

No. 20-11688

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*In the*  
**United States Court Of Appeals**  
*for the*  
**Eleventh Circuit**

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SHARON MOTLEY, on behalf of herself and those similarly situated, Appellant-  
Plaintiff;

v.

HAL TAYLOR, in his official capacity as Secretary of the Alabama Law  
Enforcement Agency,  
Appellee-Defendant.

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**On Appeal from the United States District Court for the Middle District of  
Alabama Case No. 2:19-cv-00478-WKW-SRW**

**BRIEF OF *AMICI CURIAE* MEMBERS OF THE FREE TO DRIVE  
COALITION IN SUPPORT OF PLAINTIFF-APPELLANT AND  
REVERSAL**

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rules 26.1-1 to 26.1-3, undersigned counsel certifies that all *amici* are tax-exempt nonprofit organizations. None of the *amici* has a corporate parent. No publicly owned company owns 10% or more stock in any of the *amici*.

The following are the interested persons:

1. Alabama Appleseed Center for Law and Justice – Amicus Curiae
2. American Civil Liberties Union Foundation – Amicus Curiae
3. Chenowith, Brad – Counsel for Defendant
4. Chamblee Ryan, Katherine – Counsel for Amici
5. Chicago Appleseed Fund for Justice – Amicus Curiae
6. Chicago Council of Lawyers – Amicus Curiae
7. Civil Rights Corps – Amicus Curiae
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10. Due Process Institute – Amicus Curiae
11. Equal Justice Under Law – Amicus Curiae
12. Fines and Fees Justice Center – Amicus Curiae
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- 14.Lawyers' Committee for Civil Rights of the San Francisco Bay Area –  
Amicus Curiae
- 15.LatinoJustice PRLDEF – Amicus Curiae
- 16.Law Enforcement Action Partnership, Inc. – Amicus Curiae
- 17.Legal Aid Justice Center – Amicus Curiae
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- 19.Motley, Sharon – Plaintiff
- 20.National Center for Law and Economic Justice, Inc. – Amicus Curiae
- 21.The National Legal Aid & Defender Association – Amicus Curiae
- 22.Oklahoma Women's Coalition – Amicus Curiae
- 23.Oregon Law Center – Amicus Curiae
- 24.Southern Legal Counsel, Inc. – Amicus Curiae
- 25.Still She Rises, Inc. – Amicus Curiae
- 26.Taylor, Hal – Defendant
- 27.The First 72+ – Amicus Curiae
- 28.The Justice and Accountability Center of Louisiana – Amicus Curiae
- 29.Tzedec DC – Amicus Curiae
- 30.Watkins, Hon. William Keith – District Court Judge
- 31.West, Micah – Counsel for Plaintiff
- 32.Wilner, Claudia – Counsel for Amici

Date: July 20, 2020

Katherine Chamblee Ryan

Dated: July 20, 2020

/s/ Katherine Chamblee Ryan

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....1  
TABLE OF AUTHORITIES .....2  
INTEREST AND IDENTITY OF AMICI CURIAE .....5  
STATEMENT OF THE ISSUES.....6  
SUMMARY OF THE ARGUMENT .....6  
ARGUMENT .....7  
    I. THE DISTRICT COURT ERRED BY FAILING TO APPLY THE  
    BALANCING TEST MANDATED BY SUPREME COURT AND  
    ELEVENTH CIRCUIT PRECEDENT .....9  
    II. THE EXISTING RESEARCH SHOWS THAT DEBT-BASED  
    LICENSE SUSPENSION DOES NOT FURTHER, AND IN FACT  
    HARMS, STATE INTERESTS .....13  
        A. Debt-Based Suspension of Driver’s Licenses in Alabama .....13  
        B. Debt-Based Driver’s License Revocation Does Not Increase  
        Collection of Traffic Fines and Costs .....17  
        C. The Link Between Debt-Based Driver’s License Revocation and  
        Poverty.....21  
        D. Debt-Based Driver’s License Revocation Harms Local  
        Economies .....24  
        E. Debt-Based Driver’s License Revocation Harms Public Safety  
        and Carries Significant Administrative Costs .....26  
CONCLUSION .....29  
ADDENDUM: organizational statements of the amici .....31  
CERTIFICATE OF COMPLIANCE.....41  
CERTIFICATE OF SERVICE .....42

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**INTEREST AND IDENTITY OF AMICI CURIAE**<sup>1</sup>

Twenty-one nonprofit organizations from across the country join this brief. *Amici* have direct experience working with and advocating on behalf of indigent people who suffer the harms of debt-based driving restrictions.

*Amici* are coalition members of the Free to Drive national campaign. The Free to Drive coalition is a group of more than 100 ideologically diverse organizations nationwide that seeks to end driving restrictions for any reason not related to public safety. The campaign supports the elimination of restrictions on driving privileges—including suspensions, revocations, or limitations on renewal of driver’s licenses or registration—to coerce debt payment or to punish people for missing a court appearance. The campaign and its members recognize that such restrictions are counterproductive and harmful to millions nationwide, particularly the poorest people in our communities.

*Amici* include: Alabama Appleseed Center for Law and Justice, American Civil Liberties Union Foundation, Chicago Appleseed Fund for Justice, Chicago Council of Lawyers, Civil Rights Corps, Due Process Institute, Equal Justice Under Law, Fines and Fees Justice Center, Lawyer’s Committee for Civil Rights of the San

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

Francisco Bay Area, Legal Aid Justice Center, LatinoJustice PRLDEF, Law Enforcement Action Partnership, National Center for Law and Economic Justice, the National Legal Aid & Defender Association, Oklahoma Women’s Coalition, Oregon Law Center, Southern Legal Counsel, Still She Rises, The First 72+, The Justice and Accountability Center of Louisiana, and Tzedek DC.

Further information regarding the mission of each of these organizations has been submitted as an addendum to this brief.

