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DRIVER'S LICENSE SUSPENSION FOR UNPAID FINES AND FEES: THE MOVEMENT FOR REFORM

Joni Hirsch & Priya Sarathy Jones*
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ABSTRACT

Nearly eleven million people in the United States have a suspended driver's license for unpaid fines and fees. Laws that suspend, revoke, or prevent renewal of driver's licenses and/or restrict driving privileges (i.e., registration holds and non-renewals) for nonpayment of traffic- and court-related debt criminalize poverty and disproportionately impact those with a lower economic status. These unproductive and harmful debt-based restrictions not only fail to increase collections of fines and fees, but also divert important public resources for law enforcement and courts away from public safety. The primary way in which these restrictions manifest themselves is through driver's license suspensions, which are the focus of this article. However, several states also hold or suspend registrations or other required compliance documents, creating the same types of complications that result from a suspended license. The racial disparities of debt-based driver's license suspensions are even more troubling, as individuals of color are more likely to experience poverty and to be stopped by law enforcement, as well as ticketed, arrested, charged, and convicted for traffic violations. To date, twenty-two states and Washington, D.C. have passed reforms that curb or eliminate the use of driver's license suspensions and driving privilege restrictions for unpaid fines and fees. While most states continue to suspend, revoke, or prohibit license and/or vehicle compliance renewals for those with unpaid court debt, a growing movement for reform has taken hold. This Article will discuss the imperative for stopping debt-based restrictions and examine the rationales and impacts of two pathways to reform: litigation and legislation. This Article will lay out specific factors that jurisdictions should consider in their reform approach. Careful evaluation of these factors will ensure the greatest benefit while posing the least harm to those most impacted by these policies.

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INTRODUCTION & BACKGROUND

Driver's license suspensions for unpaid traffic-related fines and court debt lead millions of people in the U.S. to lose their ability to drive, simply because they are unable to afford payment. The Free to Drive campaign¹ conservatively estimates that eleven million people currently have a suspended driver's license due to unpaid debt.²

While momentum for reform has increased over the past few years, driver's license suspensions for unpaid traffic, toll, misdemeanor, and/or felony fines and fees remain a widespread, harmful, and counter-productive policy nationwide, with most states and Washington, D.C., still suspending, revoking, or refusing to renew driver's licenses.³ The consequences of debt-related driver's license suspension are dire. They can limit individuals' access to employment (and thus their ability to earn income to pay off debt), healthcare, family, and other necessities, often for no reason other than their inability to pay. Debt-based driver's license suspensions are especially destructive to communities of color, as Black and Brown individuals are more likely to experience poverty and to be stopped by law enforcement, as well as ticketed, arrested, charged, and convicted for traffic violations.⁴

1. The Free to Drive campaign is a coalition of ideologically diverse organizations committed to the sharing of information and resources related to driver's license suspension for unpaid court debt. FREE TO DRIVE, <https://freetodrive.org/> [<https://perma.cc/8L6H-LAUN>] (last visited Feb. 7, 2021).

2. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, FREE TO DRIVE, <https://www.freetodrive.org/maps/#page-content> [<https://perma.cc/8ZDA-FAVZ>] (last visited Apr. 13, 2021); see also *Poverty Should Never Determine Who Is Free to Drive*, FREE TO DRIVE, <https://www.freetodrive.org/wp-content/uploads/2019/09/Fact-Sheet-Poverty-Should-Never-Determine-Who-is-Free-to-Drive.pdf> [<https://perma.cc/F2V7-X9G5>] (last visited May 3, 2021).

3. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

4. N.Y. L. SCH. RACIAL JUST. PROJECT, DRIVING WHILE BLACK AND LATINX: STOPS, FINES, FEES, AND UNJUST DEBTS (2020), <https://finesandfeesjusticecenter.org/content/uploads/2020/02/RJP.->

These state suspension laws purport to incentivize individuals to pay their traffic- and court-related fines and fees. Used as a “tool” to ensure payment, these laws presume that non-payment is willful—that an individual is simply choosing not to pay (and would, when faced with the risk of driver’s license suspension). However, contact with the criminal legal system is expensive and time-consuming, even for a simple traffic citation. In California, for example, a speeding ticket with a base fine of \$100 ends up costing drivers \$490 after mandatory fees are added.⁵ If a court appearance or payment is missed, the ticket could increase by \$300.⁶ When combined with additional fees, a ticket’s total amount can approach \$1,000.⁷ In many cases, people simply cannot afford to pay, which can trigger additional charges, and—in most states—the loss of a driver’s license.⁸ Even though no studies or research indicate that license suspension or other penalties lead to increased payment,⁹ most states continue to practice this harmful policy.

States suspend driver’s licenses for a variety of debt-based reasons, including failure to pay traffic- and/or court-related fines or fees, failure to appear in court, and failure to pay child support.¹⁰ Research suggests that 40% of all driver’s license suspensions are for drug offenses (unrelated to driving), unpaid traffic tickets, or unpaid child support.¹¹ In Florida, 72% of all driver’s licenses suspension notices are issued for nonpayment of fines and fees.¹² That is nearly 1.2 million suspension notices in Florida alone.¹³ In many cases, suspensions are indefinite

Drivers-License-Suspension.-Final.pdf [https://perma.cc/QLJ4-WRX9] [hereinafter DRIVING WHILE BLACK AND LATINX].

5. ANNETTE CASE & JHUMPA BHATTACHARYA, INSIGHT CTR. FOR CMTY. ECON. DEV., DRIVING INTO DEBT: THE NEED FOR TRAFFIC TICKET FEE REFORM 2–3 (2017), https://insightcced.org/wp-content/uploads/2017/07/May2017_DrivingintoDebt-Final.pdf [https://perma.cc/5LCD-6U6T].

6. *Id.*

7. *Id.*

8. *See, e.g., id.* at 1.

