

No. 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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**BRIEF, ADDENDUM AND APPENDIX OF INTERVENOR MINNESOTA  
COMMISSIONER OF HUMAN SERVICES**

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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 ISSUES

- I. Whether Minnesota Statutes section 171.30, subdivision 1(j), which prohibits the Commissioner of the Minnesota Department of Public Safety from issuing a limited commercial license in the context of a driver's license suspension for failure to pay child support, violates substantive due process under the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution.

The district court held that the prohibition on issuance of limited commercial licenses violates substantive due process.

*Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999).

*Barry v. Barchi*, 443 U.S. 55 (1979).

*Murphy v. Murphy*, 574 N.W.2d 77 (Minn. 1998).

- II. Whether Minnesota Statutes section 171.186, subdivision 1, which requires the Commissioner of the Minnesota Department of Public Safety to suspend a driver's license for nonpayment of child support, violates equal protection under the Fourteenth Amendment of the United States Constitution and the Minnesota Constitution.

The district court held that the required suspension of a driver's license based on nonpayment of child support violates equal protection.

*Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979).

*State v. Russell*, 477 N.W.2d 886 (Minn. 1991).

## STATEMENT OF THE CASE

This appeal involves the constitutionality of the driver's license suspension provisions of Minnesota Statutes enacted as a mandatory part of the State's child support enforcement program under Title IV-D of the Federal Social Security Act. The underlying action involved motions by Respondent in Swift County district court to dismiss a contempt of court action for nonpayment of child support and to reinstate his class D and commercial driver's licenses, which were suspended for nonpayment of child support. As part of his motion to reinstate his driver's license, Respondent challenged the constitutionality of Minnesota Statutes sections 518A.65, 518A.69, 171.131, and 171.186.

By order dated July 3, 2012, the Honorable Jon Stafsholt of Swift County District Court held Minnesota Statutes sections 171.30 and 171.86 unconstitutional for violations of substantive due process and equal protection, respectively. Addendum of the Commissioner of Human Services ("CADD") 10. The district court rejected the argument that Minnesota Statutes chapter 518A violated procedural due process. CADD5. Swift County, in coordination with the Commissioner of the Minnesota Department of Human Services ("Commissioner"), who is responsible for oversight of the State's child support enforcement program, appealed the decision on August 28, 2012. Commissioner's Appendix ("CAPP") 1. On September 4, 2012, the Commissioner filed a motion to intervene, which was granted by this Court on September 27, 2012.

## STATEMENT OF FACTS

### I. CHILD SUPPORT ENFORCEMENT.

#### A. Child Support Enforcement At The Federal Level.

The federal Child Support Enforcement Program is established under Title IV-D of the Social Security Act in 1974. *See* Title IV, Part D, Pub. L. No. 93-647, 88 Stat. 2351 (*codified as amended at* 42 U.S.C. § 651 *et seq.* (1976 and Supp. V. 1981) *as amended by* Pub. L. No. 97-248, §§ 171-176, 51 U.S.L.W. 30-31 (September 14, 1982)). The purpose of the Child Support Enforcement Program initially was to enforce support obligations owed by non-custodial parents (“obligors”) to their children and to assist custodial parents (“obligees”) with locating absent parents, establishing paternity, and obtaining child and spousal support. *See* 42 U.S.C. § 651.

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Act”), Pub. L. No. 104-193, 110 Stat. 2105 (1996), to supplement Title IV-D. The Act added numerous provisions aimed at improving the effectiveness of child support enforcement. *See* 42 U.S.C. § 666(a). States choosing to administer a Title IV-D program “shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in 42 U.S.C. § 666.” 42 U.S.C. § 654(20)(A). United States Code, Title 42, section 666(a)(16), requires that states have the authority to withhold or suspend licenses. The provisions reads as follows:

Authority to withhold or suspend licenses. Procedures under which the State has (and uses in appropriate cases) *authority to withhold or suspend, or to restrict the use of driver’s licenses, professional and occupational licenses*, and recreational and supporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply

with subpoenas or warrants relating to paternity or child support proceedings.

42 U.S.C. § 666(a)(16) (emphasis added).

Each state that operates a IV-D program receives federal financial participation to offset the cost of the state's administration of the child support enforcement program. 45 C.F.R. 305.61. In 2010, the federal government paid approximately \$121.5 million, which is 74 percent, of Minnesota's child support enforcement program costs. *See Evaluation of Minnesota Child Support Enforcement Mechanisms and Programs: Report to the Minnesota Legislature*, dated January 2011 ("2011 Legislative Report").