### **STATEMENT OF THE ISSUES**

1. Whether the district court erred in failing to apply the balancing test required by the Supreme Court in *Griffin v. Illinois*, 351 U.S. 12 (1956), and *Bearden v. Georgia*, 461 U.S. 660 (1983)?
2. Whether there is any rational connection between the driver’s license suspension requirements mandated by Alabama Rule of Criminal Procedure 26.11(i)(3) and the state’s purported interests?

### **SUMMARY OF THE ARGUMENT**

Alabama Rule of Criminal Procedure 26.11(i)(3) (“Rule 26.11”), authorizes Alabama courts to suspend licenses for nonpayment of traffic tickets. In evaluating the constitutionality of this rule, the district court erred by failing to apply the standard mandated by *Bearden v. Georgia*, 461 U.S. 660 (1983), which applies to hybrid due process/equal protection claims such as Ms. Motley’s. Instead, the district court incorrectly applied rational basis review, and accepted the state’s purported rationale for the practice of driver’s license suspension—that suspensions

incentivize people to pay their debts. Evidence from Alabama and across the country demonstrates that in fact, debt-based driver's license suspension *undermines* state interests in debt collection, because taking people's driver's licenses prevents them from working and satisfying the basic necessities of life, trapping them in a cycle of poverty that renders them incapable of satisfying what they owe. For these reasons, this court should reverse the judgment below.

### **ARGUMENT**

The Supreme Court recognized more than forty years ago that “driving an automobile [is] a virtual necessity for most Americans.” *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). Driving is “a basic, pervasive, and often necessary mode of transportation to and from one’s home, workplace, and leisure activities.” *Delaware v. Prouse*, 440 U.S. 648, 662 (1979). Most importantly, “[o]nce [driver’s] licenses are issued. . . their continued possession may become essential in the pursuit of a livelihood.” *Bell v. Burson*, 402 U.S. 535, 539 (1971). Indeed, in the United States today, 85.6% of Americans drive to work. United States Census Bureau, *American Community Survey (2017 5-year averages)*, Table S0802 (Means of Transportation to Work by Selected Characteristics) (2017). Alabama far exceeds the national average: 94.2% of all Alabamians working in Alabama (and 97.6% of them who work outside the home) drive to work. United States Census Bureau, *American Community Survey (2018 5-year averages)*, Table B08130 (Means of

Transportation to Work by Place of Work). Public transportation in Alabama is not a viable substitute for driving. Only about 0.33% (that is, a third of one percent) of Alabamians working in Alabama take public transportation to work. Indeed, almost three times as many people walk to work as take public transportation.

Despite the Supreme Court's unequivocal and longstanding recognition of the necessity of driving to provide for oneself and one's family, Alabama Rule of Criminal Procedure 26.11(i)(3) ("Rule 26.11"), authorizes courts to suspend licenses for nonpayment of traffic tickets. The state justifies this practice by asserting that suspensions motivate people to pay their court debt. Overwhelming data demonstrates that in fact, debt-based driver's license suspension undermines state interests in enforcing judgments, promoting personal responsibility, and collecting debt. The reason is simple: taking people's driver's licenses severely limits their employment opportunities, rendering them unable to satisfy the judgment. Moreover, the data demonstrates a clear relationship between license revocation and poverty—the vast majority of those who have their licenses revoked are poor. For these reasons, debt-based suspensions affirmatively harm the economies and the residents of the jurisdictions in which they exist.

Data showing that debt-based suspension actively harms the state's interests, including its purported interest in suspending driver's licenses for unpaid fines and costs, directly relates to the constitutional analysis of Rule 26.11. The test of *Bearden*

*v. Georgia*, which the district court erroneously failed to apply,<sup>2</sup> requires a court to assess “the nature of the individual interest affected, the extent to which it is affected, *the rationality of the connection between legislative means and purpose*, [and] *the existence of alternative means for effectuating the purpose.*” 461 U.S. 660, 666–67 (1983) (brackets in original) (emphasis added) (quoting *Williams v. Illinois*, 399 U.S. 235, 290 (1970) (Harlan, J., concurring)). And under ordinary rational basis review, which the district court applied (again, applying the wrong standard), the rule passes muster only when there is a logical connection between the state’s action and the proffered government interest, and where the state’s action does not impose harms that vastly outweigh any theoretical benefit. Here, there is no such connection.

For this reason, *amici* urge reversal.

**I. THE DISTRICT COURT ERRED BY FAILING TO APPLY THE BALANCING TEST MANDATED BY SUPREME COURT AND ELEVENTH CIRCUIT PRECEDENT**

In a line of cases beginning with *Griffin v. Illinois*, 351 U.S. 12 (1956), and running through *Bearden v. Georgia*, 461 U.S. 660 (1983), the Supreme Court has considered claims of “unlawful discrimination against the indigent in criminal proceedings,” *Walker v. Calhoun*, 901 F.3d 1245, 1259 (11th Cir. 2018), through a particular lens. “Due process and equal protection principles converge in the Court’s

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<sup>2</sup> See Part I, *infra*.

analysis in these cases.” *Bearden*, 461 U.S. at 665. For this reason, when analyzing a *Bearden* claim, the court must employ a balancing test that weighs “the character and intensity of the individual interest at stake, on the one hand, and the State’s justification for its exaction, on the other.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996) (citing *Bearden*, 461 U.S. at 666-667), *see also Bearden*, 461 U.S. at 666.

In this case, the district court correctly recognized that Ms. Motley brought a *Bearden* claim based upon her “allegation that the ‘State is treating the indigent and the non-indigent categorically differently.’” *Motley*, \*15 (quoting *Walker*, 901 F.3d at 1260); *see also Jones v. Gov. of Fl.*, 950 F.3d 795, 817 825 (11th Cir. 2020) (“[A] wealth classification that punishes those genuinely unable to pay fees, fines, and restitution more harshly than those able to pay” states a claim under *Griffin/Bearden*). The district court then fundamentally erred by applying rational basis review to Ms. Motley’s *Bearden* claim, an approach that conflicts with Supreme Court and Eleventh Circuit precedent.

