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

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| Linquista White, *et al.*,<br>Plaintiffs,<br>v.<br>Kevin Shwedo, *et al.*,<br>Defendants. | Civil Action No.<br>2:19-cv-03083-RMG<br><br>(CLASS ACTION) |

**MEMORANDUM IN OPPOSITION TO**
**DEFENDANT ANDERSON'S MOTION TO DISMISS**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Other Authorities**



**Rules**



**State Statutes**

## INTRODUCTION

As evidenced by the more than 132,000 people who experienced drivers' license suspensions in the three years prior to this litigation, the South Carolina Department of Motor Vehicles ("DMV") automatically and indefinitely suspends driver's licenses for failure to pay traffic tickets ("FTPTT") without any consideration of a driver's ability to pay or a determination that failure to pay was willful. The South Carolina Office of Motor Vehicle Hearings ("OMVH") is the sole agency empowered to provide post-deprivation relief for these driver's license suspensions. But instead of ensuring a forum for these appeals, the OMVH constructs a wealth-based barrier to relief by denying a hearing to anyone who cannot pay a non-waivable $200 filing fee for each contested suspension. The OMVH has no process by which a person can demonstrate inability to pay the filing fee due to indigence, and the agency refuses to consider requests for a fee-waiver, creating an unconstitutional deprivation of access to administrative review of DMV suspensions, whether imposed for FTPTT or any other reason.

Defendant Ralph K. Anderson III ("Defendant Anderson") is the Chief Judge of the Administrative Law Court ("ALC") and Director of the OMVH. Pursuant to S.C. Code § 1-23-660(A) ("Section 1-23-660(A)"), Defendant Anderson "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." Plaintiffs bring two claims against Defendant Anderson for his administrative actions regarding the enforcement of the Rules of Procedure for the OMVH ("OMVH Rules") to deny hearings to contest license suspensions to those who do not pay the $200 filing fee, regardless of their inability to pay: one asserting violation of the due process and equal protection right to be free from punishment for inability to pay delineated in

*Bearden v. Georgia*, 461 U.S. 660 (1983) (Claim 2); and the other a violation of the right to procedural due process (Claim 4).

Defendant Anderson mischaracterizes Plaintiffs' claims and the operative facts by arguing that he should be dismissed from this suit based on a host of jurisdictional and immunity grounds. Several of these arguments are fatally premised on a failure to recognize that Plaintiffs do not challenge their underlying traffic tickets, court proceedings, convictions, or fines. Moreover, Defendant Anderson cannot invoke legislative immunity, judicial immunity, lack of a case or controversy, or *Rooker-Feldman* for his administrative oversight of the OMVH's enforcement of the OMVH Rules, which is neither legislative nor judicial in nature. Administrative action regarding enforcement of the OMVH Rules necessarily entails many non-legislative and non-judicial activities, and the full scope of Defendant Anderson's administrative actions is a question for discovery.

As detailed below, the Court should deny Defendant Anderson's motion to dismiss.

## STATEMENT OF FACTS

### I. The DMV has the sole authority to suspend driver's licenses for failure to pay traffic tickets and initiates the process post-conviction.

South Carolina summary courts hear traffic cases and have the power to impose fines upon conviction, but they do not have the power to suspend driver's licenses, even where a defendant fails to pay the fine. *See* South Carolina Bench Book for Magistrates and Municipal Court Judges, Traffic, § A.1, https://bit.ly/2JCtwcG (last visited Feb. 6, 2020) ("Bench Book"); ¶ 51 n. 46.[1] Instead, the DMV—an administrative agency wholly separate from the courts—is the sole entity with authority to suspend driver's licenses for FTPTT. *See* S.C. Code § 56-25-20

[1] Unless otherwise noted, references to "¶" are to paragraphs in the complaint, ECF No. 1.

("Section 56-25-20"). After convicting a person and imposing fines, often through a trial in absentia, the summary court will inform the DMV if the person failed to pay. ¶¶ 57, 60, 123, 181–83, 209–10; Bench Book § M.3.7. At that point, the DMV can decide whether to suspend the license.

Section 56-25-20 does not require the DMV to suspend driver's licenses for FTPTT; it merely permits the agency to do so. *See* Section 56-25-20. But as a matter of policy and practice, the DMV automatically initiates the FTPTT suspension process whenever it receives a failure-to-pay report from a South Carolina court or out-of-state court or motor vehicle agency. ¶¶ 49, 53; Bench Book § M.1. As a first step, the DMV purports to mail a document called an "Official Notice" to an individual reported for FTPTT, although the Plaintiffs here did not receive such notices for most of their suspensions. ¶¶ 71–72, 124, 166, 175, 209; Bench Book § M.3.8.B. The Official Notice provides a suspension start date—usually around three weeks from the date the Official Notice was written. ¶ 71. If payment is not made in full by that date, the DMV automatically suspends the license. *Id*. The DMV does not inquire or receive information about whether nonpayment is willful. ¶¶ 57–59; Bench Book § M.3.

Plaintiffs Carter, White, and Bellamy were each convicted by a court in absentia for traffic violations and sentenced to pay fines. ¶¶ 110, 122, 165, 172, 181, 207. When Plaintiffs failed to pay, the courts notified the DMV. ¶¶ 165, 172, 182, 208. The DMV then suspended their licenses for FTPTT. ¶¶ 120, 124, 167, 174, 185, 210.

## II. The OMVH enforces rules that erect a wealth-based barrier to accessing a contested case hearing.

The Official Notice does not notify license holders of any way to prevent an indefinite driver's license suspension for FTPTT, offering no alternative to full payment. ¶¶ 9, 74–76. Indeed, the Official Notice fails to mention any potential for a hearing to contest the suspension;

nor is the potential for a hearing mentioned in the sole statute referenced in the document. ¶¶ 71, 77–79, 84–85; Section 56-25-20.

Despite the Official Notice's implication that the only option to prevent a driver's license suspension is to pay the traffic ticket in full, state law theoretically provides a hearing process at the OMVH. The OMVH is an agency within the ALC that is authorized to provide contested case hearings to people challenging DMV determinations. *See* Rules of Procedure for the Office of Motor Vehicle Hearings, Rule 2(J) (2011), https://bit.ly/2oznlhW ("OMVH Rules"); ¶ 89 n.60. OMVH hearing officers conduct these hearings, hear evidence, and issue formal written orders at the completion of hearings. *See* Section 1-23-660(A); OMVH Rules 9(C), 15(C). Drivers ostensibly have the opportunity to request an OMVH hearing within ten days[2] of receiving an Official Notice, but again, the Official Notice does not identify the hearing process or this deadline. *See* S.C. Code § 56-1-370 ("Section 56-1-370"). Unsurprisingly, the OMVH's workload reports do not identify a single hearing concerning an FTPTT suspension in Fiscal Years 2016–18. *See* South Carolina Administrative Law Court, Fiscal Year 2017–18 Accountability Report, A-9 (2018), https://bit.ly/2nRG3kD ("ALC 2017–18 Accountability Report"); ¶ 12 n.4.[3]

Even if a layperson were able to independently discover and navigate a complex thicket of statutes and rules to discover the OMVH and request a hearing within the ten-day statutory limit, Defendant Anderson has erected a wealth-based barrier to securing hearings: a non-waivable $200 filing fee. Under S.C. Code § 56-5-2952, "[t]he filing fee to request a contested case hearing before the [OMVH] is two hundred dollars, or as otherwise prescribed by the rules

[2] Section 56-1-370 provides that hearing requests must be filed within ten days of receiving notice, but the OMVH Rules require requests to be filed "within thirty days." OMVH Rule 4(B).

