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.

ORAL ARGUMENT REQUESTED

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

The seven Plaintiffs in this case challenge a poverty trap the District of Columbia gratuitously inflicts upon its most vulnerable and financially distressed residents. Each Plaintiff wishes to obtain from the D.C. government the licenses necessary to engage in their desired occupation. One Plaintiff is a plumber and military veteran who, after overcoming homelessness and being diagnosed with post-traumatic stress disorder, seeks to open a small business in the District. Another Plaintiff is a speech pathologist who wishes to serve District residents by opening her own small business. Other Plaintiffs have served as street vendors for many decades, working long days outdoors selling refreshments to District residents and tourists. They wish to renew their street vending occupational licenses immediately and resume vending, particularly during the summer months, which is the busiest and most profitable time of year for vendors.

The District of Columbia has blocked each Plaintiff from obtaining these licenses, however, based on the so-called "Clean Hands Law"—a draconian and irrational scheme that punishes people with lower incomes by automatically disqualifying them from obtaining occupational or small business licenses if they owe over $100 in outstanding debt to the District. And indeed, the Clean Hands Law blocks people from obtaining these licenses even if they *want* to pay back their debt, but lack an ability to do so given their financial distress, as Plaintiffs do here. The Law is thus a trap: D.C. residents who owe debt to the D.C. government desperately need their occupational or small business licenses to pay back their debt, but the Clean Hands Law denies them a license *because* of their debt. The District's punitive scheme suffocates and stifles the economic mobility of D.C. residents. Indeed, D.C. has one of the broadest and most extreme schemes in the country, and it is the only jurisdiction in the greater-D.C. region to automatically

disqualify individuals from obtaining occupational and small business licenses due to unpaid parking and traffic related debt.

Plaintiffs are entitled to a preliminary injunction that prohibits the District from continuing to enforce the Clean Hands Law with respect to occupational and small business licenses or, at a minimum, prohibits the District from continuing to unconstitutionally enforce the Clean Hands Law against the Plaintiffs. Each of the three governing preliminary injunction factors weighs strongly in Plaintiffs' favor.

1. Plaintiffs' claims are likely to succeed on the merits. Defendants' ongoing enforcement of the Clean Hands Law to automatically disqualify Plaintiffs from occupational and small business licenses violates the Constitution in five ways, any one of which is sufficient to establish likelihood of success on the merits.

First, the Clean Hands Law deprives Plaintiffs of property interests—licenses created by D.C. law—without providing a pre-deprivation hearing. This violates the Fifth Amendment's procedural due process protections, as this Court has already held with respect to the Clean Hands Law's application to driver's licenses. *See Parham v. District of Columbia*, No. 1:22-cv-02481, 2022 WL 17961250, at *4–*12 (Dec. 27, 2022), *vacated* Dkt. 25 (D.D.C. May 15, 2023). Plaintiffs recognize that following this Court's ruling—after the District agreed to change its policy and no longer enforce the Clean Hands Law as to driver's licenses—the parties settled *Parham* and the court vacated the opinion at the parties' joint request. But this does not diminish the force of that opinion's reasoning and application of governing precedent, which is on-point and persuasive here.

Second, the Clean Hands Law's application to Plaintiffs violates the Fifth Amendment at what the Supreme Court has termed the "converge[nce]" of due process and equal protection guarantees. *Bearden v. Georgia*, 461 U.S. 660, 665 (1983). It does so because the statute punishes

Plaintiffs for their poverty by depriving them of licenses for non-payment of debt to the government, without providing for an indigence exception or for any inquiry about their inability to pay.

Third, the Clean Hands Law violates substantive due process and equal protection guarantees, even under rational basis review. The only legitimate purpose the Clean Hands Law could serve is to raise revenue and incentivize payment. That purpose is frustrated—not furthered—by barring the Plaintiffs from obtaining the very occupational and small business licenses that *will enable* them to repay their debt. And the statute's failure to provide any basis for distinguishing between individuals who have the ability to pay back their debt to D.C. (allowing them to obtain licenses) and individuals like Plaintiffs who lack an ability to repay their debt (barring them from obtaining licenses) reinforces the statute's irrationality.

Fourth, the Clean Hands Law further violates equal protection principles because the District is abusing its power as a debt collector with respect to Plaintiffs, barring them from obtaining occupational and small business licenses as a consequence for not repaying their debt due to their inability to pay, in violation of *James v. Strange*, 407 U.S. 128, 138 (1972).

Finally, the Clean Hands Law's enforcement against Plaintiffs violates the Eighth Amendment's prohibition on excessive fines, which bars imposing fines and fine-related penalties that, like the disqualification for non-payment scheme applied here, (a) prevent someone from earning a living, and (b) are disproportionate because an individual lacks the ability to pay the fine.

2. Absent preliminary injunctive relief, Plaintiffs will continue to suffer irreparable harm. The violation of constitutional rights is a well-established irreparable harm. And the real-life damage the Clean Hands Law is inflicting on Plaintiffs—by denying them a fundamental

freedom, and precluding them from working in their desired field to support themselves—is further irreparable harm that will continue to occur absent preliminary relief.

3. The equities and public interest powerfully support issuing preliminary relief. The public interest is promoted by ending the continuing violation of Plaintiffs' constitutional rights. The equities and public interest also weigh heavily in Plaintiffs' favor because continued enforcement of the Clean Hands Law to those seeking occupational and small business licenses has a deleterious impact on the District as a whole: Among other things, it exacerbates racial inequality—including by entrenching racial disparities in small business ownership—and drives qualified, eager employees out of the District. Indeed, the District itself has recognized that the Clean Hands Law is harmful and (a) statutorily eliminated (and, even before the effective date of the amending statute, stopped enforcing) its application to driver's licenses, and (b) passed a law that, if it survives congressional review and is funded by Congress, will eliminate the Law's application to street vendors in certain situations, effective this October. But these steps do not provide Plaintiffs with relief here. Rather, they underscore the District's reluctant acknowledgment of the Clean Hands Law's deeply problematic nature and the urgent need for preliminary relief now.

The Court should grant Plaintiffs' motion for a preliminary injunction.

BACKGROUND

I. The Clean Hands Law Bars Plaintiffs from Obtaining Occupational and Small Business Licenses

The Plaintiffs in this case each seek to obtain an occupational or small business license from the District of Columbia government to better their lives, including by putting themselves and their families on a stronger financial footing. Obtaining these licenses is also essential to helping Plaintiffs pay back the debt they owe to the District. Yet, paradoxically, each of the

Plaintiffs cannot obtain these licenses because of their outstanding debt. That is because the so-called Clean Hands Law (the "Law") bars people who owe "more than $100 in outstanding fines, penalties" or "taxes" from renewing or obtaining occupational or small business licenses issued by the District. D.C. Code § 47-2862(a)(5)(1)–(2). As explained below, the Clean Hands Law is inflicting severe harm on these Plaintiffs, preventing them from obtaining the tools they need to climb out of indebtedness.

A. The Plumber

Plaintiff Shawn Cheatham is a Black military veteran who is currently staying at an apartment in Ward 8. Declaration of Shawn Cheatham ("Cheatham Decl.") ¶ 1 (attached as **Exhibit A**). During his service in the United States Air Force, Mr. Cheatham served as a plumbing specialist and Airman First Class prior to being honorably discharged. *Id.* ¶ 3. He moved to the District in 2015, after being diagnosed with post-traumatic distress order, because he had a plumbing job there and wished to receive psychological treatment at a local VA hospital. *Id.* ¶ 4. He then obtained a certification in Building Maintenance through a program at a D.C. non-profit, with the hope of opening his own plumbing and handyman business. *Id.* ¶ 3. During the period of time shortly after he moved to D.C., Mr. Cheatham was homeless, and he often slept in his car for his personal safety and to protect his plumbing tools. *Id.* ¶ 5. He received many parking tickets from the District during this time, many of which were issued while he was sleeping in his car with his plumbing tools. *Id.* These fines, in addition to some traffic tickets and including numerous late fees, are currently $3,070.

Despite this adversity, Mr. Cheatham overcame homelessness. He now has housing and a vehicle, but his only income is a monthly disability payment from the United States Department of Veterans Affairs and food stamps. *Id.* ¶ 6. Mr. Cheatham wishes to open a small business—a plumbing and handyman business—to not only improve his life, but also fulfill what he describes

as his "dream." *Id.* ¶ 3. Mr. Cheatham has taken concrete steps towards that end and, for example, obtained an Employer Identification Number. *Id.* But because opening a small business in the District requires receiving a small business license from the District, *see* D.C. Code § 47-2851.02(a), the Clean Hands Law has automatically disqualified Mr. Cheatham from obtaining the license required to achieve small business ownership. *Id.* Yet Mr. Cheatham lacks an ability to pay his outstanding debt to D.C., much of which flows from parking tickets that were issued when he was homeless and sleeping in his car for safety. *Id.* ¶¶ 5, 6–8. The resulting automatic disqualification under Clean Hands Law is thus making it hard for Mr. Cheatham to take care of himself and rebuild his life. *Id.* ¶ 8.