**B. Child Support Enforcement In Minnesota.**

Child support enforcement in Minnesota is governed by Minnesota Statutes chapter 518A (2010), and related provisions at Minnesota Statutes sections 171.30 (2010) (commissioner of public safety prohibited from issuing a limited commercial license) and 171.186 (2010) (commissioner of public safety required to implement driver's license suspension for nonpayment of child support). These provisions implement the State plan for child support enforcement, which is approved by the federal Office of the Administration of Children and Families ("ACF"), a division of the United States Department of Health and Human Services, under Title IV-D of the Social Security Act.

The State's child support enforcement provisions include two provisions to comply with the federal requisite that states have the authority to withhold or suspend licenses under United States Code, Title 42, section 666(a)(16): Minnesota Statutes section 518A.65, which along with complementary provisions in Minnesota Statutes

section 171.30, subdivision 1(j), and section 171.186, authorizes the suspension of a driver's license; and section 518A.66, which authorizes suspension of a professional license. The driver's license and occupational suspension statutes contain identical language that requires suspension of a person's driver's license if:

[T]he obligor 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 not in compliance with a written payment agreement pursuant to section 518A.69 that is approved by the court, a child support magistrate, or the public authority....

Minn. Stat. §§ 518A.65(b) and 518A.66(b).

If the Minnesota Department of Human Services, Child Support Enforcement Division ("DHS"), or the county acting on behalf of DHS (referred to collectively as the "public authority"), determine that the obligor has arrears as outlined in Minnesota Statutes section 518A.65(b), the public authority may order the commissioner of public safety to suspend the obligor's driver's license and any other licensing board or agency to suspend the obligor's occupational license. Minn. Stat. §§ 518A.26, subd. 18 (designating the public authority); and 518A.65(b) (public authority may order suspension). Obligor's must be notified of the proposed suspension and have the right to a hearing upon request. Minn. Stat. § 518A.65(c).

An obligor may take any of the following steps to avoid suspension or to have a driver's license suspension lifted:

- (1) provide proof to the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements pursuant to section 518A.69;

(2) bring a motion for reinstatement of the driver's license. At the hearing, if the court or child support magistrate orders reinstatement of the driver's license, the court or child support magistrate must establish a written payment agreement pursuant to section 518A.69; or

(3) seek a limited license under section 171.30. A limited license issued to an obligor under section 171.30 expires 90 days after the date it is issued.

Minn. Stat. § 518A.65(e). Occupational license suspensions may be lifted once child support obligations are brought current or the obligor has entered into and is in compliance with a written payment agreement under section 518A.69. *See* Minn. Stat. § 518A.66.

Written payment agreements are readily available, and the court, child support magistrate, and public authority have broad discretion to fashion a written payment agreement with which an obligor is able to comply. Payment agreements are governed by Minnesota Statutes section 518A.69:

In proposing or approving proposed written payment agreements for purposes of [Chapter 518A], the court, a child support magistrate, or the public authority shall take into consideration the amount of the arrearages, the amount of the current support order, any pending request for modification, and the earnings of the obligor. The court, child support magistrate, or public authority shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay any proposed payment agreement and shall propose a reasonable payment agreement tailored to the individual financial circumstances of each obligor. The court, child support magistrate, or public authority also shall consider a graduated payment plan tailored to the individual financial circumstances of each obligor.

Obligor's also have the ability to seek modification of court-ordered child support to make the obligation reasonably affordable given the circumstances of the obligor. Minn. Stat. § 518A.39.

If a driver's license is suspended for nonpayment of child support, an obligor may apply for a limited driver's license. Minn. Stat. § 171.30, subd. 1(a)(1). A limited license may be granted with any conditions deemed necessary by the commissioner of public safety if a driver's license is necessary (1) for the obligor's livelihood or attendance at a chemical dependency treatment or counseling program; (2) to prevent substantial disruption of education, medical, or nutritional needs of the family by a homemaker obligor; or (3) for attendance at a postsecondary institution by an enrolled student obligor. Minn. Stat. § 171.30, subd. 1(b). The commissioner of public safety is *not*, however, permitted to issue a limited class A, class B, or class C (hereinafter "commercial") license. Minn. Stat. § 171.30, subd. 1(j).<sup>1</sup>