[3] Nine cases are coded as "Miscellaneous." *Id.*

of procedure for the [OMVH]." In turn, the OMVH Rules state that "[e]ach request for a contested case hearing before the [OMVH] must be accompanied by a filing fee in the amount established by law. A case will not be assigned to a hearing officer until the filing fee has been paid." OMVH Rule 21. Other OMVH Rules also reference that a case will not move forward to a hearing officer until the filing fee has been paid. *Id.* at 4(A), 4(C), 9(A), 21.

On July 1, 2019, Ms. Carter, through counsel, requested an OMVH contested case hearing regarding the four FTPTT suspensions on her driver's license, sought waiver of the $200 filing fee, which she could not afford to pay, and asked for a single, consolidated hearing. ¶¶ 227, 229. The OMVH refused to provide Ms. Carter a hearing because she had not paid a separate filing fee for each contested FTPTT suspension, and the OMVH did not determine her ability to pay those fees. ¶ 230; *see also* ECF No. 17-3. The OMVH's response made clear that the agency does not afford hearings unless a request is "accompanied by the $200 filing fee" for each contested suspension. ¶ 230. Ms. Carter would thus have to pay $800 to challenge all of her FTPTT suspensions on the basis of inability to pay the underlying traffic fines and fees. *See* ¶ 153.

Like Ms. Carter, Ms. White requested an OMVH hearing concerning her FTPTT suspension and sought waiver of the $200 filing fee based on inability to pay. ¶ 231. Again, the OMVH denied her a hearing for failure to pay the $200 filing fee without determining her ability to pay. ¶¶ 228, 232; *see also* ECF No. 17-6.

Because Ms. White and Ms. Carter could not afford OMVH filing fees, they were unable to secure review of the DMV's suspension of their licenses for FTPTT. The OMVH never assigned hearing officers to Plaintiffs' contested suspensions and no OMVH hearings occurred.

### III. Defendant Anderson has administrative duties in his capacity as Director of the OMVH.

Defendant Anderson is the Chief Judge of the ALC and, in this role, serves as the Director of OMVH. ¶¶ 21, 83; Section 1-23-660(A). By statute, the legislature has delegated administrative authority and duties to Defendant Anderson. Section 1-23-660 provides:

> 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 . . . as directed by the chief judge . . . . All employees of the office shall serve at the will of the chief judge. 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.

Plaintiffs' Complaint includes allegations pertaining to Defendant Anderson's administrative conduct to enforce OMVH Rules and his failure to exercise administrative authority to ensure access to hearings. *See* ¶ 21 ("Defendant Anderson is the final decisionmaker on the assignment of cases to OMVH hearing officers"); ¶ 283 ("Defendant 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, 4, and 9"); *see also* ¶¶ 282, 284–85. These allegations encompass numerous plausible administrative enforcement acts and failures to act giving rise to Plaintiffs' claims that Defendant Anderson erects a wealth-based barrier to a hearing to contest FTPTT suspension of driver's licenses and fails to afford required pre-deprivation process before these automatic and indefinite suspensions.

In addition to the legislature's express delegation of administrative duties to Defendant Anderson, the legislature has also delegated to him the authority to promulgate the OMVH Rules. ¶ 21; Section 1-23-660(A).

## AUTHORITY AND ARGUMENT

### I. Standard of Review

A court may not grant a motion to dismiss under Rule 12(b)(6) unless "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). In addition, where a motion to dismiss is "testing the sufficiency of a civil rights complaint, '[a court] must be especially solicitous of the wrongs alleged' and 'must not dismiss the complaint unless it appears to a certainty that the plaintiff would not be entitled to relief *under any legal theory which might plausibly be suggested by the facts alleged*.'" *Id.* (internal citation omitted).

When a defendant makes a facial challenge to the court's subject matter jurisdiction under Rule 12(b)(1), the plaintiff "'is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration.' In that situation, the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (internal citations omitted).

### II. Defendant Anderson is not entitled to judicial or legislative immunity for his administrative enforcement actions.

Defendant Anderson broadly invokes absolute judicial and legislative immunity as a blanket shield from claims for declaratory and injunctive relief. But the Supreme Court has been "sparing" in its recognition of claims to absolute official immunity, noting that "immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." *Forrester v. White*, 484 U.S. 219, 224, 227 (1988). This Court must evaluate

Defendant Anderson's invocation of immunity through a "functional" analysis that "examine[s] the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and . . . evaluate[s] the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions." *Id*. at 224. In *Supreme Court of Virginia v. Consumers Union of the U.S., Inc.*, 446 U.S. 719 (1980), for example, the Supreme Court ruled that the "Virginia [Supreme] Court and its chief justice properly were held liable in their enforcement capacities" and "were proper defendants in a suit for declaratory and injunctive relief" notwithstanding the finding that other legislative and judicial conduct by the court was shielded by absolute immunity. *Id.* at 736.

Applying the required functional analysis, Plaintiffs' Complaint squarely challenges Defendant Anderson's administrative enforcement conduct that is not shielded by judicial or legislative immunity. Under Section 1-23-660(A), the South Carolina legislature has delegated considerable administrative enforcement power to Defendant Anderson, including authority over "the administration of the [OMVH], the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff." Plaintiffs' claims against Defendant Anderson center on his administrative enforcement of the OMVH Rules to prohibit access to a hearing to contest a driver's license suspension to anyone who does not pay a $200 filing fee, regardless of their inability to pay. These claims against administrative action to deny hearings are not barred by either legislative or judicial immunity.

### A. Defendant Anderson's administrative action to enforce OMVH Rules requiring a filing fee is not protected by legislative immunity.

Defendant Anderson's administrative conduct in enforcing OMVH filing fee rules does not fall within "the sphere of legitimate legislative activity" protected by legislative immunity.

*Tenney v. Brandhove*, 341 U.S. 367, 376 (1951). The purpose of legislative "immunity is to insure that the legislative function may be performed independently without fear of outside interference." *Consumers Union*, 446 U.S. at 731. It is meant to "reinforce[] representative democracy" by "fostering public decisionmaking by public servants." *E.E.O.C. v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011). The doctrine is "less absolute" when applied to non-legislator government employees. *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967).

Whether an act is "legislative" and thus protected by the doctrine depends "on the nature of the act." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998); *Ryan v. Burlington Cty., N.J.*, 889 F.2d 1286, 1290 (3d Cir. 1989) (local government entities are often "given a combination of proprietary, managerial and legislative powers," and it is "only with respect to the legislative powers delegated to them" that they "are entitled to absolute immunity"). Legislative acts "bear the outward marks of public decisionmaking, including the observance of formal legislative procedures." *Wash. Suburban*, 631 F.3d at 184.[4] Activities traditionally considered "legislative" in nature and protected by legislative immunity include voting,[5] promulgating "prospective, legislative-type rules,"[6] conducting legislative committee investigations,[7] and executing other actions integral to the legislative process. These may include introduction of a bill or budgetary proposal and signing a bill or ordinance into law. *See Bogan*, 523 U.S. at 55. Defendant

[4] Public decisionmaking includes public deliberation and adoption via legislative procedures. *See Baraka v. McGreevey*, 481 F.3d 187, 198 (3d Cir. 2007); *see also Burlington Cty.*, 889 F.2d at 1291–92. Defendant Anderson's administrative decisions regarding mechanisms for enforcing OMVH Rules do not bear any of the outward marks of public decisionmaking that signal a legislative act. *Wash. Suburban*, 631 F.3d at 184.

