

No. A09-835

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STATE OF MINNESOTA  
IN COURT OF APPEALS

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Chris John Pallas,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

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RESPONDENT'S BRIEF AND APPENDIX

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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 ISSUE

- I. Whether the Commissioner of Public Safety was obligated by Minnesota law to grant a driver's license to an applicant whose driving privileges are permanently revoked in his former home state without a "clearance letter" from that state indicating that the applicant is no longer subject to revocation in that state?

The trial court held: In the negative.

Minn. Stat. § 171.50 (2008)

Minn. Sta. § 171.04, subd. 1(5) (2008)

*Gwin v. Motor Vehicle Administration*, 385 Md. 440, 869 A.2d 822 (2005),  
*cert. denied*, 546 U.S. 823, 126 S.Ct. 359 (2005)

*Tull v. Commissioner of Public Safety*, 176 P.3d 1227, 2008 OK CIV  
APP 10 (Ok.Civ.App. 2007)

## STATEMENT OF THE CASE AND FACTS

This is an appeal from a decision of the district court denying the reinstatement of Appellant's driver's license under Minn. Stat. § 171.19 (2008). It arises from the refusal of the Commissioner of Public Safety to issue a new driver's license to Appellant because he has not obtained a "clearance letter" from the State of Illinois indicating that his driving privileges are no longer subject to revocation in that state, but is eligible for the reinstatement of driving privileges in that state.

Appellant's petition for reinstatement came on for hearing before the Honorable Richard C. Perkins, Judge of District Court, in the District Court of Carver County on January 30, 2009. By an Order and Memorandum filed March 12, 2009, the petition for reinstatement was denied. *See generally* Trial Court Order and Memorandum, reproduced in Respondent's Appendix at RA1-3.<sup>1</sup> From that Order, Appellant has taken the instant appeal.

Appellant's driving privileges were first revoked in Minnesota following a DWI arrest and refusal to submit to testing under the implied consent law on September 4, 2000. Reply, ¶ V, Exhibits 1 and 2.<sup>2</sup> At the time of that incident, he was in possession of a Wisconsin driver's license with a date of birth of January 17, 1956, and a Minnesota ID card with a date of birth of January 17, 1952. *Id.*

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<sup>1</sup> "RA" references are to pages of Respondent's Appendix attached hereto.

<sup>2</sup> "Reply" references are to paragraphs of, and Exhibits attached to, Respondent's Reply to Petition for Reinstatement filed with the district court and received into evidence at the January 30, 2009 hearing in the district court.

On February 16, 2001, Appellant was again arrested for DWI in Minnesota, again refused to submit to testing, and had his driving privileges revoked under Minnesota law. Reply, ¶ VI and Exhibits 5, 6 and 7.

In February 2002, as Appellant's second Minnesota revocation period was about to end, a PDPS ("Problem Driver Pointer System") check of the NDR (National Driver Register)<sup>3</sup> was made and produced a "hit" from Illinois, indicating that his driving privileges were under withdrawal in that state. Reply, ¶ VII and Exhibit 10. Appellant was sent a letter on February 28, 2002, requiring him to get a "clearance letter" from Illinois or face the cancellation of any driving privileges in this state. *Id.* Appellant did not get a clearance letter, and driving privileges were "canceled" effective April 8, 2002. *Id.*

Appellant brought a previous petition for reinstatement under Minn. Stat. § 171.19 in 2002, *Chris John Pallas v. Commissioner of Public Safety*, Scott Co. D. Ct. File No.

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<sup>3</sup> In 1982, Congress had enacted legislation to create a national driver register to assist state driver license administrators in identifying problem drivers. *See National Driver Register Act of 1982, Pub. L. No. 97-364, Title II, 96 Stat. 1738, 1740-48 (1982).* The Act was difficult to implement due to federal-state constitutional tensions and the utter lack of uniformity between states as to how offenses are recorded and handled. After years of negotiations, the states settled on a national clearinghouse which is not a national repository of driving records, but merely a means of sharing information and some agreed-upon terminology to communicating. This developed into the Problem Driver Pointer System (PDPS), under which a state processing an application for a new or renewed license sends a "PDPS check" to the national clearinghouse computer in Arlington, Virginia, which relays the request to all member jurisdictions instantaneously. Any jurisdiction which has a negative history on that person responds and sends the information back to the requesting state. Minnesota did not begin to implement the PDPS system until June 5, 1995, and did not begin to run PDPS checks on all applications for new or renewed licenses until 2000. *See Reply, ¶ IX.*

2002-19370. In preparing to respond to that petition, investigation revealed that Appellant had never disclosed his prior driving record in Illinois. Reply, ¶ IV. His application for a Minnesota ID card on February 11, 2000, disclosed a prior license in Arizona, but not prior licenses in Illinois and Wisconsin. *Id.* When he applied for a license on October 6, 2000, he falsely asserted that he had not been licensed in any other state in the past five years. *Id.* When he applied for a license on January 8, 2001, while still revoked in Minnesota, he falsely represented that he had not been licensed in any other jurisdiction in the past five years, and that he was not under denial, cancellation, suspension, revocation or disqualification in Minnesota or any other jurisdiction. *Id.* Yet another application on May 16, 2001 falsely asserted that Appellant had not been licensed in any other jurisdiction within the previous five years. *Id.*

Investigation revealed that Appellant was under revocation in Illinois for a DWI violation committed in Wisconsin on November 30, 1999, and that he had previously been relicensed in Illinois following a series of three DWI violations committed on June 28, 1979, June 29, 1986 and August 25, 1986. Reply, ¶ VIII and Exhibits 13 and 34. The Wisconsin DWI became the fourth DWI on his Illinois driving record, resulting in a lifetime revocation in that state. *Id.*

Because Appellant had repeatedly submitted invalid applications for driving privileges, another cancellation order was issued under authority of Minn. Stat. § 171.14 as “not entitled to issuance.” Reply, ¶ XI and Exhibit 11. Because the investigation disclosed four additional DWI violations not already a part of Appellant’s Minnesota driving record, he now had at least six such offenses on record, mandating “cancellation”

and “denial” as “inimical to public safety” until the completion of the “rehabilitation” requirements. Reply, ¶ XII. Accordingly, another order of cancellation was issued, effective October 25, 2002. *Id.*, and Exhibit 12.

Appellant brought a petition for reinstatement in 2002, challenging the requirement that he get a clearance letter from Illinois before any license would be granted in Minnesota. *See* Reply, ¶ XIII. At that time, Respondent elected to interpret language in Article V of the Driver License Compact as allowing the Commissioner of Public Safety discretion to grant driving privileges where the revocation in the other state is over a year old and the Commissioner concludes that the risk of exposing the rest of the public to sharing the roadways with the applicant is sufficiently low to be acceptable. *See* Reply, ¶ XIX. Accordingly, Respondent agreed to waive the clearance letter requirement in that instance under the circumstances existing in October 2002. *See id.*, and Exhibit 14.

