UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MEDHIN AYELE, *et al.*, **Plaintiffs,** **v.** **DISTRICT OF COLUMBIA, *et al.*,** **Defendants.**	**No. 1:23-cv-01785-ABJ**

DEFENDANTS' COMBINED MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Defendants District of Columbia, Interim Director of the Department of Licensing and Consumer Protection Shirley Kwan-Hui, Interim Director of the Department of Health Sharon Lewis, and Chief Financial Officer Glen Lee (collectively, the District) move this Court under Fed. R. Civ. P. 12(b)(1) and (6) to dismiss Plaintiffs' Complaint [1] for lack of jurisdiction or failure to state a claim. Because this Motion is dispositive, the District has not sought Plaintiffs' consent. *See* LCvR 7(m). The District also opposes Plaintiffs' Motion for a Preliminary Injunction [3]. A memorandum of points and authorities and proposed order are attached.

Dated: June 29, 2023.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

STEPHANIE E. LITOS
Deputy Attorney General
Civil Litigation Division

/s/ Matthew R. Blecher
MATTHEW R. BLECHER [1012957]
Chief, Equity Section, Civil Litigation Division

/s/ Adam J. Tuetken
ADAM J. TUETKEN [242215]
HONEY MORTON [1019878]
Assistant Attorneys General
400 6th Street, NW
Washington, D.C. 20001
Phone: (202) 735-7474
Email: adam.tuetken@dc.gov

Counsel for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' COMBINED MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 2

I. The Clean Hands Law 2

II. Plaintiffs' Debts 3

III. Plaintiffs' Desired Licenses 6

A. Basic Business Licenses 6

B. Street Vending Licenses 7

C. Occupational Licenses 8

IV. Procedural History 9

LEGAL STANDARDS 9

I. Fed. R. Civ. P. 12(b)(1) 9

II. Fed. R. Civ. P. 12(b)(6) 10

III. Preliminary Injunction 10

ARGUMENT 11

I. Plaintiffs Lack Standing. 11

II. All Claims Fail on the Merits. 17

A. The Procedural Due Process Claim Fails. 17

1. Plaintiffs Failed to Pursue All Available Process. 17

2. Plaintiffs Do Not Have Cognizable Property Interests in the Licenses They Seek. 18

3. Plaintiffs Had More Than Adequate Process. 21

a. As Legislative Action, the Clean Hands Law Does Not Require Individualized Hearings. 21

b. Regardless, Plaintiffs Had Several Hearings Available to Them..... 23

B. The Due Process and Equal Protection "Convergence" Claim Fails..... 30

C. The Equal Protection and Substantive Due Process Claims Fail..... 31

D. The Excessive Fines Clause Claim Fails. 35

III. Plaintiffs Fail to Establish Irreparable Harm. 38

IV. The Balance of Equities and Public Interest Support Denying a Preliminary Injunction. 43

CONCLUSION..... 45

INTRODUCTION

District law contains a common-sense rule: If an individual seeks a privilege from the District (*e.g.*, a license), he or she must not owe any money to the District (*e.g.*, unpaid taxes). D.C. Code § 47-2862. Called the Clean Hands Law, this statute evokes a fundamental legal principle recognized for centuries in the Anglo-American tradition: "He that hath committed iniquity shall not have equity." *Milwaukee & M.R. Co. v. Soutter*, 80 U.S. 517, 523–24 (1871) (internal quotation marks and citation omitted). The statute also evokes a fundamental fairness principle: Those who do not pay their fair share are not entitled to privileges administered by the government.

Plaintiffs are individuals who have not paid their taxes for years, racked up more than a dozen unpaid traffic fines, or violated consumer protection laws without paying the penalty. Although the District offers evidentiary hearings, appeals, and judicial review to dispute these debts, Plaintiffs never pursued such processes. Now, Plaintiffs want to get business or occupational licenses from the District, and they say the Clean Hands Law is the only thing preventing them from obtaining such licenses and starting businesses. So they bring various challenges to the Clean Hands Law, but each rests on unsound constitutional grounds. Not only that, they seek the extraordinary remedy of a preliminary injunction to halt this decades-old Law's enforcement on a short fuse.

To allege that the Clean Hands Law is unconstitutional, Plaintiffs stretch several of the Constitution's provisions beyond what precedent, facts, and reason can bear. Starting with Article III, Plaintiffs lack standing because no matter what happens in this case, they will not get licenses or start businesses any time soon. Next, Plaintiffs' procedural due process claim fails for several reasons, not the least of which because Plaintiffs had several opportunities to dispute their debts—none of which they pursued. Plaintiffs' claims for equal protection, substantive due

process, and the "convergence" thereof all receive rational basis review; and one can readily imagine rational reasons for the Law, like improving revenue collection and establishing licensure qualifications. Finally, Plaintiffs' Excessive Fines Clause claim would expand the Eighth Amendment to cover ordinary license denials—a step that goes too far. For these reasons, Plaintiffs can neither state a claim nor show likely success on the merits.

If the Court disagrees, it still should not grant a preliminary injunction. There is no irreparable harm here—and certainly no emergency—because Plaintiffs' purported harms (loss of earnings and business) are all pecuniary, and they waited years to challenge the Law despite knowing it applied to them. On the other side of the ledger is the District's sovereign authority to collect revenue and administer licensing systems—areas that the Supreme Court instructs are usually off-limits to judicial intervention. Yet Plaintiffs ask the Court to throw a wrench in the gears of government based on half-baked constitutional theories and self-inflicted harms. The Court should, instead, deny the Motion for a Preliminary Injunction and dismiss the Complaint.

BACKGROUND

The District explains how the Clean Hands Law works, then what debts Plaintiffs owe, and finally how the relevant licensing schemes operate.

I. The Clean Hands Law

The District's Clean Hands Law provides, in relevant part, that "the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant" "[o]wes the District more than $100 in past due taxes" or "[o]wes the District more than $100 in outstanding fines, penalties, or interest." D.C. Code § 47-2862(a)(2), (7). The Law was originally proposed almost three decades ago to combat the difficulties the District faced in collecting duly issued fines. Council of the Dist. of Columbia, Comm. on Pub. Works & Env't,

Report on an Amendment in the Nature of a Substitute to Bill 11-260, the "Clean Hands Before Receiving a License of Permit Act of 1995" 1–2 (Sept. 20, 1995), https://tinyurl.com/2fsrztjn.

The Law has two exceptions: First, the Law will not require denial of a license or permit if the applicant has disputed the debt and is pursuing an appeal with the agency that assessed the tax or fine. D.C. Code § 47-2862(b). Second, the Law will not require denial of a license or permit if the applicant is on "a payment schedule" with the District. *Id.* § 47-2862(c).[1]

Before applying for a license or permit, an individual can use an online portal, operated by the Office of Tax and Revenue (OTR), to check whether he or she satisfies the Clean Hands Law and, if so, receive a certificate documenting compliance. OTR, *Certificate of Clean Hands*, https://tinyurl.com/55zpdzkb. If debt is owed, an individual can request a payment plan in the same portal. OTR, *Certificate of Clean Hands Brochure*, https://tinyurl.com/yy4wy2fk. If an individual skips over this process and instead applies for a license or permit and is denied, then he or she "may request a hearing within 10 days of the denial on the basis for that denial." D.C. Code § 47-2865(c).

II. Plaintiffs' Debts

Between the seven Plaintiffs, they owe three types of debt: (1) unpaid taxes, (2) unpaid traffic fines, and (3) an unpaid fine for vending without a license.

Most of the Plaintiffs (Medhin Ayele, Kahssay Ghebrebrhan, Fasika Mehabe, and Hiwet Tesfamichael) formerly operated street vending businesses but have not paid taxes from those businesses for several years. Mem. of P. & A. in Supp. of Pl.'s Mot. for a Prelim. Inj. (PI Mot.)

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[1] Under recently enacted legislation, the Clean Hands Law will soon not apply to driver's licenses. Clean Hands Certification Equity Amendment Act of 2022, D.C. Law 24-174, 69 D.C. Reg. 9,906 (Aug. 5, 2022). The District has already stopped enforcing the Clean Hands Law as to driver's licenses. Decl. of Vanessa Newton Bernard [19-2] ¶ ¶ 10–11, *Parham v. District of Columbia*, No. 22-cv-2481 (D.D.C. Jan. 24, 2023).

[3-1] 8–11. District law requires street vendors to collect and remit sales tax every quarter. D.C. Code § 47-2002.01(b), (c). If a street vendor collects sales tax exceeding $375 in the quarter, he or she must file a return and remit the full amount of sales tax collected. *Id.* § 47-2002.01(c). If he collects less than $375, he or she must file a return and remit a "minimum sales tax" payment of $375. *Id.* § 47-2002.01(b)(1). If that minimum sales tax payment is not remitted, the unpaid sum "shall be considered unpaid sales tax." *Id.* § 47-2002.01(b)(3).

If a street vendor fails to file a return or files an "incorrect or insufficient" return, then OTR may determine the amount owed. *Id.* § 47-2019. OTR will then send a proposed assessment to the vendor. *Id.* § 47-4312(a). If the vendor disputes the assessment, he may file a protest with the Office of Administrative Hearings (OAH). *Id.* OAH will hold a hearing and decide whether the assessment, interest, and penalties are correct. *Id.* § 47-4312(c). After OAH decides, the vendor can appeal to the D.C. Court of Appeals. *Id.* § 2-1831.16(e). As an alternative to this OAH process, a vendor may pay the assessment and then dispute it in the Superior Court. *Id.* §§ 47-4312(d), 47-3303.

