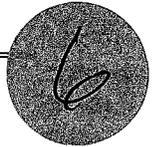


A12-1518



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STATE OF MINNESOTA  
IN COURT OF APPEALS

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State of Minnesota by  
Minnesota Commissioner of Human Services,

Intervenor,

County of Swift, ex rel. Sarah J. Bouta  
n/k/a Sarah J. Ashburn,

Appellant,

vs.

Bruce H. Buchmann,

Respondent.

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**APPELLANT'S BRIEF**

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ROBIN W. FINKE  
Swift County Attorney  
Atty Reg. No: 0224881  
211 Eleventh Street North  
Benson, Minnesota 56215  
(320) 843-2134

ATTORNEY FOR APPELLANT

LORI SWANSON  
Minnesota Attorney General  
CYNTHIA B. JAHNKE  
Assistant Attorney General  
Atty Reg. No: 0294858  
445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
ATTORNEYS FOR INTERVENORS

TARA J. ULMANIEC  
Attorney at Law  
Atty Reg. No: 0287027  
1216 Atlantic Avenue  
P.O. Box 20  
Benson, Minnesota 56215  
(320) 843-9119

ATTORNEY FOR RESPONDENT

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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### LEGAL ISSUES

I. Is Minnesota Statute §171.30, subd. 1(j) unconstitutional as a violation of Substantive Due Process?

Trial court held: Minnesota Statute §171.30, subd. 1(j) is unconstitutional as a violation of Substantive Due Process.

II. Is Minnesota Statute §171.186, Subd. 1 unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

Trial court held: Minnesota Statute §171.186, subd. 1 is unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

\* \* \* \* \*

#### STATEMENT OF FACTS

This matter is a Child Support action commenced in Swift County District Court in front of the Honorable Jon Stafsholt, Judge of District Court.

On October 15, 2001, Swift County filed a Summons and Complaint seeking to establish a child support obligation for Respondent, Bruce H. Buchmann. Appendix pages 1-19. On December 18, 2001, Swift County District Court issued an order directing Respondent to pay \$200.00 per month as and for his child support obligation. Appendix pages 20-28

On May 18, 2003, the Swift County Child Support Office sent Respondent a Notice of Intent to Suspend Driver's License. Appendix pages 29-30. This notice indicated that the Respondent's driver's license would be suspended for non-payment of his court ordered child support. The notice also indicated that the Respondent could prevent the suspension if he did one of the following things:

\* Request a hearing in writing within 30 days of this notice to contest the suspension.  
You will have to show the court that you do not owe court-ordered support or maintenance payments of at least three times your total monthly support or maintenance

payments, or both; or you will have to show the court that you are complying with a written payment agreement.

\* Pay your child support arrears IN FULL.

\* Make and comply with a written payment agreement with your county child support agency within the next 90 days.

On April 21, 2005, Swift County District Court issued an order finding the Respondent in constructive civil contempt of court for failure to pay his monthly child support obligation as ordered. Appendix pages 31-36. The court sentenced Respondent to 30 days in the Swift County Jail, or, at his option to perform 240 hours of sentence to serve or community service work. The court set purge conditions for the Respondent which included the following:

a. Providing proof of five job contacts to the child support officer every week.

b. Getting a job.

c. Paying child support

d. If the Respondent gets a job within the next 30 days, the court will entertain

Respondent's motion to retroactively amend the prior child support order and to forgive a substantial portion of child support arrearages which would normally be placed to judgment.

In its Findings of Fact in the April 21, 2005 Order, the Swift County District Court stated as follows:

3. Respondent had previously worked as a truck driver but lost jobs due to deliberate irresponsibility on his part. In one case, he drove a truck for hire to

California and abandoned the truck and load to hitchhike home because he had trouble coping with a longshoremen's strike which delayed unloading of trucks.

4. Respondent lost his driving privileges because of non-payment of child support.

5. He has testified that he has sought other employment without success.

However, the court notes that it has been two years and seven months since his last child support payment, which fact does not lend credibility to the diligence of his employment pursuits. He has also not brought any motion to amend prior child support orders.

On November 3, 2005, Swift County District Court issued an Order Executing Respondent's jail sentence from the April 21, 2005 order for failure to comply with the purge conditions set forth in the order. Appendix pages 36-39.

On February 2, 2006, the Respondent entered into a payment agreement with the Swift County Child Support Office. Appendix page 39. Respondent agreed to pay \$258.00 per month toward his child support obligation beginning April 1, 2006. On March 4, 2006, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety to reinstate the Respondent's driver's license. The Swift County Child Support Office received one payment under this payment agreement on April 12, 2006. On February 6, 2007 and again on July 10, 2007 and September 18, 2007, the Swift County Child Support Office sent the Respondent a Notice of Intent to Suspend

Driver's License for Non-compliance with Payment Agreement. Appendix pages 40-43.

Each of those notices indicated the following:

**Notice**

The purpose of this notice is to tell you that you have failed to remain in compliance with your written payment agreement for child support and/or spousal maintenance. Failing to remain compliant with an approved written payment agreement is a basis to suspend a driver's license according to Minnesota Statutes, section 518A.65. If you do not take one of the following steps within thirty (30) days of the date of this notice, we will direct the Commissioner of the Minnesota Department of Public Safety to suspend your driver's license.

**How To Prevent the Suspension**

You can prevent the suspension by taking one of the actions listed below within thirty (30) days of the date of this notice:

- Pay the total amount past-due on your payment agreement.
- Pay your child support arrears in full.
- Request a hearing in writing to contest the suspension. Send your request to your child support agency.