However, when Appellant’s evidence of “rehabilitation” was accepted on December 30, 2002, he was expressly advised that any use of alcohol or drugs, or violations involving alcohol or drugs would negate the waiver of the clearance letter granted in October. *See* Reply, ¶ XX and Exhibit 16.

Appellant soon resumed the use of alcohol, a fact which came to the attention of the Commissioner of Public Safety upon receipt of the report from the Shakopee Police Department of his arrest on the afternoon of August 17, 2003 on charges of domestic assault, criminal damage to property, and obstructing legal process by force. *See* Reply, ¶ XXI and Exhibit 18. Appellant smelled strongly of an alcoholic beverage, admitted

drinking, but refused to submit to a portable breath test. *Id.* At the jail, he became “combative” and had his hands on Correction Deputy Broome’s throat in the brief struggle that followed. *Id.* The report was determined to provide sufficient cause to believe that Appellant had consumed alcohol in violation of the total abstinence restriction, and the cancellation and denial of all driving privileges as “inimical to public safety” became effective September 2, 2003. *See* Reply, ¶ XXII and Exhibits 19 and 20.

Despite being banned from driving anywhere, anytime, for any purpose, Appellant continued drinking and driving, leading to another DWI arrest on January 9, 2004 and refusal to submit to testing under the implied consent law. *See* Reply, ¶ XXIII and Exhibits 21, 22 and 23. Once again, the incident involved a lack of cooperation that also led to charges of “fleeing” and “obstructing legal process.” *Id.* Appellant challenged the implied consent revocation, which was sustained by the District Court. *See* Reply, ¶ XXIV and Exhibits 1, 25 and 26. He was also convicted of the crime of test refusal. *Id.*

In May, 2008, Appellant sought reinstatement of driving privileges in this state with evidence of having met the requirements for a “second rehab.” *See* Reply, ¶ XXV and Exhibits 27, 28 and 29. Driver Improvement Specialist Ron Spika saw the 2002 notations that any use of alcohol or drugs would negate the waiver of a clearance letter. *See* Reply, ¶ XXVI and Exhibits 30, 31 and 32. A PDPS check was run that showed that Appellant was still under revocation in Illinois. *Id.* He was advised that he would need to get a clearance letter from Illinois, but that the final decision on licensure would be made by supervisory personnel. *Id.*

After review of the entire record, the ultimate decision was that there would be no further overrides of the clearance letter requirement. Even though Appellant has met the “second rehab” requirements, no Minnesota driver’s license can be issued until and unless driving privileges are reinstated in Illinois, in which event Appellant’s situation would again be subject to review. *See Reply*, ¶ XXVII and Exhibits 33, 34, 36, 37, 38, 39 and 40. Appellant was advised of that determination by Mr. Spika on May 28, 2008. *See Reply*, ¶ XXVIII and Exhibit 41.

Appellant then commenced the present proceeding for the reinstatement of driving privileges, and the matter came on for hearing in the District Court of Carver County, before the Honorable Richard C. Perkins, on January 30, 2009. At the hearing, there were no factual disputes as to the underlying record, and Appellant did not offer any testimony, choosing instead to argue the application of the law to his case. Thus, the hearing began, at T.2,<sup>4</sup> as follows:

THE COURT: What’s the plan? I was reviewing some of the submissions here.

MR. WALBURG: Do you want me to start?

THE COURT: Sure

Appellant’s counsel then proceeded to argue the application of the law to the case at bar, essentially arguing that since the Department exercised discretion to override the clearance letter requirement in 2002, it is obligated to do so again. T.2-6. Respondent argued that while the Driver License Compact provides discretion to override the

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<sup>4</sup> “T” references are to pages of the transcript of the hearing held January 30, 2009, before the Honorable Richard C. Perkins in the Carver County District Court at Chaska, Minnesota.

clearance letter requirement where a revocation is more than a year old, it also authorizes denial of that relief where there is reason to believe that the person is an unsafe driver; that Appellant's record in this state after the override was granted in 2002 was, with 20/20 hindsight, a mistake; that the Commissioner of Public Safety is not obligated to repeat the mistake made in 2002; Appellant's record in 2008 is not the record considered in 2002; that the statute does not give the Court control over how the Commissioner exercises the discretion permitted under the statute; and that nothing in statute, rule or case law obligates the Commissioner of Public Safety to give a third, fourth or fifth chance. T.6-11.

In response, Appellant noted that after the last DWI he had been sent notice of the reinstatement requirements, had completed them, was given a notice that driving privileges were reinstated, and then was told he could not be issued a license. T.11-12.

Respondent explained that while driving privileges were technically "reinstated" in the sense that his license status is no longer "revoke" or "cancelled" or "denied," the language of the Compact precludes issuing a physical license card. T.12. Respondent also pointed out that does not assure a person of reinstatement of driving privileges, but merely deals with the requirements for clearing one sanction. T.13. There may be other suspensions or revocations that prevent reinstatement, or other statutes that govern. T.13. Therefore, we have a statute that forbids the Commissioner from issuing a license regardless of the fact that the applicant might otherwise be eligible for, but not *entitled* to, a license. T.13.

The Court questioned how Appellant would know that the notice did not address all requirements under all statutes. T.13-14. Respondent answered that Appellant had been specifically told in 2002 that any alcohol-related incidents would negate the waiver of the clearance letter that he was being granted at that time. T.14. The Court questioned whether the notices after 2002 did not lead to a reasonable assumption that the reinstatement requirements in a particular notice would be all that the person needs to do to regain driving privileges. T.14. Respondent disagreed, noting that each notice deals with the specific requirements for one particular offense and that all persons subject to that sanction will get the same notice regardless of their individual backgrounds. T.14-15. The Department cannot tailor every notice to the individual background of each licensee. T.15. It does not have the resources to make a global search for all records pertaining to each licensee when issuing somewhere between 150,000 and 200,000 notices of suspension or revocation per year. T.15.

Appellant replied that someone had tailored his 2004 notice to let him know that his “second rehab” requirement would involved four years of abstinence instead of three years. T.15-16.<sup>5</sup>

The Court then took the matter under advisement.

By its Order filed March 12, 2009, the Court denied the petition for reinstatement. *See* Order and Memorandum reproduced in Respondent’s Appendix at RA1-3. After summarizing the factual record described above, the trial court concluded:

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<sup>5</sup> Because Appellant’s license was already canceled as “inimical to public safety” after the earlier domestic assault incident, the subsequent DWI incident added a year to the required abstinence period by Minn. Rules Part 7503.1700, subp. 9.

