UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRED ROBINSON et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 3:17-cv-01263**
	)	**Judge Aleta A. Trauger**
DAVID W. PURKEY, Commissioner of the Tennessee Department of Safety and Homeland Security, in his official capacity, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM

Fred Robinson, Ashley Sprague, and Johnny Gibbs have filed a Motion for Preliminary Injunction (Docket No. 25), to which Tennessee Department of Safety and Homeland Security ("TDSHS") Commissioner David W. Purkey ("Commissioner") has filed a Response (Docket No. 187), and Robinson, Sprague, and Gibbs have filed a Reply (Docket No. 212). For the reasons set out herein, the plaintiffs' motion will be granted in part and denied in part.

I. BACKGROUND AND PROCEDURAL HISTORY

This is the second of two cases challenging Tennessee's practice of rescinding the driver's licenses of qualified Tennessee drivers who are unable, due to their indigence, to pay the fines, costs, and/or litigation taxes assessed against them in criminal cases or cases involving certain quasi-criminal civil offenses. In the first case, *Thomas v. Haslam*,[1] a plaintiff class challenged the Commissioner's statutorily-mandated revocation of the driver's licenses of indigent debtors who, for a period of a year or more, were unable to pay the fines, costs, and/or litigation taxes assessed

[1] Case No. 3:17-cv-00005.

against them related to a criminal conviction. This court concluded that the challenged statute, Tenn. Code Ann. § 40-24-105(b), ran afoul of a long line of Supreme Court precedents invalidating criminal procedures that, in effect, imposed harsher consequences on defendants based on their indigence. *See Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Bearden v. Georgia*, 461 U.S. 660 (1983). The court, therefore, granted summary judgment to the *Thomas* plaintiffs and enjoined the enforcement of the statute. This court's decision in *Thomas* is currently on appeal to the Sixth Circuit.

The statute at issue here, Tenn. Code Ann. § 55-50-502(a)(1)(H),[2] also empowers the Commissioner to take away the driver's licenses of some Tennessee drivers who, because of their indigence, cannot pay fines, costs, and/or litigation taxes against them. This statute differs from the statute at issue in *Thomas*, however, in that (1) the statute at issue here applies only to fines, costs, and litigation taxes related to convictions for traffic offenses—also known as "traffic debt"; (2) this statute does not require a year of nonpayment before a debtor's driver's license is taken away but, rather, empowers TDSHS to rescind the license as soon as it receives notice of nonpayment; (3) this statute merely authorizes the Commissioner to take the debtor's license but does not require him to do so—although, in practice, the Commissioner appears to treat the

[2] The parties have disagreed about whether a second subsection, Tenn. Code Ann. § 55-50-502(a)(1)(I), may also account for some suspensions based on failure to pay traffic debt. The plaintiffs argue that that section encompasses both failure to pay traffic debt and failure to appear in traffic proceedings. The Commissioner argues that subsection (I) deals only with failures to appear and that subsection (H) is the sole subsection regarding failure to pay. At least with regard to the present motion, this wholly abstract disagreement between the parties is of little, if any, importance, because, as explained *infra*, TDSHS's records do not record suspensions by statutory subsection but by the actual reason for suspension. It is undisputed that the plaintiffs' challenges are about failure to pay, not failure to appear. For ease of discussion, the court will discuss the plaintiffs' claims in the context of Tenn. Code Ann. § 55-50-502(a)(1)(H).

suspensions as automatic; and (4) the loss of the debtor's driver's license is classified as a "suspension" rather than a "revocation." *See id.* Although this case has not advanced to the point where either party has moved for a final judgment, the plaintiffs here have sought a preliminary injunction to halt the suspensions at issue and provide relief to those whose licenses have already been suspended. Accordingly, this court is called upon to determine whether (1) these plaintiffs are likely to succeed in establishing that the rule that this court applied in *Thomas* would also prevail here; and, (2) if so, whether any other factors counsel against providing preliminary relief.

Plaintiffs Robinson, Sprague, and Gibbs are among the thousands[3] of Tennesseans who have had their driver's licenses suspended for failure to pay traffic debt. (Docket No. 19 ¶ 11.) On September 13, 2017, the plaintiffs filed the Class Action Complaint in this case against the Commissioner and a few representative local government defendants involved in imposing traffic debt and informing TDSHS of drivers' eligibility for suspension. (Docket No. 1.) The plaintiffs raised three constitutional challenges to the state's laws governing suspension of driver's licenses for nonpayment of traffic debt:

1. Count I alleges that the defendants' effecting and continuing the suspension of people's driver's licenses for nonpayment of traffic debt without any inquiry into, or consideration of, the license holder's ability to pay violates the right to fundamental fairness guaranteed by the Equal Protection and Due Process Clauses of the Fourteenth Amendment (Docket No. 1 ¶ 156);

[3] As of December 31, 2016, TDSHS records showed 183,252 suspensions coded "FTP," for "failure to pay," and an additional 72,812 coded "FTA/P," apparently for "failure to answer or pay." (Docket No. 19 ¶ 11.) The Commissioner maintains, however, that some of those suspensions represent multiple suspensions for a single driver, meaning that the total number of suspended licenses would be lower.

2. Count II alleges that the defendants' effecting the suspension of driver's licenses—either with no notice or right to an ability-to-pay hearing, or with notice but only a right to a hearing on whether the license holder has failed to pay the relevant traffic debt—violates the right to procedural fairness guaranteed by the Due Process Clause of the Fourteenth Amendment (*Id.* ¶¶ 157–58); and
3. Count III alleges that the defendants' effecting and continuing the suspension of driver's licenses from indigent people who owe traffic debt to the state and its counties and municipalities, but not imposing similar sanctions on other judgment debtors, violates the Equal Protection Clause of the the Fourteenth Amendment (*Id.* ¶ 159).

The plaintiffs sought declaratory and injunctive relief, including reinstatement of the driver's licenses of Robinson, Sprague, and all members of the putative class, other than those facing additional legal barriers to having a driver's license, such as a suspension or revocation for a reason other than the failure to pay traffic debt. (*Id.* at 30.)

On September 21, 2017, Robinson, Sprague, and Gibbs filed a Motion for Preliminary Injunction (Docket No. 25), as well as a contemporaneous, more narrowly tailored Motion for Temporary Restraining Order ("TRO") focusing on Robinson and Sprague (Docket No. 24). On October 5, 2017, the court granted the requested TRO, ordering the Commissioner to restore Robinson's and Sprague's licenses. (Docket No. 63 at 1.) The court set a hearing regarding whether the TRO should be converted to a preliminary injunction, but the parties came to an agreement to allow the TRO to remain in place until the resolution of the broader Motion for Preliminary Injunction. (Docket No. 69.) On December 15, 2017, the plaintiffs filed an Amended Complaint (Docket No. 109), followed shortly thereafter by a Corrected Amended Complaint (Docket No. 111). The plaintiffs' constitutional theory of the case remained the same, although they revised

some facts and added a fourth plaintiff, Brianna Booher, who has since voluntarily withdrawn from the case. (Docket No. 170.) Additional motions were filed, and, on June 11, 2018, the court issued a Memorandum and Order resolving several motions to dismiss, certifying a statewide class, and concluding that the court could not resolve the Motion for Preliminary Injunction without an evidentiary hearing. (Docket Nos. 151–53.)

The local government defendants have since filed Motions to Dismiss as Moot, to which they attached affidavits, suggesting that their respective local government entities have adopted procedures consistent with the protections to which the plaintiffs argue drivers are entitled. (Docket Nos. 177 & 181.) As a result of the new factual issues raised by the local government defendants, the plaintiffs have withdrawn their request for a preliminary injunction with regard to those defendants, and a separate briefing schedule has been established with regard to those defendants' motions. (Docket Nos. 195 & 197.) The plaintiffs now seek a preliminary injunction only against the Commissioner. (Docket No. 195 at 1.) Because the Commissioner's policies affect all Tennesseans, the plaintiffs' request for a preliminary injunction against the Commissioner is unaffected by changes in policies by any isolated local government or governments.

