

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NATHAN WRIGHT, CAMESE)
BEDFORD, ASHLEY GILDEHAUS,)
and LISA MANCINI, on behalf of)
themselves and others similarly situated,)
)
Plaintiffs,)
)
v.)
)
FAMILY SUPPORT DIVISION of the)
Missouri Department of Social Services;)
MICHAEL PARSON, in his official)
capacity as Governor of Missouri;)
JENNIFER TIDBALL, in her official)
capacity as Acting Director of the)
Department of Social Services;)
REGINALD MCELHANNON, in his)
Official capacity as Interim Director of the)
Family Support Division;)
KENNETH ZELLERS, in his official)
capacity as Acting Director of the)
Department of Revenue;)
JOSEPH PLAGGENBERG, in his official)
capacity as Director of the Motor Vehicle)
and Driver Licensing Division,)
)
Defendants.)

Case. No. 4:19-cv-398 RLW

CLASS ACTION
JURY DEMANDED

**PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: December 11, 2019 at 2pm

Pursuant to Fed. R. Civ. P. 65(a), Plaintiffs Nathan Wright, Cameese Bedford, Ashley Gildehaus, and Lisa Mancini hereby respectfully move this Court to issue a Preliminary Injunction terminating Plaintiffs’ driver’s license suspensions for unpaid child support and enjoining Defendants from ordering, issuing, or enforcing driver’s license suspensions for unpaid child support unless and until Defendants adopt policies and enact regulations to ensure: (1) that no Missouri parent will be subject to driver’s license suspension for unpaid support when he or she is

unable to pay; (2) that all parents facing suspension will receive proper notice and hearing regarding their right to ability-to-pay protections; and (3) that parents who are unable to pay will have the option of very low payment plans scaled to ability to pay or, for those who are completely unable to pay, non-monetary alternatives to driver's license suspensions (such as participation in workforce development training, community service, or \$0 payment plans with consistent check-ins). Such policies and regulations must include standardized guidelines under which child support specialists ("CSSs") are required to make ability-to-pay determinations in setting reduced payment agreement amounts for the purpose of avoiding license suspension.¹ For example, under the Family Support Division's payment agreement system, such standards could include:

- For parents whose reasonable cost-of-living expenses exceed their income, the CSS must agree to a non-monetary alternative to avoid license suspension.
- The CSS must not enter a payment agreement for any payment amount that would result in manifest hardship to the parent or the parent's dependents.
- For parents whose income is at or below 125% of the Federal Poverty Guidelines, the CSS must agree to a non-monetary alternative to avoid license suspension.
- For parents who receive needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or veterans' disability benefits, the CSS must agree to a non-monetary alternative to avoid license suspension.
- For parents who are homeless or residing in a mental health facility, the CSS must agree to a non-monetary alternative to avoid license suspension.

In support of this Motion, Plaintiffs rely upon the enclosed Memorandum.

Respectfully submitted,

/s/ Phil Telfeyan

Phil Telfeyan (1029157DC)

Rebecca Ramaswamy (5403415NY)

Attorneys, Equal Justice Under Law

400 7th Street NW, Suite 602

¹ Plaintiffs are not challenging in this litigation their child support orders or the amounts that they owe in arrears. The payment amounts referenced in this Motion and in the Memorandum are amounts that parents agree to pay monthly *for the purpose of avoiding driver's license suspension*. Parents who agree to make reduced payments or no payments (with an attendant agreement to check in regularly) still owe their full child support and still accrue arrears.

Washington, D.C. 20004
(202) 505-2058
rramaswamy@equaljusticeunderlaw.org
ptelfeyan@equaljusticeunderlaw.org

/s/ Stephanie Lummus
Stephanie Lummus (64999MO)
Attorney, McGivney, Kluger, and Cook, P.C.
211 N. Broadway Suite 1295
St. Louis, MO 63102
(314) 571-4332
slummus@mcgivneyandkluger.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to the counsel of record.

/s/ Rebecca Ramaswamy
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NATHAN WRIGHT, CAMESE)
BEDFORD, ASHLEY GILDEHAUS,)
and LISA MANCINI, on behalf of)
themselves and others similarly situated,)
Plaintiffs,)

v.)

FAMILY SUPPORT DIVISION of the)
Missouri Department of Social Services;)
MICHAEL PARSON, in his official)
capacity as Governor of Missouri;)
JENNIFER TIDBALL, in her official)
capacity as Acting Director of the)
Department of Social Services;)
REGINALD MCELHANNON, in his)
Official capacity as Interim Director of the)
Family Support Division;)
KENNETH ZELLERS, in his official)
capacity as Acting Director of the)
Department of Revenue;)
JOSEPH PLAGGENBERG, in his official)
capacity as Director of the Motor Vehicle)
and Driver Licensing Division,)
Defendants.)

Case. No. 4:19-cv-398 RLW

CLASS ACTION
JURY DEMANDED

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Hearing: December 11, 2019 at 2pm

Table of Contents

Table of Authorities iv

I. Introduction..... 1

II. Statement of Facts..... 2

 A. FSD Suspended Plaintiffs’ Driver’s Licenses Because They Were Unable to Make Their Child Support Payments..... 2

 i. Nathan Wright..... 2

 ii. Camese Bedford..... 3

 iii. Ashley Gildehaus 4

 iv. Lisa Mancini 5

 B. FSD Orders Driver’s License Suspensions Against Parents Who Cannot Pay Their Child Support 5

 i. Child Support Is Sometimes Not Affordable for Parents 6

 ii. FSD Orders Driver’s License Suspensions Without Adequate Ability-to-Pay Protections or Notice of Such Protections..... 7

 a. FSD’s Payment Agreements Do Not Provide Adequate Ability-to-Pay Protections or Notice of Such Protections..... 8

 b. An Income Withholding Order Is Not an Option for Many Parents Who Are Unemployed 10

 c. Parents Who Cannot Afford Their Child Support Cannot Pay the Entire Past-Due Amount 10

 d. Parents Are Not Permitted to Raise Inability to Pay at the Pre-Suspension Administrative Hearings 10

 iii. Once a Driver’s License Is Suspended, the Suspension Cannot Be Terminated Until Arrears Are Paid in Full 11

 C. Driver’s License Suspension Severely Undermines Parents’ Ability to Work, to Care for Their Families, and Even to Pay Child Support 12

III. This Court Should Preliminarily Enjoin Defendants from Enforcing Driver’s License Suspensions Against Parents Who Cannot Pay Their Child Support 12

