges facts establishing that

[7] *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).

the law is irrational.

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 (and it would be certainly appropriate at the motion to dismiss stage). 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. at 632–33 (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 *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) (citation omitted).[8] In other words, the rational basis

[8] *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));

test does not require the court to accept what is false as if it were true solely because the government imagines a connection between its law and what it accomplishes.

B. The Ninth Circuit's Application of the Rational Basis Test Also Requires Courts to Analyze Logic and Reality.

This Court has applied a more stringent rational basis test than the one applied by the lower court. The district court's application, which improperly ignored the means-ends fit analysis and Appellants' well-pleaded factual allegations challenging the government's assertions, would guarantee that rational basis review never permitted a plaintiff challenging a law to win. But this Court has found in favor of the plaintiff in cases employing rational basis review at least ten times since 1980.[9]

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.").

[9] *See Fowler Packing Company, Inc. v. Lanier*, 844 F.3d 809, 815 (9th Cir. 2016); *Petzak v. Nevada ex. rel. Department of Corrections*, 579 F. Supp. 2d 1330 (D. Nev. 2008), aff'd, 385 Fed. Appx. 635 (9th Cir. 2010); *Merrifield v. Lockyer*, 547 F.3d 978, 990–92 (9th Cir. 2008); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 590 (9th Cir. 2008); *Ashker v. California Dept. of Corrections*, 350 F.3d 917, 923 (9th Cir.

In *O'Neil v. City of Seattle*, a case determined on summary judgment, this Court made clear that state action in this Circuit must relate to a legitimate government interest not just conceivably, but rationally. *O'Neil* considered a city's policy of refusing to provide water service to new tenants based on a prior tenant's unpaid water bills. 66 F.3d 1064 (9th Cir. 1995). The Court recognized that turning off a tenant's water had a conceivable relationship to the legitimate government interest in receiving payment. The new tenant might pay the outstanding debt, or he might put additional pressure on the former tenant to pay his overdue bill. Despite the existence of a conceivable relationship, this Court deemed the scheme unconstitutional because withholding water services did not have a stronger, rational relationship to the objective of securing payment.

O'Neil hinged on the fact that the law punished people who could not resolve the issue the government wanted resolved. Oregon's revocation of driver's licenses does the same. On its face, the law tries to force people (drivers who do not have the ability to 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

---

2003); *Silveira v. Lockyer*, 312 F.3d 1052, 1089–92 (9th Cir. 2002); *O'Neal v. City of Seattle*, 66 F.3d 1064 (9th Cir. 1995); *Lockary v. Kayfetz*, 917 F.2d 1150, 1156 (9th Cir. 1990); *Parks v. Watson*, 716 F.2d 646, 654 (9th Cir. 1983) (per curiam); *J.W. v. City of Tacoma*, 720 F.2d 1126, 1131 (9th Cir. 1983).

driver's licenses).

In contrast to the district court's failure to give credence to Appellants' factual allegations, this Court has based its decisions in rational basis cases on real-world evidence that challenged the government's asserted rationale. In *Merryfield v. Lockyer*, a case decided on summary judgment after extensive discovery, the operator of a non-pesticide pest control business targeting rodents and pigeons challenged a California law requiring such businesses to obtain state licenses while exempting non-pesticide pest control businesses targeting other vertebrates. 547 F.3d at 990–92. When applying the means-ends test, the Court did not engage in a purely hypothetical analysis of the state's assertions, nor did they only look at evidence presented by government. Instead, the Court held that the evidence in the record demonstrated that it was irrational to single out rodent and pigeon pest controllers from other pest controller businesses. The record also led the Court to conclude that the law was motivated by economic protectionism and was harming, not protecting, California consumers. This Court has also relied on evidence contrary to the government's rationale in *Lockary v. Kayfetz*, 917 F.2d at 1155–56.

If the lower court's analysis is the proper standard, then the government would have won each of the cases discussed above and done so at the motion to dismiss stage. But the government did not—the plaintiffs won, often after full factual

development and consideration of the merits. Thus, in this Circuit as in the Supreme Court, the rational basis test requires meaningful analysis on the merits.

C. The Sixth Circuit's *Fowler v. Benson* Decision Was Wrongly Decided and Should Not Be Followed

Unfortunately, the district court below is not the only court to apply an erroneous version of the rational basis test to a law like the one at issue here. In *Fowler v. Benson*, the Sixth Circuit upheld a similar Michigan driver's-license suspension scheme as applied to indigent drivers with unpaid court debt. 924 F.3d 247 (6th Cir. 2019). The Sixth Circuit panel's decision, like the district court here, failed to apply the rational basis test outlined by the Supreme Court. Instead, the panel applied a version of rational basis review that simply ignored reality.