The four Plaintiffs named above failed to file their returns and remit the minimum sales tax for several quarters. PI Mot. 8–11. These Plaintiffs voluntarily stopped vending in 2020 due to the COVID-19 pandemic and let their licenses expire in September 2020 or September 2021. Declaration of Medhin Ayele (Ayele Decl.) [3-4] ¶¶ 5–6; Declaration of Kahssay Ghebrebrhan (Ghebrebrhan Decl.) [3-5] ¶¶ 6–7; Declaration of Fasika Mehabe (Mehabe Decl.) [3-6] ¶¶ 7–8; Declaration of Hiwet Tesfamichael (Tesfamichael Decl.) [3-7] ¶¶ 7–8. Nonetheless, they all understand that OTR would still expect tax payments from them unless they returned their licenses. Ayele Decl. ¶ 6; Ghebrebrhan Decl. ¶ 7; Mehabe Decl. ¶ 8; Tesfamichael Decl. ¶ 8; *see* 24 DCMR § 506.1 ("Each Vending Business License shall be valid for the period designated on

the license, unless the license is earlier revoked, suspended, or seized."). All of them, however, decided not to return their licenses. Ayele Decl. ¶ 6; Ghebrebrhan Decl. ¶ 7; Mehabe Decl. ¶ 8; Tesfamichael Decl. ¶ 8. And although they contend they were assessed taxes for quarters after their licenses expired, if they file returns, OTR can relieve their tax liability for that time period. Ayele Decl. ¶ 8. But for OTR to determine their correct tax liability, they must file returns, which they are only now doing. *Id.* ¶ 9; Mehabe Decl. ¶ 9; Tesfamichael Decl. ¶ 11.[2]

Next, two of the Plaintiffs, Shawn Cheatham and Stephanie Carrington, have amassed thousands of dollars in fines from repeated traffic infractions. PI Mot. 5–7. When a person commits a traffic infraction in the District, the person receives notice of the infraction and can challenge the infraction in an evidentiary hearing, then before an appeals board, and then before the Superior Court. D.C. Code § 50-2301.01 *et seq.* Neither Cheatham nor Carrington claim that they ever took advantage of this process. *See* Decl. of Shawn Darnell Cheatham (Cheatham Decl.) [3-2] ¶ 5; Decl. of Stephanie Carrington (Carrington Decl.) [3-3] ¶ 11. Nor do they claim that the fines they owe were wrongfully issued or inaccurate. *Id.*

Lastly, one Plaintiff, Antonia Diaz de Sanchez, owes a fine for vending without a license. Decl. of Antonia Diaz de Sanchez (Diaz de Sanchez Decl.) [3-8] ¶ 8. She let her street vending license lapse yet still used her food vending truck and received a citation. *Id.* ¶¶ 4, 8. A violation of the street vending regulations results in a civil infraction. 24 DCMR § 575. A person who commits a civil infraction receives notice of the infraction, then may contest the

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[2] The D.C. Council recently passed legislation establishing an "amnesty program" for street vending license applicants who owe minimum sales tax payments. Street Vendor Advancement Amendment Act of 2023, § 3(f), D.C. Act 25-94, 70 D.C. Reg. 6,762, 6,776 (May 12, 2023). Under the program, individuals (including Plaintiffs) will be able to apply for and receive street vending licenses despite unpaid minimum sales tax payments. *Id.* The amnesty program will go into effect as part of the next approved budget. *Id.* § 5.

infraction in an evidentiary hearing, and then may seek judicial review. D.C. Code §§ 2-1802.01 *et seq.*, 2-1803.01 *et seq.*, 2-1831.01 *et seq.* Diaz de Sanchez does not claim she ever took advantage of this process. *See* Diaz de Sanchez Decl. ¶ 8.[3]

III. Plaintiffs' Desired Licenses

Between the seven Plaintiffs, they allegedly seek or will require (1) basic business licenses, (2) street vending licenses, and (3) occupational licenses. PI Mot. 5–13. Some of the Plaintiffs, however, do not claim that they actually applied for and were denied these licenses. *See* Cheatham Decl. ¶ 3; Carrington Decl. ¶¶ 10–11. Others vaguely claim that they spoke with District officials who informed them that they were ineligible to apply for licenses due to their debts. Diaz de Sanchez Decl. ¶ 9; Mehabe Decl. ¶ 9; Ayele Decl. ¶ 7; Ghebrebrhan Decl. ¶ 8; Tesfamichael Decl. ¶ 10. None of the Plaintiffs pursued a hearing offered under the Clean Hands Law. *See* Compl. ¶ 26 n.13.

A. Basic Business Licenses

Generally, starting a business in the District requires a basic business license. D.C. Code § 47-2851.02. An application for a basic business license requires, among other things, proof of worker's compensation insurance coverage (unless exempted), *id.* § 47-2851.07(a), and payment of fees, *id.* §§ 47-2851.04(a), 47-2851.08(a)(1). The Department of Licensing and Consumer Protection (DLCP) "may refuse to issue or renew a license," 17 DCMR § 3802, when denial "is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for any other reason [DLCP] may deem sufficient," D.C. Code § 47-2844(a); *see Miller v. D.C. Bd. of Appeals & Rev.*, 294

[3] The Council's recently enacted amnesty program, *see* note 2, *supra*, also applies to street vending fines, Street Vendor Advancement Amendment Act § 3(f).

A.2d 365, 369 (D.C. 1972) (holding that powers under what is now D.C. Code § 47-2844(a) apply to the denial of licenses).

B. Street Vending Licenses

Most of the Plaintiffs (Ayele, Ghebrebrhan, Mehabe, Tesfamichael, and Diaz de Sanchez) want street vending licenses. PI Mot. 8–13. To become a street vendor requires (1) a basic business license endorsed for street vending, (2) a vending site permit, and (3) any other licenses, permits, or authorizations required by other agencies. D.C. Code § 37-131.02(a).

A basic business license endorsed for street vending (a "street vending license") costs $476.30. DLCP, *Vending Handbook* 16 (2022), https://tinyurl.com/3kcsmvjp. Like any basic business license, a street vending license may be denied "for any [ ] reason [DLCP] may deem sufficient." D.C. Code § 47-2844(a); *see* D.C. Code § 37-131.02(c)(1). Regulations provide dozens of additional reasons for license denial. 24 DCMR §§ 504.3, 507.1. One reason is for "[v]iolations of the Clean Hands Certification requirements," but a separate reason is for "failure to pay required sales and use taxes." *Id.* § 507.1(e), (f). Another reason is for "[v]iolation of any District law or regulation governing the operation of the vending business." *Id.* § 507.1(c).

To street vend also requires a vending site permit authorizing the specific location where a person can street vend. D.C. Code § 37-131.04(a). The Department of Transportation (DDOT) may designate or eliminate vending locations based on its determination of, among other things, the public interest. 24 DCMR §§ 508.3–508.5, 524.1–524.2, 532, 537; *see* D.C. Code § 37-131.04(d) ("[A] vending site permit shall constitute a revocable license and a vendor shall not acquire a property interest in the vending site permit."). The fees for a vending site permit vary depending on the type of location. *Vending Handbook*, *supra*, at 16. For example, a sidewalk vending permit is $600 a year. *Id.*

Finally, an applicant will not receive a street vending license "until the applicant has received all necessary licenses, permits, and authorizations" from other District agencies. 24 DCMR § 505.2. These include a health inspection certificate, a food protection manager certificate, a certified food protection manager identification card, approved food safety plans, and a permit from the fire department, if applicable. *Id.*

C. Occupational Licenses

Cheatham wants to start a plumbing business, and Carrington wants to start a speech pathology practice. PI Mot. 5–7. Each will require an occupational license, although Cheatham overlooks that he will need a plumber's license. D.C. Code § 3-1205.01(a)(1), 47-2853.04(a)(21).

A plumber's license requires, among other things, 8,000 hours of apprenticeship work, a degree in mechanical engineering, two years of verified practical experience, and passage of an exam. *Id.* § 47-2853.122(b); Bd. of Indus. Trades, *Occupational and Professional Licensing* 1 (Dec. 13, 2022), https://tinyurl.com/bddsd2ja. Alternatively, the Board will accept certification from certain recognized organizations following completion of their program and passage of their exam. D.C. Code § 47-2853.122(b-1). If Cheatham wants to supervise other plumbers, Cheatham Decl. ¶ 3, then he must also show that he has worked as a licensed plumber for four years, D.C. Code § 47-2853.122(c). The application and license fees are nearly $175. DLCP, *Board of Industrial Trades*, https://tinyurl.com/yckbcuyf. The occupational board has dozens of reasons to deny a license. D.C. Code § 47-2853.17(a), (c). Those reasons include if the applicant "[f]ails to pay a civil fine imposed by the Mayor, a board, other administrative officer, or court." *Id.* § 47-2853.17(a)(15).

Carrington wants to obtain a license to practice speech-language pathology. PI Mot. 6. For individuals already licensed in another jurisdiction (as Carrington claims to be), an

application requires verification from the licensing state, certification from a national organization, transcripts, a criminal background check, and a $264 fee. Bd. of Audiology & Speech Language Pathology, *Application Checklist* 1, https://tinyurl.com/2cr6rcxz. The occupational board may deny an application for more than 50 enumerated reasons. D.C. Code § 3-1205.14(a), (c)(1). Those reasons include if an applicant "[f]ails to pay a civil fine imposed by a board, other administrative officer, or court." *Id.* § 3-1205.14(a)(15).

IV. Procedural History

Plaintiffs brought this case on June 20, 2023, alleging that the Clean Hands Law prevents them from obtaining their desired licenses and starting businesses due to their outstanding debts. Compl. ¶¶ 16–22. They allege that the Law violates (1) procedural due process, (2) the convergence of due process and equal protection, (3) substantive due process, (4) equal protection, and (5) the Eighth Amendment's prohibition on excessive fines. *Id.* ¶¶ 99–132. They seek declaratory and injunctive relief to prevent the District from enforcing the Clean Hands Law "with respect to occupational and small business licenses." *Id.*, Prayer (b)–(e). On the same day they filed their Complaint, Plaintiffs moved for a preliminary injunction on all their claims, asking the Court to broadly enjoin the District from "enforcing the Clean Hands Law . . . to deny applications to renew or obtain occupational or small business licenses due to unpaid debt to the District of Columbia." Proposed Order [3-12] 2.

LEGAL STANDARDS

I. Fed. R. Civ. P. 12(b)(1)

A complaint must be dismissed for "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1), (h)(3). To survive a Rule 12(b)(1) motion, the plaintiff bears the burden of establishing jurisdiction. *Bronner on Behalf of Am. Stud. Ass'n v. Duggan*, 962 F.3d 596, 602 (D.C. Cir. 2020). Generally, the Court accepts "well-pled factual allegations" while "disregard[ing] any

legal conclusions, legal contentions couched as factual allegations, and unsupported factual allegations." *Gulf Coast Mar. Supply, Inc. v. United States*, 867 F.3d 123, 128 (D.C. Cir. 2017). If, however, the defendant disputes the complaint's factual allegations, "the court must go beyond the pleadings and resolve any disputed issues of fact the resolution of which is necessary to a ruling upon the motion to dismiss." *Feldman v. FDIC*, 879 F.3d 347, 351 (D.C. Cir. 2018) (internal quotation marks omitted) (quoting *Phoenix Consulting v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000)).

