

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

<p>Linguista White, <i>et al.</i>,  Plaintiffs,  v.  Kevin Shwedo, <i>et al.</i>,  Defendants.</p>	<p>Civil Action No. 2:19-cv-03083-RMG  (CLASS ACTION)  <b>Expedited Ruling Requested</b></p>
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**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

The South Carolina Department of Motor Vehicles (“DMV”) currently bars tens of thousands of people from legally driving because they cannot afford to pay fines and fees for traffic violations. Plaintiffs Emily Bellamy and Janice Carter are among those being unlawfully punished with the absolute loss of their driver’s licenses simply because they are indigent. Plaintiff Linqusta White has been similarly punished because she could not pay a traffic ticket. The economic and personal consequences of these driver’s license suspensions are severe in South Carolina, where the vast majority of counties are rural and lack accessible public transportation and where nine out of ten people rely on driving to pursue their livelihoods.

As a matter of policy and practice, the DMV automatically suspended Plaintiffs’ driver’s licenses under South Carolina Code Section 56-25-20 (“Section 56-25-20”) without providing proper notice or a hearing and without determining Plaintiffs could pay traffic fines and fees but willfully refused to do so. The DMV failed to inform Plaintiffs of any process by which they could contest the loss of their driver’s licenses. Rather, the DMV made clear that Plaintiffs could only regain their licenses by paying in full all traffic fines and fees and additional DMV fees charged to reinstate a license. In fact, neither the DMV nor the South Carolina Office of Motor Vehicle Hearings (“OMVH”)—the agency empowered to review license suspensions—offer any hearings on ability to pay. The result is a wealth-based system that punishes indigent people with driver’s license suspension simply because they are unable to afford fines and fees.

In a state where one in six people endure poverty, the DMV robs Plaintiffs and tens of thousands of others of a crucial means of self-sufficiency. Without driver’s licenses, Ms. Bellamy and Ms. Carter continue to live in financial hardship because they are unable to drive to work or to secure better paying jobs without risking further legal consequences—including

additional fines and jail time—for driving on a suspended license. Suspensions thus substantially impair their ability to pay traffic fines and fees as well as to take their children to school, attend places of worship, and otherwise care for themselves and loved ones.

Plaintiffs bring this action under 42 U.S.C. § 1983 on behalf of themselves and thousands of similarly situated people to vindicate their constitutional rights.<sup>1</sup> In Claim One of their Class Action Complaint for Injunctive and Declaratory Relief (“Complaint”), Plaintiffs challenge the DMV for violating the right to protection from punishment for inability to pay, which is grounded in both due process and equal protection as delineated in *Bearden v. Georgia*, 461 U.S. 660 (1983). Plaintiffs now request a preliminary injunction on Claim One<sup>2</sup> to: (1) prohibit the DMV from suspending driver’s licenses for failure to pay traffic tickets (“FTPTT”) without first providing a hearing and determining that failure to pay was willful; and (2) require the DMV to lift all current FTPTT suspensions on driver’s licenses, strike reinstatement fees for those suspensions, reinstate licenses that have no other suspension basis, and provide notice to license-holders of these changes, pending the ultimate determination of the merits of Plaintiffs’ claims.<sup>3</sup>

## I. STATEMENT OF FACTS

### A. **The DMV automatically and indefinitely suspends driver’s licenses based on nonpayment of traffic tickets without a hearing or determining that nonpayment is willful.**

As of May 31, 2019, more than 190,000 people had a driver’s license under indefinite

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<sup>1</sup> On November 1, 2019, Plaintiffs filed a motion for class certification with accompanying record evidence. *See* ECF Nos. 8–17.

<sup>2</sup> Plaintiffs do not move for preliminary relief as to Claims Two through Five of the Complaint.

<sup>3</sup> When Plaintiffs’ motion for class certification was filed, Ms. White faced a substantial risk of imminent harm from the DMV’s policies and practices due to inability to pay pending traffic tickets. Her claims for individual relief are now moot because those tickets were abnormally dismissed or resolved without imposition of fines. She may, however, pursue preliminary relief on behalf of the proposed Classes under the exception to the mootness doctrine for inherently transitory claims. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975).



suspension by the DMV for failure to pay traffic tickets under Section 56-25-20.<sup>4</sup> Section 56-25-20 does not *require* the DMV to suspend driver’s licenses. Instead, the statute merely *permits* the agency to do so if it is timely notified that a South Carolina resident or driver’s license holder has failed to comply with a traffic citation. *See* S.C. Code § 56-25-20 (providing the DMV “may suspend or refuse to renew” a driver’s license upon notice, within twelve months of a traffic citation’s issuance or adjudication, of “fail[ure] to comply with the [citation’s] terms”).<sup>5</sup>

As a matter of policy and practice, the DMV automatically initiates the FTPTT suspension process when it receives a report of failure to pay a traffic citation from a South Carolina court or an out-of-state court or motor vehicle department.<sup>6</sup> The suspension is automatic and absolute. The DMV is only given information about the citation, the defendant, the court that adjudicated the case, the amount of court-imposed fines and fees, and the trial date.<sup>7</sup> The DMV is not given, and does not seek, information demonstrating that failure to pay was willful or any other basis of the report of failure to pay.<sup>8</sup>

Defendant Kevin Shwedo is the Executive Director of the DMV. He is the final decisionmaker as to the DMV’s policies and practices on FTPTT suspensions under Section 56-

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<sup>4</sup> The DMV reported that 192,263 people had a current FTPTT suspension as of May 31, 2019. *See* ECF No. 14 ¶ 9; DMV Letter Response to ACLU-SC’s April 22, 2019 Follow-Up Questions at 2, ECF No. 14–3.

<sup>5</sup> Section 56-25-20 codifies South Carolina’s participation in the Nonresident Traffic Violator Compact (“NRVC”), an interstate agreement that allows penalties to be imposed on drivers in their home state for certain traffic violations that take place out of state. South Carolina Bench Book for Magistrates and Municipal Court Judges § M.1 <https://bit.ly/2JctwcG> (last visited Oct. 31, 2019), ECF No. 12–1. On its face, however, Section 56-25-20 applies to all South Carolina residents and those who hold South Carolina driver’s licenses, regardless of where they reside. *See* S.C. Code § 56-25-20.

<sup>6</sup> ECF No. 12–1 § M.1; *see also* ¶¶ 49, 53. Unless otherwise noted, references to “¶” are to paragraphs in the Complaint, ECF No. 1.

<sup>7</sup> State of South Carolina, Notice of Suspension, Form DL-53, #2 Home Jurisdiction Copy, <https://bit.ly/336Ylhc>, ECF No. 12–3; ECF No. 12–1 § M.3.

<sup>8</sup> ECF No. 12–3; ¶¶ 58, 59.

25-20. ¶ 20. As a matter of policy and practice, the DMV enforces Section 56-25-20 only to suspend driver's licenses for FTPTT. ¶¶ 53–54, 309. The DMV maintains a list of violations that will result in suspension if fines and fees are not paid.<sup>9</sup>

South Carolina summary courts, which include both magistrate and municipal courts, do not have a policy or practice of considering or granting requests for continuances when people are unable to appear in court to respond to a traffic ticket.<sup>10</sup> Instead, summary courts routinely impose traffic convictions and sentence people to pay fines and fees without those people being physically present in court—a practice known as “trial in absentia” or “TIA.”<sup>11</sup> Many of the people who are reported to the DMV for FTPTT and are subsequently subjected to automatic and indefinite license suspension were convicted and sentenced to pay in absentia.<sup>12</sup>

In a March 2018 memorandum, South Carolina Court Administration endorses the use of trials in absentia and instructs summary courts to report TIA guilty dispositions to the DMV at the end of the day.<sup>13</sup> After imposing fines and fees through a TIA, the summary court informs the DMV that the individual failed to pay.<sup>14</sup> Although there is a stock form to notify defendants

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<sup>9</sup> The list include non-traffic offenses (e.g., “failure to change address/name,”), low-level traffic and vehicle equipment violations (e.g., “improper lights”), and more serious traffic offenses (e.g., driving under the influence). Municipal Association of South Carolina, Table VS7-1, List of Violations That Are Used to Suspend for FTPTT (Failure to Pay Traffic Tickets), <https://bit.ly/2BsMZZb>, ECF No. 12–2.

<sup>10</sup> The South Carolina Bench Book for Magistrates and Municipal Court Judges does not reference any continuance procedures for traffic hearings. *See* ECF No. 12 ¶ 35.

<sup>11</sup> ¶ 60.

<sup>12</sup> ¶¶ 123, 181–83, 209–10.

<sup>13</sup> Memorandum to Summary Court Judges and Staff from Renee Lipson, Staff Attorney, South Carolina Court Administration, March 14, 2018 (“Lipson Memo”), <https://bit.ly/2mjjsgt>, ECF No. 12–4. The Lipson Memo instructs courts to conduct TIAs for NRVC-eligible cases “[i]f the citation has not been paid before the court date,” as well as for uniform traffic tickets that do not involve arrest or a bond hearing, zoning violations, animal control violations, city/county ordinance summonses, and “courtesy summonses.” *Id.* at 2–3.

