THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LINQUISTA WHITE, EMILY BELLAMY, and JANICE CARTER, Plaintiffs, v. KEVIN SHWEDO, in his official capacity as the Executive Director of the South Carolina Department of Motor Vehicles; and RALPH K. ANDERSON III, in his official capacity as the Chief Judge of the South Carolina Administrative Law Court and Director of the South Carolina Office of Motor Vehicle Hearings, Defendants.	Civil Action No. 2:19-cv-03083-RMG **MEMORANDUM IN SUPPORT OF OF DEFENDANT ANDERSON'S MOTION TO DISMISS**

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Introduction and Summary of Argument

Pursuant to Fed. Rul. Civ. Proc. 12(b)(6), the Defendant, Judge Ralph K. Anderson III ("Judge Anderson"), in his official capacity as Chief Judge of the South Carolina Administrative Law Court and Director of the South Carolina Office of Motor Vehicle Hearings ("OMVH") should be dismissed from this action. Plaintiffs have not stated any claim for relief that is plausible on its face. *Francis v. Giacomelli*, 588 F.3d 186 (4th Cir. 2009).

First, Judge Anderson is absolutely immune from suit. He should be dismissed from this action based upon absolute judicial and legislative immunity. As the Supreme Court has recognized,

> [t[he absolute immunity of legislators, in their legislative function, see, e.g., *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 95 S.Ct. 1813, 44

> L.Ed.2d 324 (1975), and of judges, in their judicial function, see, e.g. *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978), now is well settled.

Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982). Moreover, it is also well understood that

> "[a]bsolute immunity defeats a suit at the outset, so long as the official's actions were within the scope of immunity." *Imbler v. Pachtman*, 424 U.S. 409, 419, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). Where an official's challenged actions are protected of absolute immunity, dismissal under Rule 12(b)(6) is appropriate. *Patterson v. Von Risen*, 999 F.2d 1235, 1237 (8th Cir. 1993).

Sample v. City of Woodbury, 836 F.3d 913, 916 (5th Cir. 2016). See also *Nelson v. Huckabee*, 2010 WL 3603699 (D.S.C. 2010) ["(a)s Defendant Ackerman was acting as a South Carolina Magistrate Judge when he set Plaintiff's bond, Judge Ackerman is immune from suit in the above captioned civil rights action and is entitled to summary dismissal from this case." (citing, among other cases, *Siegert v. Gillen*, 500 U.S. 226, 231 (1991) (immunity presents a threshold question which should be resolved before discovery is even allowed,)].

In this instance, each of the allegations in the Complaint against Judge Anderson involve either his acts or his failure to act in the exercise of his judicial functions or his acts or his failure to act in the exercise of his legislative functions. Thus, Judge Anderson is absolutely immune from suit and should be dismissed from this case.

Secondly, the naming of Judge Anderson as a party defendant in a case involving the questioning of the constitutionality of state statutes, or the unconstitutional application of those statutes – statutes which Judge Anderson is required to apply in his judicial capacity – is unwarranted. Here, Plaintiffs contend in their Complaint that OMVH's "enforcement of Section 56-5-2952 to deny hearings to contest a driver's license suspension absent payment of a non-waivable filing fee violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution as delineated in *Bearden v. Georgia*, 461 U.S. 660 (1983)."

Complaint at p. 93, ¶ f. As then Judge Breyer stated in *In re the Justices*, 695 F.2d 17, 21 (1st Cir. 1982), ". . . at least ordinarily, no 'case or controversy' exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute." Such is the case here. Thus, the action should be dismissed.

Thirdly, Plaintiffs' Complaint seeks to set aside Judge Anderson's rulings with respect to the OMVH, including rulings concerning non-waiver of filing fees, appointment of hearing officers, etc. This Court possesses no jurisdiction, essentially, to mandamus Judge Anderson to rule in accordance with the rulings they desire. *Curley v. Adams Creek, Associates*, 409 Fed.App'x. 678 (4th Cir. 2011) [claim that North Carolina court violated her due process rights was, in essence, a request for federal district court review of a state court decision and thus was barred].

Fourth, this action against Judge Anderson should be dismissed because of the failure of Plaintiffs to pursue their state remedies in the criminal prosecutions against them. The named Plaintiffs failed to appear in court and were tried in their absence. Complaint at ¶'s 110, 122, 164, 172, 181 and 207. While their federal claims are based upon the suspension of driver's licenses because of alleged inability to pay their fines, the truth is that they neglected to appear for their criminal trial, thereby resulting in being fined and subsequently having their driver's license suspended for non-payment of those fines. This is constitutional. The Uniform Traffic ticket informs the motorist that "Failure to Comply With The Terms of this Summons may result in the suspension of your driver's license by your home state." It also states that the person charged has a right to a jury trial. See www.sccourts.org/forms/pdf/utt.pdf. Had Plaintiffs simply attended court upon issuance of a Uniform Traffic Ticket, they could easily have obviated or resolved any federal claims based upon alleged indigency. According to the South Carolina

Supreme Court, the Uniform Traffic Ticket "summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights." *State v. Biehl*, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1973) (emphasis added). Had they chosen to attend criminal court, Plaintiffs could easily have, upon conviction, asserted their rights pursuant to § 17-25-350, and if deemed indigent, could have received a payment schedule for the payment of their fines rather than filing this federal lawsuit. See Op. S.C. Att'y Gen., 2004 WL 1182084 (May 19, 2004) ["a Magistrate is to structure a payment schedule for the payment of fines if the offender is indigent."]. The matter could have been and should have been resolved in state court. The United State Supreme Court, in rejecting the argument that a summary suspension of a driver's license based upon official records, does not violate Due Process, noted that the Plaintiff "had the opportunity for a full judicial hearing in connection with each of the traffic convictions on which the . . . [license suspension] was based." *Dixon v. Love*, 431 U.S. 105, 113-14 (1977). Accordingly, cases referenced below dictate that this action against Judge Anderson be dismissed. Plaintiffs cannot side step the state courts when the remedy they seek is available there to them.

For this reason also, the named Plaintiffs lack standing to bring this action. Under the long-established rules of standing, a Plaintiff must show a causal connection between an injury and the conduct complained of. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Here, rather than Plaintiffs' licenses being suspended because of their inability to pay, the driver's licenses were suspended because of the proximate cause of their injury – they did not appear in court to demonstrate their indigency. As a result, there simply is no causal connection between the injury complained of, either for DMV or OMVH. Article III standing is lacking.

In short, Judge Anderson is not a proper defendant in this case under any theory or by any stretch of the imagination. He is a sitting Judge, indeed, the Chief Judge of the Administrative Law Court, required to make rulings on cases involving the Plaintiffs' purported class, which is "[a]ll individuals whose driver's licenses are suspended, or will be suspended by the South Carolina Department of Motor Vehicles due to their failure to pay fines, fees, surcharges, assessments, or court costs assessed for a traffic offense." Complaint at ¶ 235. Plaintiffs challenge Judge Anderson's alleged failure to require the waiver of filing fees, consistent with their view of the Constitution. As a sitting judge, it is inappropriate to sue him, particularly in light of the fact that Plaintiffs failed to take advantage of their state remedies – a criminal trial and § 17-25-350. Plaintiffs cannot refuse to attend their criminal trial and take advantage of South Carolina remedies for their alleged inability to pay, and then sue in federal court, claiming their indigency status deprived them of their federal rights. Judge Anderson should be dismissed as a party from this suit.

STANDARD OF REVIEW

This Court has recognized in *Bass v. 817 Corp.*, 2017 WL 881818 (D.S. 2017), the standards for a Rule 12(b)(6) Motion to Dismiss, the following:

> Rule 12(b)(6) of the Federal Rules of Civil Procedure permits the dismissal of an action if the complaint fails "to state a claim upon which relief can be granted." Such a motion tests the legal sufficiency of the complaint and "does not resolve contests surrounding the facts, the merits of the claim, or the applicability of defenses. . . . Our inquiry then is limited to whether the allegations constitute 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). . . . In a Rule 12(b)(6) motion, the court is obligated to "assure the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint's allegations." *E. Shore Mkts., Inc. v. J.D. Assocs., Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000). However, while the Court must accept the facts in a light most favorable to the non-moving party, it "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Id*.

> To survive a motion to dismiss, the complaint must state "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although the requirement of plausibility does not impose a probability requirement at this stage, the complaint must show more than a "sheer possibility that defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint has "facial plausibility" where the pleading "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*.

Here, for the reasons discussed below, Rule 12(b)(6) dismissal is warranted.

The OMVH

By way of background, we note that the Office of Motor Vehicles Hearings is created by § 1-23-660 of the South Carolina Code. Such provision states in pertinent part as follows:

> (A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The chief judge of the Administrative Law Court shall serve as the director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006 … The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes… The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings….