Pursuant to The Driver License Compact, “the licensing authority may refuse to issue a license if ... [it] determines that it will not be safe to grant such person the privilege of driving a motor vehicle on the public highways.” Minn. Stat. § 171.50. It is clear that Petitioner has a history of alcohol use and DWIs. The Commissioner has the discretion of determining whether to grant or deny driving privileges. There is no evidence in this case that the Commissioner abused its discretion, or acted fraudulently, arbitrarily, or unreasonably when denying Petitioner’s request to reinstate his Minnesota driver’s license. Given that Petitioner has a lengthy driving record involving numerous alcohol related driving offenses in several states, including Minnesota, it is reasonable that the Commissioner would determine it unsafe to grant Petitioner the privilege of driving a motor vehicle in the state. While it may be nigh impossible for Petitioner to obtain a valid Minnesota driver’s license, that burden is the result of his conduct, not the arbitrary or unreasonable or fraudulent conduct or actions of the Commissioner.

Memorandum at 2-3.

From that order, Appellant has taken the instant appeal.

## ARGUMENT

### I. THE STANDARD OF REVIEW

This is an appeal from a decision of the district court in a proceeding under Minn. Stat. § 171.19 (2008), in which Appellant challenges the trial court's order denying his petition for the reinstatement of driving privileges. Under that statute, the duty of the trial court is stated succinctly:

[T]o take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to revocation, suspension, cancellation, or refusal of license, and shall render judgment accordingly.

Minn. Stat. § 171.19 (2008).

In carrying out that responsibility, the trial court had the guidance of a considerable body of reported decisions. Thus, it has long been established that the legislature has delegated to the Commissioner of Public Safety the responsibility and authority to administer the driver licensing laws in the interests of public safety, which necessarily involves the interpretation of the applicable statutes. *See* Minn. Stat. § 171.25 (2008); *Goodman v. State, Dep't of Public Safety*, 282 N.W.2d 559 (Minn. 1979). *See also Hintz v. Commissioner of Public Safety*, 364 N.W.2d 486 (Minn. Ct. App. 1985); *Antl v. State, Dep't of Public Safety*, 353 N.W.2d 240 (Minn. Ct. App. 1984).

In reviewing the acts of the Commissioner of Public Safety to the given facts under Minn. Stat. § 171.19, the reviewing court does not act as a surrogate driver license administrator, and does not substitute its own judgment for that of the Commissioner. *See State v. Hanson*, 356 N.W.2d 689 (Minn. 1984); *Schultz v. Commissioner of Public*

*Safety*, 365 N.W.2d 304 (Minn. Ct. App. 1985). However, the trial court may hear testimony and resolve factual disputes between the parties. See *Madison v. Commissioner of Public Safety*, 585 N.W.2d 77 (Minn. Ct. App. 1998); *Plaster v. Commissioner of Public Safety*, 490 N.W.2d 904 (Minn. Ct. App. 1992); *Gardner v. Commissioner of Public Safety*, 423 N.W.2d 110 (Minn. Ct. App. 1988).

The presumption of the regularity and correctness of administrative acts applies with equal force to the decisions of the Commissioner of Public Safety in the administration of the driver licensing laws. The Commissioner's actions on given facts are to be affirmed unless shown to be fraudulent, arbitrary and capricious, unreasonable within the meaning and intent of the law, or in excess of the jurisdiction and authority of the Commissioner. See *Pruszinske v. State, Commissioner of Public Safety*, 330 N.W.2d 887 (Minn. 1983); *Schultz*, 365 N.W.2d at 306; *Hintz*, 364 N.W.2d at 488, 491; *Antl*, 353 N.W.2d at 242.

In a petition under Minn. Stat. § 171.19, the burden of proof is upon the licensee challenging the Commissioner's action, rather than on the Commissioner to justify his action. See *McIntee v. State, Dep't of Public Safety*, 279 N.W.2d 817 (Minn. 1979); *Schultz*, 365 N.W.2d at 306.

The findings of fact of a trial court are entitled to the same weight as the verdict of a jury, and cannot be reversed if the court could reasonably make the findings of fact based upon the evidence adduced at trial. See *State v. Gardin*, 251 Minn. 157, 86 N.W.2d 711 (1957); *State v. Thurmer*, 348 N.W.2d 776 (Minn. Ct. App. 1984); *State v. Nash*, 342 N.W.2d 177 (Minn. Ct. App. 1984). Because the trial court has the

opportunity to judge the credibility of witnesses, findings of fact will not be set aside unless clearly erroneous. See *Bergstedt, Wahlberg, Berquist Assoc. v. Rothchild*, 302 Minn. 476, 225 N.W.2d 261 (1975); *State, Dep't of Highways v. Beckey*, 291 Minn. 483, 192 N.W.2d 441 (1971); *Thorud v. Commissioner of Public Safety*, 349 N.W.2d 343 (Minn. Ct. App. 1984).

Conclusions of law, on the other hand, can be overturned upon a showing that the trial court has erroneously construed and applied the law to the facts of the case. See, e.g., *Berge v. Commissioner of Public Safety*, 374 N.W.2d 730 (Minn. 1985); *State v. Speak*, 339 N.W.2d 741 (Minn. 1983); *State v. Kvam*, 336 N.W.2d 525 (Minn. 1983); *State v. Olson*, 342 N.W.2d 638 (Minn. Ct. App. 1984).

In the present matter, there was no factual dispute between the parties as to any material facts, and Appellant presented a purely legal claim for the district court's determination. Accordingly, review herein is *de novo*.

Respondent submits that the district court properly applied the law to the facts presented on the record herein. Accordingly, the decision of the district court should be affirmed.

## **II. THE DISTRICT COURT DID NOT DENY APPELLANT A "FULL HEARING."**

Appellant asserts that the District Court denied him "due process in denying the Petitioner [sic] for Reinstatement without a full hearing." Appellant's Brief at 5. This charge is patently devoid of merit. The transcript of the hearing does not offer any support for the proposition that the District Court denied Appellant the opportunity to present any evidence whatsoever. Appellant *chose* to proceed without offering any

testimony, apparently because, as the entire transcript demonstrates, there were no factual disputes as to the underlying record. Judge Perkins did not do or say anything to limit Appellant's presentation of his case, but simply invited him to proceed. T.2. Appellant immediately proceeded to offer oral argument without offering any testimony whatsoever. T.2. Having elected to proceed without offering any testimony, Appellant cannot be heard to complain that no testimony was offered.

Appellant acknowledges that Respondent had submitted an "expansive" record including the reports of several arrests and police encounters, but objects that:

none of this "evidence" was formally presented to the district court, none of the "evidence" was subject to cross-examination (as no witnesses were called in support or rebuttal of the evidence), and the district court did not even determine whether the information it reviewed as "sufficient."

Appellant's Brief at 7. Each of these objections is raised for the first time on appeal, and was neither asserted in, nor ruled upon, by the district court. As a general rule, an appellate court will not address matters that were not argued and considered by the district court and raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Accordingly, these objections have been waived by failure to timely assert them, and they are not properly before this Court on appeal.

