No. 19-1421

In the United States Court of Appeals
for the Fourth Circuit

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**SETI JOHNSON**, et al., on behalf of themselves and those similarly situated,
*Appellants/Plaintiffs,*

v.

**TORRE JESSUP**, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles,
*Appellee/Defendant.*

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On Appeal from the United States District Court
for the Middle District of North Carolina

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# BRIEF FOR DEFENDANT-APPELLEE

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## CORPORATE DISCLOSURE STATEMENT

I certify, pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, that no appellee is in any part a publicly held corporation, a publicly held entity, or a trade association, and that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

This the 21st day of October, 2019.

/s/ Kathryne E. Hathcock
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## INTRODUCTION

North Carolina, like many other states, relies on an administrative and statutory framework to ensure the safety and security of all users of the State's roadways. To that end, as part of that regulatory scheme, the State has incentivized adherence to the State's transportation laws with fines that are assessed to violators. At the same time, however, the State affords its citizens protections against capricious government sanctions by ensuring that traffic defendants are promptly notified of their citation, are given an extended period of time to pay the assessed fine, and are provided with processes by which they may challenge the underlying citation or petition a state court for an alternative remedy in the event that they are able to prove that they are unable to pay their fines.

Section 20-24.1 (the revocation statute) of the North Carolina General Statutes is among the laws that are part of this framework. It requires revocation of a driver's license if that driver has failed to pay a fine assessed for violating the State's traffic laws. However, the same statute also has built-in protections to traffic defendants who are unable to pay their fines. Together, this statute serves to disincentivize voluntary nonpayment, while

providing those with an inability to pay their fines a mechanism to seek redress from state courts.

The revocation statute is enforced only *after* a traffic defendant has failed to appear for a hearing on her traffic citation or has failed to pay the fine assessed to her for a traffic violation. State law gives every traffic defendant 40 days to resolve the citation. N.C. Gen. Stat. § 20-24.2(a)(2). If, at the end of these 40 days, the defendant has failed to address her citation, pursuant to the revocation statute, the North Carolina Division of Motor Vehicles is directed to send a notice to the defendant. This notice informs the defendant that she has 60 days to address the citation. If she fails to, the notice informs the defendant that her driver's license may be suspended. The notice also cites the revocation statute, which includes information about how to contest the underlying violation and how to petition the court for redress if the defendant is unable to pay the fine.

If, at the end of the 60-day grace period offered by the revocation statute, a defendant has still not paid her fine or petitioned the court for redress, the revocation statute commands the DMV to revoke the defendant's driver's license. The revocation statute informs the defendant that her license may be reinstated at any time, upon payment of the fines and costs and a

reinstatement fee, or if the defendant petitions the court for redress based on her inability to pay.

The plaintiffs contend that the revocation statute punishes those who are not wealthy by requiring revocation for failure to pay a fine, letting those with the ability to pay a fine continue to enjoy the privileges of driving. This argument is mistaken. The revocation statute does not punish poverty - rather, it sanctions only those defendants who do not pay the fines assessed to them *and who make no efforts to petition the state court for redress*. The State's administrative scheme offers traffic defendants opportunity to obtain relief, and there is no evidence in the record that a traffic defendant has been denied her opportunity to be heard. It is one of many similar administrative schemes that are in place around the country and is important for the evenhanded enforcement of the State's traffic laws.

The district court judgment should be affirmed.

## STATEMENT OF FACTS

### A. The Original Citation

At the time of a traffic defendant's conviction, the court notes the amount of costs and fines on the citation. Pursuant to section 20-24.2(a)(2),

any fines and costs assessed for a traffic violation are due within 40 days. N.C. Gen. Stat. § 20-24.2(a)(2).

**B. The Follow-Up Notice**

If the traffic defendant fails to pay the fines and costs assessed against her, fails to establish or comply with a payment plan pursuant to section 7A-304(f), or fails to request relief from the debt from a state district court within 40 days of the initial citation pursuant to section 15A-1362, section 20-24.1 of the North Carolina General Statutes directs the DMV to send the defendant a notice, reminding her of her ongoing financial obligation. The notice informs the defendant that she has failed to pay a fine and reminds the defendant of her violation date, the citation number, as well as the name and phone number of the state court handling the traffic violation. J.A. 17. The notice also informs the defendant that payment cannot be made directly to the DMV, but rather that the defendant must contact the appropriate clerk of court to resolve the citation. *Id.* The notice provides the contact information for the appropriate clerk of court. *Id.* Finally, the notice also notes that if the defendant does not pay her fine, pursuant to section 20-24.1, she may have her driver's license indefinitely suspended. *Id.* The notice gives the defendant 60 days to contact the clerk of court and resolve her citation. *Id.*

Section 20-24.1 (the revocation statute) provides even more detailed information to the defendant. It further informs the defendant that her license will be revoked if, within 60 days, she does not contest the underlying citation, pay the fine, or "demonstrate[ ] to the court that [her] failure to pay the penalty, fine, or costs was not willful and that [s]he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted." N.C. Gen. Stat. § 20-21.4(b). Any hearing—whether it is on her ability to pay or contesting the underlying citation itself—must be afforded to the defendant "within a reasonable time" of her appearance. *Id.* § 20-21.4(b1).

Finally, the revocation statute also makes clear that all of the options to contest the underlying citation or make alternative payment arrangements remain open even after a defendant's license is revoked. *Id.* § 20-21.4(b1).

**C. This Lawsuit**

On 30 May 2018, the proposed classes—through four named plaintiffs—sued the Commissioner in district court. The plaintiffs claimed that the revocation statute violates the Fourteenth Amendment's Equal Protection and Due Process Clauses. J.A. 261-67. The plaintiffs also moved for a preliminary injunction directing the Commissioner to reinstate driver's licenses that were suspended for nonpayment of fines and court costs which had been assessed

upon their convictions for violations of traffic laws. The plaintiffs claimed that these fines and costs have not been paid because they are indigent and that revocation of licenses before a judicial determination on the plaintiffs' ability to pay rendered the revocation statute unconstitutional.

The Commissioner moved for judgment on the pleadings and opposed the plaintiffs' motion for preliminary injunction.

### D. The District Court's Opinion

The district court granted the Commissioner's motion for judgment on the pleadings as to the plaintiffs' substantive-due-process and equal-protection claims and denied the plaintiffs' motion for preliminary injunction on the ground that they were unlikely to succeed on the merits.

First, the district court held that the Supreme Court's fundamental-fairness doctrine does not apply to the plaintiffs' due-process and equal-protection claims. J.A. 400. The district court observed that the Supreme Court has consistently limited the application of the fundamental-fairness doctrine to those cases in which fundamental rights, like liberty from incarceration, access to courts, and parental rights, are implicated. J.A. 398-400. Because the right to hold a driver's license has consistently been held not

to be a fundamental right, the district court correctly held that the fundamental-fairness doctrine does not apply to this case. J.A. 400.

Given that there are no fundamental rights implicated by a person's right to hold a driver's license, the district court applied the traditional tests for substantive due process and equal protection. J.A. 395-401. Because the right to hold a driver's license is neither a fundamental right nor does it create a suspect class, the district court held that rational-basis scrutiny was appropriate here. J.A. 400-01. Applying the rational-basis test, the district court held that the revocation statute bore a rational relationship to the State's interest: to disincentivize voluntary nonpayment of traffic fines. Consequently, the district court upheld the statute. J.A. 400-01.

