

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

SETI JOHNSON and SHAREE SMOOT,  
on behalf of themselves and those  
similarly situated,

Plaintiffs,

v.

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tickets. A revoked license has forced her to make the difficult choice of either driving illegally and risk arrest or additional tickets every day simply because there is no other way for her to support herself, her daughter, and her grandmother or stay at home and lose her job.

3. Other legal plights are common throughout North Carolina.



licenses have already been revoked under N.C.G.S. § 20-24.1 and the DMV's enforcement practice for non-payment of fines and costs.

7. Plaintiff Mr. Johnson is a victim of the DMV's unconstitutional license revocation scheme. He was ordered to pay \$228; is unable to do so because he has been unemployed for an extended period of time; and as a result, the DMV has entered an order revoking his license, which will become indefinitely effective on or around July 24, 2018. Defendant has not inquired into Mr. Johnson's ability to pay, given him an opportunity to be heard before he faces revocation of his license. Defendant sent him adequate notice of how he can prevent the revocation if he cannot pay.

8. Plaintiff Ms. Sharee Smoot is also a victim of the DMV's unconstitutional license revocation scheme. Ms. Smoot was also convicted of traffic offenses and ordered to pay fines and costs, but could not afford to pay these tickets. The



N.C.G.S. §§ 20-2(a); 20-39(a). He is sued in his official capacity as a state actor for declaratory and injunctive relief only.

#### IV. STATEMENT OF FACTS

##### **A. A Driver's License is a Necessity to Pursue a Livelihood and Care for One's Self and Family.**

16. As of Fall 2017, over 436,000 individuals had their licenses indefinitely revoked by the DMV for failure to pay fines and costs assessed for motor vehicle offenses.

17. The indefinite fines and costs disproportionately affects low-income persons and communities of color.

18. North Carolina, including Plaintiffs Mr. Johnson and Ms. Smoot, erects significant barriers to the ability to pursue a livelihood and meet basic human needs. Eighty-six percent of North Carolina households do not have air conditioning, a cell phone, a computer, and other consumer items to be a life necessity.<sup>1</sup>

19. Approximately 91% of North Carolina residents travel to work by car and only 1.1% travel to work by public transit.<sup>2</sup>

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<sup>1</sup> Paul Taylor and Wendy Wang et al., *The Fading Glory of The Television and Telephone*, Pew Research Center 1 (Aug. 10,



24. Persons whose licenses are revoked face an unenviable choice: drive illegally and risk further punishment, or stay home and forgo the ability to meet the daily needs of themselves and their families. When faced with either losing their jobs or remaining unemployed, or otherwise risking being pulled over for driving with a revoked license, individuals often chose the latter—risking car impoundment, additional fines and costs, additional periods of revocation, and even imprisonment for driving on a revoked license—so they can maintain their livelihood and support their families.

**B. The DMV Automatically Revokes Drivers' Licenses For Non-Payment of Traffic Fines and Costs Pursuant to N.C.G.S. § 20-24.1.**

25. Tgxqecvqp" qh' ftkxgtuø' rlegpugu" ku" yj g" gzenwukxg" rtqxlpeg" qh' yj g" Commissioner of the North Carolina Division of Motor Vehicles. N.C.G.S. §§ 20-2(a); 20-39(a).

26. Courts in North Carolina are required to report to the DMV the name of any person charged with a motor vehicle offense who fails to pay a fine, penalty, or costs within 62"fc{u"qh'yj g"fcvg"ur gekkf "lp"yj g"eqwtø"lwf i o gpv0' N.C.G.S. § 20-24.2(a)(2).

27. Pursuant to Section 20-24.1(a),<sup>7</sup> the DMV is required to revoke, and does revoke, cp"lpf kxf wcnø"ftkxgtø"rlegpug after it receives notice from a court that the person

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<sup>7</sup> The pertinent subsections of Section 20-24.1 read, in relevant part:

\*c+"Vj g"Fxkukqp"o wuv'tgxqng"yj g"ftkxgtø"rlegpug"qh"c"r gtuqp"wr qp"tgegkr v"qh"



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N.C. DMV, Revocation Notice to Plaintiff Sharee Smoot (Jan. 10, 2018).