Moreover, each of those objections is without merit. There was no need to formally offer the Reply and attached exhibits in evidence because this Court had already ruled more than two decades ago that the reply and exhibits filed with the Court become a part of the record when filed. *See Gardner v. Commissioner of Public Safety*, 423 N.W.2d 110 (Minn. Ct. App. 1988). The Reply included the affidavit certifying the

attached exhibits to be true and correct copies of records in Respondent's files pertaining to Appellant's license status. Ever since 1939, Minn. Stat. § 171.21 has provided:

171.21 **Copy of record as evidence.** Copies of any of the files or records of the department certified by the commissioner as being true copies shall be received in evidence in any court in this state with the same force and effect as the originals.

*Id.* Appellant's experienced trial counsel, presumably aware of the law on this point, made no objection to consideration of any of the documentation, but instead made a joking reference to the volume of exhibits: "Your Honor, as a habit, Mr. Watne has provided the Court with information by the pound instead of by the paper." T.2.

As to the objection that none of the evidence was subject to cross-examination, Petitioner seems to imply that the right to confront witnesses against him, applicable to criminal proceedings, is somehow implicated in proceedings under Minn. Stat. § 171.19. It is not. This judicial proceeding is not a criminal prosecution. It is not even a civil action to take action against Appellant. Rather, it is a special proceeding, civil in nature, commenced by Appellant against Respondent, for judicial review of completed administrative actions. There is no requirement that any witnesses be called to testify. Under the statute, both parties may submit all evidence by affidavit. The only party who must be present and available for cross-examination is the petitioner. *See* Minn. Stat. § 171.19.<sup>6</sup> *See also Goldsworthy v. State, Dep't of Public Safety*, 268 N.W.2d 46 (Minn.

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<sup>6</sup> The statute provides, in relevant portion: "The commissioner may appear in person, or by agents or representatives, and may present evidence upon the hearing by affidavit personally, by agents, or by representatives. The petitioner may present evidence by affidavit, except that the petitioner must be present in person at such hearing for the purpose of cross-examination."

1978); *Homan v. Commissioner of Public Safety*, 663 N.W.2d 568 (Minn. Ct. App. 2003).

As to the objection that the District Court did not determine whether the information was “sufficient,” Appellant cannot be heard to complain since no issue was raised as to the sufficiency of any of the evidence in the record. It cannot be reversible error for a court to fail to rule on a potential issue never presented for decision.

Appellant objects that the District Court “relied and gave credence to documents regarding two incidents in particular”: that on December 30, 2002, Appellant had been advised that any use of alcohol or drugs would negate the waiver of the clearance letter, and that there was evidence that Appellant consumed alcohol on August 17, 2003. Appellant’s Brief at 7-8. Appellant claims that the District Court’s findings were “insufficient” and were “made following a denial of Petitioner’s rights to due process, a full hearing, and confrontation/cross-examination of witnesses.” Appellant’s Brief at 8. Appellant fails to offer any explanation for the claim that the findings were “insufficient.” Since the findings are supported by evidence in the record, and Appellant did not offer any evidence to the contrary, the objection is patently devoid of merit. And since Appellant made no effort to call any witnesses for examination or cross-examination, and was not denied the opportunity to do so, his claim of a denial of “due process” is similarly patently devoid of merit.

**III. THE REQUIREMENT THAT APPELLANT OBTAIN A “CLEARANCE LETTER” FROM HIS FORMER HOME STATE, WHERE HIS DRIVING PRIVILEGES REMAIN REVOKED, IS NEITHER ARBITRARY NOR CAPRICIOUS, BUT MANDATED BY LAW.**

**A. Appellant Has Not Demonstrated That The Requirement That He Obtain A “Clearance Letter” From Illinois Is Arbitrary, Capricious, Or Unlawful.**

Appellant asserts that the requirement that he obtain a “clearance letter” from the State of Illinois, where his driving privileges are revoked, is “arbitrary and capricious” or “either arbitrary or capricious.” Appellant’s Brief at 8. The rationale for that charge is the claim that if all of Appellant’s DWI violations had occurred in Minnesota, he would be eligible for driving privileges in this state. *Id.* However, Appellant’s DWI violations did not all occur in Minnesota, making that claim irrelevant.

Appellant claims that Respondent declined to exercise discretion in his favor a second time simply because in each of his Minnesota DWI arrests, he had been uncooperative, occasionally fought with officers, engaged in property damage, etc. Appellant’s Brief at 9. Appellant asserts that the “only evidence” of his uncooperative nature was his refusal to submit to testing after each arrest. *Id.* Appellant asserts that there is no indication that he damaged property, and no evidence that he actually fought with police officers. *Id.*

Appellant ignores the fact that his lack of cooperation involves more than merely test refusal. It was a continuation of his lack of cooperation with the Commissioner of Public Safety in a series of false representations in driver license applications. Appellant ignores the domestic assault incident on August 12, 2003, when he was also charged with

obstructing legal process by force and criminal damage to property, refused to submit to a portable breath test, became violent at the jail, and had his hands on Corrections Deputy Broome's throat. Appellant ignores the fact that the record shows that, despite being banned from driving anywhere, anytime, for any purpose, he continued drinking and driving, resulting in an arrest on January 9, 2004 for DWI, Fleeing a Peace Officer in a Motor Vehicle, Obstructing Legal Process with Force, and refusal to cooperate with police after the arrest.

Appellant claims that Respondent exercised discretion against him "simply" because he "exercised his right to refuse chemical testing following three of his arrests..." Appellant's Brief at 9. However, test refusal has never been the exercise of a "right" in Minnesota, but a wrongful act for which the law imposes sanctions. Indeed, the Minnesota Supreme Court held, long before any of Appellant's Minnesota arrests, that the law makes submission to testing mandatory. *See, e.g., Nyflot v. Commissioner of Public Safety*, 369 N.W.2d 512 (Minn. 1985). And since 1989, test refusal has been a separate crime. *See, e.g., McDonnell v. Commissioner of Public Safety*, 473 N.W.2d 848 (Minn. 1991). By refusing testing, therefore, Appellant was not "exercising a right" but committing an additional criminal act.

Appellant claims that Respondent gives undue weight to his prior record, and gives "little or no consideration to [Appellant's] demonstrated rehabilitation—arguably, the first serious attempt at rehabilitation that [Appellant] has ever made." Appellant's Brief at 9. Given Appellant's past record of mendacious applications, his prior representation that he would totally abstain as long as he wished to remain licensed in

this state, and his subsequent record, Appellant can hardly expect the Commissioner or anyone else to take any representation he makes at face value. The emptiness of his previous pledge to totally abstain hardly inspires confidence in any present representation of good intentions. While Appellant argues that his recent documentation of “second rehab” requirements is arguably “the first serious attempt at rehabilitation” he has ever made, the fact remains that he offered no testimony at all, let alone testimony to that effect. Accordingly, that “arguable” representation lacks support in the record and cannot demonstrate that the District Court erred in determining that Respondent acted reasonably and lawfully in refusing to grant driving privileges until Appellant gets a “clearance letter” from Illinois.