B. The Speech Pathologist

Plaintiff Stephanie Carrington is a Black D.C. resident and single mother of two children with a Master's degree from the University of the District of Columbia in speech pathology. Declaration of Stephanie Carrington ("Carrington Decl.") ¶¶ 2-3, 6 (attached as **Exhibit B**). She is currently working towards a PhD in speech pathology. *Id.* ¶ 7. She has lived in the District for more than 15 years. *Id.* ¶ 7. She desires to work as a speech pathologist in the District for numerous reasons, including because there is a great need for Black speech pathologists in her community: D.C. *Id.* ¶ 19. To do so lawfully, she must obtain a speech pathology occupational license issued by the District. *See* D.C. Code §§ 3—1205.01(a)(1); 3–1210.07.

For similar reasons, and because D.C. offers a favorable regulatory climate for minority-owned small businesses, Ms. Carrington wishes to start a small business in the District—a private speech pathology practice. *Id.* ¶ 16. She has taken concrete steps to achieve this goal, including filing Articles of Incorporation with the D.C. government. *Id.* ¶ 17. Starting a small business also requires obtaining a license from the D.C. government. *See* D.C. Code § 47-2851.02(a).

Despite being professionally qualified and, in her words, "incredibly eager" to obtain occupational and small business licenses from the District and serve the D.C. community, the Clean Hands Law is preventing Ms. Carrington from doing so. *Id.* ¶ 22. That is because she owes over $100 in outstanding debt to the District—over $5,000, stemming from parking tickets, automatic camera tickets, red-light tickets, and significant accrued penalties and late fees. *Id.* ¶ 11. Because she cannot obtain an occupational or small business license in the District, Ms. Carrington has been working in Maryland and Virginia. *Id.* ¶ 9. In both of those states, given her qualifications, she has been able to obtain the licenses required to work as a licensed speech pathologist. *Id.* ¶¶ 8-9. While Ms. Carrington prior to 2020 had been making a steady salary and paying down her debt little by little, she has not been able to pay it off in full. *Id.* ¶¶ 12-14. In 2020, 2021 and 2022, her practice and life experienced the impact of the pandemic and her annual income in those three most recently completed years was as low as about $10,000 and never above about $30,000, respectively. *Id.* ¶ 12. She is fully financially responsible for her two children, and has spent significant time pursuing her speech pathology studies. *Id.* But for the Clean Hands Law, she would seek to be licensed by and working in the District. *Id.* ¶ 22. Working and starting her own business in the District would also help her to repay her debts, *id.* ¶ 12, which also include $250,000 of (currently deferred) student loans.[1]

[1] The deferment for student loans is ending soon, on September 1, 2023. *See* Kamaron McNair, *The federal student loan pause ends Sept. 1—how you can get ready*, CNBC (Jun. 13, 2023), https://www.cnbc.com/2023/06/13/student-loan-pause-ends-september.html.

C. The Street Vendors

To operate a vending cart or food truck in the District, street vendors must obtain a street vending license. *See* D.C. Mun. Regs. Tit. 24, § 502.[2] To obtain this license, potential vendors must obtain a Certificate of Clean Hands verifying that they do not owe the District any outstanding debts or fines greater than $100. D.C. Code § 47-2862(a). If individuals cannot obtain this Certificate, then the Clean Hands Law precludes them from obtaining an occupational license for street vending. The Street Vendor Plaintiffs have all served as street vendors in the District for decades and want to keep doing so, but the Clean Hands Law blocks them from renewing their occupational vending license.

Plaintiff Medhin Ayele is a Black D.C. Ward 4 resident who first began working as a D.C. street vendor in 1995, after immigrating to the United States from Ethiopia. Declaration of Medhin Ayele ("Ayele Decl.") ¶¶ 2-3 (attached as **Exhibit C**). Working from her cart at 14th and Park Streets in Northwest D.C., she primarily sold hot dogs, candy, chips, and other assorted food items, for 25 years. *Id.* ¶ 3. She has renewed her vending license for decades without issue. *Id.* ¶ 4. Due to the Covid-19 pandemic and related District shut down, however, Ms. Ayele paused her street vending business in 2020. *Id.* ¶ 5. Her Class A Vending Business License lapsed on September 30, 2020. *Id.* ¶ 6. In 2021, and again in 2022, she attempted to renew her street vendor license and reopen her business. *Id.* ¶ 7. The Clean Hands Law prevented her from doing so, however, because she owed outstanding quarterly street vending fees assessed during the Covid-19

[2] *See Vending Steps to Licensing*, D.C. Dep't of Licensing and Consumer Protection, https://dlcp.dc.gov/node/1619396 (last visited June 15, 2023).

pandemic—and which were imposed even after Ms. Ayele's license had lapsed.[3] *Id.* To make matters worse, after seeking additional information from the D.C. government, Ms. Ayele was informed that some of the outstanding debt that was preventing her from obtaining an occupational license was issued in error, and she was able to get some of her tax liability reversed. *Id.* ¶¶ 7-8 Even so, Ms. Ayele remains unable to pay off her remaining debt without working as a street vendor. *Id.* ¶ 10. If she could resume her work as a street vendor, it would put her on the path toward being able to take care of her financial obligations. *Id.* ¶ 12. Working as a street vendor is thus essential to Ms. Ayele's ability to meet her financial obligations. *Id.*

Plaintiff Kahssay Ghebrebrhan is a Black D.C. Ward 2 resident who has worked for decades as a street vendor in D.C., after fleeing Ethiopia's civil war in 1975 and later immigrating to the United States in 1990. Declaration of Kahssay Ghebrebrhan ("Ghebrehrhan Decl.") ¶ 2 (attached as **Exhibit D**). He first began working as a D.C. street vendor in 1991, primarily selling hot dogs, as well as chips, soda, and candy. *Id.* ¶ 3. Through his vending business, Mr. Ghebrebrhan was for many years able to support himself and his family. *Id.* ¶ 5. The Covid-19 pandemic and related shut down caused Mr. Ghebrebrhan to temporarily stop street vending in March 2020. *Id.* ¶ 6. His Class A Vending Business License lapsed on September 30, 2020. *Id.* ¶ 7. In 2021, Mr. Ghebrebrhan attempted to renew his street vendor license, but the Clean Hands Law automatically disqualified him from doing so because of outstanding quarterly street vending fees. *Id.* ¶ 8. But like Ms. Ayele, some of the debt that initially barred Mr. Ghebrebrhan from renewing his vending license was the result of errors made, and later acknowledged, by the D.C. government. *Id.* ¶ 9. Through his own diligence and conversations with the D.C. government,

[3] Vendors must pay a quarterly street vending fee of $375 each quarter "in place of collecting and remitting sales tax for the three (3) preceding months." *Street Vendors,* D.C. Office of Tax Revenue, https://otr.cfo.dc.gov/book/other-topics-faqs/street-vendors (last visited June 15, 2023).

Mr. Ghebrebrhan was able to get these errors corrected and have his debt partially reduced; however, the remainder of his outstanding debt still bars him from renewing his street vending license. *Id.* ¶¶ 10-11.

Mr. Ghebrebrhan is currently unemployed. *Id.* ¶ 12. He is a source of financial support for his sick elderly sister, but without the ability to work as a vendor, he is unable to bring in an income to sufficiently support her. *Id.* He receives public benefits, including food stamps, and does not currently have any other source of income. *Id.* Resuming street vending is essential to Mr. Ghebrebrhan's efforts to support his family and meet his financial obligations, and it would put him on a path towards doing so. *Id.* ¶ 16.

Plaintiff Fasika Mehabe is a Black former D.C. resident currently living in Maryland who first began working as a D.C. street vendor in 1996, after immigrating to the United States from Ethiopia. Declaration of Fasika Mehabe ("Mehabe Decl.") ¶¶ 2-3 (attached as **Exhibit E**). For decades, she put in 13- to 14-hour days, five days a week, as a street vendor selling hot dogs and other items. *Id.* ¶¶ 3-5. This schedule was grueling, but, along with depending on the income from her work, Ms. Mehabe enjoyed being her own boss and the flexibility vending provided, which allowed her to care for her children. *Id.* ¶ 6. She temporarily stopped vending in March 2020 due to the Covid-19 pandemic and related shut down, however, and her Class A Vending Business License lapsed on September 30, 2020. *Id.* ¶¶ 7-8.

In 2022, Ms. Mehabe wanted to renew her vending license so that she could resume working as a vendor. *Id.* ¶ 9. She repeatedly tried to renew her license—including by visiting the D.C. Department of Licensing and Consumer Protection's ("DLCP") offices multiple times—but the Clean Hands Law prevented (and still prevents) her from doing so. Based on conversations with D.C. government employees, Ms. Mehabe believes her debt is approximately $4,856.00. *Id.*

Without her vending license, Ms. Mehabe has been unable to work in her chosen profession. *Id.* ¶ 10. While she has picked up various temporary jobs, including working as a dishwasher, she remains unable to pay her debt and remains barred from renewing her vending license. *Id.* Resuming street vending is essential to helping her meet her financial obligations. *Id.* ¶ 11.

