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

SETI JOHNSON and MARIE BONHOMME-DICKS, on behalf of themselves and those similarly situated, and SHAREE SMOOT and NICHELLE YARBOROUGH, on behalf of themselves and those similarly situated, Plaintiffs, v. TORRE JESSUP, in his official capacity as Commissioner of the North Carolina Division of Motor Vehicles, Defendant.	)	No. 1:18-CV-00467

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR PRELIMINARY INJUNCTION

NOW COMES THE DEFENDANT, Torre Jessup, Commissioner of the North Carolina Division of Motor Vehicles, in his official capacity ("Defendant") by and through the undersigned counsel, respectfully submitting this response in opposition to Plaintiffs' Motion for a Preliminary Injunction ("PI").

INTRODUCTION

Plaintiffs have moved for a PI pursuant to Fed. R. Civ. P. 65(b) directing the Commissioner to reinstate driver's licenses that have been suspended for nonpayment of fines and court costs that were assessed upon their convictions

for violations of traffic laws. (Doc. 38 ¶10). They claim that such fines and costs have not been paid because they are indigent and thus do not have the ability to satisfy those obligations. Plaintiffs contend that N.C. Gen. Stat. § 20-24.1, which authorizes such suspensions, is unconstitutional because it makes no exceptions for indigent persons and does not afford an opportunity to be heard on the issue of ability to pay. Pursuant to N.C. Gen. Stat. § 20-24.1, the Commissioner suspended the driver's license of Plaintiffs Sharee Smoot and Nichelle Yarborough. If Plaintiff Bonhomme-Dicks fails to pay her court costs and fines, she will be subject to license suspension in November. After the instant action was filed, the Commissioner voluntarily stayed the license suspension of Plaintiff Seti Johnson, which was scheduled to take effect on 24 July 2018. Plaintiffs ask the Court to order the Commissioner to immediately reinstate their licenses.

Plaintiffs' Motion for a PI should be denied. Although the suspension of Plaintiffs' driver's licenses have or undoubtedly will cause them hardship, it is not a constitutional violation, nor does it merit the exercise of the extraordinary remedy of a temporary restraining order. Indeed, under the facts alleged in the complaints, Plaintiffs cannot show that they will suffer immediate and irreparable harm. The Motion for Preliminary Injunction alleges that Plaintiff Smoot's license was suspended sometime in 2016 and

again in 2018 (Doc. 38 ¶4); that Plaintiff Yarborough's license is also suspended (Doc. 38 ¶5); that Plaintiff Johnson's license had been scheduled for suspension on 24 July 2018; (Doc. 38 ¶2); and an expectation that Plaintiff Bonhomme-Dicks also will be suspended after she does not pay her court costs and fines. (Doc. 38 ¶3). As Ms. Smoot's and Ms. Yarborough's licenses have been suspended for a significant period of time, Ms. Bonhomme-Dicks is not yet scheduled for suspension, and Mr. Johnson's license suspension has been stayed pending the outcome of the instant litigation, Plaintiffs cannot show that they now need immediate relief. Moreover, Plaintiffs are not likely to succeed on the merits of their constitutional claims of violations of their equal protection or due process rights. Finally, the issuance of an injunction against the enforcement of the statutes is contrary to the public interest and will cause substantial harm to others as the State has chosen this mechanism to enforce traffic laws, an issue in which the State has a compelling interest.

FACTS

A. Relevant Statutes Governing Suspension of North Carolina Drivers Licenses

N.C. Gen. Stat. § 20-24.1 contains the following relevant provisions regarding the suspension of a North Carolina driver's license:

> (a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

(2) failed to pay a fine, penalty, or court costs ordered by the court. Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or
(2) demonstrates to the court that he is not the person charged with the offense; or
(3) pays the penalty, fine, or costs ordered by the court; or
(4) 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.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c)…

(b1) A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant's appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order and any entries on his driving record relating to it shall be deleted and the person does not have to pay the restoration fee set by G.S. 20-7(i1). For all other revocation orders issued pursuant to this section, G.S. 50-13.12 or G.S. 110-142.2, the person must pay the restoration fee and satisfy any other applicable requirements of this Article before the person may be relicensed.

