

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

(Charlottesville Division)

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DAMIAN STINNIE, )  
DEMETRICE MOORE, )  
ROBERT TAYLOR, )  
NEIL RUSSO, )  
 )  
Individually, and on behalf of all others )  
Similarly situated )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
RICHARD D. HOLCOMB, )  
in his official capacity as the Commissioner )  
of the VIRGINIA DEPARTMENT OF )  
MOTOR VEHICLES )  
 )  
Defendant. )

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Civ. No. 3:16-cv-44

**BRIEF OF AMICUS CURIAE**  
**VIRGINIA STATE CONFERENCE OF THE NAACP**  
**OPPOSING DEFENDANT’S MOTION TO DISMISS**

**I. INTEREST OF AMICUS CURIAE**

The Virginia State Conference of the National Association for the Advancement of Colored People (“Virginia NAACP”), by and through undersigned counsel, hereby file this brief as amicus curiae in opposition to Defendant’s Motion to Dismiss. The Virginia State Conference is a member of the national NAACP. Founded in 1909, the NAACP is the nation’s oldest and largest civil rights organization. The mission of the NAACP is to ensure the equality of political, social, and economic rights of all persons, and to eliminate racial hatred and racial

discrimination. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. Throughout its history, the NAACP has used the legal process to champion equality and justice for all persons. The NAACP recognizes the importance of economic stability in advancing an equal opportunity society and advocates for smarter, results-based criminal justice policies to keep our communities safe, including an end to racial disparities at all levels in the system.

## **II. INTRODUCTION**

In Virginia, approximately 914,450 people are currently without a driver's license because of unpaid court costs and fines, and a substantial number of these drivers lost their licenses for the simple reason that they could not afford to pay the costs and fines imposed on them. Compl. ¶¶ 327, 334. The Defendant's practice of automatically suspending licenses without a hearing and without consideration of ability to pay exacerbates racial and socioeconomic disparities in the incidence of license suspensions, as well as in stops, arrests, and incarceration for driving while suspended. It also calls into serious question the fundamental fairness of using driver's license suspension as a mechanism for collection in the Commonwealth's court debt system.

Given the gravity of the constitutional issues at stake and the disparate impact of the Defendant's practices on people of color, the Virginia NAACP respectfully requests this Court to deny the Defendant's motion to dismiss and permit this case to proceed.

## **III. FACTS**

The Commonwealth's policy of mandating automatic driver's license suspension for default on any debts owed to the courts disparately impacts black people. Black people make up

only 20% of Virginia's population, but receive nearly half of the orders of suspension for unpaid court debt. *See* Ex. A, Affidavit of Aaron Bloomfield, dated November 1, 2016, ¶¶ 12, 16.<sup>1</sup> In addition, nearly 60% of convictions for driving while suspended wherein court debt was imposed but is "past due" are associated with blacks. *See id.* at ¶ 15.

Alongside these data suggesting overrepresentation of black Virginians in the group of drivers suspended for unpaid court debt, recent income and employment data suggest that black people in Virginia are especially economically vulnerable as compared to other racial groups. Black Virginians experience poverty more than any other major racial group in the Commonwealth. The poverty rate for black Virginians (19.1%) is higher than the state average across all racial groups (11.2%) and more than double the rate for white Virginians (8.7%).<sup>2</sup> Per capita, black Virginians earn less in annual income than white Virginians, receiving only \$24,347 compared to \$40,040, respectively.<sup>3</sup> Relatedly, the average annual unemployment rate for black Virginians in 2015 was higher than for any other racial group in the state.<sup>4</sup> Whereas 3.6% of white Virginians were unemployed in 2015, 7.9% of black Virginians lacked employment.<sup>5</sup> On this measure, black Virginians also exceeded the state average (4.5%) and fared worse than any other racial group.<sup>6</sup>

Thus, black people in Virginia have a double disadvantage. They are both more likely to experience suspension for failure to pay court costs and fines and, because of the overlap

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<sup>1</sup> Upon information and belief, data on license suspension is not broken down by race; however, because past due court debt triggers automatic suspension pursuant to Va. Code § 46.2-395, the incidence of cases coded as "past due" may be a rough proxy for the incidence of § 46.2-395 suspensions.

<sup>2</sup> U.S. Census Bureau, American Community Survey 1-Year Estimates, Poverty Status in the Past 12 Months, Virginia (2015).