- A. Plaintiffs Are Highly Likely to Succeed on the Merits Because FSD’s Lack of Ability-to-Pay Protection Violates Equal Protection and Due Process Rights..... 13
 - i. Defendants’ Suspension Scheme Violates Equal Protection and Substantive Due Process Because It Penalizes Non-Willful Nonpayment..... 13
 - a. Defendants’ Suspension Scheme Punishes Non-Willful Nonpayment Because It Imposes a Penalty for Nonpayment Without an Indigence Exception..... 14
 - b. Defendants’ Wealth-Based Discrimination Violates Equal Protection and Substantive Due Process Because It Is Fundamentally Unfair 16
 - ii. Defendants’ Suspension Scheme Violates Substantive Due Process Because It Infringes on Plaintiffs’ Fundamental Right to Travel 19
 - iii. Defendants’ Suspension Scheme Violates Procedural Due Process Because It Does Not Guarantee an Ability-to-Pay Hearing 21
- B. Plaintiffs Will Suffer Irreparable Harm If the Preliminary Injunction Does Not Issue Because Their Suspensions Exacerbate Their Poverty and Expose Them to Criminal Culpability 23
- C. Defendants Will Not Be Harmed If the Preliminary Injunction Issues Because Driver’s License Suspensions Make Indigent Parents Less Able to Pay..... 24
- D. An Injunction Will Serve the Public Interest by Halting Discrimination Based on Wealth-Status and Protecting Vulnerable Families 24
- IV. Conclusion 25

Table of Authorities

Cases

Bearden v. Georgia, 461 U.S. 660 (1983) passim
Bell v. Burson, 402 U.S. 535 (1971) 21, 22, 23
Cole v. City of Memphis, 839 F.3d 530 (6th Cir. 2016)..... 20, 21
Doe v. Miller, 405 F.3d 700 (8th Cir. 2005) 19
Griffin v. Illinois, 351 U.S. 12 (1956)..... 14
Hamdi v. Rumsfeld, 542 U.S. 507 (2004) 22
Johnson v. City of Cincinnati, 310 F.3d 484 (6th Cir. 2002)..... 20, 21
King v. New Rochelle Mun. Hous. Auth., 442 F.2d 646 (2d Cir. 1971)..... 20
Lee v. Hutchison, 854 F.3d 978 (8th Cir. 2017) 13
Lutz v. City of York, Pa., 899 F.2d 255 (3d Cir. 1990) 20
Mackey v. Montrym, 443 U.S. 1 (1979)..... 22
Mathews v. Eldridge, 424 U.S. 319 (1976)..... 22
Mayer v. City of Chicago, 404 U.S. 189 (1971) 14, 16
Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1 (1978) 22
Phelps-Roper v. Nixon, 545 F.3d 685 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678, 692 (8th Cir. 2012) (en banc) 25
Robinson v. Purkey, 326 F.R.D. 105 (M.D. Tenn. 2018), *appeal docketed*, No. 18-6121 (6th Cir. Oct. 24, 2018) 14, 15, 17, 18
Saenz v. Roe, 526 U.S. 489 (1999) (Stewart, J., concurring)..... 19
Tate v. Short, 401 U.S. 395 (1971) 15, 16
Williams v. Illinois, 399 U.S. 235 (1970) 15, 16
Wooley v. Maynard, 430 U.S. 705 (1977) 17

Statutes

Mo. Rev. Stat. § 302.321.2 12
 Mo. Rev. Stat. § 454.1003.1(1)..... 1, 5
 Mo. Rev. Stat. § 454.1005.4 10, 23
 Mo. Rev. Stat. § 558.002.1 12
 Mo. Rev. Stat. § 558.011.1 12

Rules

Mo. Sup. Ct. R. 88.01(b)..... 6

Regulations

13 C.S.R. 40-106.010(2)(B)..... 7

I. Introduction

This case is about the Family Support Division (“FSD”) perpetuating a cycle of poverty by unconstitutionally suspending the driver’s licenses of parents who are unable to pay child support. Under Mo. Rev. Stat. § 454.1003.1(1), FSD has the authority to issue an order suspending the driver’s license of any person is not making child support payments and who owes at least three months’ worth of support or at least \$2,500, whichever is less. These suspensions are meant to coerce payment, but for those who cannot pay, suspension decreases the likelihood that a person will pay, as it often leads to reduced employment opportunities. These license suspensions harm the interests of the children who are ostensibly meant to benefit from child support enforcement by making it difficult for non-custodial parents to play a meaningful role in their children’s lives and to earn the money that they would gladly use to support their children. Many parents face an impossible choice: comply with the suspensions and lose their jobs, homes, and ability to care for their families, or drive illegally and face the threat of further debt and criminal charges.

FSD itself acknowledged the harmful and counterproductive effects of a driver’s license suspension in a 1998 memorandum implementing procedures for suspending licenses shortly after the program was introduced. According to FSD’s *own* memorandum:

Suspension of a driver’s license may hinder a person’s ability to pay child support and affect his/her subsistence. When a person’s driver’s license is suspended, it prevents him/her from looking for employment, getting to and from work and possibly visiting his/her child(ren).

Ex. 1, Suspension Memo. at 2. The memorandum goes on to emphasize that driver’s license suspensions should be ordered “only if an obligor has the **ability to pay** his/her child support and **fails to pay.**” *Id.* (emphasis in original). Twenty years later, despite this evidence that FSD was aware from the beginning of the importance of driver’s licenses and the futility of ordering suspensions against those who do not have the ability to pay, FSD routinely orders driver’s license

suspensions without adequate ability-to-pay assessments. Each of the four named Plaintiffs is illustrative of this reality, and FSD's suspension policies are rife with procedural failures that elucidate how these unconstitutional suspensions are permitted to occur.

License suspension as a debt collection method is unconstitutional and irrational when enforced against people who cannot afford to pay. Suspending the licenses of parents who are unable to pay child support violates their substantive due process, equal protection, and procedural due process rights under the United States Constitution. Plaintiffs therefore respectfully ask this Court to issue a preliminary injunction terminating their child-support suspensions and prohibiting Defendants from suspending the driver's licenses of Missouri parents who fail to pay child support when nonpayment is non-willful.

II. Statement of Facts

A. FSD Suspended Plaintiffs' Driver's Licenses Because They Were Unable to Make Their Child Support Payments

Plaintiffs (i) Nathan Wright, (ii) Camese Bedford, (iii) Ashley Gildehaus, and (iv) Lisa Mancini all have driver's license suspensions due to child support that they cannot afford to pay.

i. Nathan Wright

Nathan Wright is a self-employed contractor and a single father who barely makes enough to provide for himself and his two children who are in his custody, ages nine and four. Wright Decl., ECF No. 22-1 at ¶¶ 2, 8, 13–15. He does not receive any support from his younger children's mother. *Id.* at ¶ 14. Often, Mr. Wright's expenses exceed his income. *Id.* at ¶ 15. Mr. Wright currently owes over \$44,135 in arrears and has not been able to make a payment since April of 2018. Ex. 2, Defs.' Resp. to 3rd Interrogatories at 14; Wright Decl., ECF No. 22-1 at ¶ 4. Because of his unpaid child support, Defendants suspended Mr. Wright's license on May 24, 2018. Wright Driver Record, ECF No. 22-2. Mr. Wright never received an opportunity to raise inability to pay

as a defense against suspension enforcement, and he was never offered a reduced payment plan to avoid suspension or any non-monetary alternative. Wright Decl., ECF No. 22-1 at ¶ 6.

