UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MEDHIN AYELE, **STEPHANIE CARRINGTON**, **SHAWN DARNELL CHEATHAM**, **ANTONIA DIAZ DE SANCHEZ**, **KAHSSAY GHEBREBRHAN**, **FASIKA MEHABE**, and **HIWET TESFAMICHAEL**,

Plaintiffs,

v.

DISTRICT OF COLUMBIA, **SHIRLEY KWAN-HUI**, Interim Director of the Department of Licensing and Consumer Protection, in her official capacity, **SHARON LEWIS**, Interim Director of District of Columbia Health, in her official capacity, and **GLEN LEE**, Chief Financial Officer for the District of Columbia, in his official capacity

Defendants.

Civil Action No. 1:23-cv-01785

Hon. Amy Berman Jackson

ORAL ARGUMENT REQUESTED

REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Plaintiffs' opening brief decisively establishes that Plaintiffs are likely to prevail on the merits of their claims. The Clean Hands Law punishes lower income people by automatically disqualifying them from obtaining—indeed, even having the opportunity to apply for—occupational and small business licenses if they owe more than $100 to the District. Under black letter law, the constitutional (and other) harm the Clean Hands Law inflicts on Plaintiffs is irreparable, and the public interest strongly supports injunctive relief to stop the unconstitutional enforcement of this draconian statute.

In its briefing, the District doubles down on the Clean Hands Law's scheme, remarking that individuals like Plaintiffs who *want* to repay their debt to the District but lack the ability to do so have "committed iniquity" and deserve to be deprived of licenses. Opp. at 1. Yet the District does not and cannot dispute that the Clean Hands Law offered Plaintiffs no process before automatically disqualifying them from the ability to obtain licenses. Nor does the District seriously dispute the deep and fundamental irrationality of enforcing a regime in the name of raising revenue that actually reduces revenue by barring individuals from obtaining licenses that will make them *more likely* to pay back their debt to the District. The District's arguments on the merits confirm that Plaintiffs have not only stated valid claims, but are likely to prevail on each of them.

Unable to refute Plaintiffs' showings on the merits, the District seeks refuge in other doctrines. But these defenses are equally unavailing. Even though the Clean Hands Law in fact precludes Plaintiffs from obtaining occupational and small business licenses, the District claims that Plaintiffs lack standing to challenge the Law. That is wrong. Plaintiffs' injuries-in-fact are directly caused by the District and would be fully redressed by a favorable decision from this Court. Ample Supreme Court precedent holds that a continuing violation of Plaintiffs'

constitutional rights is an irreparable injury, and the Plaintiffs' declarations vividly show the financial struggle and desperation wrought by the Clean Hands Law. Finally, the public interest and equities powerfully favor issuing a preliminary injunction, given the District's unconstitutional conduct, the unrefuted evidence of the Clean Hands Law's deleterious impact on Plaintiffs and District residents (including the unrebutted showing that the Clean Hands Law exacerbates racial inequalities), and the D.C. government's patently weak interest in using the deprivation of occupational and small business licenses to try to generate payment from people that currently lack an ability to pay their debt.

Accordingly, the Court should issue a preliminary injunction and deny the motion to dismiss.

ARGUMENT

I. Plaintiffs Have Standing to Challenge the Clean Hands Law

A. Plaintiffs Have Established a Substantial Likelihood of Standing

"To establish standing, a plaintiff must show an injury in fact caused by the defendant and redressable by a court order." *United States v. Texas*, 599 U.S. ---, 2023 WL 4139000, at *4 (2023). In the preliminary injunction posture, Plaintiffs must establish a "substantial likelihood" of standing. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). Plaintiffs have easily met that standard here.[1]

Injury in fact. Standing requires an injury that is "concrete and particularized." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The District does not dispute that this standard

[1] Because Plaintiffs satisfy the preliminary injunction standard for standing, they also satisfy the requirements at the motion to dismiss stage. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.'" (cleaned up)).

is met here. And for good reason. By automatically disqualifying Plaintiffs from renewing or obtaining an occupational or small business license, the Clean Hands Law inflicts severe harm on them and their families. *See, e.g.*, ECF No. 3-4 ("Ayele Decl.") ¶¶ 10–13; ECF No. 3-5 ("Ghebrebrhan Decl.") ¶¶ 12–17; ECF No. 3-6 ("Mehabe Decl.") ¶¶ 10–12; ECF No. 3-7 ("Tesfamichael Decl.") ¶¶ 12–15; ECF No. 3-8 ("Diaz de Sanchez Decl.") ¶¶ 10–13; ECF No. 3-3 ("Carrington Decl.") ¶¶ 19–20; ECF No. 3-2 ("Cheatham Decl") ¶ 8.

Causal connection. There is also "a causal connection" between this injury "and the conduct complained of"—the Clean Hands Law's application to Plaintiffs. *Lujan*, 504 U.S. at 560–61. Each Plaintiff's declaration details how the Clean Hands Law has directly disqualified them from securing occupational and small business licenses. *See* Ayele Decl. ¶ 7 (the D.C. government informed her she "could not renew [her] vending license due to the Clean Hands Law"); Ghebrebrhan Decl. ¶¶ 8, 11 ("I tried to renew my license" but could not do so because "[I] cannot obtain a 'Clean Hands' certificate and cannot resume my work as a street vendor"); Mehabe Decl. ¶ 9 ("At my appointment [with the D.C. government] I was told that I . . . could not renew my vending license due to the Clean Hands Law."); Tesfamichael Decl. ¶ 10 ("I was informed [by the D.C. government] that I . . . could not renew . . . my vending license" due to the Clean Hands Law); Diaz de Sanchez Decl. ¶ 9 ("I learned [from the D.C. government] that [I] . . . could not renew or apply for a new vending license due to the Clean Hands Law"); Cheatham Decl. ¶ 6 ("[T]he Clean Hands Law still makes it impossible for me to open up my small business."); Carrington Decl. ¶ 11 ("I cannot get a license in DC due to the Clean Hands Law."). These unrebutted testimonies firmly establish the requisite causal connection. Where, as here, a plaintiff is "an object of [] [government] action . . . there is ordinarily little question that the action or

inaction has caused [the plaintiff] injury, and that a judgment preventing or requiring the action will redress" it. *Lujan*, 504 U.S. at 561–62.

Redressability. This requirement is satisfied so long as it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. It is well settled that, "if a government action causes an injury, enjoining the action usually will redress that injury." *Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 6 n.1 (D.C. Cir. 2017). This principle squarely controls here: Enjoining enforcement of the Clean Hands Law would directly redress Plaintiffs' injuries—being automatically disqualified from renewing or receiving occupational or small business license. *See Lujan*, 504 U.S. at 561–62.

B. The District's Standing Arguments Fail

Even though the Clean Hands Law is in fact barring Plaintiffs from obtaining occupational or small business licenses, the District argues that Plaintiffs lack standing to challenge the Law. ECF No. 17 ("Opp.") at 11–17. This position lacks merit for each Plaintiff.

1. Street Vendors

The District argues that the Vendor Plaintiffs' injures are neither traceable nor redressable because "Plaintiffs face barriers to obtaining [vending] licenses . . . besides the Clean Hands Law"—specifically, (1) other D.C. regulations, and (2) other vending-related costs. Opp. at 12. Neither of these so-called "barriers" deprives the Vendor Plaintiffs of standing.

Other D.C. Regulations. The District argues the Vendor Plaintiffs lack standing because other D.C. regulations could *potentially* preclude them from receiving vending licenses. *See* Opp. at 12–14. This argument wrongfully conflates Plaintiffs' pled injuries-in-fact (automatic disqualification from receiving or renewing licenses due to the Clean Hands Law) with a distinct, much broader form of relief that Plaintiffs are not demanding from this Court: a licensing board's issuance a license. Where, as here, plaintiffs bring claims based on being locked out of a system,

they "need not allege that [they] would have obtained the benefit but for the barrier in order to establish standing." *Ne. Fla. Chapter of Assoc. Gen. Contractors v. City of Jacksonville*, 508 U.S. 656, 666 (1993). That is because the injury undergirding the claims flows from "the inability to compete on an equal footing." *Id.* Plaintiffs have plainly established causation and redressability for their Article III injury. *See supra* § I.A.

The District's argument also fails because the Supreme Court has long recognized that individuals have standing to challenge government conduct that imposes "an absolute barrier" to receiving a benefit, even if there is "uncertaint[y]" about their ultimate ability to secure that benefit. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977). Here, the District concedes that (1) the Clean Hands Law is an "absolute barrier" to the Vendor Plaintiffs receiving a vending license, and (2) the other regulations it cites do not *categorically* preclude Plaintiffs from obtaining vending licenses but, rather, are subject to the District's discretion. *See* Opp. at 13. *Village of Arlington Heights* is thus on-point and controls here. Plaintiffs have standing to challenge the "absolute barrier" preventing them from obtaining vending licenses—the Clean Hands Law—even if other regulatory requirements create some "uncertaint[y]" about Plaintiffs ultimate ability to secure those licenses. *Village of Arlington Heights*, 429 U.S. at 261.

The Supreme Court's decision in *Larson v. Valente*, 456 U.S. 228 (1982), is also highly relevant. There, a church challenged a state law that would have required it to register with the state (and, in turn, lose its religious-organization exemption). *Id.* at 230–42. The Court held the church had standing to seek this relief. *Id.* at 241–42. It did so even though the "Church may indeed be compelled, ultimately, to register under the Act on some ground other than the" challenged law. *Id.* This did not deprive the church of standing, however, because "this litigation began after the State attempted to compel the Church to register" based on the challenged law—

and if that law "is declared unconstitutional . . . then the Church cannot be required to register and report" based on it. *Id.* at 242. Thus, since the challenged law was "the sole basis for the State's attempt to compel registration that gave rise to the present suit, a discrete injury . . . will indeed be completely redressed by a favorable decision of this Court." *Id.* at 243–44.

The reasoning in *Larson* applies here. As in *Larson*, "this litigation began" after just one legal requirement—the Clean Hands Law—barred Plaintiffs from securing occupational or small business licenses. *Larson*, 456 U.S. at 242. As a result, if the Clean Hands Law "is declared unconstitutional" (as applied or facially), then it "cannot be" the basis for disqualifying Plaintiffs from obtaining these licenses—thus "completely redress[ing]" Plaintiffs' injuries. *Id.* at 243. That the District has identified additional grounds that could, perhaps, in the future provide a basis for the District to seek to preclude Plaintiffs from obtaining vending license in no way diminishes Plaintiffs' standing to challenge the law that has already and concretely negatively impacted them. *Id*.