Our Court of Appeals has noted in this regard that

> [t]he DMVH [OMVH] is authorized to hear contested cases arising from the DMV. S.C. Code Ann. 1-23-660 (Supp. 2008). Therefore, the DMV is an agency under the Administrative Procedures Act. § 1-23-660. Appeals from Hearing Officers must be taken to the ALC.

South Carolina Dept. of Motor Vehicles v. Holtzclaw, 382 S.C. 344, 347, 675 S.E.2d 756, 757-58 (Ct. App. 2009).

Status of a Driver's License In South Carolina

In *State v. Price*, 333 S.C. 267, 271-72, 510 S.E.2d 215, 218 (1998), the South Carolina Supreme Court recognized that "the ability to operate a motor vehicle on the highway is a privilege, rather than a right." *Id*. (citing *State v. Collins*, 253 S.C. 358, 170 S.E.2d 667 (1969)). In addition, as was stated in *Peake v. S.C. Dept. of Motor Vehicles*, 375 S.C. 589, 595, 654 S.E.2d 284, 288 (Ct. App. 2007),

> [b]eing licensed to operate a motor vehicle on the public highways of this State is not a property right, but is merely a privilege subject to reasonable regulations under the police power in the interest of the public safety and welfare. [cases cited]. . . . The privilege may be revoked or suspended for my cause relating to public safety, but it cannot be revoked arbitrarily or capriciously. [cases cited].

See also 31 S.C. Jur., *Automobiles and Other Motor Vehicles*, § 1 (Nov. 2019) ["it is similarly well established that the legislature under the police power has full authority, in the interest of public safety to prescribe the conditions under which the privilege to operate a motor vehicle may be granted, and upon which such privilege may be revoked."].

Moreover, in *Mosley v. Jessup*, 2019 WL 1052027 (W.D.N.C. 2019) at *4, the Court had this to say regarding a driver's license:

> [a]lthough Plaintiff alleges that he has a substantial interest in his driver's license, having a driver's license is not a fundamental right. *Montgomery N.C. Dept. of Motor Vehicles*, 455 F.Supp. 338, 342 (W.D.N.C. 1978) (the right to drive is not constitutionally fundamental and the revocation of a license is not the deprivation of a fundamental constitutional right); *Mullins v. Commonwealth of Va.*, 2007 WL 120835 (W.D. Va. Jan. 9, 2007) (although a driver's license is a property right, the right to drive is not fundamental), aff'd. 599 F.2d 1048 (4th Cir. 1979 (table). Therefore, rational basis review applies and the statutes pass constitutional scrutiny if they are rationally related to a state interest, *Wilkins v. Gaddy*, 734 F.3d 344, 347 (4th Cir. 2013); *Garrantano v. Johnson*, 521 F.3d 298, 302-03 (4th Cir. 2008).

Further, courts have held that "[t]here is no argument that collection of monetary exactions [such as payment of traffic ticket or fine] is not a legitimate state interest and that suspension of a

driver's license for failure to pay those exactions serves a rational interest of the State. *Johnson v. Jessup*, 381 F.Supp.3d 619, 631 (M.D.N.C. 2019). Indeed, such is the case here. See also *Fowler v. Benson*, 924 F.3d 247, 258 (6th Cir. 2019).

Allegations In The Complaint Against Judge Anderson

Plaintiffs summarize the crux of their allegations against Judge Anderson in Paragraph 21 of the Complaint. Such paragraph states:

> Defendant Ralph K. Anderson III is the Chief Judge of the South Carolina Administrative Law Court. In this role, Defendant Anderson serves as the Director of the South Carolina Office of Motor Vehicle Hearings and promulgates rules governing OMVH procedure and practice, including the requirements for initiating an administrative action to challenge the DMV's suspension of a driver's license. . . . Defendant Anderson is the final decisionmaker on the assignment of cases to OMVH hearing officers. . . . He is sued in his official capacity as a state actor for declaratory and injunctive relief, and only for conduct undertaken as an administrative policymaker.

(footnote omitted). While Plaintiffs characterize Judge Anderson as an "administrative policymaker," he is hardly that. It can be seen even from this summary paragraph that Judge Anderson is being sued with respect to his promulgation (or non-promulgation) of rules governing OMVH procedure and practice, as well as for his role as "the final decisionmaker on the assignment of cases to OMVH hearing officers. . . ."

Other relevant paragraphs of the Complaint expand upon these basic allegations. See, e.g. ¶'s 83 [similar to ¶ 21]; ¶ 88 [Defendant Anderson and the OMVH "have erected an insurmountable, wealth-based barrier" to indigent persons "on the basis of ability to pay traffic fines and fees"]; ¶ 91 [Judge Anderson "has the power under South Carolina Code Section 1-23-660 to propose amendments to OMVH Rule 21 to permit waiver and reduction of the filing fee on the basis of financial hardship."]. Moreover, according to Plaintiffs, "[d]efendant Anderson also has the power under Section 1-23-660 to propose amendments to OMVH Rules 4(A), 4(C),

and 9(A) so that the rules permit the assignment of an OMVH hearing officer to a case even when the applicant is not able to pay the filing fee" and "[d]efendant Anderson has the authority and discretion under Section 1-23-660 to directly assign OMVH hearing officers to adjudicate appeals from DMV suspension even if individuals cannot afford to pay the filing fee." Paragraph 91.

In addition, Paragraph 283 of the Complaint alleges that Judge Anderson "enforces an OMVH policy and practice of categorically denying requests for waiver of the $200 filing fee and refusing to assign cases to hearing officers until the filing fee is paid in full, as set forth in OMVH Rules 21, 3 and 9." Further, Paragraph 284 alleges:

> Defendant Anderson's enforcement of a policy and practice of requiring full payment of a $200 filing fee before assigning a case to an OMVH hearing officer impacts the substantial interest of the members of the proposed Suspension Class in their driver's licenses by preventing people who are unable to pay the filing fee from pursuing administrative appellate review that could afford them relief from indefinite license suspension. As a result, people who seek to prevent or contest FTPTT suspensions on the basis of inability to pay, but cannot pay OMVH filing fees, suffer from indefinite license suspension, and the resulting severe and potentially limitless disadvantages in resources and devastating limitations on their ability to care for themselves and their families and to participate in civic life.

And Paragraph 285 alleges that

> Defendant Anderson's policy and practice of requiring payment of a filing fee to secure administrative appellate review of a DMV suspension thus absolutely deprives people of a critically important benefit – the ability to access justice to prevent or terminate a wrongful deprivation of the property in a driver's license.

Paragraph 289 further alleges as follows:

> [t]here are ample alternative means to effectuate South Carolina's interest in generating revenue to pay for the cost of operating the OMVH. Defendant Anderson could seek additional funding from the South Carolina legislature to fund the OMVH or could divert resources from another ALC division to permit filing fee reduction for waiver for people who are unable to pay. Moreover, all South Carolina administrative law courts, with the exception of

> the OMVH, have adopted fee waivers, demonstrating that the OMVH could implement a similar policy and practice of waiving filing fees for people who cannot afford to pay. . . .

(footnote omitted). Paragraph 313 further alleges:

> [a]dditionally, Defendant Anderson and the OMVH's enforcement of Section 56-5-2952 creates a substantial risk of sustaining the erroneous suspension of the driver's licenses of those who are unable to pay because it denies an administrative hearing covering the DMV's suspension to anyone who cannot pay the required filing fee.

Finally, Paragraph 321 of the Complaint alleges:

> [u]nder Defendant Anderson's direction, the OMVH denies ability-to-pay hearings due to nonpayment of the filing fee by people who seek to prevent or contest the suspension of driver's licenses under Section 56-25-20. In his official capacity, Defendant Anderson could amend OMVH Rules 21, 4, and 9 so that payment of the $200 filing fee under Section 56-5-2952 is not required for a case challenging the DMV's suspension of a driver's license to be assigned to an OMVH hearing officer. In his official capacity Defendant Anderson could also assign hearing officers to contested cases concerning the suspension of driver's licenses even when filing fees are not paid.

Based upon these allegations, Judge Anderson is an inappropriate party in this suit and should be dismissed.

Legislative Immunity

In *Bogan v. Scott-Harris*, 523 U.S. 44, 52, 54 (1998), the Supreme Court summarized the broad scope of legislative immunity with respect to suits brought under § 1983 as follows:

> [a]bsolute immunity for local legislators under § 1983 finds support not only in history, but also in reason. See *Tenney v. Brandhove*, 341 U.S. at 376, 71 S.Ct. at 788-89 (stating that Congress did not intend for § 1983 to "impinge on a tradition so well grounded in history and reason."). the rationales for according absolute immunity to federal, state and regional legislators apply with equal force to local legislators. Regardless of the level of government, the exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability. See *Spallone v. United States*, 493 U.S. 265, 279, 110 S.Ct. 625, 634, 107 L.Ed.2d 644 (1990)….