With regard to the Commissioner, the plaintiffs ask the court to grant a preliminary injunction providing for the following relief:

> - On behalf of all Named Plaintiffs and the . . . Statewide Class, enjoining Defendant Purkey from suspending or permitting the suspension of any driver's license pursuant to Tenn. Code Ann. § 55-50-502(a)(1)(H) or (I) without either
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> - notice to the licensee that includes the offer of a fact-based inquiry, with participation by the licensee, as to the licensee's ability to pay and, if such inquiry is requested, a factual determination, prior and as a prerequisite to license suspension, that the amount sought is within the licensee's ability to pay, or

    - certification from the reporting county that notice containing such offer has been afforded and (if inquiry is requested) such factual determination has been made. . . .
- On behalf of Plaintiffs Robinson and Sprague and the . . . Statewide Class except for the members of the Multi-Barrier Subclass,[4] enjoining Defendant Purkey to

    - reinstate all driver's licenses that were suspended for nonpayment of Traffic Debt prior to the date of entry of the preliminary injunction, at no cost to the license holders;

    - waive all reinstatement fees; and

    - notify all persons whose licenses were suspended of the reinstatement.

(Docket No. 25 at 1–2.) A preliminary injunction hearing was set for September 5, 2018, but, after the parties submitted the written and documentary materials on which they intended to rely, they concluded that an in-person hearing would be unnecessary and agreed to submit the question to the court on the written record.

II. LEGAL STANDARD

The Sixth Circuit has held that the district court must balance four factors when considering a motion for preliminary injunction under Federal Rule of Civil Procedure 65: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of

[4] The plaintiffs originally proposed a subclass, the "Multi-Barrier Subclass," defined as "[a]ll members of the Statewide Class who, as of the date of judgment in this action, also had outstanding driver's license revocations under Tenn. Code Ann. § 40-24-105(b) for nonpayment of Court Debt." (Docket No. 1 ¶ 49.) They did not include that proposed subclass in the more recent, and now pending, request for certification of subclasses. (Docket No. 171 at 2–3.) The issue still exists, however, that some drivers facing suspensions also face other barriers to reinstatement, such as suspensions or revocations based on driving under the influence or violation of the state's financial responsibility law, that would prevent immediate reinstatement.

the injunction. *City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (citing *PACCAR Inc. v. TeleScan Techs., LLC*, 319 F.3d 243, 249 (6th Cir. 2003)).

III. ANALYSIS

A. Likelihood of Success on the Merits

In the court's June 11, 2018 Memorandum and Order, it put forth an analysis closely mirroring its analysis in *Thomas* and concluded that all three of the plaintiffs' counts pled cognizable constitutional claims and, therefore, would not be dismissed. The court then went on to discuss the plaintiffs' Motion for Preliminary Injunction, concluding that, while the court could not rule on the motion based on the record before it, it could make a preliminary determination of the plaintiffs' likelihood of success on the merits:

> As the court has detailed at length, the plaintiffs have articulated a compelling argument, based in well-settled and viable Supreme Court precedent, that Tennessee's regime of suspending licenses without an effective, non-discretionary safety valve for the truly indigent violates both equal protection and due process principles. That conclusion, moreover, carries with it the inevitable implication that drivers' procedural due process rights have been violated as well, because drivers whose licenses have been suspended were never afforded the opportunity to make a showing under that standard. The only factual investigation necessary to confirm at least the general validity of the plaintiffs' theory is to confirm whether they are correct in their assertion that lack of a driver's license is, indeed, likely to exacerbate an individual's indigence and make the already-indigent debtor less able to pay her debts. While additional testimony might be helpful in understanding the precise contours of the hardship that a lack of a license inflicts, judicial notice is more than sufficient to establish that that hardship is real and substantial. . . .
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> All of these facts, together, leave very little room for doubt regarding the plaintiffs' assertion that an indigent person who loses her driver's license is only going to be made less likely to be able to meet the ordinary expenses of life, let alone pay hundreds of dollars in traffic debt. With that premise established, the plaintiffs have also established their strong likelihood of success under the *Griffin* line of cases and under [*James v. Strange*, 407 U.S. 128 (1972)]. With regard to the other three [preliminary injunction] factors, however, the court cannot yet make a determination. The court, accordingly, will set an evidentiary hearing on those issues.

(Docket No. 151 at 112–16.)

In his briefing since the June 11, 2018 Memorandum and Order, the Commissioner has expressed a desire to present additional argument with regard to the question of likelihood of success on the merits. The court, accordingly, will consider the issue of likelihood of success on the merits in light of all the evidence and argument before the court, without affording any presumptive or preclusive effect to its earlier ruling, After review of these additional materials, however, the fundamental tenets of the court's constitutional analysis remains unchanged. The court will, therefore, incorporate by reference the Memorandum of June 11, 2018, as supplemented by this Memorandum, and will include that Memorandum as Appendix I. The court will summarize its earlier holdings briefly below.

1. Issue of Law Resolved in June 11 Memorandum

The following conclusions included in the court's June 11, 2018, Memorandum remain unchanged by the additional evidence and argument presented by the Commissioner:

1. The plaintiffs have individual standing to challenge their suspensions, regardless of whether any particular plaintiff is subject to other obstacles that would prevent immediate reinstatement of his license, because the imposition of even a cumulative barrier to reinstatement is a constitutionally sufficient injury-in-fact, as long as eventual reinstatement is possible. *See Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Mich. Gaming Control Bd.*, 172 F.3d 397, 404 (6th Cir. 1999) (observing that a person "seeking to challenge [a] barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing") (quoting *Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993)). (Appendix I at 30–38.)

2. The plaintiffs' claims are not barred by the *Rooker-Feldman* doctrine, because the plaintiffs challenge only TDSHS's discretionary imposition of a particular post-judgment collection mechanism, not any aspect of the plaintiffs' convictions or the validity of their traffic debt. *See Todd v. Weltman, Weinberg & Reis Co., L.P.A.*, 434 F.3d 432, 437 (6th Cir. 2006) (holding that *Rooker-Feldman* doctrine did not bar suit based on actions related to collection of a state-court judgment). (Appendix I at 48–56.)
3. TDSHS's ongoing deprivation of the plaintiff class members' rights to drive and maintenance of barriers to reinstatement, insofar as they are unconstitutional, constitute continuing violations, such that a substantive challenge to those suspensions is timely even if the suspensions were originally entered more than a year before the Complaint. *See Kuhnle Brothers., Inc. v. Cty. of Geauga*, 103 F.3d 516, 521–22 (6th Cir. 1997). (Appendix I at 66–67.)
4. Under a long and well-established line of Supreme Court precedents, a statute that penalizes or withholds relief from a defendant in a criminal or quasi-criminal case, based solely on his nonpayment of a particular sum of money and without providing for an exception if he is willing but unable to pay, is the constitutional equivalent of a statute that specifically imposes a harsher sanction on indigent defendants than on non-indigent defendants. *See Bearden v. Georgia*, 461 U.S. 660 (1983); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin*, 351 U.S. 12. In other words, the Supreme Court has held that the Constitution "addresses itself to actualities," *Griffin*, 351 U.S. at 22 (Frankfurter, J., concurring in judgment), and, therefore, is not blind to the commonsense fact that, if the government gives defendants the ostensible choice between

paying a sum of money or suffering a harsh, non-monetary penalty, then the government is, in effect, propounding a harsher rule for defendants who cannot pay the sum than for those who can. (Appendix I and 70–76.)

5. The Supreme Court has held that the *Griffin* line of cases implicates both due process and equal protection principles in ways that defy an easy application of the Court's more general precedents involving either constitutional guarantee alone. *See Bearden*, 461 U.S. at 665–66. Accordingly, the Court has warned against resorting to the "easy slogans" and "pigeonhole analysis" associated with the rote sorting of cases into those involving either strict scrutiny or rational basis scrutiny. *Id.*at 666. (Appendix I at 76.)

