License Revocations for Support Arrears
Constitutional Issues Regarding
Right to Work and Right to Travel

Compiled by David R. Usher
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The case cites below are relevant to the general issue of license revocations. They are not sheperdized, and are not exhaustive, however they do reflect a body of Supra that could be used for the purpose of creative litigation over the revocations of driver's licenses for child support arrears.

The cases relate to substantive due process issues such as right to travel, and right to work; as well as some procedural due process issues as relates the general issue of license revocation. Case(s) specifically related to license revocations for support arrears are located at the end of this paper.

These cites have been made available for the purpose of educating the public about what the courts have done in the past about license revocations.

My study on this issue suggests that a strong case may exist in the federal courts based on "heightened scrutiny" that would accompany litigation over "right to work" and "right to travel" issues.

If you find new material, please email it to me at usher@mo.net.

Fitch v. Belshaw, 581 F. Supp. 273, February 6, 1984 (OR). [Summary: The court considering only a procedural due process appeal, but not considering right to work and travel issues, admits in its finding that license revocations hamper one's ability to get from place to place.]

Oregon Revised Statute 135.055(6) provides no assurance that a defendant unable to make payments may demonstrate that the default was not "attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payments." ORS 161.685(2). Instead, the State requests defendants to sign a Deferred Payment Agreement warning that the response to default may be arrest or suspension of driver's license without a prior opportunity for defendant to explain the circumstance of default.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L. Ed. 2d 18 (1976). The "specific dictates" of due process may be determined by consideration of three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Id. at 335, 96 S. Ct. at 903.

The property and liberty interests affected here are substantial. Entry of a civil judgment, suspension of a driver's license, arrest and imprisonment n2 are all state actions [*278] which may be taken only in compliance with procedural due process. See, e.g., Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972) (convicted defendants have a liberty interest in parole that requires hearing prior to revocation); Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971) (state must provide a hearing prior to revocation of driver's license); Oregon Rules of Civil Procedure. Deprivations of liberty or property interests resulting, even indirectly, from exercise of constitutional rights, such as right to counsel, must be closely scrutinized for compliance with

procedural due process.

Kathleen L. Piercy, v. Seymore G. Heyison, 565 F.2d 854 [1977]. [Summary: Under "heightened scrutiny", It is irrational and unconstitutional to revoke a driver's license over a debt, where revocation would hamper the ability of the person to pay the debt over which the punishment arose.

[22] In Bell v. Burson, 402 U.S. 535, 29 L. Ed. 2d 90, 91 S. Ct. 1586 (1971), the plaintiff challenged Georgia's Motor Vehicle Safety Responsibility Act, which provided that the driver's license of an uninsured motorist involved in an accident would be suspended unless that motorist could post security for the amount of damages claimed by a party to the accident. The pre-suspension procedures under the Georgia statute excluded any consideration of fault or responsibility for the accident. The Court observed that once driver's licenses are issued, their continued possession might be essential in the pursuit of a livelihood. 402 U.S. at 539. Consequently, the Court held that licenses could not be taken away without some procedural safeguards required by the due process clause of the fourteenth amendment. The Court stated:

[23] We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident.

[24] 402 U.S. at 542.

[25] Relying on **Bell v. Burson**, a three-judge district court in Kilfoyle v. Heyison, 417 F. Supp. 239 (W.D. Pa. 1976), struck down Sec. 1404 of the Pennsylvania Vehicle Code. Section 1404 authorized the suspension of driver's licenses of persons involved in automobile accidents unless those persons made deposits to secure the payment of any judgments which might be rendered against them due to the accidents. The three-judge district court held this section unconstitutional as a denial of procedural due process since it did not provide for an effective pre-termination inquiry into the question of fault or liability. The court rejected the state's argument that due process was satisfied by the availability of de novo judicial review of the termination.The court noted that of the approximately 56,000 suspension proceedings under the statute in an eight-month period, only 179 were followed by petitions for de novo review. The court assumed that many of the remaining individuals were deterred from exercising their
right of de novo review by the need for paying a filing fee and for obtaining counsel. 417 F. Supp. at 247.

[62] For purposes of Plaintiff's contention. **Carnegie v. Dep't of Public Safety, 60 So. 2d 728 (Fla. 1952); Wall v. King, 206 F.2d 878 (1st Cir. 1953); and Bell v. Burson, 402 U.S. 535, 92 S. Ct. 1586, 29 L. Ed. 2d 90 (1971)** stand only for the proposition that whether a driver's license be considered a 'right' or a 'privilege,' the license and the freedom to use one's own automobile cannot be taken away by the state without affording procedural due process.

Luther Miller et al., v. James Y. Carter, 547 F.2d 1314 [1977]

[19] In addition to the provisions previously discussed, the ordinance specifies standards of conduct required of licensees and sets penalties for violations of those standards. Ch. 28.1-10 through 28.1-15. Ch. 28.1-10 describes, as conduct which can lead to the revocation of a license, the violation of "any criminal law which, if convicted for such offense, would disqualify any applicant for a chauffeur's license . . .." Engaging in this behavior does not, however, lead to automatic revocation. Rather, "the commissioner may recommend to the mayor that [the] license . . . be revoked and the mayor, in his discretion, may revoke such license." (Emphasis supplied.) Thus,

plaintiff Miller is absolutely barred from obtaining a license, although he was convicted of armed robbery over eleven years ago, while someone who already holds a license may be permitted to retain it, although convicted of armed robbery only yesterday.

[21] Such distinctions among those members of the class of ex-offenders are irrational, regardless of the importance of the public safety considerations underlying the statute or the relevance of prior convictions to fitness. In fact, allowing existing licensees who commit felonies to continue to be eligible for licensing undercuts the reasonableness of the basis for the classification, which is that the felony is per se likely to create a serious risk which cannot be sufficiently evaluated to protect the public through individualized hearings. An applicant for a license who has committed one of the described felonies and a licensee who has done the same are similarly situated, and no justification exists for automatically disqualifying one and not the other. Accordingly, insofar as Ch. 28.1-3 and 28.1-10 discriminate irrationally among the class of ex-offenders, they violate the equal protection clause of the Fourteenth Amendment.