Mr. Wright has no choice but to continue driving even though his license is suspended. *Id.* at ¶ 8. As a contractor, he has to haul his painting and dry-walling equipment with him — including large items such as scaffolding, ladders, and benches — to jobs up to an hour-and-a-half drive from his home in Farmington. *Id.* at ¶¶ 9, 12. Mr. Wright also needs to drive to carry out his many responsibilities as a custodial father of two. *Id.* at ¶¶ 10, 16. If Mr. Wright is caught driving, he could face criminal charges. *Id.* at ¶ 18.

ii. Camese Bedford

Camese Bedford is an unemployed veteran who currently owes over \$3,626 in child support arrears. Bedford Decl., ECF No. 22-3 at ¶ 1–2; Ex. 2, Defs.’ Resp. to 3rd Interrogatories at 14. Mr. Bedford driver’s license was suspended on February 25, 2017, because he had failed to pay child support for his six-year-old daughter. Bedford Driver Record, ECF No. 22-4. Mr. Bedford does not recall receiving any notice before his license was suspended, and he was not offered a reduced payment plan or any non-monetary alternative to avoid suspension. Bedford Decl., ECF No. 22-3 at ¶ 8. Mr. Bedford has also been charged with a class A misdemeanor due to his inability to pay child support. *Id.* at ¶ 7.

Mr. Bedford is indigent and cannot afford to pay off his arrears. *Id.* at ¶ 10. His only income is the \$140 he receives monthly in disability benefits, and he is often hungry because he cannot afford to feed himself. *Id.* at ¶ 15–16. Mr. Bedford’s license suspension severely limits his job prospects, and he lost his most recent job because he could not afford bus fare to get there reliably. *Id.* at ¶ 19. Mr. Bedford has experienced homelessness in the past, and with his income severely affected by his suspension, he worries that he will soon be homeless again. *Id.* at ¶ 21.

Not being able to drive makes it very difficult for Mr. Bedford to see his six-year-old daughter. He is entitled to overnight visitation with her every weekend, but most weekends, Mr. Bedford's inability to drive makes seeing his daughter impossible; he has not seen her at all in months. *Id.* at ¶¶ 23–25. Mr. Bedford is extremely concerned about the effect that his physical absence has on his daughter's wellbeing and her future, and he believes that his daughter is depressed as a result of his inability to spend time with her. *Id.* at ¶¶ 26–27.

iii. Ashley Gildehaus

Ashley Gildehaus is a resident of Salem, Missouri, who currently owes over \$14,446 in child support arrears, a debt he has no hope of paying off. Gildehaus Decl., ECF No. 22-5 at ¶ 1–2; Ex. 2, Defs.' Resp. to 3rd Interrogatories at 15. His driver's license was suspended on April 7, 2018, because of unpaid child support. Gildehaus Driver Record, ECF No. 22-6. He does not recall receiving a notice before his suspension. Gildehaus Decl., ECF No. 22-5 at ¶ 10. Mr. Gildehaus lost his commercial driver's license ("CDL") because of his suspension and misses out on high-paying jobs as well as supplemental income opportunities as a result. *Id.* at ¶¶ 14–16.

Mr. Gildehaus currently has a stay on his driver's license suspension, which means that he is able to drive legally as long as he is making monthly payments of \$680 toward his child support, but if he misses a payment, he will lose the stay immediately. *Id.* at ¶¶ 11–13. Mr. Gildehaus has been through the process of getting a stay on his driver's license suspension approximately six times already because he often cannot afford to make the \$680 payment. *Id.*

Mr. Gildehaus has to drive for his work, which is in St. Clair, over 70 miles from his home in Salem. *Id.* at ¶ 18. Every day he goes to work to provide for his family, and he worries that he might not be coming home because he is driving on a suspended license and could go to jail. *Id.* Mr. Gildehaus struggles to support his wife and their two small children, and the family is in imminent danger of losing their house. *Id.* at ¶¶ 20–23.

iv. Lisa Mancini

Lisa Mancini is a single mother of four residing in Joplin, Missouri. Mancini Decl., ECF No. 22-7 at ¶ 1, 3. Her driver's license was suspended on March 16, 2018, because of unpaid child support arrears for her oldest son, and she currently owes over \$11,511 in child support. Mancini Driver Record, ECF No. 22-8; Ex. 2, Defs.' Resp. to 3rd Interrogatories at 14. Ms. Mancini is indigent and unable to pay off her arrears. Mancini Decl., ECF No. 22-7 at ¶ 3. She is the sole provider for her four younger children and does not receive any child support their fathers. *Id.* In the spring of 2018, Ms. Mancini received a notice that her driver's license would be suspended unless she paid her child support. *Id.* at ¶15. Ms. Mancini was offered a payment plan when she called, but she did not have enough money to make any payments, and she was not offered any non-monetary alternatives for avoiding suspension. *Id.* Her license was suspended on March 16, 2018. Mancini Driver Record, ECF No. 22-8.

Ms. Mancini needs to drive. She is a single mother of four children, all in different schools and with different extracurricular commitments. Mancini Decl., ECF No. 22-7 at ¶ 24. The family lives in a rural area with no reliable public transportation; the farthest of her children's schools is about eight miles from home, the grocery store is four miles away, and the children's doctors are about 12 to 15 miles away. *Id.* Getting pulled over while driving on a suspended license is a constant fear for Ms. Mancini, who worries about getting fined or even landing in jail, leaving no one to care for her children. *Id.* at ¶ 25.

B. FSD Orders Driver's License Suspensions Against Parents Who Cannot Pay Their Child Support

Under Mo. Rev. Stat. § 454.1003.1(1), FSD has the authority to issue an order suspending the driver's license of any person who "is not making child support payments in accordance with a support order and owes an arrearage in an amount greater than or equal to three months['] support

payments or two thousand five hundred dollars, whichever is less, as of the date of service of a notice of intent to suspend such license.” These suspensions are part of FSD’s “normal course of business,” and they are enforced by the Department of Revenue (“DOR”). Ex. 3, FSD Depo. at 110; Ex. 4, DOR Depo. at 64. Many parents who cannot afford to pay have their licenses suspended by FSD because (i) child support is not always affordable; (ii) FSD’s suspension process does not provide adequate ability-to-pay protections; and (iii) once a suspension is enforced, the only way to terminate it is to pay off all arrears.

i. Child Support Is Sometimes Not Affordable for Parents

The initial amount of child support in Missouri is not ordered based upon a meaningful ability-to-pay determination — and Plaintiffs take no position as to whether it should be. Missouri child support orders are established, either by the courts or by FSD, using Civil Procedure Form 14, which calculates a presumptive child support amount that can be rebutted only if the court or agency finds that the amount is “unjust or inappropriate.” Mo. Sup. Ct. R. 88.01(b). Form 14 is not designed to calculate a child support amount that is categorically affordable for the parent paying support; it is designed to balance the paying parent’s ability to pay against the financial needs of the child(ren) and the parent receiving support. For example, the minimum monthly child support amount calculated under Form 14 is \$60, even for parents whose gross annual income is \$0. Ex. 5, Form 14 Instructions at 20. For a parent making only minimum wage, \$8.60 per hour in Missouri,¹ Form 14 will calculate a presumed child support amount between \$318 and \$328 per month.² Additionally, Form 14 instructs that income can be imputed in certain situations based

¹ Mo. Dept. of Labor, <https://labor.mo.gov/DLS/MinimumWage> (last visited Nov. 1, 2019). A monthly gross income of \$1,491 is calculated by dividing the minimum-wage gross annual salary of \$17,888 (based on 52 40-hour work weeks) by twelve.