<sup>14</sup> ECF No. 12–1 § M.3.7; *see* ECF No. 12–3.

of TIA sentences, courts rarely tell such defendants that they owe money and will be reported to the DMV unless they pay in full. ¶¶ 67–68; ECF No. 11 ¶ 19; ECF No. 9 ¶ 27; ECF No. 10 ¶ 17.

South Carolina Code Section 56-1-350 provides that “[i]n all cases of . . . suspension . . . of drivers’ licenses, the Department of Motor Vehicles shall notify the licensee . . . that [their] license has been . . . suspended . . . .” S.C. Code § 56-1-350. According to policy and practice, the DMV mails a document called an “Official Notice” to any individual reported for non-compliance with a traffic citation.<sup>15</sup> The Official Notice provides the start date of the suspension—usually around three weeks from the notice date—and indicates that the only way to prevent suspension is to pay the traffic fines and fees in full before suspension begins and to bring proof of compliance to the DMV. *See, e.g.*, Official Notice dated June 13, 2017, attached as ECF No. 11–6. The Official Notice also says that the only way to secure reinstatement once the suspension is in effect is to “[p]ay the fine for the ticket to the court” and to pay the DMV a \$100 reinstatement fee for each failure-to-pay suspension. *See id.*; S.C. Code § 56-25-20.

After reviewing the Official Notice, the average reader will believe the only option to prevent driver’s license suspension is to pay the traffic ticket in full. Decl. of Dr. Kingsley (“Kingsley Decl.”) ¶ 64.<sup>16</sup> The Official Notice offers no alternative to full payment because there is no alternative. ¶¶ 9, 74–76. An indigent person is unable to contest an FTPTT suspension because of inability to pay, either before or after the suspension is in effect. *See* ECF No. 11 ¶¶ 50–52; ECF No. 9 ¶¶ 38–40; ECF No. 17 ¶¶ 8, 14.

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<sup>15</sup> ¶¶ 71–72; ECF No. 12–1 § M.3.8.B (“If a South Carolina driver is involved, the [DMV] will notify the individual that his privilege to drive has been suspended, and will remain so suspended until the citation is cleared with the court.”).

<sup>16</sup> *See also* Kingsley Decl. ¶¶ 80, 83 (“[A]fter reading the Official Notice . . . an average reader would not understand whether to search for, and how to locate information about, a process to contest a driver’s license suspension based on inability to pay a traffic ticket.”).

The OMVH is authorized to hear appeals from the suspension of a driver’s license. *See* S.C. Code § 56-1-370. But neither the DMV nor the OMVH ever provides a hearing on ability to pay to people facing FTPPT suspension. The OMVH’s workload reports do not identify a single hearing concerning an FTPPT suspension in Fiscal Years 2016–17 and 2017–18. ECF No. 15 ¶¶ 11–12.<sup>17</sup> Even if, after reading the Official Notice, a layperson surmounts significant obstacles to discover the OMVH, they will be denied a hearing if they are unable to pay a \$200 filing fee for each contested FTPPT suspension. ECF No. 17 ¶ 9; ECF No. 11 ¶ 52; ECF No. 9 ¶¶ 38–40.<sup>18</sup> The OMVH Rules prohibit assigning a hearing officer to a case unless filing fees are paid.<sup>19</sup> And the OMVH does not believe it can hear the cases of people who challenge suspensions based on inability to pay. ECF No. ¶ 5.

To have a driver’s license reinstated, one must pay the traffic fines and fees owed, obtain a compliance notice from the court, and provide the notice and any required reinstatement fees to the DMV. ECF No. 11–6; ECF No. 12–1 § M.3.9; S.C. Code § 56-25-20. The DMV charges a non-waivable \$100 reinstatement fee for each FTPPT suspension. ECF No. 11–6.<sup>20</sup> A driver with multiple FTPPT suspensions must pay hundreds of dollars in DMV fees. ECF No. 11 ¶ 52; ECF No. 10 ¶ 36; S.C. Code § 56-1-390(1). The DMV provides a reinstatement fee payment program only for those who can pay the underlying traffic tickets, a \$35 administrative fee, and 15% of all reinstatement fees owed. *See* S.C. Code § 56-1-395.<sup>21</sup>

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<sup>17</sup> *See also* Office of Motor Vehicles Workload Report, ECF No. 15–1.

<sup>18</sup> The Official Notice does not mention a hearing, and it would be very difficult for a layperson to even discover the OMVH. *See* ECF No. 16 ¶ 78 (describing lengthy research for attorney to identify OMVH process after reviewing the Official Notice).

<sup>19</sup> Rules of Procedure for the Office of Motor Vehicle Hearings (“OMVH”), Rule 21, 4(A), 4(C), 9 (2011), <https://bit.ly/2oznlhW>, ECF No. 16–15.

<sup>20</sup> There is no authority for waiving fees for FTPPT suspensions. *See* S.C. Code § 56-1-390

<sup>21</sup> *See e.g.*, S.C. Code § 56-1-395(A) (inclusion in repayment program requires proof that the individual has “met all other conditions for reinstatement,” including payment of traffic fines).

**B. The DMV’s automatic and indefinite suspension of licenses for failure to pay traffic tickets disproportionately impacts indigent people.**

South Carolina’s large number of FTPTT suspensions is linked to its high poverty rate. The state has the eleventh highest population of poor people in the country.<sup>22</sup> Impoverished and low-income people are more likely to be unable to pay traffic tickets, which are generally an unexpected expense. Federal Reserve research shows that 39% of Americans cannot pay a \$400 emergency cost or can only do so by selling something or borrowing money.<sup>23</sup>

The majority of people with FTPTT suspensions are unable to pay traffic fines and fees. DMV data show that 62% of people with an FTPTT suspension at any point between March 30, 2018 and March 30, 2019 were unable to pay to get driver’s licenses back during that period. Watson Decl. ¶ 55. DMV data also show that South Carolina cities with high poverty rates tend to have higher rates of FTPTT suspension as well, suggesting many suspensions are for inability to pay, not willful refusal to pay. *Id.* at ¶ 35, 38.<sup>24</sup> Data from across the country support this “tight link” between poverty and suspension for unpaid fines and fees.<sup>25</sup>

The DMV’s suspension of driver’s licenses for failure to pay a traffic ticket disproportionately impacts Black people, likely due to racial disparities in poverty.<sup>26</sup> Black

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<sup>22</sup> U.S. Census Bureau, *American Community Survey (2017 5-Year Estimates)*, Table GCT1701 (Percent of People Below Poverty Level in the Past 12 Months (For Whom Poverty Status is Determined)) 1 (2017), <https://bit.ly/2mnrDYW>, ECF No. 12–15.

<sup>23</sup> Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2018* at 2 (2019), <https://bit.ly/2KFZDZy>, attached as Ex. A to the Supp. Decl. of Nusrat Choudhury (“Supp. Choudhury Decl.”).

<sup>24</sup> For example, Sumter has a poverty rate double that of Summerville. Watson Decl. ¶ 37. Sumter also has an FTPTT suspension rate that is 1.7 times greater than that of Summerville. *Id.*

<sup>25</sup> See Br. of Amici Curiae Members of the Free to Drive Coalition in Support of Plaintiffs-Appellants and Reversal, *Johnson v. Jessup*, No. 19-1421, at 18–20, ECF No. 29 (4th Cir Aug. 26, 2019) (discussing analysis of data from Tennessee, California, New York, and Ohio).

<sup>26</sup> U.S. Census estimates show Black South Carolinians suffer from poverty and unemployment at more than double the rates of non-Hispanic white residents. See Watson Decl. ¶ 57–58.

people make up 48% of those with FTPTT suspensions, even though they constitute 26% of the state population of driving age. Watson Decl. ¶ 46, 47. The risk of FTPTT suspension for Black people is 3.4 times greater than the risk for non-Hispanic white people. *Id.* ¶ 50.

**C. Driver’s license suspensions have devastating everyday consequences for impoverished people in South Carolina.**

The indefinite suspension of a driver’s license has devastating consequences on the ability to pursue a livelihood, to meet basic needs for one’s family, and to meaningfully participate in civic life. Indeed, 86% of Americans describe a car as a “necessity of life.”<sup>27</sup> Reliable and accessible public transportation is scarce throughout most of South Carolina, which leaves people heavily dependent on licenses to find and keep jobs, take children to school, access health care, purchase groceries, be with family, and go to places of worship. ¶ 33.