Thus, binding precedent such as *Village of Arlington Heights*, *Larson*, and many other D.C. Circuit decisions foreclose the District's "potential barriers" argument. *See, e.g.*, *Wyo. Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 51 (D.C. Cir. 1999) (plaintiff had standing to sue for denial of procedural rights in the grant of authority to drill on federal lands even though there was "no certainty" the drilling would take place); *Moreau v. Fed. Energy Regul. Comm'n*, 982 F.2d 556, 566 (D.C. Cir. 1993) (plaintiff had standing to challenge licensing agency's failure to prepare an Environmental Impact Statement, "even though he cannot establish with any certainty that the Statement will cause the license to be withheld or altered." (quoting *Lujan*, 504 U.S. at 572 n.7)); *W. Va. Ass'n of Cmty. Health Ctr., Inc. v. Heckler*, 734 F.2d 1570, 291–93 (D.C. Cir. 1984) (rejecting argument plaintiffs lacked standing to challenge government program that could

increase state funding because the government had "complete discretion to award any additional funding it might receive to" other entities "not parties to this lawsuit"). And for these same reasons, there is no merit to the District's argument that potential uncertainty about Plaintiffs future likelihood of "secur[ing] a bevy of permits, certifications, and inspections" required for vending deprives them of standing here. Opp. at 13–14. These arguments all unsuccessfully attempt to obfuscate Plaintiffs' straightforward injury—being blocked from obtaining an occupational or small business license—which the injunction they seek would redress.

In any event, the District is just wrong about its asserted barriers.

First, the District says D.C. Municipal Regulation Section 507.1(f) in the future could (potentially) preclude the four Vendor Plaintiffs with unpaid taxes from obtaining a vending license. Opp. at 12 (citing 24 DCMR § 507.1(f)); *see also* Ayele Decl. ¶ 6; Ghebrebrhan Decl. ¶ 7; Mehabe Decl. ¶ 8; Tesfamichael Decl. ¶ 10. But the District materially mischaracterizes this regulation. While the District says it is triggered based on the "failure to pay required sales and use taxes," (Opp. at 12 (citing 24 DCMR § 507.1(f))), this cherry-picked quotation *omits* the key language that immediately precedes it, which says that that the regulation applies only to "[f]raud committed against the District government." 24 DCMR § 507.1(f). Section 507.1(f) would disqualify the Vendor Plaintiffs from receiving licenses only if the District established that they had *engaged in fraudulent conduct*. The District has offered no evidence of fraud, and its cavalier use of this provision against these Plaintiffs is baseless and demeaning.

Second, the District argues that Ms. Diaz de Sanchez could potentially be denied a vending license under D.C. Municipal Regulation Section 507.1(c), because her wrongfully issued ticket for vending without a license may constitute a "[v]iolation of any District law or regulation governing the operation of the vending business." Opp. at 13 (alternation in original); *see also*

Diaz de Sanchez Decl. ¶¶ 7–8. But again, this regulation's applicability is discretionary, and the District proffers no evidence whatsoever indicating the District would in fact deny Ms. Diaz de Sanchez a vending license on this ground. In fact, the actual evidence in the record is unrebutted, straightforward, and specific—testimony showing (or, at a minimum, raising a serious question whether) Ms. Diaz de Sanchez's citation for unlicensed vending was issued in error, as she was simply not at that time vending, a point that as a Spanish speaker she was unable to get across to the inspector. *See* Diaz de Sanchez Decl. ¶¶ 8–9 ("I bought a second truck later in 2020. On May 18, 2020, I was test-driving this truck with my daughter and niece and parked it on the street. Within a few minutes, a [DLCP] inspector issued me a $3,000 vending-related ticket. I was fined even though there was no food in the truck, and I was not engaged in sales.") Thus, it is purely speculative that this regulation would in fact present a barrier to Ms. Diaz de Sanchez's opportunity to obtain a vending license. Put simply, the "barriers" invoked by the District are not independent or categorical exclusions, and the District has introduced no evidence to suggest any Plaintiff would likely be affected by them.

Moreover, the cases cited by the District all confirm that these Plaintiffs have standing. For example, in *Grid Radio v. Federal Communications Commission*, the Court rejected the government's standing argument in a challenge to an FCC licensing ban. 278 F.3d 1314, 1319 (D.C. Cir. 2002). The government contended plaintiff's injury was "traceable not to the ban but to the more general prohibition against operating without a license"; the D.C. Circuit rejected this argument because no "general prohibition" would have triggered the "*categorical*[]" denial of the plaintiff's license application like the ban at issue. *Id.* (emphasis added). That is true here—the District cites a smattering of discretionary regulations, not one of which operates (as does the Clean Hands Law) as a *categorical* basis to deny Plaintiffs' vending licenses. *See* Opp. at 13. Similarly,

Kaspersky Lab, Inc. v. U.S. Department of Homeland Security held a plaintiff lacked standing to challenge government action only because another statute in fact "prohibit[ed] all the same conduct"—which is not true here given the District's ability to offer only guesswork about how these other laws would be applied to Plaintiffs down the road. 909 F.3d 446, 465 (D.C. Cir. 2018).

The District's other cases fare no better. *DKT Memorial Fund, Ltd. v. Agency for Intern. Development* indicated that, "in order to have standing to challenge" a funding policy, plaintiffs "must first show that[] they would be qualified to receive" funding absent the policy. 810 F.2d 1236, 1238 (D.C. Cir. 1987). The District suggests this standard is not met here (Opp. at 12), but that is wrong: the Vendor Plaintiffs have squarely asserted their ability and qualifications to obtain vending licenses absent the Clean Hands Law by (a) attempting to renew or apply for vending licenses (as four of the vendors previously did for decades), and (b) testifying that the Clean Hands Law *alone* is preventing them from obtaining a vending license. *See* Ayele Decl. ¶¶ 7, 12; Ghebrebrhan Decl. ¶¶ 8, 11; Mehabe Decl. ¶¶ 9–11; Tesfamichael Decl. ¶¶ 9–12; Diaz de Sanchez Decl. ¶¶ 9–10.[2]

Other Vending-Related Costs. The District also argues the Vendor Plaintiffs lack standing because they "are indigent" and, in turn, likely "cannot afford the fees required for their desired licenses," as well as "ingredients, cooking and cleaning supplies, a cart or food truck,

[2] The District's other authorities are equally off-base. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412–13 (2013) (no standing to challenge potential collection of communications when source of collection (if any) was unknown); *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1296–97 (D.C. Cir. 2015) (per curiam) (no standing when "a separate action" in fact "independently cause[d] the same alleged harm as the challenged action"); *Von Aulock v. Smith*, 720 F.2d 176, 177–80 (D.C. Cir. 1983) (no standing for injury of being unable to hold employer liable under federal law due to agency guidance). *Von Aulock* also rested on the fact that plaintiffs asserted an "identical" injury to the one in *Greater Tampa Chamber of Com. v. Goldschmidt*, 627 F.2d 258 (D.C. Cir. 1980). *Id.* But the "barriers" in *Goldschmidt* that deprived Plaintiffs of standing—the Senate potentially not ratifying a treaty, and the United Kingdom entering an agreement with the United States over aircraft landing rights—are nothing like the so-called "barriers" the District cites here.

additional labor, and more." Opp. at 14–15. This is a bitter sentence to read in a brief filed by a government about its constituents, particularly ones who are immigrant community members of color who have (by dint of their dawn-to-dusk labor) for many years supported themselves and their families and provided services to people who live and visit D.C. Moreover, for years before the Clean Hands Law disqualified them from licenses, the Plaintiffs *in fact* found ways to afford the things the District says they will be unable to obtain. These future financing contingencies are precisely the type of speculative "uncertaint[ies]" that cannot defeat standing. *See Arlington Heights*, 429 U.S. at 261 (rejecting argument that a plaintiff lacked standing to challenge government action because he "would still have to secure financing" if he prevailed). The District's subjective assessment of Plaintiffs' business models is speculative and irrelevant.

The District's argument also misconstrues the record. The District says the "Plaintiffs do not even appear to have the necessary supplies or property for their businesses, like a food cart." Opp. at 15. But the record is clear and unrefuted: for years (and often decades) each Vendor Plaintiff served as a vendor and had access to a cart or other appropriate vehicle for use in the marketplace, and they could do so again with the necessary licenses. *See, e.g.*, Ghebrebrhan Decl. ¶ 6 (as of June 2023: "I own my cart and continue to pay $100 a month to store it [in] a garage."); Ayele Decl. ¶ 5 (after the 2020 pandemic, I "continued to rent my cart for $50 a month"); Tesfamichael Decl. ¶ 5 (detailing her past vending work with her cart); Mehabe Decl, ¶ 5 (same); Diaz de Sanchez Decl. ¶ 11 (noting that even without the truck she used to have but sold, she can, once she is able to renew her vending license, sell pre-prepared items such as pupusas). The District's dubious line of attack—that Plaintiffs are too poor to make use of a license and therefore lack standing—is unsupported by the law and the preliminary injunction record.

2. Shawn Cheatham

The District argues that Mr. Cheatham lacks standing because he could not comply with various regulatory "requirements for a plumber's license," and then chides Mr. Cheatham for "overlook[ing] that he will need a plumber's license." Opp. at 8, 14. The District's attempt to belittle Mr. Cheatham "overlooks" a key fact. As his declaration makes clear, Mr. Cheatham does not at present *intend* to seek or obtain a plumber's license. He instead simply wishes to open a small business that would employ other plumbers. Cheatham Decl. ¶ 3 ("But for the D.C. Clean Hands Law, I could apply for a small business license and make plans to open my own small plumbing business in the District, *supervising other plumbers* and using my contacts, plumbing tools, and skills.") (emphasis added).[3] Nothing in the plumber's license requirements recited at length in the District's brief, (Opp. at 8 (citing D.C. Code § 47-2853.122(b))), prevents Mr. Cheatham from opening such a business and employing one of the master plumbers he knows from his contacts over the years.

As to the license that *is* relevant here for Mr. Cheatham, the only argument the District makes is that "basic business licenses all have associated fees and require worker's compensation insurance." Opp. at 15. Mr. Cheatham is a U.S. Airforce veteran with an honorable record serving his country; he is also an experienced handyman who has survived homelessness and incarceration and now has housing, some income, and the desire to generate more income and open a small

[3] Mr. Cheatham may in the future seek to obtain a masters plumbers license, and it possible that he is eligible to do so. As his declaration states, he obtained a certification in Building Maintenance through a program at the D.C. nonprofit group, So That Others Might Eat, with the hope of opening his own plumbing and handyman business. He also served for approximately 3 years as a plumbing specialist in the Air Force. Cheatham Decl. ¶¶ 3–8. Arguably, but for the Clean Hands Law, these qualifications would suffice to enable him to meet the requirements of §§ 47-2853.122(b)(3) and (4), without more. In any event, the Court here need not address questions related to his potential claims or interests in a plumbers' license as he is not at this time seeking or intending to seek one.

business in the D.C. community where he lives, to support himself and help provide financial support for his college-student daughter. *See* Cheatham Decl. ¶¶ 3–8. Casting aspersions on Mr. Cheatham's future prospects and predicting the worst for Mr. Cheatham is not legal argument; it is rank speculation. And as demonstrated above, the uncertainty of securing financing or insurance in the future cannot defeat Mr. Cheatham's standing to maintain this civil legal action challenging the validity of his current disqualification.

