

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SETI JOHNSON and MARIE
BONHOMME-DICKS, on behalf of
themselves and those similarly situated,
and SHAREE SMOOT and NICHELLE
YARBOROUGH, on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

TORRE JESSUP, in his official capacity
as Commissioner of the North Carolina
Division of Motor Vehicles,

Defendant.

Case No. 1:18-cv-00467

(CLASS ACTION)

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION FOR A PRELIMINARY INJUNCTION**

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NATURE OF THE MATTER

Plaintiffs are low-income individuals facing unlawful punishment under a statute that indefinitely revokes their drivers' licenses because they cannot afford to pay fines, court costs, and penalties for traffic offenses ("fines and costs"). This revocation process is carried out by the North Carolina Division of Motor Vehicles ("DMV"), pursuant to N.C.G.S. § 20-24.1, without any meaningful notice, pre-deprivation hearing, or determination of ability to pay. In a state where 92% of residents rely on a license to pursue their livelihoods and support family, this wealth-based revocation scheme unlawfully punishes the State's low-income residents and pushes them further into poverty, in violation of the Fourteenth Amendment to the U.S. Constitution.

Plaintiffs' experiences exemplify the abuses of this system. All received traffic tickets and were unable to pay the associated fines and costs. The licenses of Plaintiff Sharee Smoot and Plaintiff Nichelle Yarborough have been revoked for failing to pay. Plaintiff Seti Johnson's license has been revoked with an effective date of July 28, 2018.¹ Plaintiff Marie Bonhomme-Dicks is facing revocation around September 5, 2018, with an effective date around November 4, 2018. Thus, all currently face, or will soon face, the impossible choice of failing to provide for themselves and their families or of driving illegally to meet basic needs. None was provided any sort of hearing or assessment of ability to pay, and Mr. Johnson, Ms. Yarborough, and Ms. Smoot received a DMV notice

¹ Defendant Commissioner Jessup has elected to not suspend Mr. Johnson's license until this Motion is resolved. *See* DE 24 ¶ 8. If relief is not granted, it will be suspended imminently.

that told them they had to pay in full to avoid revocation, without mentioning alternatives for those who cannot pay.

Plaintiffs bring this action to vindicate their constitutional rights and request a preliminary injunction: (1) to enjoin Section 20-24.1(a)(2) and (b)(3)-(4); (2) to bar the DMV from revoking licenses for non-payment under Section 20-24.1(a)(2); and (3) to lift current license revocations entered under Section 20-24.1(a)(2) and reinstate those licenses without charging a reinstatement fee if there are no other bases for the revocation—pending the ultimate determination of the merits of Plaintiffs’ claims.

STATEMENT OF THE FACTS

At any time, hundreds of thousands of driver’s licenses are revoked for failure to pay fines and costs for traffic offenses under North Carolina law.² Section 20-24.1 of the North Carolina General Statutes mandates automatic and indefinite revocation of a driver’s license when a person fails to pay fines and costs, without any inquiry into the driver’s ability to pay or notice of permissible alternatives to payment. N.C.G.S. § 20-24.1. This revocation scheme disproportionately punishes impoverished residents, taking away crucial means of self-sufficiency and further pushing them into poverty.

² The precise number varies, but over 436,000 licenses were revoked in the fall of 2017. Email from DMV (Sept. 26, 2017), attached as Exhibit I to Declaration of Samuel Brooke (“Brooke Decl.”), DE 6.

A. The DMV Indefinitely Revokes Driver’s Licenses for Failure to Pay Fines and Costs Pursuant to Section 20-24.1.

State law requires courts to notify the DMV of a person’s failure to pay fines and costs 40 days after the non-payment. N.C.G.S. § 20-24.2(a)(2). After receiving this notice from the court, the DMV “must revoke” the individual’s driver’s license. *Id.* § 20-24.1(a). The DMV does this by entering a revocation order, which becomes effective 60 days after it is mailed or personally delivered to the individual. *Id.*

Section 20-24.1 does not require—and the DMV does nothing to ensure—that any sort of hearing, inquiry, or determination that the individual willfully refused to pay occurs before the license revocation. *See id.*

While the statute creates an option for those unable to pay to regain their licenses, it fails to do so in a constitutionally effective manner. It places the burden on individuals to petition to stop the revocation or to reinstate their licenses by proving that their failure to pay was not willful. *See id.* § 20-24.1(b)(4). And as noted below, the State not only fails to inform anyone of this process, but affirmatively misleads drivers into believing they must pay in full to halt revocation or be reinstated. Until the motorist satisfies Section 20-24.1(b), the license remains indefinitely revoked. *Id.* § 20-24.1(b), (c).