In *Jones*, the court directly applied *Bearden*’s balancing test to Florida’s felon re-enfranchisement scheme, which required payment of outstanding fines and fees as a condition of reinstatement, “because differential punishment based on wealth strikes at the heart of *Griffin*’s equality principle.” 950 F.3d at 820, *see also id.* at 825-27. And in *Walker*, the Eleventh Circuit held that proper adjudication of a *Bearden* claim “requires analysis of the governmental and private interests that are

affected.” 901 F.3d at 1265 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). The district court’s rational basis analysis failed to comport with this mandate. The district court did not consider the private interests affected by Rule 26.11, nor did it assess whether Rule 26.11 in fact furthers any legitimate governmental interest. It does not.

The district court’s reasoning reflects a fundamental misunderstanding of *Griffin, Bearden* and their progeny. The district court refused to apply the *Bearden* test to Ms. Motley’s *Bearden* claim because neither the Supreme Court nor the Eleventh Circuit had previously applied the test to a driver’s license suspension scheme. *Motley*, \*5. But a state system that takes driver’s licenses from people too poor to pay criminal fines and fees—and does so exclusively because of their inability to pay and not because of their culpability or driving conduct—is precisely the type of punitive state sanction to which *Bearden* applies. It is a “sanction[ ] of the *Williams* genre” that is “wholly contingent on one’s ability to pay” and “appl[ies] to all indigents and do[es] not reach anyone outside that class.” *M.L.B.*, 519 U.S. 102, 127 (1996); *see generally Williams v. Illinois*, 399 U.S. 235, 242 (1970) (discussing a state statute that “in operative effect exposes only indigents to the risk” of the sanction).

*Bearden*’s test applies to *Bearden* claims regardless of the interest at stake. A fine, not imprisonment, was the only sanction at issue in an early case in the

*Griffin/Bearden* line, *Mayer v. City of Chicago*, 404 U.S. 189 (1971), in which the Court observed that “[a] fine may bear as heavily on an indigent accused as forced confinement” and specifically mentioned the loss of a professional license as a “collateral consequence[.]” that could be “even more serious” than confinement. *Id.* at 197. In both *M.L.B.* and *Mayer*, the Court struck down the sanction as applied to the indigent because the state’s “pocketbook interest . . . was unimpressive when measured against the stakes for the defendant.” *See M.L.B.*, 519 U.S. at 121 (discussing and applying *Mayer*).

In *Bearden* itself, the Supreme Court expressly signaled the doctrine’s application to diverse factual contexts. The first prong of the *Bearden* test directs consideration of “the nature of the individual interest affected,” 461 U.S. at 666-67, demonstrating that the Supreme Court contemplated its test applying to multiple kinds of interests. The strength of the individual interest must then be balanced against the government’s interest and the rationality of the state-imposed sanction, and the court must consider whether alternative means exist to effectuate the State’s legislative purpose. *Bearden*, 461 U.S. at 666-667.

Under *Bearden*, the court must make “a careful inquiry” into whether a proposed sanction for nonpayment would in fact further the state’s interests. 461 U.S. at 666, 671–72. As the data discussed below establish, driver’s license revocation is just as pointless as jailing when used to attempt to coerce payment from



people who do not have money to pay. The revocation of a driver’s license—and with it, a low-income person’s ability to work, get to school, care for children and elderly parents, seek medical care, and even grocery shop—is yet another extreme deprivation for which the State must seek an alternative rather than visiting its consequences only upon the poor.

In *Bearden*, the “alternative measures of punishment” the Court suggested included “extend[ing] the time for making payments, or reduc[ing] the fine, or direct[ing] that the probationer perform some form of labor or public service in lieu of the fine.” 461 U.S. at 672. And indeed, the empirical studies that *amici* discuss demonstrate that jurisdictions that have enacted these kinds of alternatives have successfully enforced and collected traffic tickets—rather than resorting to debt-based revocation schemes and the senseless harm they inflict to both low-income citizens and the state’s own collection efforts.

## **II. THE EXISTING RESEARCH SHOWS THAT DEBT-BASED LICENSE SUSPENSION DOES NOT FURTHER, AND IN FACT HARMS, STATE INTERESTS**

### **A. Debt-Based Suspension of Driver’s Licenses in Alabama**

Rule 26.11 allows for the suspension of drivers’ licenses as a punishment for unpaid traffic tickets and associated court costs, even where the people affected are indigent and have no ability to pay the money. On top of paying of outstanding debts, people whose licenses have been suspended are also charged a reinstatement fee of

at least \$100, of which \$25 goes to the Department of Public Safety Highway Traffic Safety Fund and \$75 to the state General Fund. As of April 20, 2018, according to the Alabama Law Enforcement Agency, 22,735 Alabamians had their licenses suspended for nonpayment of fines and costs. On top of that, a staggering 80,593 Alabamians had suspended licenses for failure to appear at hearings regarding their nonpayment of traffic tickets.<sup>3</sup>

The consequences for this group of people of having their licenses suspended is dire. In 2018, Alabama Appleseed conducted a survey of Alabamians whose licenses were suspended due to unpaid tickets. They found that:

- 89% had to choose between basic needs like food, utilities, or medicine and paying what they owed;
- 73% were forced to request charity that they wouldn't otherwise have needed. 48% took out a high-interest payday loan to pay off their tickets;
- 64% were jailed in connection with unpaid traffic debt, disrupting their family lives and employment and costing the state for every day they spent in lockup;

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<sup>3</sup> Alabama Appleseed Center for Law and Justice, *Stalled: How Alabama's Destructive Practice of Suspending Driver's Licenses for Unpaid Traffic Debt Hurts People and Slows Economic Progress*, available at <https://www.alabamaappleseed.org/wp-content/uploads/2020/02/Alabama-Appleseed-Stalled-Brief-1.pdf> (last visited July 13, 2020).