Plaintiff Hiwet Tesfamichael is a Black D.C. Ward 4 resident and senior citizen who first began working as a D.C. street vendor in 1991, after immigrating to the United States from Eritrea. Declaration of Hiwet Tesfamichael ("Tesfamichael Decl.") ¶¶ 2-3 (attached as **Exhibit F**). For decades, Ms. Tesfamichael has worked long days as a street vendor, including most recently working near the Takoma Park Metro, selling various items to her customers, many of whom are students. *Id.* ¶¶ 3, 5. She always renewed her vending license every two years and never encountered any issues doing so. *Id.* ¶ 4. As a street vendor, she earned enough to support herself and her family. *Id.* ¶ 14.

Due to the Covid-19 pandemic and associated District shut down, Ms. Tesfamichael temporarily stopped vending in April 2020. *Id.* ¶ 7. Ms. Tesfamichael's Class A Vending Business License lapsed on September 30, 2021. *Id.* ¶ 8. In 2022, when Ms. Tesfamichael attempted to renew her license, DLCP employees told her she owed the District quarterly vending fees and, therefore, could not renew her license under the Clean Hands Law. *Id.* ¶ 10. Unable to work as a street vendor, Ms. Tesfamichael has been working part time in food preparation, but she earns much less in this position than she would from street vending. *Id.* ¶ 12. As a result, she remains unable to pay her outstanding debt and remains barred from obtaining her vending license. *Id.* ¶¶ 12-13. Resuming vending is critical to Ms. Tesfamichael's ability to repay her debt. Without the income she would have earned from street vending, Ms. Tesfamichael has a hard time providing

her family with the financial support they need. *Id.* ¶ 14. Resuming street vending is essential to helping her meet her financial obligations. *Id.*

Plaintiff Antonia Diaz de Sanchez is a Hispanic D.C. resident who currently lives in Ward 5. Declaration of Antonia Diaz de Sanchez ("Diaz de Sanchez Decl.") ¶ 2 (attached as **Exhibit G**). She is mother and grandmother who emigrated from Guatemala and first obtained her D.C. food truck vendor license in 2016. *Id.* ¶¶ 2-3. Ms. Diaz de Sanchez sold fried and grilled chicken, beef stew, fish, flautas, empanadas, chips, and soda out of her truck, usually to workers near construction sites in Southeast D.C. *Id.* ¶ 3, 5. She renewed her vendor license with no issues before 2020. *Id.* ¶ 4.

In 2020, after she became sick with Covid-19 and could not work, Ms. Diaz de Sanchez paused her food truck business and sold her truck so that she could pay her rent. *Id.* ¶ 7. While test-driving the new truck, she parked the truck on the street. *Id.* ¶ 8. A DLCP inspector wrongly issued her a $3,000 ticket for vending without a license and suspended her vendor's license. *Id.*

Since then, Ms. Diaz de Sanchez has tried to resolve her license issues. *Id.* ¶ 9. She has called DLCP and visited that office in person, but was stymied by pandemic office closures and by the inability for DLCP to provide services in her native Spanish. *Id.* The fine has not been rescinded. As a result, Ms. Diaz de Sanchez has been unable to obtain a street vending license because she owes at least $3,000 in outstanding debt to the District stemming from this vending-related ticket based on the inspector's mistaken understanding of her test-driving activity in the truck with no food. *Id.* ¶¶ 8-9. She is, consequently, unemployed and unable to pay her debt to the District without working as a street vendor. *Id.* ¶ 10. Her financial problems are exacerbated because she must support her father, daughter, and three grandchildren.

Resuming street vending is essential to helping her repay her debt. *Id.* ¶ 12. Ms. Diaz de Sanchez seeks urgently to obtain a street vending license to resume working in the District, but she is blocked by the Clean Hands Law from doing so. *Id.* ¶ 13.

II. The History of the Clean Hands Law

Plaintiffs' experiences with the Clean Hands Law are emblematic of the experiences of countless other individuals in the decades the Law has been in effect. The D.C. Council passed the Clean Hands Law in 1996. As originally enacted, the Law required denial of an application to obtain or renew certain licenses and permits for non-payment of fines and taxes for littering, illegal dumping, and civil infractions assessed by the D.C. Department of Consumer and Regulatory Affairs. Since then, the District has continued broadening the Clean Hands Law's scope to cover more fines and fees and, in turn, prevent more individuals from obtaining occupational or small business licenses. In 2001, for example, the D.C. Council, in the wake of Congress placing the D.C. government's control of its finances under a control board, amended and expanded the Clean Hands Law to add parking and moving infractions to the list of violations that trigger penalties and generate revenue. The sole stated purpose of this significantly scope-expanding 2001 amendment was to generate additional revenue for the District. D.C. COUNCIL COMM. ON PUB. WORKS AND THE ENV'T, Comm. Rep. on B. 13-828, at 5 (2000). And in 2005, D.C. further expanded the law to cover parking fines assessed in other jurisdictions. *See* D.C. Law 15-307 (Apr. 8, 2005).

Currently, the Clean Hands Law disqualifies applicants from obtaining or renewing occupational or small business licenses if they owe more than $100 in fees or fines to the District. This disqualification is automatic; the law provides no hearing or other opportunity to assert an inability to pay. The statute provides in relevant part:

> Notwithstanding any other provision of law, the District government shall not issue or reissue a license or permit to any applicant for a license or permit if the applicant: (1) "[o]wes the District more than

> $100 in outstanding fines, penalties, or interest assesse[d] pursuant to the following acts or any regulations promulgated under the authority of the following acts," [which includes code sections governing littering, dumping, consumer violations, car insurance laws, and parking and traffic violations]; (2) "[o]wes the District more than $100 in past due taxes"; . . . [or] (7) "[o]wes the District more than $100 in outstanding fines, penalties or interest[.]

D.C. Code § 47-2862(a). There are no meaningful procedural protections like a pre-disqualification hearing, or any other inquiry into the source of the outstanding debt, the applicant's ability to pay that debt, or the accuracy of the outstanding charges.[4] In addition, the Clean Hands Law is focused exclusively on payment of past fines and fees; it has no connection to public health and safety, nor does it base disqualifications on individuals' competency or proficiency in their chosen profession.

III. The Clean Hands Law Harms the District

The Clean Hands is causing ongoing harms to the seven Plaintiffs here as described above. Further, data from the D.C. Office of the Chief Financial Officer indicates that tens of thousands of people are likewise subject to the Clean Hands Law's automatic disqualifications from an occupational or small business license. *See* D.C. COUNCIL, COMM. ON BUS. & ECON. DEV., Report on Bill 24-0237, at 5 (2022) ("Report on B24-0237") (attached as **Exhibit H**) (noting that

[4] D.C.'s Clean Hands enforcement scheme defers automatic license disqualification in two—and only two—narrow contexts: first, where an applicant owing over $100 has disputed the underlying ticket and thus has appealed "the basis for the alleged debt and the appeal is pending," D.C. Code § 47-2862(b); and second, where an applicant is in compliance with an authorized payment schedule agreed to by the District Government. D.C. Code § 47-2862(c). But not only did D.C. not offer payment plans to nearly all of the Plaintiffs here, *see* Ayele Decl. ¶ 8; Diaz de Sanchez Decl. ¶ 9; Ghebrebrhan Decl. ¶ 11; Mehabe Decl. ¶ 9; Tesfamichael Decl. ¶ 10, but the two Plaintiffs who actively had any communications with the D.C Government about a payment plan plainly could not afford the significant lump sum outlays required by the government. *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.").

an estimated number of 50,000 D.C. residents have unpaid fines and fees of over $100); *see also Parham*, 2022 WL 17961250, at *2 (Dec. 27, 2022), *vacated* Dkt. 25 (D.D.C. May 15, 2023) ("A report from the D.C. Council Committee on Business and Economic Development indicated that the number of D.C. residents impacted by the Clean Hands Law when attempting to obtain or renew a driver's license is, conservatively, in the tens of thousands."). Thus, beyond the harms it causes to many individuals (including Plaintiffs), the Clean Hands Law inflicts at least four substantial harms on the District overall.

First, by disqualifying people from obtaining occupational licenses, the Law negatively impacts the District's workforce and economy. Nearly 12% of the District's private sector employment is in occupations regulated by an occupational licensing board, and licensing restrictions apply to over 125 occupations. *See* Yesim Sayin, *The Impact of Occupational Licensing Requirements in D.C.*, D.C. Policy Center, at 1 (Nov. 12, 2019) (attached as **Exhibit I**). On top of that, occupational licenses are required primarily for middle- or low-wage jobs—which means the District residents most in need of income from those jobs may be unable to obtain them due to the Law. *Id.* at 2. The consequences are equally harmful with respect to small business licenses. Over 75% of establishments in D.C. are small businesses, which account for nearly half of D.C.'s employment and payroll.[5] Importantly, small businesses also invigorate local economies, help bridge income inequality—both racial and gender—and increase the quality of life in the communities in which they are located.[6] *Id.* Barring individuals from opening small

[5] D.C. Policy Center, 2022 State of Business Report: Doing Business Under the New Normal 9 (2022), https://dcpolicycenter.wpenginepowered.com/wp-content/uploads/2022/09/2022-State-of-Business-report-FINAL.pdf.

[6] *Id.*

businesses because they owe debt to the District prevents the District from realizing the benefits of the small businesses that would otherwise open.