[5] *Bogan*, 523 U.S. at 55.

[6] *Wash. Suburban*, 631 F.3d at 184; *Consumers Union*, 446 U.S. at 734.

[7] *Tenney*, 341 U.S. at 377.

Anderson mischaracterizes Plaintiffs' Complaint as challenging his budgeting decisions. ECF No. 45-1 at 13–15. Yet Plaintiffs solely noted that there are alternative means besides filing fees to pay for the cost of operating the OMVH. ¶ 289.

Legislative immunity does not apply to actions taken in an administrative enforcement capacity. Federal courts have consistently found that where a government entity has authority to both promulgate and enforce rules, legislative immunity does not extend to administrative enforcement actions. In *Mainstream Loudoun v. Bd. of Trustees of the Loudoun County Library*, a library board of trustees promulgated rules and regulations but was also charged with the "management and control of [the] free public library system," and thus had a "prominent role in enforcing the policy it has chosen to adopt." 2 F. Supp. 2d 783, 789 (E.D.Va. 1998). The court found that legislative immunity applied to adoption of a policy requiring that libraries block access to internet sites featuring "material harmful" to juveniles, but did not apply to the board's administrative choice of which mechanism to use to block internet sites or other actions in implementing and enforcing the policy. *Id*. at 789, 796; *see also Grant-Davis v. Bd. of Trs. of Charleston Cty. Public Library*, No. 2:15-CV-2676-PMD-MGB, 2017 WL 9360875, at *19 (D.S.C. May 24, 2017), *adopted by* No. 2:15-CV-2676-PMD-MGB, 2017 WL 3634070 (D.S.C. Aug. 24, 2017), *aff'd*, 710 F. App'x 134 (4th Cir. 2018) (legislative immunity applied to board's promulgation of code of conduct but not to board's enforcement of the code); *Ryan*, 889 F.2d at 1291–92 (members of county board were not entitled to legislative immunity from claims against their administrative conduct in overseeing administration of a jail).

Here, Defendant Anderson has been delegated both legislative authority to promulgate OMVH Rules and administrative responsibility to enforce those Rules. Plaintiffs' allegations that Defendant Anderson is responsible for the administration of the OMVH and the

administrative enforcement of its Rules are sufficient to overcome a motion to dismiss. These allegations plausibly encompass a variety of administrative enforcement actions, including the establishment of procedures and protocols to ensure that docket numbers and hearing officers are not assigned, and hearings denied, when people requesting a hearing fail to pay a $200 filing fee; protocols for OMVH staff to collect, track, and process paid filing fees, enter cases into a case management system, and initiate cases that are accompanied by filing fees; the refusal to take these actions when filing fees are not paid; the communication of non-compliance with the filing fee requirement to applicants; and the training and supervision of OMVH staff in these procedures and protocols. While legislative immunity may protect Defendant Anderson from suit as to the promulgation or failure to promulgate OMVH Rules, it does not apply to the administrative actions to enforce the Rules. Because Plaintiffs squarely challenge Defendant Anderson's administrative conduct, Plaintiffs' *Bearden* and procedural due process claims against Defendant Anderson withstand the invocation of *legislative* immunity, notwithstanding references in Plaintiffs' Complaint to Defendant Anderson's exercise and failure to exercise rulemaking authority.

### B. Defendant Anderson's administrative action to enforce OMVH Rules requiring a filing fee is not protected by judicial immunity.

Judges are accorded immunity from liability for monetary damages and injunctive relief when engaged in "judicial acts." *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); *Justice Network Inc. v. Craighead Cty.*, 931 F.3d 753, 763–64 (8th Cir. 2019). However, judicial immunity does not foreclose prospective declaratory relief. *Id.* The party claiming immunity "bears the burden of establishing the justification for such immunity." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993). The "touchstone" for justifying this immunity is whether a claim challenges a judge's "performance of the function of resolving disputes between parties, or of authoritatively

adjudicating private rights." *Id.* at 435–36. Thus, "paradigmatic judicial acts" protected by judicial immunity involve resolution of "disputes between parties who have invoked the jurisdiction of the court" and expect to deal "with the judge in his judicial capacity." *Forrester*, 484 U.S. at 227–28. Other traditional judicial acts include "weighing evidence, making factual findings, reaching legal determinations," explaining the reasons for decisions, and carrying out these "adjudicatory functions in structured proceedings replete with procedural safeguards." *Coggeshall v. Mass. Bd. of Registration of Psychologists*, 604 F.3d 658, 663 (1st Cir. 2010).

Judicial immunity, however, does not extend to the administrative or executive functions that judges "may on occasion be assigned by law to perform," even if such acts are essential to the very functioning of the courts. *Forrester*, 484 U.S. at 227–88. Entitlement to judicial immunity depends upon the "scope" of the challenged conduct carried out in the defendant's "administrative capacit[y]." *Brown v. Reinhart*, 760 F. App'x 175, 179 (4th Cir. 2019). Immunity from suit is "a fact-intensive inquiry that will turn on the record as it develops at least through discovery." *Id.*

"Any time an action taken by a judge is not an adjudication between parties, it is less likely that the act is a judicial one." *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989). In *Morrison*, the Sixth Circuit found that a Chief Judge's declaration of a moratorium on the issuance of writs of possession (to evict tenants) during the holiday season, which was applied to deny the petitioner's requested writ, was an administrative act not entitled to judicial immunity. *Id*. The Sixth Circuit characterized the judge's moratorium as "a general order, not connected to any particular litigation" because it "did not alter the rights and liabilities of any parties but, rather, *instructed court personnel on how to process the petitions made to the court*." *Id*. (emphasis added). Similarly, in *Ratté v. Corrigan*, the court found that a judge's actions in pre-

signing partially completed orders that would later be filled in by non-judicial court personnel was not a judicial act protected by immunity because at the time the judge signed the order, "there were no parties before the court nor were there any active [] proceedings." 989 F. Supp. 2d 550, 560 (E.D. Mich. 2013); *see also Stebbins v. Watkins*, No. 3:13-CV-03068, 2013 WL 5288476, at *3 (W.D. Ark. Sept. 19, 2013), *aff'd*, 550 F. App'x 347 (8th Cir. 2014) (characterizing administrative assignment of case numbers as ministerial act not protected by judicial immunity).