Prior to suspending an individual's license as provided in N.C. Gen. Stat. § 20-24.1, the DMV provides sixty days of notice before the suspension is to take effect, giving him the opportunity to either pay the debt or "demonstrate 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. Even after the debtor's license has been suspended, the opportunity to request a § 20-24.1 hearing from the courts remains available.

B. The Suspension of Plaintiffs' Driver's Licenses

Plaintiff Seti Johnson ("Johnson") resides in Mecklenburg County. (*Amended Complaint* ¶¶ 15, 45). In the summer of 2017 and again in September 2017, he was cited for violations of the traffic laws. (*Amended Complaint* ¶¶ 49, 51). Johnson alleges that he has limited financial means and has been unable to pay the fines and costs that were assessed in connection with those violations. (*Amended Complaint* ¶¶ 45-46, 50, 56). Johnson did not pay those outstanding fines and court costs, and his license was scheduled for suspension pursuant to N.C. Gen. Stat. § 20-24.1 which authorizes the Commissioner to suspend a driver's license in cases where a person has been finally convicted of a driving offense and has failed to pay the fines and court costs imposed for that offense. However, after the instant action was filed,

Defendant agreed to stay the suspension of Johnson's license pending resolution of the case.

Plaintiff Marie Bonhomme-Dicks resides in Wake County. (*Amended Complaint* ¶¶ 16, 59). Ms. Bonhomme-Dicks pled guilty to speeding on July 27, 2018 and will not pay the $388 in fines and costs by September 5, 2018. (*Amended Complaint* ¶¶ 63). Ms. Bonhomme-Dicks expects that her driver's license will be suspended by DMV approximately sixty days thereafter. (*Amended Complaint* ¶¶ 63).

Plaintiff Nichelle Yarborough ("Yarborough") resides in Franklin County. (*Amended Complaint* ¶¶ 17, 65). Upon a traffic conviction, Ms. Yarborough did not pay $221 in fines and costs and her license was suspended by DMV in February 2017. (*Amended Complaint* ¶ 70).

Plaintiff Sharee Smoot ("Smoot") is a resident of Cabarrus County. (*Amended Complaint* ¶¶ 18, 74). In 2016 and 2017, Smoot was convicted of "failure to notify DMV of address change" and DWLR. (*Amended Complaint* ¶¶ 76, 85). These convictions led to the imposition of $308 and $235 in fines and court costs, respectively. (*Amended Complaint* ¶¶ 77, 85). Smoot did not pay those fines and costs and the Commissioner twice suspended her license pursuant to N.C. Gen. Stat. § 20-24.1. (*Amended Complaint* ¶¶ 80, 88).

ARGUMENT

A motion for a temporary restraining order will be granted only upon a showing "that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b). A temporary restraining order is regarded as a strong remedy to be sparingly applied. A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In order to succeed, the movant "must establish that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. The party seeking the preliminary injunction must demonstrate: (1) by a "clear showing," that he is likely to succeed on the merits at trial; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Via v. Wilhelm*, 2011 U.S. Dist. LEXIS 66805 (W.D. Va. June 22, 2011) (*citing Id.*).

I. PLAINTIFFS HAVE NOT SHOWN IMMEDIATE AND IRREPARABLE INJURY TO SUPPORT THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER.

A specific finding of immediate and irreparable injury to the movant is considered the most important prerequisite that a court must examine and find when ruling upon a motion for preliminary injunction. In fact, the absence of irreparable injury must end the court's inquiry. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111-112,123 (1983). Injunctive relief should not issue to address injury which is neither threatened nor imminent by a defendant merely to assuage a plaintiff's fears. *Continental Baking Co. v. Woodring*, 286 U.S. 352, 369 (1932)).

Finally, judicial intervention into the activities of state officers discharging in good faith their official duties should be exercised with great restraint. *Hawks v. Hamill*, 288 U.S. 52, 60 (1933)). A preliminary injunction is considered an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 811 (4th Cir. 1991) (*quoting Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989)).