II. Fed. R. Civ. P. 12(b)(6)

A complaint also must be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, the "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Courts need not accept as true conclusory "assertions devoid of further factual enhancement," *Iqbal*, 556 U.S. at 679, or "legal conclusions," *Pueschel v. Chao*, 955 F.3d 163, 166 (D.C. Cir. 2020).

III. Preliminary Injunction

"A preliminary injunction is an 'extraordinary remedy[.]'" *Archdiocese of Wash. v. WMATA*, 897 F.3d 314, 321 (D.C. Cir. 2018) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010)). "The moving party must make a 'clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest.'" *Id.* (quoting *League of Women Voters v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016)). A movant must also "show a substantial likelihood of standing under the heightened standard for evaluating a motion for summary judgment." *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on*

Election Integrity, 878 F.3d 371, 377 (D.C. Cir. 2017) (internal quotation marks and citation omitted). That is, the movant cannot "'rest on . . . mere allegations, but must set forth by affidavit or other evidence specific facts' that, if 'taken to be true,' demonstrate a substantial likelihood of standing." *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)).

ARGUMENT

I. Plaintiffs Lack Standing.

Although Plaintiffs make no argument that they have standing, they "must establish standing 'for each claim [they] seek[ ] to press and for each form of relief that is sought.'" *Finnbin, LLC v. Consumer Prod. Safety Comm'n*, 45 F.4th 127, 136 (D.C. Cir. 2022) (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008)). "A plaintiff has standing only if he can 'allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006)). Plaintiffs' theory of standing here is that they cannot start businesses (injury) because they cannot obtain certain licenses due to the Clean Hands Law (causation) and enjoining the Law would allow them to start businesses (redressability). *E.g.*, Mehabe Decl. ¶ 12; Ghebrebrhan Decl. ¶ 17; Tesfamichael Decl. ¶ 15; Ayele Decl. ¶ 13; Diaz de Sanchez Decl. ¶ 13; Carrington Decl. ¶ 22; Cheatham Decl. ¶ 8.

This theory defies key principles of standing. To start, when "a separate action . . . independently causes the same alleged harm as the challenged action," plaintiffs are "unable to establish the 'necessary causal connection' between the [challenged action] and their purported injury." *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1296–97 (D.C. Cir. 2015) (per curiam); *see Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412–13 (2013) (plaintiffs lacked standing to challenge statute authorizing communications interceptions because it was not clear whether the government would rely on that statute "or some other authority" to authorize future

interceptions). For similar reasons, an injury is not redressable when enjoining the challenged law would "have no real effect" due to other factors or laws that could still produce the same injury. *Kaspersky Lab, Inc. v. U.S. Dep't of Homeland Sec.*, 909 F.3d 446, 465 (D.C. Cir. 2018) (internal quotation marks and citation omitted); *see also Von Aulock v. Smith*, 720 F.2d 176, 180 (D.C. Cir. 1983) ("[T]he existence of one absolute barrier was sufficient injury only if its removal would mean that all other barriers to the ultimately sought relief were likely to fall."). More specifically, when plaintiffs challenge an unconstitutional condition on receiving a benefit, they "must first show that, without the [condition], they would be qualified to receive [the benefit]." *DKT Mem'l Fund, Ltd. v. Agency for Int'l Dev.*, 810 F.2d 1236, 1238 (D.C. Cir. 1987); *see Grid Radio v. FCC*, 278 F.3d 1314, 1319 (D.C. Cir. 2002) ("But for the ban, Szoka would have applied for a license, and the Commission points to no individual characteristics . . . that would have led it categorically to deny his application in the absence of the ban.").

Here, Plaintiffs face barriers to obtaining licenses or starting businesses besides the Clean Hands Law. Starting with the street vendor Plaintiffs, the street vending regulations have their own requirement, independent from the Clean Hands Law, that "failure to pay required sales and use taxes" supports denial of a street vending license. 24 DCMR § 507.1(f). This requirement is separate from the Clean Hands Law because it is contained in a license-specific regulation, and the agency enumerates "[v]iolations of the Clean Hands Certification requirements" as a different reason for denying a license. *Id.* § 507.1(e); *see Thomas v. D.C. Dep't of Emp. Servs.*, 547 A.2d 1034, 1037 (D.C. 1988) ("A basic principle is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous."). Four of the Plaintiffs have failed to pay required sales taxes. Background § II,

supra. Their applications could thus be denied for that failure, regardless of the Clean Hands Law. The other street vendor Plaintiff, Diaz de Sanchez, will also face a denial due to a "[v]iolation of any District law or regulation governing the operation of the vending business," since she was cited for vending without a license. 24 DCMR § 507.1(c). So all the street vendor Plaintiffs lack standing because "two independent government actions"—street vending regulations and the Clean Hands Law—"produce the same harm," yet "only one is challenged." *Baz v. U.S. Dep't of Homeland Sec.*, No. 18-cv-1013, 2019 WL 5102827, at *4 (D.D.C. Oct. 11, 2019).

True, the licensing authority ultimately decides whether to deny the license. *See* 24 DCMR § 507.7 ("The [DLCP] Director may . . . deny an application for the issuance or renewal of a Vending Business License, for any of the following . . . ."). But that just compounds Plaintiffs' standing problem. Standing cannot depend upon how the government or decisionmakers will exercise discretion and authority. *See Clapper*, 568 U.S. at 412–13. Rather, it is Plaintiffs' burden to show that the licensing authority is substantially likely to approve their applications despite the fact that they clearly fall within one of the enumerated reasons for denial. *See id.* at 412 n.4 ("[I]t is [*Plaintiffs'*] burden to prove their standing by pointing to specific facts, not the Government's burden to disprove standing . . . ." (internal citation omitted)); *Greater Tampa Chamber of Com. v. Goldschmidt*, 627 F.2d 258, 263 (D.C. Cir. 1980) (holding that a complaint must "allege facts which give rise to a 'substantial likelihood' that, were a court to grant appellants the relief they request, their injury would be redressed"). That is a burden Plaintiffs cannot and do not bear, as the disqualifiers above are plainly applicable to Plaintiffs.

Moreover, a street vending license contains other requirements which Plaintiffs have not shown they satisfy. A street vending license requires an applicant to first secure a bevy of

permits, certifications, and inspections. 24 DCMR § 505.2. Neither the Complaint nor Plaintiffs' declarations make any mention of these requirements—let alone provide facts sufficient to conclude that Plaintiffs can meet them. Also, a street vending license and the accompanying permits all require several fees. It costs nearly $1,000 to begin street vending—at a minimum. *Vending Handbook*, *supra*, at 16. None of the Plaintiffs allege that they can pay the requisite fees. In fact, Plaintiffs' central allegation in this case is that they are indigent. It is simply implausible for Plaintiffs to claim that they will likely secure licenses if the Clean Hands Law is enjoined when it appears they cannot afford the fees required for their desired licenses.

Similar problems abound for the remaining Plaintiffs, Cheatham and Carrington, who want to start plumbing and speech-language pathology businesses, respectively. Applications for a plumber's or speech-language pathologist's license may be denied if the applicant "[f]ails to pay a civil fine imposed by the Mayor, a board, other administrative officer, or court." D.C. Code §§ 47-2853.17(a)(15), 3-1205.14(a)(15). This requirement comes from the occupational licensing statutes—not the Clean Hands Law. *Id.* Yet both Cheatham and Carrington owe civil fines from their outstanding traffic tickets and late payment fines. *See* Background § II, *supra*; *DeVita v. District of Columbia*, 74 A.3d 714, 722 (D.C. 2013) (holding that traffic fines under District law are civil fines).

These two Plaintiffs have more qualification problems. Cheatham does not allege that he meets the other requirements for a plumber's license, such as 8,000 apprenticeship hours and a mechanical engineering degree. D.C. Code § 47-2853.122(b). Further, Cheatham declares that he "spent time in prison," Cheatham Decl. ¶ 2, but plumber's licenses can be denied if an applicant has committed certain offenses, D.C. Code §§ 47-2853.12(a)(1), 47-2853.17(a)(19). Without facts about his conviction, the Court cannot conclude that there is a "substantial

likelihood" that he qualifies for a license despite the Clean Hands Law. *Greater Tampa Chamber of Com.*, 627 F.2d at 263. Finally, occupational and basic business licenses all have associated fees and require worker's compensation insurance (unless specifically exempted). Bd. of Audiology & Speech Language Pathology, *supra*; DLCP, *Board of Industrial Trades*, *supra*; D.C. Code § 47-2851.07(a). Again, those fees and costs are unfortunately "other barriers" to Cheatham's and Carrington's ability to secure licenses. *Von Aulock*, 720 F.2d at 180.

Besides legal barriers, Plaintiffs face economic barriers to starting their businesses. As the adage goes, "you have to spend money to make money." Starting a business—no matter how small—requires upfront capital and expenditures. For example, a food vendor must purchase ingredients, cooking and cleaning supplies, a cart or food truck, additional labor, and more. The unfortunate economic reality is that, if Plaintiffs have no income or savings as is, and no loans secured, then they do not have the means to start a business anytime soon. Plaintiffs do not even appear to have the necessary supplies or property for their businesses, like a food cart or space to open a private speech pathology practice. *See, e.g.*, Ayele Decl. ¶ 5 (stating that she returned her cart in 2022); Carrington Decl. ¶ 17 (listing as her only "steps to open my own private practice" as forming a limited liability company).

Relatedly, Plaintiffs throughout their brief resort to the refrain that the Clean Hands Law prevents them from earning any living or pursuing their chosen professions. *E.g.*, PI Mot. 4, 5, 40. That is not true. Carrington *is* currently following her chosen profession. Carrington Decl. ¶ 9. All the street vendors could seek employment from another street vendor or somewhere else in the food industry. Or they could street vend outside the District. Cheatham is currently on disability, in any event. Cheatham Decl. ¶ 7. And every Plaintiff could seek a myriad of jobs that do not require a license, save their earnings, pay off their debts, and then apply for licenses

to start their own businesses. No Plaintiff is precluded from seeking employment and supporting themselves by the Clean Hands Law.

All said, Plaintiffs' theory that, if the Clean Hands Law is enjoined, they could obtain licenses and start businesses is demonstrably false because other legal and economic hurdles stand in their way. Put simply, Plaintiffs have bigger problems than the Clean Hands Law. And those problems cannot be solved by the judiciary in a case challenging the Clean Hands Law alone. At the least, Plaintiffs needed to provide far more allegations in their Complaint or factual support in their declarations to demonstrate that they are otherwise qualified for the licenses they seek and that they could otherwise start a business but for the Clean Hands Law. They did not, so they lack standing and certainly are not entitled to a preliminary injunction.