- 30% admitted to committing crimes like selling drugs or stealing to pay off their tickets.

44.9% of justice-involved participants in the Appleseed survey had had their drivers' licenses suspended due to non-payment of court debt; 45.5% of justice-involved survey-takers who had their driver's licenses suspended for non-payment had been declared indigent.<sup>4</sup> Indigent justice-involved individuals who had never committed a felony (i.e., they had only been charged with violations and misdemeanor offenses) were more likely to have their licenses suspended than the overall population. 51.5% of those surveyed who had never committed a felony had had their drivers' licenses suspended due to failure to make payments. The median amount owed was \$869. In interviews, many people described being unable to find work or being fired from jobs that had nothing to do with driving because their licenses were suspended.

The stories behind suspension underline the degree to which driver's license suspension upends the lives of those who live paycheck-to-paycheck. The named plaintiffs in *McCullough v. City of Montgomery*, 2020 U.S. Dist. LEXIS 118754 (M.D. Ala. Jul. 7, 2020), represent thousands of putative class members who were

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<sup>4</sup> Alabama Appleseed, *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide*, available at <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf> (last visited July 13, 2020).

jailed in violation of their *Bearden* rights because they could not afford to pay traffic fines and fees. The arrests and fines piled up in part because these plaintiffs had suspended licenses, yet had to keep driving in order to get to work, leading to frequent police encounters, followed by arrests and prosecutions for driving while suspended. A recent *Reuters* article tells some of these plaintiffs stories in harrowing detail. *See generally* Michael Berens & John Bishop, “Objections Overruled: Thousands of U.S. Judges Who Broke Laws or Oaths Remain on the Bench,” *Reuters*, available at <https://www.reuters.com/investigates/special-report/usa-judges-misconduct/>.

Marquita Johnson lost her license because she could not afford to pay a single traffic ticket, but she still needed to drive to go to work, shop for groceries, and take her children to school and medical appointments. Ms. Johnson accumulated thousands of dollars in traffic tickets she could not afford to pay, and ultimately spent ten months in jail for the unpaid debt. During this time, she could not care for her young children. They were dispersed to different homes, where two of them were abused. Today, years later, her daughters still suffer from this trauma.

Angela McCullough, a single mother of four children including an adult child with schizophrenia, had no driver’s license and \$1,350 in traffic debt she could not afford to pay. Stopped and arrested by police, she spent 20 days in jail for unpaid tickets before deciding to use her federal student loan money to pay off her tickets

so she could get out of jail. During this time, her disabled son was institutionalized in a mental hospital because she could not care for him. At the time of her arrest, Ms. McCullough was in her last semester at Faulkner University, where she had maintained a 3.87 GPA and planned to graduate with a degree that would allow her to work as a mental health counselor. That dream fell by the wayside when she had to spend the last of her student loan money to get out of jail. Having maxed out her student loan resources, Ms. McCullough never had the resources to finish her degree.

The overwhelming majority of people in Alabama who experience suspension for nonpayment of traffic fines and costs are left without a license for many years, and a large number suffer effectively permanent suspension—suspension that leads to dire consequences in terms of their ability to achieve the basic necessities of life. License suspension is *ineffective* at coercing payment from this group of people—as illustrated by the number of people who remain suspended over long periods of time. And while some people faced with the threat or fact of suspension pay their fines and costs, data from jurisdictions that have abandoned suspension or revocation demonstrates that *these people would pay anyway*. See Part II(B), *infra* (discussing, in particular, data from California). License suspension, then, serves no purpose other than to punish people for their poverty.

**B. Debt-Based Driver’s License Revocation Does Not Increase Collection of Traffic Fines and Costs**

*Amici* have searched for and have been unable to find a single study, analysis, article, or discussion demonstrating that depriving a driver of his or her license makes that person *more* likely to pay outstanding court debt. Indeed, the empirical evidence that exists to date illustrates precisely the contrary, undercutting the state’s proffered rationale for the statute, that it would “motivate” individuals “otherwise disinclined” to pay their fines and costs. The data shows that revocation as a collection scheme is irrational as a means of collection of outstanding debts, because those debts remain uncollected during the years—sometimes decades—that people are without their licenses.

**California:** In June 2017, the State of California stopped suspending driver’s licenses for nonpayment of traffic tickets. The Governor’s signing statement report for that bill concluded that there “does not appear to be a strong connection between suspending someone’s driver’s license and collecting their fine or penalty.” Fines and Fees Justice Ctr., California AB 103 – Public Safety Omnibus (June 27, 2017), <https://finesandfeesjusticecenter.org/articles/california-ab-103-public-safety-omnibus-budget-trailer-bill-ends-drivers-license-suspension-for-unpaid-fines-and-fees/>. In lieu of suspension, the State of California now offers an array of less punitive options including an ability to pay determination upon request and opportunities to request reduced payments, payment plans, or community service instead of monetary payment. After eliminating suspensions and introducing

payment flexibility, the State of California experienced an 8.9% *increase* in collections on newly issued tickets, from \$840.3 million in 2016–17 to \$922.3 million in 2017–18. Judicial Council of California, *Report on the Statewide Collection of Delinquent Court-Ordered Debt for 2017–18* 2 (2018), [https://www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463\\_010.pdf](https://www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463_010.pdf). The state Judicial Council attributes that increase to the court’s “implement[ation of] several mechanisms to help individuals pay or resolve their court-ordered debt,” including the end of driver’s license suspensions. *Id.*<sup>5</sup> In 2019, revenue collections from court-ordered debt declined slightly, but the Judicial Council attributes the decline to the reduced criminal filings. Judicial Council of California, *Report on the Statewide Collection of Delinquent Court-Ordered Debt for 2018-2019* 3 (2019), [https://www.courts.ca.gov/documents/lr-2019-JC-statewide-court-ordered-debt-2018-19-pc1463\\_010.pdf](https://www.courts.ca.gov/documents/lr-2019-JC-statewide-court-ordered-debt-2018-19-pc1463_010.pdf).