Plaintiffs Yarborough and Smoot's driver's licenses are presently under suspension and have been for some time, Plaintiff Bonhomme Dicks is not

currently subject to suspension, and Plaintiff Johnson's driver's license suspension has been stayed by Defendant. Only now are Plaintiffs Smoot and Yarborough seeking a temporary restraining order to compel the Commissioner to take the affirmative step of lifting their suspensions and restoring their driving privileges, in addition to other prospective class members. (*Amended Complaint* ¶¶ 12, 105, 113).

Such action would not have the effect of preserving the status quo and avoiding immediate and irreparable harm, but would affirmatively change the situation and would effectively grant these Plaintiffs full relief. Thus, reinstatement of Plaintiff's licenses would go well beyond the intended purpose of temporary restraining orders under Fed. R. Civ. P. 65(b) and such relief would not be in the public interest. Accordingly, the motion for a preliminary injunction should be denied.

1. The Statute Does Not Violate the Equal Protection Clause.

a. The Statute is Rationally Related to Legitimate Government Interests.

Plaintiffs argue that the statute violates the Equal Protection Clause of the Fourteenth Amendment because it makes no allowance for inability to pay and thus unfairly disadvantages indigent people who owe fines and court costs stemming from their convictions for traffic violations. (*Amended Complaint* ¶¶ 5-6, 12, 43)). As our Supreme Court has made clear, if the challenged law

does not classify on the basis of a suspect class or burden a fundamental right, it "is 'presumed to be valid and will be sustained if the classification . . . is rationally related to a legitimate state interest.'" *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 81 (1988). Thus, in assessing whether the automatic license revocation provisions set forth in N.C. Gen. Stat. § 20-24.1 violate the Equal Protection Clause, this court must determine whether the goals the State sought to advance were legitimate and "whether it was 'reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose.'" *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311, 1320 (4th Cir. 1994) (*quoting Western & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 668 (1981)). Plaintiffs cannot demonstrate that the statute violates the Equal Protection Clause because (1) a driver's license is not a fundamental right, but a revocable privilege; (2) "wealth" qualifications do not discriminate against a suspect class; and (3) because a driver's license is a revocable privilege, the statutory limitations on that privilege are subject to a rational-basis analysis, which the State clearly meets. Accordingly, Plaintiffs cannot demonstrate a likelihood of success on the merits of their Equal Protection Claim.

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 a revocable

"privilege" that is granted upon compliance with statutory license procedures. *See Reitz v. Mealey*, 314 U.S. 33, 36-37 (1941), *overruled in part by, Perez v. Campbell*, 402 U.S. 637 (1971); *Henry v. Edmisten*, 315 N.C. 474, 496, 340 S.E.2d 720, 735 (1986) (no fundamental right to drive); *Mullins v. Commonwealth of Virginia*, No. 5:06CV00068, 2007 U.S. Dist. LEXIS 1882, 2007 WL 120835, *1 (W.D. Va. Jan. 9, 2007) (finding no constitutional violation based upon defendants' refusal to renew plaintiff's driver's license since the right to drive is not a fundamental right); As other jurisdictions have emphasized, the fact that Plaintiffs' driver's licenses are suspended (or will be suspended in the future) does not prevent them "from traveling interstate by public transportation, by common carrier, or in a motor vehicle driven by someone with a license to drive it."[1] "Burdens on a single mode of transportation do not implicate the right to interstate travel,"[2] for there is no "constitutional right to the most convenient form of travel."[3] Other

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[1] *Miller v. Reed*, 176 F.3d 1202, 1205-1206 (9th Cir. 1999) (quoting *Berberian v. Petit*, 374 A.2d 791, 794 (R.I. 1977)); *see also 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." (citations omitted)).

[2] *Miller*, 176 F.3d at 1205-1206 (citing *Monarch Travel Servs., Inc. v. Associated Cultural Clubs, Inc.*, 466 F.2d 552, 554 (9th Cir. 1972); *City of Houston v. FAA*, 679 F.2d 1184, 1198 (5th Cir. 1982)).

[3] *City of Houston*, 679 F.2d at 1198.

jurisdictions have similarly found that there is no constitutional right to a driver's license. *See, e.g., John Doe No. 1 v. Georgia Department of Public 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); *Walton v. Commonwealth*, 24 Va. App. 757, 760 (1997) ("[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."), *aff'd*, 255 Va. 422 (1996); *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*, 538 F.2d 317 (1976).