If the Court nonetheless concludes that Plaintiffs have standing, they still do not have standing for all the relief they seek. *See Neb. Dep't of Health & Hum. Servs. v. Dep't of Health & Hum. Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006) ("[A]n injunction must be narrowly tailored to remedy the specific harm shown." (internal quotation marks omitted) (quoting *Aviation Consumer Action Project v. Washburn*, 535 F.2d 101, 108 (D.C. Cir. 1976))). Plaintiffs want the Court to enjoin the Clean Hands Law's enforcement "with respect to occupational and small business licenses." Compl., Prayer (b)–(e). But the District issues occupational licenses for all manner of occupations, from architects to veterinarians. D.C. Code § 47-2853.04(a). And the District issues several different types of small business licenses, from beauty shops to ride services. *Id.* § 47-2851.03(a). Plaintiffs are only seeking a fraction of the "occupational and small business licenses" the District offers. They plainly do not have standing to challenge the Clean Hands Law's application to the hundreds of licenses for which they have no interest in ever obtaining. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[T]he plaintiff generally must

assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."); *Brokamp v. James*, 66 F.4th 374, 389 (2d Cir. 2023) (holding that plaintiff only had standing to challenge licensing scheme applicable to her qualifications). Article III limits any injunction to the few Plaintiffs here.

II. All Claims Fail on the Merits.

If the Court reaches the merits, Plaintiffs fail to state any claim—let alone prove up a likelihood of success on the merits, as required for a preliminary injunction.[4]

A. The Procedural Due Process Claim Fails.

Plaintiffs' procedural due process claim fails even on the pleadings. To state a claim, Plaintiffs must allege that the District (1) "deprive[d] [them] of a liberty or property interest" (2) "without providing appropriate procedural protections." *Bowman v. Iddon*, 848 F.3d 1034, 1039 (D.C. Cir. 2017) (internal quotation marks omitted) (quoting *Atherton v. D.C. Off. of the Mayor*, 567 F.3d 672, 689 (D.C. Cir. 2009)). Plaintiffs fail at the threshold to establish a necessary condition for any procedural due process claim: exhaustion. That aside, they do not have a property interest in new licenses they have not been granted, and the District's processes far exceed constitutional requirements.

1. Plaintiffs Failed to Pursue All Available Process.

Plaintiffs' failure to take advantage of the many processes available to them bars their claim. To state a procedural due process claim, a plaintiff must first avail himself of all available process. *E.g.*, *Williams v. District of Columbia*, No. 20-7037, 2020 WL 6038667, *1 (D.C. Cir.

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[4] If any of the claims survive dismissal, they should be dismissed against the individual defendants because such claims are "superfluous" to a claim against the District of Columbia, which is already a defendant. *Freeman v. District of Columbia*, 60 A.3d 1131, 1145 (D.C. 2012).

Sept. 1, 2020) (per curiam); *Long v. District of Columbia*, 194 F.3d 174 (Table) (D.C. Cir. 1999) (per curiam); *see Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 485 (1982) ("The fact that [plaintiff] failed to avail himself of the full procedures provided by state law does not constitute a sign of their inadequacy."). None of the Plaintiffs disputed his or her debt through the available processes for traffic infractions, civil infractions, or tax assessments. The street vendor Plaintiffs have not even filed tax returns yet. Not only that, none of the Plaintiffs actually applied for a new license, received a denial, and sought a hearing under the Clean Hands Law. D.C. Code § 47-2865(c). Plaintiffs' total failure to exhaust the administrative and judicial remedies available to them requires dismissal of their procedural due process claim. *E.g.*, *Hoey v. District of Columbia*, 540 F. Supp. 2d 218, 227 (D.D.C. 2008).

2. Plaintiffs Do Not Have Cognizable Property Interests in the Licenses They Seek.

Exhaustion aside, the business or occupational licenses Plaintiffs seek are not cognizable property interests to which procedural due process protections attach. In some circumstances, a government benefit, like a license, can qualify as a cognizable property interest. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). But "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *Id.* To find a cognizable property interest, the Court looks to District law for "substantive limitations on official discretion, embodied in mandatory statutory or regulatory language." *Price v. Barry*, 53 F.3d 369, 370 (D.C. Cir. 1995) (per curiam).

A clarification at the outset: Plaintiffs suggest that the property interest here is in "both license renewals and issuance of licenses in the first instance." PI Mot. 22. But license renewals are not at issue in this case. No Plaintiff currently holds any license. Cheatham Decl. ¶ 8 (no license); Carrington Decl. ¶ 21 (no license); Ayele Decl. ¶ 6 (street vending license expired in

2020); Ghebrebrhan Decl. ¶ 7 (same); Mehabe Decl. ¶ 8 (same); Tesfamichael Decl. ¶ 8 (street vending license expired in 2021). Although the street vendor Plaintiffs at one time had licenses, a vendor must begin the renewal process while he or she still has a license. *See* 24 DCMR § 506.2 ("Not less than forty-five (45) days before the expiration of a Vending Business License, the licensee shall submit a renewal application . . . ."). If a vendor lets his or her license expire (like Plaintiffs here), then he or she must reapply for a license like any new applicant. *See id.* Thus, all Plaintiffs are seeking issuances of licenses in the first instance, and Plaintiffs' citations to case law dealing with revocations or suspensions miss the mark. *See* PI Mot. 21–22. Rather, Plaintiffs lack a property interest in the licenses here for two reasons.

First, the *specific* property interest at issue here is not cognizable under District law. The Court must "[i]dentify[ ] with specificity the nature of the claimed property interest." *Fowler v. Benson*, 924 F.3d 247, 256 (6th Cir. 2019). Plaintiffs' alleged property interest is not merely a general interest in business or occupational licenses. Rather, it is an interest, as indigent individuals, in obtaining business or occupational licenses when District law requires licenses be denied for failure to pay debts. *See id.* (holding that, in challenge to state law requiring suspension of driver's licenses due to unpaid court debt, "their specific claim is to a property interest, as indigent individuals, in maintaining their driver's licenses when state law requires they be suspended due to unpaid court debt"). Yet Plaintiffs identify no authority showing that District law directs anyone to consider indigency as part of the licensing application process. Thus, District law does not establish the entitlement Plaintiffs seek in this case—a license because they are indigent, Compl. ¶ 104—so there is no constitutional requirement to provide procedures to determine indigency. *See Fowler*, 924 F.3d at 258 (holding that state law did not "establish[ ] the entitlement that Plaintiffs' claim in this case—a right of the indigent, who

cannot pay court debt, to be exempt from driver's-license suspension on the basis of unpaid court debt").

Second, and apart, heavy doses of discretion are baked into the licensing systems at issue here, so the licenses are not cognizable property interests. A statute applicable to basic business licenses and street vending licenses empowers the licensing authority to deny a license if denial "is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for *any other reason* [the licensing authority] may deem sufficient." D.C. Code § 47-2844(a) (emphasis added). The only limit to this grant of discretion is that the reason for denial should be related to the "particular business activity for which [an applicant] seeks a license." *Miller*, 294 A.2d at 369; *see id.* at 369 n.9. This is as broad of discretion as it comes. And because this supercharged discretionary power applies to licenses each Plaintiff seeks, it dooms every Plaintiff's due process claim.

If that were not enough, the occupational licensing schemes for speech pathologists and plumbers provide that the occupational board "*may*" deny a license for dozens of reasons. D.C. Code §§ 47-2853.17(a), (c), 3-1205.14(a), (c) (emphasis added). "The use of the word 'may' clearly marks the [b]oard's decision as discretionary." *Price*, 53 F.3d at 370. Further, some of the reasons are subjective, so their application will depend on a board member's exercise of discretion. For example, license applications can be denied if an applicant violates laws "related" to the occupation, and determining whether an offense is "related" to the profession and requires denial is up to the board. D.C. Code §§ 47-2853.17(a)(5), 3-1205.14(a)(25). All said, the licensing statutes "under no circumstances compel[ ] the [b]oard[s]" to approve license applications, so there are no property interests in the licenses before they are issued. *Price*, 53 F.3d at 370.

The street vending licenses also involve significant discretion when it comes to vending sites. Vending site approval and continued recognition are a matter of agency discretion. *E.g.*, 24 DCMR §§ 508.5, 524.2. Indeed, District law declares that "a vending site permit shall constitute a revocable license and a vendor shall not acquire a property interest in the vending site permit." D.C. Code § 37-131.04(d). Accordingly, street vendors do not have a property interest in the vending site, which is necessary to street vend. *Ki Young Chung v. District of Columbia*, 982 F. Supp. 20, 22 (D.D.C. 1997).

3. Plaintiffs Had More Than Adequate Process.

Even if Plaintiffs have a property interest in the licenses they seek here, they were not deprived of that interest without "appropriate procedural protections." *Bowman*, 848 F.3d at 1039 (internal quotation marks omitted) (quoting *Atherton*, 567 F.3d at 689). Plaintiffs allege that the District does not provide adequate process because "individuals do not receive a hearing before being disqualified from renewing or receiving an occupational or small business license." Compl. ¶ 104. This claim fails for two overarching reasons: (1) any deprivation caused by the Clean Hands Law is through legislative action, which does not require any individualized hearing; and regardless (2) Plaintiffs had several opportunities to be heard.

a. As Legislative Action, the Clean Hands Law Does Not Require Individualized Hearings.

In deciding what process is due and whether individualized hearings are required, the Supreme Court has long distinguished between legislative and adjudicative action. *Pickus v. U.S. Bd. of Parole*, 543 F.2d 240, 244 (D.C. Cir. 1976). When the government deprives property through a general rule applicable to a large class of individuals, it acts legislatively, and the only process due is that afforded by the legislative process. *Id.* at 244–45. For example, in a classic opinion by Justice Holmes, the Supreme Court upheld a law increasing the valuation of all

taxable property in Denver by 40% against a challenge from a property owner that due process required individualized hearings. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 443–45 (1915). Justice Holmes explained that when "a rule of conduct applies to more than a few people," "[t]heir rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule," *i.e.*, through the legislative process. *Id.* at 445. In contrast, when state action concerns a "relatively small number of persons" who are "exceptionally affected, in each case upon individual grounds," the action is adjudicative and may require "a right to a hearing." *Id.* at 446. Justice Holmes' words continue to apply today. *E.g.*, *Decatur Liquors, Inc. v. District of Columbia*, 478 F.3d 360, 363 (D.C. Cir. 2007) (upholding ban on selling single beer cans by licensed alcohol retailers in a geographic area because "the statute prohibits the same conduct by all 73 licensees" and "[n]ot only would individualized hearings be impractical, they would be unnecessary").