The following are issues the court may take into consideration:

- You do not owe the delinquent amount of at least one month on your payment agreement, or
- You are complying with a written payment agreement.
- Tell your county child support office if any of the situations below apply to you:

- You have a pending bankruptcy action
- You receive cash-grant public assistance payments such as MFIP (Minnesota Family Investment Program) or GA (General Assistance)
- We made a mistake - for example, you are not the person owing support.

On September 20, 2008, the Swift County Child Support Office sent a request to suspend the Respondent's driver's license to the Minnesota Department of Public Safety. On April 8, 2009, the Respondent entered into a second payment agreement with the Swift County Child Support Office. Appendix page 44. In the payment agreement, the Respondent agreed to pay \$268.80 per month toward his child support obligation beginning June 1, 2009. On April 11, 2009, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety to reinstate the Respondent's driver's license. No payment was received from the Respondent under this payment agreement.

On June 26, 2009, the Swift County Child Support Office sent the Respondent another Notice of Intent to Suspend Driver's License for Non-compliance with Payment Agreement. Appendix page 45-46. This notice contained the same language as the 2007 notices. On August 15, 2009, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety to suspend the Respondent's driver's license.

On October 7, 2009, the Respondent entered into a third payment plan with the Swift County Child Support Office. Appendix page 47. In that payment agreement, the Respondent agreed to pay \$285.60 toward his monthly child support obligation,

beginning October 15, 2009. On October 10, 2009, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety to reinstate the Respondent's driver's license. The Swift County Child Support Office received one payment under this payment agreement. This payment was made on November 2, 2009 via income withholding through the Respondent's employer. No child support payments have been received from the Respondent since that time.

On January 5, 2010, the Swift County Child Support Office sent the Respondent another Notice of Intent to Suspend Driver's License for Non-compliance with Payment Agreement. Appendix pages 48-49. This notice contained the same language as the 2007 and 2009 notices. On February 20, 2010, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety to suspend the Respondent's driver's license.

On February 7, 2011, Swift County brought a motion to find the Respondent in Constructive Civil Contempt of Court for failure to pay his monthly court ordered child support obligation. Appendix pages 50-62. In an order dated May 2, 2011, the court found "that Respondent is not in contempt for failure to pay child support as he currently is unable to pay his child support." Appendix page 67. In this Order, the Court found:

2. At the hearing, Respondent testified that he currently resides in a home owned by a family trust. He has not been paying rent, as he is unemployed. Respondent testified that he has no electricity, no running water, no motor vehicle, no insurance, and no employment. Respondent is a commercial truck driver by trade, but his driver's license is suspended due to his failure to pay child support.

Respondent states he has not applied for a limited license because limited licenses are not given for class A, class B, and class C licenses. Respondent testified that he would be able to find employment and make his child support payments if he had a commercial driving license. Appendix page 65.

The Court concluded in the May 2, 2011 Order that:

3. "The commissioner shall suspend a person's driver's license or operating privileges without a hearing upon receipt of a court order or notice from a public authority responsible for child support enforcement that states that the driver is in arrears in court ordered child support or maintenance payments, or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement pursuant to section 518A.69 that is approved by a court, a child support magistrate, or the public authority responsible for child support enforcement, in accordance with section 518A.65." Minn. Stat. § 171.186, subd. 1 (2011). Appendix page 66.
4. "A license or operating privilege must remain suspended and may not be reinstated, nor may a license be subsequently issued to the person, until the commissioner receives notice from the court, a child support magistrate, or public authority responsible for child support enforcement that the person is in compliance with all current orders of support or written payment agreements pursuant to section 51SA.69" Minn. Stat. §171.186, subd. 3 (2011).

5. While the commissioner may issue a limited license in this case, "[t]he commissioner shall not issue a class A, class B, or class C limited license." Minn. Stat. § 171.30, subd. 10) (2011). Appendix page 67.

The Court also stated the following in its May 2, 2011 ORDER:

4. Respondent shall make every effort to pay child support. If Respondent continues to fail to pay child support, after 90 days Swift County may bring another motion for contempt for non-payment of child support.
5. At a subsequent hearing and upon due notice and motion, this court will consider a Constitutional challenge to the State's Mandatory Driving Suspension statutes. Appendix pages 68-69.

At a hearing on December 14, 2011, pursuant to an Order to Show Cause and Notice of Motion and Motion served on the Respondent, Swift County sought to again find the Respondent in contempt of court for failure to pay his monthly, court ordered, child support obligation.

On January 13, 2012, the Respondent filed a motion seeking to dismiss the State's Motion for Contempt arguing that the State of Minnesota's Mandatory Driving Suspension Statutes for failure to pay child support are unconstitutional as they violated both procedural and substantive due process. Appendix pages 92-109.

On March 8, 2012 this Court Issued an Order denying Swift County's motion to find the Respondent in contempt for failure to pay his child support obligation. Appendix pages 136-145.

On April 5, 2012, a hearing was held in Swift County District Court before the Honorable Jon Stafsholt, Judge of District Court, on Respondent's motion to dismiss Swift County's Motion for Contempt on the grounds that the State of Minnesota's Mandatory Driving Suspension Statutes for failure to pay child support are unconstitutional.

On July 3, 2012, Swift County District Court issued an Order and Judgment ruling that "Minnesota Statute §171.186, subd. 1 is unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." Appendix page 158. The Swift County District Court also ruled that "Minnesota Statute § 171.30, subd. 1(j) is unconstitutional as a violation of Substantive Due Process." Appendix page 158.

In holding that Minnesota Statute §171.30, subd. 1(j) is unconstitutional, the Swift County District Court found:

18. As stated above, the suspension of a driver's license of a child support obligor implicates a protectable property interest, which is subject to a rational basis review. Although it may not be wise to suspend driver's licenses, which may make life more troublesome for the obligor, there is a rational relation between paying child support and maintaining the privilege of having a driver's license. There are other options for transportation to and from employment, without the necessity of a driver's license (however, concerning rural residents, see below).