**Dallas-Fort Worth, TX:** The State of Texas offers a program known as OmniBase to local courts. Under this program, courts may refer people to OmniBase if they do not pay traffic fines and costs; OmniBase then prevents them from renewing their licenses until they pay the fines and costs. The program thus functions

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<sup>5</sup> Although California also reported a 1.5% reduction in collections on already-defaulted tickets, the state attributed that reduction to the fact that fewer tickets entered into default thanks to the court’s newfound ability to help people resolve their tickets prior to default. *Id.* at 1–2.

similarly to a license suspension scheme, but with suspension deferred to the time of license renewal. Dallas and Fort Worth form a single metropolitan area, but the Dallas Municipal Court makes heavy use of OmniBase while the Fort Worth Municipal Court does not use it at all. See Texas Fair Defense Project & Texas Appleseed, *Driven by Debt: How Driver's License Suspensions for Unpaid Fines and Fees Hurt Texas Families*, <http://stories.texasappleseed.org/driven-by-debt> (last visited Aug. 22, 2019). Yet the Fort Worth Municipal Court collects more revenue than the Dallas Municipal Court (\$116 per case in Fort Worth as compared to \$113 per case in Dallas). *Id.* OmniBase data also underscores the close connection between license suspension/revocation and poverty—the Dallas holds were concentrated in lower-income zip codes. *Id.*; see *infra* Part C.

**Palm Beach County, FL:** The State of Florida suspends driver's licenses for nonpayment of criminal court debt and traffic tickets. In 2014, Palm Beach County instituted a program to reduce suspensions by making it easier for people to pay. The Palm Beach County Clerk began offering payment plans as low as \$20 per month. When people miss payments, the clerk calls them, provides a payment reminder, and asks them whether they need to adjust the payments. According to information and statistics prepared by the Clerk and on file with *amicus curiae* Fines and Fees Justice Center, since instituting this program Palm Beach County has reduced suspensions by 75% in non-traffic cases and 36% in traffic cases. Driving while suspended



charges are down by 23%. And payments and revenue are up dramatically, from \$50,659.97 in 2014 to more than \$1.6 million in 2017.

Data from these three jurisdictions show that revoking or suspending licenses for nonpayment of traffic tickets does not in fact affect the rate at which people pay. California eliminated suspensions entirely and improved collections. In Texas, a comparison between two neighboring jurisdictions with different suspension policies showed no substantial difference in collection rates (if anything, the jurisdiction that eschews suspensions collected more). And Palm Beach County saw significant revenue growth when it focused on helping people meet their obligations rather than punishing them for nonpayment.

### **C. The Link Between Debt-Based Driver's License Revocation and Poverty**

Data from jurisdiction after jurisdiction shows a tight link between poverty and debt-based suspension or revocation. For example:

**Tennessee:** Statistical analysis presented to the court in *Robinson v. Purkey*, No. 3:17-CV-01263, 2018 WL 5023330, at \*11 (M.D. Tenn. Oct. 16, 2018), *rev'd and remanded sub nom. Robinson v. Long*, No. 18-6121, 2020 WL 2551889 (6th Cir. May 20, 2020), examined suspension rates across every Tennessee county and concluded that poverty drives suspensions. Specifically, regression analysis revealed that adding a poor White person to a county would produce 3.5 times the number of suspensions in that county as adding one additional non-poor person and adding a

poor African-American person would produce nearly 20 times that number. Declaration of Prof. Dain Donelson in Support of Plaintiffs’ Motion to Certify Subclasses at ¶ 24, *Robinson v. Purkey*, No. 3:17-cv-01263 (M.D. Tenn. Sept. 13, 2017), ECF No. 173-2. Analysis of unreinstated suspensions provided particularly valuable insight because, in Tennessee, reinstatement requires payment. When looking specifically at unreinstated suspensions, the data analysis showed that people who could afford to reinstate their licenses did: “Virtually all persons in Tennessee with unreinstated suspensions are poor.” *Id.*

**California:** Prior to ending suspensions in June 2017, the State of California had a very high suspension rate. Data revealed that suspensions highly correlated with poverty; zip codes with higher suspension rates had lower household incomes. *Back on the Road California, Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 7 (2016), [http://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BOTRCA.pdf](http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf). More detailed data from Los Angeles and San Francisco Counties revealed that arrests for driving on a suspended license—which flow directly from debt-driven suspensions—are concentrated in areas with high poverty, high unemployment, and low household income. *Id.* at 9.

**New York:** In 2016, the suspension rate in New York’s ten poorest zip codes was nearly nine times higher than the suspension rate in the ten wealthiest zip codes.

Driven by Justice Coalition, *Opportunity Suspended: How New York's Traffic Debt Suspension Laws Disproportionately Harm Low-Income Communities and Communities of Color*, [www.drivenbyjustice.org](http://www.drivenbyjustice.org) (last visited Aug. 22, 2019). Nearly half of suspensions for non-payment of traffic tickets issued in 2016 remained in effect for longer than one year. *Id.*

**Ohio:** A 2017 analysis by a consortium of Cleveland journalists found a dramatic association between license suspensions and poverty in Ohio. Zip codes where fewer than 20% of residents lived below 200% of the Federal Poverty Level (FPL) saw rates of eleven or fewer suspensions per thousand residents on average. Sara Dorn & Rich Exner, *License suspensions disproportionately imposed on poor Ohioans, trapping them in debt*, [Cleveland.com](http://Cleveland.com), [https://www.cleveland.com/metro/2017/03/license\\_suspensions\\_disproport\\_1.html](https://www.cleveland.com/metro/2017/03/license_suspensions_disproport_1.html) (last visited Aug. 22, 2019). That number grew exponentially with every 10% increase in the number of low-income residents; zip codes where 80–100% of residents had low incomes saw suspension rates of 172 out of 1000 on average. *Id.*

The data underline an intuitive proposition: people living in poverty are far more likely to have their driver's licenses suspended or revoked (because they cannot afford to pay fines and costs) and to lose their licenses virtually permanently, because suspension/revocation triggers a vicious cycle of unemployment and

compounding court debt from which they cannot escape. The empirical research is clear that driver's license revocation only punishes the poor.