Plaintiffs also cannot demonstrate that the statute targets a suspect class. Plaintiffs argue that indigency, i.e., an individual's inability to pay the fines and court costs resulting from their convictions for traffic violations, constitutes a suspect class for purposes of the Equal Protection Clause. Contrary to Plaintiffs' contentions, however, "wealth-based classifications do not discriminate against a suspect class." *Papasan v. Allain*, 478 U.S. 265, 283-84 (1986); *Maher v. Roe*, 432 U.S. 464, 470-71 (1977)). As Plaintiffs do not otherwise allege that the statute discriminates against anyone on the basis of race, religion, national origin or any other unlawful reason or purpose, they

cannot demonstrate that it is directed toward a suspect class. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Accordingly, because the statute does not implicate a fundamental right, nor does it target a suspect class, it is only subject to rational basis review. To survive rational basis review, a statute need only be "rationally related to legitimate government interests." *Washington v. Glucksberg*, 521 U.S. 702, 721, 728 (1997). Thus, a statute "must be upheld against equal protection challenge 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, 313 (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. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (*quoting Hooper v. California*, 155 U.S. 648, 657 (1985)). Moreover, "a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for its seems tenuous." *Romer v. Evans*, 517 U.S. 620, 632 (1996)); *see also Washington v. Davis*, 426 U.S. 229, 239-42 (1976) (disparate impact alone cannot sustain an equal protection violation; instead, a plaintiff must allege a discriminatory purpose behind the offending policy). Finally, the Supreme Court has recognized that the fact there may be other means better

suited to the achievement of governmental ends is of no relevance under rational basis review. *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 77 (2001).

The Supreme Court has held, as a general matter, that "the power of the State to regulate the use of its highways is broad and pervasive." *Bibb v. Navajo Freight Lines Inc.*, 359 U.S. 520, 523 (1959). *See also Reitz v. Mealey*, 314 U.S. at 36 (holding that the "use of the public highways by motor vehicles, with the consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers."). Thus, within its powers of regulation, "a state may freely exact registration of the vehicle and an operator's license." *Bradley v. Public Util. Comm'n of Ohio*, 289 U.S. 92, 95 (1933) (*citing Hendrick v. Maryland*, 235 U.S. 610, 622 (1915)); *Sprout v. South Bend*, 277 U.S. 163, 169 (1928)); *see also Ex parte Poresky*, 290 U.S. 30 (1933) (state may require proof of financial responsibility as a condition for licensing of a motor vehicle); *Hess v. Pawloski*, 274 U.S. 352 (1927) (states may require out-of-state drivers to appoint the secretary of state as their agent for service of process for any lawsuits that might arise while driving in the state); *Kane v. New Jersey*, 242 U.S. 160 (1916) (upholding operator licensing and vehicle registration statutes). Additionally, states are generally afforded significant latitude under the police powers to legislate "as to the protection of the lives,

limbs, health, comfort and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quotations and citations omitted)); *see also City of Cleburne*, 473 U.S. at 440 (recognizing that when social or economic legislation is at issue, the Equal Protection Clause allows states wide latitude).

Early on in the advent of motor vehicles, the Supreme Court recognized that "[t]he movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves." *Hendrick*, 235 U.S. at 622. N.C. Gen. Stat. § 20-24.1(a) authorizes the suspension of a North Carolina driver's license upon a showing that a licensee was charged with a motor vehicle offense and (1) "failed to appear . . . when the case was called for trial or hearing; or (2) "failed to pay a fine, penalty, or court costs ordered by the court." These provisions clearly advance the State's legitimate exercise of its police power in regulating the use of its public highways by protecting the safety and welfare of its citizens from licensees, who either have been convicted of a driving offense or have failed to appear to answer for the violation of a traffic statute, and who continue to violate the law by failing to comply with court orders requiring the payment of fines and costs or face the penalty of revocation of their licenses. Indeed, the Fourth Circuit has recognized that states possesses a valid interest in encouraging compliance with court orders. *Carter v. Lynch*, 429 F.2d 154, 157-

58 (4th Cir. 1970) (upholding state civil arrest and release statutes as legitimate legislative functions "well within the State's power to secure enforcement of the judgments of its courts"). The statute in question clearly bears a direct and 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 and, therefore withstands rational basis scrutiny. Accordingly, Plaintiffs cannot meet their burden of demonstrating a likelihood of success on their Equal Protection claim.