> Absolute legislative immunity attaches to all actions taken "in the sphere of legitimate legislative activity." *Tenney*, *supra* at 376, 71 S.Ct. at 788.

Further, the Fourth Circuit, in *McCray v. Md. Dept. of Transp., Md. Transit Adm.*, 741 F.3d 480, 484-85 (4th Cir. 2014), described legislative immunity as one which

> . . . protects those engaged in legislative functions against the pressures of litigation and liability that may result. See *E.E.O.C. v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011). . . . "The practical import" of "legislative immunity" is "difficult to overstate." *Id*. It prevents "those who were defeated in elections from waging political war through litigation." *Id*. It promotes a healthier, more thriving class of politicians by ensuring that legislative offices are not limited only to those who are willing to withstand a lawsuit. *Id*.
>
> The protections of legislative immunity extend beyond legislatures themselves. *Bogan v. Scott-Harris*, 523 U.S. 44, 49, 55, 118 S.Ct. 966, 140 L.Ed. 79 (1998). The determination of legislative immunity is based on the function being fulfilled – not the title of the actor claiming immunity. *Kensington [Volunteer Fire v. Montgomery Cnty.*, 684 F.3d 462, 471 (4th Cir. 2011)]. . . .
>
> Finally, . . . our case law shows that legislative immunity extends to those individuals who advise legislators. *Kensington*, 684 F.3d at 471; *Baker v. Mayor & City Council of Balt.*, 894 F.2d 679 (4th Cir. 1990) (applying legislative immunity to a government department that recommended that a position be cut pursuant to a mayor's request), overruled on other grounds by *Berkley v. Common Council of the City of Charleston*, 63 F.3d 295, 303 (4th Cir. 1995); see also *Baraka v. McGreevey*, 481 F.3d 187, 196-97 (3rd Cir. 2017) (holding that governor's appointees' actions in "advising and counseling Governor McGreevey and the Legislature are also legislative" and protected under legislative immunity). This case law stands for the proposition that just as a legislator is immune from discrimination lawsuits when she makes budget decisions based on improper animus, aides to that legislator are also immune. Legislative immunity is a shield that protects despicable motives as much as it protects pure ones.

Clearly, judges may, on occasion, be called upon – as part of their duties – to exercise certain legislative functions. The seminal case in which the Supreme Court applied legislative immunity to a situation involving judicial officers is *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719 (1980). There, the Court concluded that the Virginia Supreme Court and its chief

justice were entitled to legislative immunity from suit pursuant to 42 U.S.C. § 1983 in the promulgation of the Virginia Court's disciplinary rules governing the conduct of attorneys. The Court noted that one of the questions before it was "whether the Virginia Court and its chief justice are immune from suit for acts performed in their legislative capacity." 446 U.S. at 731. According to the Court,

> [t]o preserve legislative independence, we have concluded that "legislators engaged 'in the sphere of legitimate legislative activity,' Tenney v. Brandhove, [341 U.S. 367, 376, 71 S.Ct. 783, 788, 95 L.Ed. 1019 (1951)], should be protected not only from the consequences of litigation's results but also from the burden of defending themselves. *Dombrowski v. Eastland*, 387 U.S.82, 87 S.Ct. 1425, 1427, 18 L.Ed.2d 577 (1967).

It was argued in *Consumers Union* that "whatever may be true of state legislators, the Virginia Court and its members should not be accorded the same immunity where they are merely exercising a delegated power to make rules in the same manner that many executive and agency officials wield authority to make rules in a wide variety of circumstances." In rejecting such a contention, the Court concluded that ". . . the Virginia Court and its members are immune from suit when acting in their legislative capacity." Id. at 735. Furthermore, the Court made clear that legislative immunity encompassed not only the affirmative actions of the Virginia judges, acting in their legislative capacities, <u>but also any alleged omissions or failure to act in those legislative capacities</u>. According to the Court, "we hold that it was an abuse of discretion to award [attorneys] fees because the Virginia Court <u>failed to exercise its rulemaking authority</u> in a manner that satisfied the District Court." 446 U.S. at 739 (emphasis added). Moreover, as the 10th Circuit noted in *Sable v. Myers*, 563 F.3d 1120, 1126, n. 2 (10th Cir. 2009), "[i]t would be strange public policy indeed to inform legislators that they are immune from liability if they decide to take action, but not immune if they decide that action would be contrary to the public interest." See also *NRP Holdings LLC v. City of Buffalo*, 916 F.3d 177 (2d Cir. 2019) [mayor's

discretionary conduct in declining to introduce resolutions was legislative, and thus mayor's inaction was entitled to legislative immunity."].

In addition, legislative immunity bars not only actions for damages under § 1983, but also actions for declaratory and injunctive relief pursuant to that statute. *Mainstream Loudoun v. Bd. of Trustees of Loudoun County Library*, 2 F.Supp.2d 783, 788 (E.D. Va. 1998). Such immunity is "premised on the notion that a private civil action, whether for injunction or damages, creates a distraction and forces [those exercising a legislative function] to divert their time, energy and attention from their legislative tasks and defend the litigation." *Eastland*, 421 U.S. *supra* at 503. Thus, legislative immunity applies to all forms of relief – claims for declaratory and injunctive relief, as well as damages. *Kobe v. Haley*, 2013 WL 4056335 (D.S.C. 2013).

The Fourth Circuit has emphasized that enacting a budget, including the decisions surrounding budget making, and whether to include certain items in the budget, are legislative functions, protected by legislative immunity, rather than constituting administrative functions. In *Kensington Volunteer Fire Dept., Inc. v. Montgomery Co., Md.*, 684 F.3d 462 (4th Cir. 2012); the Fourth Circuit dealt with the question of the alleged retaliatory elimination of public funding for certain administrative support positions. The Court explained the operation of legislative immunity in that context as follows:

> . . . we have no trouble concluding that enacting a budget is a legislative act. E.g., *Bogan*, 523 U.S. at 55, 118 S.Ct. 966 (determining that the "introduction of a budget and signing into law an ordinance . . . were formally legislative" even where accomplished by an executive official); *Berkley*, 63 F.3d at 302 (finding that, in challenging the city's annual budget, plaintiffs "challenged the [city's] execution of a core legislative function"); *Rateree v. Rockett*, 852 F.2d 946, 950 (7th Cir. 1988) "([B]udgetmaking is a quintessential legislative function, reflecting the legislators' ordering of policy priorities in the face of limited financial resources.") . . . .
>
> We also find that Leggett and Bowers, while not legislators, have been sued based on their actions associated with the budgetmaking process. Leggett

> faces trial for his actions in proposing and submitting the budget to the County Council, a task required of him by local law. See J.A. 564 (noting that the Fire chief must submit the proposed budget to the County Executive "for review and submission to the county Council as required by the county Charter") (quoting Code § 21 Code § Code 21-22(c)22(c)). Thus, Leggett's actions were with "the sphere of legitimate legislative activity," *Bogan*, 523 U.S. at 54, 118 S.Ct. 966 (internal quotations omitted), and he is entitled to immunity. And Bowers is faulted for his allegedly misleading testimony to the County Council prior to the vote on the budget. "[S]peaking before a legislative body" is, however, a type of legislative activity to which absolute immunity applies. *Baraka v. McGreevey*, 48l F.3d 187, 196 (3d Cir. 2007) (finding that "when a governor and a governor's appointee advocate bills to the legislature, they act in a legislative capacity"). Thus, Bowers is also entitled to legislative immunity.
>
> In arguing otherwise, Plaintiffs contend that it was through their exercise of executive and administrative duties, respectively, that Leggett and Bowers participated in the budget process. In *Rateree*, plaintiffs similarly argued that a budget that eliminated jobs was "necessarily administrative since it involved employment decisions." 852 F.2d at 950. The Seventh Circuit, however, rejected this "backdoor approach," noting that it "would turn every budget decision into an administrative one." *Id*.
>
> Legislative immunity includes "officials outside the legislative branch ... when they perform legislative functions." *Bogan*, 523 U.S. at 55, 118 S.Ct. 966. Thus, the district court properly found that Leggett and Bowers are entitled to legislative immunity.