6. Nevertheless, the law of the Sixth Circuit is that distinctions based on economic circumstances—even if they amount to outright "wealth discrimination"—are subject only to rational basis review, unless they involve a fundamental right. *Molina-Crespo v. U.S. Merit Sys. Prot. Bd.*, 547 F.3d 651, 660 (6th Cir. 2008) (citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973)). Furthermore, the Sixth Circuit has held that, while the rights to inter- and intrastate travel are fundamental rights, the right to drive a motor vehicle is not. *See League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 534 (6th Cir. 2007) (citing *Saenz v. Roe*, 526 U.S. 489, 500 (1999); *Johnson v. City of Cincinnati*, 310 F.3d 484, 494–98 (6th Cir. 2002)). Accordingly, this court is bound to consider this case under rational basis review, which asks only whether the challenged policy is rationally related to a legitimate government purpose. *See Midkiff v. Adams Cty. Reg'l Water Dist.*, 409 F.3d 758, 770 (6th Cir. 2005). (Appendix I at 82.)

7. The Sixth Circuit has recognized, however, that the application of rational basis review to distinctions based on indigence may call for a more searching inquiry if the challenged scheme

is one that not only treats indigent people more harshly than the non-indigent, but does so in a way that threatens to exacerbate the indigents' poverty. *See Johnson v. Bredesen*, 624 F.3d 742, 749 (6th Cir. 2010) (discussing *Strange*, 407 U.S. at 135). In other words, if a statute treats the rich better than the poor in a way that will affirmatively *make the poor poorer*, then the court should—though still not departing from the boundaries of rational basis review—take extra care to make sure that the minimum requirements of rationality are met. (Appendix I at 79.)

8. The State of Tennessee, its courts, and its local governments have a legitimate interest in collecting traffic debt. *See Sickles v. Campbell Cty., Ky.*, 501 F.3d 726, 731 (6th Cir. 2007) (noting government interest in sharing costs and furthering accountability). While that interest may be characterized in many ways, the core premise is that, because Tennessee has an uncontested legitimate interest in enforcing its traffic laws and imposing certain ancillary debt related to enforcement proceedings, then Tennessee also, by extension, has a legitimate interest in collecting the resultant debt. (Appendix I at 83–84.)

9. The plaintiffs' substantive due process and equal protection claims, therefore, hinge on whether the Commissioner's application of Tenn. Code Ann. § 55-50-502(a)(1)(H) to indigent debtors is rationally related to the government's concededly legitimate purpose. "[E]ven in the ordinary . . . case calling for the most deferential of standards," a law may be struck down if its substance is "so discontinuous with the reasons offered for it" that any pretense of rationality cannot be sustained. *Romer v. Evans*, 517 U.S. 620, 632 (1996); *see also Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 653 (1974) (Powell, J., concurring in the result) (arguing that policy would fail rational basis review because it is "either counterproductive or irrationally overinclusive"). The court's review includes considering whether, "in practical effect," the law

"simply does not operate so as rationally to further the" legitimate purpose professed. *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973). (Appendix I at 88.)

10. The same basic features that rendered the revocations in *Thomas* irrational apply with equal force to the suspensions here. A driver's license suspension cannot coerce an indigent person into paying his traffic debt, because his failure to pay was never voluntary in the first place. What a suspension does do, however, is impose a significant material hardship on the driver that is likely to make him less able to develop the resources and, if possible, the economic self-sufficiency necessary to pay the underlying debt. Suspending the driver's license of an indigent person because he has failed to pay his traffic debt is not only wholly ineffective, but powerfully counterproductive. (Appendix I at 85–87.)

11. Exacerbating the counterproductive nature of the suspension regime is its tendency to trap drivers in a cycle of repeated violations and ever-mounting debt. A driver may begin by getting a single ticket for a minor traffic violation. If he cannot pay the resulting debt, however, his license will be suspended unless he is lucky enough to be granted a form of wholly discretionary relief by a court. The suspended driver, faced with a need to engage in essential life activities and a paucity of alternative transportation options, may choose to drive, despite his suspension. Driving on a suspended license is a Class B misdemeanor, for the first offense, punishable by up to six months in jail, a fine of up to $500, or both.[5] Tenn. Code Ann. §§ 40-35-111(e)(2), 55-50-504(a)(1). A driver who violates his suspension, therefore, may find himself subject to new fines, new court costs, and new litigation taxes. Because he could not pay the original traffic debt, he will be just as unable to pay the new debt, and the cycle will

[5] For the second and subsequent offenses, driving on a suspended license is a Class A misdemeanor, punishable by up to 11 months and 29 days in jail, a fine of up to $2,500, or both. Tenn. Code Ann. §§ 40-35-111(e)(1), 55-50-504(a)(2).

begin again, only with the driver further in the red. The Commissioner has not identified or asserted any legitimate governmental interest in allowing a single traffic ticket to serve as the gateway to a mounting cycle of unpayable debt that keeps a fully qualified driver off of the road and out of productive economic life. (Appendix I at 87.)

12. The Commissioner cannot plausibly defend the state's practices as based on the furtherance of road safety, because safety and risk bear no relationship to the distinction that the plaintiffs challenge. Tennessee has other provisions for the loss of driving privileges for reasons related to safety, and the plaintiffs do not challenge those statutes. *See, e.g.*, Tenn. Code Ann. § 55-50-501(a)(1) (calling for revocation based on conviction for vehicular manslaughter), (a)(2) (calling for revocation based on conviction for driving under the influence).While it is true that every person who faces a suspension for nonpayment of traffic debt has been held to have committed some traffic violation, it is not the violation itself, or any attendant indication of risk, that determines whether the driver will lose her license; the license is suspended or not suspended based entirely on whether or not she has paid her debt. (Appendix I at 99.)

13. The plaintiffs' arguments are premised on the assumption that driving is central to economic life in Tennessee. The role that driving plays in the lives of Tennesseans is a factual question for which some evidentiary support must be provided. The court, however, is permitted to take judicial notice of certain facts beyond reasonable dispute, pursuant to Rule 202 of the Federal Rules of Evidence, including general facts about the geographic and infrastructural features of the region. *See, e.g.*, *Witter v. Delta Air Lines, Inc.*, 138 F.3d 1366, 1370 (11th Cir. 1998) (taking judicial notice that "Atlanta is home to Hartsfield Atlanta International Airport, one of the busiest airports in the country"). The court, in this case, takes judicial notice of the following. First, the court judicially notices that the public transportation available in

Tennessee is widely insufficient to provide an adequate substitute for access to private motor vehicle transportation. Second, the court judicially notices that services, businesses, homes, and workplaces throughout Tennessee are so geographically diffuse that navigating life in the state wholly on foot is impracticable for all but perhaps a few Tennesseans. Third, the court judicially notices that a number of obstacles prevent non-motorized transportation, such as bicycles, from providing an adequate alternative to driving in Tennessee, including (1) the aforementioned geographically diffuse pattern of development; (2) the need to travel on interstates and highways; (3) safety concerns associated with using non-motorized travel in areas without paths dedicated to that purpose; (4) the lack of such dedicated paths on numerous important roads within the state; and (5) the fact that many Tennesseans face physical limitations that would not prevent them from driving but that would sharply limit their use of a bicycle or other human-powered mode of transportation. (Appendix I at 113–16.)

14. The plaintiffs have established that, under the *Griffin* line of cases, the state's failure to allow an exception to indigent debtors must pass rational basis review; that the application of Tenn. Code Ann. § 55-50-502(a)(1)(H) to indigent drivers is so profoundly counterproductive, in light of the centrality of driving to economic life in Tennessee, that it cannot meet the bare minimum standard of rationality; and that no other rational basis exists to sustain the state's policies. Accordingly the plaintiffs have set forth a plausible account of a constitutional violation in Count I of the Corrected Amended Complaint. (Appendix I at 91.) The same underlying facts support finding a constitutional violation as alleged in Count III as well, based on the rule, set forth in *James v. Strange*, that a state's uniquely harsh treatment of a class of indigent debtors cannot be carried out in "such discriminatory fashion" that it "blight[s] . . . the hopes of indigents for self-sufficiency and self-respect," merely because the indigent

debtors owe a particular type of debt to the government rather than a private party. Because indigent traffic debtors are subject to an exceedingly harsh collection scheme, while other judgment debtors are not, the state's policies violate the constitutional guarantee of equal protection. 407 U.S. at 142–43. (Appendix I at 94.)

