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Via Email

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Counsel for Kevin Shwedo

RE: COVID-19 and Driver's License Suspensions Under S.C. Code § 56-25-20.

Dear Mr. Shwedo:

As the COVID-19 strain of coronavirus continues to spread across the United States, and as more public and private actors take drastic steps to combat this pandemic, we urge you to impose a moratorium on all new driver's license suspensions for failure to comply with a traffic ticket under South Carolina Code Section 56-25-20. As detailed below, the suspension of a driver's license greatly reduces an individual's ability to practice social distancing, a primary means for controlling the spread of the virus and protecting the health of vulnerable people. A moratorium on Section 56-25-20 driver's license suspensions is needed to follow guidance from public health experts to minimize the harm inflicted on people who are, or may become, at risk of the absolute loss of a driver's license. Protecting these individuals will by extension mitigate the overall public health risk of COVID-19 by slowing its spread to communities across South Carolina.

According to the Centers for Disease Control and the World Health Organization, older adults and people of any age with serious chronic medical conditions – such as heart disease, lung disease, or diabetes – or who are otherwise immuno-compromised are at higher risk for contracting and getting very sick from COVID-19. While immediate medical attention should be sought for anyone exhibiting symptoms of COVID-19, namely fever, dry cough, and difficulty breathing, excellent personal hygienic practices and social distancing are the most effective tools to combat the spread of the virus, according to the South Carolina Department of Health and Environmental Control.¹ **This means staying at least six feet away from someone who coughs or sneezes, avoiding or limiting all physical contact, washing your hands regularly with soap and water, and using alcohol-based hand sanitizer to clean your hands after coughing, sneezing, or coming into contact with potentially exposed surfaces, objects, or people.**

¹ See South Carolina Announces Additional 22 Cases of COVID-19, Continues to Urge Residents to take Prevention Precautions, Department of Health and Environmental Control (March 22, 2020), <https://www.scdhec.gov/news-releases/south-carolina-announces-additional-22-cases-covid-19-continues-urge-residents-take>.

Once imposed, a Section 56-25-20 suspension absolutely bars an individual from legally driving. The suspension is only lifted when the individual is able to do two things, both of which require traveling to public places, which increases the risk of exposure to the virus. First, the person must travel to court to pay the money owed on the ticket and obtain proof of payment. Second, the person must then travel to the DMV to provide proof of payment and request lifting of the Section 56-25-20 suspension.

Because Section 56-25-20 suspensions absolutely bar people from legally driving, they increase the risk of transmission of COVID-19 in three distinct ways.

First, these suspensions compel people to use public transportation, secure paid rides, or secure rides from friends and family in order to travel to meet basic needs. Yet taking public transportation, using paid rides, or carpooling with others makes it very difficult, if not impossible, to maintain at least six feet between people as recommended by public health experts to prevent the spread of COVID-19.

Second, even if it were possible to safely socially distance on public transportation, such transit is inadequate in South Carolina. *See, e.g.,* CDM Smith, *Charting a Course to 2040: South Carolina Statewide Public Transportation and Coordination Plan*, S.C. Dep't of Transp. 51 (2014), <https://bit.ly/2nhxK1j> (reporting that only 44% of South Carolina's public transit needs were met in fiscal year 2011). Thus, now more than ever, South Carolinians need to lawfully drive to secure testing and treatment if they experience COVID-19 symptoms, and to obtain necessary supplies such as soap, hand sanitizer, and protective gloves or masks. Section 56-25-20 suspensions erect barriers to many people's ability to safely secure this sort of treatment and get the supplies needed to take preventative measures.

Third, imposing new Section 56-25-20 suspensions will force those who can pay tickets to travel to courts and DMV offices to reinstate their driver's licenses, putting them in close contact with court and DMV staff and other members of the public. This public contact further increases the risk of spreading the virus, particularly to state and local employees and other members of the public at DMV offices.

Therefore, we urge the DMV to impose an immediate moratorium lasting a minimum of three months on imposing any new suspensions on driver's licenses for failure to comply with traffic tickets under Section 56-25-20. This action is well within the DMV's power. To be clear, the suspension of a driver's license under Section 56-25-20 is an act undertaken by the DMV as an exercise of discretion—not an outcome ordered by a magistrate or judge who imposes a sentence for a traffic or littering offense. Section 56-25-20 *explicitly* grants the DMV sole discretion to decide whether and when to suspend a driver's license for a person's reported failure to comply with a traffic ticket. *See* S.C. Code § 56-25-20 (“[T]he department may suspend or refuse to renew the person's driver's license”).

In accordance with recommendations from public health experts, an immediate moratorium on new Section 56-25-20 suspensions will reduce the number of people traveling to public facilities, thereby lowering the risk of transmission to members of the public, as well as to court and DMV staff. Additionally, a moratorium will help limit the number of people who face

impediments to securing health care and goods required for COVID-19 preventative measures, and barriers to caring for loved ones suffering from the disease due to the suspension of a license. A moratorium will also help limit the number of people at risk of arrest for driving under suspension, which can result in lengthy time in jail. Under South Carolina law, a third offense of driving on a suspended license carries a mandatory 90-day sentence in jail, while a first and second offense may lead to up to thirty and sixty days in jail, respectively. S.C. Code Ann. § 56-1-460(A)(1)(a)-(c). Public health experts such as Dr. Gregg Gonsalves, Dr. Marc Stern, Dr. Oluwadamilola T. Oladeru and Adam Beckman, Dr. Anne Spaulding, Homer Venters, Josiah Rich and doctors working in New York City Hospitals have all clearly stated that preventing the harm inflicted by COVID-19 can become immensely more difficult for people involved in the criminal legal system.² It is imperative that the DMV impose a moratorium on new Section 56-25-20 suspensions to help ensure that as few people as possible are arrested for driving on a suspended license and then detained, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult.

Finally, the DMV must ensure that its facilities are as empty, safe, and clean as possible. This means sanitizing facilities and coordinating with local public health experts to ensure that all facilities have adequate supplies of soap, hand sanitizer, tissues, and other hygiene products. Each of these products must be made freely and constantly available to all staff and members of the public. Decreasing the number of drivers who need to visit a DMV office during this time will help the DMV meet those needs.

In conclusion, there is an emerging and broad public consensus that supports common sense steps to protect the most vulnerable populations during this pandemic. The DMV must coordinate with and defer to local public health experts in limiting the risks presented by COVID-19 to people who are reported for driver's license suspension for failure to comply with traffic tickets.

The urgency of deliberate and thoughtful action cannot be overstated. We would like to be a resource for you throughout this process, to ensure the DMV engages in action well within its discretion to limit the threats presented by this public health crisis.

Sincerely

Susan Dunn

² Some local jail officials in South Carolina have already taken steps to reduce the jail population in response to COVID-19 for this reason. *See, e.g., Daniel J. Gross, Dozens of inmates released from Greenville jail amid growing COVID-19 concerns*, Greenville News (March 20, 2020), <https://www.greenvilleonline.com/story/news/local/south-carolina/2020/03/20/dozens-released-greenville-south-carolina-jail-due-covid-19-fears/2883854001/>.