B. The DMV Sends Deficient, Misleading Notices to Drivers to Induce Payment.

The DMV presents drivers who have unpaid fines and costs with only two options: pay or have the license revoked. The DMV uses a standard form for the revocation order, which it labels as an “Official Notice.” A copy of this notice, referred to hereafter as the “Revocation Notice,” appears below:

01/10/2018

SHAREE ANTONETTE SMOOT

██████████
CONCORD NC 28025-6033

OFFICIAL NOTICE

CUSTOMER NO. ██████████

WE REGRET TO INFORM YOU THAT EFFECTIVE 12:01 A.M., 03/11/2018, YOUR NC DRIVING PRIVILEGE IS SCHEDULED FOR AN INDEFINITE SUSPENSION IN ACCORDANCE WITH GENERAL STATUTE 20-24.1 FOR FAILURE TO PAY FINE AS FOLLOWS:

VIOLATION DATE: 2017-08-02 CITATION NUMBER: 04G82989
COURT: CABARRUS COUNTY COURT PHONE: (704)262-5500

UNFORTUNATELY THE DIVISION OF MOTOR VEHICLES CANNOT ACCEPT PAYMENTS FOR FINES AND COSTS IMPOSED BY THE COURTS. PLEASE CONTACT THE COURT ABOVE TO COMPLY WITH THIS CITATION.

NOTE: PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.

IF YOU HAVE NOT COMPLIED WITH THIS CITATION BY THE EFFECTIVE DATE OF THIS ORDER, YOU WILL NEED TO MAIL YOUR CURRENT NORTH CAROLINA DRIVER LICENSE, IF APPLICABLE, TO THE DIVISION. FAILURE TO DO SO MAY RESULT IN AN ADDITIONAL \$50.00 SERVICE FEE.

REINSTATEMENT PROCEDURES:

UPON COMPLIANCE WITH THIS CITATION, YOU MAY VISIT YOUR LOCAL DRIVER LICENSE OFFICE. AT SUCH TIME PROPER IDENTIFICATION AND PROOF OF AGE WILL BE NEEDED.

A RESTORATION FEE OF \$65.00 AND THE APPROPRIATE LICENSE FEES ARE NEEDED AND HAVE TO BE PAID AT THE TIME YOUR DRIVING PRIVILEGE IS REINSTATED.

THIS ORDER IS IN ADDITION TO AND DOES NOT SUPERSEDE ANY PRIOR ORDER ISSUED BY THE DMV. IF ADDITIONAL INFORMATION CONCERNING THIS ORDER IS NEEDED, PLEASE CONTACT A REPRESENTATIVE OF THE DIVISION AT (919)715-7000.

DIRECTOR OF PROCESSING SERVICES

DMV, Revocation Notice (Jan. 10, 2018), Attachment B to Declaration of Sharee Smoot (“Smoot Decl.”), DE 5, 5-2.

The Notice alerts individuals that their “driving privilege is scheduled for an indefinite suspension in accordance with general statute 20-24.1 for failure to pay [a] fine” by the effective date. *Id.* It also instructs that the driver must “comply” with the citation to prevent “suspension” by the effective date or to have the revoked license reinstated. *Id.* There is no explanation of what “comply” or “compliance” means and no

process outlined on how to comply beyond payment of the underlying citation.

Id. Rather, the Notice simply states: “PLEASE COMPLY WITH THIS CITATION PRIOR TO THE EFFECTIVE DATE IN ORDER TO AVOID THIS SUSPENSION.”

Id.

C. The Revocation of Drivers’ Licenses Pushes Individuals Further into Poverty.

The impact of Section 20-24.1 on the thousands of individuals who have lost their licenses for failure to pay is severe—particularly in a state like North Carolina, where 1.5 million individuals live in poverty.³

Plaintiff Seti Johnson, a father of young children, lives with his mother because he cannot afford to pay his own rent. Declaration of Seti Johnson (“Johnson Decl.”), DE 4, ¶¶ 3, 4, 7. He relies on his driver’s license for work, to obtain food, and to take his children to school. *Id.* ¶¶ 4, 16. He fears that losing his license would prevent him from supporting himself and his family and fulfilling their needs. *Id.* ¶¶ 4, 14, 16. Mr. Johnson obtained a new job, but lacked a stable income and has struggled to maintain work, in part, because his license was revoked at least twice before due to inability to pay traffic tickets. *Id.* ¶ 7, 13, 14, 17, 18.

In April 2018, Mr. Johnson pled guilty to “failure to notify DMV of address change” and was sentenced to pay a \$100 fine, \$208 in court costs, and an additional \$20 because he could not pay in full that day. *Id.* ¶¶ 9–10, 12. He scraped together \$100 that

³ U.S. Census Bureau, *Quick Facts North Carolina*, <https://www.census.gov/quickfacts/NC>, attached as Exhibit A to Brooke Decl.

day, and was told the remainder was due “within 40 days,” on May 22, 2018, and that his license would be suspended if he did not pay in full. *Id.* ¶¶ 11–13. Mr. Johnson was unable to pay, and his license was automatically revoked by the DMV. *Id.* ¶¶ 13–14. The revocation was to become effective on July 28, 2018.⁴ N.C.G.S. § 20-24.1(a).

Plaintiff Marie Bonhomme-Dicks is a mother of four who currently provides for a teenage child and two grandchildren. Declaration of Marie Bonhomme-Dicks (“Bonhomme-Dicks Decl.”) ¶ 2. She relies on her driver’s license for work, to obtain food, and to take her child and grandchildren to church, daycare, school, and related functions. *Id.* ¶ 6. Ms. Bonhomme-Dicks is employed part-time but does not earn enough to make ends meet, and has tried to work alternative jobs like driving for Uber and Lyft, but had to stop when her license was suspended previously. *Id.* ¶ 3. She donates plasma to try to cover her family’s needs. *Id.* ¶ 4. Losing her license will make it impossible for her to continue working and providing for her family. *Id.* ¶ 11.