Appendix page 153.

19. Although license suspension is rationally related to the enforcement of child support payments, if unwise, the prohibition of issuing a limited commercial license to those who are behind on child support payments is wholly irrational. While the law may be a good incentive for commercial drivers not to resist income withholding, the result is severely problematic. Without a commercial license, Petitioner is not able to work, despite finding employment opportunities. For some commercial drivers, their commercial rig may be not only a means to employment, but also their only method of transportation and a residence or transportation to a residence. It is not rational to prevent an obligor from obtaining a limited commercial license, thus preventing the obligor from continuing to make child support payments. Regardless of whether the obligor will make the payments, the obligor must have an opportunity to do so. If the State wishes to encourage obligors not to shift the burden of child support onto the State, then it is imperative that the State not severely hinder the obligor's ability to pay child support.

Appendix page 154.

In holding that Minnesota Statute §171.186, subd. 1 is unconstitutional, the Swift County District Court found:

26. Under the Equal Protection Clause, the license suspension statutes fail the rational basis test. The effect of the laws on people in rural Minnesota is considerably more harmful than for those in urban areas.

While the State compares Petitioner's situation to that of the taxi driver in *Amunrud*, a taxi driver is likely living in a more urban setting with greater options for alternative employment. In rural Minnesota, the availability of employment is considerably lower. There may not be more than one or two employers in the nearest town, neither of which may be hiring. Public transportation rarely exists. An obligor would need to rely upon others for transportation, or would need to use an alternate mode of transportation, such as a bicycle or walking. These burdens are significantly greater on those in rural Minnesota and the smallest towns. Although the purpose of these statutes is to encourage child support obligors to continue their payments, so they fulfill their obligation of supporting their children rather than relying upon the state to do so, in cases such as this one, that purpose fails. Instead, obligors become unable to support not only their children, but also themselves, becoming a financial burden upon society rather than a financial contributor.

27. Despite the State's argument that this situation is a result of Petitioner's own actions, the fact is it has become near impossible for Petitioner to change those circumstances. Regardless of fault, the issue is how Petitioner can move his life forward and how Petitioner can continue to make his child support payments. Without a license, he cannot. It does no good to say that Petitioner could live with relatives, or that Petitioner

should find another sort of employment. If these were viable options for Petitioner, he would take them. Petitioner's situation has become progressively worse. With no income, he cannot pay for a return of water and electricity. He cannot pay rent. Even with a limited, non-commercial license, he cannot afford a car or car insurance. This would not matter, since he has no money to pay for a new license. This is irrelevant, since even with medical assistance, he has no money for the copay to purchase new prescription glasses, which would allow him to see well enough to drive. It is wholly irrational to require rural residents to have to walk or bike multiple miles for a chance to find employment. It is also wholly irrational to tell these rural residents, when their licenses are suspended, to uproot themselves and move in order to find employment. Petitioner could not do so anyway, as he has no money to pay for moving expenses and no money for a rental. Depriving rural residents of a driver's license is significantly more burdensome, oftentimes preventing people from obtaining and maintaining employment. Driver's license suspension is unconstitutional as a violation of the Equal Protection Clause.

Appendix pages 156-158.

\* \* \* \* \*

## ARGUMENT

I. The District Court erred in holding that Minnesota Statute §171.30, subd. 1(j) is unconstitutional as a violation of Substantive Due Process.

Minnesota Statute §171.30, as applicable to child support cases state, in pertinent part:

- (a) The commissioner may issue a limited license to the driver under the conditions in paragraph (b) in any case where a person's license has been:
  - (1) suspended under section 171.18, 171.173, or 171.186; ...
- (b) The following conditions for a limited license under paragraph (a) include:
  - (1) if the driver's livelihood or attendance at a chemical dependency treatment or counseling program depends upon the use of the driver's license;
  - (2) if the use of a driver's license by a homemaker is necessary to prevent the substantial disruption of the education, medical, or nutritional needs of the family of the homemaker; or
  - (3) if attendance at a postsecondary institution of education by an enrolled student of that institution depends upon the use of the driver's license.
- (c) The commissioner in issuing a limited license may impose such conditions and limitations as in the commissioner's judgment are necessary to the interests of the public safety and welfare including reexamination as to the driver's qualifications. The license may be limited to the operation of particular vehicles, to particular classes and times of operation, and to particular

conditions of traffic. The commissioner may require that an applicant for a limited license affirmatively demonstrate that use of public transportation or carpooling as an alternative to a limited license would be a significant hardship.

...

(e) The limited license issued by the commissioner shall clearly indicate the limitations imposed and the driver operating under the limited license shall have the license in possession at all times when operating as a driver.

(f) In determining whether to issue a limited license, the commissioner shall consider the number and the seriousness of prior convictions and the entire driving record of the driver and shall consider the number of miles driven by the driver annually.

...

(h) The limited license issued by the commissioner to a person under section 171.186, subdivision 4, must expire 90 days after the date it is issued. The commissioner must not issue a limited license to a person who previously has been issued a limited license under section 171.186, subdivision 4.

...

(j) The commissioner shall not issue a class A, class B, or class C limited license.

The Minnesota Court of Appeals set forth the considerations in reviewing the constitutionality of a State Statute and the due process required when depriving someone

of a liberty or property interest in *Mertins v. Commissioner of Natural Resources*, 755 NW2d 329, 335 (Minn. App. 2008).