To the extent the Clean Hands Law deprives people of a property interest in licenses, it does so via a generally applicable, prospective rule contained in a statute; so the Law is legislative action. *See Gray Panthers v. Schweiker*, 652 F.2d 146, 156 n.18 (D.C. Cir. 1980) (explaining that "[g]enerally, . . . the broader and more prospective the Government's proposed action is," the more legislative it is, and "fewer procedural protections need be ensured to each individual affected"). That is, the Law proclaims that anyone who owes more than $100 to the District cannot obtain a District license or permit. "The procedural component of the Due Process Clause does not 'impose a constitutional limitation on the power of [the legislature] to make substantive changes in the law of entitlement to public benefits.'" *Atkins v. Parker*, 472 U.S. 115, 129 (1985) (quoting *Richardson v. Belcher*, 404 U.S. 78, 81 (1971)).

Plaintiffs may argue that due process still requires the District to provide a hearing, before a person applies for a license, to determine whether he or she owes more than $100 and whether the Clean Hands Law applies. Setting aside for a moment that the District *does* provide such process a few times over (see below), "[t]he Due Process Clause does not require States to provide individual process to help citizens learn the facts necessary to comply with laws of general application." *Jones v. Governor of Fla.*, 975 F.3d 1016, 1049 (11th Cir. 2020) (en banc). In *Jones*, for example, Florida passed a law providing that felons could vote if they paid all fines and court fees. *Id.* at 1025. Holding that the law was legislative action, the en banc Eleventh Circuit rejected the notion that "the Due Process Clause somehow makes Florida responsible not only for giving felons notice of the standards that determine their eligibility to vote but also for locating and providing felons with the *facts* necessary to determine whether they have completed their financial terms of sentence." *Id.* at 1049.

Plaintiffs' claim here is similar and fails for the same reason. The Clean Hands Law provides clear "notice of the [objective] standards that determine their eligibility" for licenses. *Id.* The District is not also constitutionally required to provide an adjudicative process on the front end to determine eligibility, as Plaintiffs demand. *Id.*

b. Regardless, Plaintiffs Had Several Hearings Available to Them.

In any event, the District offers process on top of process—none of which Plaintiffs even tried to use. "[D]ue process is flexible," requiring only "the opportunity to be heard at a meaningful time and in a meaningful manner." *Statewide Bonding, Inc. v. DHS*, 980 F.3d 109, 118 (D.C. Cir. 2020) (internal quotation marks and citations omitted). "To 'evaluate a procedural due process claim, a court must evaluate the risk of an erroneous deprivation of [a property] interest through the procedures used, and the probable value, if any, of additional or

substitute procedural safeguards.'" *Id.* (quoting *Nat'l Min. Ass'n v. U.S. Dep't of Interior*, 251 F.3d 1007, 1010 (D.C. Cir. 2001))). That evaluation is made while also considering "the private interest affected" and "the Government's interest." *UDC Chairs Chapter, Am. Ass'n of Univ. Professors v. Bd. of Trs. of Univ. of D.C.*, 56 F.3d 1469, 1473 (D.C. Cir. 1995).

Plaintiffs are just plain wrong that the District does not offer an opportunity to dispute the debts at issue here before a license is denied. PI Mot. 29. When a person commits a civil or traffic infraction, he or she receives notice and can dispute it in an evidentiary hearing and before an appeals board and before a court. Background § II, *supra*. These procedures have already been held to provide due process. *DeVita*, 74 A.3d at 717 (Traffic Adjudication Act); *Agomo v. Fenty*, 916 A.2d 181, 193 (D.C. 2007) (Automated Traffic Enforcement System); *Kuri Bros. v. D.C. Bd. of Zoning Adjustment*, 891 A.2d 241, 245 (D.C. 2006) (Civil Infractions Act). For sales taxes, District law provides clear notice of an objective rule: remit sales taxes every quarter or at least $375. Once businesses file a return, they can then dispute the amount they owe. Background § II, *supra*. "Courts have consistently held that pay first, litigate later procedures such as these satisfy due process in the context of tax collection." *Franceschi v. Yee*, 887 F.3d 927, 936 (9th Cir. 2018). Thus, for all of the disqualifying debts at issue here, the District provides notice and an opportunity to dispute the assessment when it is made and before applying for a license. This satisfies due process. *See id.* (rejecting due process challenge to law allowing revocation of driver's licenses for unpaid taxes because the plaintiff could have disputed his tax liability in a tax proceeding).

In fact, the District provides *more* process than constitutionally required. Although the process described above would be sufficient, the District also provides a hearing following a denial of a license due to the Clean Hands Law. D.C. Code § 47-2865(c). That means the

District provides *two* layers of process: a front-end opportunity to dispute a tax or fine before applying for a license, and a back-end opportunity to dispute Clean Hands Law's application after a license denial. The District even provides what might be called a third layer: individuals can always check their Clean Hands compliance themselves through a publicly available online portal before applying for a license. All said, the District provides several ways to determine and dispute Clean Hands eligibility.

Moreover, the Clean Hands Law does not "finally deprive[ ]" anyone of a license—the principal concern of due process. *Gutierrez-Rogue v. INS*, 954 F.2d 769, 773 (D.C. Cir. 1992); *see UDC Chairs*, 56 F.3d at 1475 (considering "the potential length or severity of the deprivation" (internal quotation marks and citation omitted)). Under the Law, a license application may be denied, but a person is not permanently disqualified from obtaining a license. In the usual course, if a license applicant learns through the application process that he owes a debt, then he simply pays the debt, reapplies, and receives the license. All this can happen quite quickly and is little different from if a license applicant forgets to include a necessary form and then has to resubmit his application once he gets the form. Thus, the Clean Hands Law works, at most, a temporary deprivation that is easily curable.

Plaintiffs nonetheless argue that due process requires the District to add a hearing *before* a license denial to determine whether the Clean Hands Law applies to an applicant. This makes no sense. The Law makes someone ineligible for licenses when he or she incurs a debt over $100 to the District. When that debt is incurred, the District provides process specific to that debt to dispute it (*e.g.*, traffic ticket adjudications, civil infraction adjudications). If the tax or fine is in error, that debt-specific process will fix it. And the District exempts individuals from the Clean Hands Law's application while they determine the validity of their debts. D.C. Code

§ 47-2862(b). If the tax or fine is valid, as decided by the specific process, or the person never disputes it (like Plaintiffs here), then there is no second adjudication needed to determine whether the debt is proper and whether the Clean Hands Law applies. Plaintiffs' proposed second hearing would just repeat what the District already provides (a pre-license-denial opportunity to dispute the debt), so due process does not require it.

Dixon v. Love, 431 U.S. 105 (1977), is on point (and unmentioned by Plaintiffs). There, state law allowed for suspension or revocation of driver's licenses for repeated traffic offenses, without a hearing. *Id.* at 107–10. The Supreme Court rejected the argument that due process required a hearing to determine suspension or revocation because individuals had an opportunity to contest their convictions "at the time they were determined," *i.e.*, in traffic court or judicial proceedings. *Id.* at 113. The same is true here: Plaintiffs could have contested the assessment of their debts in prior proceedings. They "ha[ve] not challenged the validity of those [assessments] or the adequacy of [their] procedural rights at the time they were determined." *Id.* Because they have undisputed debts to their names, the Clean Hands Law's application is "largely automatic," so there is no need for an additional hearing to determine its application. *Id.*

Nor is a second hearing required to "conduct a meaningful inquiry into individuals' ability to pay, or whether the non-payment of the debt is willful." Compl. ¶ 104. The government is not constitutionally required to provide a hearing for individuals to raise defenses to a law's application that the law does not recognize. *Dixon*, 431 U.S. at 113–14; *Mendoza v. Strickler*, 51 F.4th 346, 361 (9th Cir. 2022). Indigency and willfulness are not grounds in the Clean Hands Law to excuse Clean Hands ineligibility. *See* D.C. Code § 47-2862. Thus, a hearing to raise indigency or willfulness would be pointless and is not constitutionally required. *See Fowler*, 924 F.3d at 259 ("If Plaintiffs' indigency is not relevant to the state's underlying

decision to suspend their licenses, then giving them a hearing—or any other procedural opportunity—where they can raise their indigency would be pointless."); *Mendoza*, 51 F.4th at 361 (similar).

Related to this point, Plaintiffs cannot show the requisite prejudice for a procedural due process claim. *See Estes v. Texas*, 381 U.S. 532, 542 (1965) ("[I]n most cases involving claims of due process deprivations we require a showing of identifiable prejudice . . . ."); *Throckmorton v. Nat'l Transp. Safety Bd.*, 963 F.2d 441, 446 (D.C. Cir. 1992) (finding no due process violation where plaintiff failed to show prejudice). Plaintiffs do not dispute that they owe taxes or fines.[5] Indeed, given Plaintiffs' inaction, District law presumes their taxes and fines are valid and admitted. *See, e.g.*, D.C. Code § 2-1802.02(f) (stating that if the respondent to a civil infraction fails to answer a notice of infraction, then "the respondent shall be liable for the penalty"); *id.* § 50-2302.05(e) (stating that if a person fails to answer a notice of a traffic infraction, then "the commission of the infraction shall be deemed admitted"); *id.* § 47-2002.01(b)(3) (stating that street vendors' unsubmitted minimum sales tax payments "shall be considered unpaid sales tax"). So Plaintiffs cannot show that they were prejudiced by the lack of their proposed hearing because, even if the District had given them that hearing, they would have not been able to show that the Clean Hands Law should not apply to them. Again, Plaintiffs' proposed hearing is meaningless, and the lack of prejudice it would cure is reason enough to dismiss the procedural due process claim.

