

NO. A12-1518

**STATE OF MINNESOTA
IN COURT OF APPEALS**

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.

RESPONDENT'S BRIEF

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STATEMENT OF ISSUES

- I. Whether the District Court erred in determining that Minn. Stat. § 171.30, subd. 1(j), as applied to Respondent's particular facts, violates the substantive due process right of Respondent to earn a living.

The district court held that as applied to Respondent, a rural Minnesota resident, Minn. Stat. § 171.30, subd. 1(j) violates Respondent's substantive due process right to earn a living.

United States v. Priutt, 502 F.3d 1154, 1171 (10th Cir. 2007); *Brockett v. Spokane Arcades*, 472 U.S. 491, 502 (1985); *Minn. Board of Barber Examiners v. Laurance*, 218 N.W.2d 692, 695 (Minn. 1974); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152, (1938).

Minn. Stat. § 171.30 (2010)

- II. Whether the District Court erred in determining that Minn. Stat. § 171.186, subd. 1, as applied to Respondent's particular facts, violates Equal Protection.

The district court held that as applied to Respondent, a rural Minnesota resident, Minn. Stat. § 171.186, subd. 1, violates the Equal Protection Clause.

Minn. Board of Barber Examiners v. Laurance, 218 N.W.2d 692, 695 (Minn. 1974); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Cornwell v. Hamilton*, 80 F.Supp.2d 1101, 1103 (U.S. Dist. Ct. S.D. Cal. 1999); *Amunrud v. Board of Appeals*, 143 P.3d 571 (Wash. 2006).

Minn. Stat. § 171.186 (2010).

STATEMENT OF THE CASE

The district court did not determine that each statute was unconstitutional on its face. The district court conceded that the statutes may be constitutional in many of their applications, but issued judgment and order that Minn. Stat. § 171.186, subd. 1, suspension of driver's license for failure to pay child support, as applied, violates the Equal Protection rights of Respondent; and, as applied, Minn. Stat. § 171.30, subd. 1(j) violates Respondent's Substantive Due Process rights.

STATEMENT OF RELEVANT FACTS

In conjunction with a December 2001 child support order, Bruce Buchmann was ordered to pay \$200.00 per month. Due to cost-of-living adjustments, Respondent's payment amount increased to \$238.00 a month. Respondent and Swift County entered into a payment agreement on April 8, 2009 and a second agreement on October 7, 2009. Respondent made his last child support payment on November 2, 2009 for \$198.31 and has been unable to pay child support since that date. *Intervenor's Addendum, Page CADD1; District Court's Order and Judgment dated July 3, 2012.*

Respondent, Bruce Buchmann, has not been able to obtain employment and pay child support because Minn. Stat. § 171.186 mandates revocation of an obligor's driver's license after three months of payments are overdue, and while § 171.30 allows for a limited driver's license so that an obligor can drive to work, subdivision 1(j) prohibits the issuance of a limited commercial driver's license. *Id.*

Mr. Buchmann is an unemployed truck driver living in an isolated home in rural Minnesota, and he is unable to afford running water, telephone service, or electricity. Mr. Buchmann's impoverished state has progressively deteriorated due to his inability to work as a commercial truck driver or obtain alternate employment because he lives in an isolated, dilapidated home with the closest town of Danvers, Minnesota, population 97, being nine miles away. The opportunities for Respondent to obtain employment outside of his work as a commercial truck driver

are nearly non-existent. *Intervenor's Addendum, Pages, CADD1-2; District Court's Order and Judgment dated July 3, 2012.*

Respondent's eyeglass prescription is outdated, and he cannot afford to buy replacement glasses. Respondent owns no motor vehicle. The state suspended his Class D driver's license and commercial driver's license for non-payment of child support, and his licenses have since expired. Respondent used to rely on the generosity of two friends to give him rides, but both have since passed. *Id.*

Mr. Buchmann lives in a home owned by a family trust; he is supposed to pay rent but is unable to afford to pay it but is being billed for it. Without the generosity of Mr. Buchmann's family, he would be homeless. Mr. Buchmann's living conditions are arguably less than the basic requirements afforded inmates in prison. Respondent's suspension of driver's license and inability to obtain a limited commercial driver's license has prevented Respondent from obtaining any employment and from paying child support. *See, Intervenor's Addendum, Pages CADD1-CADD11; District Court's Order and Judgment dated July 3, 2012.*

STANDARD OF REVIEW

Appellant and Intervenor challenge the district court's declaratory judgment and order concluding that Minn. Stat. § 171.186, subd. 1 and § 171.30, subd. 1(j) is unconstitutional as applied to the specific facts of Respondent, Bruce Buchmann.