[23] The irrebuttable presumption doctrine, invoked by the Supreme Court in several recent cases,2 has its roots in the era when substantive due process concepts led the Court to strike down state and federal economic and social legislation it deemed arbitrary or capricious.3 The renaissance of the doctrine has been fatal to state laws regulating residency for purposes of voting rights4 and college tuition,5 driver's license suspension,6 child custody,7 and pregnancy disability.8 Federal regulations concerning food stamp eligibility were also held unconstitutional on the same rationale.9 In all these cases the legislative classifications were judged by balancing the advantages and feasibility of individualized determinations against the inflexibility and consequent harshness of the classification. In each case the Court struck down the classification established, and required an individualized factual determination of the eligibility of the plaintiff for the benefits or penalties attendant upon membership in the class. It did not, however, forbid consideration of the factors behind the classification in making that determination.10

Waterman Steamship v. Marcus J. Casbon, Ryan 417 F.2d 1040 (1969).

In re: Florida statute 99.161:

[41] "(1) (b) No person holding a license for the sale of intoxicating beverages, nor any member of an unincorporated association holding such a license, nor any officer or director or a corporation holding such a license, shall make, directly or indirectly, any contribution of any nature to any political party or to any candidate for nomination for, or election to, any political office in the state; providing, however,that these prohibitions shall not apply to members of country clubs, fraternal, social and cultural organizations."

[44] 1. Section 99.161(1) (b) discriminates against liquor licensees because businessmen in other fields are allowed to make political contributions;

[45] 2. Section 99.161(1) (b) denies liquor licensees equality before the law under Section 1 of the Florida Declaration of Rights

[50] 7. Section 99.161(1) (b) denies equal protection of the laws by restricting plaintiffs' right to vote and support the candidate of his choice, or political party of his choice by limiting his right to vote to the actual casting of his ballot without a reasonable basis and without reasonable classification contrary to the Fourteenth Amendment to the U.S. Constitution

[51] n3 The complaint in the federal action advanced the following reasons that Section 99.161(1) (b) is unconstitutional:

[52] 1. Section 99.161(1) (b) denies due process of law by restraining without reason the plaintiffs from fully exercising their right to vote and contribute to the candidate or political party of their choice;

[53] 2. Section 99.161(1) (b) discriminates against plaintiffs in their right to work and deprives them of property without due process of law;

[54] 3. There is no reasonable relationship between the prohibition of Section 99.161(1) (b) and the exercise of the police power;

[55] 4. Section 99.161(1) (b) denies equal protection of the law by making an exception for liquor licensees who are members of certain organizations;

The State of Washington v. Richard R. Scheffel et al. 514 P.2d 1052, 82 Wash. 2d 872 [1973]

[36] [1, 2] The possession of a motor vehicle operator's license, whether such possession be denominated a privilege or right, is an interest of sufficient value that due process of law requires a full hearing at some stage of the deprivation proceeding. Ledgering v. State, 63 Wash. 2d 94, 385 P.2d 522 (1963). The purpose of the hearing will be a controlling factor in determining what specific procedures are appropriate. Olympic Forest Prods. v. Chaussee Corp., 82 Wash. 2d 418, 511 P.2d 1002 (1973). The purpose of the hearing in the instant case is to determine whether or not the individual is an habitual offender as defined by the legislature. The procedure adopted by the legislature in the instant case, and followed by the trial court, is designed to insure that the individual's license is not wrongfully revoked. It is designed to insure that the individual did in fact accumulate the number of violations he is charged with and that he does in fact come within the legislative definition of an habitual offender. As such the hearing does not appear to be in violation of the due process provision of either the federal or state constitution.

48] [7] We also disagree with the defendants' argument that the revocation of a driver's license is a punishment. While recognizing in one context that it might be so interpreted, it has been almost universally held that the suspension or revocation of a driver's license is not penal in nature and is not intended as punishment, but is designed solely for the protection of the public in the use of the highways. See Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778 (1964), and the cases cited therein; State Dep't of Highways v. Normandin, 284 Minn. 24, 169 N.W.2d 222 (1969); and Huffman v. Commonwealth, 210 Va. 530, 172 S.E.2d 788 (1970), and the cases cited therein. It is also well established that a proceeding to revoke a driver's license is a civil not a criminal action. Huffman v. Commonwealth, supra; Barbieri v. Morris, supra ; and Cooley v. Texas Dep't of Pub. Safety, supra.

[49] The defendants next contend that the prosecution by the state to impose an additional penalty for the acts already punished violates the constitutional protection against double punishment and double jeopardy found in Const. art. 1, § 9, and in the fifth and fourteenth amendments to the United States Constitution. We disagree.

[50] As heretofore stated, the revocation of a license is not a punishment, but it is rather an exercise of the police power for the protection of the users of the highways. The court, in Anderson v. Commissioner of Highways, supra, addressed a similar issue and stated on page 316:

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City of Spokane v. Julie Anne Port, 716 P.2d 945, 43 Wash. App. 273 [1986].

[18] Ms. Port attempts to extend this fundamental rule, alleging she has a right, rather than privilege, to operate a motor vehicle upon public highways and streets. Consequently, she claims RCW 46.20.021 is unconstitutional as it makes the exercise of that purported right a crime. "Right" and "privilege" have assumed a variety of meanings, depending upon the context in which they are used. As used here, "privilege" means a qualified right or a particular advantage enjoyed by a class, beyond the common advantages of other citizens, Black's Law Dictionary 1077 (5th rev. ed. 1979); see also R. Pound, Readings on the History and Systems of the Common Law 468 (3d ed. 1927), whereas "right" connotes an interest belonging to every person. Black's Law Dictionary at 1190; Pound, at 467-68. Compare 72 C.J.S. Privilege (1951 & Supp. 1985) with 77 C.J.S. Right (1952 & Supp. 1985). Hence, driving an automobile on our state's public highways is a privilege and not a right because the activity is limited to a certain class of individuals, generally those over the age of 16 years, who have passed a driver's license examination. RCW 46.20.031, .120.*fn2 This privilege is always subject to such reasonable regulation and control as the proper authorities see fit to impose under the police power in the interest of public safety and welfare. See State v. Scheffel, 82 Wash. 2d 872, 880, 514 P.2d 1052 (1973) (one does not have an absolute constitutional right to a particular mode of travel), appeal dismissed, 416 U.S. 964 (1974); Crossman v. Department of Licensing, 42 Wash. App. 325, 328 n.2, 711 P.2d 1053 (1985) (privilege to drive not a "fundamental right"); State ex rel. Juckett v. Evergreen Dist. Court, 32 Wash. App. 49, 55, 645 P.2d 734 (1982) (driver's license is privilege granted by State). This is because the right to a particular mode of travel is no more than an aspect of the "liberty" protected by the due process clause of the Fifth Amendment.*fn3 See Reitz v. Mealey, 314 U.S. 33, 86 L. Ed. 21, 62 S. Ct. 24 (1941). In Reitz, the United States Supreme Court examined the privilege to travel on our public streets and highways and concluded, in 314 U.S. at 36:

[19] Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process.