9. *See, e.g.,* AM. ASS’N MOTOR VEHICLE ADM’RS, REDUCING SUSPENDED DRIVERS AND ALTERNATIVE REINSTATEMENT BEST PRACTICES (2018), <https://www.aamva.org/ReducingSuspendedDriversAlternativeReinstatementBP/> [https://perma.cc/N5L5-UKVR] [hereinafter REDUCING SUSPENDED DRIVERS]; William Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspension in North Carolina*, 69 DUKE L.J. 1585 (2020).

10. Jessica Eaglin, *Driver's License Suspensions Perpetuate the Challenges of Criminal Justice Debt*, BRENNAN CTR. FOR JUST. (Apr. 30, 2015), <https://www.brennancenter.org/our-work/analysis-opinion/drivers-license-suspensions-perpetuate-challenges-criminal-justice-debt> [https://perma.cc/RWN6-P6FQ].

11. *Id.*

12. CARSON WHITELEMONS, ASHLEY THOMAS & SARAH COUTURE, FINES & FEES JUST. CTR., DRIVING ON EMPTY: FLORIDA’S COUNTERPRODUCTIVE AND COSTLY DRIVER’S LICENSE SUSPENSION PRACTICES 15–16 (2019), <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf> [https://perma.cc/D7MH-XFVR].

13. *Id.*

(and may require an additional fee to be reinstated), resulting in suspensions that last for decades.¹⁴

These suspension “triggers” are often interrelated, resulting from poverty rather than unsafe driving. A “failure to pay” suspension can follow either unpaid criminal fines and fees or unpaid traffic tickets. In a handful of places, unpaid parking tickets can also lead to a suspended driver’s license.¹⁵ If an individual receives a ticket and does not respond (i.e., they fail to pay the fine, plead not-guilty, or appear at the scheduled hearing) then a “failure to appear” license suspension may be issued.¹⁶ Yet, appearing at a hearing often does not address the fact that an individual cannot pay. As a result, an individual is less likely to appear in court if they already know they are unable to pay the ticket. Thus, someone who cannot pay is likely to receive a suspension regardless of whether they appear in court. Both types of suspensions ultimately punish a person for their inability to afford fines and fees.

Additionally, all fifty states authorize driver’s license suspensions for failure to pay child support.¹⁷ While state laws differ on the degree to which payments must be delinquent before license suspensions occur, all states are federally mandated to enact laws addressing this issue, or their federal child support enforcement funding can be reduced by 5%.¹⁸ The revocation of driver’s licenses for nonpayment of child support remains a key policy with disproportionate effects for those who cannot pay, founded on the same ineffective assumptions underlying traffic and court-related license suspensions.¹⁹

14. WILLIAM CROZIER, BRANDON GARRETT & THOMAS MAHER, DUKE L. CTR. FOR SCI. & JUST., *THE EXPLOSION OF UNPAID CRIMINAL FINES AND FEES IN NORTH CAROLINA* 7 (2020), <https://sites.law.duke.edu/justsciencelab/wp-content/uploads/sites/5/2020/04/CSJ-Criminal-Fines-and-Fees-in-NC-v.7.pdf> [<https://perma.cc/JJ4Y-427S>].

15. See, e.g., S. 2589, 191st Gen. Ct. (Mass. 2020); *Wimberly, Sumter Bill to Remove Suspension of Driver’s License from Unpaid Parking Ticket Penalties Clears Committee*, INSIDER NJ (Aug. 24, 2020, 3:05 PM), <https://www.insidernj.com/press-release/wimberly-sumter-bill-remove-suspension-drivers-license-unpaid-parking-ticket-penalties-clears-committee/> [<https://perma.cc/4TDL-AJZZ>].

16. See Crozier & Garrett, *supra* note 9, at 1585.

17. *License Restrictions for Failure to Pay Child Support*, NAT’L CONF. OF STATE LEGISLATURES (Oct. 14, 2020), <https://www.ncsl.org/research/human-services/license-restrictions-for-failure-to-pay-child-support.aspx> [<https://perma.cc/Y43K-2Z8T>].

18. CATALINA CARBONELL, CHASE CHILDRESS, KRISTINA DANIELS, PRATISHTHA DATE, MADISON GARRETT, ELEANOR LANDSBAUM, MORGAN O’GRADY, KHALAFALLA OSMAN, GREGORY PAAL, TRANG PHAM, ANDREA SATCHWELL, JUAN TAMAYO, ANDREW WINSTON, JINYIN ZHU, HAJAR HASANI, ANDY LOCKE, LESTER SMILEY, MITHRA REDDY, DAYLE DURAN & CAROL MALLORY, NE. U. SCH. LAW & CHI. JOBS COUNCIL, *A NEW DIRECTION: ALTERNATIVES TO DRIVER’S LICENSE SUSPENSION FOR FAILURE TO PAY CHILD SUPPORT* 10 (2018), https://cjc.net/wp-content/uploads/2020/02/Final-Report-A-NEW-DIRECTION_-ALTERNATIVES-TO-DRIVER’S-LICENSE-SUSPENSION-FOR-FAILURE-TO-PAY-CHILD-SUPPORT-2.pdf [<https://perma.cc/UL47-A2LT>].

19. In some states, drug offenses are an additional major trigger of driver’s license suspension. While we will not focus on them here because they are not debt-based, drug-related driver’s license

Debt-based driver's license suspensions are not a race-neutral policy. People of color experience a disproportionate risk of having their licenses suspended,²⁰ driven by systemic policing issues that increase initial contact of people of color with the justice system. The tragic shooting of Philando Castile during a traffic stop in Falcon Heights, Minnesota,²¹ highlighted the often-inescapable cycle of traffic stops, fines, court hearings, driver's license suspensions, and reinstatements. Between July 2002 and his murder in July 2016, police stopped Castile at least forty-six times.²² His citations were often triggered by small issues, like driving at night with an unlit license plate.²³ When Castile was unable to pay off the growing amount of fines and fees (he eventually owed more than \$5,000), his license would get suspended, but he would continue to drive.²⁴ One of Castile's most common traffic citations was for driving with a suspended license.²⁵