The Court in *Mertins* stated:

""[W]e proceed on the presumption that Minnesota statutes are constitutional and that our power to declare a statute unconstitutional should be exercised with extreme caution." *Associated Builders & Contractors v. Ventura*. 610 N.W.2d 293, 299 (Minn.2000). "The party challenging a statute has the burden of demonstrating beyond a reasonable doubt a violation of some provision of the Minnesota Constitution." *In re Haggerty*, 448 N.W.2d 363,364 (Minn. 1989). Moreover, "[i]n attacking a statute or regulation on due process grounds, one bears a heavy burden; the statute or rule need only bear some rational relation to the accomplishment of a legitimate public purpose to be sustainable." *Manufactured How. Inst. v. Pettersen*. 347 N.W.2d 238,243 (Minn. 1984) (citing *Williamson v. Lee Optical of Okla.. Inc.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955))."

The first question, therefore, is whether a drivers license is a liberty or property interest and therefore requiring Due Process. The Minnesota Supreme Court has said of driver's licenses; "It is therefore clear that, whether a driver's license be termed a 'privilege' or a 'right,' such license, whether restricted or not, once granted, is of substantial value to the holder thereof and it may not be suspended or revoked arbitrarily or capriciously but only in the manner and on the grounds provided by law. Having determined that a license to operate an automobile, once acquired, is a right and privilege

of real value and may not be suspended or revoked arbitrarily and taken away capriciously". *State v. Moseng*, 254 Minn. 263, 95 N.W.2d 6, 13 (Minn. 1959)

The Minnesota Supreme Court has also said of driver's licenses; "A driver's license is a privilege which, like other privileges enjoyed by citizens of this state, is one laden with civic responsibilities. Pursuant to this end, the Minnesota legislature has enacted a comprehensive set of statutes and regulations governing the issuance of driver's licenses." *Minnesota v. Hanson*, 543 NW2d 84, 89 (Minn 1996).

The question of whether not being allowed to obtain a limited Class A, B, or C, drivers license after a license suspension for non-payment of child support seems to be one of first impression in the State of Minnesota. Therefore, it is helpful to look at decisions from other State and Federal jurisdictions for direction. In 1995, the United States District Court, District of South Dakota, Southern Division, heard a challenge to South Dakota's law which restricted the issuing or renewing of driver's licenses where the applicant was in arrears on their child support obligation. *Thompson v. Ellenbecker*, 935 F. Supp. 1037 (Dist.S.D. 1995). The Plaintiff in *Thompson*, challenged the constitutionality of South Dakota Statute SDCL §32-12-116 alleging that it did not provide procedural or substantive due process or equal protection of the laws. SDCL §32-12-116 read as follows:

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 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 provisions of this section as they pertain to the functions of the department of social services. The department of commerce 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.

The Eighth Circuit explained "a plaintiff asserting a Substantive Due Process claim must establish that the government action complained of is 'truly irrational' that is 'something more than ... arbitrary, capricious, or in violation of state law.'" *Anderson v. Douglas County*, 4 F.3d 574, 577 (8th Cir.1993).

Plaintiffs assert SDCL § 32-12-116 fails to provide substantive due process because it is arbitrary and irrational to restrict an individual's driver's 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 driver's 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 driver's 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§ 32-12-116 is not arbitrary or irrational. Rational reasons, as espoused above, support restrictions on child support obligors' drivers licenses for non-payment of child support. Therefore, this statute does not deny substantive due process to the plaintiffs." *Thompson* at p.1040.

In 1998, the Supreme Court of Alaska heard a challenge to the constitutionality of Alaska's Statute permitting a driver's license revocation for non-payment of child support. *State v. Beans*, 965 P.2d 725 (Alaska 1998). In *Beans*, Alaska Statute 25.27.246 was challenged as violating Beans rights to substantive due process, procedural due process, and equal protection of the law. "Alaska Statute 25.27.246 permits CSED to take adverse action against a delinquent child support obligor's driver's license. It requires CSED to maintain a list of obligors who are not in substantial compliance with support orders and to whom CSED has sent a notice of arrearages at least sixty days before it places them on the list. See AS 25.27.246(a). CSED must notify each person on the list that their driver's license will be suspended in 150 days and will not be reissued unless they obtain a

release from CSED. See AS 25.27.246(b). Licensees may request review of their inclusion on the list. See AS 25.27.246(e)-(f). CSED must release a licensee from the list if any of the following conditions is met: (1) the licensee is found to be in substantial compliance with the support order; (2) the licensee is in substantial compliance with a payment agreement negotiated with CSED; (3) the licensee obtains a judicial finding of substantial compliance; or (4) CSED or judicial review is not completed within the 150-day period before the licensee's license is suspended, through no fault of the licensee. See AS 25.27.246(f).

Following administrative review, a licensee may request judicial relief from CSED's decision. See AS 25.27.246(i). Alaska Statute 25.27.246(i) limits the court's review to three questions: "(1) whether there is a support order or a payment schedule on arrearages; (2) whether the petitioner is the obligor covered by the support order; and (3) whether the obligor is in substantial compliance with the support order or payment schedule." " *Id* at 726, 727.

In ruling that Alaska Statute 25.27.246 did not violate Beans' right to substantive due process, the Court reasoned:

Article I, section seven of the Alaska Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law." Substantive due process, we have explained, is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one.... The constitutional guarantee of substantive due process assures only

that a legislative body's decision is not arbitrary but instead based on some rational policy.... The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification. *Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974) (footnote omitted).