As to the plaintiffs' motion for preliminary injunction, the district court held that the plaintiffs had not shown that they were likely to succeed on the merits of their procedural-due-process claims. J.A. 435.

First, the district court applied the three-factor test in *Mathews v. Eldridge* and determined that the revocation statute implicated an important private interest in the ability to hold a driver's license. J.A. 419-20. But the district court held that the procedural safeguards in place (namely, that the revocation statute afforded a traffic defendant 100 days to either pay a fine or

petition a state court for redress), and the governmental interests in enforcing the State's regulatory and administrative scheme, were sufficient to overcome the private interest in holding a license. J.A. 425-30.

Finally, the district court also held that the plaintiffs were unlikely to succeed on their due-process claim that the notice provided is insufficient. The district court first observed that the constitutional requirements for notice do not require individualized notices of state-law remedies, which are established by published, generally available statutes. J.A. 433. Because the DMV's notice not only contains a citation to the appropriate statute, but encourages the defendant to contact the clerk of the court directly to resolve the citation, the district court held that the notice contained sufficient information to inform the defendant of her options. J.A. 435. Accordingly, the notice passes constitutional muster.

## SUMMARY OF ARGUMENT

The district court correctly concluded that the revocation statute conforms with the requirements of due process and equal protection. A straightforward application of the Supreme Court's jurisprudence on due process and equal protection shows why.

In the absence of a suspect classification or a fundamental right, statutes are upheld as long as they have a rational basis. To date, the vast majority of federal courts have held that, while the ability to drive is important, holding a license is not a fundamental right. Nor, as the plaintiffs concede, does classification based on voluntary nonpayment of fines assessed create a suspect class. Accordingly, the revocation statute must be upheld as long as it has a rational basis.

Here, the district court was right to find that there is a rational basis. The revocation statute serves dual purposes of collecting unpaid fines and costs owed to the State and disincentivizing nonpayment of fines incurred as a result of traffic violations. The statute, which conditions continued possession of a driver's license on the payment of fines or a demonstration of the defendant's inability to pay, serves those purposes. Accordingly, the district court was right to hold that there are no due-process or equal-protection concerns with the revocation statute.

Nevertheless, the plaintiffs contend that the Supreme Court's fundamental-fairness doctrine applies here because, in their view, it prohibits the imposition of sanctions "solely for inability to pay" and requires a searching judicial inquiry on a person's ability to pay before sanctions may be

imposed. But that is not an accurate interpretation of the doctrine. Rather, the Supreme Court has recognized that, where certain specific fundamental rights (including liberty from incarceration, access to courts, and parental and family rights) are implicated, a state may not impose a punishment that would apply only to those who are unable to pay a fine. The right implicated by the revocation statute—the ability to hold a driver's license—is not the type of fundamental right that the Supreme Court has said requires a more searching inquiry. Therefore, the fundamental-fairness doctrine is inapplicable in this case.

The district court was also correct to find that the plaintiffs were unlikely to prevail on their procedural-due-process claims. Before a license may be revoked, the statutory scheme provides the traffic defendant with process sufficient to ensure that her due-process rights are protected. The traffic defendant is first awarded 40 days to comply with the traffic citation. If, at the end of the 40 days, the traffic defendant has not paid her traffic fine, the DMV then sends a notice, reminding the defendant of the citation, giving her the particulars of the citation, and urging her to contact the clerk of the court to come into compliance with the law within 60 days. The notice also provides the statute, which informs the defendant of her options to seek an

inability-to-pay hearing or contest the underlying citation. The statutory scheme, including the notice, which allows a traffic defendant 100 days to either pay the outstanding fines and costs or seek a determination from a state court on her inability-to-pay, fulfills the requirements of due process.

The district court's judgment should be affirmed.

## STANDARD OF REVIEW

An order awarding judgment on the pleadings is reviewed *de novo*. *Burbach Broad. Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 405–06 (4th Cir. 2002).

When reviewing a denial of a preliminary injunction, this court reviews the district court's factual findings for clear error and reviews its legal conclusions de novo. *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

## ARGUMENT

### I. The District Court Correctly Held That Section 20-24.1 Does Not Violate the Constitution.

#### A. The Revocation Statute Does Not Violate the Due-Process Clause.

The revocation statute does not violate the substantive-due-process clause of the Fourteenth Amendment. No court has held that the right to hold

a driver's license is a fundamental liberty interest. Accordingly, the revocation statute need only survive rational-basis scrutiny. The State has a legitimate governmental interest in regulating access to its highways and ensuring the safety of its citizens. The revocation statute, which serves to disincentivize nonpayment of traffic fines, bears a rational relationship to the State's governmental interest. *Sylvia Dev. Corp. v. Calvert Cty., Md.*, 48 F.3d 810, 827 (4th Cir. 1995).

Accordingly, section 20-24.1 does not violate the Due Process Clause.

**1. The Right to Hold A Driver's License is Not a Fundamental Right Under the Due Process Clause.**

The plaintiffs' claim has a fatal flaw: It is predicated upon the assertion that the right to hold a driver's license is a fundamental liberty interest. But federal courts around the country have consistently held that the right to hold a driver's license is not a fundamental right. Indeed, the plaintiffs are unable to cite any case in which a federal court has held that the right to hold a driver's license is a fundamental liberty interest. Because the revocation statute does not affect a fundamental liberty interest, the district court correctly held that it does not violate substantive due process.

Fundamental rights are, objectively, deeply rooted in this Nation's history and tradition, and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). A right is fundamental if it is "sufficiently basic to the livelihood of the Nation." *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 388 (1978).

Holding a driver's license, while important and valuable, is not a fundamental right.

State and federal courts have long recognized that the ability to drive a motor vehicle on a public highway is not a fundamental right, but rather, a revocable "privilege" that is granted upon compliance with statutory license procedures. *Reitz v. Mealey*, 314 U.S. 33, 36-37 (1941), *overruled in part by Perez v. Campbell*, 402 U.S. 637 (1971); Mullins v. Commonwealth of Virginia, No. CIV.A. 5:06CV00068, 2007 WL 120835, at *1 (W.D. Va. Jan. 9, 2007) (holding no constitutional violation based upon defendants' refusal to renew plaintiff's driver's license since the right to drive is not a fundamental right); *John Doe No. 1 v. Georgia Dep't of Pub. Safety*, 147 F. Supp. 2d 1369, 1375 (N.D. Ga. 2001) (holding that a legal resident of Georgia does not have a constitutional right to a driver's license); *Wells v. Malloy*, 402 F. Supp. 856, 858 (D. Vt. 1975)

("Although a driver's license is an important property right in this age of the automobile, it does not follow that the right to drive is fundamental in the constitutional sense."), *aff'd*, *Estate of Edwin C. Weiskopf v. Commissioner of Internal Revenue,* 538 F.2d 317 (2d Cir. 1976); *Henry v. Edmisten*, 340 S.E.2d 720, 735 (N.C. 1986) (holding that North Carolinians do not have a fundamental right to drive); *Walton v. Commonwealth*, 24 Va. App. 757, 760, 485 S.E.2d 641 (1997), *aff'd*, 255 Va. 422, 497 S.E.2d 869 (1998) ("[T]he right to drive is not a fundamental right and consequently, laws regulating that right need only withstand rational basis review to be found constitutional.").