3. Ms. Carrington

The District's arguments with respect to Ms. Carrington fail for the same reasons. The District cites (Opp. at 14) a legal requirement it contends gives the District *discretion* to deny Ms. Carrington's speech pathologist license. *See* D.C. Code § 47-2853.17(a)(15) (a licensing board, "on an affirmative vote of a majority of its members present and voting, *may*" deny a license for "fail[ure] to pay a civil fine" (emphasis added)). Again, this conflates Ms. Carrington's Article III injury (automatic disqualification from licensure due to the Clean Hands Law) with actual license issuance—a future process that can only begin once the Clean Hands Law's blanket bar is lifted. Section 27-2853.17(a)(15) is not an independent or categorical ban to Ms. Carrington. *Id.* The other cited requirements for opening a small business—such as renting "space to open a private speech pathology practice" (Opp. at 15)—also fail both for the reasons previously identified, and because they rest on unfounded assumptions about hypothetical future costs (such as renting space), *see, e.g.*, https://www.asha.org/Advocacy/state/info/DC/District-of-Columbia-Telepractice-Requirements/ (American Speech-Language-Hearing Association - "D.C. allows telepractice" for speech pathologists).

C. The District's Arguments on the Scope of an Injunction Lack Merit

The District contends that, even if Plaintiffs have standing to bring their claims and establish entitlement to a preliminary injunction, "Article III limits any injunction to the few Plaintiffs here." Opp. at 16–17. This position has no merit.

The District is wrong to suggest that the scope of an injunction implicates standing in any way. Opp. at 16–17. It does not. As the District concedes, if the Court issues a preliminary injunction, it will have necessarily found that Plaintiffs have standing to bring their constitutional claims. *Id.* at 16. Thus, while the District says that Plaintiffs must "assert [their] own legal rights and interests" not the "interests of third parties" (Opp. at 16–17 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975))), that unremarkable principle governs the claims Plaintiffs assert, not the scope of the relief the Court may fashion. The latter is a question of remedy, not standing.

The District suggests that an injunction preventing enforcement of the Clean Hands Law with respect to occupational and small business licenses is an improper remedy because it would impact individuals other than the Plaintiffs. *See* Opp. at 16–17. But the injunction would formally and lawfully apply only against a *party* in this litigation – the District. And it is both appropriate and entirely lawful that other affected District residents would be protected from enforcement of the unconstitutional scheme. "Federal courts have issued hundreds of injunctions reaching beyond the parties in the lawsuit," *District of Columbia v. U.S. Dep't of Agric.*, 444 F. Supp. 3d 1, 46 (D.D.C. 2020), pursuant to their "sound discretion to consider the necessities of the public interest when fashioning injunctive relief," *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 496 (2001). The Supreme Court has affirmed this approach. *See Trump v. Int.'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017) (declining to stay injunction entered "with respect to respondents and those similarly situated"); *see also id.* ("Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as

the substance of the legal issues it presents."). The scope of remedy Plaintiffs seek is truly routine and unremarkable.

This is particularly true because this Court possesses broad power to fashion appropriate equitable remedies. *See Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978) ("Once invoked, 'the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies.'"). And if a federal district court has concluded that government conduct likely violates the Constitution, it is plainly equitable and appropriate for the court to enjoin that conduct—rather than let it continue to impose constitutional injuries on other individuals unless and until they too file suit.

Indeed, the D.C. Office of the Attorney General has taken this *exact position*. Testifying before the United States Senate Judiciary Committee in her official capacity, and expressly on behalf of the D.C. Office of the Attorney General, then D.C. Solicitor General (and now D.C. Court of Appeals Judge) Loren L. AliKhan was clear and unequivocal: "A court should be reluctant to allow similarly situated individuals to suffer from conduct it has already found to be unlawful," and "courts would be remiss to permit legally unsupportable conduct to continue to harm individuals and entities across the country."[4] She further observed that "the Supreme Court has permitted broad prophylactic injunctions that remedy more than the specific harm a particular plaintiff has alleged."[5] These carefully-considered statements to Congress demolish the credibility of the District's contrary litigation position here on the scope of the injunction.

[4] *Testimony on the Role of Nationwide Injunctions: Hearing Before the United States Senate Judiciary Comm.* (2020) (statement of Loren L. AliKhan, Solicitor General of the District of Columbia), https://oag.dc.gov/release/testimony-role-nationwide-injunctions.

[5] *Id.* (collecting cases).

Moreover, this Court previously issued a preliminarily injunction that enjoined operation of the Clean Hands Law with respect to an entire class of licenses (driver's licenses), not just the five specific plaintiffs in that case. *See Parham v. District of Columbia*, No. 1:22-cv-02481 (CKK), ECF No. 16 (Dec. 27, 2022), *vacated*, ECF No. 25 (D.D.C. May 15, 2023) (enjoining the District "from enforcing the Clean Hands Law to deny applications to obtain or renew a driver's license").[6] This reinforces the appropriateness of the scope of the remedy Plaintiffs seek.

II. Plaintiffs' Claims Are Likely to Succeed on the Merits and State a Claim

A. Defendants Have Violated Plaintiffs' Procedural Due Process Rights

Plaintiffs' brief readily establishes a likelihood of success on their procedural due process claim. *See* ECF No. 3-1 ("Mot.") at 21–29. The District's counterarguments fail.

1. Defendants' Exhaustion of Remedies Argument Is Meritless

The District's lead argument is that Plaintiffs cannot state a procedural due process claim because they "fail[ed] to take advantage of the many processes available to them"—specifically, "disput[ing] his or her debt through the available processes for traffic infractions, civil infractions, or tax assessments" and "fil[ing] tax returns." Opp. at 17–18. But these procedures concern the imposition of the *underlying* fines and penalties at issue—which Plaintiffs do not challenge here. *Id.* Rather, this case challenges enforcement of the Clean Hands Law, and the District does not identify *any* pre-deprivation procedure that Plaintiffs failed to exhaust. Nor could it do so, because

[6] The reasoning in *Parham*, and its application of governing precedent, are indisputably relevant and persuasive here, as *Parham* involved the same statute and a procedural due process claim. The District nonetheless claims that "relying on [*Parham*] 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." Opp. at 28 (quoting *United States v. Munsingwear, Inc*., 340 U.S. 36, 40 (1950)). This argument is meritless. *Munsingwear* in no way prevents a court from being "swayed" as a matter of persuasive reasoning by a prior opinion vacated following settlement. Moreover, *Munsingwear* addressed vacatur after mootness, rather than decisions (like *Parham*) that are vacated at the joint request of the parties in connection with a settlement.

there are none. And for that reason, the cases the District cites are inapposite. *See Williams v. District of Columbia*, No. 20-7037, 2020 WL 6038667, at *1 (D.C. Cir. Sept. 1, 2020) (addressing failure to exhaust "existing procedural protections" in connection with the challenged conduct); *Kremer v. Chem. Constr. Corp*., 456 U.S. 461, 479–85 (1982) (rejecting a procedural due process challenge because a federal statute required giving preclusive effect to a state administrative process); *Long v. District of Columbia*, 194 F.3d 174 (Table) (D.C. Cir. 1999) (per curiam) (unpublished) (affirming denial of procedural due process claim because, had the plaintiff sought review of the challenged action, "she might very well have received the hearing to which she now claims she was entitled").

The District also argues that "none of the Plaintiffs actually applied for a new license, received a denial, and sought a hearing under the Clean Hands Law." Opp. at 18. That is highly misleading: *All* of the Vendor Plaintiffs attempted to apply for a vending license, but were actively blocked by the Clean Hands Law from doing so. *See* Ayele Decl. ¶ 7; Ghebrebrhan Decl. ¶ 8; Mehabe Decl. ¶ 9; Tesfamichael Decl. ¶ 10; Diaz de Sanchez Decl. ¶ 9. Regardless, the exhaustion doctrine does not apply where "following the administrative remedy would be futile because of certainty of an adverse decision." *James v. U.S. Dept. of Health and Human Services*, 824 F.2d 1132, 1138 (D.C. Cir. 1987). That principle excuses any supposed failure by Plaintiffs, including Mr. Cheatham and Ms. Carrington, from having to engage in the empty and pre-determined exercise of applying for small business or occupational licenses.[7] The District *concedes* that the

[7] As set forth in Plaintiffs' opening brief (Mot. at 14 n.4), both Ms. Carrington and Mr. Cheatham tried to secure a payment plan to solve the problem—but they were unable to do so given the District's demand for an up-front payment of thousands of dollars. The futility doctrine exists to protect individuals like Plaintiffs here, who could not reasonably or practically be expected to do more. *See* Carrington Decl. ¶ 13 ("I was told by the DC government employee that, if I paid $3,000 up front, I could get on a payment plan."); Cheatham Decl. ¶ 5 ("D.C. government officials told me that I can enter into a payment plan if I pay $2,800 up front.").

Clean Hands Law bars each Plaintiff from obtaining the licenses they seek—describing the Law as an "independent" bar to obtaining licenses (Opp. at 13)—confirming that the futility exception to exhaustion applies here. Moreover, the District's position ignores how the Clean Hands Law operates—if individuals, like Plaintiffs, cannot obtain a Clean Hands Certificate, they are actively prevented from even *applying* for a license; disqualification is automatic. *See* Mot. at 7.

2. Occupational and Small Business Licenses are Property Interests

The Supreme Court and D.C. Circuit have long recognized that licenses and similar authorizations created by state law—such as the occupational and small business licenses at issue here—are property interests protected by the Constitution. *See* Mot. at 21–24. The District dismisses this unbroken line of precedent because it "deal[s] with revocations or suspensions" of licenses, while the Plaintiffs are "seeking issuances of licenses in the first instance." Opp. at 19. But while Ms. Carrington and Mr. Cheatham are seeking licenses in the first instance, the Vendor Plaintiffs previously held vending licenses for years, many of them for decades. *See* Ayele Decl. ¶ 4; Ghebrebrhan Decl. ¶ 4; Mehabe Decl. ¶ 4; Tesfamichael Decl. ¶ 4; Diaz de Sanchez Decl. ¶ 4. And though the vendors temporarily stopped vending due to the Covid-19 pandemic, the Vendor Plaintiffs' debt arose, in part, from quarterly vending fees the District imposed *after* the Vendor Plaintiffs' licenses lapsed. *See* Ayele Decl. ¶¶ 5–6; Ghebrebrhan Decl. ¶¶ 6–7; Mehabe Decl. ¶¶ 7–8; Tesfamichael Decl. ¶¶ 7–8. The District's actual conduct—imposing vending taxes on the Vendor Plaintiffs after their licenses had lapsed—undercuts the District's litigation position that these Plaintiffs are seeking *new* licenses "like [a] new applicant." Opp. at 19.