681 F.3d at 471.

Accordingly, based upon the foregoing authorities, Judge Anderson is absolutely immune from suit – for all forms of relief – for his actions or non-actions taken in his legislative capacity. His alleged failure to propose amendments to OMVH Rule 21 to permit waiver and reduction of the filing fee on the basis of financial hardship (Paragraph 21 of the Complaint) is protected by legislative immunity. As the Court stated in *NPR Holdings, supra*, "[i]f introducing a resolution is a legislative act, then, precedent suggests, so must be a refusal to introduce a resolution." 916 F.3d at 192 (citing *Sup. Ct. of Virginia*, 446 U.S. at 731-34; *Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1063 (11th Cir. 1992)). Likewise, Judge Anderson's alleged failure to seek

additional funding (¶ 289) or his alleged failure to divert resources from other needs, is a legislative function, entitled to legislative immunity. As the Seventh Circuit explained in *Rateree v. Rockett,*

> [b]udgetmaking is a quintessential legislative function, reflecting the legislators' orders of policy priorities in the face of limited financial sources. When budgets are cut materially as labor-intrusive as that of local government, some people will almost surely lose their jobs. But that does convert a budget cut into an "administrative" employment decision.

852 F.2d at 950 (quoting 630 F.Supp. at 7761). Such reasoning also applies here, thereby affording legislative immunity to Judge Anderson for these actions and non-actions.

Judicial Immunity

Likewise, Judge Anderson is entitled to absolute judicial immunity for actions or non-actions taken in his judicial capacity. The seminal case articulating the doctrine of judicial immunity is *Stump v. Sparkman, supra*. There, the Court stated that

> [a]s early at 1872, the Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him [should] be free to act upon his own convictions, without apprehension of personal consequences to himself."

453 U.S. at 355 (quoting *Bradley v. Fisher*, 13 Wall. 335, at 347 (1872)). Therefore, in *Stump*, the Court concluded that "[a] judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." 438 U.S. at 360. See *Smalls v. Gergel, et al.*, 2017 WL 9288197 (D.S.C. 2017) ["Thus in this civil action, the Defendant judges are entitled to absolute judicial immunity for any claims against them based on their judicial actions."]. See also *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987); *Jackson v. Houck*, 181 Fed. Appx. 372 (4th Cir. 2006) [judge and law clerk absolutely immune]; *Chien v. LeClairRyan*, 566 Fed. App'x. 275 (4th Cir. 2014).

In *Snow v. King*, *2018 WL 656032* (N.D. Ala. 2018), the Court discussed at length the evolution of judicial immunity which had traditionally encompassed only freedom from damages. See *Pulliam v. Allen*, 466 U.S. 522 (1984). The issue thus arises, in light of *Pulliam*, as to whether judicial immunity also includes the injunctive and declaratory relief which Plaintiffs seek here against Judge Anderson. The Court in *Snow* answered that question in the affirmative. With respect to injunctive relief, the *Snow* Court stated:

> In order to address this issue, it is best to set out briefly the history of judicial immunity in the context of a section 1983 claim. The following excerpt from Judge Proctor's opinion in *Ray v. Judicial Corn Servs., Inc.*, No. 2:12-CV-02819-RDP, 2014 WL 5090723, at *3-4 (N.D. Ala. Oct. 9, 2014) (Proctor, J.) does so nicely:
>
> > [In] *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), [the Supreme Court] held that judicial immunity does not bar prospective injunctive relief against judicial officers for acts or omissions taken in a judicial capacity. Congress, however, responded to *Pulliam* by amending 42 U.S.C. § 1983 in an attempt to abrogate *Pulliam's* holding regarding the scope of judicial immunity. After the Federal Courts Improvement Act of 1996 ("FCIA") amendments, § 1983 now reads in relevant part;
> >
> > > Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States... jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, <u>suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable</u>.
> >
> > 42 U.S.C. § 1983 (emphasis added). . .; see also Pub.L. No. 104-317, § 309(c), 110 Stat. 3847 (codified at 42 U.S.C. § 1983).
> >
> > It cannot be seriously disputed that, after the FCIA, judicial immunity typically bars claims for prospective injunctive relief against judicial officials acting in their judicial capacity. Only when a declaratory decree is violated or declaratory relief is unavailable would plaintiffs have an end-run around judicial immunity—and neither is true here. This abrogation of *Pulliam* has been widely recognized. See *Guerin v. Higgins*, 8 Fed.Appx. 31, 32 (2d Cir.

> 2001); *Haas v. Wisconsin*, 109 Fed.Appx. 107, 114 (7th Cir. 2004); *Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000) (per curiam) (discussing amendment's purpose and effect); *Kuhn v.* Thompson, 304 F.Supp.2d 1313, 1335 (M.D. Ala. 2004); *Nollet v. Justices of Trial Court of Com. of Mass.*, 83 F.Supp.2d 204, 210 (D.Mass.), *affd*, 248 F.3d 1127 (1 st Cir. 2000); *Kampfer v. Scullin*, 989 F.Supp. 194, 201-02 (N.D.N.Y. 1997); see also *Esensoy v. McMillan*, No. 06-12580,2007 WL257342, at *1 n. 5 (11th Cir. Jan. 31,2007).

Snow, at *4 (footnotes omitted).

Snow, as well as numerous other decisions, also conclude that a judge is protected from declaratory relief by judicial immunity. In *Snow* itself, the Court dealt with the issue of declaratory relief and how judicial immunity might affect such relief. The Court first noted that § 1983, as amended in 1996 by the FCIA, "fails to address the availability of prospective declaratory relief to defeat judicial immunity." *Id*. at *5. Nevertheless, in concluding that judicial immunity encompassed declaratory relief in the situation before it, the *Snow* Court concluded:

> [a]t the end of the day, section 1983 does not specifically prohibit prospective declaratory relief against municipal court judges. Further, the statute was amended only to in response to the *Pulliam* opinion, which did not address declaratory relief. Finally, although not binding, everything the Eleventh Circuit has said on this issue supports the availability of such relief in spite of judicial immunity principles. Accordingly, and in consideration of all of the above, the Court agrees with those opinions which hold that prospective declaratory relief <u>is</u> an exception to judicial immunity in cases brought against municipal court judges pursuant to 42 U.S.C. § 1983. . .
>
> That being said, the Plaintiff's request for "a declarat[ion] that [Judge King] wrongfully convicted and/or failed to set aside the conviction of the plaintiff" is <u>retrospective</u> in nature, and therefore barred by judicial immunity. See *Andrews*, 641 F.Appx. at 180; *Moore v. City of New York*, No. 12-CV-4206 RRM LB, 2012 WL 3704679, at *2 (E.D.N.Y. Aug. 27, 2012) (Mauskopf, J.) ("Judicial immunity … bars plaintiff's claims for retrospective declaratory relief."). However, the Plaintiff's requests for declarations that "the Court engages in a pattern and practice of such conduct in violation of the Due Process, Takings Clauses of the 14th and 5 Amendments, 42 U.S.C. 1983, 1st and 6th Amendments, the Alabama Constitutional corresponding provisions and state common law and statutes," and that "[the nuisance] ordinance [is] unconstitutional to the extent it does not require a description of said alleged

> inoperable vehicle and nuisance" are prospective in nature and are not barred by judicial immunity.

Id. at 6. Other courts have reached the same conclusion as *Snow*. For example, in *Justice Network v. Craighead County*, 931 F.3d 753, 764 (8th Cir. 2019), the Eighth Circuit explained:

> [t]he Tenth Circuit has concluded that "[t]he only type of relief available to a plaintiff who sues a judge is declaratory relief, but not every plaintiff is entitled to this remedy." Lawrence, 271 F.App'x. at 765 (emphasis added).... "A declaratory judgment is meant to define the legal rights and obligations of the parties in anticipation of some future conduct, not simply to proclaim liability for a past act." *Id*. (emphasis added). A complaint "seeking ... a declaration of past liability" against a judge of "future rights" does not satisfy the definition of "declaratory judgment" and renders declaratory relief unavailable. *Id*." "Furthermore, retrospective declaratory relief cannot be granted as '[t]he Eleventh Amendment does not permit judgments against state officers declaring that they violated federal law in the past.'" *Id*. at 766 n. 7 (quoting *Johns v. Stewart*, 57 F.3d 1544, 1553 (10th Cir. 1995)).