According to a 2011 U.S. Department of Justice report, Black drivers are 31% more likely to be pulled over than white drivers.²⁶ Missouri provides a particularly startling statistic: Black drivers are 91% more likely

suspensions are also extremely harmful, restricting the ability to drive for reasons unrelated to unsafe driving. Enacted during the Bush administration in 1990, the Solomon-Lautenberg amendment encourages states to suspend the driver's licenses of individuals who have committed drug offenses. 23 U.S.C. § 159. Forty-six states have opted out of this amendment, but four—Alabama, Arkansas, Florida, and Texas—continue to suspend licenses. *From Busts to Boon: Marijuana Sales Meant Prison in the 1970s, Now It Promises Another Avenue of Tax Revenue*, TIMES WAYNE CNTY. (Feb. 27, 2021), <https://waynetimes.com/news/from-busts-to-boon-marijuana-sales-meant-prison-in-the-1970s-now-it-promises-another-avenue-of-tax-revenue/> [https://perma.cc/LH4W-65Y2]; see also Joshua Aiken, *Reinstating Common Sense: How Driver's License Suspensions for Drug Offenses Unrelated to Driving Are Falling out of Favor*, PRISON POLY INITIATIVE (Dec. 12, 2016), <https://www.prisonpolicy.org/driving/national.html> [https://perma.cc/PY8X-QUD9].

20. See, e.g., Nina R. Joyce, Melissa R. Pfeiffer, Andrew R. Zullo, Jasjit Ahluwalia & Allison E. Curry, *Individual and Geographic Variation in Driver's License Suspensions: Evidence of Disparities by Race, Ethnicity and Income*, 19 J. TRANSP. & HEALTH 10 (2020).

21. Eyder Peralta & Cheryl Corley, *The Driving Life and Death of Philando Castile*, NPR: THE TWO-WAY (July 15, 2016, 4:51 AM), <https://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile> [https://perma.cc/SL2B-KLBB].

22. *Id.*

23. Sharon LaFraniere & Mitch Smith, *Philando Castile Was Pulled over 49 Times in 13 Years, Often for Minor Infractions*, N.Y. TIMES (July 16, 2016), <https://www.nytimes.com/2016/07/17/us/before-philando-castiles-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html> [https://perma.cc/U223-367J].

24. Peralta & Corley, *supra* note 21.

25. *Id.*

26. Christopher Ingraham, *You Really Can Get Pulled Over for Driving While Black*, *Federal Statistics Show*, WASH. POST (Sept. 9, 2014, 2:44 PM), <https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/> [https://perma.cc/WUW6-UFQ6]; see LYNN LANGTON & MATTHEW DUROSE, U.S. DEPT OF JUSTICE, *POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS*, 2011 (revised 2016), <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf> [https://perma.cc/EKD4-ZBT7].

to be stopped than white drivers.²⁷ Further, Black and Brown individuals are disproportionately ticketed, arrested, charged, and convicted for traffic violations, as well as for driving with suspended licenses.²⁸ Given concentrated poverty in communities of color, people of color are also less likely to be able to pay fines and fees, thereby increasing the risk of driver's license suspensions for unpaid debt.²⁹ In New York City, for example, driver's licenses are suspended 2.5 times more in areas with the highest concentrations of people of color than in those with the highest concentrations of white residents.³⁰ The disparity is even greater outside the city—with the suspension rate four times higher in the ten New York zip codes with the highest concentrations of people of color compared to those with the highest concentration of white populations.³¹ Further, though 75% of New York City drivers are white, 87% of those charged with driving with a suspended license are non-white.³² This is a racial issue.

I. THE CASE AGAINST DRIVER'S LICENSE SUSPENSION FOR UNPAID FINES AND FEES

Restrictions on driving privileges should never be used to coerce payment or punish people who cannot afford to pay; they are ineffective, counterproductive, and harmful. For one, these restrictions do not effectively lead to greater collections of fines and fees.³³ License suspensions and restricted driving privileges do not address the root causes of individuals' inability to afford debt payment: economic insecurity and poverty. Rather, suspended driver's licenses create a predicament for low-income drivers: stop driving and potentially lose employment and access to other essential services, or continue to drive on a suspended

27. *Free to Drive Fact Sheet: Poverty Should Never Determine Who Is Free to Drive*, FREE TO DRIVE, <https://www.freetodrive.org/wp-content/uploads/2019/09/Fact-Sheet-Poverty-Should-Never-Determine-Who-is-Free-to-Drive.pdf> [<https://perma.cc/5LLG-SHR9>] (last visited May 31, 2021) [hereinafter *Free to Drive Fact Sheet: Poverty*].

28. DRIVING WHILE BLACK AND LATINX, *supra* note 4.

29. DRIVING WHILE BLACK AND LATINX, *supra* note 4.

30. *Id.*

31. *Id.*

32. *Free to Drive Fact Sheet: Poverty*, *supra* note 27.

33. Tex. Fair Def. Project & Tex. Appleseed, *Driven by Debt: How Driver's License Suspensions Hurt Texas Families*, TEX. APPLESEED, <https://report.texasappleseed.org/driven-by-debt/> [<https://perma.cc/R6LC-Q8K3>] (last visited June 2, 2021) ("Comparing the Dallas and Fort Worth Municipal Courts is particularly telling. The Dallas Municipal Court relies heavily upon OmniBase for enforcement while the Fort Worth Municipal Court reported that it has not used OmniBase at all over the past three years. Yet there is virtually no difference in the revenue per case disposed between the two courts in the most recent year.").

license³⁴ and risk additional fines and fees, criminal charges, or even incarceration. Notably, over 85% of Americans drive to work.³⁵ Losing a license takes away one's ability to commute (in addition, many jobs require a license), buy necessities, access healthcare, and visit family members, pharmacies, grocery stores, hospitals, and other essential services. Studies have directly linked driver's license suspensions to job losses.³⁶ In New Jersey, 42% of people lost their jobs after their driver's license was suspended.³⁷ As previously noted, these barriers to employment, familial obligations, healthcare, and education fall more heavily upon Black and Brown drivers who are disproportionately stopped, ticketed, and arrested. Moreover, the COVID-19 pandemic has exacerbated many of these pre-existing hardships.³⁸