In short, Appellant simply asserts that Respondent’s application of the law is “arbitrary and capricious,” without discussing any of the applicable statutes or attempting to demonstrate that Respondent and the District Court misconstrued and misapplied the law. Accordingly, Respondent submits that all of Appellant’s asserted objections are without merit.

**B. UNDER EXISTING STATUTES, RESPONDENT IS JUSTIFIED IN REQUIRING THAT APPELLANT OBTAIN A “CLEARANCE LETTER” FROM ILLINOIS BEFORE ISSUING A MINNESOTA DRIVER’S LICENSE.**

This is a case of first impression before this Court.<sup>7</sup> It involves the construction of Article V of the Driver License Compact, Minn. Stat. §§ 171.50-56, as well as other

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<sup>7</sup> A WestLaw search on “driver license compact” produces over 300 cases nationwide, the majority of which deal with Article IV, which provides for sanctions by the home state for conduct in other jurisdictions. The largest number of cases arise in Pennsylvania,

provisions of Chapter 171 of Minnesota Statutes, the Driver's License Law. For reference, the text of the entire Driver License Compact and associated provisions is attached in the Appendix hereto at RA4.

The Compact arose from the recognition the people who violate traffic laws pose a danger to the rest of the traveling public, regardless of whether the violation is committed in the driver's home state. Those likely to offend in one state are likely to offend in another. It is therefore in the interests of all states to assist each other in deterring dangerous driving in all jurisdictions. *See* Compact, Art. I(a). As a result, it is the policy of each member state to promote compliance with the laws of each jurisdiction by taking into consideration actions in other states when deciding to issue or renew driving privileges. *See* Compact, Art. I(b).

Even before Minnesota joined the Compact in 1989, other Minnesota statutes existed that implemented the same policies. Just as Article IV of the Compact requires Minnesota to revoke driving privileges for DWI violations committed in other states, the earlier Minnesota statute currently numbered Minn. Stat. § 171.17, subd. 1(9) (2008) required Minnesota to revoke driving privileges for conviction of "an offense in another state that, if committed in this state, would be grounds for revoking the driver's license;..." and the current Minn. Stat. § 171.18, subd. 1(a)(7) (2008) authorized license suspensions for any person who "has committed an offense in another state that, if

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which has numerous decisions holding that residents' driving privileges can be revoked for DWI violations in New Jersey, New York, Maryland and other states. Only two unpublished decisions of this Court mention the Driver License Compact, but do not involve Article V of the Compact.

committed in this state, would be grounds for suspension.” *See Anderson v. State, Dep’t of Public Safety*, 305 N.W.2d 786 (Minn. 1981) (upholding Minnesota DWI revocation following conviction in Colorado for a lesser offense of “driving while ability impaired by alcohol”). Likewise, Minn. Stat. § 171.15 has authorized the Commissioner to suspend or revoke the nonresident driving privileges of foreign residents who offend in Minnesota, and to report their convictions to the home state, as required by Article III of the Compact. Each of these provisions has been part of our statute since at least 1939, predating the Compact by half a century. *See Act of April 22, 1939, c. 401, §§ 4, 15, 17, 1939 Minn. Laws 780.*

Members also recognized that licensees would have little incentive to avoid committing offenses in “State A” and complying with requirements for reinstatement if the consequences can be avoided by the simple expedient of migrating to “State B” and applying for driving privileges there, and that it is hardly in the best interests of the people of “State B” to encourage the immigration of bad drivers from “State A.” Accordingly, Article V was adopted, which requires licensing authorities receiving an application for a license to ascertain whether the applicant is, or has been, licensed in another state and whether the person’s driving privileges are suspended or revoked in another state. In relevant part, the Compact provides:

...The licensing authority in the state where application is made *shall not issue a license* to drive to the applicant if:

....  
(2) *The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new*

*license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.*

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

*Id.* (Emphases supplied).

Thus, the Compact has a basic rule that one may not issue a license to an applicant whose driving privileges are revoked in another state. There is a limited exception to this ban for cases where the revocation is over a year old, allowing the person to apply “if permitted by law.” However, in *all* cases, the licensing authority may refuse to issue a license upon a determination that it would not be safe to allow the person the privilege of driving a motor vehicle on the public highways.

Given the number of licensees who migrate from state to state, it is perhaps surprising to find only a handful of cases nationwide construing the language of Article V, in particular the exception for revocations over a year old.

In the very first one, *Florida Dep’t of Highway Safety and Motor Vehicles v. Weinstein*, 395 So.2d 1233 (Fla. App. 1981), the applicant’s driving privileges were suspended in another unidentified jurisdiction, and Florida authorities refused to issue a license. The Circuit Court held that the refusal violated the applicant’s “Constitutional Right to travel” and permanently enjoined the department from refusing to issue a license. The Department appealed that the appellate court “summarily” found no constitutional infirmity and reversed, stating that the Department “correctly denied issuance of the driver’s license” under the statute. *Id.*, 395 So.23d at 1234.

Next, the Alabama Supreme Court, in *Welch v. Alabama Dep't of Public Safety*, 519 So.2d 517 (Ala. 1987), construed the one-year exception to allow the person to *apply* for a license, but did not guarantee to right to be licensed; the Department could still refuse upon a determination that the person was not a safe driver.<sup>8</sup>

In *Bray v. Dep't of Public Safety and Corrections*, 638 So.2d 732 (La.App. 1994), the applicant was under a “permanent” revocation in Florida following five DWI convictions. Under Louisiana law, a person whose license is suspended, revoked or canceled *for the first time* could petition the district court for a restricted license, and Bray persuaded a district court to grant an order compelling the Department to issue the restricted license. On appeal, the Court held that Bray was not eligible for the restricted license. However, the Court also concluded that under the “one year” exception in Article V, he could *apply* for a Louisiana license—but that the Department could still deny the application upon a determination that he was not a safe driver.

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<sup>8</sup> While *Welch* discussed a number of decisions from other states as involving Article V, a review of those cases indicates that none of them actually involved the issue involved in *Welch* or herein. *People v. Klaub*, 130 Ill.App.3d 704, 474 N.E.2d 851 (Ill.App. 1985) and *People v. Sass*, 144 Ill.App.3d 163, 494 N.E.2d 745 (Ill.App. 1986) dealt with the question of whether a person still under revocation in Illinois could be convicted of driving after revocation when they had been issued licenses in Indiana or Wisconsin. *State v. Justesen*, 63 Or.App. 544, 665 P.2d 380 (Or.App. 1983) dealt with the question of whether a person whose license was revoked in Oregon could be convicted of driving after revocation if he had been issued a license in Washington. *New Jersey Division of Motor Vehicles v. Egan*, 103 N.J. 350, 511 A.2d 133 (1986) dealt with the question of whether the Department was obligated to issue an “occupational license” when Ohio had suspended his nonresident driving privileges but granted a an occupational license (a question answered in the negative). And *State v. Johnston*, 152 Ariz. 273, 731 P.2d 638 (Ariz.App. 1987) dealt with whether a Montana licensee who was under revocation in Colorado could be charged with DWI while license suspended when neither Montana nor Arizona had revoked his driving privileges based on the Colorado action.