931 F.3d at 763-64.

Moreover, in *Aldrich v. Young*, 2013 WL 3802436 (D. Mass. 2013), the Court found that there is "no equitable basis for the grant of declaratory relief where Aldrich does not seek prospective relief, but seeks only a declaration as to past wrongdoings." In the Court's view, the complaint "simply asks for a declaration that the alleged acts and omissions . . . violated his rights under the Constitution and laws of the United States and Massachusetts." *Id*. at *5. In reaching this conclusion, the Court cited, among other decisions, *Abebe v. Seymour*, 2012 WL 1130667 (D. S.C. 2012), aff'd., 479 Fed.App'x. 464 *2 (4th Cir. 2012). Thus, the *Aldrich* Court concluded that "because Aldrich had not stated any claims for which monetary, injunctive, or declaratory relief can be granted, I will GRANT the defendants' Motion to dismiss all claims for relief, including all of his claims under both federal and state law, and this case will be DISMISSED in its entirety." *Id*. at *10. See also *Wilson v. Wilson-Polson*, 2010 WL 3733935 (S.D.N.Y. 2010), (quoting *MacPherson v. Town of Southampton*, 664 F.Supp.2d 203, 211

(E.D.N.Y. 2009)) ["(T)o the extent Plaintiff's declaratory claims are retrospective in nature in that they seek a declaration that the Justices' past enforcement of the Town's rental law has violated the Constitution, they are barred by the doctrine of absolute immunity." and cases cited].

Based upon Plaintiffs' Complaint, the declaratory relief being sought by Plaintiffs is primarily retrospective in nature, thereby making judicial immunity applicable. All allegations against Judge Anderson challenge the purported wrongfulness of past practices and his failure to take alternative steps to mitigate it. According to Paragraph 321, "[u]nder Defendant Anderson's direction, the OMVH denies ability-to-pay hearings due to nonpayment of the filing fees by people who seek to prevent or contest the suspension of a driver's license under Section 56-25-20." The Complaint also continually references Judge Anderson's "enforcement of a policy and practice" of requiring full payment of filing fees and of denying waiver of such fees. See ¶'s 283 and 284 of Complaint. Moreover, in their "prayer for relief," the Plaintiffs ask the Court to:

> [i]ssue a declaration that the OMVH's enforcement of Section 56-5-2952 to deny hearings to contest a driver's license suspension absent payment of a non-waivable $200 filing fee violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution as delineated in *Bearden v. Georgia*, 461 U.S. 660 (1983).

In short, as Judge Joe Anderson explained in *Abebe v. Seymour*, *supra*, a declaratory judgment is meant to define legal rights in the future, "'not simply to proclaim liability for a past act.'" *Supra* at *3 (quoting *Lawrence v. Kuenhold*, 271 Fed. App'x. 763, 766 (10th Cir. 2008). Such is the case here.

Moreover, courts have concluded that a judge's failure to act, such as his or her declining to waive a filing fee, and the judge's role in the assignment of cases are judicial acts entitled to judicial immunity. See e.g. *Parent v. New York*, 786 F.Supp.2d 516, 532 (N.D.N.Y. 2011) [the assignment of cases and issuance of consolidation orders are judicial functions]. A judge's

failure to act, such as the failure to appoint an interpreter, is a judicial function such that the judge is immune from suit in doing so. *Perez v. Gamez*, 618 Fed.App'x. 157 (3d Cir. 2015). And, as was stated in *Syzak v. Dammon*, 2014 WL 286445 (E.D. Mich. 2014), at *2, "[h]ere, judge Lane's actions (or inactions) in maintaining order in the courtroom are conduct traditionally associated with judicial officers for which she is shielded by absolute judicial immunity. See also *Garrison v. Wilson*, 2007 WL 9710385 (D. N. Mex. 2007) [judge's inactions protected by judicial immunity].

With respect to the decision by a judge to refrain from waiving filing fees, the courts deem such action or inaction also to be a judicial function, and thus subject to judicial immunity. In *Sirbaugh v. Young*, 25 Fed.App'x. 266, 268-69 (6th Cir. 2001), the Sixth Circuit concluded that "[f]rom Sirbaugh's complaint, it is clear that the defendants – judges and court clerks – were performing their judicial and quasi-judicial duties when they interpreted Michigan law and declined to waive the appellate filing fee for Sirbaugh." (emphasis added). Thus, judicial immunity was held applicable. Moreover, in *Coleman v. Gov. of Michigan*, 413 Fed.App'x. 866, 873 (6th Cir. 2011), judges' and clerks enforcement of an administrative order regarding filing fees entitled these judicial officers were entitled to absolute judicial immunity. According to the Court,

> . . . Judge Houck's Administrative Order does not fall within the exceptions to absolute judicial immunity and Defendants Bandstra, Whitbeck, Houck and Collette are absolutely immune from injunctive or monetary relief.

Plaintiffs' Complaint alleges that Judge Anderson "is the final decisionmaker on the assignment of cases to OMVH hearing officers" (Paragraph 21); that he "has the authority and discretion under Section 1-23-660 to directly assign OMVH hearing officers to adjudicate appeals from DMV suspension even if individuals cannot afford to pay the filing fee" (Paragraph

91); that he "enforces an OMVH policy and practice of categorically denying requests for waiver of the $2100 filing fee and refusing to assign cases to hearing officers until the filing fee is paid, as set forth in OMVH Rules 2, 3, and 9" (Paragraph 283). See also Paragraphs 284, 285 and 313 (enforcement of § 56-5-2952) and 321 (failure to assign hearing officers). Each of these allegations involves a judicial act, thereby entitling Judge Anderson to absolute judicial immunity.

Based upon the foregoing authorities, the remaining allegations against Judge Anderson (not already discussed under the heading "Legislative Immunity") should be dismissed on the basis of judicial immunity. These allegations, whether actions or inactions, involve judicial functions, and thus are entitled to absolute judicial immunity. Moreover, all forms of relief as sought in the Complaint are subject to judicial immunity with respect to Judge Anderson. Thus, Judge Anderson is absolutely immune from injunctive and declaratory relief. Accordingly, Rule 12(b)(6) dismissal is warranted.

As the Court stated in *Justice Network, Inc. v. Craighead Co.*,

> "[i]n other words 'judicial immunity typically bars claims for prospective injunctive relief against judicial officials acting in their judicial capacity. Only when a declaratory decree is violated or declaratory relief is unavailable would plaintiffs have an end run around judicial immunity.'"

931 F.3d at 763 (quoting *Ray v. Judicial Corr. Servs., supra.*). Such is not the case here and plaintiffs have not so alleged. Thus, any injunctive relief against Judge Anderson is shielded by judicial immunity. See *Wilson v. Wilson-Polson*, 2010 WL 3733935 (S.D.N.Y. 2010). See also *Justice Network, Inc. v. Craighead County, supra*. Likewise, for the reasons discussed, declaratory relief against Judge Anderson is barred for his judicial actions, based upon judicial immunity.

Lack of Case or Controversy With Judge Anderson

Numerous courts have concluded that a judge who is a neutral adjudicator is not the appropriate party for a declaration that a statute he or she applies is unconstitutional. As then Judge Breyer concluded in *In re The Justices of the Supreme Court of Puerto Rico, supra,*

> . . . at least ordinarily, no "case or controversy" exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute. Judges sit as arbiters without a personal or institutional stake on either side of the constitutional controversy. They are sworn to uphold the Constitution of the United States. They will consider and decide a claim that a State or Commonwealth statute violates the federal Constitution without any interest beyond the merits of the case. Almost invariably, they have played no role in the statute's enactment, they have not initiated its enforcement, and they do not even have an institutional interest in following their prior decisions (if any) concerning its constitutionality if an authoritative contrary legal determination has subsequently been made (for example, by the United States Supreme Court). In part for these reasons, one seeking to enjoin the enforcement of a statute on unconstitutional grounds ordinarily sues the enforcement official authorized to bring suit. Under the statute, that institutional obligations require him to defend the statute. One typically does not sue the Court or judges who are supposed to adjudicate the merits of the suit that the enforcement official may bring. . . .

695 F.2d at 21-22. Other decisions are in accord. See *Brandon E. ex rel. Lisenbee v. Reynolds*, 201 F.3d 194, 200 (3d Cir. 2000) ["Because the judges presiding over Act 53 proceedings are acting in their capacity as neutral adjudicators, the district court committed no error in dismissing the suit for failure to state a claim for which relief can be granted."]; *Bauer v. Texas*, 341 F.3d 352, 361 (5th Cir. 2003) [". . . because determinations made under Section 875 are within a judge's adjudicatory capacity, there is no adversity between Bauer and Olsen as to whether section 875 is facially unconstitutional. As such, there is no case or controversy under Article III and Olsen is not a proper party under section 1983]. *Grant v. Johnson*, 15 F.3d 146, 148 (9th Cir. 1994) ["We agree with these decisions holding that judges adjudicating cases pursuant to state statutes may not be sued under § 1983 in a suit challenging the law.']; *Cooper v. Rapp*, 702

Fed.App'x. 328, 333 (6th Cir. 2017) ["Judge Rapp was not an adversary of Cooper or Moses in the state-court proceedings, which challenged the implementation of Ohio's cognovit-judgment statute. . . ."]; *Puchner v. Waukesha Co. Circuit Ct.*, 992 F.Supp. 1061 (E.D. Wis. 1998) declaratory relief served no purpose inasmuch as judge was immune from damages claim]; *Foster v. Fisher*, 694 Fed.App'x. 887, 889 (4th Cir. 2017) ["We conclude that the district court did not abuse its discretion in declining to grant Foster declaratory relief because Foster has failed to demonstrate that doing so would relieve any 'uncertainty, insecurity and controversy.'" (quoting *Aetna Cas. & Sur. Co. v. Ind-Com. Elec. Co.*, 139 F.3d 419, 422 (4th Cir. 1998)).