29. The Revocation Notice "is a notice of revocation of a driver's license for an indefinite suspension in accordance with general statute 20-24.1 for failure to pay a fine. The notice is mailed; and identifies the violation date, citation number, court, and court phone number related to the unpaid fine. *Id.*

30. The only guidance the Revocation Notice offers regarding how to prevent the revocation is that the driver must comply with the citation, as follows:

PLEASE



34. If the motorist fails to satisfy Section 20-24.1(b), the license remains indefinitely revoked. *See id.* § 20-24.1(b), (c).

35. Neither Section 20-24.1 nor the DMV, as a matter of standard practice, requires a hearing before the license revocation becomes effective to determine whether non-payment was willful. *See id.* § 20-24.1.

36. Accordingly, pursuant to Section 20-24.1, the DMV routinely revokes licenses for non-payment without inquiring into the motorist's ability to pay, ensuring that any nonpayment is willful.

37. Finally, pursuant to Section 20-24.1, the DMV routinely revokes licenses for non-payment without providing motorists adequate notice of the revocation process, including that ability-to-pay is a material fact to whether a license should be indefinitely revoked, and without providing them an opportunity to be heard on ability to pay and whether the non-payment was willful.

**C. Plaintiff Mr. Johnson Faces the Unconstitutional Future Revocation of His Driver's License Pursuant to Section 20-24.1 Due to an Inability to Pay Fines and Costs.**

38. Plaintiff Mr. Seti Johnson lives in Cabarrus County with his mother. Mr. Johnson is married and the father of three children. Mr. Johnson does not have stable

to pay his traffic tickets, and because he needed to attend multiple court hearings regarding the unpaid tickets.

40. Mr. Johnson needs his f tkxgtø"nēgpug0"J g"tgrlgu"qp"j ku"ftkxgtø"nēgpug"vq" search for work, and go to work when he is employed, and to travel to the grocery store, vng"j ku"ej kf tgp"vq"uej qqn"cpf "f c {ectg."cpf "vq"i q"vq"vj g"f qevqtø"qhlleg0

41. Mr. Johnson is familiar with P qtvj "Ectqrkpcø" procedures for revoking f tkxgtø licenses for non-payment of fines and costs, and the hurdles erected for restoring licenses. Mr. Johnson previously has had this license revoked because he could not pay, and despite his limited income, uwtø qwpvgf "vj g"Ucvgø"uki pklēcpvj wtf rgu"vq"tguvqtø"vqp"d {" paying to have his license reinstated.

42.2 ~~D~~uring the summer of 2017, Mr. Johnson was pulled over by the police while driving. Vj g"r qnēg"qhlleg"vqqm"O t0'Lqj puqpø"nēgpug"cpf "vqrf "j kø "j g"y cu"f qkpi "uq" because he did not pay old traffic tickets. The police officer also issued Mr. Johnson a veng"vht"øF Y NT"pqv"ko r cktgf ö"Kq0"ftkxkpi "y j krg"nēgpug"tgxqngf +0 When Mr. Johnson contacted the Cabarrus County District Court \*vj g" uo "

but to move in with his mother for housing. During this time, Mr. Johnson also had to sacrifice buying necessities for himself and his children.

44. Before Mr. Johnson paid the more than \$700 and regained his license, he was

45. In April 2018, Mr.





work. As a result, she is forced to make the difficult choice of losing her job and not being able to care for

O u0'Uo qqvau"go r m{ o gpv'cv'yj g"vko g"qpn{ "gctpgf "her \$9 per hour, and she y cu"tgegkxkpi "Uwr r ngo gpvci'P wtkkqp "Cuukucpeg"Rtqi tco "UP CRö+"dgpefits. She also was solely responsible for paying the rent and utilities for the residence she shared with her mother and daughter and her car note and car insurance. She also bought groceries and other necessities for herself and her daughter and mother. Between her SNAP benefits and kpeqo g."uj g"j cf "dctgn{ "gpqwi j "o qpg{ "vq'o gg'j gt "cpf "j gt "hco kx{ au'p'ggf u0

Uj qtv{ "chvgt"uj g"uvtv'gf "tgegkxkpi "qxgtvko g"cv'y qtm"O u0'Uo qqvau"UP CR" benefits were cancelled, forcing her to choose between her hco kx{ au'needs, like paying the light bill or buying groceries.