15. The question of whether the Commissioner's administration of the suspension regime violates procedural due process, which forms the basis of Count II, is closely bound up with the merits of the plaintiffs' *Griffin* and *Strange* claims. If the plaintiffs prevail in establishing that indigent drivers are entitled to an exception based on inability to pay, they are also likely to establish that they were entitled to the chance for a pre-deprivation hearing with regard to that exception under the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Bell v. Burson*, 402 U.S. 535, 539 (1971) (citing *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970)). If, however, the plaintiffs' substantive claims fail, then their procedural due process claims are on shakier ground as well, because the process already afforded by TDSHS, along with the initial procedures provided when the traffic debt was assessed, arguably, would already have created at least some avenue for consideration of all the relevant facts. (Appendix I at 99–100.)

In summary, the plaintiffs have set forth a plausible legal framework pursuant to which they would succeed with regard to Counts I and III of their Corrected Amended Complaint, and the Commissioner has not articulated any affirmative defense or jurisdictional bar that would prevent the plaintiffs from prevailing on those claims. Moreover, if the plaintiffs are correct with regard to Counts I and III, their theory would likely also entitle them to judgment on Count II. The plaintiffs' arguments, however, are contingent on factual premises about the importance of driving to economic life in Tennessee that are amenable to corroboration or refutation. The court,

accordingly, must consider the evidence and argument offered by the parties on the issue of likelihood of success on the merits.

2. Additional Evidence and Argument Regarding Likelihood of Success on the Merits

In his recent briefing, the Commissioner offers no evidence that would undermine the conclusion that driving is crucially important to participating in economic life in Tennessee or that the loss of a driver's license makes an indigent person less likely to become able to pay his traffic debt. Rather, the Commissioner appeals to the principle that, under Supreme Court cases defining the boundaries of rational basis review, "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993) (*citing Vance v. Bradley*, 440 U.S. 93, 111 (1979); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981)). For speculation to be "rational," however, it must be based on some "reasonably conceivable state of facts." *Id.* at 314. A set of facts is not "reasonably conceivable" merely because it is conceivable in one's wildest imagination; otherwise rational basis review would devolve into an exercise in fantasy. What is reasonably conceivable depends on the world as it actually exists. Accordingly, while the Commissioner may be right that courtroom fact-finding should not be used to craft a *post hoc* refutation of a position reached by a legislative body through rational speculation, that does not preclude the court from considering factual context when evaluating the rationality of the speculation in the first place.

Indeed, a quick survey of the Supreme Court's actual cases applying rational basis review readily confirms that the Court routinely considers factual issues in rational basis cases. For example, the Commissioner favorably cites the Supreme Court's discussion of rational basis review in *Trump v. Hawaii*, 138 S. Ct. 2392, 2420–23 (2018). The *Trump v. Hawaii* court's

analysis, however, was, if anything, notable for being particularly situationally-minded and fact-intensive. Among the contextual facts considered by the *Trump* majority in its application of rational basis review were (1) the percentage of the world's Muslim population covered by the challenged policy; (2) Congress and the Executive Branch's history of designating certain countries as posing national security risks; (3) the "worldwide review process undertaken by multiple Cabinet officials and their agencies" regarding the challenged policy; (4) "the close cooperative relationship between the U.S. and Iraqi Governments and the country's key role in combating terrorism in the region"; and (5) the relative percentages of certain types of visas issued to persons from countries covered by the challenged policy. *Id.* at 2421–22. Indeed, one needs look no further than the words of the Court itself to see that it understood itself to be undertaking a fact-based inquiry. The Court upheld the challenged policy on the ground that "the Executive's *evaluation of the underlying facts* is entitled to appropriate weight" and, in that light, the policy was not "*divorced from any factual context* from which [the Court] could discern a relationship to legitimate state interests." *Id.* at 2420, 2421 (citing *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33–34 (2010); quoting *Romer*, 517 U.S. at 632) (emphasis added). Such an analysis would be impossible to square with any rule that this court is simply barred from considering the facts on the ground in determining whether the state's policy has a rational basis.

The Court's other rational basis cases show a similar consideration of factual context. The *Romer v. Evans* court considered the "immediate, continuing, and real injuries" inflicted by the challenged policy. 517 U.S. at 635. The *Williamson v. Lee Optical of Oklahoma Inc.* court considered a number of underlying logistical facts about the practice of optometry. 348 U.S. 483, 487 (1955). The *Kotch v. Board of River Port Pilot Commissioners for Port of New Orleans* court considered a number of similar technical and historical details about the pilotage of sea vessels, in

particular "through the treacherous and shifting channel of the Mississippi River" approaching the City of New Orleans. 330 U.S. 552, 558–59 (1947). The *U.S. Department of Agriculture v. Moreno* court considered how the challenged policy functioned "in practical effect" and relied on testimony of a food stamp administrator regarding whom the challenged policy would likely exclude from the program. 413 U.S. at 537–38. If a court applying rational basis review can consider contextual facts regarding Iraq, optometry, seafaring vessels, and food stamp administration, this court can consider contextual facts about driving in Tennessee.

Next, the Commissioner argues that rational basis review must only be assessed at the time of enactment and that, therefore, any facts later showing that a policy turned out to be ineffective, even disastrously so, must be disregarded. The Commissioner makes this argument in an attempt to preclude the court from considering the high rate of drivers who have not, in fact, been successfully coerced into paying their traffic debt by their suspensions. The Commissioner's premise is, like his argument against considering factual context, arguably contradicted by the Supreme Court's recent analysis in *Trump v. Hawaii*, in which the Court's rational basis review expressly considered events that occurred "since the President introduced entry restrictions in January 2017." 138 S. Ct. at 2422. The Supreme Court, moreover, has repeatedly acknowledged that a statute's "current burdens . . . must be justified by current needs." *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 536 (2013) (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)). Pursuant to that principle, the Court has acknowledged that a particular policy may be able to pass constitutional muster at the time of its adoption but fail the same test at a later date, as context has changed. *See Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) ("We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest

approved today."). Those premises would be incompatible with a rule requiring a policy's constitutionality to be judged only as of the time of its adoption.

Moreover, even if the Commissioner's assertion that a statute's rationality must be considered only as of the time of enactment were correct, that principle would have very little bearing on this particular challenge for two reasons. First, the overwhelming amount of evidence suggesting that driving is central to economic life in Tennessee consists of basic facts about the world that existed prior to and independent of the General Assembly's adoption and the Commissioner's implementation of the suspension scheme. Driving's role in Tennessee life was not some mystery only revealed once indigent drivers started losing their licenses. Driving's role has always been apparent. Insofar as post-enactment facts—namely, the large number of indigent drivers who have been unable to overcome their suspensions—have confirmed the importance of driving to economic self-sufficiency, those facts merely corroborate features of life that were readily ascertainable to the General Assembly or anyone else at the time of the underlying statute's enactment. The issue is not that the state's policy should be held to be irrational because it has failed; the issue is that the policy has failed because it is irrational.

Second, and perhaps most fatal to this line of argument, the proposition that the challenged policy must be evaluated only as of the time of the enactment of Tenn. Code Ann. § 55-50-502(a)(1)(H) ignores the fact that this statute does not require, or even instruct, the Commissioner to suspend the driver's licenses of indigent traffic debtors. Indeed, it does not require him to suspend anyone's driver's license for unpaid traffic debt; it only says that he "is authorized" to do so. After the statute was enacted, TSDHS chose, within its discretion, to suspend all licenses of drivers reported to have unpaid traffic debt, regardless of ability to pay. Every day, the Commissioner chooses, within his discretion, to continue that policy, which he could simply stop

or modify at any time. Unlike in *Thomas*, where the Commissioner had no choice under Tennessee law but to continue the challenged revocations unless the underlying statute was amended, the Commissioner has no duty to continue to engage in the suspensions at issue here. Present facts are therefore very relevant to the question of the rationality of the continued policy.