[20] See also Hendrick v. Maryland, 235 U.S. 610, 59 L. Ed. 385, 35 S. Ct. 140 (1915) (states may rightfully prescribe uniform regulations necessary for public safety and order in the operation upon its highways of motor vehicles and it may require the licensing of drivers).

Wesley Thomas Craig, v. Commonwealth of Kentucky, Department of Public Safety, VersusLaw 1971.KY.168 [1971]. (dissenting opinion).

[54] In summary, I would point out that many rights not explicitly mentioned in the Constitution have been deemed to be so elementary to our way of life that they have been labeled basic rights. Such is the right to travel from state no state, United States v. Guest, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239. Such, also, is the right to marry, Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010. I would place among these rights the right to use the highways in an automobile and I would not require the citizen to give up the right against self-incrimination in order to enjoy it.

Thornhill v. Kirkman, Dlrector of the Department of Public Safety, et Al., 1953.FL.17 [1953] (VersusLaw)

[18] We think there is ample warrant for the legislature to treat a driver's license as privilege, subject to suspension or revocation for cause. The owner of such a license holds it subject to reasonable regulation. His interest in the highway is common to that of every other user for whom the highways are constructed and there must be reasonable regulations to require or guide him in the use of them subject to the privilege of every other citizen to use them for the same purpose. If he cannot demean himself as a careful user, considerate of the right of others to do likewise, he becomes a public nuisance and should be excluded temporarily or permanently from their use. In this holding we do not overlook the right and liberty of appellant to use the highways as guaranteed by the Bill of Rights. At the same time none of these liberties are absolutes but all may be regulated in the public interest. It would produce an intolerable situation on the public highways to subscribe to a theory that they could not be summarily regulated in the interest of the public. So long as summary regulations are reasonable and reasonably executed we will not disturb them.

Fred Alvarez v. Fabian Chavez, Superintendent of Insurance, State of New Mexico, 886 P.2d 461, 1994.

[55] Heightened Rational Basis is the Applicable Standard of Review in this Case

[59] We believe the implication of the Clements decision is that access to the ballot is an interest that under certain circumstances can be afforded some form of heightened scrutiny, such as when a statute acts as a substantial barrier to a person's candidacy. Cf. McDaniel v. Paty, 435 U.S. 618, 646, 55 L. Ed. 2d 593, 98 S. Ct. 1322 (1978) (White, J., concurring) (prohibition against ministers serving in the constitutional convention deprives voters of a candidate and violates ministers' right to equal protection). Further, we think that the statutes in this case, which require Alvarez to give up his livelihood if he is to remain in elected office, are indeed substantial barriers to his candidacy. See Amador v. New Mexico State Bd. of Educ., 80 N.M. 336, 337, 455 P.2d 840, 841 (1969) (laws concerning revocation of license to practice vocation are to be strictly construed). Consequently, we hold that the statutes in question are subject to at least the heightened rational-basis standard of review under the New Mexico Constitution.

[60] G. The Statutes at Issue are Invalid Under a Heightened Rational-Basis Analysis

[61] Having determined that, at a minimum, heightened rational basis is to be applied to the statutes at issue, we review the statutes under that standard. As we have noted, a statute will be upheld under traditional rational basis if there is any conceivable basis to support it, even if the basis has no foundation in the record. Heller, 113 S. Ct. at 2643. However, heightened rational-basis review requires more. That is, we are not permitted to imagine or speculate in order to sustain the legislation. Rather, both the trial court and the appellate court must be persuaded that there is an adequate basis in fact or law for the challenged classification. See City of Cleburne, 473 U.S. at 448

(under circumstances of the case, purported rational basis needed to be supported by the record); see also id. at 458 (Marshall, J., concurring in the judgment in part and dissenting in part). In this case, we are not persuaded that such a basis exists.

RIGHT TO WORK - Substantive and Due-Process Requirements of Constitutional Law

In a dissenting opinion, in *Barsky v. Board of Regents of the University of the State of New York [1954.SCT.41]* , Supreme Court Justice Wendell Douglas wrote:

[119] The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. The American ideal was stated by Emerson in his essay on Politics, "A man has a right to be employed, to be trusted, to be loved, to be revered." It does many men little good to stay alive and free and propertied, if they cannot work. To work means to eat. It also means to live. For many it would be better to work in jail, than to sit idle on the curb. The great values of freedom are in the opportunities afforded man to press to new horizons, to pit his strength against the forces of nature, to match skills with his fellow man.

[120] The dictum of Holmes gives a distortion to the Bill of Rights. It is not an instrument of dispensation but one of deterrents. Certainly a man has no affirmative right to any particular job or skill or occupation. The Bill of Rights does not say who shall be doctors or lawyers or policemen. But it does say that certain rights are protected, that certain things shall not be done. And so the question here is not what government must give, but rather what it may not take away.

[121] The Bill of Rights prevents a person from being denied employment as a teacher who though a member of a "subversive" organization is wholly innocent of any unlawful purpose or activity. Wieman v. Updegraff, 344 U.S. 183. It prevents a teacher from being put in a lower salary scale than white teachers solely because he is a Negro. Alston v. School Board, 112 F.2d 992. Those cases illustrate the real significance of our Bill of Rights.1a

[122] So far as we can tell on the present record, Dr. Barsky's license to practice medicine has been suspended, not because he was a criminal, not because he was a Communist, not because he was a "subversive," but because he had certain unpopular ideas and belonged to and was an officer of the Joint Anti-Fascist Refugee Committee, which was included in the Attorney General's "list." If, for the same reason, New York had attempted to put Dr. Barsky to death or to put him in jail or to take his property, there would be a flagrant violation of due process. I do not understand the reasoning which holds that the State may not do these things, but may nevertheless suspend Dr. Barsky's power to practice his profession. I repeat, it does a man little good to stay alive and free and propertied, if he cannot work.