## **II. APPELLANT'S HISTORY WITH CHILD SUPPORT ENFORCEMENT.**

Under a December 18, 2001 child support order, Respondent Bruce Buchmann ("Respondent") is required to pay \$200 per month in child support. Memorandum of Law, dated April 4, 2012 ("Mem."), p. 1. On May 18, 2003, the Swift County Child Support Office issued a Notice of Intent to Suspend Driver's License. *Id.* The notice informed Respondent that he could request a hearing to show that he was either current with his child support obligation, that he is complying with a written payment agreement under Minnesota Statutes section 518A.69, or that he made and complied with a written

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<sup>1</sup> Minnesota Statutes section 171.30, subdivision 1(j), is also required by United States Code of Regulations, Title 49, section 384.210. Failure to have and enforce Section 171.30, subdivision 1(j), jeopardizes the State's federal funding for the Minnesota Department of Transportation and may result in decertification of the State's Commercial Driver's License program. *See* 49 C.F.R. 384.401–.407.

payment agreement under Minnesota Statutes section 518A.69 with the county child support office within the next 90 days. *Id.*

On April 21, 2005, the district court issued an order finding Respondent in civil contempt for failure to comply with his monthly child support obligation. Mem., p. 2. In its order, the district court made these findings of fact:

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.

Mem., p. 2

On February 2, 2006, Respondent entered into a written payment agreement with the Swift County Child Support Office. *Id.* Respondent agreed to pay \$258 per month toward his child support obligation beginning April 1, 2006. *Id.* On March 4, 2006, the Swift County Child Support Office sent a request to the Minnesota Department of Public Safety ("DPS") to reinstate Respondent's driver's license. *Id.* The Swift County Child Support Office received one payment under this agreement on April 12, 2006. *Id.*

On February 6, 2007, and again on July 10, 2007 and September 18, 2007, the Swift County Child Support Office sent Respondent a Notice of Intent to Suspend

Driver's License for Non-Compliance with Payment Agreement. *Id.* Respondent failed to comply, and on September 20, 2008, the Swift County Child Support Office sent a request to suspend Respondent's driver's license to DPS. *Id.* at 3.

On April 8, 2009, Respondent entered a second payment agreement with Swift County agreeing to pay \$268 per month toward his child support obligation beginning June 1, 2009. *Id.* On April 11, 2009, Swift County sent a request to DPS to reinstate Respondent's driver's license. *Id.* No payment was received from Respondent under this payment agreement. *Id.*

On June 26, 2009, Swift County sent Respondent another Notice of Intent to Suspend Driver's License for Non-Compliance with Payment Agreement. *Id.* On August 15, 2009, Swift County again requested that DPS suspend Respondent's driver's license when he failed to satisfy conditions to avoid suspension. *Id.* While under suspension, Respondent entered into a third payment agreement, dated October 7, 2009, agreeing to pay \$285.60 per month beginning October 15, 2009. *Id.*, at p. 4. Based on this latest agreement, Swift County again sent a request to DPS to reinstate Respondent's driver's license. *Id.* Respondent made one payment on November 2, 2009, through income withholding. *Id.* No further child support payments have been received from Respondent as of the time of the motions before the district court. *Id.*

On January 5, 2010, Swift County sent Respondent a Notice of Intent to Suspend Driver's license for Non-Compliance with Payment Agreement. *Id.* On February 20, 2010, Swift County sent a request to DPS to suspend Respondent's driver's license. *Id.*

After having received no further child support payments from Respondent for roughly a year, Swift County brought a motion in February of 2011 to find Respondent in Constructive Civil Contempt of Court for failure to pay his monthly court ordered child support. *Id.* In an order dated May 2, 2011, the district court concluded that Respondent was not in contempt but stated that Swift County may bring another motion for contempt for non-payment of child support in 90 days if Respondent continued to fail to pay child support. *Id.*, at p. 5. At a hearing on December 14, 2011, pursuant to an Order to Show Cause and Notice of Motion and Motion, Swift County again sought to find Respondent in contempt for failure to pay his monthly court ordered child support obligation. *Id.* On January 13, 2012, Respondent filed a motion seeking to dismiss the Motion for Contempt arguing that Minnesota's driver's license suspension statutes are unconstitutional for violating substantive and procedural due process. *See* Respondent's Motion to Dismiss: Statute Unconstitutional and Notice of Constitutional Challenge to Statute, dated January 13, 2012. On March 8, 2012, the district court issued an order denying Swift County's motion to find Respondent in contempt.