In 2013, 92% of surveyed South Carolinians reported using a personal vehicle for travel.<sup>28</sup> The median distance of a work commute in South Carolina is 7.6 miles each way—the thirteenth longest of any state.<sup>29</sup> U.S. Census estimates show that 92% of people in South Carolina use a car to get to work by driving or carpool, which is higher than the national average of 85.6%.<sup>30</sup> Only 0.6% of all trips to work in South Carolina were made by public transportation—less than one-eighth of the national average of 5.1%.<sup>31</sup>

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<sup>27</sup> Paul Taylor et al., *The Fading Glory of the Television and Telephone*, Pew Research Center 1 (Aug. 19, 2010), <https://www.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf>, ECF No. 12–5.

<sup>28</sup> CDM Smith, *Charting a Course to 2040: South Carolina Statewide Public Transportation and Coordination Plan* 51, S.C. Dep’t of Transportation (2014), <https://bit.ly/2nhxK1j>, ECF No. 12–6.

<sup>29</sup> Streetlight Data, *Commutes Across America: Where Are the Longest Trips to Work? Part 1*, 9 (2018), <https://bit.ly/2r4j8UP>, ECF No. 12–7.

<sup>30</sup> U.S. Census Bureau, *American Community Survey (2017 5-Year Estimates)*, Table S0801 (Commuting Characteristics by Sex)—South Carolina (2017), <https://bit.ly/31N6LJu>, ECF No. 12–8.

<sup>31</sup> *Id.*

A 2014 report for the South Carolina Department of Transportation recognized an increased need for public transit due to an increase in low-income households. ECF No. 12–6 at 37 (Table 3-1). It found insufficient public transportation to serve second- and third-shift workers, a lack of “coordinated/ scheduled services and coverage” in rural areas, and “[l]imited scheduled public transit routes outside urban areas.” *Id.* In 2011, only 44% of statewide public transit needs were met. *Id.* at 66.

The indefinite suspension of a driver’s license severely restricts a person’s ability to find and keep paid employment even when there is access to transportation alternatives. Being able to legally drive is a qualification for many jobs, and many employers consider a valid driver’s license an indicator of reliability and employability.<sup>32</sup> Charleston-area postings show a driver’s license is required for jobs in housekeeping, cleaning, construction, painting, warehouse staffing, maintenance, and plumbing, as well as for work as a courier, technician, and retail merchandiser.<sup>33</sup> A survey of New Jersey driver’s license holders found that 42% of respondents lost jobs after their licenses were suspended, 45% of whom were unable to find new jobs; of those who were able to find employment, 88% reported a decrease in income.<sup>34</sup>

Driver’s license suspension also limits people’s ability to care for themselves and their families and to participate meaningfully in society. Plaintiffs are routinely unable to take their

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<sup>32</sup> Danielle Conley & Ariel Levinson-Waldman, *Discriminatory Driver’s License Suspension Schemes* 4–5, American Constitution Society (2019), ECF No. 12–9.

<sup>33</sup> See ECF No. 12 ¶ 51; See ECF No. 12–17 (Charleston-area job postings requiring a valid driver’s license); see also Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 26–27 (2016), <https://bit.ly/31kAs4n>, ECF No. 12–10.

<sup>34</sup> Alan M. Voorhees Transportation Center et al., Motor Vehicles Affordability and Fairness Task Force: Final Report at xii (2006), <https://bit.ly/2lLarfV>, ECF No. 12–11.



children to school and childcare, care for ill loved ones, make trips to the grocery store and pharmacy, travel to places of worship, be with family, and participate in community activities.<sup>35</sup>

The American Association of Motor Vehicles Administrators (“AAMVA”) has recognized that “[s]uspending a person’s driving privilege makes it less likely that fines will be paid if the person is unable to go to work and to pursue other daily activities such as attending school, going to medical appointments, and so on. This is compounded for individuals who live in areas where other transportation options are not readily available.”<sup>36</sup> In 2018, the American Bar Association (“ABA”) observed that “[p]eople who are prohibited from driving often lose their ability to work or attend to other important aspects of their lives.”<sup>37</sup> It condemned license suspension as out of proportion to the purpose of ensuring payment and destructive to that end.

Data from across the country show that depriving people of driver’s licenses when they are unable to pay fines and fees fails to improve collections and imposes significant enforcement costs. California experienced an 8.9% increase in payments on newly-issued tickets after it stopped suspending licenses for unpaid traffic tickets in 2017 and permitted ability-to-pay determinations on request, payment plans, and community service.<sup>38</sup> A Texas study shows that Fort Worth, which does *not* prevent driver’s license renewals for unpaid traffic fines and costs, collects slightly *more* money per case than Dallas, which does.<sup>39</sup> Additionally, data from

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<sup>35</sup> See, e.g., ECF No. 11 ¶¶ 65–66; ECF No. 10 ¶¶ 54–59; ECF No. 9 ¶ 57.

<sup>36</sup> American Association of Motor Vehicle Administrators, *Reducing Suspended Drivers and Alternative Reinstatement Best Practices* 12 (2018), <https://bit.ly/2nXb3zL>, ECF No. 12–12.

<sup>37</sup> American Bar Association, Working Group on Building Public Trust in the American Justice System, et al., Report to the House of Delegates, Resolution 114 at 6, 7 n. 22 (Aug. 6, 2018), <https://bit.ly/2nQRKZf>, ECF No. 12–13.

<sup>38</sup> Judicial Council of California, Report on the Statewide Collection of Delinquent Court-Ordered Debt for 2017–18 at 2 (2018), [https://www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463\\_010.pdf](https://www.courts.ca.gov/documents/lr-2018-statewide-court-ordered-debt-2017-18-pc1463_010.pdf), attached as Ex. B to the Supp. Choudhury Decl.

<sup>39</sup> See Texas Fair Defense Project & Texas Appleseed, *Driven by Debt: How Driver’s License Suspensions for Unpaid Fines and Fees Hurt Texas Families* 17,



Oregon, Washington, and Colorado show that processing and executing driver's license suspensions for failure to pay consumes significant government staff time and resources.<sup>40</sup>

**D. The consequences for driving under suspension are dire and perpetuate a cycle of poverty, debt, and entanglement with the criminal legal system.**

The suspension of driver's licenses for failure to pay a traffic ticket forces people who cannot pay to make a difficult and unfair decision: lose their jobs, face barriers to employment, and fail to care for themselves and their families; or drive illegally and risk further penalties, including fines, fees, jail time, and extension of probation or parole. ¶ 43. When faced with this dilemma, most people drive on a suspended license. ¶ 44.

A report by the National Cooperative Highway Research Program estimated that as many as 75% of people with suspended and revoked licenses continue to drive without valid driver's licenses.<sup>41</sup> A study commissioned by the AAMVA Suspended and Revoked Working Group analyzed 114,626 driver records from eight geographically and demographically diverse states and concluded that people with suspended licenses continue to drive despite the seriousness of the consequences for doing so.<sup>42</sup> The ABA recognized that failure-to-pay suspensions “can lead

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<http://stories.texasappleseed.org/driven-by-debt> (last visited Nov. 21, 2019), attached as Ex. C to the Supp. Choudhury Decl.

<sup>40</sup> Brennan Center for Justice, *The Steep Costs of Criminal Justice Fines and Fees* 28 Nov. 21, 2019, [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_Fees%26Fines\\_Final5.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf) (reporting that in 2015, Washington spent \$37.5 million in prosecuting cases of driving under a license suspended for failure to pay or appear on a moving violation; that reform of Oregon's license suspensions for failure to pay fines is predicted to save almost \$1 million; and that an estimated nine full-time staff process and hold hearings for non-safety-related suspensions of driver's licenses in Colorado), attached as Ex. D. to the Supp. Choudhury Decl.

<sup>41</sup> Timothy R. Neuman et al., *Guidance for Implementation of the AASHTO Strategic Highway Safety Plan Volume 2: A Guide for Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses* at III-1, National Cooperative Highway Research Program (2003), [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_rpt\\_500v2.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_500v2.pdf), ECF No. 12–16.

<sup>42</sup> ECF No. 12–12 at 5–6.

to a cycle of re-incarceration, because many such individuals find themselves in an untenable position of either driving with a suspended license or losing their jobs, and because driving on a suspended license is itself an offense that may be sanctioned with incarceration.”<sup>43</sup>

Steep penalties for driving on a suspended license can push people into cycles of poverty, debt, and entanglement with the criminal legal system. ¶ 45. A first offense for driving under suspension (“DUS”) carries a \$300 fine, up to 30 days in jail, or both.<sup>44</sup> A second offense carries a \$600 fine, up to 60 days in jail, or both.<sup>45</sup> A third offense carries a \$1,000 fine and up to 90 days in either jail or home detention, and the defendant must pay the cost of home detention.<sup>46</sup> A DUS conviction also leads to additional assessments and a 30-day license suspension.<sup>47</sup> A person convicted of DUS three or more times in three years is designated a “habitual offender” and may be charged with a felony and face up to five years of incarceration if convicted again.<sup>48</sup> Tens of thousands of people are vulnerable to these penalties. DMV data shows that out of 55,497 tickets issued for driving under suspension during a year-long period, 34%—18,828 tickets—were issued to people with FTPTT suspensions. ECF No. 14 ¶ 11.