[123] The distinction between the State's power to license doctors and to license street vendors is one of degree. The fact that a doctor needs a good knowledge of biology is no excuse for suspending his license because he has little or no knowledge of constitutional law. In this case it is admitted that Dr. Barsky's "crime" consisted of no more than a justifiable mistake concerning his constitutional rights.2a Such conduct is no constitutional ground for taking away a man's right to work. The error is compounded where, as here, the suspension of the right to practice has been based on Dr. Barsky's unpopular beliefs and associations. As Judge Fuld, dissenting in the New York Court of Appeals, makes clear, this record is "barren of evidence reflecting upon appellant as a man or a citizen, much less on his professional capacity or his past or anticipated conduct toward his patients." 305 N. Y. 89, at 102, 111 N. E. 2d 222, at 228-229.

[124] Neither the security of the State nor the well-being of her citizens justifies this infringement of

fundamental rights. So far as I know, nothing in a man's political beliefs disables him from setting broken bones or removing ruptured appendixes, safely and efficiently. A practicing surgeon is unlikely to uncover many state secrets in the course of his professional activities. When a doctor cannot save lives in America because he is opposed to Franco in Spain, it is time to call a halt and look critically at the neurosis that has possessed us.

In Re Marriage of Chastain v. Missouri Division of Social Services, Case No. 78611, October 22, 1996. [Summary: Administrative agencies may not perform quasi-judicial functions to the extent of approving actions without judicial approval].

Under section 454.496.1, "any time after the entry of a court order for child support in" cases where support rights have been assigned to the state under section 208.040 or a child support recipient requests support services under section 454.425, the parent paying support, the person to whom support is owed, or the Division may file a motion to modify the existing child support order. Section 454.400.2 requires the director of the Division to review the existing order to determine whether modification is appropriate under Rule 88.01 guidelines. If the director believes modification is appropriate, a motion setting forth the reasons for the modification must be served on all the parties.(FN5) Once the motion is filed, opposing parties have thirty days either to resolve the matter by stipulation, file written objections, or request a hearing. If a hearing is requested, a hearing officer designated by the Department of Social Services conducts a hearing pursuant to Chapter 536, RSMo.(FN6) Where neither objections nor a request for hearing is timely filed, the Division may enter an order granting modification.(FN7)

Nevertheless,

an administrative order modifying a court order is not effective until the administrative order is filed with and approved by the court that entered the court order. The court may approve the administrative order if no party affected by the decision has filed a petition for judicial review pursuant to sections 536.100 to 536.140, RSMo. The court shall determine if the administrative order complies with the provisions of supreme court rule 88.01. If it so determines, the court shall make a written finding on the record that the order complies with the provisions of supreme court rule 88.01 and approve the order. If upon review the court finds that the administrative order should not be approved, the court shall set the matter for trial de novo. If no action is taken by the court within forty-five days of the filing the administrative order with the court, and no petition for judicial review has been filed ... the court shall be deemed to have made a written finding that the administrative order complies with the provisions of supreme court rule 88.01 and to have approved the administrative order.(FN8)

Sail'er Inn, Inc., et al. v. Edward J. Kirby 485 P.2d 529, 5 Cal. 3d 1, 95 Cal. Rptr. 329 [1971]

[49] Before deciding whether the statute violates the equal protection clauses of the state and federal Constitutions we must determine the proper standards for reviewing the classification which the statute creates.

[50] We have followed the two-level test employed by the United States Supreme Court in reviewing legislative classifications under the equal protection clause. (In re Antazo (1970) 3 Cal. 3d 100, 110-111 [89 Cal. Rptr. 255, 473 P.2d 999]; Westbrook v. Mihaly, supra, 2 Cal. 3d 765, 784-785; Purdy & Fitzpatrick v. State of California (1969) 71 Cal. 2d 566, 578-579 [79 Cal. Rptr. 77, 456 P.2d 645]; see also, Note: Developments in the Law -- Equal Protection (1969) 82 Harv.L.Rev. 1065, 1076-1077, 1088.)

[51] "In the area of economic regulation, the high court has exercised restraint, investing legislation

with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. [Citations.] [para.] On the other hand, in cases involving 'suspect classifications' or touching on 'fundamental interests,' the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose." (Westbrook v. Mihaly, supra, 2 Cal. 3d 765, 784-785.)

[52] The instant case compels the application of the strict scrutiny standard of review, first, because the statute limits the fundamental right of one class of persons to pursue a lawful profession, and, second, because classifications based upon sex should be treated as suspect.

[53] We have held that the state may not arbitrarily foreclose any person's right to pursue an otherwise lawful occupation. (Purdy & Fitzpatrick v. State of California, supra, 71 Cal. 2d 566, 579.) The right to work and the concomitant opportunity to achieve economic security and stability are essential to the pursuit of life, liberty and happiness. As early as 1915, the United States Supreme Court declared that "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of [the Fourteenth] Amendment to secure." (Truax v. Raich (1915) 239 U.S. 33, 41 [60 L.Ed. 131, 135, 36 S.Ct. 7].) The California Legislature accords statutory recognition to the right to work by declaring the opportunity to seek, obtain and hold employment without discrimination a civil right. (Lab. Code, § 1411.) Limitations on this right may be sustained only after the most careful scrutiny. (Purdy & Fitzpatrick v. State of California, supra, 71 Cal. 2d 566, 579; cf. Allgeyer v. Louisiana (1897) 165 U.S. 578, 589-590 [41 L.Ed. 832, 835-836, 17 S.Ct. 427]; Truax v. Raich, supra, 239 U.S. 33, 41; Endler v. Schutzbank (1968) 68 Cal. 2d 162, 169, fn. 4, 169-170 [65 Cal. Rptr. 297, 436 P.2d 297]; Blumenthal v. Board of Medical Examiners (1962) 57 Cal. 2d 228, 235 [18 Cal. Rptr. 501, 368 P.2d 101].) Bartending and related jobs, though carefully regulated, are lawful occupations and the strict standard of review is therefore justified on this ground.