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[5] Diaz de Sanchez in passing suggests that she disputes whether she committed her infraction that resulted in a fine. Diaz de Sanchez Decl. ¶ 8; Compl. ¶¶ 72–73. But her allegations are far too bare and conclusory to make a difference here. She does not even say what the cited offense was. *Id.* And while she alleges that she "attempted . . . to dispute the ticket" by "calling DLCP" "a few times," she clearly did not pursue the adjudicatory process that offenders are supposed to use to dispute infractions. *Id.*

The adequacy of all these processes looks even better when judged against the private and government interests at stake. The private interests are minimal, as Plaintiffs are not currently licensed, so this case does not involve "*retaining* employment." PI Mot. 25 (emphasis added) (internal quotation marks and citation omitted). Nor are they prevented from pursuing their occupations, *id.*, because Carrington is currently a speech pathologist, the street vendors could still street vend for other street vendors, and Cheatham is on disability. On the government side, the District has "compelling" interests in licensing professions and determining who can conduct business "within [its] boundaries." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975). Further, while Plaintiffs dismiss the government's interests in revenue collection, PI Mot. 28, the District "obviously has a strong interest in revenue collection, and the challenged statutory scheme appropriately reflects the importance of this interest," *Franceschi*, 887 F.3d at 937; *see id.* (upholding statutory scheme providing for license suspensions for failure to pay taxes).

To argue that all the process described above is not enough, Plaintiffs mostly rely on *Parham v. District of Columbia*, No. 22-cv-2481, 2022 WL 17961250 (D.D.C. Dec. 27, 2022), which found that applying the Clean Hands Law to driver's licenses likely violated due process. At the outset, that opinion was vacated at the parties' joint request following the District's motion for reconsideration and the plaintiffs' voluntary dismissal. Order [25], Order [27], *Parham*. The opinion was non-binding to begin with, but relying on it now offends the principle that vacatur operates to "clear[ ] the path for future relitigation of the issues" and stop the vacated opinion from continuing to hold sway. *United States v. Munsingwear, Inc.*, 340 U.S. 36,

40 (1950); *see also Clarke v. United States*, 915 F.2d 699, 706 (D.C. Cir. 1990) (en banc) (noting that *Munsingwear* has supported vacating district court decisions).[6]

In any event, *Parham* erred on several key points. *Parham* reasoned that a hearing like Plaintiffs propose was needed because the plaintiffs there were issued traffic tickets that they contended were in error. 2022 WL 17961250, at *10. *Parham*, however, overlooked that the District provides an adjudicatory process to dispute traffic tickets. Indeed, there is no mention in *Parham* of the District's traffic adjudication system. The District pointed out this error in a motion for reconsideration, along with noting that no plaintiff actually disputed the validity of his/her tickets. Mot. for Reconsideration [19-1] 6–10, *Parham*. The plaintiffs voluntarily dismissed their case before the court could decide the District's motion.

Parham is also distinguishable in so far as it involved driver's licenses, which implicate stronger private interests because, without a driver's license, plaintiffs there could not pursue any employment. 2022 WL 17961250, at *9. As explained several times now, however, Plaintiffs here have employment and business opportunities available to them. *Parham* also found that the private interest outweighed the District's interest in revenue collection because the District had not shown that "the Clean Hands Law actually achieves that goal." *Id.* at *11. As explained further below, Argument § II.C, *supra*, it should be obvious that conditioning licenses on payment of taxes and fines will likely improve revenue collection.

Yet *Parham*, as a part of *Mathews* balancing, seemed to test the government's interests against its chosen means and hold the government to some heightened scrutiny standard. The District is not aware of case law instructing that the third *Mathews* factor is a chance for a court

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[6] Counsel for the *Parham* plaintiffs, who jointly moved with the District to vacate the judgment, is also counsel for Plaintiffs here. Jt. Mot. to Vacate [24], *Parham*.

to apply heightened scrutiny. *Cf. UDC Chairs*, 56 F.3d at 1474 (accepting the government's assertion that it adopted abbreviated procedures to maintain its solvency). That is essentially what *Parham* did and is contrary to other courts that have recognized that the government "obviously has a strong interest" under *Mathews* in deciding how best to collect revenue. *Franceschi*, 887 F.3d at 937. But ultimately, what process is due is "determined by the particular circumstances of each situation." *UDC Chairs*, 56 F.3d at 1472. The circumstances and plaintiffs here are different from *Parham*, so the same result need not obtain.

B. The Due Process and Equal Protection "Convergence" Claim Fails.

Plaintiffs bring a novel claim that the Clean Hands Law violates "a right, located at the convergence of . . . due process and equal protection guarantees, not to be punished by Defendants because of their poverty." Compl. ¶ 109. For this right, they point to two related lines of cases (which they incorrectly blend). PI Mot. 29. In one line, the Supreme Court has placed limits on the state's power to imprison individuals who cannot pay a fine, and the Court has subjected indigency-based imprisonment to heightened scrutiny. *Bearden v. Georgia*, 461 U.S. 660, 667–69 (1983); *Tate v. Short*, 401 U.S. 395, 396–98 (1971); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970). But courts have consistently held that this line of precedent only "applies when the State imprisons a person by reason of his inability to pay a fine." *Jones*, 975 F.3d at 1032; *see also, e.g.*, *Mendoza*, 51 F.4th at 357; *Fowler*, 924 F.3d at 261. Indeed, the Supreme Court emphasized in these cases that "the State may constitutionally resort" to "other alternatives" besides imprisonment "to serve its concededly valid interest in enforcing payment of fines." *Tate*, 401 U.S. at 399; *see also Bearden*, 461 U.S. at 672 ("[T]he State is not powerless to enforce judgments against those financially unable to pay a fine." (internal quotation marks and citation omitted)). The Clean Hands Law does not impose imprisonment for failure to pay a fine, it merely provides that failure to pay a fine—or taxes, which were not at

issue in the *Bearden* cases—is grounds for a license denial. So the Law does not implicate *Bearden*. *See Mendoza*, 51 F.4th at 357 (holding that *Bearden* did not apply to law suspending driver's licenses for failure to pay fines); *Fowler*, 924 F.3d at 261 (same).[7]

In another line of cases, the Supreme Court has held that states cannot condition access to the judicial process on court fees in criminal cases and "a narrow category of civil cases" involving certain fundamental interests. *Asemani v. U.S. Citizenship & Immigr. Servs.*, 797 F.3d 1069, 1077 (D.C. Cir. 2015) (internal quotation marks omitted) (quoting *M.L.B. v. S.L.J.*, 519 U.S. 102, 113 (1996)). The Clean Hands Law, however, does not condition access to any judicial process on inability to pay fines and does not implicate any fundamental right. The Law conditions licenses and permits, and Plaintiffs point to no precedent applying this line of cases to licensing schemes. Indeed, the Supreme Court observed in one of these cases that "a State may exact fees from citizens for many different kinds of licenses." *M.L.B.*, 519 U.S. at 124 n.14 (internal quotation marks omitted) (quoting *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668 (1966)). This line of cases, then, is inapplicable. *See Mendoza*, 51 F.4th at 355–56 (holding that these cases did not apply to law suspending driver's licenses for failure to pay fines); *Fowler*, 924 F.3d at 261 (same). Thus, Plaintiffs' "convergence" claim is not cognizable and should be dismissed.

C. The Equal Protection and Substantive Due Process Claims Fail.

Plaintiffs bring equal protection and substantive due process claims but admit that only rational basis review applies. Compl. ¶¶ 115, 122; PI Mot. 31–33. Indeed, the Clean Hands Law does not discriminate against any suspect class or implicate a fundamental right, so rational basis

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[7] As the only support for their request to extend *Bearden*, Plaintiffs cite a panel opinion, *Jones v. Governor of Florida*, 950 F.3d 795, 920 (11th Cir. 2020), which the en banc Eleventh Circuit later emphatically rejected, *Jones*, 975 F.3d at 1032.

review governs here. *Sanchez v. Off. of State Superintendent of Educ.*, 45 F.4th 388, 395 (D.C. Cir. 2022), *cert. denied*, 143 S. Ct. 579 (2023). Under such review, the question is only whether the Court could imagine "'any reasonably conceivable state of facts that could provide a rational basis' for the legislative choice." *Id.* at 396 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). The actual motivations of the legislature are "entirely irrelevant." *Id.* (internal quotation marks omitted) (quoting *Beach*, 508 U.S. at 315). Equally irrelevant is whether the challenged law actually serves the legislative purposes in practice. *See id.* at 398 ("Under rational-basis review, the policy choices of the political branches are 'not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.'" (quoting *Beach*, 508 U.S. at 315)). Thus, to survive a motion to dismiss, Plaintiffs "face[ ] the unenviable task of refuting 'every conceivable basis which might support'" the Clean Hands Law. *Id.* at 396 (quoting *Beach*, 508 U.S. at 315).

This Plaintiffs cannot do. A legislator could rationally conclude that conditioning licenses and permits on payment of taxes or fines would prompt people to pay their taxes and fines, thereby increasing revenue collection. *See Franceschi*, 887 F.3d at 939 (holding that state had a rational basis in revenue collection for law that suspended driver's licenses of the most delinquent taxpayers); *Fowler*, 924 F.3d at 262 (holding that state had a rational basis in revenue collection for law that suspended driver's licenses for failure to pay fines). A legislator could also rationally conclude that individuals who do business or practice professions in the District should be those who pay their financial obligations and contribute to the District. In other words, a legislator could rationally view indebtedness to the District or refusal to pay financial obligations as a valid disqualification for a business or occupational license. *See Franceschi*,

887 F.3d at 939 (holding that state would have a rational basis in professional standards for lawyers that conditioned licenses to practice law on compliance with tax obligations).

Plaintiffs, however, contend that the Law fails rational basis review because its revenue collection purpose is "not at all served" if individuals cannot pay the taxes and fines they owe, and denying those individuals business and occupational licenses prevents them from earning money to pay off their debts. PI Mot. 32. This argument suffers from several problems. First, it is precisely the type of testing whether a law actually serves its purposes that rational basis review forbids. *Sanchez*, 45 F.4th at 398; *see also Fowler*, 924 F.3d at 262–63 (rejecting identical argument). Second, that the Law may not advance revenue collection in every instance is not fatal. *See Sanchez*, 45 F.4th at 397 ("Under rational-basis review, [the District] had discretion to impose a requirement that is 'not . . . in every respect logically consistent with its aims,' so long as it identified 'an evil at hand for correction' and established 'a rational way to correct it.'" (quoting *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 487–88 (1955))). Most individuals can and want to pay their taxes and traffic tickets—indeed, they legally must. The fact that Plaintiffs may be the few who cannot pay their taxes or tickets does not undermine the District's rational conclusion that most people will pay their taxes or tickets when prompted or will make arrangements so that they can. Finally, the District does not require licenses for every job; so, despite the Clean Hands Law, any individual can still get a job to earn money to pay off their debts.