**E. Plaintiffs suffer ongoing harm from the DMV’s policy and practice.**

1. Plaintiff Emily Bellamy

Plaintiff Emily Bellamy is a single mother. ECF No. 10 ¶ 3. Her driver’s license is suspended because she is unable to pay fines and fees on four traffic tickets. *Id.* ¶¶ 5, 19, 36.

Despite working full time at a children’s daycare, Ms. Bellamy does not earn enough to support

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<sup>43</sup> ECF No. 12–13 at 6–7.

<sup>44</sup> S.C. Code § 56-1-460(A)(1)(a).

<sup>45</sup> S.C. Code § 56-1-460(A)(1)(b).

<sup>46</sup> S.C. Code § 56-1-460(A)(1)(c).

<sup>47</sup> S.C. Code § 56-1-460(B).

<sup>48</sup> S.C. Code §§ 56-1-1020(a)(4), 56-1-1100.

her family. *Id.* ¶ 4. With a suspended license, she cannot get higher-paying work with a former employer. *Id.* ¶ 6. In 2017, Ms. Bellamy worked for a housekeeping company and provided in-home healthcare for disabled and elderly people. *Id.* ¶ 7. She lost these jobs due to license suspension because she could not drive to work or between job sites. *Id.* ¶¶ 27, 32, 53.

In February 2018, Ms. Bellamy was ticketed for speeding. *Id.* ¶ 8. She was convicted in absentia and sentenced to pay \$76.50. *Id.* ¶ 16. Three months later, Ms. Bellamy was involved in a multiple-vehicle accident and issued three traffic tickets. *Id.* ¶ 21. The citing officer also told her that the DMV had been unable to verify her car insurance. *Id.* ¶ 22.

In July 2018, the DMV suspended Ms. Bellamy's driver's license for failure to pay the February 2018 ticket. *Id.* ¶ 19. The following month, she was convicted in absentia on the other tickets and sentenced to pay \$665. *Id.* ¶ 33. By September 2018, the DMV had placed another two suspensions on Ms. Bellamy's driver's license related to her lapse in car insurance. *See* ECF No. 10–3. A few months later, the DMV placed three suspensions on her driver's license for failure to pay the tickets related to the accident. ECF No. 10 ¶ 36. Ms. Bellamy never received notice of the suspensions. *Id.*

In 2019, after nearly a year of unemployment, Ms. Bellamy found a job at a daycare. *Id.* ¶ 43. With a driver's license, she could also work in housekeeping and in-home healthcare. *Id.* ¶ 64. But because Ms. Bellamy cannot pay at least \$716.50 in traffic tickets and at least \$1,305 in reinstatement fees, she cannot get this higher-income work. *Id.* ¶¶ 18, 33, 37; ECF No. 10–4.

The FTPTT suspensions on Ms. Bellamy's driver's license have severely restricted her ability to care for her family. She frequently cannot visit or care for her ill mother, who lives 20 miles away. ECF No. 10 ¶¶ 55–56. She faces barriers to getting her children health care and is unable to let them attend after-school and community activities for lack of transportation. *Id.* ¶¶

57–58. Ms. Bellamy has had to stop engaging in charitable activities and has missed meetings for a support group for young families due to her suspended license. *Id.* ¶ 59.

2. Plaintiff Janice Carter

Ms. Carter is an Air Force veteran whose driver’s license is currently suspended because she cannot afford to pay fines and fees for traffic tickets. ECF No. 11. ¶¶ 4, 43–46. She has struggled financially since 2016. *Id.* ¶¶ 6–7. From April 2018 to July 2019, Ms. Carter was only able to secure short-term, and part-time work in cleaning, marketing, babysitting, and hotel laundry. *Id.* ¶ 9. In 2018, she earned a total of \$5,360 in income—well below the Federal Poverty Guideline. *Id.* ¶ 10.<sup>49</sup> Since July 2019, Ms. Carter has worked part-time for A Second Chance Resource Center, an organization assisting people with convictions and people dealing with substance abuse. *Id.* ¶ 11. She continues to struggle to support herself. *Id.* ¶ 12.

Since 2017, the DMV has imposed four FTPTT suspensions on Ms. Carter’s driver’s license. *Id.* ¶¶ 13, 30, 42. She cannot pay \$1,637.50 in tickets and reinstatement fees to get her license back. *Id.* ¶¶ 43–46. The suspensions prevent her from earning money to pay toward these debts. *Id.* ¶¶ 56–64, 66. Ms. Carter’s supervisor at A Second Chance Resource Center is prepared to offer her a higher-paying case manager position, which she cannot accept because it requires a driver’s license. *Id.* ¶¶ 56–57, 59–61. Ms. Carter needs to drive to reliably get to work, church, and medical appointments. *Id.* ¶¶ 63–66.

Ms. Carter’s cycle of debt and driver’s license suspension began when she could not pay a \$129 fine for a 2016 speeding ticket. Carter Decl. ¶ 14, 18. In 2017, her license was suspended for FTPTT. *Id.* ¶¶ 20, 30. Ms. Carter never received notice and continued to drive.

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<sup>49</sup> U.S. Dep’t of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *2019 Poverty Guidelines*, <https://aspe.hhs.gov/2019-poverty-guidelines> (last visited Nov. 1, 2019), ECF No. 12–19 (2019 poverty line for a one-person household is \$12,490).

*Id.* ¶ 19. More than a year later, she could not pay another \$129 speeding ticket, which led to another FTPTT suspension. *Id.* ¶ 22–23, 25. Again, she received no notice. *Id.* ¶ 25.

In 2018, Ms. Carter learned for the first time during a traffic stop that her driver’s license was suspended and received two additional tickets, including one for driving under suspension. *Id.* ¶¶ 26–27. At the DMV, she was told to pay outstanding traffic fines and DMV fees to get her license back. *Id.* ¶ 37. Ms. Carter was sentenced to pay \$879.50 for the two most recent tickets, which she could not afford. *Id.* ¶¶ 39, 41. Two DMV Official Notices informed her she had to pay in full to prevent additional suspensions. *Id.* ¶ 40–41. Because Ms. Carter could not pay, the DMV imposed two more FTPTT suspensions on her license. *Id.* ¶ 42.

In July 2019, with the help of her lawyers, Ms. Carter submitted a request to the OMVH for a hearing, explaining that she was unable to pay the tickets that led to the four FTPTT suspensions, providing her financial information, and requesting waiver of the \$200 filing fee for inability to pay. ECF No. 17 ¶ 3; ECF No. 17–1; ECF No. 11 ¶ 51. The OMVH denied the request, stating that “there is not a waiver provision in statute or the OMVH rules” and that “each case must be accompanied by a filing fee.” ECF No. 17–3.

### 3. Plaintiff Linquista White

Ms. White is a single mother and the primary caregiver for her daughter. ECF No. 9 ¶ 3. From August 2018 to August 2019, she was also the primary caregiver for her goddaughter. *Id.* ¶ 4. Ms. White works at the Medical University of South Carolina, but struggles to meet her family’s expenses for rent, electricity, transportation, food, and health care. *Id.* ¶¶ 8–10, 18, 25, 41–42. She filed for bankruptcy in 2013, and a portion of her paycheck was garnished until her bankruptcy was discharged in November 2018. *Id.* ¶¶ 11–12. Due to her financial situation, she has missed car insurance payments, and at times, her insurance has lapsed. *Id.* ¶¶ 13, 16.

In 2018, Ms. White was informed during a traffic stop that her driver's license was suspended for inability to verify insurance. *Id.* ¶ 20. She was ticketed for DUS, convicted in absentia, and sentenced to pay \$647. *Id.* ¶ 27. She received no notice of the TIA or fine. *Id.*

In March 2019, the DMV suspended Ms. White's driver's license for failure to pay the DUS ticket. *Id.* ¶ 30. She inquired into the DMV's reinstatement fee payment plan but learned she was ineligible. *Id.* ¶ 33. With the help of her attorneys, Ms. White requested an OMVH hearing, but was denied for failure to pay the \$200 filing fee, even though she had requested waiver of the fee due to inability to pay. *Id.* ¶¶ 38–39; ECF No. 17 ¶¶ 10–14.

At times, Ms. White drove with a suspended driver's license because she had no other way to get to work, take her daughter and god daughter to school, and meet other familial obligations. ECF No. 9 ¶¶ 19, 23. In July 2019, Ms. White received three traffic tickets. *Id.* ¶¶ 36–37. To resolve them without going to court, she needed to pay \$1,942. *Id.* ¶ 37.

In September 2019, Ms. White's landlord unexpectedly compensated her for property damage. *Id.* ¶¶ 48, 50.<sup>50</sup> She used this money to purchase car insurance and pay the DUS fine and DMV reinstatement fee to get her driver's license back. *Id.* ¶¶ 50–51.