Debt-based driver's license suspensions are also not cost-effective, and in fact divert public resources for law enforcement, courts, and DMVs away from public safety. Law enforcement and court actors waste thousands of hours and millions of dollars that could be devoted to public safety when they are instead citing, stopping, fining, arresting, and prosecuting people for driving on a suspended license or detaining individuals who pose no risk to public safety. In Florida, for example, fewer than 3% of suspension notices are for dangerous driving or other public safety concerns.³⁹ A study conducted by the Colorado DMV estimated that 8,566 hours of staff time is spent on almost 17,000 yearly suspensions unrelated to driving each year (equaling 4.22 full-time employees).⁴⁰ Georgia expected to save \$80,000 in postage costs alone by changing non-driving license suspension laws.⁴¹ Debt-based driver's license suspensions further undermine public safety, as they increase the number of uninsured drivers on the road because car insurance is difficult to obtain for someone whose license has been sus-

34. Studies show that 75% of people continue driving even after their licenses have been suspended for unpaid court debt, thus undermining the rationale that it is a deterrent. REDUCING SUSPENDED DRIVERS, *supra* note 9, at 3. In many cases, it also doesn't prevent individuals from committing the same offenses for which they were initially cited. *Id.*

35. *Free to Drive Fact Sheet: Poverty*, *supra* note 27.

36. *E.g.*, ALAN M. VOORHEES TRANSP. CTR., MOTOR VEHICLES AFFORDABILITY AND FAIRNESS TASK FORCE FINAL REPORT (Feb. 2006); L. WILLIAM SEIDMAN RSCH. INST., THE CITY OF PHOENIX MUNICIPAL COURT'S COMPLIANCE PROGRAM, 2016: AN ECONOMIC ASSESSMENT (2017).

37. *Free to Drive Fact Sheet: Poverty*, *supra* note 27.

38. *See, e.g.*, *The COVID-19 Recession Can't Be Cured with More Fines and Fees*, FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/covid-19-policy-tracker/> [<https://perma.cc/EFC7-ZUT6>] (last visited Apr. 15, 2021).

39. *Suspended in the Sunshine State: Ending the Unfair Practice of Driver's License Suspension for Unpaid Fines and Fees*, FINES & FEES JUST. CTR. (May 26, 2020), <https://finesandfeesjusticecenter.org/story-map/florida-drivers-license-suspensions/> [<https://perma.cc/WR8Z-WJFF>].

40. REDUCING SUSPENDED DRIVERS, *supra* note 28, at 14.

41. Aiken, *supra* note 19.

pended.⁴² A 2021 study indicated that one in eight drivers is uninsured.⁴³ Driving on a suspended license also increases a person's insurance premium 61.3%, placing it in the top four driving infractions that impact the cost of insurance.⁴⁴ The only citations that impact premiums more are DUIs, racing, and hit-and-runs.⁴⁵ The reason for the suspension is not a factor that can mitigate the increase in the insurance premium.⁴⁶ And an increase in uninsured drivers has financial impacts on all drivers.

The overall economic impact of debt-based driver's license suspensions is vast. Suspensions cause people to lose their jobs, thereby limiting their ability to participate in the economy. In a Phoenix study, over 50% of participants whose licenses were suspended lost their jobs, with a median decrease of \$36,800 to their annual income.⁴⁷ The economic impact was underscored when compared to the results of a program which helped drivers repay their debt: the restoration of 7,000 licenses led to an estimated GDP increase of \$149.6 million.⁴⁸

Given the severe, harmful impacts on individuals, as well as the chilling economic effects, driver's license suspensions should only be used in cases of dangerous driving.

II. MOVEMENT FOR REFORM

A flurry of litigation, legislation, organizing, and advocacy around driver's license suspension law has materialized in recent years—often emerging as a bipartisan issue. These efforts are supported by increasing evidence of the laws' ineffectiveness at raising collections, their burden on low-income communities of color, and their cost to governments and the economy.

42. DRIVING WHILE BLACK AND LATINX, *supra* note 4.

43. News Release, *One in Eight Drivers Uninsured*, THE INSTITUTES INS. RSCH. COUNCIL (Mar. 22, 2021), <https://www.insurance-research.org/sites/default/files/downloads/UM%20NR%20032221.pdf> [<https://perma.cc/RQ3M-WHTX>] (last visited May 3, 2021).

44. ZEBRA, STATE OF AUTO INSURANCE REPORT 2021, 20 (2021), <https://www.thezebra.com/state-of-insurance/auto/2021/#introduction> [<https://perma.cc/5T28-SM63>].

45. *Id.*

46. *Id.*

47. *Free to Drive Fact Sheet: Poverty*, *supra* note 27.

48. L WILLIAM SEIDMAN RSCH. INST., W. P. CAREY SCH. OF BUS., ARIZ. STATE UNIV., THE CITY OF PHOENIX MUNICIPAL COURT'S COMPLIANCE ASSISTANCE PROGRAM, 2016: AN ECONOMIC ASSESSMENT 23 (2017), <https://finesandfeesjusticecenter.org/content/uploads/2018/11/Phoenix-license-restoration-pilot-THE-CITY-OF-PHOENIX-MUNICIPAL-COURT%E2%80%99S-COMPLIANCE-ASSISTANCE-PROGRAM.pdf> [<https://perma.cc/X8FV-DJQH>] [hereinafter PHOENIX ECON. ASSESSMENT].

A. Litigation

Reform efforts began through litigation, with cases challenging the constitutionality of driver's license suspensions for unpaid fines and fees in Tennessee, Montana, Virginia, Oregon, North Carolina, Michigan, Washington, and South Carolina.⁴⁹ Litigation has been an important tool for reform, less with respect to the results obtained (at least in the cases that have concluded to date) than with respect to the attention they have brought to the issue.