"On appeal from a declaratory judgment, we apply a clearly erroneous standard to the factual findings, but review the trial court's determination of questions of law de novo." *Rice Lake Corp. v. Rust Env't & Infra., Inc.*, 549 N.W.2d 96, 98

(Minn. Ct. App. 1996), *review denied* (Minn. Aug. 20, 1996). Whether a statute is unconstitutional is a legal question that we review de novo. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). Minnesota statutes are presumed constitutional. *State v. Barker*, 705 N.W.2d 768, 771 (Minn. 2005). "[W]e exercise our power to declare a statute unconstitutional with extreme caution and only when absolutely necessary." *Walker v. Zuehlke*, 642 N.W.2d 745, 750 (Minn. 2002) (quotation omitted).

ARGUMENT

I. THE COURT'S REVIEW, UNDER BOTH THE SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION CLAUSES, IS BASED ON THE RATIONAL BASIS TEST.

"The right to follow any of the common occupations of life is an inalienable right. *Minn. Board of Barber Examiners v. Laurance*, 218 N.W.2d 692, 695 (Minn. 1974) *citing Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897). When the police power is exerted to regulate the conduct of a useful business or occupation the legislature is not the sole judge of what is a reasonable and just restraint upon the constitutional right of a citizen to pursue his calling and exercise his own judgment as to the manner of conducting it, but the measures adopted to protect the public health and security the public safety and welfare must have some relation to these proposed ends . . ." *Id.* "The liberty mentioned in that [due process] amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all

lawful ways; to live an work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out a successful conclusion the purposes above mentioned.” *Allgeyer*, 165 U.S. at 589.

Minnesota rational basis test requires that “(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.” *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991); *citing, Wegan v. Village of Lexington*, 309 N.W.2d 273, 280 (Minn. 1981).

The Legislature writes the laws, and the Court’s role is to decide whether the means used to regulate the activities in question are constitutionally permissible. *See, FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313-14 (1993). The district court appropriately decided that there is no rational relationship between the prohibition on issuing Respondent a limited commercial driver’s license for non-payment of child support and ensuring Respondent adequately and timely pays child support because Respondent is unable to work without a commercial driver’s license and thus unable to pay child support.

II. RESPONDENT CHALLENGES THE PROHIBITION OF A LIMITED COMMERCIAL DRIVER'S LICENSE FOR NON-PAYMENT OF CHILD SUPPORT AS APPLIED TO THE SPECIFIC FACTS OF RESPONDENT.

Constitutional challenges can be sorted into two distinct categories: facial challenges and as applied challenges. “A facial challenge is a head-on attack on the legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications. An as-applied challenge concedes that the statute may be constitutional in many of its applications, but contends that it is not so under the particular circumstances of the case.” *United States v. Priutt*, 502 F.3d 1154, 1171 (10th Cir. 2007).

A constitutional challenge as applied is based on “the ‘elementary principal that the same statute may be in part constitutional and in part unconstitutional, and that if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected.’” *Brockett v. Spokane Arcades*, 472 U.S. 491, 502 (1985) *citing*, *Allen v. Louisiana*, 103 U. S. 80, 83-84 (1881) and *Field v. Clark*, 143 U. S. 649, 695-696 (1892).

The district court correctly held the prohibition on issuance of a driver's license and limited commercial driver's license for non-payment of child support as applied to Respondent's particular circumstances is unconstitutional. When a litigant claims that a statute is unconstitutional as applied to him, and the statute is in fact unconstitutional as applied, the court normally invalidate the statute only as applied to the litigant in question. The court does not strike down the statute on its

face. In the typical case, "we neither want nor need to provide relief to nonparties when a narrower remedy will fully protect the litigants." *United States v. Booker*, 543 U.S. 220, 314 (2005); *citing, United States v. Treasury Employees*, 513 U.S. 454, 478 (1995); *see also Renne v. Geary*, 501 U.S. 312, 323-324 (1991); *Board of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 484-485 (1989); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501-504 (1985).

The district court rightly decided that the statutes preventing Respondent, a rural Minnesota resident, from obtaining a limited commercial driver's license have unconstitutionally interfered with (1) Respondent's right to obtain viable employment, (2) Respondent's duty to pay child support, and (3) Respondent's need to afford the basic necessities of life. *See, generally, Intervenor's Addendum, Pages CADD1-CADD12; District Court's Order and Judgment dated July 3, 2012.*

III. AS APPLIED TO RESPONDENT, THE STATUTORY REGULATIONS PROHIBITING THE ISSUANCE OF A LIMITED COMMERCIAL DRIVER'S LICENSE FOR NON-PAYMENT OF CHILD SUPPORT VIOLATES THE SUBSTANTIVE DUE PROCESS RIGHT OF RESPONDENT TO EARN A LIVING.