Another federal court of appeals that recently upheld a state's driver's license revocation statute came to the same conclusion. In *Fowler*, the Sixth Circuit explained that "[p]roperty interests [such as a driver's license] are not due the same degree of legal protection as the fundamental liberty interests implicated in the *Griffin* line of cases." *Fowler v. Benson,* 924 F.3d 247, 261 (6th Cir. 2019). This is because, while the due-process clause applies to both liberty and property, "property receives the lesser protection" and "[l]iberty receives the greater protection." *Id.* (citing *Markadonatos v. Vill. of Woodridge*, 760 F.3d 545, 554 (7th Cir. 2014)).

The Commissioner does not quibble with the plaintiffs' assertion that the ability to hold a driver's license is an important and valuable privilege. Br. at 28. But the fact that holding a driver's license may be beneficial for the license holder does not automatically make it a fundamental right. This is because federal courts have found that "[b]urdens on a single mode of transportation do not implicate the right to interstate travel." *Miller*, 176 F.3d at 1205-06 (citing *Monarch Travel Servs., Inc. v. Associated Cultural Clubs, Inc.*, 466 F.2d 552, 554 (9th Cir. 1972)); *City of Houston v. Fed. Aviation Admin.*, 679 F.2d 1184, 1198 (5th Cir. 1982) (there is no "constitutional right to the most convenient form of travel."). The fact that one's driver's license is suspended does not prevent a person "from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it." *Miller v. Reed*, 176 F.3d at 1206.

Accordingly, as the district court observed, the vast majority of federal courts to consider this issue have held that while holding a driver's license is undoubtedly beneficial to drivers, the suspension of a license does not infringe on a fundamental right. J.A. 398 n.10; *Fowler v. Johnson*, 17-11441, 2017 WL 6379676, at *2-3 (E.D. Mich. Dec. 14, 2017), *rev'd and remanded on other grounds*, 924 F.3d 247 (6th Cir. 2019); *Mendoza v. Garrett*, 358 F. Supp. 3d 1145,

1171 (D. Or. 2018); *Miller v. Reed*, 176 F.3d 1202, 1205-06 (9th Cir. 1999); *Farley v. Santa Clara County Dep't of Child Support Servs.*, No. C 11-01994-LHK, 2011 U.S. Dist. LEXIS 117151, at *17-18 (N.D. Cal. Oct. 11, 2011) ("The Court agrees that because it forecloses only one mode of transportation, the suspension of a driver's license does not infringe the fundamental right to travel."

The plaintiffs also argue that the revocation statute is unconstitutional because it does not explicitly require that an inability-to-pay hearing take place before revocation occurs. Br. at 31-33. But the plaintiffs cite no authority that would require—even in the cases in which the court has considered the ability of indigent challengers to pay—a determination on a person's ability to pay before a penalty is assessed. To the contrary, at least one district court has explicitly rejected such an argument. *Evans v. Rhodes*, No. 3:14CV466/MCR/CJK, 2016 WL 5019202, at *7 (N.D. Fla. Feb. 29, 2016) ("The Department is not constitutionally required to provide Evans with a pre-suspension hearing to determine his ability to pay court costs before suspending his driver's license."), *report and recommendation adopted*, 2016 WL 5024202 (N.D. Fla. Sept. 16, 2016), *aff'd*, 735 Fed. Appx. 986 (11th Cir. May 2018). As the district court here correctly held, "the [private] interest [in a driver's license] is not so great as to require departure from the principle that

an evidentiary hearing is not ordinarily required prior to adverse administrative action." J.A. 420 (citing *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1235 (4th Cir. 1985)).

Moreover, there is no evidence in the record that any of the plaintiffs attempted to schedule an inability-to-pay hearing but had their license revoked before such a hearing could take place. The plaintiffs' assertion that the hearing process is nevertheless insufficient to satisfy due process and equal protection is baseless.

### 2. Where No Fundamental Rights Are at Stake, Rational-Basis Scrutiny Applies.

When no fundamental rights are involved, statutes challenged under the Fourteenth Amendment's due-process clause are upheld so long as they have a rational basis. *United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 & n.4 (1938). Under rational-basis review, courts uphold governmental decisions that are rationally related to a state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721, 728 (1997). Thus, a statute "must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification," *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993) and "every reasonable construction must be resorted to, in order to save

a statute from unconstitutionality." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council,* 485 U.S. 568, 575 (1988) (quoting *Hooper v. California*, 155 U.S. 648, 657 (1985)). This is a deferential standard, placing the burden on the aggrieved party "to negate every conceivable basis which might support' the governmental action." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973).

### 3. The Law Requiring Revocation of Driver's Licenses for Failure to Pay Passes the Rational-Basis Test.

The district court correctly held that North Carolina's revocation statute passes the rational-basis test. J.A. 400. States are free to use their police power to regulate their public highways so that they can protect the safety and welfare of theirs citizens. *Sproles v. Binford*, 286 U.S. 374, 388 (1932); *Morris v. Duby*, 274 U.S. 135 (1927). One way in which states are able to do this is by requiring violators of traffic laws to pay a fine or cost as a penalty for their violations. *See, e.g., Karpark Corp. v. Town of Graham*, 99 F. Supp. 124 (M.D.N.C. 1951), *aff'd*, 194 F.2d 616 (4th Cir. 1952) (revenues from parking meters levied and collected under the inherent police power to regulate traffic and are regarded as defraying the costs of such regulation of traffic). Section 20-24.1 does just that by conditioning the continued use of a driver's license

on the payment of fines assessed as a penalty of traffic violations. *See Fowler*, 924 F.3d at 262 ("By imposing greater consequences for violating traffic laws, the state increases deterrence for would-be violators. The state also has legitimate interests in promoting compliance with court orders and in collecting traffic debt.").

Section 20-24.1 conditions continued use of a driver's license on one of two circumstances: (1) payment of a fine or penalty charged in conjunction with a motor-vehicle offense or (2) a finding by a state court that the driver cannot pay the penalty and that the driver is making a good-faith effort to pay the penalty. N.C. Gen. Stat. § 20-24.1(a), (b). The threat of revocation, therefore, incentivizes the payment of a fine or penalty that is charged in conjunction with a motor-vehicle offense. As the district court observed, North Carolina has a strong interest in imposing "a motivation to accomplish what an individual might otherwise be disinclined to do"—here, the State incentivizes a traffic defendant from avoiding having her license suspended by requiring the defendant to pay court fines and costs. J.A. 400.

The plaintiffs contend that section 20-24.1 is not rationally related to a governmental interest because the statute establishes "a classification based on inability to pay." Br. at 35-38. But the plaintiffs' assertion ignores the plain

text of the statute. The revocation statute does not establish a classification based on inability to pay a fine. Rather, the revocation statute establishes a classification based on *willingness* to either pay a fine or approach a court for relief from the fine. This classification is rationally related to the State's interests in incentivizing payment of fines and costs related to traffic violations.