Due to Respondent's continued unemployment, he is living in a home owned by a family trust in rural Minnesota approximately nine miles from Danvers and thirteen miles from Montevideo. Motion to Dismiss: Statute Unconstitutional, p. 3. He does not pay rent and has no electricity or running water due to nonpayment. *Id.*; Mem., p. 4. Respondent does not have a motor vehicle; does not have the ability to pay insurance on a motor vehicle, if he did have one; and does not have a current eyeglass prescription that would allow him to drive. Motion to Dismiss: Statute Unconstitutional, p. 3; Transcript,

p. 13; CADD2; Mem., p. 4. Despite these circumstances and despite his loss of employment several years ago, Respondent has never filed a motion to modify his child support obligation. Transcript, p. 16.

### III. THE DISTRICT COURT'S DECISION.

The district court, identifying the right to employment as a protected but not fundamental interest, applied the rational basis test and acknowledged the “good incentive” that driver’s license suspension has for child support obligors who resist paying child support. CADD6. The district court ultimately concluded, however, that child support obligors must have the opportunity to earn and that driver’s license suspension, when it reaches a commercial driver’s license, takes away that opportunity. *Id.* As a result, the district court held the prohibition on issuance of a limited commercial driver’s license under Minnesota Statutes section 171.30, subdivision 1(j), unconstitutional as a “wholly irrational” way for the State to compel persons to pay child support. *Id.*

The district court also applied the rational basis test when it reviewed *sua sponte* whether Minnesota Statutes section 171.186, subdivision 1, which requires the commissioner of public safety to suspend a driver’s license for non-payment of child support, violates equal protection. CADD8. The district court determined that the provision violates equal protection under the United States and Minnesota Constitutions because of the disparate economic effect on rural Minnesotans that result from already limited employment opportunities and lack of public transportation in the rural setting. CADD8–CADD9.

The district court upheld the constitutionality of driver's license suspension statutes against Respondent's procedural due process challenge. CADD5. The Commissioner does not challenge this holding by the district court, nor has Respondent raised the issue through cross-appeal. Accordingly, procedural due process is not at issue in this appeal.

### **SCOPE OF REVIEW**

Statutes are presumed constitutional. The party challenging the statute "bears the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990). When the constitutionality of a statute is at issue, the role of the judiciary is limited to deciding whether the statute is constitutional, not whether it is wise or prudent. *Id.* Courts "do not sit as legislators with a veto vote, but as judges deciding whether the legislation, presumably constitutional, is so." *Id.* Moreover, the separation of powers doctrine requires the court to give deference to the legislature's action. *See State v. Russell*, 447 N.W.2d 886, 894-95 (Minn. 1991) (Simonett J., concurring) (the separation of powers doctrine requires the court to accord deference to the legislative branch).

### **ARGUMENT**

#### **I. THE PROHIBITION ON ISSUANCE OF A LIMITED COMMERCIAL LICENSE FOR NON-PAYMENT OF CHILD SUPPORT IS CONSISTENT WITH SUBSTANTIVE DUE PROCESS REQUIRED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.**

The due process protection afforded by the Minnesota Constitution is identical to that guaranteed under the United States Constitution. *Boutin v. LaFleur*, 591 N.W.2d

711, 714 (Minn. 1999) (quoting *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988)). Both clauses provide that government cannot deprive a person of “life, liberty, or property without due process of law.” U.S. Const. Amends. V, XIV; Minn. Const. art. I, sec. 7. The touchstone of substantive due process is protection of the individual against “government power arbitrarily and oppressively exercised.” *City of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (citations omitted).

The level of judicial scrutiny under the Due Process Clause varies depending on whether a statute affects a fundamental right. *Boutin*, 591 N.W.2d at 716. Where no fundamental right is involved, substantive due process requires “only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective.” *Id.* (citing *State v. Behl*, 564 N.W.2d 560, 567 (Minn. 1997)); *see also Doll v. Barnell*, 693 N.W.2d 455, 460–61 (Minn. Ct. App. 2005).

Minnesota law is well-settled that holding a driver’s license is a privilege, and that there is no fundamental right to a Minnesota driver’s license guaranteed by the State’s constitution. *See State v. Hanson*, 543 N.W.2d 84, 89 (Minn. 1996) (stating that a driver’s license in Minnesota is a privilege); *In re E.R.D.*, 551 N.W.2d 238 (Minn. Ct. App. 1996) (stating that a driver’s license is a privilege). Once issued, however, both a driver’s license and an occupational license become a liberty interest to which due process protections apply. *Barry v. Barchi*, 443 U.S. 55, 64, n.11 (1979) (licenses issued to horse trainers were protected by due process because state law engendered a clear expectation of continued enjoyment of a license absent proof of culpable conduct by the trainer); *Conn v. Gabbert*, 526 U.S. 286, 291–92 (1999) (the Fourteenth Amendment’s

due process clause includes some generalized due process right to choose one's field of private employment); *Cornwell v. Cal. Bd. of Barbering & Cosmetology*, 962 F. Supp. 1260, 1271–72 (1997) (substantive due process challenges to regulations of occupations are subject to rational basis review).