² See Child Support Guideline Review Schedule, *available at* courts.mo.gov/file.jsp?id=114615.

on various sources, including a person's work history, usual occupation, occupational qualifications, and, if no other information is available, minimum wage.³

Even if a parent is initially able to afford their payments, financial circumstances can change quickly and drastically, and administrative modification of child support orders is only permitted under narrow circumstances.⁴

FSD itself has acknowledged that sometimes parents cannot afford to pay their child support. The agency's child support training manual as well as its 1998 Memorandum, in noting that a CSS must determine whether a parent is able to pay child support before ordering license suspension, both acknowledge that some obligors do *not* have the ability to pay their child support. Ex. 1, Suspension Memo. at 2; Ex. 6, Training Manual Excerpt at 18 ("Before suspending a driver's license because of a support arrearage, the CSS must determine if the obligor has the ability to pay his/her child support obligation.").

ii. FSD Orders Driver's License Suspensions Without Adequate Ability-to-Pay Protections or Notice of Such Protections

Although FSD has acknowledged the importance of not suspending the driver's licenses of parents who cannot afford to pay,⁵ the agency's existing policies do not adequately prevent such suspensions from being ordered. They do not provide any notice that parents who are unable to

³ See Ex. 5, Form 14 Instructions at 8–11.

⁴ For changes in economic circumstances, "[a] review may be conducted earlier than thirty-six (36) months" only if "there has been a fifty percent (50%) or more increase or involuntary decrease in income of either party to the order, and the division determines that the circumstances that caused the change have existed for at least three (3) months, and that it is reasonably likely they will remain unchanged for another six (6) months or longer." 13 C.S.R. 40-106.010(2)(B) (for voluntary income decrease, the circumstances must have existed for at least six months).

⁵ See Ex. 1, Suspension Memo. at 2. ("[FSD] staff [should] issue a license suspension order to the Drivers License Bureau only if an obligor has the **ability to pay** his/her child support and **fails to pay.**") (emphasis in original); see also Ex. 6, Training Manual Excerpt at 18.

pay have a right to avoid license suspension, nor do they provide non-monetary alternatives (such as workforce development training, community service, or regular check-ins) for those parents.

The first step in FSD's arrears-based suspension process is to send a Notice of Intent to Suspend License(s), which informs the parent that FSD intends to suspend her license because she owes either \$2,500 or three months' payments in arrears. Ex. 7, Notice of Intent. The Notice does not contain any mention of non-monetary alternatives, reduced payment plans, or any other inability-to-pay protections. Rather, it describes the parent's options for avoiding license suspension as (a) "enter into a payment agreement," (b) "provide your current employer so FSD can issue an income withholding order," (c) "pay the entire past-due amount," or (d) "request an administrative hearing" (solely to determine whether there is a mistake of fact, not to raise inability to pay). *Id.* None of these options provides adequate ability-to-pay protections.

a. FSD's Payment Agreements Do Not Provide Adequate Ability-to-Pay Protections or Notice of Such Protections

FSD's payment agreement system for avoiding license suspension fails to provide adequate ability-to-pay protection because on its face, it discourages low payment amounts, and in practice, parents are at the mercy of the discretion of FSD's inconsistent child support specialists.

FSD's payment agreement policies rarely permit sufficiently low payment amounts for struggling parents.⁶ There are three types of payment agreements: Standard, Arrearage-Only, and Temporary. Ex. 6, Training Manual Excerpt at 10–12. The Standard agreement is ostensibly used only when a parent "has the ability to pay current and/or past-due support," the Arrearage-Only agreement is used when a parent owes "past-due support only," and the Temporary agreement is

⁶ It is important to note that when parents enter payment agreements to make monthly payments lower than their current support orders, those lowered payments are *only for the purpose of avoiding license suspension*. The parents still owe their full amounts and still accrue arrears at the same rates — FSD does not have the authority to amend judicial child support orders.

supposed to be used when a parent is self-employed or unemployed *and* “unable to pay his/her current support obligation.” *Id.*

FSD instructs that under a Temporary agreement, the only payment agreement intended for people who are unemployed and cannot afford their payments, the payment amount set by the CSS “as a general rule, should not be less than 50 percent of the current support amount” except “under extreme circumstances.” Ex. 8, Temporary Agreement Instructions at 2. According to FSD, “extreme circumstances” refers to situations that are “rare” or “life-changing;” for example, if the parent’s “house just burned down” or if the parent is a builder and “loses his right arm.” Ex. 3, FSD Depo. at 175, 177–78. “Ordinary job loss” is not an “extreme circumstance” even if it results in complete loss of income. *Id.* at 178. Therefore, under FSD policy, a parent who loses her job (under ordinary circumstances) will be required to pay at least 50% of her regular child support amount to prevent FSD from suspending her license, regardless of whether she can afford to pay 50%. *See, e.g.,* Mancini Decl., ECF No. 22-7 at ¶ 15 (“I was offered a payment plan, but I did not have enough money to make any payments at that time.”). Moreover, the Notice of Intent to Suspend makes no mention at all of the possibility of making reduced payments to avoid license suspension, so parents may often be unaware that the option exists. Ex. 7, Notice of Intent.

In practice, child support specialists (“CSSs”) have broad discretion in setting payment amounts. *See* Lummus Decl., ECF No. 22-9 at ¶ 9. But the lack of standardized ability-to-pay guidelines for the hundreds of CSSs employed by FSD results in wildly inconsistent results and often leaves indigent parents believing that they have no option but to pay their full child support amount. *See* Ex. 3, FSD Depo. at 21 (estimating the number of CSSs to be around 400); *see also* Wright Decl., ECF No. 22-1 at ¶ 6 (“They told me my only option was to pay my court-ordered \$509 per month and did not offer a way to make smaller payments”); *see also* Gildehaus Decl.,

ECF No. 22-5 at ¶ 11 (“They ask how much I can pay, but when I suggest an amount, they say the only option is to make the full monthly payment plus \$50 toward arrears”). FSD’s payment agreement option therefore does not provide adequate ability-to-pay protections for parents facing driver’s license suspension.

b. An Income Withholding Order Is Not an Option for Many Parents Who Are Unemployed

FSD issues income withholding orders for parents who are employed to garnish their earnings, and FSD can also garnish unemployment benefits. Ex. 3, FSD Depo. at 95, 165, 168–69. But for parents who are unemployed and ineligible to receive unemployment benefits for whatever reason, income withholding is not an option. Income withholding is also not usually an option for self-employed parents, like Mr. Wright and Mr. Gildehaus.

c. Parents Who Cannot Afford Their Child Support Cannot Pay the Entire Past-Due Amount

Paying the entire past-due amount is, of course, not an option for avoiding license suspension for a parent who fell behind on child support due to inability to pay.

d. Parents Are Not Permitted to Raise Inability to Pay at the Pre-Suspension Administrative Hearings

The final option for avoiding license suspension is to “request an administrative hearing,” but “the only issues that may be determined in [such] hearing are: whether [the parent is] the correct person; whether the amount of [the] past-due support [meets the statutory criteria]; or whether [the parent] entered into a payment agreement.” Ex. 7, Notice of Intent. These limitations are set by Missouri statute. *See* Mo. Rev. Stat. § 454.1005.4. Thus, Missouri law precludes ability-to-pay hearings for parents who face driver’s license suspension for past-due child support.