When the Complaint and motion for class certification were filed, Ms. White could not pay to resolve the July 2019 traffic tickets without going to court. *Id.* ¶ 55. On November 19, 2019, two tickets were dismissed and one was resolved with a sentence to time served.

## II. AUTHORITY AND ARGUMENT

Plaintiffs 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

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<sup>50</sup> Ms. White's management office had commenced eviction proceedings and failed to cancel them after she paid past due rent earlier in the day. ECF No. 9 ¶¶ 43–46.

their favor, and (4) the injunction is in the public interest.” *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (citation omitted).

### **A. Plaintiffs Are Likely to Prevail on Their Claims**

A long line of Supreme Court decisions has held the Fourteenth Amendment prohibits states from punishing people solely because of their inability to pay. Doing so “would be little more than punishing a person for his poverty” in violation of the rights to due process and equal protection. *Bearden v. Georgia*, 461 U.S. 660, 671, 673 (1983). The DMV violates this right by sanctioning people with the automatic, absolute, and indefinite suspension of driver’s licenses for FTPTT without holding a hearing to determine that nonpayment was willful.

#### **1. *Bearden*’s analysis applies where a state seeks to sanction a person solely due to inability to pay.**

The Supreme Court’s decision in *Bearden* controls the analysis applicable to the DMV’s automatic and indefinite suspension of driver’s licenses for failure to pay traffic tickets. *Bearden* concerned whether a state may lawfully revoke probation for failure to pay a fine if the probationer “has made all reasonable efforts to pay” and “yet cannot do so through no fault of his own.” *Id.* at 668. Relying on both due process and equal protection principles, the Court held that the question required “a careful inquiry” into four relevant factors: (1) “the nature of the individual interest affected,” (2) “the extent to which [that interest] is affected,” (3) “the rationality of the connection between legislative means and purpose,” and (4) “the existence of alternative means for effectuating the purpose.” *Id.* at 666–67.

*Bearden* is part of a long line of cases establishing the basic principle that the state may not sanction people because of their inability to pay. *Id.* at 672–73. In *Griffin v. Illinois*, the foundational “equal justice” case, the Court held that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” 351 U.S. 12, 19 (1956).

*Griffin* struck down the denial of trial transcripts to defendants who sought to appeal felony convictions but could not pay the transcript fees. *Id.* at 13, 20. Drawing on both due process and equal protection, the plurality explained the state could not “discriminate[] against some convicted defendants on account of their poverty” in the appeals process. *Id.* at 17–18.

This concern about the “disparate treatment of indigents in the criminal process” has been “heightened rather than weakened” over time. *Williams v. Illinois*, 399 U.S. 235, 241 (1970). The Supreme Court has pronounced a “basic command that justice be applied equally to all persons.” *Id.*

Over the years, the Supreme Court has expanded this prohibition against punishment for inability to pay by applying *Griffin* to other situations. In *Williams v. Illinois*, the Supreme Court invalidated a state statute authorizing the extension of a defendant’s term of imprisonment beyond the statutory maximum based on failure to pay a fine. The additional incarceration was unconstitutional because it “ma[de] the maximum confinement contingent upon one’s ability to pay . . . .” *Id.* at 242; *see also Tate v. Short*, 401 U.S. 395, 396–98 (1971) (striking down as “unconstitutional discrimination” imprisonment for unpaid fines for fine-only traffic offenses with consideration of ability to pay). In *Mayer v. Chicago*, the Supreme Court recognized that “[a] fine may bear as heavily on an indigent accused as forced confinement.” 404 U.S. 189, 197 (1971). It found unconstitutional the denial of a free transcript to an indigent defendant seeking to appeal a conviction punishable only by a fine. *Id.* at 199. And *San Antonio Independent School District v. Rodriguez* examined the *Griffin* case line in relation to a challenge to Texas’ public-school financing system. 411 U.S. 1, 4 (1973). The Supreme Court recognized that under *Griffin* and its progeny, it would be unconstitutional to absolutely deprive people of education



based on their inability to pay tuition, even though the Texas system did not have such an effect. *Id.* at 20–21, 25 n.60.

In *Bearden*, the Supreme Court synthesized and built on this precedent, reversing the decision to incarcerate a probationer whose poverty prevented payment of fines and restitution that were a condition of probation. 461 U.S. at 674. It explained that “[d]ue process and equal protection principles converge” when people are treated differently based on their wealth: the Due Process Clause guards against practices that are “fundamentally unfair or arbitrary,” and the Equal Protection Clause protects people from being “invidiously denied . . . a substantial benefit” available to those with the financial resources to pay. *Id.* at 665–66. Together, these principles require an “inquir[y] into the reasons for the failure to pay” and a determination that “alternative measures are not adequate” before imposing a sanction for nonpayment. 461 U.S. at 672–73.

*Bearden* formally eschewed the traditional framework for equal protection and due process claims that would otherwise apply outside the context of state punishment for inability to pay. Because shoehorning questions related to the sanctioning of poverty into “an equal protection framework is a task too Procrustean to be rationally accomplished,” the Supreme Court did not consider whether a fundamental right or suspect classification was at issue. *Id.* at 668 n.8. Rather than rely on “easy slogans or pigeonhole analysis,” the Supreme Court instead required a careful inquiry into four relevant factors: “[1] the nature of the individual interest affected, [2] the extent to which it is affected, [3] the rationality of the connection between” the policy or practice and the state’s “purpose,” and [4] “the existence of alternative means for effectuating the purpose.” *Id.* at 666–67 (quotations omitted).<sup>51</sup> Since then, the Fourth Circuit

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<sup>51</sup> See also *M.L.B. v. S.L.J.*, 519 U.S. 102, 120–21 (1996) (surveying the *Bearden/Griffin* line of cases to explain that “we inspect the character and intensity of the individual interest at stake, on the one hand, and the State’s justification for its exaction, on the other”).

has recognized that these factors apply to “heightened civil or criminal penalties based solely on [an individual’s] inability to pay.” *Alexander v. Johnson*, 742 F.2d 117, 126 (4th Cir. 1984).

The question of whether to apply the *Bearden* four-factor analysis to the suspension of driver’s licenses for failure to pay traffic tickets is currently pending in the Fourth Circuit Court of Appeal. *Johnson v. Jessup*, 381 F. Supp. 3d 619 (M.D. N.C. 2019), *appeal docketed*, No. 19–1421 (4th Cir. Apr. 18, 2019). The same question is pending in the Ninth Circuit in an appeal from a district court ruling that incorrectly held *Bearden* applies only when a fundamental right is implicated, as when “incarceration or access to courts, or both, is at stake.” *Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1171 (D. Or. 2018), *appeal docketed*, No. 19–35506 (9th Cir. June 11, 2019). In a split decision, the Sixth Circuit Court of Appeals declined to apply *Bearden* to driver’s license suspension for failure to pay, erroneously cabining its hybrid due process/equal protection analysis to situations where liberty interests, rather than property interests, are at stake. *Fowler v. Benson*, 924 F.3d 247, 260–61 (6th Cir. 2019).

This Court should apply *Bearden*’s hybrid due process/equal protection analysis to Plaintiffs’ wealth-based punishment claim against the DMV for five overarching reasons.<sup>52</sup>

First, the *Bearden/Griffin* line has never been limited to deprivations of fundamental rights. Instead, it applies where the state imposes “heightened . . . penalties based solely on [an individual’s] inability to pay.” *Alexander*, 742 F.2d at 126. *Griffin* stressed there was no right to the interest at issue—an appeal. 351 U.S. at 18. Nevertheless, if a state chooses to provide appellate review, it cannot do so “in a way that discriminates against some convicted defendants on account of their poverty.” *Id.* Thus, in *Alexander*, the Fourth Circuit explicitly recognized

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<sup>52</sup> For the reasons detailed below, the district courts in *Jessup* and *Mendoza* and the Sixth Circuit in *Fowler* incorrectly declined to apply *Bearden* to state punishment in the form of driver’s license suspension for inability to pay.

the *Bearden* analysis in a challenge to the conditioning of parole on the repayment of attorneys' fees. 742 F.2d at 123. Although "there is no fundamental right to parole," *Moss v. Clark*, 886 F.2d 686, 690 (4th Cir. 1989), "the constitutionality of the program can only be determined by careful scrutiny of" the *Bearden* factors, *Alexander*, 742 F.2d at 123 n.8.<sup>53</sup>

Second, Supreme Court precedent supports application of the *Bearden/Griffin* line where, as here, the deprivation of a driver's license is absolute, lasts indefinitely, and is tied to inability to pay. As noted above, the Supreme Court upheld a public school financing system in *Rodriguez* but observed that the "wealth discrimination cases" would counsel the opposite result if public education were "made available by the State only to those able to pay a tuition assessed against each pupil" because then those unable to pay "would be absolutely precluded from receiving an education." *Id.* at 25 & n.60.