In *Fowler,* the Court did not engage in a meaningful means-ends analysis based on logic and real-world evidence. Based on the research and evidence presented, the *Fowler* Court acknowledged that the policy of suspending the driver's licenses of indigent drivers might not help achieve the government's stated objective of receiving payments on the indigent driver's debt. In fact, such a policy might, in the words of the Court, be "unwise" or "even counterproductive." *Fowler*, 924 F.3d at 262. Nonetheless, the panel found that even a "counterproductive" measure could be "rationally related to legitimate government interest." *Id.* at 262–63. As support for its conclusion, the Court quoted the Supreme Court's *James v. Strange* decision

stating that that "[m]isguided laws may nonetheless be constitutional" and that a court's task "is not to weigh this statute's effectiveness but its constitutionality." *Id.* at 263 (quoting *James v. Strange*, 407 U.S. at 133–34). However, in this instance, the policy is not merely ineffective or "misguided," it actually works to hinder the government's purpose.

Rational basis review cannot be a rote rubberstamp on government action. The court must ensure that the means chosen are actually related to the ends. Although this review is permissive, and offers substantial deference to the government, the test cannot allow for counterproductive means to be considered as rationally related to the ends. In conducting the review, the Court must look at reality. Certainly at the motion to dismiss stage, this Court must take Appellants' facts regarding suspension or revocation as true: The suspension of a driver's license makes it *less likely* that an indigent driver will be able to repay his outstanding debt. ER 86-87. The *Fowler* Court acknowledged the evidence undercut the state's goals, but nonetheless upheld the law. Because the Sixth Circuit failed to apply the proper level of scrutiny demanded by rational basis under Supreme Court precedent, this Court must not look to the *Fowler* decision as persuasive precedent.

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

There is a more fundamental reason why this Court should reverse here and remand the case to a full consideration on the merits. That is because the assumption that suspending a driver's license will help the state collect court debt is simply false. Should the district court consider this case considering all facts and analyzing the means by which the government's means undermine its goals, it will likely conclude that O.R.S. 809.416 fails. Below *amici* discuss why the district court's conclusion was incorrect and why it should be reversed and remanded for full consideration on the merits. Put simply, this issue is one that a number of researchers and analysts have examined, and their findings bolster the conclusion that O.R.S. 809.416 is unconstitutional.[10]

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

[10] This case is before this Court on a motion to dismiss and this Court must therefore accept Appellants' facts as true. *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1927 (2019). In addition to the facts alleged by Appellants, 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).

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. "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 et al., *Access to Driving and License Suspension Policies for the Twenty- First Century Economy* 4 (2008), *available at* http://research.policyarchive.org/20441.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 O.R.S. 809.416 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. Regardless of the discrete anecdotes the government relies on here, *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. Oregon's law does this while manifestly failing to do what it was intended to do. It is difficult to conceive of a more irrational system. For this reason, O.R.S. 809.416 fails the rational basis test.

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

Laws like O.R.S. 809.416 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 and must also 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 O.R.S. 809.416 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. O.R.S. 809.416 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.

CONCLUSION

By dismissing this case at the pleading stage, the district court misapplied the rational basis test and foreclosed the consideration of the harm that laws like Oregon's does in the real world. Put another way, the district court's erroneous approach to the rational basis test places government assertions over what is widely acknowledged to be true. That is not the correct standard for either a motion to

dismiss or the rational basis test. This Court should reverse that decision and remand the case for full consideration on the merits.

Dated: September 25, 2019

Respectfully Submitted,

s/ William R. Maurer

Lisa Foster
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, WA 98101
(206) 957-1300

Counsel for Amicus Curiae
Institute for Justice

CERTIFICATE OF COMPLIANCE

9th Cir. Case No. 19-35506

This brief contains 6221 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5).

Dated: September 25, 2019 By: /s/ William R. Maurer
Counsel for Amicus *Institute for Justice*

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 25th day of September, 2019, I caused this BRIEF OF *AMICI CURIAE* INSTITUTE FOR JUSTICE AND FINES AND FEES JUSTICE CENTER IN SUPPORT OF PLAINTIFFS-APPELLANTS to be filed electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the participants in the case who are registered CM/ECF users.

Dated: September 25, 2019

/s/ William R. Maurer