Debt-based driver's license litigants have primarily focused their arguments on the equal protection and due process clauses, citing the fundamental unfairness of punishing those who cannot afford to pay fines and fees more harshly than those who can.⁵⁰ Indeed, in the Virginia case, *Stinnie v. Holcomb*, the U.S. Department of Justice filed a statement of interest arguing that due process and equal protection converge to make suspensions without first assessing ability to pay unconstitutional.⁵¹ Challenging the constitutionality of debt-based suspensions on these grounds initially showed promise in Tennessee with the district court's decision in *Robinson v. Purkey*⁵² and *Thomas v. Haslam*,⁵³ companion cases which held that the state's suspension statutes were unconstitutional because they did not provide for an ability-to-pay assessment before suspension. The state appealed⁵⁴—and with good reason. The year before the Tennessee case reached the Sixth Circuit, the Circuit decided *Fowler v. Benson*, a case that unsuccessfully challenged driver's license suspensions in Michigan.⁵⁵ In *Fowler*, the Sixth Circuit applied an extremely narrow interpretation of the rational basis test and such a circular interpretation of due process that virtually any statute would survive scrutiny.⁵⁶ Not surprisingly, the Court held that the Michigan statute was constitutional,⁵⁷ and, applying the same standard in *Robinson*, found that Tennessee's statutes, too, were constitutional.⁵⁸

49. *Fowler v. Benson*, 924 F.3d 247 (6th Cir. 2019); *Robinson v. Purkey*, 326 F.R.D. 105 (M.D. Tenn. 2018); *Stinnie v. Holcomb*, 355 F. Supp. 3d 514 (W.D. Va. 2018); *DiFrancesco v. Bullock*, No. 2:17-CV-00066 (D. Mont. Aug. 31, 2017).

50. See Statement of Interest of the United States, *Stinnie v. Holcomb*, 355 F. Supp. 3d 514 (W.D. Va. 2018) (No. 16-CV-00044), 2016 WL 6892275.

51. *Id.*

52. *Robinson v. Purkey*, 326 F.R.D. at 105.

53. *Thomas v. Haslam*, 303 F. Supp. 3d 585 (M.D. Tenn. 2018).

54. *Thomas v. Lee*, 776 F. App'x 910, 910 (6th Cir. 2019).

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

56. *Id.* at 261–62.

57. *Id.*

58. See *Robinson v. Long*, 814 F. App'x 991 (6th Cir. 2020).

The Sixth Circuit cases delivered a significant blow to the hopes of what can be achieved through litigation in this area. Although there are pending cases in other Circuits, the precedent that *Fowler* created is formidable. Moreover, even in successful cases, litigation as a pathway to reform has been less comprehensive than what has been achieved through legislation. Both *Robinson* and *Thomas* resulted only in the creation of ability-to-pay assessments prior to suspension, which have proved to be less-than-desirable outcomes. While ability to pay—the idea that a person’s license can only be suspended if they have the ability to pay and are willfully not paying—seems prudent on its face, in practice courts are not bearing the burden of proving this position. Rather, individuals, if they are aware, must raise this issue to the court and bear the burden of proving their inability to pay fines and fees with no consistent metric. In the end, this effort has little effect on the ultimate outcome and merely serves as an additional step before license suspension.

In some circumstances—particularly when there is no political will to consider legislation—litigation may make sense, but it also opens the door to bad precedent that can be cited by legislators who oppose reform. Litigators should carefully strategize with policy advocates to determine when litigating is more likely to achieve a positive outcome than pushing for more comprehensive legislation.

B. Legislative Advocacy

Legislative change regarding debt-based driver’s license suspensions has come in waves, and addressed various aspects of the law, depending on the political climate. Legislative policy change ranges from eliminating reinstatement fees to creating payment plans, requiring ability-to-pay hearings, and most importantly, eliminating driver’s license suspension for unpaid debt wholesale. To date, twenty two states and D.C. have limited or ended driver’s license suspensions for unpaid fines and fees.⁵⁹ In 2021, over a dozen states introduced bills to end or curb driver’s license suspensions for unpaid fines and fees, and nine states passed such bills.⁶⁰ Based on recent years, 2022 is expected to take on a similar trajectory.

59. Arizona, California, Hawaii, Idaho, Illinois, Maine, Maryland, Michigan, Mississippi, Montana, New York, Texas, Oregon, Utah, Virginia, and West Virginia. See *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

60. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

The first wave of state law reform included California, Mississippi, Idaho, and Washington, D.C.⁶¹ In June 2017, California enacted legislation to prohibit the suspension of driver's licenses for failure to pay traffic tickets, and the DMV restored all licenses that were suspended for failure to pay.⁶² Notably, in the following fiscal year (2017-2018), the collection rate rose 8.9% from non-delinquent accounts.⁶³ California's legislation was followed by policy change in Mississippi in late 2017 and legislation in 2019 (which, unlike California, also addressed suspensions for failure to appear),⁶⁴ and by Idaho⁶⁵ and Washington, D.C. in 2018 (the latter of which did not address preventing driver's license renewals).⁶⁶ The next wave of successful legislative reform included Montana and Texas, followed by West Virginia, Maryland, Oregon, Hawaii, Virginia,⁶⁷ Michigan, and New York in 2020.⁶⁸ And in 2021, Illinois, Utah, Nevada, Colorado, Arizona, Arkansas, Washington, Indiana, and Minnesota all signed laws ending or curbing their use of debt based suspensions.⁶⁹ Driver's license suspension reform came about differently in each of these states. Various forms of advocacy, such as coalition building, and, in some cases, litigation, have been used to achieve meaningful reform across the country.

61. See *About the Campaign*, FREE TO DRIVE, <https://www.freetodrive.org/about/#page-content> [<https://perma.cc/GY7Y-HQ42>] (last visited Apr. 16, 2020).