Ordinarily, no case or controversy exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute or its application to him. As the Court explained in *Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004), "[a]s Judge Breyer explained in *In Re Justices*, 'a court should not enjoin judges from applying statutes when complete relief can be afforded' by enjoining other parties, because 'it is ordinarily presumed that judges will comply with a declaration of a statute's unconstitutionality without further compulsion.'". Thus, it is inappropriate to need to name Judge Anderson as a party in this action. He has interpreted § 56-5-2952 as not permitting any waiver of filing fees, in keeping with Chief Justice Toal's admonition in *Sullivan v. S.C. Dept. of Corrections*, 355 S.C. 437, 446, 580 S.E.2d 124, 128 (2004) that

> [t]he General Assembly is the body charged with the power to waive filing fees. . . . Further, this is not a case involving "fundamental rights," so access to the courts is not constitutionally required.

As noted above, a number of courts have concluded that having a driver's license is not a "fundamental right" such that any filing fees should be waived. See *Mendoza v. Grant*, 358 F.Supp.3d 1145, 1173 (D. Oregon 2018) ["Thus, despite difficulties presented by alternative

transportation systems or the lack thereof, a challenge to the suspension of a driver's license is not 'fundamental in a rational or constitutional sense.'"]; *Johnson v. Jessup*, 381 F.Supp.3d 619, 630 (M.D.N.C. 2019) [involving revocation of driver's license due to failure to pay court fines and costs because of alleged indigency; Court concluded that "[i]n sum contrary to Plaintiff's contention, the fundamental fairness doctrine does not apply to the indigency claim here, where no fundamental right or interest is involved."]. Thus, inasmuch as no "fundamental right" is here involved, the State is not obligated to waive filing fees. See *Ortwein v. Schwab*, 410 U.S. 656 (1973). See also *Sirbaugh v. Young*, 25 Fed.App'x. 266, 268 (6th Cir. 2001) [judge declining to waive filing fees based upon an interpretation of Michigan law is a judicial function]. In any event, Judge Anderson simply carried out his duties as a neutral adjudicator of the law and facts as well as his duties as Chief Judge of the Administrative Law Court and director of OMVH. There is no case or controversy between him and Plaintiffs.

Rooker-Feldman

For other reasons as well, this case should be dismissed with respect to Judge Anderson. As the Fourth Circuit has recognized,

> [t]he Rooker-Feldman abstention doctrine establishes that a federal district court lacks jurisdiction over a litigant's challenge to a state court decision, including allegations that the state court's action was unconstitutional. See *Feldman*, 460 U.S. at 476, 482-83 § n.16, 103 S.Ct. 1303; *Rooker*, 263 U.S. at 415-16, 44 S.Ct. 149; This jurisdictional bar includes claims that are "inextricably intertwined" with a state court judgment and precludes a district court from reviewing decisions of any level of state court. *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 199 (4th Cir. 1997) . . . .

Curley v. Adams Creek Associates, 499 Fed. App'x. at 680. As the Court in *Curley* concluded:

> [h]ere *Curley* asked the district court to invalidate a proceeding brought to register a parcel of disputed property pursuant to North Carolina's Torrens Act, N.C. Gen. Stat. Ann. § 43-1, *et seq.* (West 2009). She claimed that both the Torrens Act and her due process rights were violated when the court proceeded to dispose of her property with notice to her. After reviewing the

> record, we conclude that Curley's claims fall squarely within the ambit of the *Rooker-Feldman* doctrine, as she is "seeking what in substance would be appellate review of the state judgment." See *[Jounson v.] De Grandy*, 512 U.S. at 1005-06, 114 S.Ct. 2647.

Id. See also *Deheny v. Comm. of Pa.*, 781 Fed.App'x.106 (3rd Cir. 2019) [Rooker-Feldman doctrine barred driver's as-applied challenge to constitutionality of Pennsylvania statutes that required appeals from driver's license suspensions to be made within 30 days of entry of the suspension]. Courts have also applied the *Rooker-Feldman* doctrine to the situation involving suspension of a driver's license for failure to pay traffic tickets. *Normandeau v. City of Phoenix*, 516 F.Supp.2d 1054 (D. Ariz. 2005). In *Normandeau*, plaintiff alleged that *Rooker-Feldman* did not apply, arguing "he never had the chance to raise his constitutional claims in state court." 516 F.Supp.2d at 1063. This contention was, however, rejected by the Court:

> Plaintiff's complaint on its face demonstrates that this Court lacks jurisdiction under the Rooker-Feldman doctrine to review Plaintiff's claims regarding his traffic citations and license suspensions. First, Plaintiff asks the Court to enter declaratory judgment that his October 1989 traffic citations, on which the municipal court ordered default judgment for Plaintiff's failure to appear were unconstitutional. . . . Plaintiff requests similar relief concerning his citations dated July 7, 1989 and March 9, 1990. . . . Second, Plaintiff requests this Court to "overturn the convictions" entered regarding those citations, "[throw] the tickets out of court" and lift the driver's license suspensions. . . . Third, Plaintiff asks for declaratory judgment that A.R.S. § 28-160 (former § 1080) is unconstitutional as applied to him and on its face. . . .
>
> The requested relief by this Court would violate the *Rooker-Feldman* doctrine. Most obviously, because Plaintiff asks the Court to find a specific Arizona statute unconstitutional as state courts have applied it to him, to comply with Plaintiff's request would require this Court to find that the State courts erred. Moreover, although Plaintiff did not raise his constitutional claims in state court, he could have and should have. The relevant state rules of procedure provided Plaintiff with the right to appeal. . . his final order or judgment in his civil case. . . .

Id. at 1063-63. See also *Iles v. White*, 879 F.Supp.2d 993 (C.D. Ill. 2012).

Further, *Rooker-Feldman* is applicable to the requirement that filing fees be paid. In *King Grant-Davis v. Supreme Court of South Carolina et al.*, 2016 WL 165007 (D.S.C. 2016), Plaintiff filed suit in federal court "asking it to hold that the two state appellate courts violated his constitutional rights by requiring him to pay the filing fee and the copying costs." at * 1. Judge Duffy affirmed the Magistrate Judge's Report and Recommendations dismissing the case. In his opinion, Judge Duffy stated the following:

> [i]n her R&R Magistrate Judge Baker carefully analyzed Plaintiff's claim and concluded *Rooker-Feldman* deprives this Court of jurisdiction over it. Plaintiff argues *Rooker-Feldman* does not apply because he "is not attempting to appeal the state court decisions." . . . . This Court disagrees. Although Plaintiff has not labeled his case as an appeal, in substance, his case fits squarely within the circumstances described in *Exxon Mobil* [544 U.S. 280 (2005)]. After proceedings in the state appellate courts ended, Plaintiff came to this Court, alleging that those courts made constitutionally infirm decisions in his waiver request. He now wants this Court to issue an opinion declaring as much. Such a ruling would simply be a judicial rejection of the state appellate courts' decisions, thus infringing upon the Supreme Court's exclusive appellate jurisdiction. Accordingly, the Court concludes that under *Rooker-Feldman*, it lacks jurisdiction over this case. Plaintiff's objection is overruled.

Id. at * 2.

We recognize, of course, that the Supreme Court has stated that the *Rooker-Feldman* doctrine is inapplicable "where the party against whom the doctrine is invoked was not a party to the underlying state court proceeding." *Lance v. Dennis*, 546 U.S. 459, 464 (2006) (citing *Johnson v. DeGrandy*, 512 U.S. 997, 1006 (1994)). However, each of the named Plaintiffs (Bellamy, White and Carter) were parties to the underlying state proceedings, including the underlying criminal proceedings in which traffic tickets were issued. Moreover, each of the three named Plaintiffs seek class certification for "'[a]ll individuals whose driver's licenses are suspended, or will be suspended, by the South Carolina Department of Motor Vehicles due to their failure to pay fines, fees, surcharges, assessments, or court costs assessed for a traffic

offense,'" as well as "'[a]ll individuals whose driver's licenses are suspended, or will be suspended, by the South Carolina Department of Motor Vehicles due to their failure to pay reinstatement fees. '" Complaint, at ¶'s 235 and 236. Therefore, based upon these allegations, the *Rooker-Feldman* doctrine is applicable. The named Plaintiffs, as well as the alleged class, were all parties to state proceedings and possessed the right to challenge not only the tickets themselves in criminal court, but the suspensions resulting from those offenses as a result of non-payment of finesse imposed.