#### **D. Debt-Based Driver's License Revocation Harms Local Economies**

Not only does debt-based driver's license revocation fail to improve collections, but studies show that it wreaks economic harm to communities by sharply curtailing people's ability to work and contribute to the local economy. Two jurisdictions have commissioned academic studies to examine the economic impact of driver's license revocation and reinstatement. Both studies found that debt-based revocation had devastating effects.

**Phoenix, AZ:** The State of Arizona mandates suspension for nonpayment of traffic tickets. As a result, many low-income drivers throughout the state lost access to driving privileges. The Phoenix municipal court launched a program to assist low-income drivers to reinstate their driver's licenses and commissioned a study of the impact and effectiveness of the program. The study found that, among people who had participated in the program for at least three months, 52.9% reported losing a job as a direct consequence of losing their license. Seidman Research Institute, *The City of Phoenix Municipal Court's Compliance Assistance Program, 2016: An Economic Assessment* 21 (2017),

<https://www.azcourts.gov/Portals/74/TFFAIR/Resources/SeidmanResearchInstituteReport2017.pdf>. The median reported income loss among program participants was

\$36,800 per year. *Id.* Over and above these reported losses, among people who retained their jobs but could not drive to work, the study authors estimated an additional loss of \$9,572.20 to \$19,350 per year due to lost income opportunities necessitated by increased travel time. *Id.* at 22.

Under the program, the Phoenix Municipal Court reduced participants' debt burdens to manageable amounts, placed people on payment plans, and reinstated their driver's licenses. Fifty-three percent of participants reported that they found a new job as a direct result of increased mobility from a reinstated driver's license. *Id.* at 23. About 41% of participants reported an increase in income after joining the program, with a median increase of \$24,000 per year. *Id.* The study estimated the positive economic effects of license reinstatement for the nine-month study period at \$76.5 million in increased household spending and an overall growth in GDP of \$149.6 million. *Id.*

**New Jersey:** A New Jersey study found that 42% of suspended drivers lost their jobs along with their driving privileges, and of those drivers, 45% could not find another job. Jon A. Carnegie and Ian M. Voorhees, *Driver's License Suspensions, Impacts and Fairness Study* 56 (2007), <https://www.nj.gov/transportation/business/research/reports/FHWA-NJ-2007-020-V1.pdf>. Even among those who found another job, 88% reported a decrease in income. *Id.*

**E. Debt-Based Driver's License Revocation Harms Public Safety and Carries Significant Administrative Costs**

Debt-based driver's license revocation harms public safety by forcing police and prosecutors to spend their time processing people who pose no harm to public safety, thus diverting their time and attention from true public safety threats. Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, Urb. Aff. Rev., at \*24 (August 2018), [https://www.law.nyu.edu/sites/default/files/upload\\_documents/YOU\\_policing.pdf](https://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf) (preprint version).

Washington State has attempted to measure the costs of devoting so many law enforcement resources to license suspension offenses that bore no relation to public safety. In 2015, Washington State spent an estimated 70,848 hours addressing license suspensions for non-driving offenses. Joshua Aiken, Prison Policy Initiative, *Reinstating Common Sense* (December 12, 2016), <https://www.prisonpolicy.org/driving/national.html>. These hours represent thousands of hours spent detaining and questioning individuals who pose no risk to public safety and millions of dollars wasted. Police estimated that each arrest for driving while suspended consumed nine hours of officer time that could have been spent more productively. Andrea Marsh, National Center for State Courts *Rethinking Drivers' License Suspensions for Nonpayment of Fines and Fees* 23 (2017), <https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/787>; *see also*

Shaila Dewan, *Driver's License Suspensions Create Cycle of Debt* (N.Y. Times, April 15, 2015) <https://www.nytimes.com/2015/04/15/us/with-drivers-license-suspensions-a-cycle-of-debt.html> (reducing license suspensions in Washington State saved an estimated 4,500 hours of patrol officers' time).

Moreover, suspensions beget more criminal prosecutions because three quarters of suspended drivers continue to drive, risking arrest for driving on a suspended license. Marsh, *supra*, at 22. Not surprisingly, courts and jails across the country are filled with people whose only crime is driving on a suspended license arising from an inability to pay traffic fines and costs. In Texas, for example, debt-based license suspensions produced more than 400,000 new driving-while-suspended charges over a three-year period, and driver's license offenses accounted for six to 20 percent of jail admissions. *Id.* at 23.

Recently, some prosecutors faced with limited resources and overwhelming dockets have announced that they no longer have the resources to prosecute people for driving with debt-based license suspensions or revocations. Traffic violations already occupy more than half of state court case loads. American Association of Motor Vehicle Administrators (AAMVA), *Reducing Suspended Drivers and Alternative Reinstatement Best Practices* 18 (Nov. 2018), <https://www.aamva.org/Best-Practices/> (download link on website).

In Chicago, the Cook County State’s Attorney, citing a concern with costs, ended prosecutions of misdemeanor cases of driving without a suspended license when the underlying cause was “failure to pay tickets, fees, or fines.” Melissa Sanchez, *Some States No Longer Suspend Driver’s Licenses for Unpaid Fines. Will Illinois Join Them?* (ProPublica Illinois Mar. 15, 2008), available at <https://www.propublica.org/article/illinois-license-suspensions>. The State’s Attorney estimated that roughly sixty percent of cases in 2016 of driving on a suspended license stemmed from debt. *Id.* The office stated that the new policy allowed it to shift prosecutors to “matters more critical to public safety.” *Id.* And in Memphis, Tennessee, a similar policy change eliminated 43% of the general sessions (misdemeanor) docket. Katherine Burgess, *Shelby County DA’s Office Stops Prosecuting Many Cases of Driving with a Revoked License* (Memphis Commercial Appeal Oct. 19, 2018), <https://www.commercialappeal.com/story/news/2018/10/19/shelby-county-da-revoked-drivers-license-cases/1694404002/>.