Section 20-24.1 requires revocation of a license unless a fine is paid *or* unless the traffic defendant is able to demonstrate to the court that her failure to pay is not willful and that she is making a good-faith effort to pay it. N.C. Gen. Stat. § 20-24.1(a), (b). The statute, therefore, does not require automatic revocation for inability to pay. Rather, the statute requires revocation only if the traffic defendant does not demonstrate to the court that she is unable to pay. The classification established by the revocation statute is based on the traffic defendant's willingness to comply with the laws of the State—not on whether the traffic defendant is *able* to comply with the laws.

This classification is rationally related to the State's interest in incentivizing payment of traffic fines: if the traffic defendant can pay the fine, the statute ensures that the defendant does; if the traffic defendant cannot pay the fine, the statute ensures that the defendant takes steps to show that she

cannot and works with a state court to make a good-faith effort to pay the fine. In both cases, the revocation statute focuses on disincentivizing voluntary nonpayment of fines and penalties assessed in traffic violations—the rational basis behind the revocation statute.

The plaintiffs, however, argue that the statute subjects "those who cannot pay . . . to automatic and indefinite revocation, while those with means can simply pay their fines and costs." Br. at 36. But that is not what the text of the statute provides. The plaintiffs have served to sever the clause of the statute that allows defendants who are unable to pay their fine to seek redress from a state court. In fact, the statute specifically requires that "the revocation order and any entries on his driving record relating to it shall be deleted," if the traffic defendant "demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted." N.C. Gen. Stat. § 20-24.1(c), (b)(4).

Nor is the plaintiffs' claim supported by the evidence in the record. The plaintiffs claim that the evidence establishes that, in the last three years, at least 130,597 residents received revocation orders but were unable to pay their fines and that at least 62,788 have never been able to pay the fines. Br. at 37.

This, the plaintiffs claim, demonstrates that the statute automatically revokes license of people who are unable to pay their fines. *Id.* But this is a misunderstanding of the evidence. The plaintiffs provide no evidence that those whose licenses were revoked took measures to procure determinations that they were unable to pay. Instead, they assume that any North Carolinians whose licenses were revoked did not pay the fine because they could not pay the fine. This theory is unsupported by the evidence.

None of the cases that the plaintiffs cite are appropriate analogies to this case. The plaintiffs rely principally on *Williams v. Illinois*, in which the Supreme Court held that a facially neutral statute that further imprisons only those who are unable to pay a fine is unconstitutional. 399 U.S. 235, 242 (1970). But *Williams* is inapposite. The Court in *Williams* explained its basis for finding that the statute at issue was unconstitutional: "Since only a convicted person with access to funds can avoid the increased imprisonment, the Illinois statute in operative effect exposes only indigents to the risk of imprisonment beyond the statutory maximum." *Id.* In this case, the revocation statute does not revoke licenses of only those who cannot pay. Rather, the statute requires revocation if a defendant fails to demonstrate to a court that she cannot pay. The statute does not punish indigency—it only punishes the failure to

*demonstrate* an inability to pay.[1] *See Bearden v. Georgia*, 461 U.S. 660, 670 (1983) (objecting to the revocation of probation because of an indigent prisoner's *inability* to pay restitution); *Robinson v. Purkey*, No. 3:17-CV-1263, 2017 WL 4418134, at *8 (M.D. Tenn. Oct. 5, 2017) (enjoining enforcement of a statute that automatically revokes licenses for failure to pay and with no provision for an inability-to-pay hearing).

Finally, the plaintiffs argue that the revocation statute is not rationally related to the State's interest because it is not, in the view of the plaintiffs, the best policy to help those who cannot pay "establish the economic self-sufficiency that is necessary to be able to pay the relevant obligations" and that "punishing people for their inability 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." Br. at 40. But the rational-basis test does not require that States pursue the policy that a court would later determine is best. *Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 477 (1985); *see also Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992)

[1] In any event, *Williams* is irrelevant for a separate reason: The statute at issue in *Williams* involved a fundamental right—a person's liberty. The statute here does not affect a fundamental right and is therefore not subject to the analysis in Williams. See 399 U.S. at 242.

(noting the "presumption that the administration of government programs is based on a rational decisionmaking process that takes account of competing social, political, and economic forces").

Nor, as the district court correctly held, does the rational-basis test require laws to be narrowly tailored to accomplish the State's ends. J.A. 401. "The 'rational' aspect of rational basis review . . . is not an invitation to scrutinize . . . the instrumental rationality of the chosen means (i.e., whether the classification is the best one suited to accomplish the desired result)." *Van Der Linde Housing, Inc. v. Rivanna Solid Waste Auth.*, 507 F.3d 290, 295 (4th Cir. 2007). Instead, as the district court observed, the State need only demonstrate that there is a "reasonably conceivable state of facts," *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313, (1993), under which the revocation statute "provides some traffic defendants with an efficacious incentive to pay fines and costs." J.A. 401. Here, the revocation statute bears a rational relationship to the advancement of North Carolina's interest in regulating the use of its public highways, protecting the safety and welfare of its citizens, and ensuring compliance with court orders. It therefore survives rational-basis review.

### B. The Revocation Statute Does Not Violate the Equal-Protection Clause.

The district court was also correct to hold that the revocation statute does not violate the equal-protection clause because the statute is rationally related to a legitimate government interest. J.A. 400-01. Where a statute does not differentiate on the basis of a suspect classification, the statute is upheld under the equal-protection clause so long as it has a rational basis. *See Carolene Products Co.*, 304 U.S. at 152, n.4.

The plaintiffs concede that the revocation statute's classification based on a traffic defendant's ability to pay a fine does not create a suspect classification. Br. at 35-41. The plaintiffs only contend that the classification has no rational basis. *Id.*

But, again, the plaintiffs' argument is based on a fundamental misreading of the revocation statute. The statute does not differentiate based on a traffic defendant's *ability* to pay—but rather, her *willingness* to pay. *See supra* N.C. Gen. Stat. § 20-24.1. Because the statute, which disincentivizes voluntary non-payment of fines incurred in traffic violations, is rationally related to the State's interest in regulating the use of its public highways,

protecting the safety and welfare of its citizens, and ensuring compliance with court orders, it survives rational-basis review. J.A. 400-01.

### C. The *Bearden* Doctrine Does Not Apply to This Case.

Tacitly acknowledging that the revocation statute does not implicate a fundamental right or create a suspect classification, the plaintiffs instead contend that the fundamental fairness doctrine articulated by the Supreme Court in *Bearden* invalidates the revocation statute. Br. at 18-27. But the plaintiffs' attempt to extend *Bearden's* "fundamental fairness" doctrine beyond what the Supreme Court permitted is misguided.

The plaintiffs' argument is based on a novel legal theory that interprets the *Bearden* line of cases as prohibiting the State from "sanction[ing] a person solely due to their inability to pay" a fine. Br. at 18. This is an inaccurate interpretation of the doctrine.

Rather, as the district court correctly held, the fundamental fairness doctrine applies only when a state has deprived persons of *fundamental rights* because of their indigency. J.A. 400-01. This interpretation is supported by the Supreme Court's own cases, as well as the vast majority of cases from other federal courts.