Second, the Clean Hands Law exacerbates racial inequality. Studies demonstrate that Black District residents are five times more likely to live in poverty than White residents.[7] White households in D.C. have 81 times the average wealth of Black D.C. households,[8] and 22 times the wealth of Latino or Latina households.[9] The Clean Hands Law disproportionately impacts Black, Latino, and Latina individuals, who are less likely to be able to pay outstanding debt. Indeed, the D.C. Council's Office of Racial Equity itself noted in 2022 that "[b]ecause of the Clean Hands policy, Black residents are disproportionately blocked from occupational licenses, starting a business, or competing for contracts, among other wealth building activities. This leaves Black residents disproportionately impacted by fines but with fewer opportunities to build wealth that

[7] Erica Williams & Tazra Mitchell, *Large Black-White Disparities in Poverty and Income Persisted in 2021*, DC Fiscal Policy Institute (Sept. 15, 2022), https://www.dcfpi.org/all/large-black-white-disparities-in-poverty-and-income-persisted-in-2021/#:~:text=The%20share%20of%20Black%20people,effect%20on%20the%20poverty%20rate.

[8] Kilolo Kijakazi et al., The Color of Wealth in the Nation's Capital vii, 58 tbl.12 (2016), urban.org/sites/default/files/publication/85341/2000986-the-color-of-wealth-in-the-nations-capital.pdf.

[9] Nikki Metzgar, *Latinas in DC Earn 64 Cents For Every Dollar Earned by White, Non-Hispanic Men*, DC Fiscal Policy Institute (Dec. 8, 2022), https://www.dcfpi.org/all/latinas-in-dc-earn-64-cents-for-every-dollar-earned-by-white-non-hispanic-men/#:~:text=The%20poverty%20rate%20for%20Latinas,3.3%20percent%20of%20white%20women.

may help them pay debts resulting from fines."[10] This dynamic is particularly true for street vendors because an overwhelming majority of them are Latino, Latina, Indigenous, and/or Black.[11]

Third, the Clean Hands Law entrenches racial disparities in small businesses in the District. Studies show that 69.8% of D.C.'s small business are White-owned, compared to just 5.2% that are owned by Black residents.[12] The Clean Hands law is a substantial obstacle to bridging this racial disparity.

And fourth, the Clean Hands Law harms applicants with disabilities. Black residents are over three times more likely to be disabled than White residents, and adults with disabilities are more than twice as likely to experience poverty than adults without disabilities.[13] As a result, applicants with disabilities are disproportionately more likely to lose their ability to obtain or renew an occupational or small business license.

[10] Report on B24-0237 at 118.

[11] Geoff Gilbert et al., Where the Sidewalk Ends Part II: A Vision for Decriminalizing and Investing in DC Street Vendors 7, https://static1.squarespace.com/static/5cf9450e810352000190b4e4/t/637ba6fa9dc5424b0425556c/1669048061149/Where+the+Sidewalk+Ends+Part+II.pdf (last visited June 15, 2023).

[12] Colleen Grablick, *Economic Inclusiveness Tool Reflects Large Racial Wealth Gap In D.C. Region*, NPR (June 30, 2021), https://www.npr.org/local/305/2021/06/30/1011757593/economic-inclusiveness-tool-reflects-large-racial-wealth-gap-in-d-c-region.

[13] *See* Nanette Goodman et al., Financial Inequality: Disability, Race and Poverty in America 12 (2019), https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf.

IV. D.C. Recognizes the Clean Hands Law's Harmful Impact But has Only Partially Cured It

The District has recognized the harm that the uniquely punitive and counter-productive Clean Hands Law inflicts and has sought to reform it in certain limited ways—yet the District has failed to enact protections that provide relief here to Plaintiffs.

First, Councilmember Kenyan McDuffie introduced, and Councilmember Brianne Nadeau co-sponsored, a bill in the D.C. Council that, had it been enacted as introduced, would have significantly reformed the application of D.C.'s Clean Hands Law as to occupational and small business licenses. *See* D.C. B. 24-0237, *Clean Hands Certification Equity Amendment Act of 2021* (introduced May 3, 2021) (proposed bill would have "increase[d] the minimum threshold for allowable debt, so that applicants owing $5,000 or less in certain debts will still be able to obtain Clean Hands certification"). The Council did not move those aspects of the bill forward.

Second, the D.C. Council passed a bill that, among other reforms, waives vendors' unpaid minimum quarterly vending fees related to licensing. D.C. COUNCIL COMM., Report on Bill 25-68 (2023). More specifically, the Street Vendor Advancement Amendment Act of 2023, passed by the Council in April of this year, forgives "[m]inimum sales tax payments owed pursuant to D.C. Official Code § 47-2002.01 from 2010 to the effective date of [the] act" for all individuals who obtain or register a sidewalk vending license. Street Vendor Advancement Amendment Act of 2023, D.C. B. 25-0068 (2023). There are numerous procedural steps that must occur in order for this bill to take effect, however, which will take many months to complete, including the Mayor signing the bill and both the bill itself and the companion funding provision in the Fiscal Year 2024 budget surviving Home Rule Act review by Congress. The prospects for final enactment are uncertain and not guaranteed. And since this bill is not yet law, the vendor Plaintiffs continue to be out of work with limited to no ability to earn income. This is particularly harmful to the vendor

Plaintiffs because summer is the busiest, and most profitable, time for vending. The proposed law's time-limited amnesty on minimum sales tax also excludes street vendors who may incur debt after its effective date. Finally, the proposed law also does not provide any relief to the myriad other types of licenses—including speech pathologist licenses—to which the Clean Hands Law applies.

Third, the D.C. Council has also reformed the Clean Hands Law with respect to driver's licenses. It repealed the portion of the Law that disqualified District residents from obtaining or renewing driver's licenses due to outstanding debt. The change in law, legislated in summer 2022, was prospective, however, and was not set to go into effect for many months, until October 2023. In the meantime, impacted individuals who—similar to Plaintiffs here—had been automatically blocked from renewing their driver's licenses sued the District and sought injunctive relief from this Court to stop the District from unconstitutionally enforcing the law against them. This Court, as noted, granted the preliminary injunction, holding that the plaintiffs were likely to succeed on the merits of their procedural due process claim. *Parham*, 2022 WL 17961250, at *4–*12, *vacated* Dkt. 25 (D.D.C. May 15, 2023). The parties subsequently entered a settlement agreement and jointly moved to vacate that decision. *See Parham* Docket, ECF No. 24. The Court vacated the decision at the parties' joint request. *Parham* Docket, ECF No. 27. In connection with that settlement, the D.C. government announced publicly that it would no longer prevent D.C. residents from applying for our renewing their driver's licenses because of the Clean Hands Law.[14]

[14] *See* D.C. Department of Motor Vehicles, https://dmv.dc.gov/ (last visited June 15, 2023) ("DC DMV will no longer prevent DC residents from applying for a new or renewed driver's license because of failing to meet the requirements of the Clean Hands Law"); *see also* DC DMV (@dcdmv), Twitter (May 15, 2023, 10:04 AM), https://twitter.com/dcdmv/status/1658111133268471808?cxt=HHwWgMCzic3S5YIuAAAA.

Nearly half a year has gone by since this Court's decision in *Parham*. And yet, even though the Clean Hands Law imposes the exact same licensing prohibitions and procedural process in the occupational and professional context that the District has elected to halt in the driver's license context—and which this Court in *Parham* recognized violated the Constitution—the D.C. Government has provided no relief from the Clean Hands Law's impact for people who need D.C. occupational and small business license to stay financially afloat.

LEGAL STANDARD

A party seeking a preliminary injunction "must establish [1] that [it] is likely to succeed on the merits, [2] that [it] is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [its] favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). When, as here, the government is the opposing party, these final two factors merge and are "one and the same, because the government's interest is the public interest." *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016). Therefore, when merged into a single, third factor, the analysis "call[s] for weighing the benefits to the private party from obtaining an injunction against the harms to the government and the public from being enjoined." *Doe v. Mattis*, 928 F.3d 1, 23 (D.C. Cir. 2019). Although the D.C. Circuit has not decided whether the factors continue after *Winter* to operate on a traditional sliding scale, *see Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011), the Court need not resolve that question in this case because here each of the governing factors cut decisively in support of the Plaintiffs.

ARGUMENT

I. Plaintiffs are Substantially Likely to Prevail on the Merits

A. Defendants Have Violated Plaintiffs' Procedural Due Process Rights

The government violates procedural due process protections when it "deprives an individual of a . . . property interest without providing appropriate procedural protections." *Atherton v. D.C. Office of Mayor*, 567 F.3d 672, 689 (D.C. Cir. 2009). Here, Plaintiffs' occupational and small business licenses are "property interests" created by D.C. law. Under the Clean Hands Law, the Plaintiffs were provided with plainly insufficient procedural protections before being denied the renewal or issuance of those licenses. Plaintiffs' procedural due process claim is therefore likely to succeed on the merits.