For all the reasons above, FSD’s suspension process is rife with procedural flaws and inconsistencies that result in Defendants suspending the driver’s licenses of many indigent parents.

In fact, Defendants have admitted that parents who cannot afford to pay their child support sometimes have their driver's licenses suspended because of their failure to pay. *See* Ex. 3, FSD Depo. at 187–88; *see also* Ex. 4, DOR Depo. at 92.

iii. Once a Driver's License Is Suspended, the Suspension Cannot Be Terminated Until Arrears Are Paid in Full

Once FSD orders a driver's license suspension for past-due support and DOR enforces it, a parent's only means of terminating the suspension is to pay her arrears in full (unless the child support case is closed). Ex. 3, FSD Depo. at 208–09. This is likely the reason that over 65% of the 41,903 parents whose driver's licenses are currently suspended for past-due support (as of June 10, 2019) have had those suspensions for more than three years. Ex. 9, Defs.' Resp. to 2nd Interrogatories at 4–5. Over 8% have had their suspensions for more than ten years. *Id.*

FSD offers stays, which allow parents to drive legally while their licenses are suspended, but the stay process relies on the same flawed options that FSD uses for parents hoping to avoid suspension in the first place, including income withholding and payment agreements. “The process of getting a stay is long and difficult,” leaving parents unable to drive legally in the meantime. Gildehaus Decl., ECF No. 22-5 at ¶¶ 11–13 (“One time, the process . . . took three months Another time, it took six months.”); *see also* Mancini Decl., ECF No. 22-7 at ¶¶ 18–20 (“I then called FSD to ask about the status of my stay. . . . I made another payment, and still I heard nothing about the stay.”); Lummus Decl., ECF No. 22-9 at ¶ 6. And as soon as a parent misses a payment after a stay is granted, FSD orders the termination of the stay, and the arduous process begins anew. Gildehaus Decl., ECF No. 22-5 at ¶¶ 12–13 (“I have had five different stays since my license was suspended . . . and I am currently waiting on a sixth.”). Moreover, neither the Notice of Intent to Suspend (Ex. 7) nor the DOR Loss of Driving Privilege Notice (Ex. 10)

contains any mention of the stay option. The only way for parents to find out that FSD's stay option is available is "by contacting [the] agency." Ex. 3, FSD Depo. at 208.

C. Driver's License Suspension Severely Undermines Parents' Ability to Work, to Care for Their Families, and Even to Pay Child Support

As FSD itself has recognized, driver's license suspension "may hinder a person's ability to pay child support," may "affect his/her subsistence," "prevents him/her from looking for employment," prevents him/her from "getting to and from work," and can even prevent him/her from "visiting his/her child(ren)." Ex. 1, Suspension Memo. at 2. DOR also admits that having a suspended driver's license can affect a person's ability to obtain employment in Missouri:

Q: Is having a driver's license suspension likely to have any effect on a person's ability to obtain employment in Missouri?

MS. ROBB: Same objection.

A: Yes, I think it probably could, yes.

Ex. 4, DOR Depo. at 139. Defendants' suspensions for unpaid child support harm Missouri parents and actively undermine the goal of collecting child support to benefit children and families.

Because driving on a suspended license is a misdemeanor (and can be a felony on the fourth or subsequent offense), FSD's suspension scheme also creates a downward spiral from poverty to criminal culpability: unpaid child support leads to suspension, which often leads to the offense of driving without a valid license. The fine for a first offense of driving while suspended is up to \$500, and subsequent offenses can result in higher fines and even jail time. Mo. Rev. Stat. §§ 302.321.2, 558.002.1, 558.011.1. The statutory provisions related to driving while suspended contain no exceptions for situations in which driving is a necessity.

III. This Court Should Preliminarily Enjoin Defendants from Enforcing Driver's License Suspensions Against Parents Who Cannot Pay Their Child Support

Plaintiffs request that this Court enjoin Defendants from operating their driver's license suspension scheme for four reasons: (A) Plaintiffs are highly likely to succeed on the merits of

their claims because punishment of those unable to pay violates Equal Protection and Due Process rights; (B) without injunctive relief, Plaintiffs will continue to be hindered from earning a living and caring for their families; (C) an injunction will not harm Defendants because it will make parents better able to pay the child support Defendants seek to enforce; and (D) an injunction will serve the public interest by ending discriminatory suspensions and strengthening families. *Lee v. Hutchison*, 854 F.3d 978, 983 (8th Cir. 2017).

A. Plaintiffs Are Highly Likely to Succeed on the Merits Because FSD's Lack of Ability-to-Pay Protection Violates Equal Protection and Due Process Rights

Plaintiffs are highly likely to prevail on the merits because Defendants violate their constitutional rights under the Due Process and Equal Protection Clauses by suspending their driver's licenses for nonpayment of child support without any exception for inability to pay. This suspension scheme is unconstitutional for four reasons: (i) it violates Equal Protection and Substantive Due Process by punishing parents for non-willful nonpayment, (ii) it infringes on Plaintiffs' fundamental right to intrastate travel because Plaintiffs have no viable public transit options, and (iii) it violates Procedural Due Process rights by suspending driver's licenses for failure to pay without an ability-to-pay hearing or notice thereof.

i. Defendants' Suspension Scheme Violates Equal Protection and Substantive Due Process Because It Penalizes Non-Willful Nonpayment

Defendants enforce suspensions for nonpayment of child support against parents who cannot pay.⁷ These suspensions violate equal protection and substantive due process (a) because they punish non-willful nonpayment and (b) because they are fundamentally unfair.

⁷ Plaintiffs are not challenging their child support amounts or their arrears, nor are they challenging the process by which child support orders are established. They are challenging *the enforcement mechanism of a driver's license suspension as enforced against those who cannot pay*.

a. Defendants’ Suspension Scheme Punishes Non-Willful Nonpayment Because It Imposes a Penalty for Nonpayment Without an Indigence Exception

Defendants enforce suspensions for failure to pay child support against willful and non-willful nonpayers alike, but because section 454.1003.1(1) contains no indigence exception, it is discriminatory on the basis of wealth even though it does not on its face explicitly target parents who are poor. *See Robinson v. Purkey*, 326 F.R.D. 105, 149–61 (M.D. Tenn. 2018), *appeal docketed*, No. 18-6121 (6th Cir. Oct. 24, 2018).