62. Press Release, California DMV, DMV Removes Driving Suspensions for Failure to Pay Fines (Mar. 15, 2018), <https://www.dmv.ca.gov/portal/news-and-media/dmv-removes-driving-suspensions-for-failure-to-pay-fines/> [<https://perma.cc/2UQB-CMEK>].

63. Non-delinquent debt is debt that has not gone past due. California attributes this shift in its ability to address and collect court debt more immediately due to other tools and options used by the court. JUD. COUNCIL OF CAL., REPORT OF STATEWIDE COLLECTION OF 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://perma.cc/KZW9-UZAW>].

64. Mississippi's driver's license reform was included in Mississippi's Criminal Justice Reform Act in 2019. H.R. 1352, 2019 Leg., Reg. Sess. (Miss. 2019) (enacted). The Act formalized an earlier discretionary policy change by the Mississippi Department of Public Safety (DPS). The 2017 policy changes were made after a series of discussions between DPS, the Southern Poverty Law Center, and the MacArthur Justice Center. See *SPLC Reaches Agreement with Mississippi to Reinstate over 100,000 Driver's Licenses Suspended for Non-Payment of Fines*, S. POVERTY L. CTR. (Dec. 19, 2017), <https://www.splcenter.org/news/2017/12/19/splc-reaches-agreement-mississippi> [<https://perma.cc/GU58-KPUX>].

65. H.B. 599, 64th Leg., 2nd Reg. Sess. (Idaho 2018).

66. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

67. Virginia passed one-year driver's license reform through a budget solution in 2019, but permanent legislative changes occurred in 2020. See *Victory: Virginia Ends Debt-Based Driver's License Suspensions*, FINES & FEES JUST. CTR. (Apr. 13, 2020), <https://finesandfeesjusticecenter.org/2020/04/13/victory-virginia-ends-debt-based-drivers-license-suspensions/> [<https://perma.cc/2FAW-R9KQ>].

68. Press Release: Gov. Cuomo Signs Driver's License Suspension Reform Act, FINES & FEES JUST. CTR. (Jan. 4, 2020), <https://finesandfeesjusticecenter.org/2021/01/04/gov-cuomo-signs-drivers-license-suspension-reform-act/> [<https://perma.cc/7VB5-WYH3>]; see *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

69. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

In 2021 the bipartisan Driving for Opportunity Act was introduced at the federal level by Senators Chris Coons (D-Del.) and Roger Wicker (R-Miss.).⁷⁰ The United States House of Representatives has an almost identical bill that passed out of the Judiciary Committee.⁷¹ The House and Senate bills provide grants to states to cover reinstatement costs that no longer suspend, revoke, or refuse to renew a driver's license or registration for failure to pay a civil or criminal fine or fee.⁷² The House "bill also repeals the law that reduces federal highway funding for states that do not suspend driver's licenses for anyone convicted of a drug offense."⁷³ While debt-based driver's license suspension is largely an issue to be addressed by the states, the interest from federal lawmakers adds additional incentive and support to move states in this direction.

Following the first wave of successes of state legislation from 2017 to 2019, the *Free to Drive* coalition was created to build a national campaign around the issue.⁷⁴ Building on the early reform efforts, the national coalition provides assistance and support for state and local reform around the country,⁷⁵ with the goal of eliminating debt-based driving license suspensions and restrictions on driving privileges nationwide. Eventually, the hope is to shift focus from back-end consequences to the front end of the issue: the laws and policies generating the unpaid debt in the first place.

70. Press Release, Sen. Chris Coons, Sens. Coons, Wicker Reintroduce Bipartisan Bill Targeting Debt-based Driver's License Suspensions (Mar. 25, 2021), <https://www.coons.senate.gov/news/press-releases/sens-coons-wicker-reintroduce-bipartisan-bill-targeting-debt-based-drivers-license-suspensions#:~:text=reintroduced%20the%20bipartisan%20Driving%20for,debt%2Dbased%20driver's%20license%20suspensions.&text=%E2%80%9CDriver's%20licenses%20enable%20millions%20of,worship%2C%E2%80%9D%20Senator%20Coons%20said> [https://perma.cc/3757-PN6B].

71. Driving for Opportunity Act of 2021, H.R. 2453, 117th Cong. (Apr. 20, 2021).

72. S. 4186, 116th Cong. (2020).

73. *Driving for Opportunity Act of 2020*, FINES & FEES JUST. CTR. (July 2, 2020), <https://finesandfeesjusticecenter.org/articles/driving-for-opportunity-act-of-2020/> [https://perma.cc/Z39K-HQUD].

74. See Free to Drive Launch Event, Free to Drive, <https://www.freetodrive.org/2019/08/20/free-to-drive-launch-event/#page-content> [https://perma.cc/78A5-RHVH] (last visited Jun. 6, 2020).

75. See *About the Campaign*, *supra* note 61 (listing the Fines and Fees Justice Center as a Free to Drive coalition and steering committee member); *The Clearinghouse*, FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org/clearinghouse/?sortByDate=true> (choose "Topics" from filters dropdown; then choose "Local Reforms") (last visited May 8, 2021). While most legal reform regarding driver's license suspension is targeted at the state level, policy reform has also been sought at the municipal level, often with the hopes of cascading effects to the county and state.