Rooker-Feldman is particularly applicable to Judge Anderson as a defendant. Paragraph 321 of the Complaint alleges:

> [u]nder Defendant Anderson's direction, the OMVH denies ability-to-pay hearings due to nonpayment of the filing fee by people who seek to prevent or contest the suspension of a driver's license under Section 56-25-20. In his official capacity, Defendant Anderson could amend OMVH Rules 21, 4, and 9 so that payment of the $200 filing fee under Section 56-5-2952 is not required for a case challenging the DMV's suspension of a driver's license to be assigned to an OMVH hearing officer. In his official capacity, Defendant Anderson could also assign hearing officers to contested cases concerning the suspension of driver's licenses even when filing fees are not paid.

Thus, Plaintiffs sue Judge Anderson essentially because the OMVH "refuses to provide a hearing unless the requester pays the $200 filing fee set forth in South Carolina Code Section 56-5-2952 for each contested suspension." (¶ 10 of Complaint). According to Plaintiffs' "Defendant Anderson enforces an OMVH policy and practice of categorically denying requests for waiver of the $200 filing fee and refusing to assign hearing officers until the filing fee is paid in full, as set forth in OMVH Rules 21, 4, and 9." (¶ 283 of Complaint). Plaintiffs' Complaint (¶ 282) states that, "[i]n practice, the OMVH rejects requests to waive the filing fee, even when supported by documentation of inability to pay the fee, and requires a separate $200 filing fee for each disputed suspension of a driver's license."

Such allegations fall clearly within the scope of the Supreme Court's decision in the *Feldman* case (the second leg of *Rooker-Feldman*). As the Supreme Court later explained in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 285 (2005), in *Feldman*, "[t]he two plaintiffs in that case, Hickey and Feldman, neither of whom had graduated from an accredited law school, petitioned the District of Columbia Court of Appeals to waive a court rule that required D.C. bar applicants to have graduated from a law school approved by the American Bar Association." The Court further noted that "[a]fter the D.C. Court denied their waiver requests, Hickey and Feldman filed suits in the United States District Court for the District of Columbia." (citing *Feldman*, 460 U.S. at 465-73). The question in *Feldman* was whether the D.C. Court of Appeals, in denying the waiver, had acted legislatively or judicially. The Supreme Court, in *Feldman*, concluded that the D.C. Court had, at least in part, acted judicially. According to the Court in *Feldman*, the decision to deny the Waiver Petitions by the D.C. Court of Appeals was "inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny [plaintiffs'] petitions." 460 U.S. at 486-87. The *Feldman* Court went on to distinguish between "challenges to state bar admission rules [generally] and claims that a state court has unlawfully denied a particular applicant admission. . . . Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States District court to review a final state court judgment in a judicial proceeding." 460 U.S. at 485-86. Here, Plaintiffs' allegations make it clear that Plaintiffs are challenging the filing fee requirements on the basis of indigency and are not seeking to strike down § 56-5-2952 altogether. Thus, *Feldman* requires dismissal of their claim against Judge Anderson is based upon his "failure" to make allowances for their alleged indigent status with respect to the statutory filing fee requirement.

In *Howard v. Whitbeck*, 382 F.3d 633 (6th Cir. 2004), the Sixth Circuit addressed the applicability of *Rooker-Feldman* to a statute dealing with the payment of partial filing fees for state court appeals by prisoners. The Court concluded that *Rooker-Feldman* was inapplicable to a challenge to the facial constitutionality of the statute, but was applicable to the statute as applied. According to the Sixth Circuit, *Rooker-Feldman* precluded the District Court from "second guessing" the state courts in applying the statute:

> [t]he statute, as authoritatively construed by the highest court of the state, thus allows prisoners who have insufficient funds to pay a filing fee to be denied the right to file a claim or an appeal. As discussed above, however, the Michigan courts have construed the statute to allow waivers in certain conditions, but not to require them whenever a prisoner is unable to pay an initial partial filing fee. This may be unconstitutional, but it still allows discretion: it allows waivers in situations where prisoners have a zero balance, it merely does not require them. In rejecting Howard's motions to waive the filing fees, the Michigan courts made judicial decisions that under state law they had discretion in making. We therefore cannot reach the greater question of whether those decisions violate the Constitution, as to reach that question would be to sit in review of the Michigan courts in violation of the *Rooker-Feldman* doctrine. Howard then argues that the issues in his federal claim are not inextricably intertwined with the state-court claims. This is not persuasive at the outset, because his case is most properly analyzed in the first category of *Rooker-Feldman* cases, where the complained-of injury is the decision of the state court. Howard seeks the sort of direct appeal of the state-court decisions which is not allowed, except to the extent that he mounts a general constitutional challenge to the statute. Additionally, it is impossible to determine whether his case is inextricably intertwined with the state-court decisions, because we do not have the actual motions for waiver filed with the Michigan courts. It is entirely possible that Howard included in those motions constitutional arguments, in which case the Michigan courts necessarily rejected those arguments in refusing to waive his initial filing fees. In any case, however, Howard is clearly barred from bringing an as-applied challenge under the first category of *Rooker-Feldman*; that the Michigan courts may not have decided the exact issues he brings before this court, a claim impossible to analyze on appeal, does not change the nature of the decision and relief he seeks from this court.

382 F.3d at 641. Such is precisely the case here, as Plaintiffs challenge the application of the filing fee statute and the reinstatement statute to them. In doing so, they seek to set aside the

rulings in state court against them. *See also Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *Cox v. U.S.*, 2012 WL 1158864 at * 2 (D.S.C. 2012) [*Heck* bars injunctive relief, "if a judgment in the plaintiff's favor would necessarily imply the invalidity of the conviction of sentence. . . .]; *Holliday Amusement Co. of Chas, Inc. v. S.C.*, 2006 WL 1285105 at * 4 (D.S.C. 2006) ["Under the doctrine of res judicata, 'a final judgment on the merits bars further claims by parties of their privies based on the same cause of action.'"].

Younger v. Harris abstention

Moreover. *Younger v. Harris* abstention precludes this action against Judge Anderson. In *Kawai v. Uacearnaigh*, 249 F.Supp.3d 821, 824-25 (D.S.C. 2017), Judge Mary Lewis granted a motion to dismiss based upon *Younger v. Harris*. Relying upon *Martin Marietta Corp. v. Md. Comm. on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) in a matter involving spousal support, Judge Lewis explained:

> [i]n *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) . . . the United States Supreme Court held a federal court should not interfere with ongoing state criminal proceedings "except in the most narrow and extraordinary circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). [Younger) abstention applies "as well 'to noncriminal judicial proceedings when important state interests are involved.'" *Harper v. Pub. Serv. Comm'n. of W.Va.*, 396 F.3d 348, 351 (4th Cir. 2005 (quoting *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 432, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982)). . . .
>
> From [Younger] . . . and its progeny, the Court of Appeals for the Fourth Circuit has derived the following test to determine when abstention is appropriate: (1) "there are ongoing state judicial proceedings"; (2) "the proceedings implicate important state interests"; and (3) "there is an adequate opportunity to raise federal claims in the same proceedings." *Martin Marietta Corp. v. Md. Comm'n. on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex*, 457 U.S. at 432, 102 S.Ct. 2515). In weighing the application of [*Younger*], the Court heeds the basic proposition that 'abstention from the exercise of federal jurisdictions the exception, not the rule.'" *Emp'rs Res. Mgmt. Co. v. Shannon*, 65 F.3d 1126, 1134 (4th Cir. 1995) (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984)). Even where [Younger] abstention is at issue, federal

> courts have a "'virtually unflagging obligation . . . to exercise the jurisdiction given. '" *Deakins v. Monaghan*, 484 U.S. 193, 204, 108 S.Ct. 523, 98 L.Ed.2d 829 (1988) (quoting *Colo. River Water conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976)).

Courts have viewed driver's license suspension proceedings to be "ongoing" for purposes of *Younger* even where "the plaintiff has not exhausted all of his state remedies." In *Krall v. Commonwealth of Pa.*, 903 F.Supp. 858, 861 (E.D. Pa. 1995), the Court noted that "[t]he Supreme Court has held that 'a party . . . must exhaust his state appellate remedies before seeking relief in the District Court.'" *Id*. (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975)).