Substantive due process prevents governments and government officials from acting arbitrarily, capriciously, and outside the scope of their authority. Substantive due process asks whether the government's exercise of authority "is a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?"

Lochner v. New York, 198 U.S. 45, 56 (1905).

“[T]he right to work for a living in the common community is of the very essence of the personal freedom and opportunity that the Constitution was designed to protect.” *Truax v. Raichl*, 239 U.S. 33, 41 (1915).

Substantive due process protects all rights from deprivation without a rational basis; the district court is correct in that “[d]espite the State’s argument that this situation is a result of [Buchmann’s] own actions, the fact is it has become near impossible for [Buchmann] to change those circumstances. Regardless of fault, the issue is how [Buchmann] can move his life forward and how [Buchmann] can continue to make his child support payments. Without a license, he cannot.” *Intervenor’s Addendum, Page CADD9, District Court’s Order and Judgment dated July 3, 2012; see also, Intervenor’s Brief Page 7-10, (listing Respondent’s difficult history with child support compliance); see also, Intervenor’s Brief Page 16 (asserting that Respondent would be able to afford child support if he would have had the child support amount reduced or followed the written payment agreements).*

The substantive component of the Due Process Clause bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." *Zinerman v. Burch*, 494 U.S. 113, 125 (1990) *citing Daniels v. Williams*, 474 U.S. 327, 331 (1986). "The right to follow any of the common occupations of life is an inalienable right. *Minn. Board of Barber Examiners v. Laurance*, 218 N.W.2d 692, 695 (Minn. 1974) *citing Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897).

The district court correctly stated that Respondent has the continued, protected right to obtain and maintain employment even if Respondent failed to follow the other provisions of the statute regarding modification of child support and written payment agreements. *See, Intervenor's Addendum, Page CADD9; District Court's Order and Judgment dated July 3, 2012.* Arguably, Respondent would have a better quality of life in jail than he does at his home with no running water or electricity. *See, Intervenor's Addendum, Page CADD2;; District Court's Order and Judgment dated July 3, 2012.*

The legislature never intended the prohibition of issuing a limited commercial license to prevent Respondent from working in any viable field of employment and thus destroy any ability of Respondent to pay child support and to support himself now and in the foreseeable future. Minnesota Statute § 171.30, subd. 1 (b)(1) provides one reason for issuing a limited driver's license is if the driver's livelihood depends upon the use of the driver's license. *Id.* Respondent's livelihood depends upon the use of a commercial driver's license. The district court was correct in deciding that there is no rational connection between the prohibition of Respondent receiving a limited commercial license so that he can work, and the legislative's intent to utilize license suspension as a powerful incentive for obligors to pay child support. *See, Murphy v. Murphy, 574 N.W.2d 77, 82 (Minn. 1998); see also, Intervenor's Addendum, Pages CADD5-CADD6; District Court's Order and Judgment dated July 3, 2012.*

According to the facts of this particular case, under the rational basis test, “the existence of facts supporting the legislative judgment is to be presumed . . . unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators.” *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 (1938). It is well established precedent that suspension or revocation of a license is not a punishment but is rather an exercise of police power. *Anderson v. Commissioner of Highways*, 126 N.W.2d 778, 783-84 (Minn. 1964). The purpose and intent of revoking a license for failure to pay child support is to encourage a parent to pay child support. *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. 1998).

The district court properly issued a declaratory judgment that Respondent’s constitutionally protected right to earn a living has been violated because the statutes that suspended Respondent’s driver’s license and prohibit him from having a limited commercial driver’s license irrationally prevent Respondent from paying child support, from earning a living, and from having a minimal standard of living. *See, Intervenor’s Addendum, Pages CADD5-CADD6; District Court’s Order and Judgment dated July 3, 2012.*

IV. AS APPLIED TO RESPONDENT, THE STATUTORY REGULATIONS PROHIBITING THE ISSUANCE OF A LIMITED COMMERCIAL DRIVER'S LICENSE FOR NON-PAYMENT OF CHILD SUPPORT VIOLATES THE EQUAL PROTECTION CLAUSE.