Ms. Smoot also had to stop attending school at the University of North Carolina-Ej ctrqwg"dgecwug"uj g"eqwrf "pqv'chhqt" "v'j g"equ'qh'uej qqn'cpf "j gt "hco kx{ au'dkmu" on her limited income.

Because of her limited financial means, Ms. Smoot could not pay the fine, penalty, and court costs on her 2016 ticket."cpf "v'j g"FO X"tgxqngf "j gt "ftkxgt au'ndegpug"lp" 2016.

kp"4239."O u0'Uo qqv'y cu"eqpxkvgf "kp"v'j g"F kvtlev"Eqwtv'qh"öF Y NT" PQV" KÖ RC KGF "TGXö"cpf "qtf gtgf "vq'r c{ "&457."y j kej "uj g could not afford to pay that day.

The District Court once again did not provide her any options to resolve the fine and court costs other than paying the \$235 in full and did not conduct a hearing to inquire into or decide her ability to pay the fine and





77. A class action is the only practicable means by which Plaintiffs and unknown members of the Future Revocation Class and Revoked Class can challenge North Carolina's "automatic and indefinite" revocation law, Section 20-24.1, and the FOIA practice of automatically and indefinitely revoking licenses for non-payment.

78. As set forth below, this action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a). This action also meets Rule 23(b)(2) Federal Rules of Civil Procedure.

79. **Numerosity**: The exact sizes of the Future Revocation Class and the Revoked Class are unknown by Plaintiffs, but each Class plainly meets the numerosity requirement, thereby making joinder impracticable. In its FOIA request, the Revoked Class had approximately 436,000 members in the fall of 2017— all individuals punished with an automatic and indefinite "automatic and indefinite" revocation for unpaid fines and costs.<sup>8</sup>

licenses for non-payment absent the requested injunction, causing this class size to grow over time.

81. Finally, members of the proposed Classes such as Plaintiffs Mr. Johnson and Ms. Smoot are spread out across the state, and they are typically low-income individuals who lack financial resources to bring an independent action or to be joined in this action. Putative members are facing or have experienced the revocation of their licenses precisely

b. Whether Section 20-24.1 mandates the DMV to revoke, and whether







91. **Rule 23(b)(2)**: Class action status under Rule 23(b)(2) is appropriate because the DMV has acted or failed and/or refused to act on grounds that generally apply to the proposed Classes, such that preliminary and final injunctive and declaratory relief is appropriate and necessary with respect to each member of each Classes. Specifically, pursuant to Section 20-24.1, the DMV automatically and systematically revokes licenses in an unconstitutional manner without any determination of willfulness or ability to pay, without a pre-deprivation hearing, and without adequate notice or opportunity to be heard that is generally applicable to both of the proposed Classes.

92. Accordingly, (a) a declaration that Section 20-24.1, along with the DMV's practice of enforcing the statute, violate the Fourteenth Amendment; (b) an injunction that enjoins enforcement of Section 20-24.1 by the DMV; (c) an injunction that prohibits the DMV from revoking the licenses of individuals for non-payment under Section 20-24.1; and (d) an injunction that mandates the lifting of license revocations and the restoration of unconstitutionally revoked licenses for non-payment under Section 20-24.1, would benefit every member of each of the proposed Classes.

practice of revocation. Counsel also have the resources, expertise, and experience to prosecute this action.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Fourteenth Amendment of the U.S. Constitution (Equal Protection and Due Process *Bearden* Violation)**

94. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

95. Plaintiff Mr. Johnson asserts this claim on behalf of himself and the proposed Future Revocation Class he seeks to represent.

96. Plaintiff Ms. Smoot also brings this claim on behalf of herself and the behalves of the proposed Revoked Class she seeks to represent.