<sup>3</sup> U.S. Census Bureau, American Community Survey 1-Year Estimates, Per Capita Income in the Past 12 Months (in 2015 Inflation-Adjusted Dollars), Virginia (2015).

<sup>4</sup> U.S. Bureau of Labor Statistics, Preliminary 2015 Data on Employment Status by State and Demographic Group, Virginia (2016).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

between race and poverty, are also especially vulnerable to the long-lasting and far-reaching effects of losing a driver's license. Indeed, driver's license suspension leads to a host of other consequences, including loss of employment and educational opportunities, inability to care for young or ailing family members, and increased risk of incarceration (for driving while suspended) or for failure to appear for court proceedings due to unreliable transportation. Increasingly, driver's licenses are prerequisites for many jobs, and individuals with suspended driver's licenses experience great difficulty finding and maintaining steady and sustainable employment. Driver's license suspensions shut people out of employment opportunities in four major ways: (1) a driver's license is needed for transportation to and from work; (2) many jobs and job training programs require driving as part of the job duties; (3) driver's licenses are becoming crucial for non-traditional jobs (*e.g.*, Uber); and (4) private employers often screen out applicants who do not have driver's licenses, believing a lack of a driver's license to be an indicator of unreliability and irresponsibility.<sup>7</sup>

Lack of employment can send individuals and families into long cycles of poverty that are extremely difficult to break. Thus, loss of the ability to drive is a serious threat to economic security, not only for impacted drivers but also for their family members. Data shows that these impacts are most severe in neighborhoods where there are high concentrations of low-income people and people of color.<sup>8</sup>

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<sup>7</sup> Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* (April 2016), at 26-28, [http://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BOTRCA.pdf](http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf).

<sup>8</sup> *See id.* at 7-10.

## IV. ARGUMENT

### A. The Virginia statutory process of automatic suspension is fundamentally unfair.

The due process and equal protection principles of the Fourteenth Amendment prohibit “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Yet Va. Code § 46.2-395(B) requires that a person’s driver’s license be automatically suspended when a person fails to pay fines, fees, and costs within the requisite time period (usually 30 days after sentencing, or upon default on a payment plan). Suspension occurs automatically, with no inquiry into the individual’s ability to pay. Astoundingly, the Virginia statute does not provide even the enigmatic minimum famously described by Justice White, when he wrote that “[t]he Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests.” *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974). Nothing at all is provided. Because there is no inquiry into the person’s ability to pay, there is also no consideration of alternatives, such as community service, job training, restorative justice, or settling the debt for less than is owed.

In December 2015, the United States Department of Justice convened a group of public officials from across the nation to discuss the assessment of fines and fees in state and local governments. Driver’s license suspension for unpaid court debt, as it exists presently in Virginia, was straightforwardly condemned in the resulting federal guidance:

Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.

*See* “Letter to Colleague” from Vanita Gupta & Lisa Foster, U.S. Dep’t of Justice, at 2 (Mar. 14, 2016) [hereinafter “DOJ Guidance”]. The DOJ Guidance notes that “[i]n many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant’s driver’s license to compel the payment of outstanding court debts.” *Id.* at 6. The

DOJ Guidance concludes that automatic license suspension for failure to pay court costs and fines may violate due process in jurisdictions where ability to pay has not been established. *See id.* (citing *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver’s licenses “may become essential in the pursuit of a livelihood” and thus “are not to be taken away without that procedural due process required by the Fourteenth Amendment”)).

Automatically suspending driver’s licenses for outstanding court debt, with no consideration of ability to pay, surely violates principles of due process, equal protection, and fundamental fairness. As DMV is a recipient of federal funds,<sup>9</sup> Virginia’s license-for-payment system may also violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, when it unnecessarily imposes disparate harm on the basis of race or national origin. *See generally* DOJ Guidance at 2.

**B. Virginia’s laws criminalizing driving on a suspended license inflict outsized pain on those who lose their licenses because they cannot afford to pay court costs and fines.**

Virginia’s license-for-payment scheme has a coercive and discriminatory impact on those who drive after suspension; while licenses are easily taken away, they are difficult to restore, and driving while suspended can lead to severe punishments. For someone of modest financial means, even a minor traffic infraction can lead to a disastrous series of events, including loss of driver’s license, serious criminal consequences, and jail time.

This cascade of hardship often starts with a citation for a minor moving violation, or even a non-serious status infraction like “expired inspection” that a wealthier person would satisfy out of court by coming into compliance (usually involving payment) and paying costs to the court.