Defendant Anderson fails to point to any "judicial act" that is entitled to judicial immunity. ECF No. 45-1 at 3, 21. In response to Plaintiffs' requests for hearings without an accompanying filing fee, OMVH staff completed several non-judicial tasks in accordance with Defendant Anderson's alleged protocols and procedures for administratively enforcing OMVH filing fee rules, including: communication by OMVH staff to people seeking relief from license suspension that the agency requires filing fee payment for each contested suspension and offers no fee waiver process; and the withholding of a docket number and assignment of cases to hearing officers absent full payment of filing fees. *See* ¶ 12; ALC 2017–18 Accountability Report at A-9. These alleged administrative acts to enforce the OMVH filing fee rules were carried out under Defendant Anderson's supervision, and discovery will develop the full scope of other administrative conduct, or failure to exercise administrative authority, by which Defendant Anderson ensures the denial of hearings to people seeking to contest license suspensions who cannot pay filing fees in full. ¶¶ 21, 282–85. Because the claims against him do not pertain to any individualized adjudication in Plaintiffs' cases but instead to administrative enforcement of OMVH policies and protocols and the supervision and training of OMVH staff regarding the same, Defendant Anderson is not protected by judicial immunity.

Defendant Anderson's reliance on judicial immunity cases where petitioners challenged the paradigmatic judicial conduct of issuing decisions in individual, adversarial court proceedings is misplaced.[8] Here, Defendant Anderson's administrative enforcement of the OMVH Rules—which results in the automatic denial of hearings to contest driver's license suspensions absent payment of a $200 filing fee—does not involve the adjudication of the rights of parties in an adversarial proceeding before the judge. *Forrester*, 484 U.S. at 227.

Defendant Anderson also cites to two distinguishable unpublished Sixth Circuit cases for the proposition that refusal to waive a filing fee can be considered a judicial act entitled to judicial immunity. ECF No. 45-1 at 20. In both of those cases—unlike in this case—the plaintiffs' applications were processed, and their specific eligibility for a filing fee waiver was reviewed by the defendants, who decided not to waive the fee in their individual cases based on their circumstances. *See Sirbaugh v. Young*, 25 F. App'x 266, 268 (6th Cir. 2001) (defendants considered the petitioner's request for a complete fee waiver and determined that a partial fee waiver was appropriate); *Coleman v. Gov. of Michigan*, 413 F. App'x 866, 869, 872 (6th Cir. 2011) (defendants found that plaintiffs did not meet the statutory criteria for fee waivers).[9] Here, there was no particularized determination regarding Plaintiffs' indigency or fee waiver.

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[8] *Smalls v. Gergel* concerned a judge's decision to dismiss a habeas action based on a claim of "conspiracy." No. 4:16-cv-3645-BHH-TER, 2017 WL 9288197, at *4 (D.S.C. Mar. 22, 2017). Similarly, *Snow v. King* concerned a judge's issuance of a conviction and failure to set aside a conviction. No. 4:17-CV-1048-VEH, 2018 WL 656032, at *3 (N.D. Ala. Feb. 1, 2018). *Syzak v. Dammon* is also distinguishable because there, a criminal defendant sued a judge for failing to intervene when he was attacked during a court proceeding. No. 14-10245, 2014 WL 2864458, at *2 (E.D. Mich. Jun. 24, 2014). While a judge's duty to maintain order in courtroom proceedings is judicial in nature and protected by judicial immunity, the establishment and oversight of policies and procedures for enforcing OMVH Rules concerning filing fees is not.

[9] While the plaintiffs in *Coleman* did challenge an administrative order regarding the interpretation of Michigan's filing fee statute, that order was akin to an advisory decision regarding proper interpretation of a fee waiver statute, which judges still had to apply to the particular facts of the litigants before them. 413 F. App'x at 873.

Further, *Parent v. New York* does not support the proposition that administrative assignment of cases to judges is entitled to judicial immunity. In *Parent*, the plaintiff challenged a judge's orders particular to the consolidation and assignment of numerous filings related to his active divorce case. 786 F. Supp. 2d 516, 532 (N.D.N.Y. 2011), *aff'd*, 485 F. App'x 500 (2d Cir. 2012). The assigning judge made specific determinations regarding the appropriate consolidation and assignment of cases based on the particular facts and law at issue. *Id.* at 526, 532. This differs from Defendant Anderson's administrative enforcement of a blanket rule that keeps people out of court altogether.

Finally, this Court should reject Defendant Anderson's argument that Plaintiffs seek retrospective declaratory relief. ECF No. 45-1 at 19. Plaintiffs are not asking the Court to reverse the OMVH's past administrative refusal to process their particular requests for contested case hearings. Rather, Plaintiffs seek prospective relief: a declaration that the OMVH's ongoing enforcement of OMVH Rules to deny hearings to contest license suspensions absent payment of a $200 filing fee is unconstitutional, and an injunction prohibiting the OMVH from enforcing that filing fee requirement unless it provides applicants an opportunity to demonstrate an inability to pay and determines that nonpayment is willful. ECF No. 1 at 93. This relief is intended to address ongoing, forward looking constitutional violations.

### III. Plaintiffs have pleaded a case or controversy against Defendant Anderson.

Defendant Anderson mischaracterizes his administrative enforcement role by arguing that Plaintiffs lack a case or controversy with respect to this conduct as a purported "neutral adjudicator of the law and facts." ECF No. 45-1 at 22–24. But Plaintiffs challenge Defendant Anderson's uniform administrative action in the enforcement of OMVH Rules, conduct that does not concern the adjudication of any individual case. Indeed, the result of Defendant's

administrative action is the complete *absence* of any neutral adjudication of the law or facts as to any person who requests an OMVH hearing who is unable to pay.

It is well established that one seeking to enjoin the enforcement of a statute or rule ordinarily sues the official authorized to enforce a statute or rule at issue. *See In re the Justices of the Supreme Court of P.R.*, 695 F.2d 17, 22 (1st Cir. 1982). Here, that official is Defendant Anderson. Defendant Anderson does not sit as an adjudicator in proceedings to review requests for filing fee waivers. There are no such proceedings at the OMVH. Rather, Defendant Anderson serves as an administrator who enforces OMVH Rules by creating and overseeing protocols for refusing to process requests for contested case hearings absent payment of a $200 filing fee.

Defendant's "lack of case or controversy" argument relies on inapposite cases where judges were assigned to preside as neutral adjudicators over adversarial proceedings involving disputes between parties.[10] Defendant also cites to an inapplicable Ninth Circuit case that was not decided on case or controversy grounds.[11]

[10] *See, e.g.*, *Bauer v. Texas*, 341 F.3d 352, 361 (5th Cir. 2003) (no case or controversy between plaintiff and judge where plaintiff sued individual judge who presided over guardianship proceedings in Probate Court, initiated by her son and attorneys seeking guardians ad litem appointment); *Brandon E. ex rel. Listenbee v. Reynolds*, 201 F.3d 194, 200 (3d Cir. 2000) (no adverse relationship where minors sued judges who presided over Court of Common Pleas proceedings initiated by their parents, seeking to commit them to involuntary drug and alcohol treatment services); *Grant v. Johnson*, 15 F.3d 146, 148 (9th Cir. 1994) (presiding judge was acting as a neutral adjudicator upon the application of a third party to appoint a guardian).

[11] In *Wolfe v. Strankman*, the Ninth Circuit did not hold that there was no case or controversy as to judges issuing orders under a California statute. 392 F.3d 358, 365–66 (9th Cir. 2004). Rather, the court found that because the challenged statute granted judges the power to impose, on their own motion, a prefiling order prohibiting a person from filing a new litigation without the court's permission, the action "*may not be purely that of a neutral adjudicator*." *Id.* (emphasis added). But the court ultimately decided that because complete relief could be afforded by enjoining other parties, there was no need to enjoin the judges. *Id.*

Further, Defendant Anderson's suggestion that access to a valid driver's license is not a fundamental right is irrelevant to the case or controversy analysis. This is a merits argument that should not be resolved on a motion to dismiss.[12] ECF No. 45-1 at 23.