The United States Supreme Court has held that penalties for nonpayment are unconstitutional when there is no exception for indigence. In *Griffin v. Illinois*, the Court considered a requirement that individuals pay a fee for trial transcripts on appeal. 351 U.S. 12, 13 (1956). Indigent individuals were thus denied their transcripts. *Id.* The requirement was neutral on its face, but the Court nevertheless found that its effect was “to deny adequate appellate review to the poor while granting such review to all others,” which was unconstitutional. *Id.* Thus, *Griffin* established the principle that an otherwise neutral law discriminates against people who are indigent if it denies them some benefit because they cannot pay. And because *Griffin* involved the right to appeal, its holding guarantees the application of this wealth-based discrimination analysis even where there is no fundamental right at stake. *Id.* at 18 (noting that “a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all,” but holding that a wealth-based prohibition on appeal without an indigence waiver is unconstitutional).

The Supreme Court has since expanded the application of wealth-based discrimination. Importantly, the doctrine is not limited to situations in which an indigent person faces imprisonment; rather, the analysis applies to all additional consequences that are imposed upon indigent debtors for failure to pay. *Mayer v. City of Chicago*, 404 U.S. 189, 197 (1971) (“[t]he invidiousness of the discrimination that exists when criminal procedures are made available only

to those who can pay is not erased by any differences in the sentences that may be imposed.”). In *Williams v. Illinois*, the Court extended the logic of *Griffin* to hold that a court cannot increase an indigent person’s sentence beyond the maximum based solely on the person’s inability to pay fines arising from conviction. 399 U.S. 235 (1970) (explaining that, because the statute contained no exception for indigence, it “visited different consequences on two categories of persons.”). In *Tate v. Short*, the Court explained that *Williams*’ holding was not limited to cases involving prison time; it applies to fine-only infractions as well. 401 U.S. 395 (1971). The *Tate* Court “emphasized that the constitutional defect was not in the act of imposing a consequence on nonpayment, but in the fact that applying that consequence to a truly indigent person had the practical effect of imposing greater punishment based on the economic status of the violator.” *Robinson*, 326 F.R.D. at 150.

Finally, the Supreme Court articulated a requirement that before a punishment for nonpayment can be imposed upon a person, there must be a finding that the nonpayment was willful. This requirement safeguards against unconstitutional wealth-based discrimination by ensuring that non-willful nonpayment is not punished. *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983) (holding that a person’s probation could not be revoked for failure to pay a fine without a finding that the person’s nonpayment was willful or that alternative forms of punishment were inadequate). Where an individual “has willfully refused to pay . . . when he has the means to pay,” Defendants are “perfectly justified” in suspending the individual’s license “as a sanction to enforce collection.” *Id.* at 668. But when an individual “has made all reasonable efforts to pay . . . and yet cannot do so through no fault of his own, it is fundamentally unfair” to impose an additional consequence as a collection method. *Id.*

The unconstitutionality of Missouri’s child support suspension scheme is easily understood through the lens of the *Griffin* cases. Section 454.1003.1(1) is ostensibly neutral — it enforces

suspension against all nonpayers equally, regardless of their wealth. But as *Williams* makes clear, because the statute has no exception for indigence, it ensures that avoidance of suspension is “contingent upon one’s ability to pay” and therefore “visit[s] different consequences on two categories of persons” — those who can pay their child support and those who cannot. 399 U.S. at 242. This amounts to “unconstitutional discrimination” because Plaintiffs suffer failure-to-pay license suspensions “solely because of their indigency.” *Tate*, 401 U.S. at 397–98. It makes no difference that the consequence at issue is license suspension rather than imprisonment. *See Mayer*, 404 U.S. at 197 (collateral consequences “may bear as heavily on an indigent . . . as forced confinement”). And Plaintiffs do not challenge license suspension for *willful* nonpayment, but only for non-*willful* nonpayment. *See Williams*, 399 U.S. at 241 (an additional consequence that “results directly from an involuntary nonpayment of a fine or court costs [is] impermissible discrimination that rests on ability to pay”). Defendants’ suspension scheme therefore discriminates on the basis of wealth.

The plaintiffs in the *Griffin* line of cases did not challenge the amounts of their underlying fees or fines; rather, the issue in each case was the consequence imposed upon those who could not afford to pay. Similarly, Plaintiffs in this lawsuit are not challenging the amounts of their child support orders; they are challenging driver’s license suspension as a consequence for nonpayment when nonpayment is non-*willful*.

b. Defendants’ Wealth-Based Discrimination Violates Equal Protection and Substantive Due Process Because It Is Fundamentally Unfair

Defendants’ discriminatory suspension scheme is fundamentally unfair and violates the Equal Protection and Due Process Clauses. Because Defendants impose license suspension as a punishment for nonpayment of child support without any guaranteed exception for indigence, the suspensions amount to discrimination on the basis of wealth and should be rigorously scrutinized.

See Robinson, 326 F.R.D. at 155 (“[I]f the scheme at issue affords no adequate exception based on indigence, *Griffin* and the cases applying it instruct [courts] to consider that scheme as the constitutional equivalent of the state’s ‘us[ing,] as the sole justification for’ its action, ‘the poverty of’ the [individual].” (quoting *Bearden*, 461 U.S. at 671)). This analysis “requires a careful inquiry into such factors as” (1) “the nature of the individual interest affected,” (2) “the extent to which it is affected,” (3) “the rationality of the connection between legislative means and purpose,” and (4) “the existence of alternative means for effectuating the purpose.” *Bearden*, 461 U.S. at 666–67. All four *Bearden* factors weigh in favor of finding the lack of an indigence exception in Defendants’ suspension scheme constitutionally impermissible.

Regarding the first *Bearden* factor, the nature of the individual interest affected in this case is serious, with far-reaching consequences. A driver’s license is often necessary for finding and maintaining employment, and it is essential for carrying out the duties and responsibilities of everyday life, especially in a state like Missouri, where many residents live in rural areas, and public transportation is often unavailable. *See Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (“[D]riving an automobile” is “a virtual necessity for most Americans.”); *see also* Ex. 1, Suspension Memo. at 2; Wright Decl., ECF No. 22-1 at ¶ 8 (“I don’t have any other means for getting from place to place.”); Gildehaus Decl., ECF No. 22-5 at ¶ 18 (“I have to drive for my work.”); Mancini Decl., ECF No. 22-7 at ¶ 24 (“We live in a rural area with no reliable public transportation. The grocery store is four miles away. My children’s doctors are about 12 to 15 miles away.”). The loss of a license can directly affect a parent’s livelihood, interfere with their ability to care for and visit their children, render them helpless in the event of an emergency — the list of potential consequences goes on. *See Robinson*, 326 F.R.D. at 156. Because of the great scope of the ramifications, the nature of the interest affected by these suspensions is serious.