CSED clearly articulates a legitimate public policy for targeting the driver's licenses of delinquent obligors: the State needs to collect child support from all obligors, whether they are subject to income withholding or not. The threat of driver's license suspension is a particularly effective enforcement tool against those obligors who resist income withholding. Beans has not disproved this contention, as required by *Concerned Citizens of South Kenai Peninsula*. Beans first argues that license revocation makes it more difficult for an obligor to earn the money to pay child support. Because this effect is contradictory to the State's asserted desire to collect child support, argues Beans, the statute is arbitrary. But Beans misses the point of the statute: an obligor who is willing to pay child support will not lose his or her license. As soon as an obligor enters into and begins to comply with a payment agreement negotiated under AS 25.27.246(f)(1) then, under subsection (f), CSED must release the obligor's license. Beans next suggests that the lack of relationship between the sanction

(forfeiting a driver's license) and Beans's underlying conduct makes AS 25.27.246 arbitrary. This argument focuses on the wrong relationship entirely. Whether there is a direct relationship between Beans's underlying conduct and the potential sanction has little or nothing to do with whether the sanction is particularly effective against a certain class of delinquent obligors. It is this particular effectiveness that makes the sanction of losing a driver's license rational. Beans argues that because CSED only pursues licensing action against delinquent obligors whose former spouses have used CSED's collection services, the authorizing statute has no rational basis. Beans provides no authority for the proposition that this method of selection renders a statute unconstitutional. CSED responds that "[a] statute is not arbitrary ... merely because the enforcement tool provided by that statute is used only in those cases in which the state's enforcement mechanism has been triggered." CSED's position is more persuasive. It is not irrational to limit CSED's enforcement efforts to cases in which CSED is already implicated or in which its aid is requested. Finally, Beans argues that the statute does not distinguish between obligors who are avoiding payment and obligors who simply cannot pay. It is true that the statute does not explicitly draw that distinction, and we agree that such a distinction is necessary for the statute to satisfy the requirements of substantive due process. The statute, however, provides CSED with the flexibility to draw a distinction between obligors who are unwilling to pay and obligors who are unable to pay, as follows: CSED must release an obligor's

license if the obligor is in substantial compliance with a payment schedule negotiated with CSED under subsection (f)(1). The statute does not circumscribe CSED's authority to negotiate such a payment schedule. In order to comport with the requirements of due process, CSED is simply required to exercise that authority to negotiate a payment schedule on arrearages that is within an obligor's ability to pay. 2 This court has explained that "[a] statute may be unconstitutional either on its face or as applied. A statute is facially unconstitutional if 'no set of circumstances exists under which the Act would be valid.' " *Javed v. State, Dep't of Public Safety*, 921 P.2d 620, 625 (Alaska 1996) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct 2095,95 L.Ed.2d 697 (1987) and citing *Gilmore v. Alaska Workers' Compo Bd.*, 882 P.2d 922, 929 n. 17 (Alaska 1994)). Furthermore, AS 01.10.030 requires that any statute that does not contain a severability clause (which AS 25.27.246 does not appear to contain) be construed as though it contained the following language:

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby. If AS 25.27.246 were applied so as to take away the license of an obligor who was unable to pay child support, it would be unconstitutional as applied in that case. At that point there would be no rational connection between the deprivation of the license and the State's goal of collecting child support. CSED's flexibility in negotiating payment plans, however, ensures that the statute need not be applied in such a

manner; it is not unconstitutional on its face. Beans does not allege that CSED applied the statute to Beans in such a manner. We note that AS 25.27.246(i) purports to limit the grounds on which judicial relief may be requested, and does not explicitly include inability to pay. This is, of course, ineffective to prevent a litigant from challenging an unconstitutional application of the statute. Subsection (i) cannot be applied to prevent a litigant from seeking judicial relief based on inability to pay. With that limitation, subsection (i) passes constitutional muster. We read out of subsection (i) only the language purporting to limit judicial review to the determination of the three enumerated issues. In seeking relief on the basis of inability to pay, the obligor will bear the burden of proving his or her inability to pay by a preponderance of the evidence. See *Johansen v. State*, 491 P.2d 759, 766-67 (Alaska 1971) (placing this burden on the obligor in an analogous case involving civil contempt).

*Bean* at 727, 728.

Perhaps the most helpful case in this matter is *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 143 P.3d 571 (Wash.2006). In *Amunrud*, the Supreme Court of Washington considered a challenge to Washington Statute RCW 74.20A.320 which sets forth provisions for suspending a driver's license for non-payment of child support, and is similar to Minnesota's statutory scheme at question in this matter. Amunrud, a taxi driver, had his commercial driver's license suspended for failure to pay court ordered child support. Amunrud challenged the suspension on two bases: he claims that he was denied a meaningful opportunity to challenge the suspension in violation of his right to

procedural due process, and he contends that the statute upon which the suspension rests violates substantive due process because it impinges on his fundamental right to pursue a profession or occupation.

The Court in *Amunrud* found that, "Amunrud was given a meaningful opportunity to be heard prior to and post suspension of his commercial drivers license consistent with procedural due process. Further, consistent with long-standing law, we apply a rational basis test and hold that the enforcement of child support obligations is a legitimate state interest and RCW 74.20A.320 is rationally related to that interest. We affirm the Court of Appeals, finding that Amunrud received due process consistent with the federal and state constitutions." *Id* at 572.

In pertinent part, the Supreme Court of Washington reasoned as follows:

“¶13 ... The United States Constitution guarantees that federal and state governments will not deprive an individual of "life, liberty, or property, without due process of law." U.S. CONST. amends. V, XIV, § 1.2. The due process clause of the Fourteenth Amendment confers both procedural and substantive protections. *Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994).

...

¶19 ... Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures. *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir.1994).