## IV. The *Rooker-Feldman* doctrine does not bar Plaintiffs' claims.

Defendant Anderson erroneously invokes the *Rooker-Feldman* doctrine as a ground for divesting this Court of jurisdiction. ECF No. 45-1 at 24–30. Under this doctrine, litigants who lose in state court are precluded from obtaining federal district court review of "injuries caused by state-court judgments." *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see also Lance v. Dennis*, 546 U.S. 459, 463 (2006) ("[L]ower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.").

As both the Supreme Court and the Fourth Circuit have emphasized, the *Rooker-Feldman* doctrine is exceedingly "narrow." *Exxon Mobile*, 544 U.S. at 284; *Lance*, 546 U.S. at 464 (same); *Thana v. Bd. of License Comm'rs for Charles Cty., Md.*, 827 F.3d 314, 319 (4th Cir. 2016) (same). *Rooker-Feldman* does not apply "if [the plaintiff] is not challenging the state-court decision." *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718 (4th Cir. 2006) (recognizing that *Exxon* "undercut[] the [previous] broad interpretation of the *Rooker-Feldman* doctrine").[13]

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[12] Plaintiffs' *Bearden* and procedural due process claims against Defendant Anderson do not hinge on the existence of any fundamental right to a driver's license. ¶¶ 285, 311.

[13] Defendant Anderson puts forward a far broader statement of the *Rooker-Feldman* doctrine than is supported by either the Supreme Court or Fourth Circuit precedent, arguing that *Rooker-Feldman* bars suit if Plaintiffs could have raised their constitutional claims against the OMVH during their state traffic court proceeding but failed to do so. ECF No. 45-1 at 27. It is well established by *Exxon* and subsequent cases that *Rooker-Feldman* does not apply merely because a constitutional claim could have been raised below. *See e.g.*, *Exxon*, 544 US at 293; *Lance*, 546 U.S. 466 ("*Rooker–Feldman* is not simply preclusion by another name."); *Davani*, 434 F.3d at 713 (discussing how *Exxon* reined in a previously broad interpretation of the *Rooker-Feldman* doctrine to bar suit "alleging the same claim or a claim that could have been brought in the state proceedings"). Moreover, Defendant Anderson fails to explain how Plaintiffs could have raised

Moreover, the *Rooker-Feldman* doctrine does not apply where a state court issues a judgment against a litigant based on a rule or statute, and the litigant later brings an independent constitutional challenge related to the rule or statute in federal court. This is because "a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." *Skinner v. Switzer*, 562 U.S. 521, 532 (2011); *see also Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005).

Defendant Anderson appears to contend that two different state court actions support the application of *Rooker-Feldman* to this case: (i) the criminal proceedings in which Plaintiffs were convicted of traffic violations, and (ii) the OMVH's enforcement of its Rules requiring non-waivable filing fees to access contested case hearings. ECF No. 45-1 at 26–27. Neither provides a basis for the application of *Rooker-Feldman*.

**A. The state-court traffic convictions are not a bar to this Court's jurisdiction.**

Plaintiffs' convictions in the underlying *traffic* cases do not divest this Court of jurisdiction to hear claims against Defendant Anderson under *Rooker-Feldman* because Plaintiffs do not challenge those convictions. Specifically, Plaintiffs do not challenge the charges brought against them in traffic court, the court rulings finding them guilty of those charges, or the fines assessed against them. ¶¶ 262–322. Under South Carolina law, traffic courts do not have the power to suspend driver's licenses for failure to pay traffic tickets. *See* Section 56-25-20. That power is vested exclusively in the DMV. *Id*. And it was the DMV, not the state courts, that suspended Plaintiffs' licenses. ¶¶ 120, 124, 153, 210. Similarly, it was the OMVH, not the state courts, that administratively enforced a blanket policy to deny Plaintiffs OMVH hearings to

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the constitutionality of challenges to the OMVH's *post*-conviction practices in pre-conviction traffic court proceedings.

contest those FTPTT suspensions. ¶¶ 230, 232. Thus, Defendant Anderson's contention that Plaintiffs complain of injuries caused by state court traffic judgments is contrary to the allegations of the Complaint and the plain terms of South Carolina law. Rather, Plaintiffs' claims against Defendant Anderson concern the constitutionality of his administrative action to enforce the OMVH Rules barring requests for contested case hearings absent payment of a non-waivable $200 filing fee. Such independent claims do not implicate *Rooker-Feldman*. *See Skinner*, 562 U.S. at 532; *Davani*, 434 F.3d at 718; *Washington*, 407 F.3d at 280.[14]

Moreover, numerous courts have rejected the application of *Rooker-Feldman* to federal suits challenging schemes for suspending driver's licenses for failure to pay traffic tickets where, as here, the plaintiffs did not seek to challenge the underlying state traffic court judgments. For example, in *Stinnie v. Holcomb*, the court found that *Rooker-Feldman* did not bar suit where the plaintiffs were challenging a state executive officer's suspension of their driver's licenses for failure to pay fines and costs, and not challenging the underlying convictions or fines and costs. 355 F. Supp. 3d 514, 523–24 (W.D. Va. 2018). The court held that the plaintiffs were bringing an independent constitutional claim that no state court had ruled on. *Id.*; *see also Stinnie v. Holcomb*, 734 F. App'x 858, 869 (4th Cir. 2018) (Gregory, J., dissenting) (same); *Robinson v. Purkey*, 326 F.R.D. 105, 139–140 (M.D. Tenn. June 11, 2018) (holding *Rooker-Feldman* did not bar suit challenging license suspensions for failure to pay traffic fines and fees and collecting cases holding *Rooker-Feldman* does not apply generally to suits challenging mechanisms for collecting judgments); *Fowler v. Benson*, 924 F.3d 247, 255 (6th Cir. 2019) (same); *Johnson v.*

[14] *Curley v. Adams Creek Assocs.* is distinguishable. 409 F. App'x 678 (4th Cir. 2011). There, the plaintiff had lost in a state court proceeding brought to register a parcel of land and then asked the federal court to invalidate the state court decision. *Id.* at 680; *see also Curley v. Adams Creek Assocs.*, No. 4:08-CV-21-H, 2010 WL 11527409 (E.D.N.C. Mar. 29, 2010). By contrast, Plaintiffs do not ask the Court to invalidate their underlying state court convictions.

*Jessup*, 381 F. Supp. 3d 619, 626 (M.D.N.C. 2019) (same), *appeal docketed*, No. 19-1421 (4th Cir. Apr. 19, 2019).[15]

**B. The OMVH actions are not a bar to this Court's jurisdiction.**

Defendant Anderson separately argues that the OMVH's administrative enforcement of its filing fee rules is an additional ground for barring federal district court jurisdiction. That argument is unavailing.