Ms. Bonhomme-Dicks pled guilty to a traffic ticket on July 27, 2018, and was assessed \$388 in court costs. *Id.* ¶ 8. She was given no option other than to pay in full, and when she explained she could not pay, the Judge told her he used to waive costs, but the legislature now prevented him from doing so. *Id.* She is unable to pay, and fears her license will be suspended imminently for non-payment. *Id.* ¶¶ 9, 11.

⁴ *See supra* note 1 (noting Defendant has temporarily elected to not suspend Mr. Johnson’s license until this Motion is resolved).

Plaintiff Sharee Smoot's driver's license is currently revoked because she could not pay fines and court costs for traffic tickets in 2016 and 2017. Smoot Decl. ¶¶ 3, 14, 20. Ms. Smoot needs a license to support herself and her daughter, and to get to her job, as well as getting to doctor's appointments, church, and the grocery store. *Id.* ¶¶ 4, 21, 24. She struggles mightily to meet her financial needs, like rent, utilities, car note and car insurance, and groceries, and lives with her grandmother to try to save costs. *Id.* ¶¶ 21–23. She has had to choose between paying utilities or buying groceries, gave up on college, and has cycled through poverty when she lost a prior car, and then, her job. *Id.* ¶¶ 10–13, 19. Ms. Smoot continues to face ongoing, imminent harm arising from the revocation of her license, as she cannot provide for herself and her family without risking driving on a suspended license, which exposes her to additional tickets. *Id.* ¶¶ 21, 24.

Ms. Smoot pled guilty to tickets that resulted in fines and costs of over \$500; she cannot afford to pay all these tickets due to her limited finances. *Id.* ¶¶ 5–7, 15–17. When she failed to pay, the DMV sent her nearly identical Revocation Notices, which failed to tell her how to avoid the revocation or reinstate her license after the revocation, except to “comply” with the citation by the designated dates. *Id.* ¶¶ 8, 18 & Attachments A & B (Notices). The DMV indefinitely revoked her license in late 2016 and again in early 2018 because she did not pay. *Id.* ¶¶ 14, 20.

Plaintiff Nichelle Yarborough's driver's license is currently revoked from a 2008 ticket. Declaration of Nichelle Yarborough (“Yarborough Decl.”) ¶ 3. Ms. Yarborough needs a license to support herself and her four young children, one of whom is an infant

born prematurely, and another of whom has developmental disabilities. *Id.* ¶ 2. She needs to drive to get her children to school, doctor’s offices, and hospitals, as well as groceries and basic necessities. *Id.* ¶¶ 2, 4. She is unemployed, has filed for bankruptcy, and is enrolled in community college with the hopes that an education will give her better career opportunities. *Id.* ¶¶ 5, 11. Ms. Yarborough continues to face ongoing, imminent harm arising from the revocation of her license, as she cannot provide for herself and her family without risking driving on a suspended license, which further exposes her to additional tickets. *Id.* ¶ 4.

Ms. Yarborough received a ticket for driving without insurance in 2008, and owes over \$290 for this ticket; she does not have enough money to pay off this ticket. *Id.* ¶¶ 6, 11. The notice the DMV sent tells her she must “comply” with the citation, which she assumed means she had to pay in full. *Id.* ¶ 8.

Plaintiffs’ experiences are typical of many others who have lost—or will soon lose—their ability to drive due to poverty. In North Carolina the inability to drive makes it nearly impossible to sustain a livelihood or provide for family. A driver’s license is a “very common requirement” to obtain employment, including most jobs that “can actually lift people out of poverty.”⁵ Nearly 92% of North Carolinians travel to work by

⁵ See, e.g., Alana Semuels, *No Driver’s License, No Job*, *The Atlantic* (June 15, 2016), <https://goo.gl/xQjyLj>, attached as Exhibit B to Brooke Decl. (DE 6); Stephen Bingham et al., *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 26–28 (2016), <https://goo.gl/uLhFfL>, attached as Exhibit C to Brooke Decl.

car and only 1.1% travel to work by public transit.⁶ Reliable, accessible public transit remains scarce in the state, where the vast majority of counties are rural.⁷ Public transit services in urban areas of the state also provide limited access to jobs.⁸

Thus, lack of transportation options remains a common barrier to obtaining and maintaining employment for many North Carolinians.⁹ Accordingly, revocations for failure to pay make it even more difficult to find and keep employment, and create an unjust and impossible dilemma: drive illegally and risk further punishment, or stay home, lose employment, and forgo the ability to provide for one's basic daily needs.

QUESTIONS PRESENTED

- A. Whether the license revocation process for failure to pay, enforced by the DMV pursuant to N.C.G.S. § 20-24.1, violates the Fourteenth Amendment, including whether the notice used by the DMV is constitutionally deficient.
- B. Whether Plaintiffs are entitled to preliminary injunctive relief.

⁶ U.S. Dep't of Transp., Bureau of Transp. Stats., *NORTH CAROLINA Transportation by the Numbers 2* (2016), <https://goo.gl/eM6NWy>, attached as Exhibit D to Brooke Decl.