As to the second *Bearden* factor, the extent to which Plaintiffs' interest is affected is also significant, since the suspensions are indefinite, and suspended individuals are not able to drive without risking fines and imprisonment. Plaintiffs' suspensions will continue until their arrears are paid. Since a suspended driver's license impedes a parent's ability to earn a living, making child support payments becomes even more difficult once one's license is suspended. As discussed in section II.B.iii above, it can be extremely difficult for a parent to obtain and maintain a stay so that she may drive legally while her license is suspended. Gildehaus Decl., ECF No. 22-5 at ¶¶ 11–12 (“The process of getting a stay is long and difficult. . . . As soon as I miss a monthly payment — that is, any time I am unable to pay the full \$680 in a given month — the stay is taken away.”). Thus, the deprivation is great because it is not time-limited, and it is difficult to obtain relief while the suspension is ongoing.

As to the third *Bearden* factor, there is no rational connection between license suspension and child support collection or child welfare. Suspending licenses to encourage payment of child support is irrational and counterproductive when applied to indigent parents because people who are *unable* to pay only become *less* able to pay when their driver's licenses are suspended. Taking away transportation options makes it harder for parents to earn money and thus subverts any legitimate state interest in collecting child support. *See Robinson*, 326 F.R.D. at 157. Most people will do whatever it takes to make sure their children are cared for; if parents owe enough unpaid child support that they are facing license suspension, it is likely because they cannot afford to pay it. And when parents must choose between paying arrears and paying rent, buying medication, feeding their families, and other necessary expenses, they cannot prioritize arrears. FSD itself has acknowledged that in such cases, suspensions are actually counterproductive, causing parents to

lose income. Ex. 1, Suspension Memo. at 2 (“Suspension of a driver’s license may hinder a person’s ability to pay child support.”).

License suspension is also counterproductive to the best interests of children, because when parents cannot drive, they cannot visit their children or otherwise engage in everyday parenting responsibilities. *Id.* (“When a person’s driver’s license is suspended, it prevents him/her from . . . possibly visiting his/her child(ren).”). In many cases, the noncustodial parents’ inability to participate in childcare responsibilities and visitation leads to a breakdown in family dynamics, as custodial parents begin to resent the noncustodial parents’ perceived lack of reliability and may even conclude that the noncustodial parent is not fit to be an involved parent. Lummus Decl., ECF No. 22-9 at ¶ 7. This can significantly harm a noncustodial parent’s relationship with the children. *Id.* Thus, there is no rational connection between license suspension and child welfare.

Under the fourth and final *Bearden* factor, Missouri has many “alternative means for effectuating the purpose[s]” of child support collection and family welfare, as license suspension is one of many enforcement tools. *Bearden*, 461 at 667. A more efficient and fair mechanism for reducing child support orders would allow parents to keep up with their child support while still being able to drive to work and care for their families.

ii. Defendants’ Suspension Scheme Violates Substantive Due Process Because It Infringes on Plaintiffs’ Fundamental Right to Travel

Defendants’ suspension of Plaintiffs’ driver’s licenses because they cannot pay their child support strips Plaintiffs of their mobility, implicating their constitutional right to travel, which is “a virtually unconditional personal right, guaranteed by the Constitution to us all.” *Saenz v. Roe*, 526 U.S. 489, 498 (1999) (Stewart, J., concurring) (citations omitted).

The Eighth Circuit has never decided whether the right to travel extends to travel within a state. *Doe v. Miller*, 405 F.3d 700, 713 (8th Cir. 2005) (“We find it unnecessary in this case to

decide whether there is a fundamental right to intrastate travel under the Constitution.”). But other appellate courts have found that the right is constitutionally protected. *See, e.g., King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646, 648 (2d Cir. 1971) (“It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state.”); *see also Lutz v. City of York, Pa.*, 899 F.2d 255, 256 (3d Cir. 1990) (“[A] constitutional right of *intrastate* travel . . . exists, and grows out of substantive due process.”) (emphasis in original); *Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002) (holding that the Due Process Clause of the Fourteenth Amendment protects the “right to travel locally through public spaces and roadways.”).

Although Plaintiffs are not expressly prohibited from traveling, taking away their driver’s licenses is a significant deprivation. Public transportation in Missouri is extremely limited and an unrealistic option for meeting life’s basic needs. *See* Wright Decl, ECF No. 22-1 at ¶ 8; *see also* Bedford Decl., ECF No. 22-3 at ¶ 24; Gildehaus Decl., ECF No. 22-5 at ¶ 18; Mancini Decl., ECF No. 22-7 at ¶ 24. Plaintiffs do not have access to other modes of transportation. Thus, Plaintiffs “depend on” driving “to carry out [their] daily life activities,” *Johnson*, 310 F.3d at 498, and Defendants’ suspensions infringe on their fundamental rights.

Defendants’ suspension scheme is comprehensive and must be analyzed under the strictest scrutiny for restrictions on intrastate travel. *See Cole v. City of Memphis*, 839 F.3d 530, 537 (6th Cir. 2016) (noting that strict scrutiny is appropriate where an intrastate travel restriction imposes a broad prohibition). Because the right to intrastate travel is “deeply rooted in this Nation’s history and tradition, and implicit in the concept of ordered liberty,” it is a fundamental right that requires strict scrutiny. *Johnson*, 310 F.3d at 489. Plaintiffs’ “right to travel locally through public spaces and roadways — perhaps more than any other right secured by substantive due process — is an

everyday right, a right [they] depend on to carry out [their] daily life activities. It is, at its core, a right of *function*.” *Id.* at 498 (emphasis added). By suspending Plaintiffs’ driver’s licenses, Defendants have imposed a functional ban on their intrastate travel that constitutes far more than a restriction on travel that lasts a few hours or only covers a few blocks. *Cole*, 839 F.3d at 537. Rather, it forecloses all travel because driving is Plaintiffs’ only practical means of transport. Unlike in *Cole v. City of Memphis* — which involved an ordinance that was limited geographically to a specific radius and limited in time to specific two-hour periods, *id.* — Defendants’ suspension scheme creates broad prohibitions on all driving in all locations at all times in all circumstances for an indefinite period and is therefore subject to strict scrutiny. *See Johnson*, 310 F.3d at 502 (“broad prohibition . . . requires that we apply strict scrutiny”).

Defendants’ suspension scheme cannot survive strict scrutiny because it is not “the least restrictive means to accomplish the [State’s] goal” of child support collection. *Id.* at 503. Defendants’ suspension scheme is not narrowly tailored to any goal. Instead, it is a blanket penalty that takes no account of non-willfulness. Defendants could allow parents less-restrictive options for modifying their child support orders when they are struggling financially, or at the very least allow them to drive on provisional or restricted licenses. *See Bearden*, 461 U.S. at 672. People who cannot afford to pay their child support have an even more difficult time without their licenses, as they are no longer able to commute to and from work to earn money. While suspending licenses of willful non-payers may be appropriate, taking away the licenses of those who are simply too poor to pay is not narrowly tailored to Defendants’ goal of child support collection.

iii. Defendants’ Suspension Scheme Violates Procedural Due Process Because It Does Not Guarantee an Ability-to-Pay Hearing

A driver’s license is recognized as a property interest that may not be taken away without due process of law. *Bell v. Burson*, 402 U.S. 535 (1971); *see also Mackey v. Montrym*, 443 U.S.