[55] An analysis of classifications which the Supreme Court has previously designated as suspect reveals why sex is properly placed among them.16 Such characteristics include race (see, e.g., Loving v. Virginia (1967) 388 U.S. 1, 9 [18 L.Ed.2d 1010, 1016, 87 S.Ct. 1817]; McLaughlin v. Florida (1964) 379 U.S. 184, 191-192 [13 L.Ed.2d 222, 227-229, 85 S.Ct. 283]), lineage or national origin (see, e.g., Korematsu v. United States (1944) 323 U.S. 214, 216 [89 L.Ed. 194, 198-199, 65 S.Ct. 193]; see also Sei Fujii v. State of California (1952) 38 Cal. 2d 718, 730 [242 P.2d 617]), alienage (Takahashi v. Fish Comm. (1948) 334 U.S. 410, 420 [92 L.Ed. 1478, 1487-1488, 68 S.Ct. 1138]; Truax v. Raich, supra, 239 U.S. 33; Purdy & Fitzpatrick v. State of California, supra, 71 Cal. 2d 566, 579), and poverty, especially in conjunction with criminal procedures (see, e.g., Douglas v. California (1963) 372 U.S. 353, 356-357 [9 L.Ed.2d 811, 814-815, 83 S.Ct. 814]; Griffin v. Illinois (1956) 351 U.S. 12, 17 [100 L.Ed. 891, 898, 76 S.Ct. 585]; see also, In re Antazo, supra, 3 Cal. 3d 100).

[56] Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from nonsuspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classifications is that the

Developments in the Law -- Equal Protection, supra, 82 Harv.L.Rev. 1065, 1173-1174.) The result is that the whole class is relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members. (See Karczewski v. Baltimore and Ohio Railroad Company (N.D.Ill. 1967) 274 F.Supp. 169, 179.) Where the relation between characteristic and evil to be prevented is so tenuous, courts must look closely at classifications based on that characteristic lest outdated social stereotypes result in invidious laws or practices.

[57] Another characteristic which underlies all suspect classifications is the stigma of inferiority and second class citizenship associated with them. (See Note: Developments in the Law -- Equal Protection, supra, 82 Harv.L.Rev. 1065, 1125-1127.) Women, like Negroes, aliens, and the poor have historically labored under severe legal and social disabilities. Like black citizens, they were, for many years, denied the right to vote17 and, until recently, the right to serve on juries in many states.18 They are excluded from or discriminated against in employment and educational opportunities.19 Married women in particular have been treated as inferior persons in numerous laws relating to property and independent business ownership and the right to make contracts.20

[58] Laws which disable women from full participation in the political, business and economic arenas are often characterized as "protective" and beneficial. Those same laws applied to racial or ethnic minorities would readily be recognized as invidious and impermissible. The pedestal upon which women have been placed has all too often, upon closer inspection, been revealed as a cage. We conclude that the sexual classifications are properly treated as suspect, particularly when those classificationsare made with respect to a fundamental interest such as employment.

Orlo G. McCoy, M.D. v. Commonwealth of Pennsylvania, State Board of Medical [No. 881 C.D.1977]

[25] Testing Section 701(a) of the Act against these principles of substantive due process, we cannot conclude that requiring professional liability insurance is wholly unreasonable and arbitrary and bears no rational relation to the public's interest in assuring the compensability of malpractice claims. Petitioner's holistic approach to the statute as aimed simply at making malpractice insurance available, glosses over the myriad and complex factors that gave rise to the malpractice crisis that confronted the legislature and which petitioner candidly admits was the reason for the legislation. This view also ignores the interrelated nature of the entire statute, a full reading of which discloses that mandatory insurance is inextricably tied to the creation and maintenance of the Catastrophe Loss Fund, the legislative quid pro quo to insurance companies' continuing to provide malpractice insurance coverage in Pennsylvania. Moreover, the 10 per cent surcharge on insurance premiums by which the health care provider's contribution is determined roughly relates to the degree of risk (and thus the health care provider's direct interest in the maintenance of the Fund). If health care providers could elect not to participate in contributing to the Fund, it takes no special knowledge of logic or human nature to conclude that "low risk" health care providers would withdraw, leaving the Fund to be financed by "high risk" insureds and almost inevitably assuring its depletion. Without the Fund which allows insurers to establish an actuarial basis for anticipation of needed reserves, insurers might again find malpractice an uninsurable risk and either drastically curtail or withdraw totally from participating in the market, in short, creating conditions for precisely the same "crisis" the legislation was designed to obviate. Therefore, we find, within the words of the statute itself, a real and demonstrable relation between the requirement of insurance, or proof of financial responsibility, and the object of the legislation to make malpractice insurance available to all health care providers. Similarly, we find the public has an interest in providing that malpractice insurance be available not only to assure compensability for claims but also to protect those who provide medical services in the state from the threat of financial ruin.

[26] We do not understand petitioner's due process argument that the penalty of suspension of his license to practice medicine is too harsh. If it is proper to require him to obtain insurance, then what other penalty would be appropriate?

Dennis Paul Hetherington et al. v. State Personnel Board et al., [147 Cal. Rptr. 300, 82 Cal. App.3d 582]

89] In the context of section 1029 the reasoning of Sail'er Inn is intact. The court stated: "We have

held that the state may not arbitrarily foreclose any person's right to pursue an otherwise lawful occupation. . . . The right to work and the concomitant opportunity to achieve economic security and stability are essential to the pursuit of life, liberty and happiness." (Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d at p. 17.) Since a fundamental right was at stake in Sail'er Inn the court added: "[the] strict scrutinystandard of review . . . [is applicable] because the statute limits the fundamental right of one class of persons to pursue a lawful profession. . . ." (Sail'er Inn, Inc. v. Kirby, supra, at p. 17.)