⁷ See Tazra Mitchell, *Connecting Workers to Jobs through Reliable and Accessible Public Transit*, Policy & Progress, N.C. Justice Center (Nov. 2012), <https://goo.gl/qOF0S>, attached as Exhibit E to Brooke Decl. (noting scarcity of public transit options); Chandra T. Taylor and J. David Farren et al., *Beyond the Bypass: Addressing Rural North Carolina's Most Important Transportation Needs*, So. Envtl. Law Ctr. 1 (2012), <https://goo.gl/xQjyLj>, attached as Exhibit F to Brooke Decl.

⁸ Mitchell, *supra* note 7, at 1–2.

⁹ *Id.*

ARGUMENT

A plaintiff seeking a preliminary injunction must show that: “(1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm, (3) the balance of hardships tips in their favor, and (4) the injunction is in the public interest.” *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (citation omitted).¹⁰

A. Plaintiffs Are Likely to Prevail on Their Claims.

The Constitution prohibits states from revoking the driver’s licenses of people who cannot afford to pay fines and costs. It is also unconstitutional to revoke driver’s licenses without providing sufficient notice and an opportunity to be heard. Indeed, within the last year, comparable license revocation statutes have been enjoined in Tennessee and Michigan. *See Robinson v. Purkey*, No. 3:17-CV-1263, 2017 WL 4418134 (M.D. Tenn. Oct. 5, 2017) (granting TRO reinstating licenses suspended for non-payment of traffic tickets, pending ruling on preliminary injunction); *Thomas v. Haslam*, No. 3:17-CV-5, 2018 WL 3301648 (M.D. Tenn. July 2, 2018), *appeal filed*, No. 18-5766 (filed July 27, 2018) (granting summary judgment and enjoining revocation of licenses for failure to pay non-traffic court debt); *Fowler v. Johnson*, No. CV 17-11441, 2017 WL 6379676 (E.D. Mich. Dec. 14, 2017) (enjoining suspension of licenses for non-

¹⁰ Plaintiffs’ withdrawn memorandum in support of a preliminary injunction misstated that the reinstatement of licenses would involve a mandatory injunction. DE 7 at 9. This was error. Restoring the licenses of Ms. Smoot, Ms. Yarborough, and related individuals is a prohibitory injunction because it restores the parties to “the ‘last uncontested status between the parties which preceded the controversy,’” *i.e.*, to the point prior to their licenses being suspended. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) (citation omitted).

payment), appeal filed, No. 17-2504 (6th Cir. Dec. 19, 2017).¹¹ A similar conclusion is warranted here.¹²

1. Defendant’s automatic revocation of driver’s licenses without a prior determination of ability to pay violates the Fourteenth Amendment.

North Carolina’s license revocation statute violates fundamental constitutional principles of equal protection and due process by subjecting those who cannot afford to pay fines and costs to an additional punishment not imposed on those who can pay. It is well established that a person may not be punished, either by incarceration or by other means, solely because they cannot afford to pay fines and costs. *See Bearden v. Georgia*, 461 U.S. 660, 664 (1983) (“[The Court] has long been sensitive to the treatment of indigents in our criminal justice system”); *Mayer v. City of Chicago*, 404 U.S. 189, 196 (1971) (striking down prohibition on right of indigent criminal defendant to appeal fine-only offense). In articulating the Court’s commitment to the “basic command that justice

¹¹ Plaintiffs respectfully submit that these decisions misapplied the judicial standard mandated by *Bearden v. Georgia*, 461 U.S. 660, 664 (1983). *Fowler* concluded that *Bearden* did not apply while *Robinson* and *Thomas* applied a lower rational basis analysis in deference to dicta from the Sixth Circuit. As discussed below, this was error. But *even under the lowest standard of judicial review*, these courts concluded that Tennessee and Michigan’s license revocation statutes did not pass constitutional muster.

¹² A third case challenges Virginia’s suspension scheme. The district court dismissed for lack of jurisdiction because that statutory scheme directed the *state court* to order suspension of licenses, and plaintiffs sued the state Department of Motor Vehicles Commissioner. *Stinnie v. Holcomb*, No. 3:16-cv-44, 2017 WL 963234, at *9 (W.D. Va. Mar. 13, 2017), *appealed*, 2018 WL 2337750 (4th Cir. 2018) (dismissing appeal and remanding with leave to amend). *Stinnie* is inapposite. North Carolina law places revocation authority within the exclusive domain of the DMV—not with state courts. *See* N.C.G.S. §§ 20-24.1, 20-24.2 (court provides notice; DMV revokes); *Smith v. Walsh*, 238 S.E.2d 157 (N.C. App. 1977) (DMV has exclusive authority to revoke).

be applied equally to all persons,” the Court has emphasized that “the passage of time has heightened rather than weakened attempts to mitigate the disparate treatment of indigents in the criminal process.” *Williams v. Illinois*, 399 U.S. 235, 241 (1970).

In the seminal case of *Bearden v. Georgia*, the Supreme Court outlined the framework for evaluating whether a criminal justice sanction unconstitutionally punishes a defendant for being poor. 461 U.S. 660.¹³ Because “[d]ue process and equal protection principles converge” in evaluating such claims, the Court dismissed the traditional equal protection framework—which usually requires analysis under a particular level of scrutiny—as a “task too Procrustean to be rationally accomplished.” *Id.* at 666 n.8. Instead, the Court required a more searching approach directed at weighing the impact a sanction may have on an indigent defendant. *Id.*; *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (requiring balance of “the character and intensity of the individual interest at stake . . . and the State’s justification” (internal citation marks omitted)).