2. The Statute Does Not Violate Plaintiffs' Right to Procedural Due Process.

Plaintiffs contend their due process rights have been violated because they received no notice or opportunity to be heard before the Commissioner suspended their licenses. Although "due process is flexible and calls for such procedural protections as the particular situation demands," *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (internal citations and quotations omitted), the "essential requirements of due process . . . are notice and an opportunity to respond." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). The "fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To state a procedural

due process claim, Plaintiffs must demonstrate: "(1) they had property or a property interest (2) of which [Defendants] deprived them (3) without due process of law." *Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 826 (4th Cir. 1995). Plaintiffs do not have a protected property interest in having a driver's license. Furthermore, even if they had a protected property interest, Plaintiffs have failed to demonstrate that they were not afforded adequate pre or post-deprivation remedies.

For purposes of substantive due process analysis, courts first must determine whether a property interest represents a fundamental right "rooted in the traditions and conscience of our people." *Reno v. Flores*, 507 U.S. 292, 302 (1993) ("Substantive due process analysis must begin with a careful description of the asserted right.")(quotations omitted). "To have a property interest in a benefit, a person clearly must have more than an abstract desire for it . . . he must, instead, have a legitimate claim of entitlement to it." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (internal citations and quotation marks omitted). However, while state law might create a property interest, "federal constitutional law determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause." *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 9 (1978) (citations omitted).

As discussed above, there is no fundamental right to a driver's license. *Henry v. Edmisten*, 315 N.C. 474, 496, 340 S.E.2d 720, 735 (1986), however, the Supreme Court has held that the Due Process Clause applies to the deprivation of a driver's license by the State:

> Suspension of issued licenses . . . involves state action that adjudicates important interests of the licensees. In such cases, the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

Dixon v. Love, 431 U.S. 105, 112 (1977) (*quoting Bell v. Burson*, 402 U.S. 535, 539 (1971)) (alterations in original). Thus, in suspending a driver's license, the State must provide appropriate due process rights including an opportunity to be heard. The question, then, is what process is required of the State before suspending a driver's license. In *Dixon v. Love*, the Supreme Court held that the State is not required to conduct a pre-decision administrative hearing before suspending a driver's license. 431 U.S. at 115. The Illinois statute at issue in *Dixon* provided for the summary revocation or suspension of driver's licenses whenever a driver accumulated a set number of penalty points that were assessed upon convictions for convictions on traffic offenses. *Id*. at 107-10. The Court's analysis in *Dixon* is instructive. It applied the following factors set out in *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation

of such interest through the procedures used, and probable value, if any, 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 entail." *Dixon*, 431 U.S. at 112-13 (*quoting Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). First, the Court held that the "nature of the private interest here is not so great as to require us 'to depart from the ordinary principle, established by our decisions, that something less than an evidentiary hearing is sufficient prior to adverse administrative action.'" *Id.*at 113. (*quoting Matthews*, 424 U.S. at 343). Second, the Court concluded that "the risk of an erroneous deprivation in the absence of a prior hearing is not great." *Id.* The Court noted that, although the suspension and revocation decisions "are largely automatic" under the applicable regulations, the licensee "had the opportunity for a full judicial hearing in connection with each of the traffic convictions" on which the suspension decision was made and had not "challenged the validity of those convictions or the adequacy of his procedural rights at the time they were determined." *Id.* Next, the Court concluded that "requiring additional procedures would be unlikely to have significant value in reducing the number of erroneous deprivations." *Id.* at 114. In reaching that conclusion, the Court noted that the licensee "does not dispute the factual