1. Occupational and Small Business Licenses are Property Interests

Property interests are "created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 578 (1972). 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 Barry v. Barchi,* 443 U.S. 55, 64 (1979) (concluding "it [was] clear" that an individual "had a property interest in his [horse racing] license"); *Bell v. Burson*, 402 U.S. 535, 539, (1971) (concluding a driver's license was a cognizable property interest); *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103 (1963) (concluding license to practice law required procedural due process protections); *In re Ruffalo*, 390 U.S. 544, 550 (1968) (similar); *3383 Conn. LLC v. District of Columbia*, 336 F.3d 1068, 1072–73 (D.C. Cir. 2003) (concluding building permits are a property interest); *Wilmina Shipping AS v. U.S. Dep't of Homeland Sec.*, 934 F. Supp. 2d 1, 16–17 (D.C. Cir. 2013) (concluding a certificate of compliance from the Coast Guard, which enabled a ship to

operate, was a cognizable property interest); *see also Cleveland v. United States*, 531 U.S. 12, 25 n.4 (2000) (considering and rejecting a state government's argument that "any license issued or renewed is not property or a protected interest under the" Constitution, and noting that "[i]n some contexts, we have held that individuals have constitutionally protected property interests in state-issued licenses essential to pursuing an occupation or livelihood.").

This is true for both license renewals and the issuance of licenses in the first instance. Individuals have a property interest in a license created by state law so long as they "have a legitimate claim of entitlement to it." *Roth*, 408 U.S. at 577; *see also Schware v. Bd. of Bar Examiners of New Mexico*, 353 U.S. 232, 247 (1957) (recognizing interest in "opportunity to qualify for" a law license). The "touchstone question" to determining entitlement is "whether D.C. law gives 'significant or unfettered discretion' to the government agency in renewing" or granting the licenses. *Parham*, 2022 WL 17961250, at *7 (quoting *Crooks v. Mabus*, 845 F.3d 412, 419 (D.C. Cir. 2016)). As explained below, D.C. does not have unfettered discretion to refuse to renew or deny the issuance of any of the licenses at issue here. As a result, the Plaintiffs have a legitimate claim of entitlement to renewing or obtaining these licenses.

Small business licenses. Mr. Cheatham and Ms. Carrington both have legitimate claims of entitlement to a "Basic Business License," which is required to operate a small business in D.C. The D.C. Code itself makes clear that the issuance of these licenses is not discretionary: D.C. "*shall* issue or renew a basic business license to an applicant who complies with all applicable District and federal laws and regulations." D.C. Code 47-2851.02(a) (emphasis added). The D.C. Code likewise permits denials only in limited, enumerated circumstances. *See, e.g.*, D.C. Code § 47-2853.17(a).

Speech pathologist licenses. Ms. Carrington has a legitimate claim of entitlement to a speech pathology license under D.C. law. The D.C. Code of Municipal Regulations contains the requirements for obtaining a speech pathologist license, *see* D.C. Mun. Regs. tit. 17, §§ 7900-7999, which include educational requirements (*id.* § 7902), examination requirements (*id.* § 7905), and other gating requirements that apply to all licenses, *see* D.C. Code § 47-2853.17 (requirements addressing fraud and substance abuse). Ms. Carrington would satisfy all of these criteria (except for the Clean Hands Law). *See* Carrington Decl. ¶ 22. D.C. law does not grant the government discretion to deny speech pathologist licenses for reasons other than not meeting the requirements for obtaining the license set forth in the regulations.

Street vendor licenses. The remaining Plaintiffs have a legitimate claim of entitlement to renewing or receiving occupational licenses for street vending.

The D.C. Code of Municipal Regulations sets forth the requirements for obtaining a vending license. *See* D.C. Mun. Regs. tit. 24, § 502. Plaintiffs could meet these requirements, as many of them did for decades and decades when they held these licenses. *See* Ayele Decl. ¶ 4; Ghebrebrhan Decl. ¶ 4; Tesfamichael Decl. ¶ 4; and Mehabe Decl. ¶ 4. D.C. law does *not* grant the D.C. government unfettered discretion to deny the renewal or issuance of a vending license; instead, the regulations list highly specific circumstances when a denial is required. D.C. Mun. Regs. tit. 24, § 504.3 (stating the "DCRA Director shall not issue a Vending Business License" if, among other things, the vendor was "convicted for a criminal offense committed while vending without a license"); *id.* § 507 (similar); *see also* D.C. Code § 47-2853.17(a) (similar).

The regulations addressing license renewals cross-reference these same requirements and provide the narrow bases on which a renewal may be rejected. *See id.* § 506.3 ("No application to renew a Vending Business License shall be approved if the applicant does not hold the valid

licenses, permits, and registrations required for an initial applicant for a Vending Business License under § 504."). The regulations governing vendor licenses thus severely cabin the government's discretion and limit the circumstances in which it can deny license renewals or the issuance of new licenses in the first place. The Street Vendor Plaintiffs therefore have a legitimate claim of entitlement to occupational licenses for street vending—which is reinforced by the fact that, before the COVID-19 pandemic, they routinely renewed these licenses. *See* Diaz de Sanchez Decl. ¶ 4; Ayele Decl. ¶ 4; Ghebrebrhan Decl. ¶ 4; Tesfamichael Decl. ¶ 4; and Mehabe Decl. ¶ 4.

2. The Process Afforded Before License Renewals or Denials is Inadequate

As this Court previously concluded in *Parham*, 2022 WL 17961250, at *8–11, the process the Clean Hands Act affords before refusing to renew (or issue) a license is likely inadequate under the three factors set forth in *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 334–35 (1976). Indeed, the Clean Hands Law offers no meaningful process before denying the renewal or issuance of an occupational or small business license, as *Parham* squarely recognized. 2022 WL 17961250, at *9 (recognizing the Clean Hands law "does not afford any opportunity for Plaintiffs to be heard prior to disqualifying them from renewing their [] licenses"). Accordingly, Plaintiffs are likely to demonstrate that the procedure under the Clean Hands Act violates procedural due process protections.

Private interests affected. The Clean Hands Law deprives Plaintiffs of a significant interest, and this factor weighs strongly in Plaintiff's favor. Occupational and small business

license enable individuals to work in their desired field and earn a living. The Supreme Court has long recognized the vital importance of this interest. *See, e.g.*, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985) ("[T]he significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood."); *Butchers' Union Co. v. Crescent City Co*., 111 U.S. 746, 762, (1884) ("The right to follow any of the common occupations of life is an inalienable right.").

Plaintiffs' experiences confirm the vital importance of this right. Not only are Plaintiffs unable to work in their desired professions, but many of them remain trapped in poverty in part because of the Clean Hands Law. *See* Diaz de Sanchez Decl. ¶¶ 10, 12; Ayele Decl. ¶¶ 10, 12; Ghebrebrhan Decl. ¶¶ 12, 16; Tesfamichael Decl. ¶¶ 12, 14; Mehabe Decl. ¶ 10; Cheatham Decl. ¶¶ 7-8. For example, Mr. Ghebrebrhan has been unable to find full-time, regular work other than street vending (which the Clean Hands Law bars him from doing). Ghebrebrhan Decl. ¶ 12. He has been receiving food stamps and welfare benefits, which is his only source of income. *Id.* This makes it difficult to support himself and his sick, elderly sister. *Id.* The other Plaintiffs are suffering similar harms. *See* Diaz de Sanchez Decl. ¶ 10; Ayele Decl. ¶ 10; Tesfamichael Decl. ¶ 12; Mehabe Decl. ¶ 10; Cheatham Decl. ¶¶ 7-8 ("Presently, my only income is a monthly $1600 disability check I receive from the VA, and $23 in monthly SNAP (food stamps) benefits that I also receive. . . . In taking away my ability to get a . . . small business license, the D.C. government continues to deprive me of my livelihood. I have fought hard to stand on my own feet and not be a burden to society, but the Clean Hands Law truly makes it hard to take care of myself and rebuild my life.").

Risk of unjustified deprivation and probable value of additional safeguards. The Clean Hand Law's lack of meaningful process leads to errors for which safeguards are needed.

This factor likewise strongly weighs in Plaintiff's favor. The analysis in *Parham* is directly on-point and persuasive here. There, this Court concluded that the *Parham* plaintiffs satisfied this *Matthews* factor because 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." *Parham*, 2022 WL 17961250, at *10. That is equally true here under the exact same statutory scheme (indeed, the same statutory provision). Here, as in *Parham*, the record includes evidence that Plaintiffs in fact experienced bureaucratic errors when they attempted to renew their licenses—errors that the Plaintiffs identified and were acknowledged and corrected by the D.C. government only after the Plaintiffs had caught them. For example, the D.C. Office of Tax Revenue (OTR) wrongly marked timely payments from Mr. Ghebrebrhan as late, which wrongfully increased his debt to D.C. Ghebrebrhan Decl. ¶ 9. Ms. Ayele was likewise charged an incorrect tax amount, which wrongfully inflated the debt she purportedly owed to the District. Ayele Decl. ¶ 8. The experience detailed above that Ms. Diaz has endured of being subject to a continuing fine for unlicensed vending when she was not vending and did not even have food in her truck, *see* Diaz de Sanchez Decl. ¶ 8, provides another example of risk of unjustified deprivation of occupational license.