[90] As in Sail'er Inn we deal with a right to employment respecting some common occupations. We deal with a group which historically has been discriminated against. Finally, we deal with an interest which is "implicitly" guaranteed by the Constitution. Thus, with respect to the applicable constitutional test, it is Sail'er Inn and not D'Amico which applies.

[91] 2. The Class of Ex-felons Constitutes a Suspect Classification

[92] The majority rule that ex-felons do not fall within any suspect classification. Although the United States Supreme Court may have adopted "strict and rigid definitions of fundamental rights and suspect classes" (see Massachusetts Bd. of Retirement v. Murgia (1976) 427 U.S. 307 [49 L.Ed.2d 520, 96 S.Ct. 2562]), the California Supreme Court, in interpreting the California Constitution, has not been so constrained. (See Serrano v. Priest, supra, 18 Cal. 3d 728; Sail'er Inn, Inc. v. Kirby, supra, 5 Cal. 3d 1; see also, Cal. Const. art. I, § 24, as amended in 1974 ("Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution").)

[93] The California Supreme Court has specified two factors in determining whether a class is suspect. They are (1) immutable traits tied to outdated social stereotypes and (2) the stigma of inferiority and second class citizenship. (Sail'er Inn, Inc., v. Kirby, supra, at pp. 18-20.) These factors apply to ex-felons.

[94] The status of ex-felon is immutable. It is true that prior felony conviction is not a status created by the accident of birth as are sex or race. (See Sail'er Inn, supra, at p. 18 and cases cited.) Nonetheless, it is more "immutable" a trait than other suspect classifications, alienage (see Purdy & Fitzpatrick v. State of California (1969) 71 Cal. 2d 566, 578-579 [79 Cal. Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194]) or poverty (see Serrano v. Priest (1971) 5 Cal. 3d 584, 604 [96 Cal. Rptr. 601, 487 P.2d 1241]; In re Antazo (1970) 3 Cal. 3d 100, 112 [89 Cal. Rptr. 255, 473 P.2d 999].)

[95] An alien is a person who travels or lives in this country but is not a citizen. Alienage can be terminated by acquiring citizenship. In contrast, the classification of prior felony conviction, once imposed, becomes far more immutable. Even after a full pardon, the criminal record persists (Pen. Code, § 4852.17), and does so even if the pertinent penal statute has been abolished (see Pen. Code, § 11100 et seq.). Poverty, of course, can be changed by acquiring wealth.

[96] The crucial distinction is that a whole class is "relegated to an inferior legal status without regard to the capabilities or characteristics of its individual members." (Sail'er Inn, Inc., supra, at p. 18.) Those "[characteristics] frequently bearno relation to ability to perform or contribute to society. . . . Where the relation between characteristics and evil to be prevented is so tenuous, courts must look closely at classifications based on that characteristic lest outdated social stereotypes result in invidious laws or practices." (Id., at p. 18.)

[97] There are over 120,000 ex-felons in California who continue to face severe unemployment problems. The national unemployment rate for ex-felons is traditionally at least three times the rate for the general public. (See Chaneles, The Open Prison, Monograph (U.S. Dept. of Labor); see also, Miller, The Closed Door: The Effects of a Criminal Record on Employment with State and Local Public Agencies (1972).) Removing several hundred thousand job possibilities manifestly has a

deleterious effect.

[98] The persistence of stereotypical notions in the denial of any opportunity to compete for statutorily defined peace officer-related jobs is especially debilitating for ex-felons due to the stigma attached to their status. One commentator has noted that "convicted felons have for centuries faced purposeful unequal treatment." (Comment, The Revolving Door; The Effect of Employment Discrimination Against Ex-Prisoners, 26 Hastings L.J. 1403, 1420.) They are branded as second-class citizens due to civil disability statutes which deny them the right to vote, to serve as a juror, or to hold public office. (Elec. Code, § 701; see Otsuka v. Hite (1966) 64 Cal. 2d 596 [51 Cal. Rptr. 284, 414 P.2d 412]; Code Civ. Proc., § 199; Gov. Code, § 1021; see also, Cal. Const., art. XX, § 11.) The stigmatization experienced by ex-felons as a class is compounded by the fact that "the great majority of prisoners are poor, lower class, members of minority groups, and uneducated." (Comment: The Revolving Door: The Effect of Employment Discrimination Against Ex-Prisoners, supra, at p. 1421.) Minorities account for over 50 percent of all felons in California state prisons even though they constitute only 26 percent of the total population of the State of California. (See State of Cal., Health and Welfare Agency, Dept. of Corrections, Characteristics of Felon Population in Cal. State Prisons by Institution (June 30, 1975) dated Aug. 15, 1976; U.S. Dept. of Commerce, Bureau of the Census 1970 Census Rep. -- Detailed Characteristics -- Cal. Section 1, tables 139 and 140.)

[99] The majority reject any claim of disproportionate impact, stating that a "statutorily significant percentage correlation or relationship" must first be established. The statistics show that the ratio of minority felons to the minority population is three times as great as the ratio of nonminority felons to the nonminority population.*fn3 An absolute ban against ex-felons reduces the employment opportunities for the minority community resulting in a disproportionate economic and social impact. (See Boren v. Department of Employment Dev. (1976) 59 Cal. App. 3d 250, 257 [130 Cal. Rptr. 683].) Courts are concerned with the practical impact of a statute, not its neutral language. The rejection of plaintiffs' claims on the ground that the statistics failed to reach a "statutorily significant" level was improper.*fn4

[100] In summary, the factors identified by the court in Sail'er Inn apply to ex-felons. The "immutable" status of prior felony conviction, which persists for the rest of a person's life, is the result of outdated social stereotyping based on a "disqualifying defect in moral character." The class is also stigmatized by society and assigned to a position of inferiority and second class citizenship. This stigmatization is compounded by the minority and indigent status of most ex-felons. I would hold that the class of ex-felons constitutes a suspect classification in the context of equal employment opportunities.

[101] 3. The State Has No Compelling Interest

[102] I proceed to the final step under an equal protection analysis. "Under this standard the presumption of constitutionality normally attaching to state legislative classifications falls away, and the state must shoulder the burden of establishing that the classification in question is necessary to achieve a compelling state interest." (Serrano v. Priest, supra, 18 Cal. 3d at p. 768. See also, Sail'er Inn, Inc. v. Kirby, supra, 5 Cal. 3d at pp. 16-17; Westbrook v. Mihaly (1970) 2 Cal. 3d 765, 785 [87 Cal. Rptr. 839, 471 P.2d 487].)