In assessing whether a criminal justice sanction punishes individuals for their poverty, *Bearden* requires a “careful inquiry” into: (1) “the nature of the individual interest affected,” (2) “the extent to which it is affected,” (3) “the rationality of the

¹³ While *Bearden* involved jailing for failing to pay, the principle that a person may not be punished for her poverty “is not confined to cases in which imprisonment is at stake.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 111, 112 (1996) (citations omitted); *see also Mayer*, 404 U.S. at 197 (indigent entitled to copy of appellate record); *Miller v. Smith*, 115 F.3d 1136, 1141 (4th Cir. 1997) (appellate rights); *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) (attorney fee reimbursement statute); *see also* U.S. Stmt. of Interest, *Stinnie*, at 15-16, No. 3:16-cv-00044 (W.D. Va. Nov. 7, 2016) (summarizing same), attached as Exhibit H to Brooke Decl.

connection between legislative means and purpose,” and (4) “the existence of alternative means for effectuating the purpose” 461 U.S. at 666 (citation omitted). Under this standard, Defendant’s automatic, indefinite revocation system is unconstitutional for the reasons set forth below.

- i. Section 20-24.1 deeply impairs Plaintiffs’ substantial property interest in their driver’s licenses.

Plaintiffs have a substantial property interest in their driver’s licenses because they rely on their licenses as a means of economic survival. *See Mackey v. Montrym*, 443 U.S. 1, 11 (1979). A person’s means of support enjoys heightened significance as a property interest. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 539 (1985); *Bell v. Burson*, 402 U.S. 535, 539 (1971); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). A driver’s license is “essential in the pursuit of livelihood,” *Bell*, 402 U.S. at 539; *see also Miller v. Anckaitis*, 436 F.2d 115 (3rd Cir. 1970) (license indispensable “for virtually everyone who must work for a living”); U.S. Stmt. of Interest, *Stinnie*, at *9, Ex. H to Brooke Decl. Individuals’ interest in their driver’s license is therefore “substantial.” *Scott v. Williams*, 924 F.2d 56, 59 (4th Cir. 1991).

The need to access and legally operate a vehicle is particularly acute in North Carolina, where public transportation is limited and nine out of ten residents need a car for employment. *Supra* pp. 8–9. Absent a valid driver’s license, North Carolinians like Plaintiffs have extremely limited avenues for economic survival.

ii. The private interest is substantially affected.

Defendant's automatic revocation of Plaintiffs' driver's licenses completely bars them from driving. After the license is revoked, an individual must stop driving or run an immediate risk of further criminal sanctions for driving on a revoked license. This process inhibits the ability of low-income persons to pursue a livelihood and support their families, since a person with a revoked driver's license "is at an extraordinary disadvantage in both earning and maintaining material resources." *Robinson*, 2017 WL 4418134, at *9. Plaintiffs are also inhibited in fulfilling the basic necessities of life, including picking up their children from school and going to a grocery store to purchase food for family members.

iii. The legislative means of Section 20-24.1 and its purpose are not rationally related.

The legislative purpose of Section 20-24.1(a)(2) is to ensure compliance with orders by collecting unpaid fines and costs. But as explained in *Bearden*, in determining whether legislative means are rationally related to legislative purpose, it "is of critical importance" whether the statutory scheme accounts for the reason for nonpayment when sanctioning a person for failure to pay. 461 U.S. at 668. Revoking the driver's licenses of people who cannot afford to pay fines and costs is not rationally related to collecting money, because punishing "someone who through no fault of his own is unable to [pay] will not make [payment] suddenly forthcoming." *Id.* at 670. It is also counterproductive because suspending driving privileges actually undermines these individuals' ability to earn money to pay their fines and costs, amounting to "little more than punishing a

person for his poverty.” *Id.* at 671; *see also Robinson*, 2017 WL 4418134, at *9 (“[T]aking an individual’s driver’s license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.”).

iv. Alternative means exist to effectuate the State’s legislative purpose.

Alternative means that are more effective than automatic, indefinite license revocations of people unable to pay exist to effectuate the State’s interest in ensuring compliance with monetary court judgments. For example, North Carolina could extend the time to pay, reduce payment amounts, or utilize a graduated payment plan to collect unpaid fees and costs. *See Tate v. Short*, 401 U.S. 395, 399–400 & n.5. The State could also create alternative sanctions, including performing public service or completing traffic safety classes. *See U.S. Stmt. of Interest, Stinnie*, at *14, Ex. H to Brooke Decl.

2. Defendant violates procedural due process by automatically revoking drivers’ licenses for nonpayment without any meaningful pre-deprivation opportunity to be heard.