basis" for the suspension of his license, but "is really asserting the right to appear in person only to argue that the Secretary should show leniency and depart from his own regulations." *Id.* at 113. Third, the Court held that "the substantial public interest in administrative efficiency would be impeded by the availability of a pre-termination hearing in every case," as the opportunity to "automatically . . . obtain a delay . . . in the suspension or revocation of a license "would encourage drivers routinely to request full administrative hearings." *Id.* at 114 (*citing Matthews*, 424 U.S. at 347). Last, the Court held: "Far more substantial than the administrative burden, however, is the important public interest in safety on the roads and highways, and in the prompt removal of a safety hazard . . . . [T]he Illinois statute at issue in the instant case is designed to keep off the roads those drivers who are unable or unwilling to respect traffic rules and the safety of others." *Id.* at 114-115 (citation omitted). The Court noted that the case demonstrated that "procedural due process in the administrative setting does not always require application of the judicial model":

> When a governmental official is given the power to make discretionary decisions under a broad statutory standard, case-by-case decision making may not be the best way to assure fairness . . . . The decision to use objective rules in this case provides drivers with more precise notice of what conduct will be sanctioned and promotes equality of treatment among similarly situated drivers. The approach taken by the District Court would have the contrary result

> of reducing the fairness of the system, by requiring a necessarily subjective inquiry in each case as to a driver's "disrespect" or "lack of ability to exercise ordinary and reasonable care."

Id. at 115 (quotations omitted).

Here, as in *Dixon*, Plaintiffs "had the opportunity for a full judicial hearing in connection with each of the traffic convictions." *Dixon*, 431 U.S. at 113. N.C. Gen. Stat. § 20-24.1 —the statute Plaintiffs challenge—directs the suspension of a driver's license upon a showing that the licensee "failed to pay a fine, penalty, or court costs ordered by the court" after being charged with a motor vehicle offense. Also, as in *Dixon*, North Carolina's statute provides "objective rules" which give drivers "precise notice of what conduct will be sanctioned and promotes equality of treatment among similarly situated drivers." *Dixon*, 431 U.S. at 115. In *Dixon*, Illinois provided no notice before suspending or revoking a license, a process the Supreme Court described as "largely automatic," and held that if there was a clerical error, "written objection will bring a matter of that kind to the Secretary's attention." *Id.*at 113.

Although procedural due process does not require it, North Carolina actually does provide written notice to licensed drivers informing them of their unpaid fines and court costs and that their licenses will be suspended in 60 days if those fines remain unpaid, as evidenced by the letter it sent Plaintiff

Sharee Smoot. (*Amended Complaint* ¶ 32). As set forth in the letter, a licensee who receives a notice that license revocation is pending is provided the citation number and instructed to "contact the court above to comply with this citation." Neither *Dixon* nor any other authority cited to this Court requires more. What Plaintiffs seek is a pre-suspension hearing regarding ability to pay, but they have no authority that suggests that is required by the Due Process Clause in this context. Instead, they cite numerous cases that are completely inapposite because they are in the criminal context, unlike the suspension of Plaintiffs' driver's licenses. For example, Plaintiffs rely on *Bearden v. Georgia*, 461 U.S. 660 (1983), for a four-part test used to analyze "whether a criminal justice sanction unconstitutionally punishes a defendant for being poor." (*Memorandum in Support of PI* pp 11-12). But the question in Bearden was whether "a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate." *Bearden*, 461 U.S. at 665. In *Alexander v. Johnson*, 742 F.2d 117 (4th Cir. 1984), the Fourth Circuit rejected constitutional challenges, including equal protection, brought by inmates who alleged that a North Carolina statute that conditioned parole on repayment of attorney's fees violated their equal protection rights, among other

constitutional challenges. *Id.* at 124-25. *Bearden* and its progeny are similarly inapplicable here, as the privilege to drive is clearly a civil matter.

Plaintiffs ask this Court to take huge leaps from existing case law with no authority to support their position. Indeed, Plaintiffs have no authority that holds that a State must hold a pre-suspension hearing before suspending a driver's license that takes into account a driver's ability to pay. 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*, No. 3:14CV466/MCR/CJK, 2016 WL 5024202 (N.D. Fla. Sept. 16, 2016), *aff'd*, No. 16-16936, 2018 WL 2383015 (11th Cir. May 25, 2018). Plaintiffs dislike North Carolina's public policy of requiring that drivers pay their traffic citations and court costs to continue to receive the privilege of driving in the state, but as the Supreme Court has emphasized, state action that "rationally furthers a legitimate state purpose or interest" will generally be upheld despite the fact that it may differentiate or otherwise disparately impact individuals of varying socioeconomic backgrounds. *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411

U.S. 1, 55 (1973); *see also Sansotta v. Town of Nags Head*, 724 F.3d 533, 543-44 (4th Cir. 2013).