Regardless, even if Plaintiffs are seeking "new" licenses, the District identifies no reason why this distinction is constitutionally significant. *See* Opp. at 18–21; *see also Parham*, 2022 WL 17961250, at *8 (holding driver's licenses were a protected property interest even though

"Plaintiffs' drivers' licenses [had] naturally expired"); *id.* ECF No. 16 (enjoining using the Clean Hands Law to "deny applications to obtain . . . a driver's license"). The licenses at issue here are cognizable property interests because Plaintiffs "have a legitimate claim of entitlement to" them. *See* Mot. at 22 (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)); *see also Schware v. Bd. of Bar Exam'rs of N.M.*, 353 U.S. 232, 247 (1957) (recognizing interest in "opportunity to qualify for" a law license).

The District says "the licenses are not cognizable property interests" because "heavy doses of discretion are baked into the licensing systems at issue here." Opp. at 20. That is incorrect. While "significant or unfettered" discretion can defeat a claim of entitlement to a government benefit, *Crooks v. Mabus*, 845 F.3d 412, 419 (D.C. Cir. 2016), the regulatory frameworks at issue here significantly cabins the District's ability to deny license renewals or applications within narrow, enumerated statutory exceptions. *See* Mot. at 21–24. These regulatory requirements are comprehensively set forth in Plaintiffs' motion, *see id.*, and the District does not meaningfully dispute any of that analysis. The District does not have unfettered discretion to deny occupational or small business licenses to District residents. *See* Opp. at 20–21.[8]

The District tries to rescue its argument as to occupational and small business licenses by pointing to the fact that the narrow, enumerated bases for license denials involve *some* element of discretion. *See* Opp. at 20–21. But "some" discretion is not unfettered discretion that defeats a legitimate expectation of license entitlement. *Crooks*, 845 F.3d at 419. Indeed, in *Parham*, this Court considered D.C.'s driver's license application scheme, which invests far *more* discretion in the D.C. government than does the D.C. occupational and small business license regime. *See*

[8] The District's argument about a "vending site permit" (Opp. at 21) is irrelevant because that is not the property interest at issue here.

Parham, 2022 WL 17961250, at *6–8. As *Parham* recognized, D.C.'s Mayor has the authority to permit or deny driver's license applications based on her evaluation of the broad criteria of whether an applicant has "demonstrate[d] that he or she is mentally, morally, and physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property," and that the methods of determining whether this standard is satisfied may include certain enumerated tests and "*[a]ny* other criteria as the Mayor may establish." *Id.* (quoting D.C. Code § 50–1401.01(a)(1)(B)) (emphasis added). *Parham* distinguished this discretion from circumstances of *unfettered* discretion: "In [*Crooks*, *Lopez*, and other cases], unfettered discretion allowed government officials to deny a renewal for seemingly any reason at all. In contrast . . . the [driver's license] provisions are far more constrained, allowing the imposition of conditions that could thwart renewal only when in furtherance of public safety." *Id.* at *8. It follows that the occupational and small business licenses here are "property interests," given that the regimes governing them afford the District less discretion than it has in the driver's license context. *See* Mot. at 22–24.

The District's reliance on the enabling statue that authorizes the "Council of the District of Columbia and Mayor" to "make [] regulations" on license issuances, D.C. Code § 47-2844(a) (cited Opp. at 20), likewise fails to rebut the showing of Plaintiff's cognizable property interests here. Because the District has used this authority to enact regulations that severely narrow and limit the grounds for denying licenses (*see* Mot. at 21–24), this statute only reinforces the District's limited discretion. Nor does the vending statue's catch-all reference to denying licenses "for *any other reason* [the Mayor] may deem sufficient" (Opp. at 20 (quoting D.C. Code § 47-2844(a))), change the analysis, given the more specific regulatory framework the Mayor promulgated to govern license issuances, as *Parham* explained in detail. *See* Mot. at 21–24.

Unable to refute Plaintiffs' legitimate claim to a property interest, the District seeks to distort it. According to the District, "Plaintiffs' alleged property interest is not merely a general interest in business or occupational licenses" but, rather, "an interest, as indigent individuals, in obtaining business or occupational licenses when District law requires licenses be denied for failure to pay debts." Opp. at 19. This argument is deeply flawed. The District defines the property interest (a license) in reference to its deprivation procedure (the Clean Hands Law). That is improper under long-settled Supreme Court precedent: "'[p]roperty' cannot be defined by the procedures provided for its deprivation any more than can life or liberty." *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (rejecting the argument that a terminated employee lacked a property interest in employment because a statute provided "grounds" and "procedure" for termination). Under the District's view, no "property interest" could ever arise where a statute imposes a condition on receiving a license, which is contrary to decades of Supreme Court due process cases.

The Supreme Court has repeatedly held that "individuals have constitutionally protected property interests in state-issued licenses essential to pursuing an occupation or livelihood." *Loudermill*, 531 U.S. at 25 n.4 (citing *Bell v. Burson*, 402 U.S. 535, 539 (1973)). Plaintiffs' experiences confirm that these licenses are "essential to pursuing an occupation or livelihood." *Id.*; *see also* Mot. at 5–13 (collecting declaration citations).

Tellingly, the only case the District cites to support its novel "no property interest" position is the Sixth Circuit's divided decision in *Fowler v. Benson*, 924 F.3d 247 (6th Cir. 2019). *See* Opp. at 19–20. Unlike the Supreme Court and D.C. Circuit decisions detailed above, however, that decision is not binding here, is inconsistent with binding Supreme Court precedent, and, in

any event, is wholly unpersuasive, as Judge Donald's dissent explains. *Id.* at 264–72 (Donald, J., dissenting).

Thus, there is no merit to the District's attempt to redefine and diminish Plaintiffs' property interests in licenses based on an obvious "tautology," *see Loudermill*, 470 U.S. at 541—the absence of a statutory exception for indigency means that Plaintiffs have no property interest in an opportunity to obtain or renew their licenses without regard to their indigency or inability to pay. If the District were correct, the Supreme Court in *Bell* would not have analyzed the interest in retaining a driver's license (which it did) but rather the interest in retaining a driver's license when state law requires a license to be immediately suspended, without a determination of fault, for failure to post bond after an accident (which it did not). The District's definition of property would also immunize the government from procedural due process scrutiny—contrary to decades of Supreme Court precedent.

3. The Process Afforded Before License Denials is Inadequate

The District argues that the process Plaintiffs received was constitutionally sufficient for two reasons: (1) the District blocking each individual Plaintiff from obtaining a license is a "legislative action," and (2) the Plaintiffs "had several opportunities to be heard." Opp. at 21. Both arguments fail.

Plaintiffs' license denials are not legislative acts. In *Parham*, this Court held that the process the Clean Hands Act affords before license denials is likely constitutionally inadequate under the traditional *Mathews v. Eldridge* framework. *See Parham*, 2022 WL 17961250, at *8–11; *see also* Mot at 24–28. In a transparent attempt to sidestep that same analysis and conclusion here, the District argues the *Matthews* framework is inapplicable because Plaintiffs challenge

"legislative action" that triggers minimal procedural protections. *See* Opp. at 21–23. That is incorrect.

It has been the law for more than a century that individual determinations are not "legislative" acts. *See Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 443–46 (1915) (recognizing that individuals "exceptionally affected . . . upon individual grounds" have a right to a hearing) (citing *Londoner v. Denver*, 210 U. S. 373, 385 (1908)). The "key question [is] whether the agency's action pertained to a class of individuals, indicating a rule-making function, or whether it focused on a particular individual, indicating an adjudicative function requiring a hearing." *Alaska Airlines, Inc. v. Civil Aeronautics Board*, 545 F.2d 194, 200 (D.C. Cir. 1976). Here, each individual Plaintiff challenges an *individual* decision—the District blocking her or him from obtaining an occupational or small business license through the Clean Hands Law. *See* Mot. at 4–13. This is an individualized, adjudicative act that triggers procedural due process protections. As shown below, this conclusion is reinforced by: (1) Supreme Court precedent; (2) the structure of the Clean Hands Law; and (3) the discretion that the D.C. Government has repeatedly exercised to waive the requirements of the Clean Hands Law when it decides to do so (*e.g.*, with driver's licenses).

1. First, Supreme Court precedent—including *Bi-Metalli*c, on which the District's argument rests (Opp. at 21–22)—foreclose the District's position. *Bi-Metallic* held that an "order . . . increasing the valuation of *all taxable property* in Denver" constituted a legislative act that did not trigger procedural due process protections. 239 U.S. at 443 (emphasis added). The Court so held precisely because the challenged conduct was a "general determination" that applied broadly to all property holders, rather than an individualized determination impacting "[a] relatively small number of persons . . . upon individual grounds"—in which case procedural due process *would*

have demanded a pre-deprivation hearing. *Id.* at 445–46. The Court grounded its analysis on the core principle that taxpayers generally lack standing, reasoning that if "the result in this case had been reached, as it might have been by the state's doubling the rate of taxation, no one would suggest that the 14th Amendment was violated unless every person affected had been allowed an opportunity to raise his voice against it before the body intrusted by the state Constitution with the power." *Id.* at 445; *see also Flast v. Cohen*, 392 U.S. 83, 105 (1968) ("[T]he Due Process Clause of the Fifth Amendment does not protect taxpayers against increases in tax liability."). *Bi-Metallic* thus stands for the unremarkable proposition that the Due Process Clause does not prevent the government from enacting tax laws of general applicability.

In contrast, in *Londoner v. Denver*, Supreme Court held that a local government board's decision to tax specific property triggered procedural due process protections. 210 U.S. at 385. The Court so held because the state had "commit[ed] to some subordinate body the duty of determining whether, in what amount, and upon whom [the tax] shall be levied, and of making its assessment and apportionment." *Id.* at 385. Thus, the state's decision in that case to impose the tax on a specific individual was a classic individualized determination that required a hearing. *Id.* at 386 (holding opportunity "to submit in writing all objections to and complaints of the tax to the board" without a hearing violated the Constitution). *Bi-Metallic* expressly recognized and reaffirmed this holding. *See* 239 U.S. at 446.