In *Griffin v. Illinois*, the Supreme Court first held that a statute may violate the equal-protection and due-process clauses of the Fourteenth Amendment even when the statute does not create a suspect classification or implicate a traditional fundamental right. 351 U.S. 12, 19 (1956). In *Griffin*, the Court struck down a statute that denied a defendant the right to appeal his conviction because he was unable to pay for a trial transcript. *Id.* In invalidating the statute, the Court explained that "our own constitutional guaranties of due process and equal protection both call for *procedures in criminal trials* . . . which allow no invidious discriminations between persons and different groups of persons." *Id.* at 17 (emphasis added). Because the "constitutional promise of a fair trial" requires access to appellate procedures, the Court held that denying that access on account of indigency violated the Fourteenth Amendment. *Id.*

The Court subsequently applied this basic tenet—that a criminal defendant's liberty cannot be abridged by the state without consideration of the defendant's financial situation—in *Bearden v. Georgia*. 461 U.S. 660 (1983). In *Bearden*, the Court invalidated a law that conditioned probation on a defendant's ability to pay a fine. 461 U.S. at 672-73. The Court held that, just as in *Griffin*, where a law was unconstitutional because it conditioned a

person's liberty on that person's ability to pay a fine, denial of probation and remand to jail based on a defendant's inability to pay a fine also violated the Fourteenth Amendment. 461 U.S. at 670-73. Again, however, the Court based its holding on the particularly sensitive interests involved when a citizen's liberty is at stake. *Id.* ("Depriv[ing] the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine . . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment.").

Since *Bearden*, the Court has applied the "fundamental fairness" doctrine to a handful of cases that involve liberty and access to courts. Compare *Tennessee v. Lane*, 541 U.S. 509, 522-23 (2004) (holding that Title II, as applied to the fundamental right of access to the courts, constituted a valid exercise of Congress's authority); *Mayer v. Chicago*, 404 U.S. 189, 196 (1971) (striking down law that required payment of fees to appeal a conviction that threatened fines); *Tate v. Short*, 401 U.S. 395, 397-98 (1971) (invalidating law that required indentured servitude to satisfy fines that the defendant was unable to pay); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (striking down law that increased imprisonment past maximum sentence solely on the grounds that the defendant could not afford to pay fines stemming from the original

conviction); *with United States v. Kras*, 409 U.S. 434, 448-49 (1973) (upholding filing fee for a no-asset bankruptcy proceeding which involved no fundamental interest); *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973) (upholding filing fee in a benefit reduction challenge because an interest in increased benefits did not implicate a fundamental interest). Here, as the district court correctly observed, the Plaintiffs failed to offer "a single case from the Supreme Court or Fourth Circuit in the sixty-plus years since *Griffin*" in which the fundamental-fairness doctrine was applied to non-fundamental rights. J.A. 398-99.

Contrary to what the Plaintiffs suggest (Br. at 20), *Bearden* did not reject the traditional frameworks for analyzing whether statutes violate the due-process and equal-protection clauses. Rather, the Supreme Court has since acknowledged the need to expand the consideration of fairness when a fundamental right is at stake. In fact, since *Bearden*, the Court has cautioned lower courts not to extend the *Griffin* and *Bearden* line of reasoning beyond these fundamental-rights cases. *See, e.g.*, *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) (the Supreme Court "has not extended *Griffin* to the broad array of civil cases"); *see also Hom v. Brennan*, 840 F. Supp. 2d 576, 583 (E.D.N.Y. 2011)

(observing that "*Griffin* applies largely to criminal proceedings, not to civil litigants").

The plaintiffs base their effort to extend *Bearden* on the Supreme Court's decision in *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). But their reliance on this case is misplaced. The plaintiffs contend that, in *M.L.B.*, the Supreme Court extended "protection from state sanctions based on inability to pay" (Br. at 24) by striking down a statute that denied an indigent mother from being able to appeal the termination of her parental rights. *M.L.B.*, 519 U.S. at 128.

The Court in *M.L.B.* did no such thing. Rather, the Court specifically underscored that it was not "question[ing] the general rule . . . that fee requirements ordinarily are examined only for rationality. . . . States are not forced by the Constitution to adjust all tolls to account for disparity in material circumstances." *Id.* at 123-24. Accordingly, the Court acknowledged only "two exceptions to that general rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license. Nor may access to judicial processes in cases criminal or quasi criminal in nature turn on ability to pay." *Id.* at 124.

*M.L.B.* fell within one of those exceptions: access to a judicial process that would decide whether a parent's parental status would be terminated.

Although the statute at issue was not criminal in nature, the Court held that "[c]hoices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *Id.* at 116. Accordingly, the Court held that a parent whose rights would be terminated should not be forced to forgo an appeal on account of an inability to pay the filing fee. *Id.* at 128.; *see also Boddie v. Connecticut*, 401 U.S. 371 (1971) (striking down a filing fee that prevented indigent litigants from obtaining a divorce).

The plaintiffs' reliance on *San Antonio Independent School Dist. v. Rodriguez* does not save their argument either. 411 U.S. 1 (1973). In that case, the Supreme Court analyzed the challenged statute not under the fundamental-fairness doctrine articulated in *Griffin*, but rather under the traditional equal-protection test. In doing so, the Court held that "this is not a case in which the challenged state action must be subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights." *Id.* at 40. Indeed, the only time the *Rodriguez* Court invoked *Griffin* and its progeny was when the Court drew a distinction between the invalidated law in *Griffin* (which completely

denied a meaningful opportunity to enjoy a benefit) with the law in *Rodriguez* (which gave preferential treatment to students from wealthier families). That *Rodriguez* is not a suitable reference for the fundamental-fairness doctrine is made clear by the fact that the Supreme Court did not even *mention Rodriguez* in its analysis in *Bearden* or in *M.L.B.*[2]

The only case in which a court has accepted the plaintiffs' theory, *Robinson v. Purkey*, can be easily distinguished. 2017 WL 4418134, at *8-*9. In that case, the district court held that a statute that automatically revoked licenses, without providing for any mechanism to plead inability to pay, violated the fundamental-fairness doctrine. *Id.* That law is a far cry from the law in North Carolina, which explicitly provides for an indigent traffic defendant to avoid revocation by showing a state court that she cannot pay her fine. *See* N.C. Gen. Stat. § 20-24.1. Moreover, while *Robinson* was pending appellate review, the Sixth Circuit issued a published decision that held that a

[2] The plaintiffs also misconstrue *Alexander v. Johnson*, a case from this Court. 742 F.2d 117 (4th Cir. 1984). In their brief, the plaintiffs merely cite the *Alexander* Court's general recitation of the *Bearden* factors (Br. at 25), but fail to note that this Court did not rely on *Bearden* at all in its analysis of a law conditioning parole on payment of attorneys' fees. *Alexander*, 742 F.2d at 123. The fact that this Court explicitly opted not to analyze the law under the fundamental-fairness doctrine shows that where there is no fundamental right to parole, the fundamental-fairness doctrine does not apply. *Moss v. Clark*, 886 F.3d 686, 690 (4th Cir. 1989).

statute that requires the suspension of an indigent traffic defendant's driver's license on the basis of unpaid court debt "does not run afoul of the Fourteenth Amendment." *Fowler*, 924 F.3d at 252.

Because revocation of a driver's license has never been held to implicate a fundamental right, the *Bearden* doctrine is inapplicable in this case.

### D. Even if the *Bearden* Doctrine Applied, the Plaintiffs Still Would Not Prevail.

Even if the *Bearden* doctrine was applicable to this case, the plaintiffs cannot satisfy the four-factor test necessary to invalidate the revocation statute: their property interests in their driver's licenses are not impermissibly affected; their property interests are not substantially affected; as set forth above, the revocation statute imposes penalties that are rationally related to North Carolina's interests; and the revocation statute already provides alternative remedies.