The “central meaning” of procedural due process is notice and an opportunity to be heard at a meaningful time and manner. *See Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Mallette v. Arlington Cty. Employees’ Supp. Retirement Sys. II*, 91 F.3d 630, 634 (4th Cir. 1996). In determining what process is due, a court must balance: (1) the nature of the private interest that will be affected by the governmental action; (2) the risk of erroneous deprivation through the procedures used and the probable value of requiring

additional procedural safeguards; and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Ordinarily due process requires an opportunity for 'some kind of hearing' *prior to* the deprivation of a significant property interest. *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 19 (1978) (emphasis added) (citations omitted); *see also Fuentes*, 407 U.S. at 82. Indeed, courts have held that revocation of a driver's license without a prior ability-to-pay hearing violates due process. *See Robinson*, 2017 WL 4418134, at *9; *Fowler*, 2017 WL 6379676, at *12; *cf. Craft*, 436 U.S. at 18 (same for termination of utilities); *Goldberg*, 397 U.S. at 264 (same for welfare benefits).

i. The private interest affected by the deprivation is substantial.

Individuals have a substantial property interest in their drivers' licenses. *Mackey*, 443 U.S. 1, 11 (1979). License revocation is a complete deprivation. *See Dixon v. Love*, 431 U.S. 105, 113 (1977). Therefore, a license may not be suspended "without that procedural due process required by the Fourteenth Amendment." *Bell*, 402 U.S. at 539.

ii. The risk of erroneous deprivation under section 20-24.1 is substantial absent additional procedural safeguards.

As the Supreme Court has explained, when a state fails to permit "consideration of an element essential to the decision" of whether to revoke a license before revocation—particularly an element that is fact-dependent—the process does not satisfy due process because there is too great a risk of an erroneous result. *Bell*, 402 U.S. at 542; *see also Conn. Dep't of Public Safety v. Doe*, 538 U.S. 1, 7 (2003) (finding due process requires opportunity to prove facts material to statutory scheme); *cf. Plumer v. Maryland*, 915

F.2d 927 (4th Cir. 1990) (citations omitted) (affirming statute requiring hearing before suspension); *Jones v. Penny*, 387 F. Supp. 383, 394–95 (M.D.N.C. 1974) (same). By contrast, where the suspension is “largely automatic,” a pre-deprivation hearing may not be necessary. *See Dixon*, 431 U.S. at 113 (suspension based on point system); *Mackey*, 443 U.S. at 1 (same based on refusal to take breath-analysis test).

Here, the willfulness of an individual’s non-payment is material: if one did not willfully fail to pay, she should not be punished for it.¹⁴ Yet, the statutory scheme does not ensure that willfulness will be found before imposing the sanction of prohibiting use of an individual’s driver’s license. Rather, the scheme requires that DMV revocation orders result in the automatic, indefinite revocation of licenses. N.C.G.S. § 20-24.2(a)(2). This process is insufficient to ensure that only those who have the means to pay will be coerced to pay through license revocation. *Bell*, 402 U.S. at 542.

Moreover, this deficiency is not cured by the 60-day window before the revocation becomes effective. Relief from indefinite license revocation is still conditioned on the individual knowing about, and affirmatively seeking, a hearing on ability to pay, which is entirely undermined by the insufficient notice the DMV sends the driver that makes no mention of this process. *See infra* pp. 20–21. Thus, a pre-deprivation hearing is necessary to ensure that the substantive standard of willful nonpayment is met *before* the State revokes a person’s license.

¹⁴ “Willfulness” is a factor the legislature clearly intended to be considered for proper license revocation. *See* N.C.G.S. § 20-24.1(b)(4); *see also Bell*, 402 U.S. at 541 (evaluating statutory scheme to identify critical issues requiring hearing).

By analogy, the same conclusion is reached by examining Section 20-24.1 through the lens of civil contempt. Civil contempt is defined by an intent to coerce compliance with a prior order. *See Hicks ex. rel. Feiock v. Feiock*, 485 U.S. 624, 646–47 (1988); Black’s Law Dictionary, *Civil Contempt* (10th ed. 2014) (“A civil-contempt proceeding is coercive or remedial in nature. . . .”). To be constitutional, a civil contempt process requires a willfulness determination because “[a] court may not impose punishment ‘in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order.’” *Turner v. Rogers*, 564 U.S. 431, 442 (2011) (citation omitted); *see also McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 251 (1972) (requiring willfulness); Black’s Law Dictionary, *Civil Contempt* (10th ed. 2014) (“The act (or failure to act) complained of must be within the defendant’s power to perform . . .”).

Like civil contempt, Section 20-24.1 seeks to coerce payment of unpaid fines and costs. For this coercive scheme to satisfy due process, the DMV must first ensure that non-payment was willful. Failing to do so results in an extremely high risk that people who have not willfully failed to pay will suffer erroneous license revocations.

iii. The State’s interests do not justify dispensing with a pre-deprivation hearing.

The Supreme Court permits deprivation of property interests without a hearing in only “extraordinary circumstances.” *Fuentes*, 407 U.S. at 90. To do so, “three criteria must be satisfied”:

(1) the seizure must be directly necessary to secure an important governmental or general public interest; (2) there must be a special need for very prompt action; and (3) the person initiating the seizure must be a government official responsible for determining, under the standards of a narrowly drawn statute, that seizure is necessary and justified in the particular instance.

Richmond Tenants Org., Inc. v. Kemp, 956 F.2d 1300, 1307 (4th Cir. 1992) (citation omitted).