Here, as in *Londoner*, the Plaintiffs are individuals "exceptionally affected" by the challenged government action—they *want* to obtain professional and small business licenses, and the Vendor Plaintiffs have tried to do so, yet the District has disqualified each of them from obtaining these licenses without a hearing. The District—through "some subordinate body," *Londoner*, 210 U.S. at 385—has the ability to exercise discretion regarding who can obtain

occupational and small business licenses, including through approving payment plans and waiving Clean Hands requirements. The individual determination that each of the seven Plaintiffs cannot obtain occupational and small business licenses triggers procedural due process protections.

Indeed, under the District's view, the Supreme Court's landmark procedural due process decisions should have come out the other way. Consider *Bell v. Burson*, 402 U.S. at 536, which was decided before *Matthews* and long after *Bi-Metallic*. There, a state law provided that any "uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident," and it included no hearings "prior to the suspension," or any procedures for "consideration of the motorist's fault or liability for the accident." *Bell*, 402 U.S. at 536–42. While that law applied generally, the Court sustained the procedural due process claim by an individual who, like the Plaintiffs here, was in fact impacted by the law. *Id.* at 542–43.

Loudermill is equally instructive. There, a state employee was terminated based on a state statute—on the ground that he was allegedly untruthful on an employment application—without any pre-deprivation hearing. 470 U.S. at 535–36. That statute, of course, applied to any other state employees who were allegedly untruthful. *Id.* But because the employee in that case was individually impacted by the statute—he wanted to continue serving as an employee, but could not do so—the Court held the scheme trigged procedural due process protections. *Id.* at 535–41. Each of these Supreme Court decisions would have come out the other way if the District's position were correct.

2. Second, the structure of the Clean Hands Law reinforces that Plaintiffs are challenging individualized, adjudicative determinations, not legislative acts. The Clean Hands Law provides affected individuals a (post-deprivation) hearing—a stark recognition that the denial of a license

is an adjudicative act. *See* D.C. Code § 47-2865(c). While this procedure is constitutionally insufficient (*see* Mot. at 24–28), it nonetheless demonstrates the adjudicative nature of license denials. After all, *Bi-Metallic* turned on the fact that "it is impracticable that everyone" receive process such as hearings in connection with legislative acts. 239 U.S. at 445. This practical concern is absent here because the Clean Hands Law in fact provides *post*-deprivation hearings; the only question is timing—whether the Constitution mandates a *pre*-deprivation hearing (it does).

Moreover, "[w]here adjudicative, rather than legislative, facts are involved, the parties must be afforded a hearing to allow them an opportunity to meet and to present evidence." *Alaska Airlines*, 545 F.2d at 200. "Adjudicative facts are the facts about the parties and their activities, businesses, and properties." *Id.* at 200 n.11. These adjudicative considerations are present here. The District says the Plaintiffs "can request payment plans through an online portal, and getting on a payment plan will waive the Clean Hands requirement." Opp. at 43. Yet when some of the Plaintiffs have attempted to do so, the District has demanded arbitrary and unjustifiably high initial payments that render such plans infeasible given the Plaintiffs' financial circumstances. Carrington Decl. ¶¶ 11–15; Cheatham Decl. ¶¶ 5–7. A hearing would allow the Plaintiffs to present facts about their desire to repay their debt and the terms under which they could participate in a payment plan. These are adjudicative considerations, not "[l]egislative facts" that help "decide questions of law and policy discretion." *Alaska Airlines*, 545 F.2d at 200 n.11.[9]

[9] The District's reliance on *Jones v. Governor of Fla*. (Opp. at 23, 30, 31 n.7), is misplaced for numerous reasons. First, unlike in that case, Plaintiffs do not seek to impose procedural protections to "help [them] learn the facts necessary to comply with" the Clean Hands Law. 975 F.3d 1016, 1049 (11th Cir. 2020) (en banc). Moreover, the plaintiffs in *Jones* challenged the Florida Constitution's provision "depriv[ing] all felons of the right to vote upon conviction"—and they "d[id] not challenge any individual voter-eligibility determinations that could qualify as

3. Finally, the District's actual implementation of the Clean Hands Law further underscores the individualized nature of the challenged conduct here. Even though the statute appears to apply generally with no exceptions—using "shall not issue or reissue" language, D.C. Code § 47-2862(a)—the District has routinely exercised discretion to not apply it. For example, as the District concedes, the District voluntarily ended its enforcement of the Clean Hands Law as to driver's license applicants, with no statutory mandate to do so prior to October 2023. Similarly, the Mayor has for certain residents shown a willingness to suspend Clean Hands requirements—again with no alteration in the statute or act by the legislature. In 2017, for example, the Mayor "started a pilot program to allow district residents returning home from prison with unpaid traffic debt to have their licenses reinstated, noting that this is a vulnerable time when the mobility to look for work and attend appointments is crucial."[10] The District's decisions to not enforce the Clean Hands Law against these individuals—but nonetheless apply it with full force to the Plaintiffs here, despite their similar desire and need to work by obtaining occupational and small business licenses—confirms that Plaintiffs are not challenging a legislative act; they are challenging the District's decision to preclude them specifically from obtaining licenses.[11]

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adjudicative action." *Id.* Here, in contrast, the Plaintiffs challenge the District blocking them individually from obtaining the licenses they seek.

[10] Beth Schwartzapfel, *43 States Suspend Licenses for Unpaid Court Debt, But That Could Change,* The Marshall Project (Nov. 21, 2017, 12:47 PM), https://www.themarshallproject.org/2017/11/21/43-states-suspend-licenses-for-unpaid-court-debt-but-that-could-change. couldchange?utm_content=buffer2c14f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

[11] This underscores why the District's reliance on *Decatur Liquors, Inc. v. District of Columbia* is misplaced. 478 F.3d 360, 363 (D.C. Cir. 2007) (Opp. at 22). That case addressed a "classic Bi-Metallic scenario": A challenge to a general property-related law; specifically, a "moratorium zone" that barred single-can alcohol sales and covered "all 73 liquor stores" in the geographic zone, leaving no room for discretion. *Id.* (concluding a hearing "would not be necessary" since

For all these reasons, the District's resort to the legislative acts doctrine fails to save the statute from review under the *Matthews* factors.

The Clean Hands Law provides constitutionally insufficient process. As the Court in *Parham* properly recognized, under the three governing *Matthews* factors, the Clean Hands Law provides constitutionally insufficient procedural protections before disqualifying individuals, like Plaintiffs, from renewing or obtaining occupational and small business licenses. *See* Mot at 24–28. The District's counterarguments here fail.

Private interests. The District says the "private interests are minimal, as Plaintiffs are not currently licensed." Opp. at 28. But the Supreme Court has repeatedly recognized the vital importance of licenses that enable someone to work in their desired field and earn a living. *See* Mot. at 24–25. That interest does not dissipate based on the procedural posture of the license renewal, and the District offers no reason why it would.

The District says the Plaintiffs are not "prevented from pursuing their occupations" because "the street vendors could still street vend for other street vendors" and "Cheatham is on disability." Opp. at 28. [12] But the record is clear (and unrefuted) that these Plaintiffs could earn more money if they could obtain their desired licenses. *See* Mot. at 24–25; *see also* Ayele Decl. ¶¶ 10, 12 (other work "does not provide me with as much income as I would have received [from] vending"); Ghebrebrhan Decl. ¶¶ 5, 16–17; Mehabe Decl. ¶ 10; Tesfamichael Decl. ¶¶ 12, 14; Diaz de

"the only disputable issue would be the link between the forbidden sales and the District's legislative goal"). Here, in contrast, Plaintiffs challenge individualized determinations, and the District has exercised discretion to not apply the Clean Hands Law in various scenarios.

[12] The District also suggests that the vendors could simply leave D.C. to work in another state. Opp. at 15. The District's position underscores the deleterious impact the law has on D.C., by driving workers and business elsewhere. *See* Mot. at 14–20.

Sanchez Decl. ¶¶ 10, 12; Cheatham Decl. ¶¶ 7–8 ("[T]he Clean Hands Law truly makes it hard to take care of myself and rebuild my life.").

Nor does the District meaningfully dispute that Plaintiffs' inability to earn more money has left them in dire straits, struggling financially to support themselves and their families. *See* Mot. at 24–25 (citing declarations). And while Ms. Carrington "is currently a speech pathologist" (Opp. at 28), she has a substantial and legitimate private interest in serving in this role in the District, which is her home and community where, as she notes with personal insight, "[t]here is a great need for Black speech pathologist therapists." Carrington Decl. ¶ 19. Ms. Carrington is also motivated by her understanding, based on her direct experience and observation, that the District offers "more benefits for small business owners, especially minority small business owners, than Maryland does." *Id.*; *see also id.* ¶ 20 ("I understand that, as a Black woman, I would have greater access to educational programs, grants, and other opportunities if I operated a small business in DC."). Against all this, the District says these private interests should be ignored or otherwise discounted because Ms. Carrington has already obtained some speech pathologist work in neighboring states. Opp. at 28. That in no way diminishes her substantial interest in working in the District and serving her home community.

The District fares no better in seeking to explain away *Parham's* private interest analysis. It argues that "*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." Opp. at 29. That is fallacious. Possession of a driver's license is not an absolute requirement to working in the District—as one of the prevailing plaintiffs in *Parham* (employed as a nurse) demonstrated. *See Parham*, 2022 WL 17961250, at *2 ("Plaintiff Dominique Roberts is a single mother of three children and a nurse at Washington Hospital

Center"). In contrast, Plaintiffs are absolutely barred from engaging in their profession of choice *at all* due to the Clean Hands Law. It is no answer to say that they could find other "employment and business opportunities" (Opp. at 29), any more than it would have sufficed to tell the *Parham* plaintiffs that they could have walked or taken the bus or metro. Moreover, most of the Plaintiffs here have no paid work at all despite their significant efforts. *See* Ayele Decl. ¶ 10; Cheatham Decl. ¶ 7; Ghebrebrhan Decl. ¶ 12; Tesfamichal Decl. ¶ 12.

Government interest. The District argues it "obviously has a strong interest in revenue collection." Opp. at 28 (quoting *Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018)). Perhaps so as a general matter, but that purpose is frustrated—not furthered—by barring Plaintiffs from obtaining licenses that make them *more likely* to repay their debts and, in turn, generate revenue for the District. *See* Mot. at 28. The District also says it "has 'compelling' interests in licensing professions and determining who can conduct business 'within [its] boundaries.'" Opp. at 28 (alteration in original) (quoting *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975)). But *Goldfarb* itself frames the government's interest in licensing around public safety concerns, which are absent here (as the District does not dispute). *Goldfarb*, 421 U.S. at 792 ("States have a compelling interest in the practice of professions" and can regulate them "as part of their power to protect the public health, safety, and other valid interests"). A general interest in regulating licenses does not establish a strong governmental interest here, especially where the Clean Hands Law's impact on Plaintiffs has nothing to do with public safety but rather mere revenue collection from people not in a position to currently pay off their debts to the government. *See* Mot. at 28.