The "narrow" doctrine of *Rooker-Feldman* specifically applies to bar federal lower court review of "state-court judgments." *Exxon*, 544 U.S. at 284; *see also Lance*, 546 U.S. at 463 (*Rooker-Feldman* solely applies to "final state-court judgments"). The OMVH never made a "judgment" regarding DMV's suspension of Plaintiffs' licenses for failure to pay traffic tickets. Rather, Plaintiffs did not make it past the front door—their requests for contested case hearings did not move forward based on the blanket administrative policy of the OMVH requiring a filing fee in all cases without exception. No hearing officers were assigned to Plaintiffs' requests for contested case hearings, and no officers considered the information in those requests or issued judgments based on them. Indeed, while Defendant Anderson characterizes the "application of the filing fee statute" as "the rulings in state court against [Plaintiffs]," ECF No. 45-1 at 29–30,

[15] Defendant Anderson relies on two distinguishable cases for his contention that *Rooker-Feldman* bars claims against failure to pay suspensions. ECF No. 45-1 at 25. The plaintiff in *Normandeau v. City of Phoenix* explicitly sought to overturn the underlying traffic convictions. 516 F. Supp. 2d 1054, 1064 (D. Ariz. 2005). In *Iles v. White*, unlike here, the plaintiff's suspension was affirmed in a state court decision. 879 F. Supp. 2d 993, 996 (C.D. Ill. 2012). Moreover, *Iles* was wrongly decided because *Rooker-Feldman* does not prohibit federal court review of state administrative action, even where state courts have affirmed them. *See Thana*, 827 F. 3d at 321 ("[A]dministrative decisions, even those that are subject to judicial review by state courts, are beyond doubt subject to challenge in an independent federal action . . . ."). Finally, Defendant Anderson's argument that *Rooker-Feldman* bars Plaintiffs' reinstatement fee claim, ECF No. 45-1 at 29, is unpersuasive because the DMV's application of the reinstatement statute is an administrative action subject to challenge in federal court, and not a state court ruling.

they are anything but that. The OMVH correspondence denying Plaintiffs hearings were not substantive determinations, which must be made by OMVH hearing officers through written orders. *See* OMVH Rule 15(C) ("Pursuant to S.C. Code Ann. § 1-23-350, the hearing officer shall issue the decision in a written order which shall include separate findings of fact and conclusions of law."). The OMVH's administrative enforcement of a blanket denial of hearings is not a state-court judgment to which *Rooker-Feldman* applies.

Defendant Anderson cites several cases for the proposition that imposition of filing fees or other barriers to hearings is equivalent to a state-court judgment that is not subject to federal court review under *Rooker-Feldman*. ECF No. 45-1 at 25–29. But each of those cases—including *Feldman* itself—involved a state court proceeding where a judge considered the merits of the plaintiff's request, rejected the request, and issued a final judgment on the merits. *See e.g.*, *D.C. Cir. v. Feldman*, 460 U.S. 462, 480–81 (1983) (explaining plaintiffs had applied in state court for waiver of law school accreditation requirement, and state court judges considered petitions and issued judgments denying waivers).[16]

Even if Defendant Anderson were correct in asserting that the OMVH's administrative enforcement of a Rule takes the form of a state-court judgment on Plaintiffs' individual requests for contested case hearings, *Rooker-Feldman* nonetheless does not bar the Court's jurisdiction.

[16] S*ee also Howard v. Whitbeck*, 382 F.3d 633, 635–36 (6th Cir. 2004) (applying *Rooker-Feldman* where plaintiff challenged state court final ruling requiring payment of partial fee following individualized adjudication of fee waiver motion); *Doheny v. Pennsylvania*, 781 F. App'x 106, 112 (3d Cir. 2019) (federal claim challenging state filing deadline barred by *Rooker-Feldman* where state intermediate court ruled on appeal that lower court had incorrectly permitted untimely filing and federal claim therefore sought to invalidate the intermediate court's judgment); *Grant-Davis v. Supreme Court of S.C.*, No. 2:15-cv-4019-PMD-MGB, 2015 WL 13732644, at *2, 5–6 (D.S.C. Dec. 7, 2015), *adopted by* No. 2:15-cv-4019-PMD-MGB, 2016 WL 165007, at *2 (D.S.C. Jan. 14, 2016) (*Rooker-Feldman* applied to plaintiff's challenge to state-court judgment denying motion for a filing fee waiver and permission to file single copy of the brief issued after state court's consideration of the motion and opposition).

Plaintiffs do not challenge the OMVH's refusal to waive its filing fee in their individual cases. Rather, Plaintiffs raise a constitutional challenge to OMVH's administrative enforcement of its Rules, which result in the denial of hearings to those who fail to pay a filing fee without a pre-deprivation consideration of ability to pay. This practice deprives all affected people—whether ultimately found to be indigent or not—of an opportunity to have their ability to pay considered before denial of a hearing for nonpayment of a filing fee.

Likewise, Plaintiffs are not asking the OMVH to lift the filing fee requirement; rather, Plaintiffs seek a ruling that would prohibit the agency under *Bearden* from denying hearings for failure to pay a filing fee "for those who show inability to pay." ECF No. 1 at 93. As held by the Fourth Circuit, "the test is not whether the relief sought in the federal suit 'would certainly upset' the enforcement of a state court decree . . . but rather whether the relief would 'reverse or modify' the state court decree." *Adkins v. Rumsfeld*, 464 F.3d 456, 464 (4th Cir. 2006). Claims that raise an independent constitutional challenge to a rule or practice—but do not ask the court to reverse a state court's individual application of a rule or practice—are not barred by *Rooker-Feldman*. *See Feldman*, 460 U.S. at 487 (refusing to bar claims that "involve a general attack on the constitutionality" of rule); *Skinner*, 562 U.S. at 533 (no *Rooker-Feldman* bar for § 1983 suit challenging constitutionality of state post-conviction DNA testing statute after state court had denied motion for DNA testing under the statute); *LaMar v. Ebert*, No. 15-7668, 2017 WL 1040450, at *6 (4th Cir. Mar. 17, 2017) (same). *Rooker-Feldman* therefore does not bar the Court's jurisdiction over Plaintiffs' claims.[17]

[17] Defendant Anderson alludes to *Heck v. Humphrey* and *res judicata* as additional grounds for dismissing Plaintiffs' claims. ECF No. 45-1 at 30. But *Heck* barred a convicted person from pursuing a Section 1983 claim for malicious prosecution because winning on the Section 1983 claim would "necessarily imply the invalidity" of the underlying conviction. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). In contrast, here a ruling that the OMVH's denial of hearings for

## V. The *Younger* abstention doctrine does not bar Plaintiffs' claims.

Defendant Anderson argues that even if the Court has jurisdiction to hear the claims against him, the Court should refrain from exercising jurisdiction under *Younger*. ECF No. 45-1 at 30-32. But the Supreme Court has made clear that where a federal court has jurisdiction, the court's "obligation" to hear and decide a case is "virtually unflagging." *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)); *see also United States v. South Carolina*, 720 F.3d 518, 526 (4th Cir. 2013) ("Abstention from the exercise of federal jurisdiction is the exception, not the rule.") (internal citation omitted).

