

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

SETI JOHNSON and SHAREE SMOOT,
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.

(CLASS ACTION)

Expedited Ruling Requested

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs Seti Johnson and Sharee Smoot and pursuant to Rule 65 of the Federal Rules of Civil Procedure, move the Court for a preliminary injunction against Defendant Torre Jessup, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles (the "DMV"), in connection with Plaintiffs' First, Second, and Third Claims for Relief. In support of this Motion, Plaintiffs state as follows:

1. This matter challenges Section 20-24.1 of the North Carolina General Statutes, which mandates the DMV to indefinitely revoke individuals' drivers' licenses for non-payment of fines, court costs, and penalties for traffic offenses ("fines and costs"), without any determination of ability to pay, pre-deprivation hearing on willfulness of non-payment, or meaningful notice—in violation of the Fourteenth Amendment of the U.S. Constitution.

2. Mr. Seti Johnson is facing imminent indefinite revocation of his driver's license on or around July 24, 2018, because he has been, and remains, unable to pay outstanding fines and costs for a 2017 traffic ticket. Declaration of Seti Johnson ¶¶ 13, 14 ("Johnson Decl."). Mr. Johnson relies on his driver's license to search for work and when employed, to travel to work; to travel to the grocery store; to take his children to school and daycare; and to attend doctor's appointments. *Id.* ¶¶ 4, 16. Absent injunctive relief, he will indefinitely lose his license and as a result, will not be able to maintain employment and care for himself and his family. Johnson Decl. ¶¶ 16, 18.

3. The DMV indefinitely revoked Ms. Smoot's license in 2016 and 2018 for non-payment of fines and costs that she could not afford, and her license remains revoked. Declaration of Sharee Smoot ¶¶ 3, 7–14, 17–20 ("Smoot Decl."). Ms. Smoot needs a valid driver's license to support herself, her daughter, and her grandmother. She currently works forty-five minutes from her home, but has no one to pick her up from, and drop her off at, work. *Id.* ¶ 4. She also needs a license to travel to doctor's appointments and her church and to get food for her daughter. *Id.* ¶ 21. Ms. Smoot, however, still does not have money to pay her traffic tickets due to strained financial circumstances. *Id.* ¶¶ 22–23. Thus, absent injunctive relief, she will continue to experience harm from the indefinite revocation of her license and will not be able to maintain employment and care for herself and her family. *Id.* ¶ 24.

4. Neither Mr. Johnson nor Ms. Smoot has ever been provided any hearing or assessment of ability to pay. Nor has either received any notice of existing alternatives

under state law for those who cannot pay. Johnson Decl. ¶¶ 10, 15; Smoot Decl. ¶¶ 6, 8, 16, 18.

5. Thus, as detailed in Plaintiffs' accompanying Memorandum of Law, Plaintiffs are likely to prevail on the merits of their First, Second, and Third Claims for Relief that Section 20-24.1 violates the Fourteenth Amendment to U.S. Constitution because it mandates the DMV to revoke licenses for non-payment without any determination of ability to pay, a hearing to determine willfulness of non-payment, or meaningful notice.

6. If a preliminary injunction does not issue, Mr. Johnson will suffer the immediate irreparable injury of the loss of his driver's license, and Ms. Smoot will suffer imminent irreparable injury of the ongoing revocation of her driver's license. Thus, Ms. Smoot currently faces, and Mr. Johnson will soon face, the impossible choice of staying at home and being unable to provide for themselves and their families or of driving illegally to meet basic needs.

7. The threatened injury to Plaintiffs and the putative Classes significantly outweighs any possible injury a preliminary injunction may cause Defendant, and the injunction would serve the public interest.

8. For these reasons and the reasons set forth in the accompanying Memorandum of Law in Support, the declarations of Mr. Johnson, Ms. Smoot, and Mr. Samuel Brooke and the Exhibits appended thereto; and any other matters presented to the Court, Plaintiffs respectfully request the Court grant this Motion and enter a preliminary

injunction that: (1) enjoins the DMV's enforcement of Section 20-24.1(a)(2) and (b)(3)-(4) of the North Carolina General Statutes; (2) enjoins the DMV's revocation of drivers' licenses for non-payment under Section 20-24.1(a)(2); and (3) mandates the DMV to lift current license revocations entered pursuant to Section 20-24.1(a)(2), reinstate licenses without charging a reinstatement fee if there are no other bases for the revocation, and provide notice to the license-holders of this change, pending a final determination on the merits of Plaintiffs' claims.

Dated May 30, 2018.

Respectfully submitted,

/s/ Kristi L. Graunke

Kristi L. Graunke

On behalf of Counsel for Plaintiffs

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

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CERTIFICATE OF SERVICE

I certify that arrangements have been made to this day deliver a true and correct copy of the foregoing by hand delivery to the following:

Torre Jessup, Commissioner, or
via Brandon Mattox or Charlotte Hanemann, Designated Agents
Office of the Commissioner
North Carolina Division of Motor Vehicles
3101 Mail Service Center
Raleigh, NC 27699-3101

Formal proof of service will be filed with the Court when completed.

I further certify that arrangements have been made to this day deliver a true and correct courtesy copy of the foregoing to the following, in the manners described below:

Via Certified U.S. Mail, Return Receipt Requested

Josh Stein, Attorney General
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Via Electronic Mail

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DATED this May 30, 2018.

/s/ Kristi L. Graunke

Kristi L. Graunke