After several rounds of briefing, in this case and in *Thomas*, touching on the same core constitutional issues, the Commissioner's arguments are most notable for what he does not contend. He does not offer any reason—in facts, common sense, or the law—based on which one could conclude that taking an indigent person's driver's license away is an effective, or even rational, way to collect that person's debt.[6] Asked to justify the state's application of its policy to indigent debtors, the Commissioner instead retreats to reminding the court that rational basis review is, as everyone in this case has always agreed, usually very easy to pass. *See Trump*, 138 S. Ct. at 2420 ("[I]t should come as no surprise that the Court hardly ever strikes down a policy as illegitimate under rational basis scrutiny."). A test that is easy to pass, however, is also, by definition, a test that it is possible to fail. Otherwise, it would not be a "test" at all.

Although rational basis review poses a meaningful obstacle to very few statutes or policies, it is, on occasion, indispensable to ensuring that the "constitutional conception of 'equal protection of the laws' means anything." *Moreno*, 413 U.S. at 534. As the Supreme Court has recently noted, the most common situation in which rational basis review has been used has been to constrain the government from improperly singling out and punishing a "politically unpopular group" that, though vulnerable, has never been recognized by the Supreme Court's jurisprudence as a suspect class. *Trump*, 138 S. Ct. at 2420 (quoting *Moreno*, 413 U.S. at 534). The intellectually disabled

[6] The Commissioner provides some reason to think that suspensions are helpful in coercing payment from non-indigent debtors, namely that many of those non-indigent debtors appear to have been able to resolve their suspensions. (*See* Docket No. 187 at 7–8.) The application of the state's traffic debt collection laws to non-indigent drivers, however, is not at issue here.

are not members of a suspect class, but rational basis review has protected them. *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 448–50 (1985). Gays and lesbians are not members of a suspect class, but rational basis review has protected them. *Romer*, 517 U.S. at 635–36. People forced by poverty to live in group housing arrangements are not members of a suspect class, but rational basis review has protected them. *Moreno*, 413 U.S. at 537–38. And, by the same principle, poor criminal defendants are not members of a suspect class, but, as the *Griffin* line of cases has abundantly demonstrated, the Constitution protects them, even if "strict scrutiny" does not provide the framework for doing so.

In his final briefing in opposition to the Motion for Preliminary Injunction, the Commissioner makes no mention of *Griffin*. He also makes no mention of *James v. Strange*, *Douglas v. California*, *Roberts v. LaVallee*, *Williams v. Illinois*, *Tate v. Short*, *Mayer v. City of Chicago*, or *Bearden v. Georgia*. Rather than offering any argument why the Supreme Court's numerous cases about indigent criminal defendants would not apply here, the Commissioner simply chooses to set forth his argument as if those cases never existed. Such an approach does little to undermine the plaintiffs' demonstrated likelihood of success on the merits.

The plaintiffs, for their part, have offered additional evidence in support of their theory of the case. For example, they have filed a Declaration of Professor Dain Donelson of the McCombs School of Business at the University of Texas at Austin, setting forth a statistical analysis of suspensions, using Wilson County as an example. (Docket No. 173-2). Professor Donelson's analysis concluded that poor Tennesseans—and poor African-American Tennesseans, in particular—were vastly more likely to be subject to suspensions:

> The real-world phenomenon described by the equation is that, in terms of the impact of adding one more person to the County's population on the number of suspensions of residents of that County, it matters a great deal whether the person one is adding is poor. Adding a poor White person to the County's population has

> three-and-a-half times the effect on the number of suspensions as adding a non-poor individual does (0.0643328/0.0183647 = 3.503). Adding a poor African-American person to the population has nearly twenty times that effect (0.358514/0.0183647 = 19.522).

(*Id.* at ¶ 13.) Although the parties have quibbled some about how to define the raw data on which Professor Donelson relied, his analysis reached conclusions supportive of the plaintiffs' position under multiple sets of assumptions. For example, Professor Donelson was able to conclude that, depending on how one defined the raw data set, "one can say with a high degree of confidence that [either] over 93% of *unreinstated suspensions in Tennessee* relate to poor people . . . [or] over 93% of *Tennesseans with unreinstated suspensions* are poor." (*Id.* at ¶¶ 21, 24 (emphasis added).) Either conclusion is strongly supportive of the plaintiffs' premise that the lack of an indigence exception has resulted in numerous poor Tennesseans with suspensions that they cannot overcome.

The plaintiffs also produced evidence confirming that many drivers are languishing with suspended licenses. (Docket No. 205-4.) By the plaintiffs' analysis of the data provided by TDSHS, 45.3% of the drivers suspended in 2016 had not been relicensed by June 30, 2018. For drivers suspended in 2017, that figure was 59.3%. (*Id.* at 2.) Insofar as issues related to the methodology of the plaintiffs' calculations would justify revising those precise numbers, any such revisions would not undermine the basic principle demonstrated: that TDSHS's policy leaves many Tennesseans stranded under their suspensions, rather than having been prodded into paying their traffic debt, as one would suspect under a rational debt collection regime.

As the court held in its earlier Memorandum, the plaintiffs' likelihood of success on the merits was readily apparent, from applying the *Griffin* and *Strange* line of cases to the facts susceptible to judicial notice. The additional evidence provided by the plaintiffs merely confirms what any reasonable observer can see—that Tennessee is a large state with diffuse development, even around its urban centers, and that both holding a job and performing everyday tasks in the

state will, for most people, be contingent on some access to motor vehicle transportation. The Commissioner is correct that rational basis review will permit a policy to stand as long as "there is any reasonably conceivable state of facts that could provide a rational basis for the classification" that is being challenged. *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 681 (2012) (quoting *Beach Commc'ns*, 508 U.S. at 313.). There is, however, simply no reasonably conceivable factual basis for believing that suspending the driver's license of an indigent traffic debtor serves the legitimate government purpose of collecting the debt. Because, under *Griffin*, the lack of an indigence exception must itself be justifiable, the plaintiffs have shown a strong likelihood of success with regard to Count I.

Count III covers much of the same ground as Count I but considers whether, under *James v. Strange*, the state's treatment of indigent traffic debtors is "unduly harsh or discriminatory . . . merely because the obligation is to the public treasury rather than to a private creditor." 407 U.S. at 138. As the court previously held, the same facts that cause the state's policy to fail rational basis review under *Griffin* support the holding that it violates *Strange* by being carried out in "such discriminatory fashion" that it "blight[s] . . . the hopes of indigents for self-sufficiency and self-respect." *Id.* at 142–43. Traffic debt, like ordinary judgment debt, can be collected through standard civil collection tools, such as garnishment and attachment. *See* Tenn. Code Ann. § 40-24-105; Tenn. R. Civ. P. 69.05–.07; Tenn. Op. Att'y Gen. No. 06-135 (Aug. 21, 2006). Driver's license suspensions amount to an additional, harsh mechanism that is directed not merely at putting resources in the hands of the creditor but in disrupting the life of the debtor, and traffic debtors are made subject to that mechanism, whereas comparable private debtors are not. Under Tennessee law, a financially secure civil judgment debtor who fails to pay what he owes simply out of defiance, greed, or spite faces no risk of losing his license, whereas a person who wishes to, but

cannot, pay a minor traffic ticket is likely to have his license suspended. That wide differential in treatment runs afoul of *James v. Strange*, and none of the facts or argument raised by the Commissioner in his most recent briefing undermines such a holding.