None of these criteria apply here. First, the government lacks an important interest in revoking drivers' licenses of individuals who *cannot* pay fines and costs: license revocations cannot achieve payment. *Supra* p. 14. The State has a strong interest in suspending the licenses of dangerous drivers, *see Dixon*, 431 U.S. at 114; *Mackey*, 443 U.S. at 17, 18, but non-payment of fines has no connection to public safety, *Dixon*, 431 U.S. at 114; *Robinson*, 2017 WL 4418134, at *8 (distinguishing suspension for failing to pay versus suspension for severity or numericity of offenses). Indeed, this policy *undermines* public safety because revocations divert law enforcement resources away from scenarios that do pose a risk to the public, and lead to more unlicensed and uninsured drivers.¹⁵

Second, there is no special need for automatic license revocation. The State's ability to collect unpaid debt is not deterred by deferring revocation until after a hearing.

¹⁵ *See* Am. Ass'n of Motor Veh. Adm'rs, *Best Practices Guide to Reducing Suspended Drivers* 3 (2013), <https://goo.gl/2jtka7>, attached as Exhibit G to Brooke Decl. (recommending ceasing suspension of licenses "for non-highway safety related violations" because it would increase public safety).

Third, the revocation process is *not* initiated by a “government official responsible for determining, under the standards of a narrowly drawn statute, that seizure is necessary and justified in the particular instance.” *Richmond Tenants Org.*, 956 F.2d at 1307. Here, the revocation is automatic; no government official monitors the process to ensure that any particular revocation is justified. *See* N.C.G.S. §§ 20-24.1, 20-24.2.

Finally, while a pre-revocation hearing may cause some fiscal burden, “[f]inancial costs alone [are] not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision.” *Mathews*, 424 U.S. at 348. Such considerations are instead a “factor that must be weighed” to assess how *extensive* the procedural safeguard must be. *Id.* Cost cannot justify the DMV abdicating its responsibility to hold a pre-deprivation hearing that is necessary to establish whether a person willfully failed to pay.

3. The DMV violates procedural due process by revoking licenses for non-payment without adequate notice of legal rights under Section 20-24.1.

Adequate notice is “a vital corollary to one of the most fundamental requisites of due process—the right to be heard.” *Schroeder v. City of New York*, 371 U.S. 208, 212 (1962). Notice allows a person to choose “whether to appear or default, acquiesce or contest.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The standard for determining whether notice is sufficient involves a holistic reasonableness analysis. Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action; afford them an opportunity to present their objections” and “convey the required information.” *Id.*; *Craft*, 436 U.S. at 14;

Goldberg, 397 U.S. at 268–69. Where a punishment may be imposed, notice must inform the party as to what the “critical issue[s]” of the hearing will be. *Turner*, 564 U.S. at 447.

To be adequate, “notice requires accuracy in the description of legal rights and options available to parties.” *Dealy v. Heckler*, 616 F. Supp. 880, 886 (W.D. Mo. 1984) (citation omitted); *McCubbrey v. Boise Cascade Home & Land Corp.*, 71 F.R.D. 62 (N.D. Cal. 1976)). A misleading notice violates the core constitutional principle of due process. *See, e.g., id.* (notice providing incomplete information found insufficient); *see also Nnebe v. Daus*, 184 F. Supp. 3d 54, 74 (same where notices did not convey factors commission would consider); *Noah v. McDonald*, 28 Vet. App. 120, 123 (2016) (same regarding deadline to submit evidence); *Butland v. Bowen*, 673 F. Supp. 638, 641 (D. Mass. 1987) (same regarding statute of limitations); *Mallette*, 91 F.3d at 641 (notice “affirmatively misl[ed]” by incorrectly suggesting benefits would be granted).

Here, the Revocation Notice is critically misleading. The Notice gives the drivers only one option to avoid having their licenses revoked—“comply” with the citation—and omits any reference to the option of a hearing under Section 20-24.1(b) and (b1) to prevent indefinite revocation of the license by demonstrating inability to pay.

Because the Notice advises recipients of their monetary debt but gives no information regarding any alternative beyond full payment, a typical reader would interpret “compliance” to mean that the citation must be paid in full to prevent the revocation from becoming effective. Smoot Decl. ¶¶ 8–9, 18; Yarborough Decl. ¶¶ 7–8;

see also Johnson Decl. ¶¶ 15, 17. This omission is constitutionally deficient. *See Turner*, 564 U.S. at 447; *Nnebe*, 184 F. Supp. 3d at 74.

B. Plaintiffs Will Suffer Immediate, Irreparable Injury Without a Preliminary Injunction.

Plaintiffs will suffer immediate irreparable injury absent the entry of a preliminary injunction. Where, as here, a constitutional right is being violated, irreparable injury is assumed. *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987); *Messmer v. Harrison*, No. 5:15-CV-97, 2015 WL 1885082, at *2 (E.D.N.C. Apr. 24, 2015) (collecting cases). The Court “will not be able to make a driver whole” for any economic harm or inconvenience caused by erroneously suspended license. *Mackey*, 443 U.S. at 11.