Moreover, in *Falco v. Justices of the Matrimonial, Parts of the Supreme Court of Suffolk Co.*, 2015 WL 778354 (E.D.N.Y. 2015), Plaintiff argued unsuccessfully that the *Younger* abstention was inapplicable in an action for declaratory and injunctive relief from a state court order directing him to pay the legal fees of his children's court-appointed law guardian. Particularly, significant was the fact that the Court rejected Plaintiff's argument "that the state court system does not afford plaintiff an adequate forum for his constitutional claims." The District Court cited *McKnight v. Middleton*, 699 F.Supp.2d 507, 521 (E.D.N.Y., aff'd 434 Fed.App'x. 32 (2d Cir. 2011), which had concluded that *Younger* applied even though the Family Court orders in question were not appealable as of right in state court. 699 F.Supp2d at 521. According to the *Falco* Court, *Younger* cannot be defeated "'merely because the losing party in the State Court . . . believes that his chances of success on appeal are not auspicious.'" *Id*. at * 4 (quoting *Glatzer v. Barone*, 394 Fed. Appx. 763, 765 (2d Cir. 2010).

Here, as noted above, all of the named Plaintiffs failed to show up at their criminal trials (upon which the tickets were issued) and were tried in their absence. There is, therefore, nothing in the Complaint to suggest that Plaintiffs ever raised their federal claims in any state

proceedings. In rejecting the contention "that there was no opportunity in the state disciplinary proceedings to raise his federal constitutional challenge to the disciplinary rules," the Supreme Court in *Middlesex, supra*, nevertheless, concluded that *Younger* was applicable. The Court noted that ". . . Hinds failed to respond to the complaint filed by the local Ethics Committee and failed even to attempt to raise any federal constitutional challenge in the state proceedings." 457 U.S. at 435. According to the Court in *Middlesex,* "Respondent Hinds points to nothing existing at the time the complaint was brought by the local Committee, to indicate that members of the Executive Committee, the majority of whom are lawyers, would have refused to consider a claim that the rules which they were enforcing violated federal constitutional guarantees." *Id*. Thus, *Younger* was deemed applicable. For all the reasons cited, *Younger* applies here as well.

Non Appearance at Criminal Trials And Lack of Standing

Here, state law requires where, due to indigency, a person is unable to pay a fine there is a mandatory recourse for that situation. Section 17-25-350 mandates that "[i]n any offense requiring a fine or imprisonment, the judge or magistrate hearing the case shall, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine. . . ." Thus, if the named Plaintiffs had simply appeared for their criminal trial, upon conviction, a payment schedule for payment of the fine would have been established pursuant to state law. Suspension of their license could have thus been avoided. Moreover, as discussed above, the Uniform Traffic Ticket, the form of which must be approved by the Attorney General (§ 56-7-10), warns the offender that their license may be suspended and of the right to jury trial. Thus, even apart from *Rooker, Heck* and *Younger*, Plaintiffs' claims must be dismissed for this reason. Courts have held virtually universally that the hearing provided by a criminal trial satisfies due process with

respect to a resulting driver's license suspension. Moreover, failure to appear at the criminal trial or to pursue state remedies is ordinarily fatal with respect to any federal claim for the driver's license suspension.

In *Calabi v. Landsman*, 438 F.Supp. 1165 (D. Vt. 1978), an action was brought to challenge Vermont statutes authorizing the suspension of a driver's license for commission of traffic offenses. Relying in part upon *Dixon v. Love, supra*, the Court upheld the statute against Due Process and Equal Protection arguments. With respect to the Due Process claim, the Court's reasoning is instructive:

> [b]ecause the suspension decision is, at least in the great majority of instances, simply a function of the guilt-determination process, and the motorist is given due warning of the possibility of license suspension on the Vermont Traffic Citation, the defendant is not required by the due process clause to provide a second hearing dealing only with the suspension issue.

438 F.Supp. at 1172. See also *Evans v. City of New York*, 308 F.Supp.2d 316, 326 (S.D.N.Y. 2004) [citing *Dixon v. Love*, *supra* and concluding that ". . . plaintiff received all the process he was due. Like the habitual offenders in *Dixon*, the plaintiff was afforded a hearing on his underlying speeding violation."].

Moreover, failure to appear at trial for a traffic offense defeats any federal claim regarding an inability to pay the traffic fines. In *Garcia v. City of Abilene*, 890 F.2d 773 (5th Cir. 1989), the plaintiff brought a § 1983 action against the City contending its fine collection system was unconstitutional as applied to her under *Bearden v. Georgia*, 461 U.S. 660 (1983). Plaintiff was incarcerated for failure to pay the fine. However, she absented herself from the criminal trial. The Court concluded that her federal claim was not meritorious because of her failure to appear for trial. The Court explained:

> Mrs. Garcia contends that the City of Abilene violated the principles established in *Tate* and *Bearden* by attempting to jail her solely because she

> could not pay her fines. However, these cases rest on the assumption that the indigent appears before the court to assert his inability to pay. Even assuming an individual who is fined is too poor to pay, if he does not appear and assert his indigency, the court cannot inquire into his reasons for not paying and off alternatives.

890 F.2d at 776.

The South Carolina Supreme Court has recognized that an offender cannot be imprisoned for inability to pay a fine due to indigency. In *Richards v. Crump*, 260 S.C. 504, 1975 S.E.2d 298 (1973), the Court acknowledged the passage of § 17-25-350 shortly before the decision was rendered and concluded that the defendant was entitled to resentencing "in keeping with this legislative enactment." 260 S.C. at 506, 197 S.E.2d at 298. Yet, as *Garcia* held, a defendant cannot fail to attend the trial and still receive the benefits of a payment schedule such as § 17-25-350 provides.

One of the purposes of a Uniform Traffic Ticket is to "notify an accused. . . ." *Bayly v. State*, 397 S.C. 290, 296, 724 S.E.2d 182, 184-85 (2012). The South Carolina Supreme Court has held that the UTT "is more than sufficient to adequately inform [the defendant] . . . of the charges against him." *City of Goose Creek v. Brady*, 288 S.C. 20, 21, 339 S.E.2d 509 (1986). The UTT gives the offender notice as to when to appear. See *In re Sons*, 335 S.C. 343, 344, 517 S.E. 214 (1999) [Lance Corporal L.D. Sells of the Highway Patrol issued a uniform traffic ticket and told Martin to appear in Central Traffic Court on August 26, 1997."]; *State v. Hewins*, 409 S.C. 93, 104, 760 S.E.2d 814, 819-20 (2014) [Uniform Traffic Ticket states that "a trial was scheduled for October 8, 2009"]. As the South Carolina Supreme Court emphasized in *State v. Biehl, supra*, the issuance of the Uniform Traffic Ticket "summons the accused person to appear before a Magistrate, where he may submit any contention relative to the preservation of his rights." The UTT informs the violator of the right to a jury trial.

Thus, Plaintiffs' trials in their absence were constitutional. See *U.S. v. Camacho*, 955 F.2d 950, 953 (4th Cir. 1992) ["A defendant may waive his constitutional right to be present at his own trial." (citing *Taylor v. U.S.*, 414 U.S. 17, 19 (1973))]. As the Fourth Circuit has held, actual notice is not necessary to satisfy due process, and the mailing of traffic citations by certified mail is sufficient. *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140 (4th Cir. 2014). Moreover, the Mississippi Supreme Court has held, with respect to an offender tried in his absence, that the offender, who was subject to arrest for non-payment of a fine, received sufficient notice by the Uniform Traffic Ticket to satisfy due process. *Wheeler v. Stewart*, 798 So.2d 386, 391 (Miss. 2001), the Court stated:

> [t]he notice received by Wheeler was adequate to satisfy due process requirements. The notice of the date, time and court where Wheeler was to appear was clearly stated on the ticket signed by the issuing officer. Any reasonable person who failed to appear before a court as directed by a criminal citation should expect an arrest warrant to be issued. After his failure to appear, but prior to arrest, Wheeler was given notice of the imposition of a fine and the opportunity to pay the fine before the mittimus was issued. We find Wheeler's argument that his due process rights were violated is without merit.

In these instances, the named Plaintiffs were given the opportunity for a full judicial hearing (trial) and the opportunity to have a payment schedule set by the Court if they were indigent. They were warned fully by the UTT of the consequences if they failed to appear. Because they failed to appear, they lack standing to seek a "do over" in federal court now.

CONCLUSION

Judge Anderson is not an appropriate party to this case and should be dismissed. He is a judge and a legislator entitled to immunity, and there is no case or controversy between him and the Plaintiffs. *Rooker*, *Younger* and other cases cited mandate that Plaintiffs are unable to side step state court which afforded them full relief.

Respectfully submitted,

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