C. Evaluation of Reform to Date

Since California passed the first statewide driver's license bill for failure to pay unpaid fines and fees in 2017,⁷⁶ momentum against debt-based suspensions has taken hold. In the last five years, twenty-two states passed some level of reforms.⁷⁷ The impact of driver's license suspension cannot be overstated. Millions of people are suffering under these policies, but when a state makes legislative changes that are immediately impactful, millions of lives can be instantly changed. In California, 450,000 licenses were restored after passage of the law ending debt-based suspensions.⁷⁸ In Texas, 634,933 individuals almost immediately got their licenses back.⁷⁹ When Virginia passed its initial driver's license bill in 2019, more than a half a million residents had their licenses restored, with another half-million in the works.⁸⁰ While these numbers reflect the individual licenses placed back into the pockets of residents in these states, the full value of this reform has yet to be measured. The burden this reform has taken off the criminal justice system itself—with fewer charges for driving on a suspended license—is undoubtedly unmeasured in most states. In Texas from January 2019 through August 2019 (before the enactment of the repeal), there were 14,851 new class B DWLI (driving while license is invalid) cases filed; for the same time period in 2020 (after the enactment of the repeal), there were only 6,323 new class B DWLI cases filed.⁸¹ If the Arizona State University study of the Compliance Assistance Program is any indicator of economic impact, we can expect millions of people to reenter the job market and gain stable employment with higher incomes, while contributing to the growth of local GDP.⁸²

76. Assemb. B. 103, 2017–18 Gen. Assemb., Reg. Sess. (Cal. 2017) (enacted).

77. *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2.

78. *13 States. 13 Victories. Millions of Lives Restored.*, FREE TO DRIVE, https://www.freetodrive.org/wp-content/uploads/2021/01/Social-Media_Free-to-Drive_States_DLS_Reform_1_21_Infographic2.png [<https://perma.cc/E3DM-PGL5>] (last visited Feb. 10, 2021).

79. *See, e.g.*, Press Release, ACLU of Tex., ACLU of Texas Statement on End of Controversial Driver Responsibility Program (June 14, 2019), <https://www.aclutx.org/en/press-releases/aclu-texas-statement-end-controversial-driver-responsibility-program> [<https://perma.cc/AN8D-YN7R>].

80. Press Release, Va. Governor Ralph S. Northam, Governor Northam Announces Budget Amendment to Eliminate Driver's License Suspensions for Nonpayment of Court Fines and Costs (Mar. 26, 2019), <https://www.governor.virginia.gov/newsroom/all-releases/2019/march/headline-839710-en.html> [<https://perma.cc/WYM7-T8FD>].

81. This information is from the Texas Office of Court Administration's database, which can be found at <https://card.txcourts.gov/ReportSelection.aspx>. These numbers are a combination of new DWLS/DWLI cases filed in both County-Level Courts and Constitutional County Courts during those time periods. The County-Level data can be accessed by selecting "County-Level Courts" and "Misdemeanor Activity Detail." The Constitutional County Court data can be accessed by selecting "Constitutional County Courts" and "Constitutional County Court Activity Detail."

82. *See* PHOENIX ECON. ASSESSMENT, *supra* note 48.

While more states are heading in the direction of reform, not all reform is equal in intent or impact. Almost every state has approached this policy issue differently. Some states have solely repealed the law authorizing driver's license suspensions for unpaid fines and fees. This approach is often referred to as a "clean repeal."⁸³ While preventing any future harms, some states have not been able to make this policy retroactive, leaving tens of thousands of already-harmed residents without reprieve. Other states have also addressed failure to appear and provided forgiveness for unpaid fines and fees. The Michigan⁸⁴ and New York⁸⁵ reforms are two of the most robust approaches to debt-based driver's license suspensions.

New York's newest law ends suspensions for failure to pay and automatically reinstates all licenses suspended for failure to pay across the state.⁸⁶ New York's law also includes language for how to administer meaningful payment plan systems in the state.⁸⁷ This law not only addresses the harm of driver's license suspensions, but also addresses some of the harm of the underlying fines and fees that continue to be in place. While the final law does not include provisions that automatically end failure to appear, it does provide a pathway to compliance and reinstatement for licenses that are suspended for failure to appear.⁸⁸ The exclusion of ending license suspension for failure to appear is a measurable loss in what was the most comprehensive driver's license suspension package in the country. While over 3.1 million driver's license suspensions were lifted due to failure to pay, it is estimated that millions of suspensions remain in place for not including ending suspensions failure to appear.⁸⁹ This highlights that reforms for failure to pay that do not include a repeal of failure to appear will continue to leave thousands if not millions of individuals without a license.

Michigan's new law addresses both failure to pay and failure-to-pay suspensions, with the exception of a carved-out group of offenses tied to unsafe driving.⁹⁰ The impact of these reforms on tens of thousands—

83. FINES & FEES JUST. CTR., WRITTEN TESTIMONY TO THE MARYLAND HOUSE OF DELEGATES JUDICIARY COMMITTEE, HOUSE BILL 280: VEHICLE LAWS – SUSPENSION OF DRIVER'S LICENSE OR REGISTRATION – UNPAID CITATIONS OR JUDGMENTS (2020), https://mgaleg.maryland.gov/cmte_testimony/2020/jud/2742_02192020_104935-217.pdf [<https://perma.cc/5ZXXN-DZQZ>].

84. H.R. 5846, 100th Leg., Reg. Sess. (Mich. 2020) (enacted).

85. N.Y. VEH. & TRAF. LAW § 510(4-a) (McKinney 2021).

86. *Press Release: Gov. Cuomo Signs Driver's License Suspension Reform Act*, *supra* note 68.

87. *Press Release: Gov. Cuomo Signs Driver's License Suspension Reform Act*, *supra* note 68.

88. *Press Release: Gov. Cuomo Signs Driver's License Suspension Reform Act*, *supra* note 68.

89. E-mail from Paul Midey, Senior Counsel, Office of Governor Andrew M. Cuomo to Katie Adamides, New York State Director, Fines & Fees Justice Center et al. (July 23, 2021, 02:28 PM EDT) (on file with author).

90. See 2020 Mich. Pub. Acts. 376.

if not hundreds of thousands—of Michigan residents cannot be overstated.⁹¹

D. *Ill-Conceived Reforms*

Historically, debt-based driving restriction reforms were similarly structured and seen as victories for the larger movement. These victories can be characterized by ending some or all of the debt-based practices tied to failure to pay without substituting more or equally harmful practices. And where politically feasible, these laws achieved progress in reforming the use of failure to appear for unpaid fines and fees.