[103] Penal Code section 830 et seq. define "peace officer" but not by specific occupational titles. Government Code section 1029, of course, incorporates those definitions. A number of state interests are advanced -- the good moral character of peace officers, public trust and confidence in law enforcement officials and the carrying of firearms. We have seen that these interests cannot and do not apply to each affected position.

[104] Even if a compelling interest were established, defendants have not shown that the automatic

ex-felon bar is necessary to further the state's purpose. That is, that it is the least obtrusive means to meet that interest. (See Dunn v. Blumstein (1972) 405 U.S. 330, 342-343 [31 L.Ed.2d 274, 284-285, 92 S.Ct. 995].) The state, in my view, has a viable screening alternative through the individualized consideration of ex-felon applications for those positions deemed particularly important to the public interest. (See Gov. Code, § 1031, subd. (a).)

[105] I would reverse and remand for a full evidentiary hearing. The constitutional issues posed demand no less. Nonetheless, even this incomplete record convinces me of the unconstitutionality of Government Code section 1029.

CASES IN LICENSE REVOCATIONS FOR SUPPORT ARREARS

(One case found as of Feb. 1, 1996)

Thompson, et. al. v. James Ellenbecker, 935 E Supp. 1037; 1993 U.S. Dist. [S.D. 1995] (Revocation upheld).

MAYNARD THOMPSON, LOUIS FLAMMOND, SR., and PEDRO RED HAWK, Plaintiffs, -vs- JAMES ELLENBECKER, in his capacity as Secretary of the South Dakota Department of Social Services, and his successors, executives and assigns, TERRY WALTER, in his capacity as Program Administrator, South Dakota Office of Child Support Enforcement, and his successors, executives and assigns, and MIKE MEHLHAFF, in his capacity as the Secretary of the South Dakota Department of Commerce, his successors, executives and assigns, Defendants.

Civ. 94-4166

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION

935 E Supp. 1037; 1993 U.S. Dist.

September 18,1995, Decided

DISPOSITION: [**1] Plaintiffs' Motion For Summary Judgment, Doc. 26, denied. Defendants' Motion For Summary Judgment, Doc. 30, granted.

COUNSEL: APPEARANCES:

For the Plaintiffs: Mr. 11.1. Jones, Attorney at Law, Dakota Plains Legal Services, Mission, SD.

For the Defendants: Mr. David L. Braun, Mr. Charles McGuigan, Assistant Attorneys General, Pierre, SD.

JUDGES; John B. Jones, Senior U.S. District Judge

OPINION BY: John B. Jones

OPINION; [*1038] MEMORANDUM OPINION AND ORDER

Plaintiffs

than $1,000 in child support arrears, violate various provisions of the United States Constitution. Plaintiffs seek a permanent injunction prohibiting the defendants from enforcing the said statutes.

Each plaintiff has child support arrearages of more than $ 1.000 and their prior South Dakota driver's licenses have expired. The plaintiffs have each received temporary driving permits pending the resolution of this action.

Both plaintiffs and defendants have made Motions For Summary Judgment in this action. (*1039] The motions were heard on April 17, 1993 and taken [**2] under advisement.

I. Jurisdiction

This Court has subject matter jurisdiction over this action pursuant to 28 US. C. §§ 1331, 1343(3) and (4), and 1367(a).

II .Background

A. Standing

Although plaintiffs seek to have two statutes declared unconstitutional, this Court held in an order dated August 17, 1995, that plaintiffs do not have standing to challenge SDCL § 23-7A-36 because none of the plaintiffs have the type of professional or business license subject to restriction under this statute.

As plaintiffs do have drivers' licenses they have standmg to challenge SDCL § 32-12-116, which provides;

32-l2~l 16. Restrictions on issuing license to person in arrears for child support - Promulgation of rules. The department of commerce and regulation may not issue or renew any license under (the "Drivers' Licenses and Permits" chapter) to a person after receiving notice from the department of social services that the person has accumulated child support arrearages in the sum of one thousand dollars or more unless the person has made satisfactory arrangements with the department of social services for payment of any accumulated arrearages. However, the department [[**3] of commerce and regulation may, upon the recommendation of the department of social services, issue a temporary permit pursuant to § 32-12-19 pending the issuance of a license if the temporary license is necessary for the licensee to work and if the department of social services has determined that the licensee is making a good faith effort to comply with the provisions of this section.

The department of social services may promulgate rules pursuant to chapter 1-26 to implement the pro- visions of this section as they pertain to the functions of the department of social services. The department of commence and regulation may promulgate rules pursuant to chapter 1-26 to implement the provisions of this section as they pertain to the functions of the department of commerce and regulation.

Plaintiffs allege the above statute is unconstitutional because it does not provide procedural or substantive due process or equal protection of the laws.

B. Parties

Maynard Thompson. Mr. Thompson is employed with a temporary employment service in Sioux Falls, and his wages are currently being garnished by the Office of Child Support Enforcement

(OCSE) for $ 150 per month
which is being [**4] applied $ 100 to his current child support obligations and $ 50 to his child support arrearages. OCSE lies determined this amount is satisfactory. However, Mr. Thompson has refused to sign the stipulation required by OCSE and his driver's license has not been renewed.

Louis Flammond, Sr. Mr. Flammond was in a car accident in 195? which left him a quadriplegic. His minor son is now receiving Social Security and VA benefits so he has no current child support obligations, but he had arrearages of $ 6,430 at the commencement of this action. OCSE is receiving $150 per month from Mr. Flammond's Social Security benefits on the arrearages and this is a satisfactory amount to OCSE. Mr. Flammond has refused to sign the stipulation required by OCSE and his driver's license has not been renewed.

Pedro Red Hawk. Mr. Red Hawk is disabled and is receiving Social Security disability benefits. OCSE has
garnished his Social Security benefits and is receiving $150 per month which is a satisfactory payment to OCSE.
Mr. Red Hawk has not contacted OCSE or signed the required stipulation.