With regard to Count II, none of the evidence presented draws into doubt the conclusion that, if the plaintiffs succeed on Counts I and III, they are also likely to succeed in showing that they were denied procedural due process. The Commissioner argues that Tennessee drivers are afforded due process with regard to their indigence because they have access to discretionary mechanisms through which a court may—or, within its discretion, may not—grant relief from their traffic debt. *See* Tenn. Code Ann. § 40-24-102 ("The several courts in which a cause is finally adjudged are *authorized*, either before or after final judgment, *for good cause*, to release the defendants, or any one (1) or more of them, from the whole or any part of fines or forfeitures accruing to the county or state."); Tenn. Code Ann. § 40-24-104(a) ("If the defendant . . . is unable to pay the fine . . . the court . . . *may* enter any order that it could have entered under § 40-24-101, *or may* reduce the fine to an amount that the defendant is able to pay . . . ."); Tenn. Code Ann. § 40-25-123(b) ("[T]he presiding judge of a court of general sessions *may* suspend the court costs and the litigation tax . . . , for any indigent criminal defendant, *as in the presiding judge's opinion the equities of the case require*.").[7] As an initial matter, it is not clear that, even if those mechanisms were adequate, drivers facing suspension could be said to have received adequate notice that those mechanisms were available. Moreover, what the plaintiffs seek—and what, if the plaintiffs succeed on Counts I and III, the state is obligated to provide—is not merely the opportunity to throw themselves upon the mercy of a court in a proceeding in which indigence may be one factor, of many, for the court to consider or disregard. They seek the right to a pre-

[7] Emphasis added throughout.

deprivation hearing, in which they are allowed the opportunity to demonstrate their eligibility for an exception based on indigence.

Tennessee courts have made clear that, under current law, a court may deny a defendant relief from his court-related debt, even where the debtor is clearly indigent and unable to pay. *See State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995) (upholding denial of waiver of costs for indigent defendant); *State v. Lafever*, No. M2003-00506-CCA-R3CD, 2004 WL 193060, at *7 (Tenn. Crim. App. Jan. 30, 2004) (applying *Black* to waiver of fines). For example, the state courts have upheld the denial of a waiver of fines to a person who was earlier found to be indigent, based purely on the speculative possibility that, "[b]y the time [he would be] required to begin paying the fines, his financial circumstances may have altered significantly, for instance, through an inheritance." *Lafever*, 2004 WL 193060, at *7; *see also State v. Ryan*, No. E2013-02135-CCA-R3CD, 2014 WL 3611508, at *7 (Tenn. Crim. App. July 22, 2014) (affirming assessment of court costs against defendant who was found, twice, to be indigent as within the court's discretion).

The Commissioner points out that some indigent Tennessee drivers and criminal defendants have, in some cases, obtained judicial relief that prevented their licenses from being suspended or revoked. For example, in one unrelated case involving plaintiff Robinson, he was granted discretionary relief from a court that allowed him to avoid an additional, continuing cumulative barrier to reinstatement. (*See* Docket Nos. 187-6 to -8.) That fact, though, is of no more consequence than the fact that some Tennessee drivers have been spared traffic debt because police officers, in their discretion, chose to issue those drivers warnings instead of citations. The plaintiffs' theory has never been that every indigent Tennessean who violates a traffic law ends up losing his license. Rather, the plaintiffs argue—accurately—that for some such drivers, suspension has been inescapable but could have been avoided with the opportunity for an indigence

determination and exception. The existing judicial mechanisms for relief, therefore, do not negate the plaintiffs' procedural due process claims, because those mechanisms—insofar as drivers even receive notice of them—involve only discretionary, holistic considerations, not a right to relief based on indigence.

The additional arguments and evidence provided, therefore, merely bolster the court's earlier analysis, concluding that the plaintiffs have shown a likelihood of success on the merits with regard to all three of their claims. The court, therefore, will turn to the remaining preliminary injunction factors.

B. Irreparable Harm to the Plaintiff Class

The plaintiffs' showing in support of their likelihood of success on the merits also demonstrates an almost certain risk of serious, irreparable harm to members of the plaintiff class if no injunction is granted. As an initial matter, the Sixth Circuit has held that, "if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated." *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The injury to members of the plaintiff class, however, will not be limited to abstract constitutional violations. For the reasons explained at length both herein and earlier, a driver's license suspension threatens to place a debtor into a cycle of hardship and marginalization from shared public and economic life that cannot easily be undone.

The Commissioner suggests that members of the plaintiff class can be spared irreparable harm by the various discretionary mechanisms that Tennessee courts have for alleviating traffic debt. The discretionary nature of that relief, however, negates any expectation that irreparable harm can be avoided without a preliminary injunction for all but some unknown number of

especially lucky members of the plaintiff class. The second preliminary injunction factor, like the first, weighs heavily in favor of granting the plaintiff class relief.

C. Harm to Third Parties and the Public Interest

The third and fourth factors of the preliminary injunction analysis—harm to others and the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Commissioner identifies three ways in which the State of Tennessee and its residents will be harmed if the court issues its preliminary injunction: first, that the state will suffer an inherent injury if it is enjoined from exercising its policymaking authority; second, that compliance with the plaintiffs' requested injunction would cause TDSHS to incur substantial administrative costs; and, third, that interfering with or restricting the suspension regime will deprive TDSHS of revenue that it needs to perform its basic functions.

1. Inherent Injury

With regard to the first alleged harm, the Commissioner points out that the Supreme Court, in its own consideration of whether to enjoin state policies, has suggested that, "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers[8]) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). The plaintiffs cite the countervailing rule that "the public interest is served by preventing the violation of constitutional rights." *Chabad of S. Ohio & Congregation*

[8] An "in chambers" opinion is an opinion written and issued by a single judge of a multi-judge court, pursuant to a court rule allowing a lone judge to address certain secondary matters without obtaining concurrence from the full court or a panel thereof. The Supreme Court allows a single justice, serving in his or her capacity as Circuit Justice, to deny requests for interim relief, such as stays, in chambers. *See* Daniel M. Gonen, *Judging in Chambers: The Powers of A Single Justice of the Supreme Court*, 76 U. Cin. L. Rev. 1159, 1173 (2008). In *Maryland v. King*, Chief Justice Roberts, writing in chambers, denied an application for a stay of judgment. 133 S.Ct. at 3.

Lubavitch v. City of Cincinnati, 363 F.3d 427, 436 (6th Cir. 2004). At first glance, those two principles—the importance of state autonomy and the importance of vindicating constitutional rights—would seem to be in tension in a case such as this, with the court charged with the impossible task of determining which concern more fully embodies the public interest. That apparent tension, though, is born out of a misunderstanding of the source and nature of the state's constitutional obligations.

"When a State enters the Union, it surrenders certain sovereign prerogatives"—in exchange for which it gains the constitutional benefits of statehood in the federal system. *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007); *see Papasan v. Allain*, 478 U.S. 265, 294 (1986) (Blackmun, J., concurring in part & dissenting in part) (referring to the "Enabling Act that gave Mississippi the benefits of statehood"). With regard to the land that now makes up Tennessee, state-level leaders have chosen, at least three times, to accept that bargain: first, in 1789, when North Carolina ratified the Constitution and voluntarily ceded the lands that would later become Tennessee to the federal government[9]; second, in 1796, when the State of Tennessee, following the overwhelming victory of a statehood referendum, was admitted to the Union by Act of Congress[10]; and, third, in 1866, when Tennessee's political leadership ratified the Fourteenth Amendment and obtained

[9] *See Hopkins v. Hebard*, 194 F. 301, 313 (6th Cir. 1911) (Severens, J., dissenting) (describing cession of lands that would become Tennessee); *see also* U.S. Const. art. VII ("The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."); 1 Cong. Ch. 14, May 26, 1790, 1 Stat. 123 (creating government of Southwest Territory).

[10] *See* 4 Cong. Ch. 47, June 1, 1796, 1 Stat. 491; Stanley J. Folmsbee *et al.*, History of Tennessee 209 (1960) (detailing referendum vote of "6,504 in favor of statehood . . . and 2,562 against"), *cited in* Joseph Blocher & Mitu Gulati, *Puerto Rico and the Right of Accession*, 43 Yale J. Int'l L. 229, 271 (2018); *see* U.S. Const. art. IV, § 3, cl. 1 ("New States may be admitted by the Congress into this Union . . . ."). Tennessee's first Constitution, propounded the same year, asserted the territory's "right of admission into the General Government as a member State thereof, consistent with the Constitution of the United States and the act of Cession of the State of North Carolina." Tenn. Const. of 1796, prmbl.

recognition, from Congress, of Tennessee's renewed commitment to the Union.[11] Tennessee's acceptance of the strictures of the Constitution, in other words, was the result of knowing, voluntary decisions by its (and, earlier, North Carolina's) duly selected representatives and representative institutions.