#### 1. The Plaintiffs' Property Interests in Their Driver's Licenses Are Not Boundless.

The Commissioner does not deny that the plaintiffs' property interests in carrying a driver's license are substantial. *Mackey v. Montrym*, 443 U.S. 1, 11 (1979) (A "driver's interest . . . in continued possession and use of his license . . . is a substantial one."). And, as the district court correctly pointed out, there

is "no reason to doubt Plaintiffs' contention that, for many North Carolinians, the loss of a driver's license negatively impacts individuals' ability to get to work, make doctor's appointments, go grocery shopping, and more." J.A. 419-20.

The plaintiffs' property interest in their driver's licenses is not, however, without limits. While the loss of a driver's license is certainly accompanied by significant hardships, these considerations do not overcome binding precedent that the private interest in driver's licenses is insufficient to overcome a state's interest in the regulation and administration of transportation laws. *Tomai-Minogue*, 770 F.2d at 1235; *see also Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1180 (D. Or. 2018) ("[T]he government has a strong interest in enforcing traffic fines to deter continuing traffic violations."); *Crawford v. Blue*, 271 F. Supp. 3d 316, 329 (D. Mass. 2017) ("Massachusetts has a substantial interest in securing public safety on its roads by suspending the operating privileges of drivers who default" on traffic fines). Indeed, the plaintiffs do not cite a single case in which a federal court has held that a person's property interest in her driver's license overcomes the state's interest in regulating access to its roadways.

### 2. The Plaintiffs' Private Interests Are Not Substantially Affected.

The plaintiffs claim that the revocation statute requires "automatic, indefinite revocation" for failure to pay traffic fines. Br. at 29. But the revocation statute does not require automatic or indefinite revocation.

First, the revocation statute does not "automatically" suspend driving privileges. Fines and costs related to traffic violations do not come due for 40 days. N.C. Gen. Stat. § 20-24.2(a)(2). After these 40 days expire, if a traffic defendant has still not taken action to either pay the fine or schedule a hearing to prove her inability to pay, the revocation statute requires that the DMV provide the traffic defendant an additional 60 days of notice before suspension takes effect. N.C. Gen. Stat. § 20-24.1. During this time, the traffic defendant is, again, free to seek a hearing to prove her inability to pay her fine. *Id.* Therefore, rather than requiring "automatic" revocation, the revocation statute actually provides 100 days to the traffic defendant to act on the fines owed to the State. The plaintiffs have offered no evidence to suggest that a plaintiff has not been able to receive a determination of her ability to pay within the 100 days provided by statute. As the district court appropriately noted, "the fact that section 20-24.1(b1) guarantees traffic defendants the opportunity to have a hearing 'within a reasonable time' of moving for one

lessens 'the impact of official action on Plaintiffs' interests." J.A. 420 (citing *Mackey*, 443 U.S. at 12).

Second, the revocation statute also does not require "indefinite" revocation. Even after a traffic defendant's license has been suspended, the defendant continues to have an opportunity to request an inability-to-pay hearing to determine whether her license should be reinstated. N.C. Gen. Stat. § 20-24.1(b)(4). Indeed, there is ample evidence in the record of drivers who have had their licenses subsequently reinstated, including the case of named-plaintiff Smoot. J.A. 386. Any revocation that occurs as a result of the statute, therefore, is not indefinite or permanent.

Because the revocation statute does not impose serious consequences on individuals' property interests without process, the revocation statute does not substantially affect the plaintiffs' interests.

### 3. The Revocation Statute Bears a Rational Relationship to the State's Interests.

The revocation statute, which seeks to sanction those who have shown only an *unwillingness* to avoid paying a fine or to be excused from the fine, bears a rational relationship to the State's interests, which include regulating the use of its public highways, protecting the safety and welfare of its citizens, and ensuring compliance with court orders. J.A. 400-01.

Nevertheless, the plaintiffs contend that the hearing mechanism in the revocation statute is insufficient because the hearing does not take place before the revocation occurs. Br. at 31 (citing *Bearden*, 461 U.S. at 672). But the plaintiffs take *Bearden* out of context. The Court in *Bearden* held that "*in revocation proceedings for failure to pay a fine or restitution*, a sentencing court must inquire into the reasons for the failure to pay." 461 U.S. at 672 (emphasis added). DMV's revocation of a driver's license, on the other hand, is not accompanied by a separate hearing. Any hearing on the traffic defendant's ability to pay, therefore, would take place at the hearing on the substance of the traffic violation (for which many in the plaintiff class do not even appear) or at a separate inability-to-pay hearing. The plaintiffs do not claim that the revocation statute prohibits a traffic defendant from making a showing on her ability to pay at either of these hearings.

The plaintiffs further contend that the hearing mechanism is insufficient because it requires that the defendant bear the burden of scheduling an inability-to-pay hearing. But none of the cases the plaintiffs cite involve statutes that require the payment of monetary penalties. Rather, each of the cases involves the deprivation of liberty because of nonpayment. Br. at 32. The cases the plaintiffs cite, therefore, are irrelevant. Indeed, federal

courts routinely place the burden of objecting to administrative action on the individual in situations in which the individual's personal liberty is not at stake. *See, e.g., Kendall v. Balcerzak*, 650 F.3d 515, 522 (4th Cir. 2011) (right to petition for judicial review from adverse action by the local election board satisfied procedural due process since no fundamental right was involved); *Shavitz v. City of High Point*, 270 F. Supp. 702, 710 (4th Cir. 2003) ("[B]ecause Plaintiff has failed to use the process provided to him [to challenge a red-light ticket], he cannot show that he has suffered injury because of the insufficiency of the process provided.")

**4. The Revocation Statute Is an Appropriate Means of Effectuating the State's Legislative Purpose.**

The plaintiffs contend that there are alternative means of ensuring that traffic defendants do not flout their responsibility to pay traffic fines. In particular, the plaintiffs suggest extending the time to pay, reducing payment amounts, using a graduated payment plan, performing public service, or completing traffic safety classes. Br. at 34. But the plaintiffs' complaints fall flat for two distinct reasons.

First, due process and equal protection do not require a state to pursue policies that are most narrowly drawn or that would later be considered by a federal court to be the best policy. J.A. 400-01. In fact, courts are generally

loath to interfere in the public policy decisions of states in the pursuit of their legitimate governmental interests. *See, e.g.*, *Collins v. City of Harker Heights*, 503 U.S. 115, 128 (1992) (substantive due process is not "a guarantee against incorrect or ill-advised" decisions, nor does it allow a federal court to substitute its own policy judgment for that of a state legislature); *McGowan v. Maryland*, 366 U.S. 420, 425-426 (1961) ("State legislatures are presumed to have acted within their constitutional power despite the fact that in practice, their laws result in some inequality."); *Reitz,* 314 U.S. at 36 ("[a]ny appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process").