¶20 To determine the level of review to be applied in a due process challenge to state action, we begin with the nature of the right involved. It is well established that once issued, professional and motor vehicle licenses create interests requiring due process protection. See, e.g., *Barry v. Barchi*, 443 U.S. 55, 64 n. 11, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979) (licenses issued to horse trainers were protected by due process and equal protection because “state law has engendered a clear expectation of continued enjoyment of a license absent proof of culpable conduct by the trainer”); *Bell*, 402 U.S. at 539, 91S.Ct. 1586 (procedural due process protection). Likewise, the United States Supreme Court has held that pursuit of an occupation or profession is a liberty interest protected by the due process clause. *Conn v. Gabbert*, 526 U.S. 286,291-92, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999) (the “Fourteenth Amendment’s Due Process Clause includes some generalized due process right to choose one’s field of private employment”); *Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564, 572, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). See also *Dittman v. California*, 191 F.3d 1020, 1029 (9th Cir.1999), (the pursuit of profession or occupation is a protected liberty interest that extends across a broad range of lawful occupations), cert. denied, 530 U.S. 1261, 120 S.Ct. 2717, 147 L.Ed.2d 982 (2000); *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F.Supp. 1260, 1271 (1997) (“[t]he right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the “liberty” and “property” concepts” of the federal constitution

(quoting *Greene v. McElroy*, 360 U.S. 474, 492, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959))).

¶ 21 Addressing first his substantive due process claim, Amunrud contends that the right to obtain a driver's license and to earn a living is a fundamental right under the fourteenth amendment to the United States Constitution and that the statute authorizing DSHS to suspend his license is subject to strict scrutiny. He claims that the revocation of his commercial driver's license denied him the right to earn a living as a taxi driver, his occupation for over 20 years.

¶ 22 State interference with a fundamental right is subject to strict scrutiny. *In re Parentage of C.A.M.A.*, 15, 4 Wash.2d 52, ¶10, 109 P.3d 405 (2005). Strict scrutiny requires that the infringement is narrowly tailored to serve a compelling state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). The United States Supreme Court has recognized certain liberty interests protected by the due process clause but not explicitly enumerated in the Bill of Rights. However, neither this court nor the United States Supreme Court has characterized the right to pursue a particular profession as a fundamental right. Instead, courts have repeatedly held that the right to employment is a protected interest subject to rational basis review. As mentioned above, the United States Supreme Court recently explained that: [T]he liberty component of the Fourteenth Amendment's Due Process Clause includes some generalized due process right to choose one's field of private employment but a right which is nevertheless subject to reasonable government regulation. *Conn*, 526 U.S. at 291-

92, 119 S.Ct. 1292 (emphasis added). And the United States Supreme Court has made clear that "rational basis review" is the appropriate standard for reviewing such government licensing regulations. *Barry*, 443 U.S. at 61-62, 67-68, 99 S.Ct. 2642 (applying "rational basis" test in the equal protection context and upholding the regulation because the plaintiff did not establish that "the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision maker") (quoting *Vance v. Bradley*, 440 U.S. 93, 111, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979)). See also *Medeiros v. Vincent*, 431 F.3d 25, 29 n. 3 (1st Cir.2005) (explaining that it is "well-settled" that there is no fundamental right to pursue a livelihood or occupation and "that legislation or regulation impinging upon such a right therefore is subject only to 'rational basis' review, rather than 'strict scrutiny'"); *Cornwell*, 962 F.Supp. at 1271-72 (substantive due process challenges to regulations of occupations are "subjected to rational basis review" and "[t]he regulation may only be struck down if there is no rational connection between the challenged statute and a legitimate government objective"); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313-14, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) (no fundamental right to government employment and applying rational basis review to restrictions on government employment); *Schwartz v. Bd. of Bar Examiners of N.M.*, 353 U.S. 232, 238, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (no fundamental right to practice law); *Nebbia*, 291 U.S. at 527-28, 54 S.Ct. 505 (the right to work in a particular profession or trade is a protected right and subject to rational regulation); *Dittman*, 191 F.3d at 1031

(applying rational basis review to requirements for acupuncture license); *Meyers v. Newport Consol. Joint Sch. Dist. No. 56-415*, 31 Wash. App. 145, 639 P.2d 853 (1982) (holding that the right to employment is not fundamental and applying rational basis review); *In re Revocation of License to Practice Medicine & Surgery of Kindschi*, 52 Wash.2d 8, 319 P.2d 824 (1958) (applying rational basis review to license revocation).

¶23 Other states have ruled in accord. See, e.g., *In re Revocation of License of Polk*, 9, 0 N.J. 550, 449 A.2d 7 (1982) (while a professional license embraces a substantial individual interest which deserves protection, "it cannot be equated with a fundamental right" (emphasis added) requiring only compelling state interests for justification; such licenses are "'always subject to reasonable regulation in the public interest'" (quoting *B. Jeselsohn, Inc. v. Atlantic City*, 70 N.J. 238, 242, 358 A.2d 797 (1976)); *Petition of Grimm*, 138 N.H. 42, 50, 635 A.2d 456 (1993) ("[t]he right to work in one's occupation has never been placed on equal footing with fundamental personal rights," applying rational basis review for equal protection challenge to regulation affecting the licensing of medical doctors). Thus, while it is clear that pursuing a lawful private profession or occupation is a protected right under the state and federal constitutions, it is equally clear that such right is not a fundamental right, requiring heightened judicial scrutiny.

¶ 24 When state action does not affect a fundamental right, the proper standard of review is rational basis. JOHN E. NOWAK & RONALD D. ROTUNDA,

CONSTITUTIONAL (Page 578) LAW § 11.4, at 370; § 14.4, at 601 (4th ed.1991); *Glucksberg*, 521 U.S. at 728, 117 S.Ct. 2258. Under this test, the challenged law must be rationally related to a legitimate state interest. *Id.*; *Seeley v. State*, 132 Wash.2d 776, 795, 940 P.2d 604 (1997); *In re Pers. Restraint of Metcalf*, 92 Wash.App. 165, 96, 3P.2d 911 (1998), cert. denied, 527 U.S. 1041, 119 S.Ct. 2405, 144 L.Ed.2d 803 (1999). In determining whether a rational relationship exists, a court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest. *Heller v. Doe*, 509 U.S. 312,320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993); see *Seeley*, 132 Wash.2d at 795, 940 P.2d 604; *Glucksberg*, 521 U.S. 702, 117 S.Ct. 2258. Because the right to pursue a trade or profession is a protected right but not a fundamental right, we apply a rational basis test.