1, 10 (1979) (“[S]uspension of a driver’s license for statutorily defined cause implicates a protectable property interest.”). Due process in this case includes an opportunity to assert inability to pay before suspension. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner”). Due process also requires that parents facing suspension for unpaid child support receive notice that a pre-deprivation hearing is available and that they can raise inability to pay. *See Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1, 15 (1978) (holding notice “does not comport with constitutional requirements where it does not advise the [individual] of the availability of a procedure for protesting a proposed termination . . . as unjustified.”).

The pre-deprivation hearing must contemplate ability to pay. Because Defendants suspend parents’ driver’s licenses due to failure to pay, a meaningful hearing in this context is one that determines whether nonpayment was willful. Non-willfulness erodes Plaintiffs’ liability in a failure-to-pay charge. *See, e.g., Bearden*, 461 U.S. at 660. Thus, an ability-to-pay hearing is required to determine willfulness before suspension. *See Bell*, 402 U.S. at 536–37 (“[T]he State’s statutory scheme, in failing before suspending the licenses to afford [the motorist] a hearing *on the question of his fault or liability*, denied him due process”) (emphasis added). A hearing that fails to consider an essential element, such as willfulness, is not meaningful. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (“It is . . . fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.”) (internal quotation marks omitted); *see also Bell*, 402 U.S. at 541–42. For failure-to-pay violations, any meaningful hearing necessarily must include a willfulness determination before a suspension. FSD itself has identified ability to pay as an essential inquiry in the suspension process. Ex. 1, Suspension Memo. at 2 (stating that staff should “issue a license suspension order to the Drivers License Bureau only

if an obligor has the **ability to pay** his/her child support and **fails to pay**”) (emphasis in original); *see also* Ex. 6, Training Manual Excerpt at 18 (“The CSS will suspend a driver’s license if [the criteria are met] *and* the [Notice of Intent to Suspend] was based on an arrearage that the obligor *has the ability to pay.*”) (emphasis added).

The ability-to-pay hearing must be available before suspension takes effect. *Bell*, 402 U.S. at 542 (“except in emergency situations (and this is not one)[,] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective.”) (emphasis added). The purpose of FSD’s suspension scheme is to coerce payment, not to get dangerous drivers off the road. Therefore, there is no urgent safety need calling for immediate suspension, and Plaintiffs and others similarly situated are entitled to an ability-to-pay hearing prior to license suspension.

Missouri law does not currently guarantee or even allow a pre-deprivation ability-to-pay hearing for parents facing suspension due to unpaid child support. The only hearing that is available is one that precludes ability-to-pay inquiries. *See* Mo. Rev. Stat. § 454.1005.4. Because Missouri law does not require a pre-deprivation ability-to-pay hearing for parents facing driver’s license suspension for unpaid child support, there is a high risk that indigent parents will be deprived of their driver’s licenses for reasons directly attributable to their poverty.

B. Plaintiffs Will Suffer Irreparable Harm If the Preliminary Injunction Does Not Issue Because Their Suspensions Exacerbate Their Poverty and Expose Them to Criminal Culpability

Without intervention from this Court, Plaintiffs’ driver’s licenses will remain suspended indefinitely and they will suffer the continuing cycle of poverty caused by Defendants’ suspension scheme. Mr. Wright risks arrest every day that he is forced to drive to work and to care for his children while his license is suspended. Wright Decl., ECF No. 22-1 at ¶¶ 18–20. Mr. Bedford’s

suspension has severely impacted his ability to be a parent to his six-year-old daughter, whom he now rarely sees. Bedford Decl., ECF No. 22-3 at ¶¶ 19, 23–27. Mr. Gildehaus lost his commercial driver’s license as a result of his suspension, which severely hinders his ability to provide for his two younger children and his ability to pay child support for his older son. Gildehaus Decl., ECF No. 22-5 at ¶¶ 11, 14–16, 20–22. Ms. Mancini lost her most recent full-time job because of her license suspension and is forced to risk further fines and possible incarceration every day as she drives in the course of caring for her four youngest children. Mancini Decl., ECF No. 22-6 at ¶¶ 19–21, 24–25. All four named Plaintiffs are in desperate need of relief, and the putative class members they represent are no doubt experiencing the same urgent need.

C. Defendants Will Not Be Harmed If the Preliminary Injunction Issues Because Driver’s License Suspensions Make Indigent Parents Less Able to Pay

Defendants will not suffer any harm under a preliminary injunction. Because the putative class includes only those who are *unable* to pay their child support, FSD will not suffer the loss of uncollected child support for their custodial parents if this Court orders Defendants to terminate suspensions and refrain from further unlawful suspensions; no punishment or incentive can force a person to pay a debt that she cannot pay. To the extent that suspensions are ordered and enforced against *willful* nonpayers, FSD is free to continue collecting unpaid child support using the suspension tool. Plaintiffs recognize that when nonpayment is willful, a driver’s license suspension can be a powerful motivator to pay. But when nonpayment is *nonwillful*, as it is for Plaintiffs and class members, suspension actually “hinder[s] a person’s ability to pay child support.” Ex. 1, Suspension Memo at 2.

D. An Injunction Will Serve the Public Interest by Halting Discrimination Based on Wealth-Status and Protecting Vulnerable Families

A preliminary injunction will serve the public interest because Defendants’ conduct is violating Plaintiffs’ constitutional rights and the rights of tens of thousands of putative class

members. “[T]he public is served by the preservation of constitutional rights.” *Phelps-Roper v. Nixon*, 545 F.3d 685, 694 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678, 692 (8th Cir. 2012) (en banc).

The interests of children and families will also be served by a halting of unconstitutional suspensions. As FSD admits, when enforced against a parent who cannot pay, a driver’s license suspension “may hinder a person’s ability to pay child support” and even prevent a parent from “visiting his/her child(ren).” Ex. 1, Suspension Memo. at 2. Many non-custodial parents, including three of the four named Plaintiffs, are also custodial parents, and as a driver’s license suspension “affect[s] [a person’s] subsistence,” those children are significantly harmed when their parents are “prevent[ed] . . . from looking for employment, getting to and from work,” earning enough money to support their children (those in their custody and those not), and sharing in the many childcare duties that involve driving. *Id.* Finally, if an injunction issues, FSD can still use driver’s license suspensions to enforce child support against parents whose nonpayment is willful.

IV. Conclusion

For all the reasons above, Plaintiffs respectfully request that this Court grant their Motion for Preliminary Injunction.

Respectfully submitted,

/s/ Phil Telfeyan

Phil Telfeyan (1029157DC)
Rebecca Ramaswamy (5403415NY)
Attorneys, Equal Justice Under Law
400 7th Street NW, Suite 602
Washington, D.C. 20004
(202) 505-2058
rramaswamy@equaljusticeunderlaw.org
ptelfeyan@equaljusticeunderlaw.org

/s/ Stephanie Lummus

Stephanie Lummus (64999MO)
Attorney, McGivney, Kluger, and Cook, P.C.

211 N. Broadway Suite 1295
St. Louis, MO 63102
(314) 571-4332
slummus@mcgivneyandkluger.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to the counsel of record.

/s/ Rebecca Ramaswamy
Attorney for Plaintiffs