Moreover, unable to dispute *Parham*'s reasoning that "the government's interest" in enforcing the Clean Hands Law against individuals that lack an ability to pay is "slight," *Parham*, 2022 WL 17961250, at *11, the District baldly asserts that *Parham* wrongly "h[e]ld the

government to some heightened scrutiny standard" in the government interest analysis. Opp. at 29. But *Parham* did no such thing. *See Parham*, 2022 WL 17961250, at *11. The government interest analysis in *Parham* is on-point and persuasive here. *See* Mot. at 28.

Risk of erroneous deprivation. The District argues that disqualifying Plaintiffs from licenses without a pre-deprivation hearing does not risk erroneous deprivation because Plaintiffs can dispute the source of the underlying debt "in an evidentiary hearing and before an appeals board and before a court." Opp. at 24. This argument is a red herring. Plaintiffs are challenging the adequacy of the procedure offered before the denial of their *occupational and/or small business licenses* under the Clean Hands Law on the basis of unpaid debt to the government—not the procedures governing the processes underlying the sources of their alleged debt. *See* Mot. at 28. Thus, the District's authorities on the adequacy of the procedure offered for other tickets and fines are inapposite. *See* Opp. at 23–30.

In any event, the fact that Plaintiffs can challenge the underlying bases for their debt in other proceedings does not eliminate the risk of erroneous deprivation in the Clean Hands context specifically, where if "the claimed debt (or the amount of the claimed debt) is in error, holding a hearing would permit debtors . . . to contest the assessment and correct the error." Mot. at 26 (quoting *Parham*, 2022 WL 17961250, at *10)). And the District fails to address, much less refute, the "risk of errors in DMV ticketing that the Court identified in *Parham*." Mot. at 26–27.

The District also says it offers sufficient process because the Clean Hands law does not "'finally deprive[ ]' anyone of a license," given that individuals can "quickly" "pay[ ] the debt" and reapply. Opp. at 25 (quoting *Gutierrez-Rogue v. INS*, 954 F.2d 769, 773 (D.C. Cir. 1992)). This misses the point entirely. The Clean Hands Law has firmly deprived Plaintiffs of eligibility for occupational and small business licenses because they lack an ability to promptly pay off all

or most of their debts. *See* Mot. at 6–13. That is the essence of this lawsuit, which the District's "quickly pay off" argument ignores

In addition, the District argues that *Dixon v. Love*, 431 U.S. 105 (1977), is "on point." Opp. at 26. It is not. While that decision concluded a pre-deprivation hearing was not required before suspending or revoking a driver's license, it did so given "the important public interest in safety on the roads and highways, and in the prompt removal of a safety hazard." 431 U.S. at 114. As explained above, no public safety concerns are implicated here. Indeed, as Councilmember Kenyan McDuffie, Chair of the Council committee that conducted a hearing and published a comprehensive report on the Clean Hands Law, stated just last year: "There's *no evidence* to suggest that Clean Hands promotes public safety. There's *no evidence* that it promotes public safety generally or safe driving specifically."[13]

Finally, the District says "Plaintiffs cannot show the requisite prejudice for a procedural due process claim" (Opp. at 27), but cites substantive due process cases (*id.*). And even if showing prejudice were required, holding a pre-deprivation hearing plainly would not be "pointless." *Id.* at 26. Not only would the hearing present the opportunity for error correction (*see* Mot. at 25–28), but it also would enable Plaintiffs to seek tailored, reasonably achievable payment plans that do not include the exorbitant initial payments the District has previously demanded. *See* Carrington Decl. ¶ 13 ($3,000 payment demanded by DC Government as pre-condition to payment plan); Cheatham Decl. ¶ 5 ($2,800 demanded).

Plaintiffs have amply demonstrated likelihood of success on the merits on their procedural due process claim and, as in *Parham*, the Court is not obligated to go further in its merits analysis

[13] *See* D.C. Committee of the Whole, Thirtieth Additional Legislative Session, at 30:08 (May 24, 2022) http://dc.granicus.com/MediaPlayer.php?view_id=3&clip_id=7480 (statement of Councilmember Kenyan McDuffie) (emphasis added).

for preliminary injunction purposes. However, if it elects to do so, the Court should hold that Plaintiffs' additional merits claim are likewise likely to succeed.

B. The District's Conduct Violates the Convergence of Equal Protection and Due Process

The District does not dispute that all four factors for determining whether a government practice violates the *Griffin* "fundamental fairness" principle weigh heavily in Plaintiffs' favor. *See* Mot. at 30–31. That should end the inquiry. *Id.* Nevertheless, the District argues the *Griffin / Bearden* principle is inapplicable here. *See* Opp. at 30–31. This position lacks merit.

The District first says the *Griffin / Bearden* principle[14] "only 'applies when the State imprisons a person by reason of his inability to pay a fine.'" (Opp. 30 (quoting *Jones*, 975 F.3d at 1032)). That is wrong: The Supreme Court has extended this principle to contexts other than imprisonment. *See, e.g.*, *M.L.B. v. S.L.J.* 519 U.S. 102, 111 (1996) ("*Griffin's* principle has not been confined to cases in which imprisonment is at stake."); *Mayer v. City of Chicago*, 404 U.S. 189, 196–97 (1971) (applying the *Griffin / Bearden* principle when an individual was "not subject to imprisonment, but only a fine," recognizing that a "fine may bear as heavily on an indigent accused as forced confinement"). The United States Department of Justice has recognized this, too:

> [T]he constitutional principle reaffirmed by [*Griffin*, *Bearden* and related authority] prohibits the imposition of adverse consequences against indigent defendants solely because of their financial circumstances**, regardless of whether those adverse consequences take the form of incarceration, reduced access to court procedures, or some other burden**. . . .

[14] There is no merit to, or consequence from, the District's attempt to rigidly segregate the *Bearden* line of cases and the *M.L.B.* line of cases. Opp. at 30. The cases in the "*M.L.B.* line" (*id.*) cite *Bearden* and *Griffin*. *See Asemani v. U.S. Citizenship & Immigr. Servs.*, 797 F.3d 1069, 1077 (D.C. Cir. 2015) (citing *Griffin*); *M.L.B. v. S.L.J.*, 519 U.S. 102, 120–21 (1996) (citing *Bearden*). Regardless, the academic question of whether these cases are one or two lines of precedent is irrelevant: each of those Supreme Court decisions binds the D.C. Circuit and this Court.

Statement of Interest, No. 3:16-cv-00044-NKM-JCH, (ECF No. 27), at 15, 17 (emphasis added). Settled law thus forecloses the District's lead argument.

The District says the *Griffin / Bearden* principle applies outside of the criminal context (*i.e.*, in a civil setting) only if the State "'condition[s] access to the judicial process" on paying fees in cases "involving certain fundamental interests." Opp. at 31 (quoting *Asemani v. U.S. Citizenship & Immigr. Servs*., 797 F.3d 1069, 1077 (D.C. Cir. 2015)). True, cases have arisen in that context. *See M.L.B.*, 519 U.S. at 120–21. But it does not follow that the *Griffin / Bearden* principle applies *only* in that limited context, as the District wrongly suggests. Opp. at 31. Moreover, to the extent the District is arguing that the *Griffin* / *Bearden* principle applies only in cases involving "fundamental rights," that position is also incorrect. *See, e.g.*, *M.L.B*., 519 U.S. at 111–13 (applying the *Griffin* / *Bearden* principle to "important" right of "family association").

Thus, the District's argument that the *Griffin* / *Bearden* principle does not apply here falls flat. And the District does not argue that, if the *Griffin* / *Bearden* principle applies, the Clean Hands Law comports with it. *See* Opp. at 30–31. The District has thus waived that argument. *See Jones v. Mukasey*, 565 F. Supp. 2d 68, 81 (D.D.C. 2008) ("[T]he Court should not address arguments raised for the first time in a party's reply."). Regardless, the Clean Hands Law plainly cannot stand under the *Griffin* / *Bearden* principle. *See* Mot. at 30–31. The District's brief reinforces this because it effectively admits (and indeed seems to trumpet that) the Clean Hands Law punishes individuals for their poverty by excluding them from full participation in the D.C. workforce and economy. *See* Opp. at 1 (arguing the Clean Hands law is grounded in the principle that "[h]e that hath committed iniquity shall not have equity"); *id.* (claiming the Clean Hands Law reflects a "fundamental fairness principle" of government that "[t]hose who do not pay their fair share are not entitled to privileges administered by the government").

C. The Clean Hands Law's Application Here Fails Rational Basis Review

Plaintiffs' opening brief demonstrated that the Clean Hands Law's application to Plaintiffs and other individuals that lack the ability to pay is irrational and self-defeating, in violation of equal protection and due process protections. *See* Mot. at 31–33. The District does not meaningfully respond to these arguments or the cases Plaintiffs cite, much less establish the rationality of barring individuals who are unable to pay their debt from the opportunity to obtain licenses that will make them *more likely* to repay that debt. *See* Opp. at 31–34.

Instead, the District says the fact that the "Law may not advance revenue collection in every instance is not fatal" under rational basis review, so long as it sometimes serves this purpose. *Id.* at 33. While this standard may apply to attempts to invalidate entire laws under rational basis review, the Plaintiffs here bring an *as applied* challenge. *See* Mot. at 31–33. And in that context, simply establishing that a law may sometimes be rational will not do; Supreme Court precedent requires establishing the rationality of enforcing the Clean Hands Law against Plaintiffs and other individuals that lack an ability to pay. This the District cannot do.

City of Cleburne, Texas v. Cleburne Living Center, is on point and controlling here. In that case, a local government denied a special use permit for a group home for people with intellectual disabilities. 473 U.S. 432, 435 (1985). While acknowledging the government's generally "legitimate interests" in avoiding population concentration, reducing congestion, eliminating fire hazards, and preserving neighborhood serenity, the Court dug deeper and, after analysis, concluded that "the record does not reveal any rational basis for believing the . . . home would pose any special threat." *Id.* at 448. It thus held the ordinance "invalid *as applied*." *Id.* at 448 (emphasis added); *id.* (equal protection violated "[b]ecause . . . the record does not reveal any rational basis for believing that the [] home would pose any special threat to the city's legitimate interests").