In *State v. Vargason*, 607 N.W.2d 691 (Iowa 2000), the Dep't of Transportation refused to issue either a license or "temporary restricted license" to Vargason, who was under a six-year revocation in Iowa and a lifetime revocation in Florida, which, like Illinois, revokes for life on a fourth DWI. Under Iowa law, a person subject to a six-year revocation can apply to the district court for an order requiring DOT to issue a "temporary restricted license" if other requirements of the statute are met and an ignition interlock device is installed on the person's vehicle. The Iowa Court concluded that DOT was correct in concluding that it could not issue a regular driver's license due to the Iowa revocation and that the Florida revocation was not a bar to licensure after a year. The court further held that DOT could not issue a "temporary restricted license" on its own, but could do so only after Vargason persuaded the district court that he met all requirements for the "temporary restricted license." The matter was remanded to the district court to further proceedings regarding the application for a "temporary restricted license." While construing the "one year" exception in favor of Vargason, the Court did not hold that the provision *entitled* him to be licensed in Iowa. Apparently DOT could still determine he was not a safe person and decline to consider licensure.

In *Marshall v. Dep't of Transportation*, 137 Idaho 337, 48 P.3d 666 (Idaho App. 2002), *review denied* (Idaho June 13, 2002), DOT refused to renew a driver's license to a person who had twice been issued a license in Idaho upon learning of his lifetime revocation in Florida upon receipt of his Idaho conviction report. *Id.*, 137 Idaho at 339, 48 P.3d at 668. The Court concluded that DOT had erred in issuing a license in the first place, but rejected Marshall's claim that "once a driver's license is issued, including

those issued by mistake or due to a lack of information, the license must be automatically renewed upon application and, thus, can never be revoked.” *Id.*, 137 Idaho at 342, 48 P.3d at 671. The Court considered the argument to be “without merit,” noting that it ignored the statutory authority to cancel any wrongfully issued license. *Id.* The Court affirmed DOT’s refusal to issue a license, noting that “...the Compact’s prohibition against licensing a driver whose foreign license has been revoked is a legitimate remedial measure designed to prevent unsafe drivers from operating vehicles on Idaho’s highways.” *Id.*, 137 Idaho at 342, 48 P.3d at 671.<sup>9</sup>

The “one year” provision has been construed in several recent decisions. In *Chain v. Montana Dep’t of Motor Vehicles*, 306 Mont. 491, 36 P.3d 358 (2001), the applicant was either suspended or revoked in Michigan and was denied a license by Montana DMV. The Montana DMV relied upon a statute forbidding licensure of a person whose license “is currently suspended or revoked in this or any state.” *Id.*, 306 Mont. at 493, 36 P.3d at 359. Chain argued that, notwithstanding that statute, he was entitled to apply for a license under the “one year” exception in Article V of the Compact. *Id.*, 306 Mont. at 493, 36 P.3d at 493-4. Noting that the record was unclear as to whether Michigan is a member of the Compact, whether his license was suspended or revoked, and for what period, the Court concluded that “analysis under the Compact would be problematic.”

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<sup>9</sup> The Court quoted Article V of the Compact at 137 Idaho at 341, 48 P.3d at 670. The quotation does not include the language regarding the one year exception or denial upon determination that the person is an unsafe driver. A review of the online Idaho Statutes at <http://www.legislature.idaho.gov/idstat/Title49/T49CH20SECT49-2001.htm> discloses that this language is missing from Idaho’s enactment of the Compact. Together with another statute cited in the opinion, it appears that Idaho unequivocally bans licensure of any person who is under an order of revocation in any other jurisdiction.

*Id.*, 306 Mont. at 494, 36 P.3d at 360. However, the Court concluded that construing all the applicable statutes, it could proceed on the record. *Id.* The Court determined that once the driver's prior driving record from Michigan was entered on the Montana driving record, he could apply for a license upon the expiration of one year from the date of revocation or suspension. *Id.*, 306 Mont. at 496, 36 P.3d at 361. However, "[t]he decision to issue a new license upon application is then entirely within the discretion of the licensing authority." *Id.*<sup>10</sup>

In *Gwin v. Motor Vehicle Administration*, 385 Md. 440, 869 A.2d 822 (2005), *cert. denied*, 546 U.S. 823, 126 S.Ct. 359 (2005), the applicant was denied a Maryland license under a state statute forbidding licensure of any person whose license was revoked "in this or any other state" because his driving privileges were revoked in both Illinois and Florida, following a total of four DWI convictions, with a "permanent" revocation in Florida. He had been revoked in Illinois since 1982 and Florida since 1984. *Id.*, 385 Md. at 448, 869 A.2d at 826. Gwin sought driving privileges in reliance on the "one year" provision in Article V. *Id.* He claimed to have been abstinent since January 20, 2000. *Id.*, 385 Md. at 453, 869 A.2d at 829. Gwin relied heavily upon *Welch v. Alabama Dep't of Public Safety*, for the proposition that the exception in the Compact took precedence over the other statute forbidding licensure. *Id.*, 385 Md. at 459, 869 A.2d at 833. The MVA responded that the one year provision would permit application

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<sup>10</sup> One judge concurred in the conclusion that the District Court did not err in refusing to order Montana DMV to issue a license, but dissented from the statutory construction that would permit Chain to apply at all. *Id.*, 306 Mont. at 496, 36 P.2d at 362.

in Maryland after one year, but only if Maryland law permitted such an application—and another statute unambiguously prohibits issuance of a license to a person whose license is revoked in another state. *Id.*, 385 Md. at 461, 869 A.2d at 834. The Court agreed with the MVA’s interpretation of the two statutes, and stated:

This Court finds nothing in the wording of § 16-103.1 to indicate that it was intended to be subordinated to the Compact, nor do we find any statement in the language of the Compact found at § 16-703 to evidence an intent that the Compact was intended to supercede what may be viewed as more stringent state motor vehicle laws. Moreover, it is illogical to presume that the Legislature intended with its entry as a Compact state to make Maryland a safe harbor for extraterritorial drivers who have incurred harsh penalties in their home state for motor vehicle violations. The MVA echoes this sentiment, observing that the Compact was not intended to encourage “the worst and most dangerous drivers to avoid the consequences of their conduct by simply moving into another party state.”....

*Id.*, 385 Md. at 463-4, 869 A.2d at 835. Accordingly, the Court concluded that the MVA properly denied Gwin’s application for a Maryland driver’s license. *Id.*, 385 Md. at 465, 869 A.2d at 836.