To state a claim under 42 U.S.C. § 1983 for a procedural due process violation, Plaintiffs must prove that state processes for redress are inadequate. *See Pinar v. Dole*, 747 F.2d 899, 907 (4th Cir.1984) (considering "the nature of the private interest, the adequacy of the existing procedure in protecting that interest, and the government interest in the efficient administration of the applicable law" to determine due procedural protections). As Plaintiffs have failed to so prove, they have not shown a likelihood of success on the merits of a procedural due process claim.

To the extent Plaintiffs are also arguing that they have substantive due process right to have indigency be a factor the Commissioner is required to consider before suspending a driver's license under the statute, this argument is without merit. In *Bennis v. Michigan*, 516 U.S. 442 (1996), the Supreme Court considered a claim by a woman who co-owned a car with her husband. Michigan abated the car after the woman's husband, unbeknownst to her, engaged in an unlawful encounter with a prostitute in it. *Id*. at 444. Mrs. Bennis framed her claim as a procedural due process claim, but the Supreme Court concluded that she was actually claiming "she was entitled to contest the abatement by showing she did not know her husband would use it to violate

Michigan's indecency law." *Id*. at 446. The *Bennis* Court declined to "import a culpability requirement" into Michigan's abatement scheme." *Id*. at 451-53. Relying on *Bennis*, another district court declined to rewrite an ordinance that authorized the city of Chicago to dispose of cars whose owners had "repeatedly ignored lesser civil penalties" for parking infractions "by importing a requirement that the City ascertain, prior to disposition, that the owner intends to abandon her impounded vehicle." *Robledo v. City of Chicago*, 778 F. Supp. 2d 887, 896 (N.D. Ill. 2011). Here, Plaintiffs similarly seek to have this Court import an indigency defense to the State's enforcement of the Statute, but they have no authority to support such a holding.

Accordingly, Plaintiffs cannot meet their burden of demonstrating a likelihood of success on their Due Process claim—both procedural and substantive.

II. THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER IS NOT IN THE PUBLIC INTEREST.

In addition to the factors the Court must weigh in deciding whether to grant a temporary restraining order, the Court must also consider the public interest. *FTC v. Food Town Stores, Inc.*, 539 F.2d 1339 (4th Cir. 1976). In examining the public interest in the context of injunctive relief, Courts have recognized the important public interest in safety on the roads. *See Perez v. Campbell*, 402 U.S. 637, 657, 671 (1971) (opinion concurring in part and

dissenting in part); *see also Dixon*, 431 U.S. at 114-15 (holding states have "important public interest in safety on the roads and highways" and "keep[ing] off the roads those drivers who are unwilling to respect traffic rules and the safety of others").

In this case the State has a compelling public interest in promoting public safety by enforcing its traffic laws and keeping serial violators off the road. This interest outweighs the Plaintiffs' interest in a State-granted privilege like driving. And while each Plaintiff's individual circumstances for needing a driver's license are unfortunate, allowing chronically uninsured, dangerous motorists to continuing driving presents an unacceptable danger to the public.

CONCLUSION

For the foregoing reasons, the Commissioner respectfully requests that the Court deny Plaintiffs' second motion for a preliminary injunction in this matter.

Electronically submitted, this the 28th day of August, 2018.

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), I certify that the body of this memorandum, including headings and footnotes but excluding the caption, signature lines, certificates and any cover pages or indices, does not exceed 6,250 words.

This the 28th day of August, 2018.

/s/ Kathryne E. Hathcock
Kathryne E. Hathcock
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CERTIFICATE OF SERVICE

I, Kathryne E. Hathcock, Assistant Attorney General, do hereby certify that on this day, I have electronically filed the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system and electronically served Plaintiffs' copy of the foregoing through counsel, as indicated below:

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