Allegheny Pittsburgh Coal Co. v. County Comm'n. of Webster Cnty., similarly involved an as-applied constitutional challenge. 488 U.S. 336 (1989). There, the Supreme Court required the government to show that, based on the factual record in that case, it was rational to apply the challenged property tax assessment law to the plaintiffs. *Id.* The assessment scheme valued properties based on either recent purchase prices or, if the property was not recently sold, previous assessments. *Id.* at 338. Under this system, the defendant—a county commission—intentionally and systematically undervalued properties not recently sold, requiring the plaintiffs to owe much higher taxes. *Id.* at 339–40. The Court accepted that this assessment scheme was rational in theory. *Id.* at 343–44. Because the scheme resulted in such gross disparities in practice, however, the Court nonetheless held that enforcing it against the plaintiffs violated the Equal Protection Clause. *Id*. Again, the Court's analysis explicitly turned on its review of the factual record of the statute as applied to the party challenging its enforcement. *See id*.

These Supreme Court decisions foreclose the District's central argument that, because the Clean Hands Law may sometimes further a legitimate government purpose, it survives rational basis review here. Opp. at 31–34. Likewise, the District's reliance on general statements about rational basis challenges not involving "fact-finding" and "testing" (*Id.* at 32–33) cannot be squared with these Supreme Court decisions.[15]

The District's argument on the Supreme Court's decision in *James v. Strange*, 407 U.S. 128 (1972), fares no better. *See* Opp. at 33–34. The Clean Hands Law violates equal protection principles recognized in *James v. Strange* because it "singles out" Plaintiffs (and individuals like

[15] The District's reliance on how *Fowler* applied the rational basis test (Opp. at 19–20) is likewise unpersuasive in light of Supreme Court precedent. As Sixth Circuit Chief Judge Cole explained, *Fowler* "rubber-stamp[ed] [] arbitrary laws [and] abdicate[d] judicial responsibility to safeguard constitutional protections." *Robinson*, 966 F. App'x at 522 (Cole, J., dissenting from rh'g en banc).

them) by imposing harsher terms on them than are imposed on private creditors—*i.e.*, the denial of a license as a consequence for their debt. *See* Mot. at 34–35.

The District's main counterargument is that "the Clean Hands Law does not eliminate any exemptions or protections that would normally be available to individuals with debt to private entities" (Opp. at 34)—in other words, the Clean Hands Law does not treat Plaintiffs harsher than private creditors. That is incorrect. The District's debt collection scheme for debtors "to the public treasury" under the Clean Hands Law lacks two major protections that District law affords to debtors facing "private creditors": (1) an ability to pay assessment and accompanying protections from wage garnishment for debtors as to whom payment of the outstanding amount would constitute an undue hardship, D.C. Code § 16-572.01(a)(1); and (2) an indigency exemption, which extinguishes wage garnishments following civil judgments for private debtors earning less than minimum hourly wage, *see id.* 16-572(1)(a). These differences are material under the line the Supreme Court and lower courts have drawn in applying *James*. *Compare, e.g.*, *United States v. Bracewell*, 569 F.2d 1194, 1198-1200 (2d Cir. 1978) (discussing the need for individualized consideration of defendants' financial wherewithal so as not to create hardship in violation of *James*), with *Fuller v. Oregon*, 417 U.S. 40, 47 (1974) (upholding state debt collection scheme in part because it allowed debtors to demonstrate that repayment would impose "manifest hardship"). These authorities foreclose the District's position. *See* Opp. at 33–34. Nor can the District's bare-bones assertion of rational basis review (*id.* at 34) save the Clean Hands Law, as discussed above.

D. The Clean Hands Law's Application to Plaintiffs Violates the Eighth Amendment

Barring Plaintiffs from obtaining occupational and small business licenses violates the Eighth Amendment. *See* Mot. at 36–39. Denying Plaintiffs the opportunity to obtain licenses as

a consequence for their debt is a punitive measure, and this penalty is excessive given Plaintiffs' inability to repay their outstanding debt. *See id.* The District's counterarguments are specious.

The District says that "a denial of a license cannot be a fine" under *Contemporary Media, Inc. v. F.C.C.*, 214 F.3d 187 (D.C. Cir. 2011). Opp. at 35. But a "fine" includes any punishment that the government "extract[s]" in the form of payments "in cash or in kind." *Austin v. United States*, 509 U.S. 602, 610 (1993); *see also* Mot. at 35–36. *Contemporary Media* does not (and could not) cast doubt on that fundamental principle; it simply concluded that, when a license revocation occurred because "the licensee c[ould] no longer be trusted to deal with it honestly, to follow its regulations, and to operate in the public interest"—and "not to punish"—the Eighth Amendment was not implicated. 215 F.3d at 198–99. Here, in contrast, Plaintiffs have been barred from obtaining occupational or small business licenses *not* because they could "no longer be trusted" to act honestly or follow D.C. law (*id.*) but, rather, as a punishment for their financial inability to pay government fines, fees, or taxes. *See, e.g.*, Opp. at 1 (arguing the Clean Hands law is grounded in the principle that "He that hath committed iniquity shall not have equity"). This punitive purpose confirms the Eighth Amendment's applicability here.

Next, the District says that depriving Plaintiffs of licenses is not a "fine" because "it is not permanent," given that Plaintiffs "can cure their Clean Hands ineligibility by simply paying their debt." *Id.* at 36. Because most of the Plaintiffs lack an ability to repay their debt until they can get the licenses they seek, however, the Clean Hands Law *does* in effect permanently bar them from obtaining occupational and small business licenses—as Plaintiffs declarations establish. *See* Mot. at 6–13 (citing declarations).

The District says the fines imposed are not excessive—despite Plaintiffs' inability to pay them—because (a) '[n]either the Supreme Court nor [the D.C. Circuit] has spoken' on that issue"

(Opp. at 37 (quoting *United States v. Bikundi*, 926 F.3d 761, 796 (D.C. Cir. 2019))), and (b) "district courts in this Circuit have consistently rejected the notion that ability to pay is relevant to the analysis" (*id.*). But this response ignores Plaintiffs' argument on the original meaning of the Excessive Fines Clause and the numerous recent cases that persuasively conclude inability to pay renders a fine excessive. *See* Mot. at 37–38. These authorities powerfully show why the Court should hold the fines imposed here are excessive. *Id.*

The District's argument on the other excessiveness factors are equally meritless. Rather than focus on the maximum sentence that can be imposed under the Clean Hands Law (license disqualification, which was imposed here (*see* Mot. at 39)), the District wrongly focuses on punishments available under other statutes not at issue here (Opp. at 38). The District says Plaintiffs' punishments are proportional because "those who do not pay their fair share should not enjoy privileges from the government." *Id.* That is mistaken. Plaintiffs are not voluntarily declining to "pay[] their fair share"; they *want* to pay off their debt but lack an ability to pay (in part due to the Clean Hands Law). *See* Mot. at 6–13. This same problem infects the District's description of the "nature of the harm": "refusal to honor financial obligations to the community and government that are required of all members of society." Opp. at 38. And the District fails to address Plaintiffs' argument on the "class of persons for whom the statute was principally designed" (Mot. at 36)—individuals with an ability to pay—thus waiving any response.

III. Settled Law Forecloses Defendants' Argument on Irreparable Harm

The District's violation of Plaintiffs' constitutional rights constitutes an irreparable harm. *See* Mot. at 39–40; *see also, e.g.*, *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) ("[T]he loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (internal quotation marks omitted)); *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998) ("Although a plaintiff seeking equitable relief must show a

threat of substantial and immediate irreparable injury, a prospective violation of a constitutional right constitutes irreparable injury for these purposes." (citations omitted)). The District argues this black-letter principle applies only in the First Amendment context. *See* Opp. at 39. That is incorrect. Courts have routinely held that similar constitutional violations inflict irreparable harm. *See, e.g.*, *Gordon v. Holder*, 826 F.Supp.2d 279, 296 (D.D.C. 2011) (due process violation); *see also Parham*, 2022 WL 17961250, at *11 (same); *DynaLantic Corp. v. U.S. Dep't of Def.*, 885 F. Supp. 2d 237, 292 (D.D.C. 2012) ("Because [plaintiff] succeeds on the merits of its as-applied constitutional equal protection claim, the Court finds this deprivation of Plaintiff's constitutional rights constitutes irreparable harm."); *Stinnie v. Holcomb*, 355 F. Supp. 3d 514, 532 (W.D. Va. 2018) (after holding that Plaintiffs had shown likelihood of success on their procedural process claim for automatic driver's license denial as punishment for unpaid debts to the government, holding plaintiffs had shown irreparable harm because, among other things, "where Plaintiffs' constitutional rights are being violated, there is a presumption of irreparable harm" and one of the plaintiffs had "lost a job and been denied another").[16]

Next, the District says that establishing irreparable harm "requires particularized analysis." Opp. at 39. But that is not lacking here. Plaintiffs' motion and declarations detail how the Clean Hands Law is, in fact, violating their constitutional rights. *See* Mot. at 40; *id.* at 6–13; *id.* at 21–39. Indeed, the District's cases are concerned with constitutional challenges in which parties may not continue to engage in constitutionally protected behavior. *See Chaplaincy of Full Gospel*

[16] The District cites *Simic v. City of Chicago*, 851 F.3d 734 (7th Cir. 2017), to suggest that violations of the Excessive Fines Clause do not cause irreparable harm. But that case found irreparable harm lacking only because "[a]t worst, Simic faced the threat of a $540 assessment as a fine and court costs, so a damages remedy would be sufficient to remedy any harm." *Id.* at 737. That looks nothing like the extraordinary harm the Plaintiffs are enduring—automatic disqualification by the Clean Hands Law from a license that could lead to their being able support themselves and their families. *See* Mot. at 6–13 (citing declarations).

Churches v. England, 454 F.3d 290, 301 (D.C. Cir. 2006) ("[M]oving parties must also establish they are or will be engaging in constitutionally protected behavior" the challenged conduct "would chill."). That concern is absent here since without injunctive relief, the District's conduct is certain to occur in the future, in violation of Plaintiffs' constitutional rights.

The District also gratuitously asserts that Plaintiffs "attempt to manufacture a crisis by saying they need to be able to start vending in the busy summer months" but "provide no evidence to substantiate their claim that each summer month is a substantially busier than every other month." Opp. at 41. That is false. The Vendor Plaintiffs' declarations provide exactly this evidence based on each of their many years of direct experience with this seasonal dynamic. *See* Ayele Decl. ¶ 13; Ghebrebrhan Decl. ¶ 17; Mehabe Decl. ¶ 12; Tesfamichael Decl. ¶ 15. The District has provided no data, let alone any other form of evidence, suggesting otherwise.