The district court correctly determined that the under the Equal Protection Clause, the prohibition from Respondent obtaining a limited commercial driver's license for non-payment of child support is irrational. *See, Intervenor's Addendum, Pages CADD6-CADD10; District Court's Order and Judgment dated July 3, 2012.* Respondent's Equal Protection claim is based on the reasoning that "sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. *Cornwell v. Hamilton*, 80 F.Supp.2d 1101, 1103 (U.S. Dist. Ct. S.D. Calf. 1999) *citing, Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Respondent challenges the statutes as applied to his particular facts. *See United States v. Priutt*, 502 F.3d 1154, 1171 (10th Cir. 2007) (holding that while a statute may be constitutional in many of its applications, it is unconstitutional under the particular facts of the case). *See also, Intervenor's Addendum, Page CADD8-CADD9; District Court's Order and Judgment dated July 3, 2012.*

Respondent's situation involves living in an isolated area of rural Minnesota with little to no options for obtaining employment. Respondent cannot afford water, electricity or telephone. Respondent lives without a motor vehicle with the nearest town being nine miles away. *Intervenor's Addendum, Pages CADD8-CADD10; District Court's Order and Judgment dated July 3, 2012.*

Appellant incorrectly asserts the facts in the *Amunrud* case, 143 P.3d 571 (Wash. 2006), are comparable to the facts of this case. Greg Amunrud unsuccessfully challenged the order suspending his commercial driver's license for failure to pay child support asserting he had a fundamental right to earn a living in his chosen occupation as a taxi driver. *Amunrud*, 143 P.3d at 576. In contrast, Respondent, Bruce Buchmann asserts that due to living in isolated, rural Minnesota, the prohibition from receiving a limited commercial license in his case has prevented him from earning any type of living, which was never the rational intent of the legislature. *See Amunrud*, 143 P.3d at 579 (stating the legislature reasonable believed that license suspension scheme will provide a powerful incentive to those in arrears in their child support payments to come into compliance); *compare Intervenor's Addendum, CADD8-CADD9; District Court's Order and Judgment dated July 3, 2012.*

The taxi driver residing in the city, even without a driver's license and commercial driver's license, has many more options for alternate employment than Respondent living in rural Minnesota. While the taxi driver can readily obtain alternate employment in the city, Respondent has little to no options for other employment living nine miles away from the nearest town. Respondent has no access to public transportation, no money to pay for running water or electricity. Respondent is unable to pay rent or for new prescription glasses. Respondent has job offers as a commercial truck driver that could provide him not only employment but shelter, and a viable means to pay child support and to support himself; however,

the statutes prohibit Respondent from getting a limited commercial license to obtain employment. See *Intervenor's Addendum, Pages CADD1-CADD11; District Court's Order and Judgment dated July 3, 2012.* Respondent's right to Equal Protection under the law has been violated because Respondent as a rural resident living in isolation and miles from the nearest town has greater need for a driver's license and commercial driver's license than the urban resident because the opportunity for employment is less where Respondent resides with the added requirement to travel greater distances for any employment opportunity. The legislative intent in revoking a driver's license for failure to pay child support is to encourage obligors to work and support their children. Respondent's inability to obtain a limited commercial driver's license is a violation of Respondent's equally protected right to earn a living because he, unlike the urban taxi driver in *Amunrud*, Respondent has no other employment alternatives.

CONCLUSION

Appellant and Intervenor have misinterpreted the district court's July 3, 2012 Judgment and Order. The district court did not declare and order the challenged statutes on their face violate the Constitution in all of their applications. Respondent seeks rationality when trying to pursue employment so that he can pay child support and also have at least a minimal standard of living. Minn. Stat. 171.30, subd. 1(j) and the prohibition of issuing limited commercial driver's licenses as applied to Respondent fails to pass constitutional muster because the legislative's objective was never to keep Respondent, who lives in complete isolation in rural, Minnesota, from

working in any viable employment, which is the irrational result in this case.
McGowan v. Maryland, 366 U.S. 420, 425 (1961).

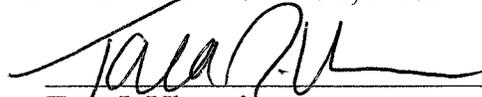
Minn. Stat. § 171.186, subd. 1 is also unconstitutional as applied to Respondent, a rural Minnesota resident, because without a driver's license and commercial driver's license Respondent is unable to obtain work of any kind and pay child support.

For the reasons set forth herein, the district court's order and judgment should be affirmed.

Respectfully submitted,

Dated: 11/21/12

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**CERTIFICATE OF COMPLIANCE
MINN. R. APP. 132.01, SUBD. 3**

The undersigned certifies that the Brief submitted herein contains 3902 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count stated in reliance of Microsoft Word 2003, the word processing system used to prepare this Brief.

Dated: 11/21/12

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