Second, the revocation statute already contains provisions for alternative means to help traffic defendants pay their fines. When viewed among the broad array of existing statutory mechanisms, traffic defendants have the option to enroll in payment plans (N.C. Gen. Stat. § 7A-304(f)) or petition the court for reductions and waivers of fines and costs associated with their traffic offenses (N.C. Gen. Stat. § 20-24.1(b)(4)). All that is required for the traffic defendant to avail herself of these alternative measures is requesting a hearing on her ability to pay. N.C. Gen. Stat. § 20-24.1(b1).

## II. The District Court Was Correct to Deny the Plaintiffs' Motion to Enjoin Enforcement of the Revocation Statute.

The district court did not abuse its discretion in finding that the plaintiffs were unlikely to succeed on the merits of their claim that the revocation statute violates their due-process rights. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Both the form of the hearing and the timing of the hearing influence whether or not a challenger has had a meaningful opportunity to air her claim. *Dixon v. Love*, 431 U.S. 105, 112 (1977). When analyzing whether a hearing procedure adequately addresses due-process concerns, courts consider three factors: (1) whether the private interest that is affected by official action is protected by the Due Process Clause, (2) the risk of erroneous deprivation of the interest through the procedures available and the probable value of additional or substitute procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would impose. *Mathews*, 424 U.S. at 335. Under these factors, the procedures under North Carolina law comport with procedural due process.

### A. The Plaintiffs Have a Property Interest in Their Drivers Licenses.

The Commissioner agrees that holding a driver's license is a protectable property interest under state law. *Mackey v. Montrym*, 443 U.S. 1, 10 (1979); *see also Bell v. Burson*, 402 U.S. 535 (1971) (driver's license is a property interest that may not be suspended without some form of hearing). North Carolina's license-suspension program recognizes and protects this interest by providing notice and an opportunity to be heard if a traffic defendant wants to challenge the underlying liability for her traffic violation, request that the fines be waived or modified, or petition the court for alternative payment mechanisms. N.C. Gen. Stat. §§ 20-24.1(b1), 7A-304(f).

Indeed, North Carolina law goes further than is necessary to satisfy due process. After all, the Supreme Court has said that because a driver's license is not a fundamental right, it can be suspended without a prior hearing. *Dixon*, 431 U.S. at 113-15. As the district court explained, "the fact that section 20-24.1(b1) guarantees traffic defendants the opportunity to have a hearing "within a reasonable time" of moving for one lessens "the impact of official action" on Plaintiff's interests." J.A. 420.

### B. The Risk of Erroneous Deprivation of Driver's Licenses Is Minimal.

The "erroneous deprivation" part of the *Mathews* test assesses the risk that a traffic defendant will be mistakenly deprived of her driver's license because the procedural safeguards in place for hearings are inadequate. If the risk of error is minimal, then the need for additional procedures declines. *Mathews*, 424 U.S. at 333-34. If the risk is high, then additional procedures might be necessary. *Id.* Government agencies also may reduce the risk of erroneous deprivation by ensuring that regulations are not arbitrary or discriminatory.

North Carolina's statutory scheme affords adequate procedural protections to traffic defendants. Specifically, the law affords a traffic defendant 40 days to pay any traffic fine owed. N.C. Gen. Stat. § 20-24.2(a)(2). If a traffic defendant fails to pay the fine within 40 days, the statutory scheme provides a grace period of an additional 60 days to address the outstanding amount due. N.C. Gen. Stat. § 20-24.1. The same statute also guarantees that the defendant is given an opportunity to seek a hearing to be held "within reasonable time," in which she may challenge any part of the citation. *Id.* In addition, the defendant may petition the court for an inability-to-pay hearing, in the event that the defendant finds herself unable to satisfy the outstanding fines and costs assessed against her. N.C. Gen. Stat. § 20-24.1(b)(4), (b1).

The traffic defendant is provided notice at both of these junctures. The defendant is notified of the fine assessed at the time of the traffic citation and is informed of the time period to satisfy the outstanding fines. N.C. Gen. Stat. § 20-24.2(a)(2); J.A. 384. If the defendant does not pay the fine at the end of the 40 days, DMV sends the defendant a separate notice. This notice reminds the defendant of the outstanding fine and alerts her to resolve the outstanding fine by contacting the appropriate traffic court. J.A. 17. The notice also contains detailed information about the underlying offense for which the defendant has been fined, including her citation number, the county in which the charge was issued, and the phone number to the applicable Clerk of Court, to assist the defendant in coming into compliance with the State's traffic laws. J.A. 17. In addition, the notice contains a citation to the revocation statute, which provides information about the defendant's options. J.A. 17.

The hearing process itself is governed by state administrative law. State district courts, which have jurisdiction over traffic cases, have broad discretion in individual cases and are empowered to offer traffic defendants a variety of resolutions, including enrolling in payment plans (N.C. Gen. Stat. § 7A-304(f)) or petitioning the court for reductions and waivers of fines and costs associated with their traffic offenses (N.C. Gen. Stat. § 20-24.1(b)(4)).

Traffic defendants are offered a robust process for resolving their traffic claims, including notice and an opportunity to be heard. If, even after the State has provided all of the procedural safeguards mentioned above, an individual's driver's license is still erroneously revoked, the revocation need not be permanent. Indeed, if a license is revoked for failure to pay, a defendant need only either petition the court for redress or pay the outstanding fine and reinstatement fee. N.C. Gen. Stat. § 20-24.1(b). Accordingly, the risk of erroneous deprivation is minimal.

### C. The Government's Interest in the Administration of Roadways Is Substantial.

As set forth above, North Carolina's interests in administrative efficiency, maintaining safe road conditions, and collecting unpaid traffic debt are substantial. The State first imposes consequences for violating traffic laws to deter would-be violators from using the State's roadways unsafely. If the fines imposed are not paid, however, the State enforces the revocation statute to disincentivize nonpayment of fines and penalties assessed for traffic violations. The State also has a considerable interest in ensuring that its laws are enforced and that fines assessed are timely paid. J.A. 400.

At any rate, the plaintiffs' property interests in their driver's licenses cannot overcome the state's interest in the regulation and administration of transportation laws. *See Fowler,* 924 F.3d at 262. Accordingly, the property interest at issue here must be considered along with the State's interest in the administration of transportation laws. Given the robust procedural safeguards in place in North Carolina's statutory scheme for revocation and the considerable interests of the State in the regulation and administration of its transportation laws, the hearing procedure laid out in the revocation statute affords the plaintiffs adequate due process.

## III. The District Court Was Correct to Deny the Plaintiffs' Motion to Enjoin the DMV's Notice.

The district court was also correct to find that the plaintiffs were unlikely to succeed on their claim that the method DMV uses to notify drivers of potential revocation violates their due-process rights.

A primary purpose of the notice required by the due-process clause is to ensure that the opportunity for a hearing is meaningful. *City of W. Covina v. Perkins*, 525 U.S. 234, 240 (1999). For notice to satisfy due process, it must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" within a reasonable time. *Mullane v. Cent. Hanover*

*Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The "reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Id.*

Individual notice has not been found necessary where it is "established by published, generally available state statutes and case law." *Stinnie v. Holcomb*, 355 F. Supp. 3d 514, 528 (W.D. Va. 2018) (quoting *West Covina*, 525 U.S. at 241). As the district court observed, if a publicly available statute "clearly lays out the procedures available to traffic defendants facing license revocation," "individualized notice of state-law remedies" is not required. J.A. 433 (citing *West Covina,* 525 U.S. at 241); *see also Grayden v. Rhodes*, 345 F.3d 1225, 1244 (11th Cir. 2003) (personal notice of procedures may only be required when those procedures cannot be accessed by the public); *Brody v. Vill. of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (placing burden on plaintiff to "research the available state law remedies or to seek the advice of legal counsel" upon receipt of notice and holding that notice is not required to inform of procedures for challenging a public use determination); *Adams v. City of Marshall*, No. 4:05-CV-62, 2006 WL 3825250 (W.D. Mich. Dec. 27, 2006) (ordinance violation notice was adequate in that it clearly informed

Plaintiffs of the nature of the alleged violation, and that abatement would follow if Plaintiffs did not rectify the situation).