The District's contention that Plaintiffs' are simply enduring run-of-the-mill "economic harm[ ]" (Opp. at 40) similarly distorts the record. As the undisputed declarations establish, the Clean Hands Law is irreparably harming Plaintiffs by trapping them in poverty and severe economic distress, preventing them from supporting themselves and their families, and blocking them from working in their desired profession. *See* Mot. at 40 (citing declarations); *see, e.g.*, Ghebrebrhan Decl. ¶ 12 (explaining he is "the primary caregiver for my sick, elderly sister" but, because he "is unable to work as a street vendor," is "receiving food stamps and welfare benefits" with "no other source of income". This is precisely the type of extraordinary, irreparable harm for which preliminary injunctive relief is warranted. *See* Mot. at 39–40.

The cases the District cites do not change the analysis. Two are completely inapposite. *See, e.g.*, *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (no irreparable harm from the "cost of compliance" with an EPA rule); *Davis v. Pension Ben. Guar.*

Corp., 571 F.3d 1288, 1295 (D.C. Cir. 2009) (no irreparable harm based on benefits payments). And *Washington v. District of Columbia* supports *Plaintiffs'* position because it found a licensing scheme did not inflict irreparable harm only because the plaintiff *could* obtain a license absent injunctive relief, No. 23-cv-36, 2023 WL 1778195, at *2 (D.D.C. Feb. 6, 2023), which is plainly not the case here given Plaintiffs' undisputed inability to pay their outstanding debt.

The District also says that Plaintiffs were "inexcusably delayed in bringing this case," which defeats irreparable harm. Opp. at 42. But D.C. Circuit precedent is clear: "a delay in filing is not a proper basis for denial of a preliminary injunction." *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011); *id.* ("Although federal courts have at times bolstered their denials of preliminary injunctions by referring to the late hour of a filing, those cases in no way stand for the proposition that a late filing, on its own, is a permissible basis for denying a preliminary injunction."). At *most*, a delay in filing "suggest[s] the proffered harm is not truly irreparable." *Klayman v. Obama*, 142 F.Supp.3d 172, 195 n. 22 (D.D.C. 2015). But as explained above, the severe harm Plaintiffs are enduring due to the Clean Hands Law is plainly irreparable as a matter of both law and fact.

The cases the District cites lack persuasion for several reasons. First, in each of those cases the harms alleged were not the deprivation of constitutional rights. *TK Servs., Inc. v. RWD Consulting, LLC*, 263 F. Supp. 3d 64, 66 (D.D.C. 2017); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975). Additionally, in *TK Servs., Inc. v. RWD Consulting, LLC*, while the court briefly addressed the plaintiffs' delay in filing suit, it reached no conclusion on irreparable harm because an arbitration agreement precluded it from doing so. 263 F. Supp. 3d at 73. None of these cases remotely supports concluding the harm established here is not irreparable.

In any event, the District's argument fails for the separate and independent reason that any delay in filing this suit flowed from their good-faith efforts to eek immediate legislative relief from

the unconstitutional and harmful law impacting their lives. *See* ECF No. 18-2, ("Gilbert Decl."), ¶¶ 5–8. Where, as here, plaintiffs "reasonably pursue[] non-litigation avenues first . . . diligent[ly] pursui[ng] of a variety of avenues for reversing a policy," instead of immediately filing suit, that delay "does not give rise to an inference that the harm is not irreparable and imminent." *Tex. Children's Hosp. v. Burwell*, 76 F. Supp. 3d 224, 244–245 (D.D.C. 2014).

Here, many of the Vendor Plaintiffs have been closely involved in efforts to address their Clean Hands Law issues through a legislative fix—advancing the Street Vending Decriminalization Act. Gilbert Decl. ¶ 4. They hoped the bill's passage would provide them with immediate relief from the constitutional and economic harms inflicted by the Clean Hands Law disqualifying them from valuable licenses—by April or May of this year—thus obviating the need for litigation. *Id.* ¶¶ 5–8. That regrettably did not occur, and per the statute enacted as of May 2023, relief will not occur (if at all) until October 2023 at the earliest. *Id.* ¶¶ 7–8. When this timing became clear, Plaintiffs expeditiously retained pro bono litigation counsel and together filed this suit shortly thereafter. This constructive, active engagement in the legislative process reinforces that any delay in filing does not suggest there is no irreparable harm here. *Compare, e.g.*, *Klayman*, 142 F. Supp. 3d at 195 n.22 (rejecting "incredibl[e] argu[ment]" that a "claim of irreparable harm is necessarily undercut by [plaintiffs] more than two-year delay in joining this suit," as plaintiffs believed their "rights would [] be vindicated" through "other means"). This is particularly true here given that the District's own conduct also contributed to any delay. For example, it took Mr. Ghebrebrhan over a year (and the engagement of pro bono counsel) to even figure out how much debt he allegedly owed the District, and District representatives were not only unhelpful during that process but downright disrespectful. ECF No. 18-1 ("Supplemental Ghebrebrhan Decl."), ¶¶ 4–5; *see also* ECF No. 18-3 ("Corkery Decl."), ¶¶ 3–5.

Finally, there is no merit to the District's position that Plaintiffs have "corrective relief" available through a payment plan or legislation that may take effect in the future. (Opp. at 43). Most of the Plaintiffs were never offered payment plans. *See* Ayele Decl. ¶ 8; Diaz de Sanchez Decl. ¶ 9; Ghebrebrhan Decl. ¶ 11; Mehabe Decl. ¶ 9; Tesfamichael Decl. ¶ 10. And for the ones that were, the District demanded large up-front payments that the Plaintiffs could not afford given their financial circumstances. *See* Carrington Decl. ¶ 13; Cheatham Decl. ¶ 5. And legislation that *may*, in October 2023 or later, provide *some* of the Plaintiffs partial or more relief, *see* Gilbert Decl. ¶¶ 4–5, 7, does not authorize the District to continue on a daily basis violating the Plaintiffs constitutional rights and causing them financial and dignity harms in the meantime.

IV. The Public Interest and Equities Powerfully Favor Plaintiffs

Plaintiffs have detailed the financial and quality of life harms to them and their families, as well as the broad social costs on D.C. and its residents, stemming from the Clean Hands Law, including: exacerbating racial inequality and causing disproportionate harm to disabled people such as Mr. Cheatham; driving talented individuals away from the District like Ms. Carrington to find employment in other states; entrenching racial disparity in small business ownership; and inflicting all of this harm without even achieving its revenue-generation purpose. *See* Mot. at 14-18; 40–42. In fact, no less than an office of the DC Council itself has recognized the unacceptable fact that "Black residents are disproportionately blocked from occupational licenses, starting a business, or competing for contracts, among other wealth building activities . . . [and therefore] disproportionately impacted by fines but with fewer opportunities to build wealth that may help them pay debts resulting from fines."[17] To all of this, District offers no direct response.

[17] D.C. Council Office of Racial Equity, *Racial Equity Impact Assessment, Bill 24-0237*, at 4 (June 22, 2022), https://www.dropbox.com/s/44fkadpnwnq1ucs/REIA%20B24-0237%20-%20Clean%20Hands%20Certification%20Equity%20Amendment%20Act-signed.pdf?dl=0

Plaintiffs have further detailed how the continued enforcement of the Clean Hands Law against people unable to pay their debts to the D.C. Government harms the public interest through continued unconstitutional enforcement. The District in response claims that the public interest would be harmed by an injunction preventing it from enforcing the statute against Plaintiffs and others who cannot afford to pay their debts, and that the District would suffer irreparable harm from interference with revenue collection. But "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012); *see also J.D. v. Azar*, 925 F.3d 1291, 1337 (D.C. Cir. 2019). And it is difficult to credit the District's claim of revenue loss given that Plaintiffs and those similarly situated are unable to pay their debts in part due to the Clean Hands Law. And even if there were some minimal loss, it would be a far cry from the kind of revenue interference that the one-Justice decision the District relies on deemed irreparable harm. *Compare Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers) (staying invalidation of the entire Texas Administrative Services Tax Act, which required Texas to "issue refunds to the challenging taxpayers").

The District next resorts to a sky-is-falling argument: that issuing a preliminary injunction "could create an administrative nightmare for the District." Opp. at 44. That claim is unsupported by any record evidence; in fact, the only evidence the District cites—an affidavit from *Parham*—confirms that the District (with an annual budget of about $19 Billion) is fully capable of expeditiously complying with an injunction covering far more than just the Plaintiffs. Opp. at 45 (citing Bernard Decl. [19-2] ¶¶ 5–10, *Parham*, No. 22-cv-2481 (D.D.C. Jan. 24, 2023)).

Finally, on the equities, the District says that Plaintiffs have "brought harms upon themselves," highlighting just how divorced from any recognizable concept of equity the District's

position is. For Plaintiff Mr. Cheatham, a Black U.S. Air Force veteran and returning citizen, his continued Clean Hands Law disqualification harms arise from parking ticket debts accrued while he was homeless, sleeping in his car for safety and to protect his plumbing tools. Cheatham Decl. ¶¶ 2, 3, & 5. As detailed in their declarations, the Vendor Plaintiffs, who are all immigrants to the United States and persons of color, ran out of money to continue paying debt to the government after there was a global pandemic that for an extended period forced them to shut down their food-vending operations. And Plaintiff Ms. Carrington, a Black single mother seeking to work in her D.C. community and increase the availability of Black speech pathologists, sought to pay off her debts to the District through a payment plan but was rebuffed and told she could only do so if she first paid the government $3,000, money she did not have. Carrington Decl. ¶¶ 10, 11, 13, 16, & 19.

The public interest and equities powerfully favor issuing a preliminary injunction.

CONCLUSION

The Court should grant Plaintiffs' motion for a preliminary injunction and deny Defendants' motion to dismiss.[18]

[18] The District suggests that, even if Plaintiffs' 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." Opp. at 21 n.4. Plaintiffs have sued the "individual defendants" in their official capacities, however, and "the Supreme Court has authorized official capacity suits against local government officials." *Moonblatt v. District of Columbia*, 572 F. Supp. 2d 15, 24 (D.D.C. 2008) (citing *Monell v. Dep't of Soc. Serv. of New York*, 436 U.S. 658, 691 n.55 (1978)). Courts in this District also routinely decline to dismiss claims on this ground. *See, e.g.*, *Johnson v. District of Columbia*, 572 F. Supp. 2d 94, 112 (D.D.C. 2008). The District's one-sentence argument to the contrary lacks merit, particularly given that Plaintiffs' complaint establishes each Defendant's involvement in the alleged constitutional violations. *See* Dkt. 1 ¶¶ 23–26.

Dated: July 6, 2023

Respectfully Submitted,

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