Moreover, the same risk of errors in DMV ticketing that the Court identified in *Parham* create the risk of unjustified deprivation here for people such as Ms. Carrington, who is deprived of her occupational and business licenses based on DMV-generated fines and fees. Plaintiffs have included here the affidavit of non-party D.C. resident Anthony Jones, who attests to being erroneously issued tickets owed by people in other jurisdictions with similar but non-identical names. *See* Declaration of Anthony Q. Jones ("Jones Decl."), ¶¶ 4-12 (attached as **Exhibit J**) (D.C. resident detailing a six-month process required to get DMV to correct its initial requirement

that he pay fines for tickets that had been issued to people with the same name who lived in different states and had different dates of birth). Further, in some cases, residents who experience homelessness, or who move frequently for other reasons, or who otherwise do not receive notice due to DMV errors, remain unaware of tickets they have been issued for years. *See, e.g.*, *Drivers try to fight back against decades old tickets issued by DC DMV* (May 20, 2015), FOX 5 (May 20, 2015), *availably at* https://www.fox5dc.com/news/drivers-try-to-fight-back-against-decades-old-tickets-issued-by-dc-dmv (residents seeking renewals at DMV "forced to pay thousands of dollars in old tickets that they never knew about"). In other cases, residents may not learn about their tickets until they receive notification by mail from debt collectors, to which the District transfers unpaid fines after 90 days. *See* Central Collection Unit, OFF. OF THE CHIEF FIN. OFFICER, https://cfo.dc.gov/service/central-collection-unit. The Court's observation about the same underlying DMV fine and disqualification scheme evaluated in *Parham* applies identically as to the DMV-based fines here that are the predicate for Ms. Carrington's occupational and small business license disqualification: "there may very well be disputes as to the facts underlying D.C. residents' debt, as illustrated above through Plaintiffs' various examples. Accordingly, these errors cast some doubt on the reliability of rejecting Plaintiffs' license . . . applications." *Parham*, 2022 WL 17961250, at *10.

The Clean Hands Law also presents an independent risk of unjustified deprivation of a different kind: depriving individuals of licenses because of debt the individuals lack an ability to pay. *See* Diaz de Sanchez Decl. ¶ 10; Ayele Decl. ¶ 10; Carrington Decl. ¶ 22; Ghebrebrhan Decl. ¶ 13; Tesfamichael Decl. ¶ 13; Mehabe Decl. ¶ 10; Cheatham Decl. ¶ 7. As explained below, this scheme violates the convergence of substantive due process and equal protection because it penalizes people for their poverty. *See infra* § I.B. It also imposes constitutionally excessive fines.

Infra § I.E. This deprivation is certain to occur under the current scheme, which presents individuals no opportunity to raise their inability to pay before their license renewal or issuance is denied.

Finally, there would be tremendous value in additional procedural safeguards that could easily be implemented. Providing a hearing *before* an occupational or small business license is renewed would both mitigate the risk of bureaucratic errors and provide individuals an opportunity to establish an inability to pay, as well as reduce the risk of deprivation through an unconstitutional process.

The government's interest. The government's interest in depriving Plaintiffs of their licenses is vanishingly small. Again, the analysis in *Parham* is on point and persuasive here. The "government's interests [are] slight" because the "Clean Hands Law was not motivated by public safety." *Parham*, 2022 WL 17961250, at 11. Correspondingly, the Clean Hands Law's impact on Plaintiffs has nothing to do with their professional competence, or their compliance with the District's applicable public health and safety laws. The Council was explicit that its motivation in adopting the Clean Hands Law was driven *only* by its interest in "revenue collection." The government does not and cannot have any interest in barring individuals from obtaining occupational and small business licenses that make them *more likely* to repay their debts (and, in turn, increase D.C.'s revenue). *Id.*; *see also Parham*, 2022 WL 17961250, at *11 (government interest diminished because the Clean Hands Law "deprives individuals of means to pay their court debt, hindering the fiscal interests of the government") (*quoting Stinnie v. Holcomb*, 355 F. Supp. 3d 514, 531 (W.D. Va. 2018)).

* * *

For these reasons, Plaintiffs are likely to succeed on their procedural due process claim.

B. The Clean Hands Law's Application to Occupational and Small Business Licenses Violates the Convergence of Equal Protection and Due Process

Plaintiffs are likely to establish that Defendants' enforcement of the Clean Hands Law violates the Fifth Amendment, at the "convergence" of its due process and equal protection guarantees, in which individuals who are too poor to pay government-imposed costs or fines get penalized when individuals who can afford to pay the same costs or fines do not – the "*Griffin* principle." *See M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996). Beginning with *Griffin v. Illinois*, the Supreme Court has repeatedly held that the government violates due process and equal protection rights when access or outcomes in the legal system are conditioned on a person's ability to pay. 351 U.S. 12, 18 (1956) (state may not deny a criminal defendant the right to appeal due to their inability to afford a trial transcript); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970) (state may not imprison an indigent person beyond the statutory maximum term on account of missed fine payments; if incarceration "results directly from an involuntary nonpayment of a fine or court costs, we are confronted with an impermissible discrimination that rests on ability to pay"); *Tate v. Short*, 401 U.S 395, 397-98 (1971) (striking down state law that authorized imprisoning criminal defendants for failing to pay fines arising out of offenses punishable only by fines); *Bearden*, 461 U.S. at 672-73 (invalidating state law that authorized revocation of criminal defendants' probation based on failure to pay restitution or fines without first inquiring into their ability to pay).

To ensure that it does not run afoul of the *Griffin* principle, the government must inquire into an individual's ability to pay, determine that they have the ability to pay, and conclude that their nonpayment is "willful" before imposing on them a penalty that would not be imposed for the same conduct on an individual with the means to pay. *Bearden*, 461 U.S. at 668–69, 672–73. "To do otherwise would deprive" the individual of a liberty or property interest "simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the

fundamental fairness required by the Fourteenth Amendment." *Id.* at 672-73. And while the *Griffin* line of cases arose in the criminal context, the "Supreme Court expressly and repeatedly extended Griffin's equality principle beyond the realm of criminal justice . . . to state action that burdens important constitutional interests, such as fundamental associational and political participation interests." *Jones v. Governor of Fla.*, 950 F.3d 795, 820 (11th Cir. 2020) (collecting cases).

The Clean Hands Law's application to Plaintiffs violates the *Griffin* principle because it punishes Plaintiffs for their poverty. *See Lindsey v. Normet*, 405 U.S. 56, 74–79 (1972) (holding statute that "discriminat[ed] against the poor" was "arbitrary and irrational" in violation of equal protection principles). Several factors govern this inquiry: [1] "the nature of the individual interest affected, [2] the extent to which it is affected, [3] the rationality of the connection between legislative means and purpose, [and] [4] the existence of alternative means for effectuating the purpose." *Bearden*, 461 U.S. at 666–67. Each of these factors strongly weighs in favor of finding that the Clean Hands Act violates the *Griffin* principle. *First*, as explained above, the nature of the individual interest—the ability to work in one's chosen profession and earn a living—is of vital importance, as the Supreme Court has recognized. *See supra* § I.A. *Second*, that right is also completely affected because Plaintiffs are barred from obtaining these licenses altogether, which has a devastating impact on their lives. *Id.* *Third*, as explained below, no rational purpose is served by the Clean Hands Law's operation in this space, as its stated purpose (raising revenue) is frustrated when the law is applied to Plaintiffs, who lack an ability to repay their debt. *See infra* § I.C. *Finally*, there is a straightforward alternative path the District could pursue: offer a pre-deprivation hearing that furnishes outcomes tailored to ability to pay, *e.g.*, a means-tested reduction in the amount owed or a reasonable, means-tested, non-draconian payment plan. Or the District

could simply not enforce the Clean Hands Law with respect to occupational and small business licenses, as it is doing for driver's licenses. To date, however, D.C. has refused (or in any event failed) to take these steps.

Accordingly, Plaintiffs are likely to succeed on their claim based on the "convergence" of due process and equal protection guarantees.

C. The Clean Hands Law's Application to Occupational and Small Business Licenses Fails Rational Basis Review

Plaintiffs are also likely to prevail on their claim that Defendants' enforcement of D.C.'s Clean Hands Law violates equal protection and due process principles under rational basis review.[15] The Supreme Court has recognized that "a State cannot exclude a person from" an "occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause." *Schware*, 353 U.S. at 238-39. The Clean Hands Law's application to Plaintiffs and other individuals that lack an ability to pay is irrational and self-defeating, and it cannot survive rational basis review.

Equal Protection. If a statute's "varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the legislature's actions were irrational," the statute must be invalidated. *Vance v. Bradley*, 440 U.S. 93, 97, 99 (1979). And while every classification under the law need not be "drawn with precise mathematical nicety," the Constitution forbids laws "wholly without any rational basis." *U. S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973). "Even in the ordinary equal protection case calling for the most deferential of standards," courts must "insist on knowing

[15] "[T]he Supreme Court has found equal protection principles embodied in the Due Process Clause of the Fifth Amendment." *Lillemoe v. U. S. Dep't of Agric., Foreign Agric. Serv.*, 344 F. Supp. 3d 215, 228 n.7 (D.D.C. 2018).

the relation between the classification adopted and the object to be attained." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Moreover, when a statute serves a "legitimate end," it still cannot pass constitutional muster if it seeks to achieve that "end through irrational means." *Richards v. Lavelle*, 620 F.2d 144, 148 (7th Cir. 1980).