Finally, license suspension harms public safety by causing more drivers on the roads to lack insurance. Unlicensed drivers, if they can obtain insurance at all, must resort to high-cost policies meant for risky drivers, and the price premium continues even after the driver obtains reinstatement. In New Jersey, for example, more than half of those with a history of suspension reported that they could not



afford the increased cost of auto insurance resulting from the suspension. Carnegie & Voorhees, *supra*, at 56. This perpetuates a vicious cycle, as individuals who cannot afford to continue their insurance coverage must nonetheless continue to drive to fulfill the basic necessities of life.

### CONCLUSION

Because the existing research unequivocally shows no demonstrable relationship between Alabama's debt-based driver's license revocation scheme and any of the state's purported interests, and because the district court ignored the absence of this link, *amici curiae* respectfully urge reversal of the district court's decision.

DATED: July 20, 2020

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**ADDENDUM: ORGANIZATIONAL STATEMENTS OF THE AMICI**

The **Alabama Appleseed Center for Law and Justice** (“Alabama Appleseed”) is a non-profit, non-partisan 501(c)(3) organization founded in 1999 whose mission is to work to achieve justice and equity for all Alabamians. Alabama Appleseed uses original research to advance policy change and fight for racial and economic justice, dismantle the school to prison pipeline, and end mass incarceration.

The **American Civil Liberties Union** (“ACLU”) is a nationwide, non-profit, non-partisan organization of more than 1.6 million members dedicated to defending the principles of liberty and equality embodied in the U.S. Constitution and our nation’s civil rights laws. Founded more than 90 years ago, the ACLU has participated in numerous cases before this Court involving the scope and application of constitutional rights, both as direct counsel and as amicus curiae. Through its Racial Justice Program, the ACLU engages in nationwide litigation and advocacy to enforce and protect the constitutional rights of impoverished people against unlawful fine, fee, and forfeiture practices.

**Civil Rights Corps** is a non-profit organization dedicated to challenging systemic injustice in the American legal system. We work with individuals accused and convicted of crimes, their families and communities, people currently or formerly incarcerated, activists, organizers, judges, and government officials to

challenge mass human caging and to create a legal system that promotes equality and human freedom.

The Collaboration for Justice—**Chicago Appleseed Fund for Justice** and the **Chicago Council of Lawyers**—work to promote equity and full access to justice for all in our courts and in the agencies which operate within them. Chicago Appleseed is a 501 (c)(3) research and advocacy organization and the Chicago Council of Lawyers is a nonpartisan public interest bar association. We promote systemic reforms which recognize the intersection of social justice, racial justice, and economic justice with court systems, administrative agencies and government regulatory functions. In this work, are members of the Transit Table Coalition, which passed the License to Work Act in Illinois in 2020 that ends drivers license suspension for some non-moving violations. The Collaboration for Justice also worked to draft and pass The Criminal & Traffic Assessment Act in Illinois in 2018, eliminating some court fines and fees and clarifying procedures for discretionary ones.

**The Due Process Institute** is a nonprofit, bipartisan, public-interest organization that works to honor, preserve, and restore procedural fairness in the criminal justice system through litigation, advocacy, and education.

**Equal Justice Under Law** is a nonprofit law organization dedicated to achieving equality in the criminal system and ending cycles of poverty across the

nation. We seek to end the criminalization of poverty wherever it occurs. We have filed lawsuits in Michigan, Montana, Texas, and Missouri challenging driver's license suspensions for those unable to pay court debt. Through our work and our clients, we understand that driving is a critical factor in people's lives allowing them to get to and from work, doctor's appointments, and family obligations. Taking away a person's ability to drive because for debt they are unable to pay is simply punishing them for being poor and also inhibits their ability to earn income and repay their debt. This policy is impractical, unjust, and unconstitutional.

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

**LatinoJustice PRLDEF** is a national not-for-profit civil rights legal defense fund that advocates for and defends the constitutional rights of all Latinos under the law. Since its founding in 1972, LatinoJustice's mission has been to promote the civic participation of the greater pan-Latino community, to cultivate new Latino community leaders, and to engage in and support law reform cases advancing the civil rights of all Latinos, particularly in the areas of criminal justice and employment. LatinoJustice supports Appellants/Plaintiffs in this appeal because

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

**The Law Enforcement Action Partnership** is an organization of police, prosecutors, judges, and other criminal justice professionals who believe that the practice of suspending drivers' licenses for unpaid fees is a waste of law enforcement and judicial resources, makes it less likely that drivers will maintain insurance, and is generally damaging to public safety.

**The Lawyers' Committee for Civil Rights of the San Francisco Bay Area** ("LCCR") works to advance, protect and promote the legal rights of communities of color, and low-income persons, immigrants, and refugees. Assisted by pro bono attorneys, LCCR provides free legal assistance and representation to individuals on civil legal matters through direct services, impact litigation and policy advocacy. LCCR successfully litigated a case that led to the end of license suspensions for unpaid debt in California, and continues to advocate for fines and fees reform in traffic and criminal court.

**Legal Aid Justice Center (LAJC)** is a non-profit organization located in Virginia committed to battling poverty, racism, and injustice through individual legal representation, as well as group and class action litigation and non-litigation advocacy. Among other efforts, LAJC has worked to bring attention to court debt recoupment laws that deprive indigent and low-income people of their driver's licenses. Nearly one million people had driver's license suspensions due to Virginia's court debt driver's license suspension law, which was repealed effective July 1, 2020. We have engaged in legislative and administrative advocacy and public education, and filed a case (*Stinnie v. Holcomb*, No. 3:16-CV-00044-NKM (W.D. Va.)) highlighting how Virginia's law violated the Constitution's guarantees of due process and equal protection.