Low-income people face many barriers to appearing in court, including inflexible work

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<sup>9</sup> According to the Virginia DMV’s website, DMV’s Virginia Highway Safety Office is responsible for administering federal highway safety funds. *See* <https://www.dmv.virginia.gov/safety/#grants/index.html> (last visited October 31, 2016).

schedules, unreliable transportation, lack of affordable childcare, or simply the knowledge that the proceeding will result in the imposition of more fines and costs that they cannot afford to pay. Consequently, defendants are often tried in absentia, convicted, and fined with only the original traffic stop citation as notice. Lack of notice persists if a bill for fines and costs (frequently less than \$100, combined) is sent to a wrong address or one that is no longer current.

When the fine goes unpaid for thirty days, this information is sent to DMV. The person's license is consequently administratively suspended. Notice of this suspension is then sent to the defendant's address, which may be incorrect or expired. Accordingly, for something no more serious than an expired sticker or registration, a person who already struggles to financially comply with legal obligations like regular inspections then has their license administratively suspended by DMV.

The saga continues when the person is pulled over and charged with driving on a suspended license. Often, this occurs without the driver's knowledge that their license had been suspended. While the Virginia Supreme Court has ruled that a person cannot be convicted of driving while suspended without actual notice of the suspension (usually finally given by the arresting officer or later by the court), *Bibb v. Comm.*, 212 Va. 249 (1971), defendants are often unrepresented for this misdemeanor appearance, and courts often convict without inquiring about notice. Additionally, the license will remain suspended until the defendant pays all of the original fines and costs, as well as a DMV reinstatement fee.

Thus, low-income drivers suffer prolonged periods of punishment in ways that wealthier drivers do not. While wealthier suspended drivers with counsel are better able to pay the fees to restore their licenses or arrange for restricted licenses, impoverished unrepresented drivers do not have the means to hire counsel or pay the costs, fines, and reinstatement fees required to restore

their licenses. This inevitably leads to repeated charges for driving suspended—often on the way to work—with further mandatory license suspensions and a mandatory ten days in jail for each third or subsequent offense of driving while suspended within a 10-year period. Va. Code § 46.2-301(C).

Each stop for driving while suspended exposes the driver to prolonged police encounters, increasing the likelihood of additional citations (and accompanying fines and costs), searches, and even full custodial arrests. *See Virginia v. Moore*, 553 U.S. 164, 171 (2008) (holding that full custodial police arrests for the offense of driving while suspended did not offend the Fourth Amendment, even when Virginia law required only the issuance of a summons and release upon the promise to appear in court). Even when the driver is not subjected to a warrantless vehicle search, suspended drivers who do not have licensed passengers on board when stopped incur extra fees for the towing, storage, and impoundment of their vehicles that cannot be left on roadsides. Once these vehicles are removed by police, they are then subject to warrantless “inventory” searches outside the presence of the previously apprehended driver. *See South Dakota v. Opperman*, 428 U.S. 364, 367-72 (1976).

In Virginia, suspended licenses function much like outstanding arrest warrants in justifying pretextual stops of persons whom law enforcement wish to question or search. Justice Sotomayor’s vigorous dissent in *Utah v. Streiff* explains how police can use outstanding arrest warrants to justify stopping people without cause:

This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant.

136 S. Ct. 2056, 2064 (2016). One need only to substitute “suspended license” for “warrant” to see how Virginia’s license-for-payment system subjects hundreds of thousands of drivers—particularly people of color—to the humiliating and degrading experience of being stopped, questioned, and probed by law enforcement officials. *See id.* at 2070 (describing, in wrenchingly graphic terms, the indignity of being targeted for suspected criminal activity, frisked for weapons, handcuffed, fingerprinted, swabbed for DNA, showered with a delousing agent, and being saddled with the “civil death” of an arrest warrant).