Based on these principles, the Clean Hands Law's wealth-based classification system—which allows individuals with an ability to repay their debt to obtain occupational and small business licenses, but prevents individuals without an ability to pay their debt from doing so—is irrational and violates equal protection principles. *Cf. Plyler v. Doe*, 457 U.S. 202, 221–22 (1982) (stating a "goal[] of the Equal Protection Clause" was the "abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit"). As noted above, the Council's stated purpose of the Clean Hands Law was to strengthen the District's ability to collect fines and generate revenue. D.C. COUNCIL COMM. ON PUB. WORKS AND THE ENV'T, Comm. Rep. on B. 11-260, at 1-2 (1995). The revenue-generation purpose is not at all served by the Law's application to occupational and small business licenses when individuals cannot pay back the debt they owe. To the contrary, by barring individuals from obtaining occupational and small business licenses, the Clean Hands Law makes it *less likely* those individuals will be able to repay their debt—undermining the statute's ostensible purpose.

No other state in the nation has passed such a law, and indeed courts have invalided similarly irrational statutes. For example, in *Moreno*, the Supreme Court struck down a provision in the Food Stamp Act under rational basis review. 413 U.S. at 533–34. That statute provided individuals with food stamps, and its purpose was increasing nutrition for low-income individuals and strengthening the country's agricultural economy. *Id.* at 533. Only related individuals who lived together qualified for food stamps; the statute barred anyone from receiving food stamps who

lived with someone unrelated to them. *Id.* at 530–31. In a challenge brought by individuals living in poverty, the Court struck down this statutory provision because the classification—whether someone lived with a family member or not—was "clearly irrelevant" to the purpose of the statute. *Id.* at 534. The Clean Hands Law's wealth-based classification—allowing individuals who can repay their debt to obtain licenses but barring indigent individuals from doing so—is even more irrational than the classification in *Moreno*, since applying the Clean Hands Law to individuals that lack an ability to pay frustrates the Law's purpose. *Cf. Williams v. Vermont*, 472 U.S. 14, 25 (1985) (sustaining a rational basis claim to a statute against a motion to dismiss when the statute's application in certain situations was "directly contrary" to the statute's purported purpose).

Plaintiffs are thus likely to succeed on their claim that the Clean Hands Law's application to individuals that lack an ability to pay violates equal protection principles.

Substantive Due Process. Under rational basis review, a law violates substantive due process when it is not "rationally related to a legitimate legislative purpose." *United States v. Carlton*, 512 U.S. 26, 35 (1994). The only possible (and the Council's only stated) purpose the Clean Hands Law serves—raising revenue—is frustrated by the Clean Hands Law's application here, since it is preventing the Plaintiffs from obtaining occupational and small business licenses that will increase their ability to repay their debt. Because the Clean Hands Law is not rationally related to a legitimate government purpose, Plaintiffs are likely to succeed on their claim that the statute's enforcement of the Law against these Plaintiffs who cannot pay their debt is unconstitutional. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (invalidating statue "as applied" to the plaintiff under rational basis review).

D. The District's Unduly Harsh and Discriminatory Treatment of Plaintiffs Violates Equal Protection Principles

The Supreme Court has squarely held that a state may not "impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor." *James*, 407 U.S. at 138. *James v. Strange* invalidated a Kansas statute that authorized the state to employ harsh debt collection methods to recoup fees and costs incurred by indigent defendants in court proceedings—depriving those individuals of protections others received under the law, such as limiting wage garnishment. *Id.* at 134–36. This violated the equal protection clause because the indigent defendants were "singled out" and "subjected" to "discriminatory conditions of repayment" that were not imposed on non-indigent individuals. *Id.* at 140.

Similarly here, the cudgel the District is using to purportedly coerce Plaintiffs to pay back the debt they owe—denying their occupational licenses—could not be imposed by a "private creditor." *Id.* at 138. Individuals like Plaintiffs that lack an ability to pay their outstanding debt are being "singled out" by the Clean Hands Law; they are the only class of individuals that *want* to repay their debt, but have nonetheless been disqualified from obtaining occupational and small business licenses to help them do so. The District is thus using its unique and extraordinary government powers to punish Plaintiffs for their poverty. This violates the equal protection principles embodied by *James v. Strange* and progeny. *See, e.g., Fuller v. Oregon*, 417 U.S. 40, 47 (1974) (upholding Oregon debt collection scheme because it allowed debtors to retain all the exemptions accorded other judgment debtors, in addition to the opportunity to demonstrate that repayment would impose "manifest hardship"); *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) (requiring repayment of appointed counsel costs was permissible as long as indigent defendants were not "exposed to more severe collection practices than the ordinary civil debtor"); *Olson v. James*, 603 F.2d 150, 154 (10th Cir. 1979) ("indigent defendants were entitled to

evenhanded treatment in relationship to other classes of debtors."); *United States v. Bracewell*, 569 F.2d 1194, 1198-1200 (2d Cir. 1978) (discussing need for individualized consideration of defendants financial positions so as not to violate *James*). Plaintiffs are likely to succeed on the merits of this Equal Protection claim.

E. The Clean Hands Law's Application to Plaintiffs Violates the Eighth Amendment's Prohibition on Excessive Fines

The Eighth Amendment bars the government from imposing "excessive fines." U.S Const. amend. VIII. A fine violates the Excessive Fines Clause when: (1) the government extracted payments for the purpose of punishment, and (2) the fine was excessive. *See United States v. Bikundi*, 926 F.3d 761, 795 (D.C. Cir. 2019). Plaintiffs are likely to prevail on their claim that the Clean Hands Law violates the Excessive Fines Clause as applied to Plaintiffs because it is both punitive and excessive.

1. The Clean Hands Law's Purpose is Partially Punitive

The Clean Hands Law's purpose is partially punitive. The Law exacts a punishment on individuals that owe outstanding debt—they cannot obtain occupational and small business licenses—and is plainly aimed at deterring the non-payment of taxes and fines through the infliction of punishment. *See United States v. Bajakajian*, 524 U.S. 321, 329 (1998) ("Deterrence . . . has traditionally been viewed as a goal of punishment"). Nor is the Clean Hands Law's purpose remedial; if it were, the Law would seek "compensation or indemnity" for "lost revenues." *Id*. at 329. The law does the opposite—it hinders residents from paying the taxes or fines they owe by preventing them from working. The Clean Hands Law's purpose is therefore partially punitive, and the Eighth Amendment Excessive Fines Clause applies. *See Tyler v. Hennepin County,* 143 S. Ct. 1369, 1381 (2023) (Gorsuch, J., concurring) ("So long as [a] law 'cannot fairly be said *solely*

to serve a remedial purpose,' the Excessive Fines Clause applies." (quoting *Austin v. United States*, 509 U.S. 602, 610 (1993) (emphasis in original))).

2. The Clean Hands Law Imposes Excessive Fines on Plaintiffs

The denial of a license is the "fine" at issue here. As the Court explained *in Austin*, 509 U.S. 602, an Eighth Amendment "fine" includes any punishment that the government "extract[s]" in the form of payments "in cash or in kind." *Id.* at 609–10 (emphasis added). The forfeiture and non-renewal of valuable licenses is thus a "fine" because licenses have significant in-kind monetary value to those need them to work and earn wages in their chosen profession. These licenses also constitute property interests under District law, subject to constitutional protection. *See supra* I.A; *see also Barry*, 443 U.S. at 64.

The imposition of this fine against the Plaintiffs is excessive. A fine "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense," *see Bajakajian*, 524 U.S. at 334—which, here, is the non-payment of D.C. taxes or fines more than $100. D.C. Code § 47-2862(a). Courts often consider the four factors below in determining whether a fine is disproportionate:

> (1) the essence of the crime [of the defendant] and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct.

Collins v. S.E.C., 736 F.3d 521, 526 (D.C. Cir. 2013) (citing *United States v. Collado*, 348 F.3d 323, 328 (2d Cir. 2003)). The D.C. Circuit has said these factors "hardly establish a discrete analytic process," *id.* at 527, and in addition to these factors, courts also consider (a) an individual's ability to continue to earn a living in light of the fine imposed, and (b) the individual's ability to pay the fine. *See, e.g.*, *United States v. Levesque*, 546 F.3d 78, 83-85 (1st Cir. 2008) ("a forfeiture could be so onerous as to deprive a defendant of his or her future ability to earn a living, thus

implicating the historical concerns underlying the Excessive Fines Clause"); *United States v. Viloski*, 814 F.3d 104, 111 (2d Cir. 2016). They do so because the "Excessive Fines Clause traces its venerable lineage back" to the Magna Carta, which "required that economic sanctions be proportioned to the wrong and not be so large as to deprive [an offender] of his livelihood." *Timbs v. Indiana*, 139 S. Ct. 682, 687–88 (2019).

Here, all of these factors demonstrate that the fines imposed on Plaintiffs violate the Eight Amendment.