97. The Fourteenth Amendment of the U.S. Constitution prohibits punishing individuals for non-payment without first determining that they had the ability to pay and willfully refused to make a monetary payment. *See Bearden v. Georgia*, 461 U.S. 660 (1983).

98. Section 20-24.1 of the North Carolina General Statutes requires the DMV to indefinitely revoke o qvtluwø'legpugu"lqt"pqp-payment of their fines, penalties, or court costs for a motor vehicle offense, without any determination that they willfully refused to pay.

99. Pursuant to Section 20-24.1, Defendant also indefinitely revokes motorist licenses for non-payment of their fines and costs for a motor vehicle offense, without any determination that they willfully refused to pay.

100. Plaintiffs have a substantial interest in their driver licenses.

101. Revoking a motorist's license, through no fault of her own, does not reasonably further any legitimate government interest.

102. There are alternate means to effectuate the government's interest in collecting unpaid fines, penalties, and court costs, including, *inter alia*, extending the time to make payments, reducing the amount owed, or ordering a motorist to complete community service or coursework.

103. Section 20-24.1 violates the Fourteenth Amendment of the U.S. Constitution by mandating the revocation of a motorist's license for non-payment, without first determining they willfully refused to pay.

104. The DMV's policy under Section 20-24.1 also violates the Fourteenth Amendment of the U.S. Constitution by mandating the revocation of motorist's license for non-payment, without first determining that they willfully refused to pay.



112. Sections 20-24.1 and 20-24.2 of the North Carolina General Statutes create a substantive standard for revocation of a license that involves the following factors: whether a driver (1) failed to pay fines and fees 40 days after due, and (2) did so willfully or in bad faith. Consequently, whether an individual has willfully failed to pay fines and court costs is a fact that is material to whether a license should be indefinitely revoked.

113. Pursuant to the provisions of the North Carolina General Statutes.

114. The process established under Sections 20-24.1 and 20-24.2 and by the DMV creates a substantial risk of erroneously revoking the licenses of those who did not willfully fail to pay or

117. To the extent a pre-revocation hearing would impose some fiscal or administrative burdens on the State, these burdens are outweighed by the ftkxgtø" substantial interest in maintaining a license and in the need to ensure erroneous revocations do not occur.

118. There exist no extraordinary circumstances, important governmental or general public interestsô including public safetyô

**THIRD CLAIM FOR RELIEF**  
**Fourteenth Amendment of the U.S. Constitution**  
**(Procedural Due Process —Failure to Provide Adequate Notice)**

121. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

122. Plaintiff Mr. Johnson asserts this claim on behalf of himself and the proposed Future Revocation Class he seeks to represent.

123. Plaintiff Ms. Smoot also brings this claim on behalf of herself and the behalves of the proposed Revoked Class she seeks to represent.

124. The Fourteenth Amendment of the U.S. Constitution prohibits the State of North Carolina from depriving any person of life, liberty, or property without due process of law.

125. The cornerstone of due process when a property interest is at stake is notice and a meaningful opportunity to be heard in a meaningful time and in a meaningful manner.

126. Notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action; to accurately describe legal rights and options available to the parties; and to afford them an opportunity to present their objections.

127. In circumstances where a punishment may be imposed, notice must adequately inform the party as to what the critical issue of the hearing will be.

128. The DMV fails to provide adequate notice to drivers either before or after licenses are revoked for 2 792 rel.or 2 7e0.00000912 0 612 792 reW\* nBT/F1 12.96 Tf1 0 0 1 138.74 9



Clause. The notice provided (1) misleadingly informs motorists that the only way they can prevent or end a license revocation is by paying the fines and costs owed in full; (2) fails to provide any notice about a right to a hearing; (3) fails to identify the remedies available under N.C. Gen. Stat. Ann. Section 20-24.1(b)(4); and (4) fails to inform the driver that ability to pay will be a critical issue at any hearing.

129. The license rrrrPlai TJE8 Tm0 the nfBT/8(both0.00008oca,5nsepose6 Tf1-hea6 Tsse1 0 0



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