Still trying to invent an equal protection problem, Plaintiffs rely on *James v. Strange*, 407 U.S. 128 (1972), to argue that the Clean Hands Law unconstitutionally abuses its power as debt collector by imposing harsh and discriminatory terms. Compl. ¶ 123; PI Mot. 34. In *Strange*, the Supreme Court found problematic a Kansas statute that allowed the state to recover legal

defense costs from indigent defendants without providing them the exemptions and protections available to other civil judgment debtors. 407 U.S. at 135, 141–42. Even so, the Supreme Court "recognize[d], of course, that the State's claim to reimbursement may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical." *Id.* at 138. Two years later, in *Fuller v. Oregon*, 417 U.S. 40, 46 (1974), the Court upheld a recoupment statute aimed at indigent criminal defendants who later gained the ability to pay because the statute retained the protections available to other judgment debtors. The Court explained that in *Strange* the "offending aspect of the Kansas statute was its provision that in an action to compel repayment of counsel fees, none of the exemptions provided for in the code of civil procedure (for collection of all other debts) shall apply to any such judgment," and those aspects were not present in the Oregon law. *Id.* at 47.

Unlike the statute in *Strange*, the Clean Hands Law does not eliminate any exemptions or protections that would normally be available to individuals with debt to private entities. The Law says nothing about what exemptions are or are not available under District law. And courts have consistently rejected similar challenges to statutes that revoke driver's licenses for unpaid debt. *Fowler*, 924 F.3d at 263; *Mendoza*, 51 F.4th at 359–60. "In any event, laws challenged under *Strange* are subject to rational basis review." *Fowler*, 924 F.3d at 263; *see Strange*, 407 U.S. at 139 (invalidating the unique statute at issue because "[i]t is difficult to see why such a defendant, adjudged to be innocent of the State's charge, should be denied basic exemptions accorded all other judgment debtors"). The Clean Hands Law passes rational basis review, as explained above.

D. The Excessive Fines Clause Claim Fails.

As the last arrow in their quiver, Plaintiffs allege that the Clean Hands Law violates the Eighth Amendment's Excessive Fines Clause, Compl. ¶¶ 126–32, but they badly miss any target. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. 8. "[A]t the time the Constitution was adopted, 'the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense.'" *United States v. Bajakajian*, 524 U.S. 321, 327–28 (1998) (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 265 (1989)). So "the central question under the Excessive Fines Clause is whether the government action at issue is 'punishment for some offense.'" *Contemp. Media, Inc. v. FCC*, 214 F.3d 187, 198 (D.C. Cir. 2000) (quoting *Austin v. United States*, 509 U.S. 602, 609–10 (1993)). Typically, a fine comes at the culmination of a criminal or, rarely, civil proceeding and is part of a sentence or judgment as a result of a conviction or finding of liability. *Bajakajian*, 524 U.S. at 328; *Austin*, 509 U.S. at 610.

Plaintiffs theorize that "denial of a license is the 'fine' at issue here." PI Mot. 36; *see also* Compl. ¶ 131. But a denial of a license cannot be a fine, holds the D.C. Circuit. In *Contemporary Media*, the FCC revoked radio licenses and denied an application for another license after the FCC learned that the owner was convicted of sexual abuse, in violation of character requirements for licensees, and the licensees had made misrepresentations about the convictions in reports and their applications. 214 F.3d at 190–91. The D.C. Circuit rejected an Excessive Fines Clause challenge to the FCC's actions, reasoning that "[t]he FCC revokes a license not to punish a licensee for its conduct, but because that conduct indicates to the Commission that the licensee is no longer qualified to hold it." *Id.* at 199. The Court also relied on precedent indicating that the Supreme Court did not view license revocations or non-renewals

due to a failure to meet qualification requirements as a punishment. *Id.* at 198 (citing *FCC v. WOKO, Inc.,* 329 U.S. 223, 228 (1946)).

Like in *Contemporary Media*, the Clean Hands Law sets a license qualification: Applicants cannot owe debt to the District. This no-debt requirement is similar to "character" requirements; requirements that a licensee "deal with [the agency] honestly, to follow its regulations, and to operate in the public interest"; and requirements to provide certain information. *Id.* at 198–99. Enforcing license qualification requirements through applicant denials or revocations is not a form of punishment to which the Excessive Fines Clause applies. *See id.* at 199 ("While the revocation of FCC license privileges 'may hurt and . . . may cause loss,' *WOKO*, 329 U.S. at 228, it does not implicate the Excessive Fines Clause of the Eighth Amendment."). Accepting Plaintiffs' view, however, would mean that every unsuccessful bar applicant has, since the Founding, unknowingly had an Eighth Amendment claim available to him or her. That cannot be right.

Other attributes of the Clean Hands Law further show that it does not exact a "fine" under the Excessive Fines Clause. For one, it is not permanent. *See Coleman v. Watt*, 40 F.3d 255, 263 (8th Cir. 1994) ("A deprivation by the government must be intended to be permanent to constitute a fine . . . ."). A person can cure their Clean Hands ineligibility by simply paying their debt and then obtain a license. Additionally, the Clean Hands Law does not impose any fines itself and certainly not after a judicial or administrative proceeding. The civil and traffic infraction fines at issue here were imposed in civil and traffic actions—not by the Clean Hands Law. And the sales taxes were imposed by tax law, while the Supreme Court has long distinguished taxes from penalties for an offense. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 567 (2012). The Clean Hands Law is completely separate from these proceedings and

is instead part of the licensing application process. As such, Clean Hands ineligibility is not imposed at the culmination of any proceeding as part of a sentence or judgment. Indeed, the Clean Hands Law looks nothing like the cases Plaintiffs rely on. PI Mot. 36–37; *Bajakajian*, 524 U.S. at 328 (currency forfeiture as part of a sentence for a person convicted of failing to report currency); *United States v. Levesque*, 546 F.3d 78, 79–80 (1st Cir. 2008) (money judgment as forfeiture in a prosecution for drug distribution); *United States v. Viloski*, 814 F.3d 104, 107–08 (2d Cir. 2016) (criminal forfeiture).

Even if a license denial under the Clean Hands Law is a fine, it is not excessive. Plaintiffs' chief argument is that the Law exacts an excessive fine because it does not contain exemptions for individuals who cannot pay their debts. PI Mot. 36–38. But "the Excessive Fines Clause does not make obvious whether a forfeiture is excessive because a defendant is unable to pay, and '[n]either the Supreme Court nor [the D.C. Circuit] has spoken' on that issue." *United States v. Bikundi*, 926 F.3d 761, 796 (D.C. Cir. 2019) (quoting *United States v. Hurt*, 527 F.3d 1347, 1356 (D.C. Cir. 2008)); *see id.* (holding that district court did plainly err by not considering ability to pay when ordering forfeiture). In fact, district courts in this Circuit have consistently rejected the notion that ability to pay is relevant to the analysis. *Duckworth v. U.S. ex rel. Locke*, 705 F. Supp. 2d 30, 48 (D.D.C. 2010), *aff'd sub nom. Duckworth v. United States*, 418 F. App'x 2 (D.C. Cir. 2011); *Combat Veterans for Cong. Pol. Action Comm. v. FEC*, 983 F. Supp. 2d 1, 18 (D.D.C. 2013), *aff'd*, 795 F.3d 151 (D.C. Cir. 2015); *United States v. Abou-Khatwa*, No. 18-cr-67, 2021 WL 289359, at *3 (D.D.C. Jan. 28, 2021). Because neither the D.C. Circuit nor Supreme Court recognizes ability to pay as part of the Excessive Fines Clause analysis, Plaintiffs' argument is a non-starter.

Plaintiffs' other main argument is that a fine is excessive if it deprives a person of the ability to earn a living. PI Mot. 36–37. Again, as explained, the Clean Hands Law does no such thing to Plaintiffs because they all may seek out other jobs, including in their chosen fields. And again, Plaintiffs cite no binding authority instructing courts in this Circuit to consider such a factor.

Factors the D.C. Circuit *does* consider cut decidedly against Plaintiffs (although they are a mismatch for a non-penal statute like the Clean Hands Law). Denial of a business or occupational license due to failure to pay taxes or fines is far below the "maximum sentence and fine that could have been imposed," *Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir. 2013), when failure to pay taxes is a crime that subjects an offender to imprisonment and/or hefty fines, D.C. Code § 47-4101. Denial of a license is also proportional when considering "the essence of the crime," *Collins*, 736 F.3d at 526, because those who do not pay their fair share should not enjoy privileges from the government. Similarly, "the nature of the harm caused by the defendant's conduct," *id.*, is a refusal to honor financial obligations to the community and government that are required of all members of society. That refusal undermines the government's ability to collect revenue to provide for the common good, so offenders should not be able to partake in privileges the government may choose to provide.

III. Plaintiffs Fail to Establish Irreparable Harm.

Plaintiffs' quick two paragraphs, PI Mot. 39–40, are not enough to meet the "high standard" for establishing irreparable harm. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The alleged harm "must be both certain and great." *Id.* (internal quotation marks omitted) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). "A movant's failure to show any irreparable harm is . . . grounds for

refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief." *Id.*

Plaintiffs' first purported irreparable injury is the denial of their constitutional rights. But "[c]onstitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a preliminary injunction." *Hohe v. Casey*, 868 F.2d 69, 73 (3d Cir. 1989). While Plaintiffs assume that *any* constitutional violation *per se* qualifies as irreparable harm, that is not the law. Plaintiffs' confusion stems from a plurality opinion in *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality), which stated, in a case involving political speech, that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." The D.C. Circuit and other courts, however, have limited the force of this statement in important ways.

Despite *Elrod*, the D.C. Circuit has explained that whether constitutional violations qualify as irreparable harm depends on the constitutional right at issue and requires particularized analysis. *See England*, 454 F.3d at 300–03 (analyzing whether an Establishment Clause violation constitutes irreparable injury). Specifically, a court must analyze whether the constitutional violation has some harm automatically associated with it or whether the movant must show some harm. *See id.* For example, in Establishment Clause cases, the moment the government prefers one religion over another (a constitutional violation), it harms movants by "send[ing] a message to nonadherents [of the favored denomination] that they are outsiders." *Id.* at 302 (internal quotation marks omitted) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). As a result, movants need not show "any concomitant protected conduct on the movants' part." *Id.* But in other First Amendment cases, like those involving

free speech or free expression, movants must show that their speech is actually chilled. *Id.* at 301.