**The National Center for Law and Economic Justice ("NCLEJ")** advances economic justice for low-income families, individuals, and communities across the country through impact litigation, policy advocacy, and support of grassroots organizing. NCLEJ fights discrimination against people of color, women, immigrants, and works to build systems that provide economic security and full participation in society for all. NCLEJ has worked extensively to secure low-income people's rights to access driver's licenses, including by filing class action litigation in Tennessee and co-founding the statewide Driven by Justice coalition in New York.

**The National Legal Aid & Defender Association (NLADA)**, founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal aid and public defense services throughout the nation, and provides a wide range of services and benefits to its individual and organizational members. NLADA has more than 700 program members representing more than 15,000 attorneys and tens of thousands more staff who ensure the fair and efficient delivery of legal services in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. NLADA's members include front-line public defenders who fight to uphold their clients' constitutional rights in courtrooms across the country and civil legal aid attorneys who work on a daily basis to ensure that the promise of justice for all is a reality in our civil justice system. NLADA's program members in both the civil and criminal justice systems represent thousands of clients every year who are affected by driver's license suspensions resulting from delinquent traffic fines and other fines and fees assessed by courts.

**Oklahoma Women's Coalition** works to champion the collective power of Oklahomans to advance gender equity and justice. We achieve this mission by dismantling systemic injustice through policy change, advocacy and



education. We honor and amplify the voices most affected by, and often excluded from, decision and policy-making conversations. We envision a socially just and equitable world where everyone has equal opportunity to flourish and to achieve the full potential for individuals and community.

**Oregon Law Center (OLC)** is a non-profit organization that provides free legal help to people struggling to make ends meet. The mission of the Oregon Law Center is to achieve justice for the low-income communities of Oregon by providing a full range of the highest quality legal services.

**Southern Legal Counsel** is a statewide, nonprofit law firm that works proactively to ensure fairness, social justice and government accountability for Floridians through focused, high-impact initiatives, policy advocacy and civil litigation. Over 40+ years, SLC has obtained precedential opinion in a variety of legal areas to redress violations of statutory and constitutional rights. SLC's work on the criminalization of homelessness has involved challenging the suspension of driver's licenses as penalties for nonpayment of court costs and fines to address the significant impacts of such policies that impede low-income individuals from achieving economic and housing stability.

**Still She Rises** represents indigent mothers in the criminal and civil legal systems in Tulsa, Oklahoma. Many of our clients have lost their drivers' licenses because of criminal justice involvement. From their experiences,

SSR is familiar with the debilitating and counter-productive consequences that suspending a license has on a person's life, her economic security, and her community. In addition to the destabilizing effects of suspensions detailed in the amicus brief, drivers' license suspensions tear apart families, inflicting inter-generational trauma. In our clients' struggles to keep together or reunite their families following involvement in the criminal justice system, loss of a drivers' license alone can be fatal. Scrutinized mothers must show consistent, preferably traditional, means of transportation to bring their children to school and appointments, and sometimes to bring themselves to mandatory counseling and other services. In a city with limited and unreliable public transportation, that is usually impossible for clients who have had their licenses suspended. For many families, not having the finances to reinstate a drivers license can lead to permanent family separation. Ending drivers' license suspensions is one component in Still She Rises' fight not only to preserve women's successful exit from the criminal justice system and their economic security, but to preserve their families.

**The First 72+** is a holistic reentry program assisting formerly incarcerated people in New Orleans, Louisiana. We envision a world where prior incarceration is not a barrier to stable housing, gainful employment, and financial security. Our mission is to stop the cycle of incarceration by fostering independence and self-sustainability for formerly incarcerated people. Through the leadership and wisdom

of formerly incarcerated people themselves, the First 72+ transforms the re-entry experience into one that builds on the strengths and abilities of people returning home from prison and ensures that they, their families, and their communities are given the greatest opportunity to grow and thrive. We work alongside our clients to remove all barriers that stand in the way of rejoining and remaining in the workforce, including the imposition and enforcement of fines and fees by local courts that develop into insurmountable debt, and prevent clients from accessing and maintaining driver's licenses.

**The Justice and Accountability Center of Louisiana (JAC)**, founded in 2011, addresses pervasive problems in the post-conviction phase of the criminal justice system and creates a supportive, collaborative space for attorneys and advocates. JAC envisions a just society where all individuals have affordable access to necessary legal and social services. The lack of access for incarcerated populations to appropriate services in the post-conviction phase of the criminal justice system and the lack of support for a positive reentry of people previously incarcerated are contrary to notions of fairness and justice. Through our work JAC has seen the collateral consequences and the impacts they have on obtaining driver's licenses. In Louisiana, and nationally, driver's licenses serve as a primary means for upward mobility. Obtaining a driver's license can mean getting to work consistently in our rural bayou communities and as equally important in our urban cities that do

not have well laid out public transit. Driver's licenses lead to some of the best paying jobs including working for the transit authority or ride share programs. JAC is committed to tearing down collateral consequences and the barriers imposed including but not limited to issues of driver license issuances and suspensions.

**Tzedek DC** is a nonprofit organization dedicated to safeguarding the rights and interests of low- and moderate-income District of Columbia residents facing debt-related crises. Headquartered as an independent public interest center at the University of the District of Columbia David A. Clarke School of Law, our work is aided by law students and other volunteers. Tzedek DC and our client communities have a substantial interest in ensuring that the rules governing the suspension of drivers' licenses comply with constitutional due process requirements and basic principles requirements and basic principles of fairness.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,123 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman style, with 14-point font.

DATED: July 20, 2020

/s/ Katherine Chamblee Ryan  
*Counsel for Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I filed the foregoing *Amici Curiae* Brief of the Free to Drive Coalition in Support of Plaintiffs-Appellants with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

DATED: July 20, 2020

/s/ Katherine Chamblee Ryan

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