III. Issues

Plaintiffs assert that SDCL § 32-12-116 and the administrative rules adopted violate their [[**5] procedural and substantive due process rights and deny them equal protection.

The issues to be decided are:

(1) Does the State of South Dakota's use of the drivers license law to collect delinquent [*1440] child support
obligations violate plaintiffs' substantive due process rights?

(2) Does the State of South Dakota's requirement that applicants for issuance or renewal of a drivers' license
sign the stipulation set out at Appendix A to this opinion as a condition to the issuance or renewal of a drivers
license violate plaintiffs' procedural due process rights?

(3) Does the State of South Dakota use of the drivers license law to collect delinquent child support obligations violate plaintiffs' equal protection rights?

IV. Decision

The statute at Issue is presumed constitutional as it does not involve suspect classifications or fundamental rights. [MSM Farms, Inc. v. Spire, 927 F2d 330, 332 (8th Crt: 1991)]. Therefore, plaintiffs carry the burden of proving the statute is unconstitutional.

A .Substantive Due Process

The Eighth Circuit explained *[a] plaintiff asserting a Substantive Due Process claim must establish that the government action complained of is `truly [**6] irrational' that is `something more than ... arbitrary, capricious, or in violation of state law.'" [Anderson v. Douglas County, 4 F3d 574, 577(8th Cir: 1993)].

Plaintiffs assert SDCL § 32-12-I 16 fails to provide substantive due process because it is arbitrary

and irrational to restrict an individual's drivers license for conduct unrelated to that individual's ability to safely operate a motor vehicle,

Defendants argue a rational basis exists between nonpayment of child support and restriction on the obligor's license to drive. When an obligor is more than $ 1,000 in arrears for child support, the state is able to ascertain an obligor's current address when he or she seeks to renew his or her drivers license. Additionally, restrictions on one's ability to drive inhibits one's ability to move from job-to-job, state-to-state or location-to-location. Without a valid drivers license it is more difficult to move or change jobs with the specific intent of avoiding payment of child support.

The Court finds that SDCL § 32-l2~l 16 is not arbitrary or irrational. Rational reasons, as espoused above, support restrictions on child support obligors' drivers licenses for non-payment of [**7] child support. Therefore, this statute does not deny substantive due process to the plaintiffs.

B. Procedural Due Process

Plaintiffs complain that neither SDCL § 32-12-116 nor the regulations adopted provide any procedure for determining "satisfactory arrangements" for payment of arrearages and thereby deprives them of procedural due process. As each of the plaintiffs are already paying through other judicial process an amount which defendants agree is satisfactory, I conclude that the only due process claim available to them is whether the state can require them to sign the stipulation as a condition to obtaining a drivers license.

Plaintiffs' drivers licenses remain restricted because they have refused to sign the stipulation end agreement required by the defendants regarding the terms of their support payments. Plaintiffs object particularly to the following provision in the stipulation:

Obligor hereby stipulates and agrees to remain current in payment of his present child support obligation and further stipulates and agrees to pay an additional $___ per month until all outstanding arrearages are paid in full.

Plaintiffs object to this provision because [5*5] it would allow a circuit court to cancel or suspend an obligor's drivers license for missing either a current support payment or an arrearages payment. They contend such action is not authorized by SDCL § 32-12-i 16 because the statute only authorizes restriction on issuance or renewal of drivers license for failure to pay arrearages.

The issue regarding the stipulation is whether it violates plaintiffs' procedural due process rights to require a child support obligor to sign a stipulation containing the above quoted provision in a case where the obligor is making or agreeing to make payments in an amount satisfactory to the OCSE.

[*1041] In each case a court order is already in existence requiring the obligor to pay child support. Although the provision at issue may not be necessary, it does not require an obligor to make any current support payments which are not already the subject of a court order. Further, this provision does not require an obligor to waive any rights regarding payment of his court ordered child support. Therefore, requiring an obligor to sign a stipulation containing this provision does not deprive an obligor of his/her procedural due process rights.

This [**9] law would be a toothless tiger if a person who had not paid child support payments as previously ordered could orally agree to make child support payments in order to got a drivers license and then cease making payments as soon as he or she actually received the new license. The stipulation provides a means by which the State could return to Circuit Court to enforce the child support obligations by seeking to cancel or suspend a drivers license issued as a result of such

stipulation.

C. Equal Protection

Both plaintiffs and defendants agree the standard to be applied in this case is the rational basis test because no fundamental right or suspect class is implicated. See City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432. 440, 87L. Ed. 2d 313, 105 S Ct. 3249 (1985). Under this test, a statute is "presumed to he valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.' Id.

Plaintiffs concede collection of past due child support is a legitimate state interest. They argue, however, that classifications drawn by the statute are not rationally related to such interest.

The Eighth Circuit explained [**10] that social and economic measures will violate the equal protection clause only when "the varying treatment of different groups or persons is an unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." [MSM Farms, 927 F2d. at 332]. It is clear SDCL § 32- 12-116 was adopted as a social and economic measure to help both the children residing in South Dakota and the State of South Dakota to collect support payments due to them.

Restrictions on renewal of drivers licenses imposed on child support obligors owing more than $ 1,000 in arrearages is different than the remedies available to collect debts from persons owing other types of debts. However the Court does not find such treatment is so unrelated to the achievement of the legitimate purpose of collecting child support so as to he irrational. The Court therefore finds SDCL § 32-12-1 16 does not violate the equal protection clause of the fourteenth amendment.

V. Conclusion

The State of South Dakota can properly require that applicants for the issuance or renewal of South Dakota drivers license make provisions for payments of child support [[5*11] obligations. SDCL § 32-12-116 does not deprive plaintiffs of due process or equal protection of the laws by requiring them to sign a stipulation that they will continue to make payments on their current and delinquent child support obligations as a condition to the issuance of their South Dakota drivers licenses.

Therefore, upon the record herein,

IT IS ORDERED;

(1) That Plaintiffs' Motion For Summary Judgment, Doc. 26, is denied.

(2) That Defendants' Motion For Summary Judgment, Doc. 30, is granted.

(3) That the Clerk of Courts shall enter judgment for the defendants on all issues.

Dated this 18th day of September, 1995.

BY THE COURT:

John B. Jones

Senior U.S. District Judge