The notice letter sent by DMV provides adequate notice to traffic defendants. It informs traffic defendants of their unpaid fines and court costs and provides sixty days to resolve the unpaid fines and court costs to avoid suspension of their licenses. J.A. 240-41 ¶ 32. The notice also cites the revocation statute, which discusses the procedure to challenge the underlying citation or to arrange for an inability-to-pay hearing, with the citation to the North Carolina General Statutes. *Id.* In addition, the notice instructs traffic defendants to "contact the court above to comply with this citation," provides the citation number, the county in which the charge was issued, and the phone number for the applicable Clerk of Court. *Id.* The notice is accurate and reasonably informs drivers facing revocation of how to comply with their citations and describes to them how to present their objections. *Mullane*, 339 U.S. at 314; *see also Fowler*, 924 F.3d at 258-60 (holding that notice letter allowing fourteen days to respond and advising that payment in full is the only way to avoid suspension satisfies procedural-due-process requirements).

The plaintiffs, however, complain that a notice that provides all of the detail contained in the revocation notice is insufficient. Br. at 48. Specifically,

the plaintiffs contend that, for the notice to be compliant with the due-process clause, it must explicitly describe the mechanism to obtain an inability-to-pay hearing, must address all alternatives to payment, and must not direct the traffic defendant to pay her fine. Br. at 47-48. But federal courts rarely require the process the plaintiffs lay out to protect a non-fundamental right-and the cases on which the plaintiffs rely are inapposite.

The plaintiffs rely principally on *Memphis Light, Gas & Water Division v. Craft* for the proposition that determining the sufficiency of notice requires a "holistic reasonableness analysis." 436 U.S. 1, (1978). In that case, the Supreme Court held that due process required a municipal utility to provide customers notice of how to contest the termination of the utility service. *Id.* at 22. But, as other courts have recognized, *West Covina* limited *Memphis Light's* holding to apply only when "the administrative procedures at issue" are "arcane and are not set forth in documents accessible to the public." *See Gates v. City of Chicago*, 623 F.3d 389, 398 (7th Cir. 2010) (citing *West Covina*, 525 U.S. at 242); *Arrington v. Helms*, 438 F.3d 1336, 1351 n.16 (11th Cir. 2006) (same). Where, by contrast, state-law remedies are "established by published, generally available state statutes and case law," the Court in *West Covina* explicitly held that the *Memphis Light* rule does not apply. 525 U.S. at 241.

*West Covina*, not *Memphis Light*, applies here. In North Carolina's notice, the right to seek review within sixty days is publicly accessible in the statute that the notice specifically lists. As a result, the plaintiffs had sufficient information to turn to "public sources to learn about the remedial procedures available" to them. *Id.*

The sixty-day deadline before revocation, moreover, is not so short as to make it too difficult for traffic defendants to inquire into their remedies in time. Compare *Grayden v. Rhodes*, 345 F.3d 1225, 1243 (11th Cir. 2003) (due process required notice of right to contest condemnation when tenants were provided with just thirty-six hours to vacate their homes), with *Reams v. Irvin*, 561 F.3d 1258, 1265 (11th Cir. 2009) (due process did not require notice of right to contest determination when individual had thirty days to "consult publicly available documents, discover [the] right to a hearing, and exercise that right") and *Nnebe v. Daus*, 184 F. Supp. 3d 54, 74 (S.D.N.Y. 2016) (finding that notice was sufficient under the Due Process Clause where the individualized notice documents, despite "not contain[ing]" some important information about the opportunity to be heard "on their face," directly cited to a publicly available document containing the information).

The plaintiffs' reliance on *Turner v. Rogers*, 564 U.S. 431 (2011) is likewise misplaced. The statute in *Turner* required imposition of a twelve-month incarceration following a finding of civil contempt for failure to pay $5,000 in child support. *Id.*, 564 U.S. at 436. The Supreme Court held that a court must inquire into a contemnor's ability to pay and find he is willfully withholding payment *before incarcerating him*. *Id.*, 564 U.S. at 449. In this case, the traffic defendants are not at risk of imprisonment, so no fundamental right is at stake.

The plaintiffs' position would require this Court to expand the requirements for notice well beyond the requirements articulated by the Supreme Court. Such an expansion would run counter to the teachings of the Supreme Court and other federal courts on this issue.

## IV. In the Alternative, This Court Should Remand for Further Factual Findings.

If this Court holds that the district court's findings on the likelihood of the plaintiffs' success on the merits were erroneous, the Commissioner respectfully requests a remand for detailed factual findings on the other factors required for a preliminary injunction. Preliminary injunctive relief should not be granted unless the moving parties establish by a clear showing that: (1) they are likely to succeed on the merits; (2) they are likely to suffer

irreparable harm in the absence of a preliminary injunction; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As set forth above, the district court was right to find that the plaintiffs did not establish their likelihood of success on the merits. J.A. 435. The district court did not, however, make findings on the other three factors.

If this Court finds that the district court erred, this Court should remand for detailed factual findings on the remaining injunction factors that the district court did not consider. Federal Rule Civil Procedure 52(a) requires that the district court make particularized findings of fact and conclusions of law to support its decision to grant or deny a preliminary injunction. *Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310, 316 (1940). Those findings are "necessary for an appellate court to conduct meaningful appellate review." *Rullan v. Goden*, No. 19-1037, 2019 U.S. App. LEXIS 30511, at *2 (citing *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 423 (4th Cir. 1999)). Because this Court does not have the benefit of the district court's factual findings on these factors, if this Court disagreed with the district court's analysis of the merits, a remand for additional findings would be appropriate. *First-Citizens Bank & Trust Co. v. Camp*, 432 F.2d 481, 484–85 (4th Cir. 1970).

## CONCLUSION

The Commissioner respectfully requests that this Court affirm the district court's judgment. Should this Court reverse the district court's analysis of the merits, the Commissioner respectfully requests that this Court remand for further factual findings on the plaintiffs' motion for a preliminary injunction.

## RESPONSE TO REQUEST FOR ORAL ARGUMENT

This appeal involves the application of settled law, so oral argument is probably unnecessary. However, if the Court wishes to hold oral argument, the Commissioner stands ready to participate.

Electronically submitted this the 21st day of October, 2019.

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## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedures 32(a)(7)(B) because it contains 11, 107 words, excluding the parts of the brief exempt by Rule 32(f). This brief complies with the typeface and the type-style requirements of Rules 32(a)(5) and (6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Constantia font.

This the 21st day of October, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I have electronically filed the foregoing Brief of Defendant/Appellee with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system, which will automatically serve a copy of the foregoing on all counsel of record.

This the 21st day of October, 2019.

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