The Constitution to which North Carolina and Tennessee assented specifically provided, as it still provides, that it would be the "supreme Law of the Land," to which "the Judges in every State shall be bound." U.S. Const. art. VI, cl. 2. When this court is faced with a seemingly unconstitutional Tennessee policy, then, the issue is not merely whether state or federal prerogatives should prevail; it is whether Tennessee's current government should be allowed to contravene the valid and binding foundational decisions of previous generations of state leaders. The choices of those earlier Tennessee and North Carolina legislators and conventioneers are no less worthy of constitutional solicitude than the choices Tennessee's agencies and General Assembly make today. In this respect, enforcing the Constitution against a state government is a vindication, not a derogation, of the enduring importance of state autonomy.

Because the court finds a high likelihood of success with regard to the plaintiffs' constitutional challenges, it finds a low likelihood that the injunctive relief would intrude on any powers legitimately retained by the Commissioner. The possibility of injury to the public interest based on intrusion on the Commissioner's authority, therefore, weighs, at most, slightly against granting the plaintiffs relief. Any such consideration, moreover, would be outweighed by the public interest in vindicating the constitutional rights guaranteed to Tennesseans, not merely by the drafters of the Constitution, but by the State of Tennessee itself.

[11] *See* 39 Res. No. 73, July 24, 1866, 14 Stat. 364.

2. Administrative Costs

As the Commissioner points out, TDSHS—even when one considers only its Driver Services Division—is an agency with a wide range of resource-intensive responsibilities requiring a significant statewide presence and workforce. TDSHS driver services centers are responsible not only for standard licensing transactions, but also, for example, for the administration of driver improvement programs and the carrying out of aspects of the state's "motor voter" voter registration responsibilities. (Docket No. 187-9 ¶¶ 2, 11.) *See Howard v. Tennessee*, No. 17-6448, 2018 WL 3342326, at *1 (6th Cir. July 9, 2018) (discussing TDSHS "motor voter" policies). Like any government agency, TDSHS has limited resources, and the imposition of any duties beyond those contemplated by its existing budget might place a strain on its ability to provide Tennesseans with needed services. TDSHS Budget Director Sonya Hadley attests that, "[b]ecause the 2018–2019 fiscal year is already underway, . . . the Department is not able to seek additional funds from the legislature or the Department of Finance and Administration." (Docket No. 187-9 ¶ 11.) Accordingly, the court must consider the degree to which injunctive relief would impose additional administrative burdens that would tax TDSHS's already limited resources.

The plaintiffs ask, first, that TDSHS be enjoined from effecting any future suspensions for nonpayment of court debt unless (1) TDSHS itself offers notice and an opportunity for an indigence determination or (2) TDSHS receives certification from the reporting county that such a notice and opportunity were provided. Because the Commissioner would have the option of relying on local jurisdictions to provide the required procedures (or, alternatively, the option of simply ceasing suspensions altogether), the administrative costs of such prospective relief might be minimal. Of course, if the Commissioner chose to pursue the option of making ability-to-pay determinations at the agency level, some resources would go toward designing, implementing, and

carrying out that process. He would, though, not be required to choose that route. The state-level administrative costs of the aspects of the requested injunction directed at future suspensions, therefore, do not weigh significantly against granting relief.

If TDSHS does not adopt its own ability-to-pay process but does wish to continue suspensions, then some administrative expenses are likely to fall on local courts tasked with evaluating the indigence of any drivers whom they wish to report for nonpayment of traffic debt. There is reason, however, to expect that such determinations easily could be built into existing processes. As the Commissioner has repeatedly reminded the court, traffic debtors already have a right to seek discretionary relief from the courts that assessed their debts. *See* Tenn. Code Ann. §§ 40-24-102, -104(a), -105(h), 40-25-123(b). Other than the imposition of an additional notice requirement, the only major difference between a system that would comply with the plaintiffs' requested injunctive relief and what Tennessee already provides is that, under the current law, a court can conclude that a debtor's sole reason for nonpayment is his indigence and yet still allow the revocation to go forward. *See Black*, 897 S.W.2d at 684; *Waters v. Ray*, No. M2008-02086-COA-R3-CV, 2009 WL 5173718, at *5 (Tenn. Ct. App. Dec. 29, 2009); *Lafever*, WL 193060, at *7. Creating a more reliable avenue for relief where an uncertain avenue already exists would create some, but likely not too great, administrative burdens.

Local courts, moreover, are likely to have skills, knowledge, and procedures that would allow them to absorb the need to make additional indigence determinations into their existing dockets. Indigence determinations are already a pervasive, unavoidable feature of the criminal justice system. *See, e.g.*, *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973) (acknowledging right to indigent defense in some probation and parole revocation hearings); *Miranda v. Arizona*, 384 U.S. 436, 473–74 (1967) (acknowledging right to indigent defense during a custodial interrogation);

Gideon vs. Wainwright, 372 U.S. 335, 344–45 (1963) (acknowledging right to indigent defense at trial). Determining a person's indigence is something that Tennessee courts do thousands of times a year. *See* Tenn. Admin. Office of the Courts, *Tennessee's Indigent Defense Fund: A Report to the 107th Tennessee General Assembly* 11–13 (2011).[12] Extending those determinations to an additional stage in the process would create some burden, but there is no evidence that that burden would be unmanageable. The likely local administrative costs associated with granting the plaintiffs a preliminary injunction with regard to future suspensions, therefore, similarly provides little reason not to grant that aspect of the plaintiffs' motion.

The plaintiffs' request for relief regarding existing suspensions, however, raises more serious concerns. The plaintiffs have asked that the Commissioner (1) waive all reinstatement fees for Tennesseans whose licenses were suspended for nonpayment of traffic debt; (2) send notice to everyone under such a suspension; and (3) restore the driver's licenses for all suspended drivers who are not subject to a separate, independent bar to receiving their licenses. The latter two of those requests would require TDSHS to identify, *en masse*, the universe of drivers currently under covered suspensions. The Commissioner has suggested that doing so would be onerous due, in particular, to the nature of TDSHS's records. Even the first requirement—waiving fees on an individual basis for drivers seeking reinstatement—would, the Commissioner argues, create significant administrative burdens due to deficiencies in the state's records that would have to be resolved by manual file review.

The Commissioner has produced a declaration by Randi Cortazar of TDSHS's Financial Responsibility Section, explaining the details of TDSHS's electronic records of existing suspensions. According to Cortazar, TDSHS used a data system known as "3270" until February

[12] Available at http://www.tsc.state.tn.us/sites/default/files/docs/aoc_indigent_defense_fund_report.pdf.

17, 2015, on which date it implemented a new system known as "A-LIST." (Docket No. 187-1 ¶ 3.) A-LIST uses a series of numerical codes promulgated by the American Association of Motor Vehicle Administrators ("AAMVA") to identify the nature of actions taken against a person's license. (*Id.* ¶ 4.) AAMVA code D53—which has also been presented in this case as "FTP," for "failure to pay"—identifies a suspension as related to a failure to pay traffic debt that was incurred via a judgment. (*Id.* ¶ 7.) Code D56—which has also been presented in this case as "FTA/P," for "failure to answer/pay"—identifies a suspension based on a failure to pay traffic debt before a driver's court date, as is contemplated for some citations, *see* Tenn. Code Ann. § 55-10-207(f). (*Id.* ¶ 8.) The Commissioner concedes that drivers whose suspensions are coded FTP or FTA/P have had their licenses suspended for "[f]ailure to pay." (Docket No. 187 at 8 n.8.) In contrast, AAMVA code D45—which has also been presented in this case as "FTA," for "failure to appear"—identifies a suspension related to a failure to appear. (Docket No. 187-1 ¶ 6.)