Illinois has had a pair of recent decisions construing Article V. In *Girard v. White*, 356 Ill.App.3d 11, 826 N.E.2d 517, 292 Ill.Dec. 376 (Ill.App. 2005), the applicant’s license was revoked in Florida following four DWI violations. The Secretary denied his application for an Illinois license because of his four convictions. The circuit court ordered the Secretary to conduct a hearing to see if Girard was entitled to a license. *Id.*, 356 Ill.App.3d at 12, 826 N.E.2d at 519. The hearing officer concluded that Girard was a “high risk” alcoholic who was not entitled to a regular Illinois driver’s license, but also found that Girard had shown that he was responsibly addressing his alcoholism and

issued an Illinois “restricted driving permit” or “RDP.” However, the court held that Secretary had no authority to issue an RDP to someone whose license had not been suspended by the Secretary, and reversed the decision that Girard was not entitled to a regular Illinois license. *Id.*, 356 Ill.App.3d at 12-13, 826 N.E.2d at 519. On appeal, the Court considered the “one year” exception in Article V and concluded:

Section 6-704 is a discretionary grant of authority to provide relief to new residents by allowing the issuance of a driver’s license when the application is consistent with relevant Illinois law. We interpret the phrase “if permitted by law” in section 6-704(2) to mean a license may be issued if such an application would be permitted under Illinois law and the Secretary determines that it will be safe to grant “such person the privilege of driving a motor vehicle on the public highways.” 625 ILCS 5/6-704(2) (West 2000). We conclude Illinois law does not permit the application for or the issuance of a license to an applicant whose license or permit or privilege to drive upon the highway has been revoked because of four DUI convictions. 625 ILCS 5/6-208(b) (West 2000).

*Id.*, 356 Ill.App.3d at 15, 826 N.E.2d at 521.

Girard argued that the statute forbidding licensure of any person with four DWI convictions applied only to those whose Illinois license had been revoked, and that the legislature inadvertently created a loophole under which a new resident with four DWIs would be entitled to a license even though an established Illinois resident with four DWIs would be barred from licensure. *Id.*, 356 Ill.App.3d at 18, 826 N.E.2d at 523. The Court responded: “We disagree and do not view section 6-208(b) as creating a loophole.” *Id.*

The Illinois Court also noted that the term “license to drive” covers “two distinct meanings: (1) the physical document itself, and (2) the abstract intangible privilege of driving.” *Id.*, 356 Ill.App.3d at 18, 826 N.E.2d at 523-4. The Court continued:

This interpretation of “privilege to drive” avoids an absurd result. Under this interpretation, new residents of Illinois with revoked foreign driver’s licenses are subject to the same restrictions as Illinois drivers who have had their licenses revoked in Illinois. We presume that the legislature did not intend absurdity. (citation omitted) Additionally, this construction is consistent with the strong public policy in Illinois to keep repeat drunk drivers off the roads. Illinois has an interest in preventing individuals with four DUI convictions from obtaining driving privileges.

*Id.* Because Girard had four DWI convictions, he was not eligible to make application for an Illinois license, and the Secretary could not grant him any relief. *Id.*, 356 Ill.App.3d at 21, 826 N.E.2d at 526.

Next, in *Gruchow v. White*, 375 Ill.App.3d 480, 874 N.E.2d 921 (Ill.App. 2007), the licensee had four DWI convictions in Illinois and South Carolina. He moved to North Carolina and sought reinstatement of his nonresident driving privileges in Illinois, *i.e.*, a “clearance letter.” The Secretary concluded that because of his four DWI convictions, Gruchow was not eligible for reinstatement of Illinois driving privileges during his lifetime. *Id.*, 375 Ill.App.3d at 482, 874 N.E.2d at 922. Gruchow contended that under the language of Article V, he was entitled to reinstatement of *driving privileges*, if not a *license*. *Id.*, 375 Ill.App.3d at 482, 874 N.E.2d at 922-3.

In language familiar to Minnesota courts, the Illinois Court noted that its task in construing the statute is to ascertain the legislature’s intent. *Id.*, 375 Ill.App.3d at 483, 874 N.E.2d at 923. If there is reasonable debate as to the meaning of the statute, the court would give deference to the interpretation of the official charged with implementation of the statute. *Id.*

The Court concluded that the “one year” provision of Article V had no application to Gruchow because it applied to individuals whose out-of-state licenses were revoked and who sought Illinois licenses after those revocations. *Id.*, 375 Ill.App.3d at 483-4, 874 N.E.2d at 924. After further discussion of the statutory provisions, the Court determined that under Illinois law, Gruchow may not apply for a license in Illinois. “He is not and cannot be ‘entitled’ to apply for a new driver’s license in our state. Reinstatement, the relief Gruchow seeks, cannot be granted.” *Id.*, 375 Ill.App.3d at 486, 874 N.E.2d at 925.

Finally, the Court stated:

Our interpretation of section 6-208(b) does not prevent North Carolina from applying its own laws to determine Gruchow’s eligibility for a North Carolina license. Our interpretation does not control what North Carolina may decide if Gruchow applies for a driver’s license in that state. It simply means Gruchow, having four DUI convictions, may not have his Illinois driving privileges restored and cannot receive a clearance letter....

*Id.*, 375 Ill.App.3d at 487, 874 N.E.2d at 926.

Similarly, in *Wilczewski v. Neth*, 273 Neb. 324, 729 N.W.2d 678 (2007), Nebraska refused to license an applicant because he was revoked for five years in Missouri. He had two DWI convictions in Nebraska while he was a Missouri licensee, leading to his five-year revocation in that state. He met Nebraska’s requirements for reinstatement, was issued a notice of reinstatement of driving privileges, but would not be issued a physical *license* until a PDPS check showed he was not suspended or revoked in some other state. Missouri reported his status to be “not eligible” and the director determined that the term included suspension or revocation and denied issuance of a license. Wilczewski cited the “one year” provision in Article V and claimed that it allowed him to apply and be issued

a license, while the department argued that a separate statute barred any license as long as his license in any other state remained revoked or suspended. *Id.*, 273 Neb. at 327-8, 729 N.W.2d at 681. The Court agreed with the DMV's argument that the applicant's "not eligible" status should be interpreted as a suspension or revocation for purposes of the statute, and that he may not be issued a Nebraska license until his period of ineligibility ends. *Id.*

Finally, in *Tull v. Commissioner of Public Safety*, 176 P.3d 1227, 2008 OK CIV APP 10 (Ok.Civ.App. 2007), the applicant had been convicted of DWI in Maryland in 1984, Delaware in 1989, Florida in 1990 and Mississippi in 1992. Following the fourth conviction, his driving privileges were "permanently" revoked by Florida. Tull eventually moved to Oklahoma and applied for a license there in 2006 or 2007. His application was rejected in reliance on a state statute forbidding licensure to a person whose license has been suspended, revoked, canceled or denied in any state. *Id.*, 176 P.3d at 1228. Tull appealed to the District Court, arguing that the "one year" language of Article V provides for an exception to the statute relied upon by the Commissioner. *Id.*, 176 P.3d at 1229. The Department agreed that it had no information that Tull had done anything in the past 13-14 years to indicate it would be unsafe to grant him a driver's license. *Id.* The District Court noted that Oklahoma law does not provide for a permanent revocation, held that the State could apply any of its other laws, and ordered the Department to allow him to apply and to issue a license upon successful completion of all testing. *Id.* The Department appealed.