¶25 Amunrud argues, though, that even if this court concludes that only a rational basis is required to justify a professional license suspension, there is "no rational or reasonable connection between the alleged increase of child support collections by revoking his professional driver's license and greater child support collections by using such a threat." ... We disagree.

¶26 The explicit legislative purpose in enacting RCW 74.20A.320 was to create a strong incentive for those owing child support to make timely payments. See Laws of 1997, ch. 58, § 801. It is axiomatic that the enforcement of child support is a legitimate state interest. See *Johnson*, 96 Wash.2d at 262, 634 P.2d 877

("[p]ublic enforcement of child support is a recognized governmental function;" "[a]s early as 1854, territorial courts were required to 'make provision for the guardianship, custody and support and education of the minor children .. .' upon divorce") (quoting Laws of 1854, 1st Sess., § 8, at 407); *State v. Wood*, 89 Wash.2d 97, 102,569 P.2d 1148 (1977), overruled on other grounds by *Sw. Wash. Chapter, Nat'l Elec. Contractors Ass'n v. Pierce County*, 100 Wash.2d 109,667 P.2d 1092 (1983) (the primary obligation for support of a child falls on his or her parents rather than on the taxpayers of this state and the state has a compelling interest in assuring parents' compliance; a court's "greatest concern is the welfare of the child and the protection of the child's fundamental right to support"); see also *In re Custody of Shields*, 15,7 Wash.2d 126, 136 P.3d 117 (2006) (the State has a compelling interest in protecting children's welfare); *In re Parentage of J.M.K.*, IS,S Wash.2d 374 ¶27, 394 n. 8, 119 P.3d 840 (2005) (long-standing rule in Washington that parents have a duty to support their children and the State has a compelling interest in safeguarding the constitutional rights of a child and protecting the interests of its taxpayers).

¶27 The rational basis test is the most relaxed form of judicial scrutiny. *State v. Shawn P.*, 122 Wash.2d 553, 859 P.2d 1220 (1993). In *Kindschi*, this court held the State's grant of license to engage in a trade or occupation may be conditioned by the State as long as there is a rational connection between the condition and the occupation. *Kindschi*, 52 Wash.2d at 11,319 P.2d 824. In that case the court found a rational connection between income tax fraud and fitness to practice

medicine. Thus, the court held that the legislature properly provided for license revocation as a consequence for fraudulent conduct. *Id.* at 12, 319 P.2d 824.

¶ 28 Here, the condition attached to Amunrud's commercial license, which he needs in order to pursue his occupation as a taxi driver, is compliance with a lawful court order of child support. It is reasonable for the legislature to believe that Washington's license suspension scheme will provide a powerful incentive to those in arrears in their child support payments to come into compliance.

Moreover, the legislature has concluded that if an individual wishes to continue to receive the financial benefit that flows from possessing a professional license granted by the State, that individual must not be permitted to burden the State by shifting the financial obligation to support his or her children to the State. In light of these considerations, we conclude that there is a rational relationship between professional license suspension and the State's interest in enforcing child support orders.

¶ 29 Other courts considering this question have reached a similar conclusion. See *State v. Beans*, 965 P.2d 725 (Alaska 1998) (license suspension is particularly effective against child support obligors and is rationally related to legitimate state interest); *Tolces v. Trask*, 76 Cal.App.4th 285, 90 Cal.Rptr.2d 294 (1999) (license suspension is rational means of achieving the State's interest in enforcing child support orders); *State v. Leuvoy*, 2004-Ohio-2232, appeal denied, 103 Ohio St.3d 1428,814 N.E.2d 491 (2004) (same; no substantive due process violation); *Thompson v. Ellenbecker*, 935 F.Supp. 1037 (S.O.1995) (no substantive due

process violation because rational reasons support restriction on child support obligors' driver's licenses for nonpayment of child support).

¶ 30 Amunrud argues, though, that the law is irrational because the suspension of his commercial driver's license here is unrelated to his driving abilities. He contends that there is no evidence he is an unsafe driver. Absent such evidence, he argues, the suspension of his commercial driver's license lacks a rational connection to a legitimate state interest.

¶ 31 As explained above, RCW 74.20A.320, under which Amunrud's commercial license was suspended, promotes the State's interest in encouraging legally responsible persons to financially support their children. The statute is not concerned with safe driving, as is obvious from its application to professional and occupational licenses other than commercial driver's licenses. Thus, whether Amunrud is a safe driver is irrelevant. Accordingly, for the reasons discussed above, we hold that RCW 74.20A.320 is rationally related to a legitimate state interest and is thus consistent with substantive due process.”

It is clear from the cases cited above that a drivers license is a protected right, but not a fundamental right. Therefore, in determining if the statute violates Substantive Due Process, a rational basis test should be applied. The state has a legitimate state interest in ensuring that Obligor's pay their child support obligations. The State needs to collect child support from all Obligor's. The prospect of a drivers license suspension creates a strong incentive for those owing child support to make timely payments. The threat of a

drivers license suspension is a particularly effective enforcement tool against those Obligor who resist income withholding.

The State has a right to place reasonable restrictions upon licenses that the State issues. It is certainly a reasonable restriction on a commercial drivers license that the person licensed comply with a lawful court order to pay child support. It is reasonable for the Legislature to believe that the suspension of a commercial Class A, B, or C drivers license would provide a powerful incentive to those in arrears in their child support payments to come into compliance with their child support order. Also, if an individual wishes to continue to receive the financial benefits that flow from a commercial drivers license granted by the State, then they should not be permitted to burden the State by shifting the financial obligation to support their children to the State.