Here, Plaintiffs do not cite any case law holding that violations of the constitutional rights at issue *per se* cause irreparable harm like with an Establishment Clause violation. PI Mot. 39–40.[8] Nor do Plaintiffs try to explain why that should be the case. To the contrary, courts have held that the types of constitutional violations at issue here do *not* automatically establish irreparable harm. *E.g.*, *Gonzalez-Droz v. Gonzalez-Colon*, 573 F.3d 75, 81 n.7 (1st Cir. 2009) (procedural due process); *Constructors Ass'n of W. Pa. v. Kreps*, 573 F.2d 811, 820 n.33 (3d Cir. 1978) (equal protection); *Simic v. City of Chicago*, 851 F.3d 734, 737 (7th Cir. 2017) (Excessive Fines Clause). So Plaintiffs' first theory of irreparable harm—the Clean Hands Law violates certain constitutional rights—is inadequate.

Plaintiffs' second theory of irreparable harm is that the Clean Hands Law is keeping them from earning income or starting businesses. PI Mot. 40. But such economic harms like lost revenue or lost business—especially those that have already occurred—do not qualify as irreparable harm at all. *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015); *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009); *see also Washington v. District of Columbia*, No. 23-cv-36, 2023 WL 1778195, at *2 (D.D.C. Feb. 6, 2023) (finding no irreparable harm for limo driver who challenged District requirement to have a license when he alleged that the licensing requirement prevented him from pursuing his business). Compensatory damages could be recovered in the regular course of litigation to

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[8] *Mills v. District of Columbia*, 571 F.3d 1304, 1308–12 (D.C. Cir. 2009), was a Fourth Amendment case involving seizures of people—an actual harm. *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998), is not a preliminary injunction case at all. Rather, it interpreted the meaning of a statutory term "injury suffered" and referred to background, highly generalized equitable principles, from which Plaintiffs crib. *Id.*

remedy those harms, so a preliminary injunction to prevent them is unnecessary. *Mexichem*, 787 F.3d at 555.

Plaintiffs' few cases to the contrary—all from outside this Circuit—do not help them. PI Mot. 40. In those cases, movants faced termination of government assistance or spousal support that they depended on to survive, *Justiniano v. Soc. Sec. Admin.*, 876 F.3d 14, 28 (1st Cir. 2017); *Sultana v. MD Safayet Hossain*, 575 F. Supp. 3d 696, 699 (N.D. Tex. 2021); or stood to become "virtually unemployable in the industry in which [they] ha[d] spent most of [their] li[ves]," *Bryan v. Hall Chem. Co.*, 993 F.2d 831, 836 (11th Cir. 1993). Even assuming these cases are compatible with the law of this Circuit, Plaintiffs do not face termination of subsistence support (which many of the Plaintiffs already have) or even the revocation of a license they already possess. Rather, they seek new benefits to which they are not legally entitled. And, again, Plaintiffs are not precluded from pursuing their chosen professions. *See Beberman v. U.S. Dep't of State*, No. 19-cv-3115, 2019 WL 5653626, at *4 (D.D.C. Oct. 30, 2019) (plaintiff failed to establish irreparable harm due to separation from her job because she could seek other jobs in the field).

The street vendor Plaintiffs also attempt to manufacture a crisis by saying they need to be able to start vending in the busy summer months. PI Mot. 1.[9] At the threshold, they provide no evidence to substantiate their claim that each summer month is a substantially busier than every other month. Anyway, Plaintiffs filed this case long past Memorial Day, their Motion will not be heard until weeks after the Fourth of July, and this Court understandably may not decide the Motion until after Labor Day. Even on an expedited schedule, summer will be over before the

[9] Of course, any summer emergency could not support a preliminary injunction for two Plaintiffs, Cheatham and Carrington, because Plaintiffs do not contend that summer is a particularly busy season for speech pathologists and plumbers.

Court could grant them relief. And even if the Court were to grant the relief they seek (enjoining the Clean Hands Law), Plaintiffs would not be getting licenses by end of summer. They would still need to file applications complete with all the required permits, materials, and fees (which they do not allege they have). And then the licensing authority would have 45 days to issue the licenses. 24 DCMR § 505.1. The reality is, there is no way Plaintiffs are getting licenses this summer, so they cannot demand that the Court spring to action to decide their case immediately.

Further cutting against Plaintiffs is that they inexcusably delayed in bringing this case. Delay "may support a conclusion that the plaintiff cannot satisfy the irreparable harm prong." *Gordon v. Holder*, 632 F.3d 722, 725 (D.C. Cir. 2011); *see also TK Servs., Inc. v. RWD Consulting, LLC*, 263 F. Supp. 3d 64, 73 (D.D.C. 2017) (Berman Jackson, J.). Plaintiffs have known that they have debts that trigger the Clean Hands Law for years. Cheatham Decl. ¶ 5 (2016); Ayele Decl. ¶ 7 (2021); Diaz de Sanchez Decl. ¶ 9 (2021); Ghebrebrhan Decl. ¶ 8 (2022); Tesfamichael Decl. ¶ 10 (2022); Mehabe ¶ 9 (2022); *see* Carrington Decl. ¶¶ 17–18 (suggesting that she learned of her ineligibility shortly after June 2021 but no later than March 2022). They cannot seriously contend that they need an injunction this moment when they have known of the Law's effect on them for some time. *See Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (holding that 44-day delay in moving for an injunction "bolstered" the conclusion that an injunction should not issue).

Plaintiffs nonetheless represented at the June 26 conference with the Court that their delay is excusable because they were waiting for months to see what happened with legislation specific to street vendors, and then spent nearly two months preparing their Complaint and Motion. This excuse does nothing for them. For one, it is entirely absent from their Motion, declarations, or Complaint. So it cannot support a preliminary injunction. For another, if

Plaintiffs could wait on legislation before suing, then that just shows that there is no emergency. If an injunction were truly needed to prevent irreparable harm, then Plaintiffs would not have waited on the Council to pass legislation—which, even if the Council passed, would take additional months to secure mayoral and congressional approval to become effective.[10] And, of course, this excuse does not work for Cheatham and Carrington who are not seeking street vending licenses.

Finally, an injunction is not warranted when a movant has "corrective relief" "available." *Mexichem*, 787 F.3d at 555 (internal quotation marks omitted) (quoting *Wis. Gas*, 758 F.2d at 674). Plaintiffs do. They can request payment plans through an online portal, and getting on a payment plan will waive the Clean Hands requirement. *Certificate of Clean Hands Brochure*, *supra*; D.C. Code § 47-2862(c). Although some Plaintiffs say they have struggled to figure out how to set up a payment plan, none aver that they have tried to use the online system designated for this purpose. Further, the Plaintiffs with unpaid sales tax and vending fines may get the exact relief they seek here through the amnesty program the District will soon establish. Street Vendor Advancement Amendment Act § 3(f). That program is more imminent than Plaintiffs portray because it will have cleared congressional review by the time their Motion is fully briefed. Plaintiffs have waited years, they can wait a few months more.

IV. The Balance of Equities and Public Interest Support Denying a Preliminary Injunction.

If the Court finds that Plaintiffs have made a sufficient showing on the merits and irreparable harm, it should nonetheless deny the injunction because the District's interests

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[10] Plaintiffs' admission of their tactics is revealing. Most of their points in their brief are just policy arguments and disagreement with the wisdom of the Law, dressed up in ill-fitting constitutional garb. It seems that after striking out with the legislature, Plaintiffs want to conscript the judiciary to change the Law for them.

outweigh Plaintiffs'. *See Winter v. NRDC*, 555 U.S. 7, 31–32 (2008) (holding that balance of equities and public interest weighed against issuing an injunction with no need to address the merits); *Trump v. Thompson*, 20 F.4th 10, 31 (D.C. Cir. 2021) ("The balance of harms and the public interest factors merge when the government is the opposing party."), *cert. denied*, 142 S. Ct. 1350 (2022).

The District—like all sovereigns—would be irreparably harmed by an injunction preventing it from enforcing its laws. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018) (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)); *see also Washington*, 2023 WL 1778195, at *2. Not only that, but the government "always" faces irreparable harm when an injunction interferes with its revenue collection. *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers). And the Clean Hands Law also implicates "compelling" interests in occupational licensing, another area where judicial involvement should be minor. *Goldfarb*, 421 U.S. at 792.

In addition, an injunction—especially Plaintiffs' startlingly broad one—could create an administrative nightmare for the District, which is not in the public interest. *See Dows v. City of Chicago*, 11 Wall. 108, 110 (1871) ("[I]t is of the utmost importance to [states] that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers . . . may derange the operations of government, and thereby cause serious detriment to the public."); *Maldonado v. District of Columbia*, No. 10-cv-1511, 2019 WL 6877913, at *5 (D.D.C. Dec. 16, 2019) (denying injunction that would require the District to implement individualized procedures to determine benefits because it "would no doubt impose *significant* financial and administrative burdens on the District"). Consider that occupational and business licensing decisions are made by dozens of District agencies that are responsible for

specific licenses. Further consider that each agency employs its own, at times complex, systems and processes for reviewing and deciding license applications. Plaintiffs' injunction would require the sudden reordering of an untold number of systems and processes carried out by an untold number of government workers.

Indeed, legislation ending the Clean Hands Law's application to just driver's licenses required significant technological and staffing changes. Decl. of Vanessa Newton Bernard [19-2] ¶¶ 5–10, *Parham v. District of Columbia*, No. 22-cv-2481 (D.D.C. Jan. 24, 2023). And that was just one agency and one license. Plaintiffs' requested injunction—even if narrowed—will multiply those difficulties.

So on one side of the ledger are the District's sovereignty, its power to tax, its authority to enforce fines, and its processes for licensing. On the other side of the ledger are pecuniary harms to a few individuals, brought upon themselves. "[T]he public interest weighs decidedly in the District of Columbia's favor." *Washington*, 2023 WL 1778195, at *2.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' Motion and dismiss the Complaint for lack of jurisdiction or failure to state a claim.

Dated: June 29, 2023.

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

STEPHANIE E. LITOS
Deputy Attorney General
Civil Litigation Division

/s/ Matthew R. Blecher
MATTHEW R. BLECHER [1012957]
Chief, Equity Section, Civil Litigation Division

/s/ Adam J. Tuetken
ADAM J. TUETKEN [242215]

HONEY MORTON [1019878]
Assistant Attorneys General
400 6th Street, NW
Washington, D.C. 20001
Phone: (202) 735-7474
Email: adam.tuetken@dc.gov

Counsel for Defendants