First, because the fines at issue deprive Plaintiffs of occupational and small business licenses, they *directly* "deprive [Plaintiffs] of their livelihood"—contrary to the original purpose and meaning of the Excessive Fines Clause, dating back to the Magna Carta. *See Timbs*, 139 S. Ct. at 687-88. Unable to obtain occupational or small business licenses, the Plaintiffs here are unable to earn nearly as much money as they would with those licenses. *See* Diaz de Sanchez Decl. ¶ 12; Ayele Decl. ¶ 12; Ghebrebrhan Decl. ¶ 16; Tesfamichael Decl. ¶ 14; Mehabe Decl. ¶ 11; Cheatham Decl. ¶¶ 7-8. Fines that, by definition, bar individuals from working in their desired field and earning a living are excessive based on the clause's original meaning. *See* Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 854–72 (2013).

Second, although the D.C. Circuit has not squarely addressed the extent to which lack of ability to pay renders a fine excessive,[16] persuasive opinions by courts in other jurisdictions have

[16] In *Bikundi*, the defendants raised for the first time on appeal an argument that the fine levied against them was excessive because they lacked the ability to pay. 926 F.3d at 796 & n.5. The D.C. Circuit concluded that the lower court did not plainly err in declining to consider the defendants' ability to pay the fine. *Id.* That decision does not control here for two main reasons: (1) *Bikundi* only addressed the issue under plain-error review; and (2) here, unlike in *Bikundi*, the Plaintiffs argue the fines imposed on them are excessive both because they lack an ability to pay

recognized that, in light of the Eighth Amendment's historical meaning, a fine can be rendered "excessive" if an individual lacks an ability to pay it. *See Seattle v. Long*, 198 Wash. 2d 136, 158-77 (2021) (*en banc*) (holding a $547.12 fine violated the Eighth Amendment's Excessive Fines Clause based on the individual's inability to pay); *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998) ("[I]n the case of fines . . . the defendant's ability to pay is a factor under the Excessive Fines Clause."); *Dep't of Labor & Emp't v. Dami Hosp., LLC*, 442 P.3d 94, 101 (Colo. 2019) (noting the historical record included "persuasive evidence that a fine that is more than a person can pay may be 'excessive' within the meaning of the Eighth Amendment"). These precedents support the conclusion that the fines imposed here are excessive because each Plaintiff lacks an ability to pay their outstanding debt. *See* Diaz de Sanchez Decl. ¶ 10; Ayele Decl. ¶ 11; Carrington Decl. ¶ 12; Ghebrebrhan Decl. ¶ 15; Tesfamichael Decl. ¶ 13; Mehabe Decl. ¶ 10; Cheatham Decl. ¶¶ 7–8.

Third, the "essence" of the offense—failing to repay debt Plaintiffs *want* to repay but lack an ability to repay—is not willful or wrongful, yet the Clean Hands Law imposes a grave and disproportionate punishment: Depriving individuals of their ability to work in their desired field. Worse still, the law never takes into account the relative culpability of the person being punished. *See Pimentel v. City of Los Angeles*, 974 F.3d 917, 922 (9th Cir. 2020) ("Courts typically look to the violator's culpability" in assessing whether a fine is excessive). Under the Clean Hands Law's unjust structure, the government has no burden to prove that residents intentionally or recklessly avoided paying taxes or fines before the Law's harsh penalties are imposed.

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the fines, and because depriving them of occupational or small business licenses hinders their ability to earn *any* sufficient living, creating a ruinous and inescapable cycle of poverty.

Fourth, the Plaintiffs do not "fit[] into the class of persons for whom the statute was principally designed," *Collins*, 736 F.3d at 526—individuals that *can* repay their debt and, in turn, could be incentivized to do so given the Clean Hands Law.

Fifth, the licenses for which Plaintiffs have applied bear no relationship to the underlying crime, as in a situation where a professional has his license revoked because he abused the license to harm or defraud the public. *Compare, e.g.*, *United States v. West*, 431 F. Supp. 3d 1054, 1059, 1066 (N.D. Iowa 2020) (revocation of nursing license appropriate where nurse used the license to steal narcotics). The Clean Hands Law is indifferent to the motives or culpability of the individual. Nor is the failure to pay taxes or fines related to other criminal activity—particularly here, since Plaintiffs have unpaid debt given their financial circumstances. *See, e.g.*, *Collins*, 736 F.3d at 527 (defendant's conduct enabled other fraudulent activity). And the harm Plaintiffs caused is minimal—a relatively small amount in unpaid fines and taxes. This harm is not remotely close to being so destructive to the community as to warrant forfeiture of one's ability to earn a living.

Finally, by being flatly disqualified from an occupational or small business license, Plaintiffs received "the maximum sentence and fine that could have been imposed." *Collins*, 736 F.3d at 526; *see* also Diaz de Sanchez Decl. ¶¶ 12-13; Ayele Decl. ¶ 13; Carrington Decl. ¶ 22; Ghebrebrhan Decl. ¶ 17; Tesfamichael Decl. ¶ 15; Mehabe Decl. ¶ 12; Cheatham Decl. ¶ 8. This too counsels in favor of concluding the fine is excessive. *Collins*, 736 F.3d at 526.

Accordingly, along with the other merits claims outlined above, Plaintiffs are also likely to succeed on their Eighth Amendment claim.

II. Plaintiffs Are Suffering Irreparable Injuries

"It has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. District of Columbia*, 571

F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, there is a "'presumed availability of . . . equitable relief against threatened invasions of constitutional interests.'" *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998) (quoting *Hubbard v. EPA*, 809 F.2d 1, 11 (D.C. Cir. 1986)). Here, the District's conduct has violated Plaintiffs' constitutional rights. *See supra* § I. Plaintiffs are thus being irreparably harmed.

Plaintiffs' lived experiences reinforce the irreparable harm the Clean Hands Law is inflicting. Because of the Clean Hands Law, Plaintiffs are struggling to provide for themselves and their families and to work in their chosen occupation. *See, e.g.*, Mehabe Decl. ¶ 10; Ghebrebrhan Decl. ¶ 12. Such hardships cannot be adequately compensated by monetary damages. *See Justiniano v. Soc. Sec. Admin.*, 876 F.3d 14, 28 (1st Cir. 2017) (irreparable harm where plaintiffs are "no longer financially self-sufficient as a result of the loss of income," particularly when "they may be unable to access . . . essential services"); *Sultana v. MD Safayet Hossain*, 575 F. Supp. 3d 696, 699 (N.D. Tex. 2021) ("[L]iving under 125% of the poverty line constitutes irreparable harm"). Plaintiffs have also lost out on the enjoyment and fulfilment of working in their chosen profession, in businesses many of them have built or desire to build, which is another irreparable harm. *See* Mehabe Decl. ¶ 12; Ghebrebrhan ¶¶ 5, 14; Diaz de Sanchez Decl. ¶¶ 6, 13; Carrington Decl. ¶ 22; Cheatham Decl. ¶¶ 7-8; *see also Bryan v. Hall Chem. Co.*, 993 F.2d 831, 836 (11th Cir. 1993) (affirming finding that plaintiff would suffer irreparable injury if prevented from working in chosen profession under broad non-compete agreement).

III. The Equities Powerfully Favor Plaintiffs and an Injunction Will Serve the Public Interest

As noted above, when the government is the defendant, "the final [merged] two injunction factors . . . generally call for weighing the benefits to the private party from obtaining an injunction against the harms to the government and the public from being enjoined." *Doe*, 928 F.3d at 23.

Here, the benefits to the Plaintiffs from getting to work in D.C. in their chosen occupation are very substantial, and the government has no cognizable interest in continued, unconstitutional enforcement of the Clean Hands Law to disqualify Plaintiffs from critically needed occupational or small business licenses.

Fundamentally, "[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) ("[T]he public has an interest in the government maintaining procedures that comply with constitutional requirements."); *Turner v. U.S. Agency for Global Media*, 502 F. Supp. 3d 333, 386 (D.D.C. 2020) ("government actions in contravention of the Constitution are *always* contrary to the public interest." (emphasis added)). No public interest is served by permitting the government's conduct here that continues to violate the Constitution.

But that is not all. The experiences of the Plaintiffs in this case reinforce that the public interest powerfully reinforce the need for a preliminary injunction. Because of the Clean Hands Law, the Plaintiffs are unable to work in their desired profession and unable to earn money from it. This is causing severe harm to not only the Plaintiffs, but many of their family members who are financially supported by them. *Id.*

The Clean Hands Law also imposes broad social costs on the District and its residents, including, among other things detailed above: exacerbating racial inequality and causing disproportionate harm to disabled people such as Plaintiff Mr. Cheatham; driving talented individuals away from the District like Ms. Carrington to find employment in other states; and entrenching racial disparity in small business ownership. And the Clean Hands Law inflicts all of this harm without even achieving its revenue-generation purpose.

Finally, the District's conduct—(a) prospectively limiting the Clean Hands Law's application to certain debt owed by street vendors, and (b) prospectively abolishing (and no longer enforcing) the Clean Hands Law's application to driver's licenses—is recognition of the harm this Law imposes and confirms that the public interest heavily weighs in Plaintiffs' favor.

CONCLUSION

For the reasons detailed above, the Court should grant Plaintiffs' motion for a preliminary injunction.

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Respectfully Submitted,

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