However, in 2021, the debt-based driving restrictions space took on new layers. Bills in Arizona, Washington, Arkansas, Indiana, and Kansas, all now law, became examples of the nuanced and complicated nature of reforms in this space.⁹² The Arizona and Washington bills serve as examples of bills introduced in line with best practices and policies in the debt-based driving restrictions space, however, the compromises and amendments may prove to be problematic for the movement.

While entirely different compromises and issues are at play in Washington and Arizona, the theme across both is that not all reform is good reform. Arizona became the first state to actively retain and use holds on vehicle registrations while eliminating debt-based suspensions for the same unpaid fines and fees.⁹³ While ending debt-based suspensions was a positive change, the compromise to keep registration holds as the collection tool keeps in place all of the same problems caused by debt-based suspensions. Additionally, because a vehicle often serves multiple people in a family or a community, debt-based suspensions cause even more wide-spread implications. In April 2021, Daunte Wright was stopped in Minnesota for an expired registration.⁹⁴ That traffic stop led to his death.⁹⁵ When a hold is placed on a person's registration, it gives cause for a traffic stop. A hold prevents a person from renewing their registration without first paying their fines and fees. It provides one more pathway for unnecessary and too often disproportionately violent and deadly consequences for Black and Brown drivers.

91. *Id.*

92. See S.B. 1551, 55th Leg., 1st Reg. Sess. (Ariz. 2021); S.B. 5226, 2021-22 Leg., Reg. Sess. (Wa. 2021).

93. Ariz. S.B. 1551.

94. Corky Siemaszko, *Daunte Wright Was Stopped for Expired Plates, but Driving While Black May Have Been His 'Crime,'* NBC (Apr. 13, 2021, 8:29 AM), <https://www.nbcnews.com/news/us-news/daunte-wright-was-stopped-expired-plates-driving-while-black-may-n1263878> [<https://perma.cc/Z4MK-FAZ5>].

95. *Id.*

In 2021, Washington state passed a law that created a workaround for failure to pay suspensions.⁹⁶ While on its face the bill ends failure to pay suspensions, it was amended to simultaneously expand failure to appear suspensions to include missed payments on a payment plan.⁹⁷ This narrow but important distinction turns failure to pay into failure to appear, making it that much harder to achieve meaningful reform. We know that the same individuals who miss payments will likely miss an appearance on those payments, and the consequence is the same as not paying at all: a license suspension.⁹⁸

Deciding what to include in state advocacy for debt-based driver's license suspensions can be difficult. Many factors should be considered, and each state will have a unique position. An emphasis on the most benefit and least harm to those impacted, however, should be central to reform decisions. When pursuing reform, advocates and policymakers should consider the following questions:

1. Will the bill address Failure to Pay *and* Failure to Appear, if applicable?
2. Are driver's license suspensions, non-renewals of licenses and vehicle registration or other vehicle compliance requirements, and license revocations applicable in our state?
3. Will reinstatements be automatic or require individual action?
4. Will the bill be retroactive?
5. Will the suspending agency be able to identify every license record to provide relief?
6. Will reinstatement fees be waived?
7. Does our state have an adequate and meaningful payment plan system?
8. Will any debt relief be provided?
9. Are we working with and informed by impacted communities in our efforts to achieve reform?

Some of these questions will need to be addressed in the legislative process itself, although many questions will also come up in the implementation process. Unless these questions are considered in the poli-

96. Wa. S.B. 5226.

97. *Id.* at § 1(b), (i).

98. In June of 2021 Thurston County Superior Court signed an order halting the use of driver's license suspensions for unpaid tickets. Press Release, *Judge Orders Halt to Driver's License Suspensions for Unpaid Tickets*, ACLU WASHINGTON (June 1, 2021) <https://www.aclu-wa.org/news/judge-orders-halt-driver%E2%80%99s-license-suspensions-unpaid-tickets>. The order results in an estimated 100,00 licenses being restored and stopping the automated practice moving forward. The order provides immediate and expansive relief as Washington's new law does not go into effect until January of 2023. *Id.*

cymaking process, the impact that advocates and policymakers are hoping for may not be achieved, or at least not immediately.

III. NEXT FRONTIER OF POLICY CHANGE

The next year brings new opportunities to tackle debt-based suspensions. President Biden and the Democratic Party-controlled Congress may make way to address the federal Child Support Enforcement mandate.⁹⁹ This Congress can repeal child support enforcement laws that require a state to suspend driver's licenses for unpaid child support or risk losing federal funding.¹⁰⁰ While many states have yet to address court debt, there is hope that a ripple effect will occur from the many states that have led the charge.

At the end of 2020, the United States finds itself grappling with a pandemic and economic crisis. Unemployment numbers are staggering, and current projections show that families who are middle and low income will not be on the same path to economic recovery as wealthier Americans.¹⁰¹ This prediction is alarming, especially for those families who were already struggling to make ends meet pre-pandemic. While the path to prosperity will be slow and long, it need not be fraught with unnecessary barriers. Debt-based driver's license suspension reform may be one of the most meaningful pieces of legislation that a state can take on in the next legislative session. Economic stimulus packages and investments in job creation will have far less impact if individuals do not have the necessary key to accessing them—a driver's license.

99. 42 U.S.C. § 666(a) demands that all U.S. states have laws that “increase the effectiveness of the [child support enforcement] program which the state administers” and allows the state to withhold, suspend, or restrict licenses of individuals owing child support in “in appropriate cases.”

100. Current law related to failure to pay child support is driven by the federal government, but states are increasingly interested in reform (for many of the same reasons that apply to eliminating traffic and court debt-related suspension). *See id.*; *Free to Drive Maps: Suspension Statutes, Data, Narratives, and More*, *supra* note 2. One obstacle to reforming the law concerning the failure to pay child support is the prevailing narrative of the “deadbeat dad,” perpetuating the perception that nonpayment is willful, rather than reflecting an inability to pay due to indigence.

101. *See, e.g., Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> [<https://perma.cc/79WG-6JYZ>] (last updated May 28, 2021).