Similarly, in *M.L.B. v. S.L.J.*, the Supreme Court applied the *Bearden/Griffin* analysis to the claim of an impoverished mother who could not afford fees to appeal the termination of her parental rights. 519 U.S. 102, 120–21 (1996). It held that her claim was different from those where civil fees did not impose absolute deprivations on indigent people. *See id.* at 114–16 (discussing *United States v. Kras*, 409 U.S. 434 (1973) (fees for bankruptcy discharge did not block "sole path to securing debt forgiveness"), and *Ortwein v. Schwab*, 410 U.S. 656 (1973) (fee reduced welfare benefits, but did not deny them)). By contrast, where the state punishes a person because of poverty, the *Bearden/Griffin* line applies. *See M.L.B.*, 519 U.S. at 125 ("Like

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<sup>53</sup> The *Alexander* court found *Bearden* on point but explained that "detailed consideration of [the *Bearden*] factors is not necessary" because "the Supreme Court has articulated the specific criteria a state's recoupment or restitution program must meet to survive a facial constitutional challenge on either due process or equal protection grounds." *Id.* The *Bearden* factors would have been analyzed if there had not been a more specific (and largely comparable) test for challenges to attorney-fee recoupment practices.

a defendant resisting criminal conviction, she seeks to be spared from the State’s devastatingly adverse action. That is the very reason we have paired her case with *Mayer*, not with *Ortwein* or *Kras*.”); *see also O’Donnell v. Harris County*, 892 F.3d 147, 161–62 (5th Cir. 2018) (The *Griffin* line applies when, “because of their impecunity[, the indigent] were completely unable to pay for some desired benefit” and, “as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit.” (quoting *Rodriguez*, 411 U.S. at 20)).

Third, the Supreme Court has stated directly that the prohibition against punishment for inability to pay is not limited to incarceration. *See M.L.B.*, 519 U.S. at 111 (“*Griffin*’s principle has not been confined to cases in which imprisonment is at stake . . . .”). In *Mayer*, where a \$500 fine but no incarceration was at issue, the Court held that the “invidiousness of the discrimination . . . is not erased by any differences in the sentences that may be imposed.” 404 U.S. at 197. Noting that a “fine may bear as heavily on an indigent accused as forced confinement,” *Mayer* specifically mentioned the loss of a professional license as a “collateral consequence[]” that could be “even more serious” than confinement. *Id.* Justice Powell also observed that “[l]osing one’s driver’s license is more serious for some individuals than a brief stay in jail.” *Argersinger v. Hamlin*, 407 U.S. 25, 48 (1972) (Powell, J., concurring).

Fourth, the logic of *Bearden* itself makes clear that its protections are not triggered by the existence of a fundamental right or a liberty interest. *Bearden* explicitly eschewed traditional equal protection analysis, delineating instead a four-factor balancing test that explicitly considers “the nature of the individual interest affected . . . .” *Bearden*, 461 U.S. at 666–67; *see also M.L.B.*, 519 U.S. at 120–21. Had *Bearden* been limited to fundamental rights or liberty interests, the Court would not have needed to require a “careful inquiry” into “the nature of the interest

affected.” *Id.* *Bearden*’s first factor would have been superfluous—the “careful inquiry” would always require the same result: a showing of a fundamental right or a liberty interest.<sup>54</sup>

Fifth, there is no pertinent distinction between the due process owed based on whether the affected interest is property or liberty. *See Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (noting no “support in precedent for a categorical distinction between a deprivation of liberty and one of property”); *see also id.* (“[T]he dichotomy between personal liberties and property rights is a false one.” (alteration in original) (quoting *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552 (1972))). “That liberty interests receive a higher degree of protection than property is nearly inapposite to the more particular question of whether *Griffin* applies when the sanction at issue is driver’s license suspension.” *Fowler*, 924 F.3d at 271 (Donald, J., dissenting).

In sum, the *Bearden/Griffin* line of cases applies whenever a state imposes “adverse consequences against indigent defendants solely because of their financial circumstances, regardless of whether those adverse consequences take the form of incarceration, reduced access to court procedures, or some other burden.” U.S. Stmt. of Interest, *Stinnie v. Holcomb*, No. 3:16-cv-00044, 2016 WL 6892275, at \*15–16 (W.D. Va. Nov. 7, 2016)

The DMV imposes the additional consequences of absolute and indefinite driver’s license suspension for nonpayment of traffic tickets without regard to a person’s inability to pay. The *Bearden* four-factor balancing test thus provides the appropriate framework for evaluating Plaintiffs’ claim against the DMV.

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<sup>54</sup> Moreover, had the Supreme Court sought to reach only rights protected as fundamental under the Constitution, a more straightforward strict scrutiny analysis would have been applied in *Bearden*. *See, e.g., Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) (noting court has “long been mindful” that restrictions of fundamental rights are closely scrutinized).

**2. Under *Bearden*, the DMV’s automatic and indefinite suspension of driver’s licenses without a hearing and determination of willful failure to pay violates equal protection and due process by punishing those who are unable to pay.**

The DMV automatically suspends driver’s licenses for failure to pay traffic tickets without ever ensuring a hearing and a determination that nonpayment is willful.<sup>55</sup> And neither the DMV nor the OMVH provide hearings to people seeking to contest suspensions based on inability to pay. The resulting suspensions for indigent people are absolute, indefinite, and pose barriers to employment that undermine the collection of traffic debt. Under *Bearden*’s multi-factor “careful inquiry,” 61 U.S. at 666, the DMV’s policy and practice is unconstitutional.

**i. The DMV’s automatic and indefinite suspension of driver’s licenses impairs Plaintiffs’ substantial property interest in their licenses.**

Plaintiffs have a substantial property interest in their driver’s licenses because they rely on them for 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); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). A driver’s license is “essential in the pursuit of livelihood.” *Bell v. Burson*, 402 U.S. 535, 539 (1971); see also *Miller v. Anckaitis*, 436 F.2d 115, 120 (3d Cir. 1970) (noting license is indispensable “for virtually everyone who must work for a living”); U.S. Stmt. of Interest,

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<sup>55</sup> Any hearing provided pursuant to *Bearden* must afford due process and thus provide adequate notice and a meaningful opportunity to be heard. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”) (internal quotation marks omitted); *Turner v. Rogers*, 564 U.S. 431, 449 (2011) (incarceration violated due process because, in lieu of counsel, court failed to provide alternative procedures, such as “clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding”); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (requiring notice to be “reasonably calculated, under all the circumstances,” to “afford them an opportunity to present their objections” and “to convey the required information”).

*Stinnie*, 2016 WL 6892275, at \*9 A person’s interest in their driver’s license is therefore “substantial.” *Scott v. Williams*, 924 F.2d 56, 59 (4th Cir. 1991).

The need to legally operate a vehicle is particularly acute in South Carolina, where public transportation is limited and meets less than half of statewide needs. *Supra* § 1.C.<sup>56</sup> Nine out of ten residents rely on driving to get to work.<sup>57</sup> Numerous jobs require a driver’s license, including jobs Plaintiffs need.<sup>58</sup> Absent a valid driver’s license, South Carolinians have extremely limited avenues for economic survival.

**ii. The private interest is substantially affected.**

The DMV’s automatic suspension of driver’s licenses based on nonpayment of traffic tickets results in an absolute deprivation—Plaintiffs are completely barred from driving. FTPTT suspensions also persist indefinitely because Plaintiffs are unable get their licenses back until they pay all traffic fines and fees and DMV reinstatement fees in full, which they cannot afford to do. *See*. S.C. Code § 56-25-20; EC No. 11 ¶ 54; ECF No. 10 ¶ 62. After their driver’s license is suspended, a person must stop driving or run immediate risk of further criminal sanctions, including fines and jail, for driving on a suspended license. *See* S.C. Code § 56-1-460(A)(1). This severely restricts Plaintiffs and other low-income people from pursuing a livelihood and supporting their families because a person with a suspended driver’s license “is at an extraordinary disadvantage in both earning and maintaining material resources.” *Robinson v.*

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<sup>56</sup> ECF No. 12–6 at 37, 66 (reporting increase in South Carolina public transit needs and that only 44% of needs were met in fiscal year 2011).

<sup>57</sup> ECF No. 12–8; *see also id.* ECF No. 12–7 (reporting the median commute distance in South Carolina is 7.6 miles each way).

<sup>58</sup> ECF No. 12 ¶ 51; ECF No. 12–17 (postings for Charleston-area jobs requiring a driver’s license); ECF No. 11 ¶ 57; ECF No. 10 ¶ 53.

*Purkey*, Case No. 3:17-cv-1263, 2017 WL 4418134, at \*9 (M.D. Tenn. Oct. 5, 2017), *appeal docketed sub nom. Robinson v. Long*, No. 18-6121, (6th Cir. Oct. 24, 2018); *see supra* § I.E.<sup>59</sup>

Plaintiffs have lost job opportunities and income for extended periods of time because of the loss of their driver’s licenses. *See* ECF No. 11 ¶¶ 56-59; ECF No. 10 ¶¶ 37, 43. Suspensions have also had other devastating ripple effects. They make everyday tasks a struggle, impairing Plaintiffs’ ability to take their children to school, access health care, obtain food, care for loved ones, travel to places of worship, and participate in community activities. *See* ECF No. 11 ¶¶ 65–69; ECF No. 10 ¶¶ 54–59; ECF No. 9 ¶¶ 57–58, 63–69.