Without a driver’s license, Plaintiffs and those similarly situated will continue to be trapped in a vicious cycle of poverty and prevented from pursuing economic opportunities that will allow them to provide for their families’ basic needs, and to ultimately pay off the fines and costs they owe. Here, the inability to drive impedes their ability to work, access groceries and medical care, care for and support their families, and be active community members. *See supra* at 5–9; *see also Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017). These injuries cannot be redressed through damages and are irreparable. *See id.* (noting loss of opportunity to pursue employment constitutes irreparable harm (citations omitted)); *Robinson*, 2017 WL 4418134, at *10 (same); *see also Mackey*, 443 U.S. at 11 (noting state “will not be able to make a driver whole” for any economic harm or inconvenience caused by erroneously suspended license); *Padberg v. McGrath-McKechnie*, 108 F. Supp. 2d 177, 183 (E.D.N.Y. 2000)

(finding irreparable injury where deprivation of license “imminently threaten[ed]” plaintiff’s “continued subsistence, an injury . . . which could not be adequately compensated by a monetary award”); *cf. Reynolds v. Guiliani*, 35 F. Supp. 2d 331, 339 (S.D.N.Y. 1999) (“To indigent persons, the loss of even a portion of subsistence benefits constitutes irreparable injury.” (citation omitted)).

C. The Threatened Injury To Plaintiffs Outweighs Any Potential Harm Injunctive Relief Might Cause To Defendant, and An Injunction Serves The Public Interest.

The threat of injury to Plaintiffs considerably outweighs any potential harm to Defendant, and the requested injunction would serve the public interest. Plaintiffs are being denied a critical ability to support themselves and their families. *See supra* 5–9; *see also Bell*, 402 U.S. at 539. By contrast, Defendant is being asked to comply with the law; this is not a cognizable hardship. *Giovanni Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002); *see also Messmer*, 2015 WL 1885082, at *2. Any administrative costs associated with affording pre-deprivation hearings is outweighed by the harms to Plaintiffs’ ability to drive to keep their jobs, support their families, and meet other critically important basic needs.

Moreover, Section 20-24.1’s revocation scheme does not serve the State’s interest in collecting fines and costs if the driver cannot pay. *See supra* pp. 14, 19. And because Plaintiffs are not challenging their underlying monetary sentences, the State can enforce monetary sentences through alternative measures other than license revocations. *See supra* p. 15.

An injunction also serves the public interest. “Upholding constitutional rights surely serves the public interest.” *Cento Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 191 (4th Cir. 2013) (citation omitted); *Giovani Carandola, Ltd.*, 303 F.3d at 521 (same). Granting the injunction would enable Plaintiffs to drive, which would permit obtaining and retaining employment and meeting their and families’ daily needs, as well as, ultimately being able to pay off their unpaid court debt.

CONCLUSION

For the above reasons, Plaintiffs respectfully request a preliminary injunction to issue. *See supra* at 2.

Dated: August 7, 2018.

Respectfully submitted,

/s/ Kristi L. Graunke

Kristi L. Graunke

/s/ Samuel Brooke

Samuel Brooke

On behalf of Counsel for Plaintiffs

Christopher A. Brook (NC Bar No. 33838)
Cristina Becker (NC Bar No. 46973)
Sneha Shah*
AMERICAN CIVIL LIBERTIES UNION
OF NORTH CAROLINA LEGAL
FOUNDATION
P.O. Box 28004
Raleigh, North Carolina 27611
T: 919-834-3466
E: cbrook@acluofnc.org
E: cbecker@acluofnc.org
E: sshah@acluofnc.org

Nusrat J. Choudhury*
R. Orion Danjuma*

Kristi L. Graunke (NC Bar No. 51216)
Emily C.R. Early*
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Ste. 340
Decatur, Georgia 30030
T: 404-221-4036
E: kristi.graunke@splcenter.org
E: emily.early@splcenter.org

Samuel Brooke*
Danielle Davis*
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, Alabama 36104
T: 334-956-8200

AMERICAN CIVIL LIBERTIES UNION
125 Broad Street, 18th Floor
New York, New York 10004
T: 212-519-7876
T: 212-549-2563
E: nchoudhury@aclu.org
E: odanjuma@aclu.org

**Appearing by Special Appearance
pursuant to L.R. 83.1(d)*

F: 334-956-8481
E: samuel.brooke@splcenter.org
E: danielle.davis@splcenter.org

Laura Holland (NC Bar No. 50781)
SOUTHERN COALITION FOR SOCIAL
JUSTICE
1415 W. NC Hwy 54, Suite 101
Durham, North Carolina 27707
T: 919-323-3380 x.161
F: 919-323-3942
E: lauraholland@southerncoalition.org

Counsel for Plaintiffs

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), I certify that the body of this memorandum, including headings and footnotes but excluding the caption, signature lines, certificates, and any cover pages or indices, does not exceed 6,250 words.

/s/ Samuel Brooke

Samuel Brooke

CERTIFICATE OF SERVICE

I certify that arrangements have been made to this day deliver a true and correct copy of the foregoing by this Court's CM/ECF system to the following attorney(s) of record for Defendant:

Neil Dalton
Kathryne E. Hathcock
Ann W. Mathews
Alexander Peters
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
ndalton@ncdoj.gov
khathcock@ncdoj.gov
amathews@ncdoj.gov
apeters@ncdoj.gov

Dated this August 7, 2018.

/s/ Samuel Brooke

Samuel Brooke