*Sprint* held that *Younger* extends to three "'exceptional circumstances' . . . but no further": 1) "ongoing state criminal prosecutions," 2) "certain 'civil enforcement proceedings,'" and 3) "pending 'civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions.'" *Sprint*, 571 U.S. at 78, 82 (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989) ("*NOPSI*")). In *Sprint*, the Court reversed a federal appellate decision that had broadly interpreted *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982), which would have required abstention whenever there is "'an ongoing state judicial proceeding . . . [that] implicates important state interests, and . . . the state proceedings provide an adequate opportunity to raise [federal] challenges.'" *Sprint*, 571 U.S. at 75. *Sprint* made

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nonpayment of filing fees would in no way imply the invalidity of Plaintiffs' traffic convictions. *See Skinner*, 562 U.S. at 533–34 (*Heck* only applies where a win in the 1983 suit would "'necessarily imply' the invalidity of the conviction"). Likewise, to the extent Defendant Anderson is arguing *res judicata*, the relevant test—which requires showing "(1) a final judgment on the merits in a prior suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits"—is not met. *Holiday Amusement Co. of Charleston, Inc. v. South Carolina*, No. 2:01-cv-210-CWH, 2006 WL 1285105, at *4 (D.S.C. May 5, 2006).

clear that federal court abstention under *Younger* requires first determining that one of the three specific types of state proceedings are ongoing and then, if this condition is met, considering factors such as whether the state proceedings provided an opportunity to raise the federal claim. *Id*. at 81–82.

Defendant Anderson maintains that *Younger* abstention applies because Plaintiffs did not appear at trials for traffic violations where they allegedly could have raised federal claims. ECF No. 45-1 at 31–32. This argument is unpersuasive for two independent reasons.

First, Defendant Anderson fails to show the instant case falls within any of the three "exceptional circumstances" to which the Supreme Court has limited *Younger* abstention. *Sprint*, 571 U.S. at 86. Defendant Anderson argues only that the traffic court proceedings are "state criminal proceedings" calling for abstention. ECF No. 45-1 at 30. But those proceedings are not "ongoing," which is necessary for *Younger* abstention. *See id*.; *see also South Carolina*, 720 F.3d at 527 ("As there is no ongoing state judicial proceeding here, *Younger* abstention is inapplicable."); *Abusaid v. Hillsborough Cty. Bd. of Cty. Comm'rs*, 405 F.3d 1298, 1316 n.9 (11th Cir. 2005) (*Younger* abstention is "clearly erroneous" where a plaintiff "has already been tried and convicted . . . and none of the parties suggest that any charges remain pending against him."); *Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 605–06 (6th Cir. 2007) (*Younger* abstention inapplicable where state court proceeding was no longer ongoing after plaintiff's conviction).[18] Plaintiffs had been convicted in traffic court long before they filed the instant case in federal court, and the time for appealing those convictions had expired.[19]

[18] Defendant Anderson does not allege facts or make an argument that could be construed as implicating the second or third "exceptional" categories identified in *Sprint*, which narrowly concern only quasi-criminal civil enforcement proceedings or ongoing civil proceedings involving court orders "uniquely in furtherance of the state courts' ability to perform their

By contrast, Defendant Anderson relies on distinguishable cases in which plaintiffs sought relief in federal courts while related cases falling within one of the three *Sprint* categories were pending in state court. ECF No. 45-1 at 30–32; *Kawai v. Uacearnaigh*, 249 F. Supp. 3d 821, 825 (D.S.C. 2017) (plaintiff sought federal relief while state court proceeding was pending); *Martin Marietta Corp. v. Md. Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (plaintiff filed federal complaint to enjoin ongoing state administrative proceeding); *Krall v. Commonwealth of Pa.*, 903 F. Supp. 858, 860 (E.D. Pa. 1995) (before seeking federal relief for drivers' license suspension, plaintiff appealed suspension in state court, and case was still pending at time of federal complaint); *Falco v. Justices of the Matrimonial Parts of the Supreme Court of Suffolk Cty.*, No. 14-CV-29-JFB-AKT, 2015 WL 778354, at *1 (E.D.N.Y. Feb. 24, 2015) (plaintiff filed federal complaint regarding state matrimonial court order while state proceeding was still pending); *McKnight v. Middleton*, 699 F. Supp. 2d 507, 520 (E.D.N.Y. 2010) (plaintiff filed federal complaint while state child custody proceeding was still ongoing).

Second, *Younger* does not apply here because the traffic court proceedings did not provide a forum in which Plaintiffs could have raised their federal claims against the DMV and the OMVH, contrary to Defendant Anderson's contention. ECF No. 45-1 at 3-4, 31-32. Under Section 56-25-20, the DMV—not the traffic courts—has exclusive power to suspend driver's licenses for FTPTT. The traffic court is unable to suspend a driver's license, and thus suspension, as well as any request for a hearing to contest or prevent suspension, all occurs post-

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judicial functions," neither of which would be applicable to the instant case. *See Sprint*, 571 US at 78.

[19] The latest conviction of the three Plaintiffs was Ms. White's conviction on January 15, 2019. ¶ 207. *See* S.C. Code. § 18-3-30 (appeals from magistrate court criminal judgments must be filed "within ten days after sentence"). Ms. Carter had an additional Florida traffic conviction on February 20, 2018, ¶ 172, and under Florida law the time to appeal expired after 30 days. *See* Fla. R. App. P. 9.110(b). The Complaint was filed on October 31, 2019. ECF No. 1.

conviction. There is simply no way to raise during a traffic hearing the constitutionality of the OMVH's post-conviction denial of hearings to challenge FTPTT suspensions to people who failed to pay filing fees.

Moreover, Defendant Anderson's assertion that Plaintiffs could have asked for a payment plan for their traffic fines under Section 17-25-350 is irrelevant. ECF No. 45-1 at 4. As discussed in Plaintiffs' reply in support of the motion for a preliminary injunction, Section 17-25-350 solely governs the sentencing decisions of South Carolina courts and does not provide Plaintiffs an avenue to challenge or get relief from any subsequent DMV action to suspend a license for FTPTT. ECF No. 50 at 3. Likewise, Section 17-25-350 does not provide an avenue to challenge the constitutionality of OMVH's administrative enforcement of OMVH Rules to deny hearings based on failure to pay a filing fee.[20]

The Supreme Court's decisions in *Middlesex* and *Gerstein v. Pugh* are instructive on this point. In *Gerstein*, the plaintiffs challenged state pretrial incarceration procedures. *Gerstein v. Pugh*, 420 U.S. 103, 106–07 (1975). The Supreme Court held that *Younger* did not bar the plaintiffs' request for injunctive relief in federal court because "[t]he injunction was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution." *Id.* at 108 n.9. By contrast, in *Middlesex*, an ethics committee had brought charges against an attorney for making certain statements about a case in the media and, rather than filing an answer to the charges in which First Amendment free speech protections could have been raised as a defense, the attorney raised the First Amendment violations in federal court. 457 U.S. at 429. In finding

[20] Plaintiffs' claims pertaining to the constitutionality of the DMV's actions are also irrelevant to the *Younger* analysis on this motion to dismiss, in which solely the claims pertaining to the OMVH are at issue.

that the federal claims were barred by *Younger* abstention, the Court held that "[a]bstention is based upon the theory that '[t]he accused should first set up and rely upon *his defense* in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection.'" *Id.* at 435 (emphasis added). The *Middlesex* court explicitly distinguished *Gerstein* because "the legality of a pretrial detention could not be raised in defense of a criminal prosecution." *Id.* at 435–36, n.14. Here, as in *Gerstein*, Plaintiffs are not attacking the traffic court convictions or sentences to pay, and their federal claims pertain to the constitutionality of post-conviction practices and procedures that could not have been raised as defenses to the traffic court prosecutions.