Indeed, the punishment for those unable to pay traffic tickets can be more severe than it is for those who endanger public safety by, for example, driving while under the influence. The former experience an absolute block on their ability to legally drive until all tickets and reinstatement fees are paid in full, while the latter face only a six-month suspension and are eligible to drive without restriction during that entire time, on certain conditions.<sup>60</sup> The suspension of Plaintiffs’ driver’s licenses thus substantially affects a weighty private interest.

**iii. The DMV’s automatic and indefinite suspension of driver’s licenses is not rationally related to any state interest in collecting traffic fines and fees.**

*Bearden* makes clear that whether a process for sanctioning nonpayment accounts for the *reason* for nonpayment “is of critical importance” in determining whether the process is rationally related to advancing a state interest. 461 U.S. at 668. There, the Supreme Court

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<sup>59</sup> *See supra* at 9–11 (showing need for a valid driver’s license to find and keep employment, particularly in South Carolina); ECF No. 12–12 at 12 (AAMVA) “Suspending a person’s driving privilege makes it less likely that fines will be paid if the person is unable to get to work and to pursue other daily activities such as attending school, going to medical appointments and so on.”); ECF No. 12–13 at 6 (ABA: “People who are prohibited from driving often lose their ability to work or attend to other important aspects of their lives.”).

<sup>60</sup> *See* S.C. Code §§ 56-5-2990(A)(2)(b), 56-1-1320-70.



rejected the argument that incarceration of those who cannot pay furthers the state’s interest in ensuring the payment of restitution. *Id.* at 670. Revoking probation when a person cannot pay would not “make restitution suddenly forthcoming” and, in fact, “may have the perverse effect of inducing the probationer to use illegal means to acquire funds to pay in order to avoid revocation.” *Id.* at 670–71; *see also Tate*, 401 U.S. at 399 (recognizing that jailing indigent people for nonpayment does not “augment the State’s revenue” but results in jail costs).

The DMV’s automatic and indefinite suspension of driver’s licenses for FTPTT without a hearing and determination that nonpayment was willful fails to advance any state interest in collecting traffic fines and fees. The DMV chooses to automatically sanction people with the loss of a license solely after a report of nonpayment of a traffic ticket and to keep the license suspended until full payment is made. *See* ¶¶ 49-59; S.C. Code §§ 56-25-20; 56-1-390(1). The DMV never holds a hearing—whether before or after the suspension is in effect—or makes any other inquiry into whether inability to pay is the reason for nonpayment.<sup>61</sup> The DMV’s Official Notice makes clear that full payment of tickets is the only way to prevent suspension and that payment of tickets and additional DMV fees is the only way to get the license back after suspension is in place. ECF No. 11–6; Kingsley Decl ¶ 22, 65.

The DMV’s Official Notice fails to explain or reference any alternative to full payment, such as the possibility of a hearing, because there simply is no alternative. ECF No. 11–6. Although it is empowered to review DMV suspensions, S.C. Code § 56-1-370, the OMVH does not provide ability-to-pay hearings to people seeking to contest the suspension of a driver’s

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<sup>61</sup> The DMV does not inquire into the basis of a court’s nonpayment report, which includes information about the citation, defendant, court, amount owed, and trial date but does not address whether nonpayment was willful. *See Choudhury Decl. Ex. C.*

license for failure to pay. ECF No. 15 ¶¶ 5, 11–12l; ECF No. 15–1.<sup>62</sup> The clear purpose of the DMV’s enforcement of Section 56-25-20 is to coerce payment toward traffic fines and fees.<sup>63</sup>

Rather than successfully motivating payment, the DMV’s policy and practice perversely results in driver’s license suspensions that indigent people cannot overcome. DMV data shows that 62% of those with FTPTT suspensions during a year-long period were unable to pay for reinstatement within that time. *See* Watson Decl. ¶ 55. DMV data also shows that cities with more people living in poverty tend to have a higher rate of FTPTT suspensions—a finding consistent with the conclusion that many people with FTPTT suspensions fail to reinstate licenses because they are unable to pay, not because they willfully refuse to pay. *Id.* ¶ 35, 38.<sup>64</sup>

These findings show that the DMV’s automatic and indefinite suspension of driver’s licenses for unpaid traffic tickets without a hearing or determination of willful nonpayment is not rationally related to collecting money. Punishing “someone who through no fault of his own is unable to [pay] will not make [payment] suddenly forthcoming.” *Bearden*, 461 U.S. at 670. It is also counterproductive because suspending driving privileges undermines people’s ability to earn money to pay their traffic fines and fees, 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.”).

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<sup>62</sup> Even if the OMVH provided ability-to-pay hearings, which it does not, an indigent person who surmounts incredible hurdles to discover the OMVH would be summarily denied a hearing because a \$200 filing fee is required. ECF No. 11 ¶ 53; ECF No. 9 ¶ 40.

<sup>63</sup> It is therefore no surprise that “after reading the Official Notice . . . an average reader would not understand whether to search for, and how to locate information about, a process to contest a driver’s license suspension based on inability to pay a traffic ticket.” Kingsley Decl. ¶¶ 86; *see also* ECF No. 16 ¶ 78 (describing arduous research for attorney to identify OMVH process).

<sup>64</sup> For example, Sumter has a poverty rate double that of Summerville and, correspondingly, an FTPTT suspension rate around 1.7 times higher. Watson Decl. ¶ 37.

The ABA and AAMVA agree that driver's license suspension causes severe economic harm.<sup>65</sup>

The DMV's automatic, absolute, and indefinite wealth-based suspension of driver's licenses thus impedes rather than advances the state's interest in collecting money.

**iv. Alternative means exist to advance the state's interest in collecting money.**

There are ample and more effective alternatives for furthering the state's interest in collecting traffic fines and fees than the automatic and indefinite suspension of driver's licenses of people unable to pay. The DMV could extend the time to pay, reduce payment amounts, or use payment plans to collect unpaid traffic fines and fees. *See Tate*, 401 U.S. at 395 n.5. Instead, the DMV offers a payment plan that only covers reinstatement fees and blocks indigent people because *all* traffic fines, 15% of all reinstatement fees, and an administrative fee must be paid to join the program. *See* S.C. Code § 56-1-395. South Carolina could also create alternative sanctions to indefinite driver's license suspension, including public service opportunities or traffic safety classes. *See* U.S. Stmt. of Interest, *Stinnie*, 2016 WL 6892275, at \*14; *Bearden*, 461 U.S. at 671 (recognizing that "punishment and deterrence . . . can often be served fully by alternative[s]" to incarceration, including an extension of time to pay, fine reduction, and performance of public service). The record shows that jurisdictions using alternatives to license suspension for unpaid fines and fees experience *increased* or comparable

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<sup>65</sup> *See* ECF No. 12–13 at 6, 7, n.22 (ABA); ECF No. 12–12 at 12 (AAMVA).

collections<sup>66</sup> and that enforcing failure-to-pay suspensions costs significant government resources.<sup>67</sup>

Thus, consideration of the *Bearden* factors shows Plaintiffs are likely to succeed on the merits of the claim that the DMV is violating due process and equal protection by automatically and indefinitely suspending driver's licenses for failure to pay traffic tickets without a hearing to ensure only those who willfully failed to pay lose their licenses.

**3. The DMV's automatic and indefinite suspension of driver's licenses for failure to pay traffic tickets fails to withstand even rational basis review because suspending the licenses of those who cannot pay does not logically advance the state's interest in collection.**

*Bearden* supplies the correct framework for evaluating Plaintiffs' wealth-based punishment claim. But the DMV's automatic and indefinite suspension of licenses for failure to pay tickets cannot withstand even rational basis review because suspending the driver's licenses of people who cannot pay undermines the government interest in collecting revenue.

**i. The DMV's automatic and indefinite suspension of driver's licenses establishes a classification based on inability to pay traffic tickets.**

Under rational basis review, a policy or practice is permissible as long as it draws a "classification . . . [that] is rationally related to a legitimate state interest." *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Rational-basis review is deferential, but not "toothless." *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981). In applying this standard, a

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<sup>66</sup> See Supp. Choudhury Decl. Ex. B at 2 (reporting increase in California collections after ending suspensions for unpaid traffic tickets and permitting payment flexibility and community service); *id.* Ex. C at 2 (finding that courts in Fort Worth and Dallas collect comparable amounts although only the latter prevents driver's license renewal for unpaid traffic fines and costs).

<sup>67</sup> See *id.* Ex. D at 28 (reporting on significant costs to government for prosecuting and enforcing driver's license suspensions for failure to pay in Washington, Oregon, and Colorado).

court's "first task . . . is to identify with particularity the precise classification alleged to be irrational." *Murillo v. Bambrick*, 681 F.2d 898, 906 (3d. Cir. 1982).