**C. The license-for-payment system distorts the criminal justice system in ways that disproportionately harm black people and their families.**

The suffering that is disproportionately inflicted on people of color by aggressive court debt collection practices is well documented.<sup>10</sup> A recent joint publication by Harvard Law School and the National Consumer Law Center summarizes the harmful ways in which poverty, race, and court practices intersect:

[D]ata from the United States Census suggests that there may be a correlation between the cities that are most dependent on fines and fees for revenue and high African-American populations. Further compounding the impact of heavy fines and fees on African-Americans is the longstanding and well-documented racial wealth gap, caused by deeply entrenched public and private discrimination, including ongoing discrimination in the housing and labor markets. The lack of assets available for many African-American families to draw on means that an unexpected court debt may produce more extreme economic shocks, and inability to pay the debt immediately may result in significant harms, from suspension of a driver’s license to incarceration for nonpayment.<sup>11</sup>

For example, in March 2015, the Civil Rights Division of the United States Department of Justice released its critical study of policing practices in the city of Ferguson, Missouri. Among

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<sup>10</sup> Reports by advocates, researchers, and civil rights plaintiffs documenting the injustices wrought by court debt collection practices are compiled in Abby Shafroth & Larry Schwartztol, *Confronting Criminal Justice Debt: The Urgent Need for Comprehensive Reform*, at 3 n.13 (2016), <http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-The-Urgent-Need-for-Comprehensive-Reform.pdf>.

<sup>11</sup> *Id.* at 3-4 (citations omitted).

the study's findings are observations that law enforcement practice is consciously revenue-driven and discriminates against blacks.<sup>12</sup> In particular, the Department of Justice found that driver's license suspension mandated by Missouri state law (for unpaid court debt or failure to appear) and prolonged by local practice exacerbates and extends the harms related to criminal justice system involvement.<sup>13</sup>

The disparate impact of driver's license suspension for unpaid court debt on black people is especially troubling given the racialized history of licensing in the United States. *See* Exhibit B, Affidavit of Cassius Adair, dated October 31, 2016. This ignominious history makes driver's licensing a locus of particular racial sensitivity, especially in light of modern trends related to licensing that continue to disproportionately deprive black people of their right to participate in society on equal footing, including implicit and explicit bias in policing on our highways,<sup>14</sup> disparate outcomes in sentencing,<sup>15</sup> and efforts to use photo identification requirements to deny the right to vote.<sup>16</sup>

The ripple effects of losing one's lawful ability to drive wreaks havoc on families and distorts criminal justice outcomes along racial and socioeconomic lines. For example, a person

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<sup>12</sup> Civil Division, U. S. Dep't of Justice, Investigation of the Ferguson Police Department (March 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>13</sup> *See id.* at 50-51.

<sup>14</sup> Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, 21 [http://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BOTRCA.pdf](http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf) (April 2016) (discussing research on the role of implicit and explicit bias in traffic stops).

<sup>15</sup> *See, e.g.*, Palazzolo, Joe, *Racial Gap in Men's Sentencing*, Wall Street Journal, Feb. 14, 2013 (highlighting an analysis by the U.S. Sentencing Commission finding that prison sentences of black men were nearly 20% longer than those of white men for similar crimes in recent years); Colarusso, David, *Uncovering Big Bias with Big Data*, Lawyerist.com, May 31, 2016, <https://lawyerist.com/110584/big-bias-big-data/> (analyzing sentencing outcomes in Virginia Circuit Court data in criminal cases from 2006-2010 by race and income [using zip code as a proxy for income], and concluding that black men needed to earn an average of \$90,000 more than their white peers to receive comparable sentencing).

<sup>16</sup> *See, e.g.*, *North Carolina NAACP v. McCrory*, 831 F.3d. 204, 229-30 (4th Cir. 2016) (finding that racially discriminatory intent could be inferred from legislative history indicating that legislators requested and received data on DMV-issued ID ownership, broken down by race, and that data indicated that blacks disproportionately lacked DMV-issued IDs).

who loses her license for failure to pay must often choose between losing her job and driving illegally. If she chooses not to drive and has no reliable source of transportation to work, she loses a crucial income source, which puts housing and family stability at risk, and makes it more difficult to satisfy financial obligations to the courts. If she does not satisfy these obligations, she risks exposure to—depending on the circumstances—continued probation, imposition of a suspended sentence, or contempt proceedings for failure to pay. If she chooses to drive illegally, she risks being stopped, arrested, incarcerated, and fined again. Compl. ¶ 334-348. All of these outcomes further destabilize families and, importantly, disproportionately destabilize black families, who experience both poverty and driver’s license suspension for failure to pay court debt at a higher rate.

## V. CONCLUSION

For the reasons stated, Virginia’s driver’s license suspension system for unpaid court debt disproportionately harms blacks, violates constitutional rights, and fails to comport with even the most basic sense of fairness. Accordingly, the Virginia State Conference of the NAACP respectfully requests that this Court deny Defendant’s motion to dismiss with prejudice.