Under the pre-A-LIST 3270 system, there was no distinction between "failure to pay" and "failure to answer/pay." When that data was transferred to the A-LIST system, all such suspensions—including those based on debt incurred via a judgment, *i.e.*, FTP suspensions—were categorized as code D56, or FTA/P. Occasionally, individual drivers' records have been updated to rectify this misclassification, but no comprehensive effort to do so has been made. Accordingly, for all or most suspensions prior to February 17, 2015, it is impossible to tell, from the data alone, whether the driver should be classified as FTP or FTA/P, and doing so would require reviewing the driver's underlying records. (*Id.* ¶¶ 9–11.) Even in the time since February 17, 2015, moreover, some courts have continued to use the old 3270 codes to send TDSHS notifications of eligibility for suspension. Accordingly, many recent suspensions suffer from the same indeterminacy as the older suspensions. (*Id.* ¶ 13.)

The lack of clarity with regard to which drivers should be classified FTP and which should be classified FTA/P would not, in and of itself, create a problem for the plaintiffs' requested relief, because, as the Commissioner has conceded, both types of suspension are based on failure to pay traffic debt. (Docket No. 187 at 17.) The Commissioner, however, identifies other aspects of the department's records that, he argues, will pose a larger problem. For example, when the 3270 system calculated suspended drivers' outstanding reinstatement fee balances, it did not separate reinstatement fees based on failure to pay or failure to answer/pay from fees related solely to a failure to appear. Accordingly, waiving fees based solely on nonpayment of traffic debt would require individual file review, at least with regard to drivers who were also the subject of suspensions for failure to appear. (*Id.* ¶ 35.) The same problem, the Commissioner argues, exists with reinstatement requirements other than fees. The 3270 system apparently simply aggregated these requirements, and TDSHS would, according to Cortazar, have to engage in manual review of driver files to separate out the requirements that must be waived from those that would not. (*Id.* ¶ 37.)

The precise extent of the hardship Cortazar has predicted is not entirely clear to the court. For example, it would seem that, because the distinction between FTP and FTA/P drivers is not meaningful for the purposes of this case, the issues predicted would only require manual review of files for drivers whose electronic records showed those suspensions *and* wholly separate suspensions or revocations, such as FTA suspensions for failure to appear. As long as all such suspensions are identifiable from the electronic records—as it seems like they would be, since both the 3270 and A-LIST systems had distinct codes for failure to appear—then identifying the universe for which manual review is necessary could be accomplished electronically. Determining

the eligibility for reinstatement of all other drivers would not, it seems to the court, require any kind of manual review.

Regardless, however, Cortazar has credibly established the likelihood of at least some significant hardship with regard to processing mass reinstatements. Moreover, the court acknowledges that operating with large troves of sometimes years-old government data is often more difficult in practice than it would seem, to an outsider, that it should be in the abstract. Even if reinstatements went as smoothly as could possibly be hoped, it would still create at least some strain on TDSHS's resources. The administrative costs related to the plaintiffs' requested relief regarding existing suspensions, therefore, weigh against granting the relief.

3. Lost Revenue

Finally, the Commissioner argues that the plaintiffs' requested relief would have substantial negative fiscal effects on TDSHS in the form of lost reinstatement fees. According to the Hadley Declaration, TDSHS's budget for the 2018-19 fiscal year assumed the receipt of more than $3 million dollars from reinstatement fees related to failure to pay traffic debt. (Docket No. 187-9 ¶¶ 9–10.) Those fees would have been used exclusively by the Driver Services Division, which, if faced with a budgetary shortfall, might, according to Hadley, have to resort to cost-cutting measures such as reducing its workforce, reducing the hours of some driver services centers, or adjusting the services available at those centers. (*Id.* ¶ 11.) Reinstatement fees related to traffic debt suspensions are just one part of a significantly larger well of reinstatement fees on which TDSHS relies; altogether, the fiscal year 2018-19 budget anticipates the collection of an estimated $19 to $20 million in reinstatement fees. (*Id.* ¶ 7.) Nevertheless, an unexpected shortfall of $3 million, or even $1 or $2 million, could be reasonably expected to pose a risk of hardship on a state agency.

The plaintiffs' proposed relief, however, would not altogether prevent TDSHS from relying on reinstatement fees related to traffic debt suspensions. The plaintiffs have maintained, throughout this litigation, that the Commissioner would be constitutionally permitted to continue suspending licenses under Tenn. Code Ann. § 55-50-502(a)(1)(H) as long as drivers were allowed notice and an opportunity for a hearing related to an exception based on indigence, either at the local or agency level. Moreover, in their briefing related to the present motion, the plaintiffs have conceded that they only seek retrospective relief with regard to those drivers who remain indigent and, therefore, would qualify for inclusion in the plaintiff class. (Docket No. 212 at 23.) It would be possible, then, for TDSHS to continue collecting reinstatement fees from drivers who are able to pay them, even if the plaintiffs are granted the relief they seek. It is unclear, moreover, how much of a negative effect an indigence exception would actually have on revenues. By definition, reinstatement fees are not, for the most part, coming from indigent drivers, although some may be coming from drivers who would have qualified for relief based on their indigence at one time and later found a way to afford reinstatement. It is not difficult, therefore, to imagine TDSHS reaching a new status quo, where its fiscal reliance on reinstatement fees could be maintained, at least in substantial part, in a way consistent with the plaintiffs' requested relief.

Nevertheless, it is clear that the plaintiffs' requested relief would, at least over the short term, disrupt a revenue stream on which TDSHS expected it could rely. Those lost revenues, therefore, weigh against granting injunctive relief under both the third and fourth preliminary injunction prongs.

4. Balancing of Factors; Scope of Preliminary Injunction

The plaintiffs have established a strong likelihood of success on the merits and have shown that the state's ongoing application of its traffic debt policy results in both constitutional and

material injuries to members of the plaintiff class that are, or are likely to be, irreparable. The Commissioner, however, has established that an overhaul of the state's system and an obligation to restore licenses across the board would place a strain on TDSHS's finances and workforce that could interfere with the agency's administration of its other important public duties. The court, moreover, remains aware of the fact that, because *Thomas* is currently before the Sixth Circuit and presents an issue of first impression in the circuit, there is a possibility that the law governing this issue in Tennessee may change in the foreseeable future. The court, therefore, is hesitant to require TDSHS to expend too many resources now, when a potential clarification of its obligations is reasonably within sight.

Nevertheless, the plaintiffs have established that indigent Tennesseans are entitled to at least some protection from infringement on their rights and some prospect of re-obtaining the driver's licenses that were wrongly taken from them. Accordingly, the court will grant the plaintiffs their requested relief regarding future suspensions and enjoin the Commissioner from suspending driver's licenses based on unpaid traffic debt, unless either TDSHS offers the opportunity for a pre-deprivation indigence determination or it receives certification from the reporting county that such an opportunity was provided.

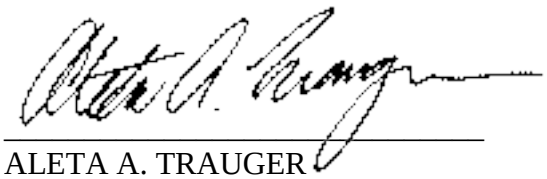
In light of the plaintiffs' concession that they only seek retrospective relief with regard to individuals who "currently cannot" pay their traffic debt (Docket No. 212 at 23), the court will revise the relief requested regarding existing suspensions to permit TDSHS to continue to charge reinstatement fees to drivers if it, through its own auspices or in coordination with local authorities, adopts a system for identifying which applicants for reinstatement are indigent and which are not. The court, moreover, will not, at this juncture, require TDSHS to engage in any ongoing efforts to affirmatively restore licenses *en masse*.

IV. CONCLUSION

For the foregoing reasons, the plaintiffs' Motion for Preliminary Injunction (Docket No. 25) will be granted in part and denied in part. The Commissioner will be ordered to grant the relief as set out in the accompanying order.

An appropriate order will enter.

ENTER this 16th day of October 2018.



ALETA A. TRAUGER
United States District Judge