The DMV's policy and practice of enforcing Section 56-25-20 is facially neutral: it imposes the same penalty (driver's license suspension) on any person reported to the DMV for failure to pay a traffic ticket. But *Griffin* made clear that a policy "nondiscriminatory on its face may be grossly discriminatory in its operation." 351 U.S. at 17 n.11.<sup>68</sup> In practice, only indigent people are powerless to avoid the DMV's absolute and long-lasting suspension of their driver's licenses. By contrast, people who can pay have the power to avoid even a single day of driver's license suspension. This dramatic difference in consequences is "wholly contingent on one's ability to pay." *M.L.B.*, 519 U.S. at 127.

Even though it is facially neutral, the DMV's enforcement of Section 56-25-20 "works an invidious discrimination" against people who are unable to pay. *Williams*, 399 U.S. at 242. *Williams* concerned a statute that subjected people who did not pay a fine to additional confinement beyond the statutory maximum. *Id.* at 236. Because "only a convicted person with access to funds can avoid the increased imprisonment," the statute "expose[d] only indigents to the risk of imprisonment beyond the statute maximum." *Id.*; *see also Tate*, 401 U.S. at 399.

Here, "only a convicted person with access to funds" can avoid the DMV's automatic and indefinite suspension of a driver's license for failure to pay a traffic ticket. *Williams*, 399 U.S. at 242. The record shows that 62% of people with an FTPTT suspension during a one-year period were unable to pay to reinstate their driver's licenses during that timeframe. Watson Decl. ¶ 55.

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<sup>68</sup> *Griffin* and *Williams*, cited herein, applied a heightened level of scrutiny. They are still relevant to identifying the appropriate classification at issue, however, because identifying the classification is the first step of any equal protection analysis, regardless of the level of scrutiny ultimately applied. *See Murillo*, 681 F.2d at 906.

Moreover, analysis of DMV data shows that an increase in the city-level poverty rate is associated with an increase in the city-level rate of FTPTT suspensions, a finding consistent with the conclusion that many people live with these suspensions because they cannot pay, not because of willful refusal to pay. *Id.* ¶ 35, 38; *see supra* § I.B (detailing evidence of the “tight link” between poverty and suspension for unpaid fines). The appropriate classification to review is thus the DMV’s difference in treatment between those who can pay and those who cannot. *See Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 590 (9th Cir. 2008) (plaintiff’s showing that a challenged policy “imposes different burdens on different classes of people” is a means to “identify the classification” for review); *see also Williams* 399 U.S. at 242. Thus, to withstand even rational basis review, there must be a rational connection between the DMV’s means—suspending the licenses of those who cannot pay—and its goal to collect fines. There is none.

**ii. There is no logical connection between punishing a person who is unable to pay traffic tickets with the absolute and indefinite loss of a driver’s license and the state’s interest in collecting fines and fees.**

A policy and practice must be “*rationaly related* to a legitimate state interest” to survive rational basis review. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (emphasis added). “The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Cleburne*, 473 U.S. at 446; *see also Adkins v. Rumsfeld*, 464 F.3d 456, 469 (4th Cir. 2006) (asking “whether it was ‘reasonable for the lawmakers to believe that use of the challenged classification would promote [the stated] purpose’”). Even in a “conventional” rational basis analysis, a policy and practice must be struck down if the classification is “discontinuous with the reasons offered for it.” *Romer v. Evans*, 517 U.S. 620, 632 (1996). The Supreme Court relies on evidence when it applies the rational basis test. *See id.* (classification must be “grounded in a sufficient factual context” to

show a logical connection); *see also U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973) (invalidating statute where classification “in practical operation” did not further state interest).

The DMV’s automatic and indefinite FTPTT suspensions purport to compel payment of fines and fees by people sentenced to pay for traffic violations. But in practice, the DMV effects a classification based on inability to pay that entirely fails to advance that purpose because “[n]o person . . . can be threatened or coerced into doing the impossible, and no person can be threatened or coerced into paying money that she does not have and cannot get.” *Purkey*, 2017 WL 4418134, at \*8; *Bearden*, 461 U.S. at 670 (“Revoking the probation [of a person who cannot pay] . . . will not make restitution suddenly forthcoming.”).

Moreover, the indefinite suspension of driver’s licenses of those who cannot pay is counterproductive. “[T]he ability to drive is crucial to the debtor’s ability to actually establish the economic self-sufficiency that is necessary to be able to pay the relevant obligations.” *Purkey*, 2017 WL 4418134, at \*9; *see also Bell*, 402 U.S. at 539 (driver’s licenses “may become essential in the pursuit of a livelihood”). “Indeed, such a policy [of punishing those unable to pay] may have the perverse effect of inducing the [impoverished] to use illegal means to acquire funds to pay in order to avoid revocation.” *Bearden*, 461 U.S. at 671–72.

Plaintiffs’ own experiences and evidence in the record show how counterproductive it is to deprive indigent people of driver’s licenses, particularly in South Carolina, where there is inadequate public transportation and the overwhelming majority of residents must drive to work. *See supra* § I.C. Plaintiffs are severely impaired in their ability to earn income and pay traffic fines and fees. *See supra* § I.E. This is hardly surprising—“one needs only to observe the details of ordinary life to understand that an individual who cannot drive is at an extraordinary disadvantage in both earning and maintaining material resources,” and suspending a license is

“not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end.” *Purkey*, 2017 WL 4418134, at \*9; *see also Argersinger*, 407 U.S. at 48 (“Losing one’s driver’s license is more serious for some individuals than a brief stay in jail.”). It is thus no surprise that thousands of people with FTPTT suspensions continue to drive and incur additional traffic tickets. ECF No. 14 ¶ 11; *see supra* § I.D. Moreover, evidence from across the country suggests that collections *increase* when people are not denied driving privileges for unpaid fines and fees, and that enforcing failure-to-pay suspensions costs significant resources.<sup>69</sup>

It is simply not reasonable for the DMV to believe that punishing those unable to pay traffic tickets by stripping them of their ability to drive will promote the goal of collecting unpaid traffic fines and fees from those who can pay. The DMV’s policy and practice of enforcing Section 56-25-20 thus fails rational basis review. *See Smith Setzer & Sons, Inc. v. S.C. Procurement Review Panel*, 20 F.3d 1311, 1320 (4th Cir. 1994).

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

Plaintiffs will suffer immediate, irreparable injury without preliminary relief. Irreparable injury is assumed where, as here, a constitutional right is violated. *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987).<sup>70</sup> This Court “will not be able to make a driver whole” for any economic harm or hardship caused by unlawful license suspension. *Mackey*, 443 U.S. at 11.

Plaintiffs and those similarly situated will continue to be impaired from earning income and caring for their families and will be pushed deeper into poverty, unemployment, and entanglement with the criminal system if the DMV continues to suspend their driver’s licenses

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<sup>69</sup> *See supra* § I.C ; Supp. Choudhury Decl. Ex. B., Ex. C, Ex. D.

<sup>70</sup> *See also Henry v. Greenville Airport Commission*, 284 F.2d 631, 633 (4th Cir. 1960) (“The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right.”).



for FTPPTT. Ms. Carter and Ms. Bellamy’s inability to drive prevents them from securing higher-paying work, getting to work, taking their children to school, purchasing groceries, and caring for loved ones. *See supra* § I.E. These injuries cannot be redressed through damages and are irreparable. *See Ariz. Dream Act. Coal. v. Brewer*, 855 F.3d 957, 977–78 (9th Cir. 2017) (irreparable injury in loss of job opportunity and economic harm); *Purkey*, 2017 WL 4418134, at \*5, 10 (same); *Padberg v. McGrath-McKenchnie*, 108 F.Supp. 2d 177, 183 (E.D.N.Y 2000) (irreparable injury where loss of license “imminently threat[ed]” plaintiff’s “subsistence”).

**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 the DMV, and the requested injunction would serve the public interest. Plaintiffs are being denied a crucial means of pursuing their livelihoods and caring for themselves and their families. *See supra* § I.E; *see also Bell*, 402 U.S. at 539. By contrast, the DMV is being asked to comply with the law, which is not cognizable hardship. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). Any administrative costs associated with affording pre-deprivation hearings and a determination of willful nonpayment are outweighed by harms to Plaintiffs’ ability to drive to keep their jobs, support their families, and meet other basic needs.

An injunction also serves the public interest. “[U]pholding constitutional rights surely serves the public interest.” *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir. 2014). The injunction would enable Plaintiffs to drive, permitting them to earn money, meet their and their families’ needs, and pay traffic tickets and DMV fees.

**CONCLUSION**

For the reasons explained above, this Court should grant Plaintiffs’ request for a preliminary injunction.

DATED the 25th day of November 2019.

Respectfully submitted by,

s/ Susan K. Dunn

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