November 3, 2016

Respectfully submitted,

**/s/David Heilberg**  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2016, I electronically filed the foregoing Brief of Amicus Curiae with the Clerk of Court using the CM/ECF System, which will send a notification of such filing to the following CM/ECF participants:

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in his official capacity as the Commissioner )  
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MOTOR VEHICLES )  
) )  
Defendant. )  
\_\_\_\_\_ )

Civ. No: 3:2016-cv-00044

**AFFIDAVIT OF AARON BLOOMFIELD**

I, Aaron Bloomfield, of the age of majority, hereby declare under penalty of perjury that the following is true and based on my personal knowledge:

1. I am an associate professor in the Computer Science department at the University of Virginia. I have been employed by the University of Virginia as a faculty member since August 2004.
2. I am familiar with the concept of data scraping (also known as web scraping). This is a technique whereby computer programming is used to automatize and expedite repeated searches of a web-based data portal, and to log the data cumulatively revealed by those repeated searches. Data scraping can aggregate large quantities of data where it would otherwise be unfeasible to do so.
3. Additionally, I have a significant amount of experience using Microsoft Excel.

4. I have reviewed the data set at VirginiaCourtData.org under the header “Criminal District Court Cases.”

5. Upon information and belief, this data set presents information from roughly 2.2 million criminal and traffic court cases adjudicated in 2015 in Virginia’s general district courts and that was data-scraped from the Virginia court system’s public online portal regarding general district court cases (“General District Court Online Case Information System”) by Ben Schoenfeld.

6. This data set is presented in a series of twelve Microsoft Excel spreadsheets, one for each month in 2015.

7. For the purposes of my review, I aggregated data from the twelve spreadsheets, so as to be able to ascertain information pertaining to cases from the full calendar year of 2015.

8. Upon information and belief, the various columns in each such spreadsheet correspond to the data fields of general district court records available for public viewing at the Virginia’s court system’s online portal.

9. Column “AG” of each spreadsheet is labeled “Race,” and, upon information and belief, lists the race of the defendant.

10. The data entries in this column consistently use one of six designations – “American Indian,” “Asian or Pacific Islander,” “Black (Non-Hispanic),” “Hispanic,” “Other (Includes Not Applicable, Unknown),” and “White Caucasian (Non-Hispanic).” Just over one percent (1.14%) of the cases reflected in the data set leave this field blank, rather than using one of these six categories.

11. Column “U” of each spreadsheet is labeled “FineCostsDue,” and, upon information and belief, designates (either being blank for paid accounts or including “PAST

DUE” as a designation) whether the court debt associated with the case has been paid or instead is past due. Similarly, Column “V” of each spreadsheet is labeled “FineCostsPaid,” and, upon information and belief, affirmatively indicates (using “Paid” as a designation) those accounts that have been paid. The data is consistent in that it appears always to be the case that a “PAST DUE” designation in Column U is accompanied by a blank field in Column V.

12. My review of this data set revealed that approximately 48.62% of the case entries coded as having a “PAST DUE” status were associated with people coded as “Black (Non-Hispanic).”

13. Column “M” of each spreadsheet is labeled “CodeSection” and, upon information and belief, designates the Virginia Code section the defendant in each case was charged with violating.

14. I isolated cases in the data set showing a designation of “B.46.2-301” in Column M. Upon information and belief, this designation corresponds with Virginia Code 46.2-301(B).

15. My review of this data set revealed that roughly 59.25% of the case entries showing a designation of “B.46.2-301” in Column M and coded as having a “PAST DUE” status were associated with people coded as “Black (Non-Hispanic).”

16. By contrast, and depending on the data source, African Americans are estimated to comprise roughly 19-20% of Virginia’s population.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 2th day of November, 2016, in Charlottesville, Virginia.

Aaron Bloomfield

Aaron Bloomfield

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
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DAMIAN STINNIE, )  
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 MOTOR VEHICLES )  
 )  
 Defendant. )

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Civ. No: 3:2016-cv-00044

**AFFIDAVIT OF CASSIUS ADAIR**

I, Cassius Adair, of the age of majority, hereby declare under penalty of perjury that the following is true and based on my personal knowledge:

1. I am a James Winn Graduate Fellow at the Institute for the Humanities at the University of Michigan, Ann Arbor. I will complete my PhD in English Language and Literature during the Spring of 2017.