Similar *Younger* abstention arguments have been rejected by other federal courts in driver's license suspension cases. In *Robinson v. Purkey*, for example, the court rejected a *Younger* challenge to a federal suit alleging that Tennessee's scheme of suspending driver's licenses for FTPTT without a pre-suspension ability to pay determination was unconstitutional. 326 F.R.D. 105, 142 (M.D. Tenn. 2018). The court noted that "post-adjudication" actions that resulted in driver's license suspension "were distinct from the judgments against [plaintiff] and the proceedings from which those judgments flowed." *Id.* Moreover, the court found that even if the state court proceeding provided an ability to reduce or obtain relief from the traffic debt, such a proceeding would not provide a mechanism to raise a claim for relief about the suspension: "Because [plaintiff]'s liability for suspension of her driver's license for nonpayment was not, in fact, a contested or adjudicated issue in the traffic violation hearings of which she was a part, proceedings before those courts do not offer the opportunity for an adequate consideration of that issue on the merits." *Id.*; *see also Fowler*, 924 F.3d at 255 (holding *Younger* inapplicable in federal challenge to constitutionality of driver's license suspension

scheme because "[t]here are no ongoing state proceedings here, only hypothetical proceedings that [Defendant] claims Plaintiffs may pursue.").

Defendant Anderson also appears to argue that *Younger* applies here because "the plaintiff has not exhausted all of his state remedies." ECF No. 45-1 at 31. But the Supreme Court made clear in *NOPSI* that a plaintiff is not required to exhaust state remedies prior to bringing a case in federal court. 491 U.S. at 373. Instead, *Younger* only triggers an exhaustion requirement where "the [underlying] proceeding [is] the sort of proceeding entitled to *Younger* treatment." *Id.* at 369–70 (finding exhaustion requirement discussed in *Huffman v. Pursue* to be inapplicable to proceedings outside the scope of the *Younger* doctrine). Here, since the traffic court proceeding does not provide the basis for the application of *Younger* to Plaintiffs' claims, there was no requirement for Plaintiffs to exhaust any potential state court remedies prior to filing in federal court.

For all of these reasons, *Younger* abstention does not bar this Court from hearing Plaintiffs' claims.

**VI. Plaintiffs have standing to pursue relief against Defendant Anderson.**

Finally, Defendant Anderson seeks dismissal of the claims against him based on the contention that Plaintiffs lack standing because they purportedly caused their own injuries through nonappearance in traffic court. ECF 45-1 at 4, 32–35.

Article III standing requires showing "(1) that the plaintiff has suffered an invasion of a legally protected interest, (2) that there is a causal connection between the injury fairly traceable to the challenged action; and (3) that it is likely that the injury will be redressed by a favorable decision." *MacDonald v. Moose*, 710 F.3d 154, 161–62 (4th Cir. 2013) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal quotation marks omitted)). Where a single

plaintiff has standing, the court need not separately address standing for others seeking identical relief. *See Horne v. Flores*, 557 U.S. 433, 446 (2009); *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 216–17 (4th Cir. 2017).

Defendant Anderson does not dispute that Plaintiffs have been injured or that redressability is satisfied. *See* ECF 45-1 at 4, 32–35. Instead, he challenges the second *Lujan* prong—causation—by arguing that Plaintiffs' driver's license suspensions were caused by their nonappearance in traffic court. *Id.* This argument misapprehends the nature of the injury giving rise to the claims against Defendant Anderson. Plaintiffs do not allege that Defendant Anderson suspended their licenses. Rather, Plaintiffs allege that his administrative actions to enforce OMVH Rules have violated their *Bearden* and procedural due process rights by denying them hearings to contest their FTPTT suspensions due to nonpayment of OMVH filing fees, without first considering their ability to pay and determining that filing fee nonpayment was willful. ¶¶ 282–86. *See Burt v. Abel*, 585 F.2d 613, 616 (4th Cir. 1978) (the denial of procedural due process is an independent constitutional injury, regardless of whether other injuries can be proven to flow from that deprivation).

There can be no doubt that this injury—the denial of contested case hearings for failure to pay filing fees without pre-deprivation process and determination of willful nonpayment—is "fairly traceable" to the OMVH's administrative enforcement of its filing fee rules. *Lujan*, 504 U.S. at 560. OMVH staff have made it clear that the agency will not accept applications for a filing fee waiver and will not hear requests for a contested case hearing unless the fee was paid. ¶¶ 228, 230, 232. OMVH staff could have only done so under Defendant Anderson's direction and supervision. *See* Section 1-23-660(A) ("[S]taff shall be appointed, hired, contracted, and supervised by the chief judge of the court . . . .").

Moreover, the OMVH categorically fails to consider fee waivers for *anyone* who seeks a hearing, not simply people who have previously failed to appear in traffic court to answer for traffic charges. ¶ 283. Rather than disputing Plaintiffs' allegations that the OMVH provides no opportunity to demonstrate indigence—and thereby no opportunity to obtain an OMVH hearing notwithstanding failure to pay filing fees—Defendant Anderson argues that by failing to appear in traffic court proceedings that occurred long before their FTPTT suspensions, Plaintiffs waived their right to an OMVH hearing. ECF 45-1 at 33–34. This amounts to a challenge to the merits of Plaintiffs' *Bearden* and procedural due process claims, which is premature at the motion to dismiss stage.[21] And the argument fails to break the causal connection between Defendant Anderson's administrative enforcement conduct and the denial of OMVH hearings to Plaintiffs.

**CONCLUSION**

For the reasons stated herein, the Court should deny Defendant Anderson's motion to dismiss.

DATED this 7th day of February, 2020

[21] The notion that Plaintiffs' failure to appear in court waived all of their subsequent *Bearden* rights regarding the post-conviction consequences of their traffic tickets is simply incorrect, as discussed in Plaintiffs' reply memorandum in support of a preliminary injunction. *See* ECF No. 50 at 11–13. Moreover, in his argument on the merits, Defendant Anderson cites to cases in which suspension was largely or completely a function of being adjudicated guilty of a particular traffic offense, thus diminishing the importance of additional pre-suspension procedures regarding a driver's guilt or innocence. ECF No. 45-1 at 33 (citing *Calabi v. Malloy*, 438 F. Supp. 1165 (D. Vt. 1977), and other cases relying on *Dixon v. Love*, 431 U.S. 105 (1977)). While this merits challenge is premature, it bears noting that here, unlike in *Dixon* and *Calabi*, Plaintiffs' driver's licenses were not suspended as a direct function of the particular traffic offenses of which they were convicted, but rather because they were unable to pay fines and fees imposed for these offenses. ¶¶ 105, 153, 190. Indeed, Plaintiffs do not contest their underlying convictions or fines at all. Thus, Plaintiffs' claims implicate significantly different interests—and a different risk of erroneous deprivation thereof—than those in *Calabi* and *Dixon*. These factual distinctions underscore the point that Plaintiffs' claims should be analyzed with the benefit of a full record and briefing as to the merits.

Respectfully submitted by,
s/ Susan K. Dunn

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