II. The District Court erred in holding Minnesota Statute §171.186, Subd. 1 unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Minnesota Statute §171.186, Subd. 1 states:

“The commissioner shall suspend a person's driver's license or operating privileges without a hearing upon receipt of a court order or notice from a public authority responsible for child support enforcement that states that the driver is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater

than three times the obligor's total monthly support and maintenance payments, and is not in compliance with a written payment agreement pursuant to section 518A.69 that is approved by a court, a child support magistrate, or the public authority responsible for child support enforcement, in accordance with section 518A.65.”

"The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides in relevant part '[no state shall] deny to any person within its jurisdiction the equal protection of the laws.'" *Doll v. Barnell*, 693 N.W.2d 455, 462 (Minn. App. 2005) (quoting U.S. Const. amend. XIV, § 1), *review denied* (Minn. June 14, 2005). "An equal protection analysis begins with the mandate that all similarly situated individuals shall be treated alike, but only 'invidious discrimination' is deemed constitutionally offensive." *Id.* (quoting *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986)).

In *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992), the United States Supreme Court stated, "The Equal Protection Clause of the Fourteenth Amendment, § 1, commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Of course, most laws differentiate in some fashion between classes of persons. The Equal Protection Clause does not forbid classifications. It simply keeps governmental decision makers from treating differently persons who are in all relevant respects alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989 (1920).

As a general rule, "legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality." *McGowan v. Maryland*, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393 (1961). Accordingly, this Court's cases are clear that, unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. See, e.g., *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439-441, 105 S.Ct. 3249, 3254-3255, 87 L.Ed.2d 313 (1985); *New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S.Ct. 2513, 2517, 49 L.Ed.2d 511 (1976)."

In *Hassinger v. Seeley*, 707 N.W. 2d 706, 709 (Minn. 2006), the Minnesota Supreme Court set forth the three primary levels of equal protection review. "The most deferential level of review is the rational relationship test, which is typically used to analyze economic regulations not involving suspect classes or fundamental rights. Under this test, a challenged classification will not be set aside if any state of facts reasonably may be conceived to justify it.... "Strict scrutiny" is the most exacting standard of equal protection review. Strict scrutiny review is applied when a challenged classification affects a fundamental constitutional right or a suspect class. Under this standard, we will uphold a classification only if it is necessary to promote a compelling state interest....

[T]he Supreme Court ... has on occasion applied what can be characterized as an intermediate level of review to classifications involving gender, alienage, or legitimacy.

Under this standard, the challenged classification must be substantially related to important governmental objectives. *Stiles v. Blunt*, 912 F.2d 260, 263 (8th Cir.1990) (quotations and citations omitted).”

The Supreme Court in *Hassinger* also stated, “Mechanistic classification of all our differences as stereotypes would operate to obscure those misconceptions and prejudices that are real.” *Id* at 710.

In *Walker v. Walker*, 547 N.W.2d 761 (Minn, App. 1998), the Court of Appeals upheld the constitutionality of Minnesota Statute §518.551, Subd. 1(b), the Statute requiring payment through the State Child Support Collection Service. There, the Father argued that Minnesota Statute. §518.551, subd. 1(b), violated his constitutional right to equal protection because it allows differential treatment of child support obligors. The Court of Appeals upheld the statute stating that the Statute “on its face, however, applies to “all proceedings involving an award of child support,”” *Id* at 763. The Court of Appeals also stated, “All persons similarly situated are treated equally under Minn.Stat. § 518.551, subd. 1(b).” *Ibid*. Also, in upholding the Statute, the Court of Appeals held, “Minn.Stat. § 518.551, subd. 1(b), on its face, passes constitutional muster because it does not differentiate between father and any other child support obligor. Without any disparate treatment here, we need not analyze whether the law is rationally related to a legitimate public purpose. See *Lidberg*, 514 N.W.2d at 784 (where legislation fails to treat similarly situated parties equally, that legislation must be rationally related to legitimate public purpose).”

The regulation of drivers licenses does not involve a suspect class or a fundamental right. Therefore, it is appropriate to use a rational basis test in determining if a statute complies with the Equal Protection Clause of the United States Constitution. Here, the enforcement of child support orders is a legitimate State interest. Suspending a drivers license for non-payment of a child support obligation is an effective enforcement tool. Minnesota Statute 171.86, subd. 1 does not differentiate between child support Obligor. The Statute treats all child support obligors the same. The fact that a drivers license suspension may create a greater burden for someone living in a rural area then it does for someone living in an urban area, does not mean the Statute violates the Equal Protection Clause. The Statute on its face, treats all child support Obligor equally. A child support obligor who lives in a rural area chooses to live there. They can move to a more populated area where it is easier for them to find employment. An Obligor should not be allowed to violate a court order and not pay child support, and not receive the consequences of non-payment of a child support obligation, simply by moving to or continuing to live in a rural area. Distinguishing between rural and urban child support Obligor would mean that those similarly situated, child support obligors, would not be equally treated, thus violating the Equal Protection Clause of the United States Constitution.

\* \* \* \* \*

CONCLUSION

Minnesota Statute §171.30, subd. 1(j) does not violate Substantive Due Process.  
Minnesota Statute §171.186, subd. 1 does not violate the Equal Protection Clause of the  
United States Constitution. Therefore, Appellant requests that the Order and Judgment of  
the District Court in this matter dated July 3, 2012 be Reversed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robin W. Finke".

Robin W. Finke  
Swift County Attorney  
Atty Reg. No: 0224881  
Attorney for Appellant  
211 – 11<sup>th</sup> Street North  
Benson, MN 56215  
(320) 843-2134