2. I am currently writing my dissertation on the role of everyday identification documents in transforming U.S. identities into things that can be measured, classified, and verified, not only by the state as such, but by fellow citizens. The first chapter of my

dissertation explores the inter-connected history of driver's licenses, racial governance, and identification.

3. As part of that project, I have reviewed primary source material from both white and African American newspapers published 1910-1940. I have also extensively researched literature on the history of identification, civil rights, and transit.

4. Historians have long argued that constraining the mobility of Black subjects in space has been an integral project of white supremacy, a centuries-long regulatory priority that can be traced from slave passes to stop-and-frisk.

5. For example, according to historian John Dittmer, from 1900 to 1920, the idea of Black mobility by any means so angered white police that they sometimes "tore up [their] tickets," temporarily detained individuals until their trains departed the station, or simply arrested them.<sup>1</sup>

6. My research indicates that driver's licenses have been a significant tool of racial regulation since the early twentieth century.

7. At the moment of introduction in 1910, the new technology of the driver's license staged a social conflict between earlier conceptions of documentation as punitive (*i.e.*, used to regulate immigrants and criminals) and incipient understandings of documentation as marking authentic citizenship and social belonging.

8. Specifically, rural white drivers worried that licenses would restrict individual mobility, that they represented state overreach and additional taxation, and that they would bring with them unprecedented regulation of the bodies of (white) citizens in peacetime.

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<sup>1</sup> See Dittmer, John. *Black Georgia In the Progressive Era, 1900-1920*. Urbana: University of Illinois Press, 1977.

9. At the same time, black drivers who owned their own vehicles were a highly visible, rapidly moving affront to a social order that depended on black subordination. Moreover, picking up and leaving was black southerners' strongest weapon to control the terms of their own labor.

10. According to historian Neil McMillan, many towns informally denied black motorists access to the public streets and informally restricted parking to whites on principal thoroughfares. Black drivers were always to give way to white ones, allowing themselves to be passed on the roadway or even rammed into with no legal penalty, and fault for any accidents was typically labeled at their feet.<sup>2</sup>

11. In the 1920s and 1930s, proponents of licensing began attaching the associations of blackness and criminality to driving crimes in order to help soothe rural white anxieties about this new licensing schema and to cast the issue as a public health crisis wrought by urban drivers and the "reckless negro."

12. For example, in Atlanta, the figure of the black reckless driver persists through early discussion of adopting licenses in the 1920s and 1930s until passage of a statewide license bill in 1937.

13. My review of newspapers from the period reveal that white newspapers routinely identified reckless drivers by race when reporting on motor vehicle accidents. In contrast, when crashes were reported in African American papers, the race of the drivers was mentioned only in extraordinary circumstances.

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<sup>2</sup> See McMillan, Neil R. *Dark Journey: Black Mississippians in the Age of Jim Crow*. Urbana: University of Illinois Press, 1989.

14. Gradually, the meaning of drivers' licenses shifted from markers of surveillance to citizenship. By 1940, licensing had been rearticulated as a form of belonging, and the documents signaled a new form of white privilege.

15. After licenses became commonplace, new narratives emerged that labeled black drivers as incapable of acquiring the new licenses. For example, the *Atlanta Constitution* began reprinting Associated Press newsclips from other Southern cities, detailing supposed conversations between motor bureau officials and "negroes" applying for licenses. These reports often ended with a quote that functioned as a punchline indicating that their subjects clearly were not fit for driving, or, indeed, for a civil interaction with officials of the state.

16. Although there is no evidence that driver's license laws contained explicit racial exclusions, the act of checking a document gave bureaucrats and other officials extraordinary power over the basic social mobility of other individuals, allowing documentation to be required in particular ways by particular individuals at particular times.

17. By 1939, driver's license laws in some states had created a system of racial categorization by mandating the collection of information on license applications, including a "brief description of the applicant." This description was widely interpreted to include race.

18. In 1939, the Chicago chapter of the NAACP mobilized around the issue of race and licensing, protesting the idea of recording race on a state document as unrelated to any particular purpose, except to aid in discrimination, such as denial of the license itself.

19. Thus, licensing was both a Progressive-era reform movement oriented around safety and public health that emphasized the importance of curtailing bad driving behavior and preserving lives, and also a specific technology of regulating mobility in an era when intra- and inter-state movement were empowering African American people.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 31<sup>st</sup> day of October, 2016, in Ann Arbor, Michigan.

A handwritten signature in black ink, appearing to read "Cassius Adair", written in a cursive style.

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Cassius Adair