The appellate court framed the issue on appeal as:

Do Oklahoma statutes permit a resident of this State, who is otherwise qualified but whose driving privileges have been permanently revoked by another state, to apply for an Oklahoma driver's license after the expiration of one year from the date of said extraterritorial revocation?

*Id.*, 176 P.3d at 1229. The court began its *de novo* inquiry on this legal question with the familiar principle that “[t]he fundamental rule of statutory construction is to ascertain and, if possible, give effect to, the Legislature’s intention and purpose as expressed in a statute.” *Id.*

The Court noted that one Oklahoma statute “plainly states that DPS ‘shall not’ issue an Oklahoma driver’s license to any person whose driving privilege is suspended or revoked in another state.” *Id.*, 176 P.3d at 1230. The Court noted that Article I(b) of the Compact stated that the purpose of the legislation is to promote compliance with the laws of each state. *Id.* Article VI expressly provides that nothing in the Compact “shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstances” and a previous opinion had already stated that “the Compact is meant to supplement, but not replace, existing state laws....” *Id.* The Court found the rationale of the *Gwin* case persuasive and adopted its holding, believing that “Oklahoma’s Legislature, like that of Maryland, did not intend to create a safe harbor for bad drivers from other jurisdictions,” and held that Tull is ineligible to apply for an Oklahoma driver’s license. *Id.* The Court concluded:

Upon *de novo* review and after consideration of the Legislature’s intent and purpose as expressed in Oklahoma’s Motor Vehicle Code, we hold Art. V of the Compact does not provide an exception to § 6-103(A)(3). The latter statute plainly prohibits the issuance of an Oklahoma driver’s license to an individual who is subject to an extraterritorial revocation or suspension. Notwithstanding his apparent unremarkable record over the

past decade, Tull is ineligible, pursuant to § 6-103(A)(3), to apply for an Oklahoma driver's license because his driving privileges are currently revoked in another jurisdiction. To hold otherwise would be inconsistent with the general purpose and object of both the Compact and § 6-103(A)(3). As was true in *Gwin* with respect to the Maryland Legislature, we do not believe our own Legislature intended for Oklahoma to be a safe haven for other states' unauthorized drivers. The judgment of the trial court is reversed.

*Id.*, 176 P.3d at 1232.

In summary, Respondent has not found any decision holding that Article V creates an *entitlement* to a license in any jurisdiction one year after a revocation in the home state. A minority of courts have held that it permits persons such as Appellant to *apply* for a license, but without any assurance that the application will be granted. The majority read Article V as merely supplementing existing state laws, and concluded that a person who remains under revocation in another jurisdiction may not even apply for a license.

Accordingly, even under the interpretations of the Georgia, Louisiana and Iowa courts, the decision of the trial court herein should be affirmed because the record supports the trial court's determination that the Commissioner of Public Safety did not abuse whatever discretion he may have to grant or deny a license.

The decision of the trial court herein can also be upheld on an additional rationale, not argued in the district court, where Respondent did not yet have the benefit of the research done for this brief into the interpretation of Article V in other jurisdictions.<sup>11</sup>

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<sup>11</sup> Similarly, the Commissioner's rationale for the interpretation of Minn. Stat. § 171.16, subd. 3, providing for court-ordered license suspensions for failure to pay fines, was never fully developed until the case reached the Supreme Court in *Goodman v. State, Dep't of Public Safety*, 282 N.W.2d 559 (Minn. 1979), in which the Court stated that the statute was "thoroughly ambiguous" and that the Court's approach in such cases was to

The majority held that because another state statute forbade issuing a license to a person whose driving privileges were revoked, Article V offered no exception or relief.

Similarly, Minn. Stat. § 171.04, subd. 1(5) (2008) prohibits granting a license “to any person whose license has been revoked except upon furnishing proof of financial responsibility in the same manner as provided in the Minnesota No-Fault Automobile Insurance Act and if otherwise qualified.” With the exception of the reference to the No-Fault statute, this provision is basically unchanged from the original 1939 enactment, when it was Minn. Stat. § 171.04(3). It is a general prohibition against licensing anyone whose license has been revoked. While it does not specifically state that it applies to revocations “in this or any other state,” there is no language that limits its application to revocations in *this* state. *Cf. Girard v. White*, 356 Ill.App.3d 11, 826 N.E.2d 517, 292 Ill.Dec. 376 (Ill.App. 2005), which rejected the argument that the statute prohibiting licensing a person with four DWI revocations to apply only to persons whose *Illinois* license had been revoked. Accordingly, a prohibition against issuing a license to anyone whose license is “revoked” can reasonably be interpreted as merely being a shorter version of “revoked in this or any other state.” Since there are no qualifying words, the disqualifying revocation need not be made under the laws of this state, but can be under the laws of any state.

This interpretation would also be consistent with the purpose of the Compact to

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give “substantial consideration to the interpretation of the administrators working daily with the problem sought to be remedied.” *Id.*, at 560. *See also Gruchow v. White*, 375 Ill.App.3d 480, 874 N.E.2d 921 (Ill.App. 2007) (If there is reasonable debate as to the meaning of the statute, the court would give deference to the interpretation of the official charged with implementation of the statute).

encourage compliance with the laws of all member jurisdictions. It would be consistent with the principle enunciated in *State, Dep't of Public Safety v. Juncewski*, 308 N.W.2d 316, 319 (Minn. 1981), that because anti-DWI laws are "remedial statutes," they are "liberally interpreted in favor of the public interest and against the private interests of the drivers involved." It would be consistent with the statutory presumption that the Legislature "intends to favor the public interest as against any private interest." See Minn. Stat. § 645.17(5). It would be consistent with Art. I, § 1 of the Constitution of the State of Minnesota, which states the purpose for which our government exists: "Government is instituted for the security, benefit and protection of the people...." It would also recognize that our Legislature, like the Legislatures of Oklahoma, Maryland and Illinois, has not demonstrated an intent to make Minnesota a haven or safe harbor for the worst drivers from other states.

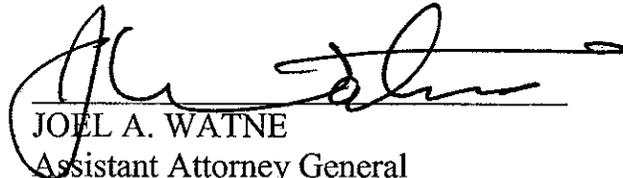
## CONCLUSION

Appellant has failed to demonstrate that the district court erred in concluding that the Commissioner of Public Safety acted within his lawful authority in requiring him to obtain a clearance letter from Illinois before granting him a Minnesota driver's license and that Appellant has not demonstrated that he is *entitled* to a driver's license under the laws of this state at this time. Accordingly, the decision of the district court should be affirmed.

Dated: September 8, 2009.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Joel A. Watne", written over a horizontal line.

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