The United States Supreme Court has never 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 “the highly deferential rational basis standard of review applicable to most economic and social legislation challenged under the fourteenth amendment.” See *Henne v. Wright*, 904 F.2d 1208, 1213–14 (8th Cir. 1990) (citations omitted); see also *Conn*, 526 U.S. at 291–92; *Barry*, 442 U.S. at 61–62. Accordingly, the proper standard for judicial scrutiny in this instance is the rational basis test, which has been laid out as follows:

The rational basis standard requires: (1) that the act serve to promote a public purpose, (2) that the act not be an unreasonable, arbitrary or capricious interference with a private interest, and (3) that the means chosen bear a rational relation to the public purpose sought to be served.

*Boutin*, 591 N.W.2d at 718 (quotes omitted); *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983) (Minnesota applies an equivalent test). In essence, if the record indicates that a statute is “rationally related to achievement of a legitimate governmental purpose, it should be upheld.” *Essling*, 335 N.W.2d at 239.

Under rational basis review, the suspension of a commercial driver's license – without the possibility of a limited license – satisfies constitutional substantive due process requirements.

**A. Minnesota Law Is Clear That Ensuring Collection Of Child Support From Obligor Is A Legitimate Public Purpose.**

Minnesota courts have consistently affirmed the State's interest – not only a legitimate interest, but a compelling interest – in assuring that parents provide adequate and timely financial support for their children. *See Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. 1998) (citations omitted); *Schaefer v. Weber*, 567 N.W.2d 29, 33 (Minn. 1997); *Doll*, 693 N.W.2d at 463. The nature of the State's interest is best understood by recognizing that parents bear the primary obligation to support their children. *Nicollet v. Larson*, 421 N.W.2d 717, 720 (Minn. 1988). When a parent fails to support a child, the State must then step in and assume the parent's responsibility to support the child. *Id.* The State's interest properly and necessarily considers the need to limit unnecessary drain of scarce social service resources. *Schaefer*, 567 N.W.2d at 33.

Neither the district court nor Respondent question the sufficiency of the State's interest in ensuring the adequate and timely collection of child support. *See* CADD4-CADD10; Motion to Dismiss: Statute Unconstitutional, generally.

**B. Minnesota Statutes Section 171.30, Subdivision 1(j), Is Reasonable, And Supporting Laws Further Assure That Obligor Have Options To Avoid Driver's License And Occupational License Suspension.**

Where a legitimate state interest exists, the state's action must not be an unreasonable, arbitrary or capricious interference with a private interest. *Boutin*, 591 N.W.2d at 718. Minnesota Statutes section 171.30, subdivision 1(j), which prohibits issuance of a limited commercial license, unquestionably affects a private interest. The

question in this case, however, is whether the interference is unreasonable under the rational basis standard in a substantive due process challenge.

Case law clearly contemplates that the government may restrict the right to private employment in a chosen field. *See Barry*, 443 U.S. at 64, n.11; *Conn*, 526 U.S. at 291-92; *Cornwell*, 962 F. Supp. at 1271-72. When the government restricts access to a limited license for commercial drivers, it may reasonably do so to ensure that a person does not shift his burden for supporting his children to the State when he continues to enjoy the financial benefit that flows from possessing an occupational license granted by the State. *See Amunrud v. Bd. of Appeals*, 143 P.3d 571, 578 (Wash. 2006) (acknowledging similar reasoning in upholding a state law to suspend a driver's license that prevented continued employment as a taxi driver).

Minnesota law also gives obligors such as Respondent a meaningful remedy to avoid driver's license suspension, and the related prohibition against issuing a limited commercial license. Child support obligors have two opportunities to ensure the affordability of their child support obligations: modification of the child support order under Minnesota Statutes section 518A.39 and payment agreements to address arrearages under Minnesota Statutes section 518A.69. Child support obligors who are unable to meet their court-ordered child support obligation may have their child support obligation reduced by making a showing that the amount is "unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a). A child support obligation is presumed unfair by statute if obligors meet any of six criteria, which consider factors such as changes in medical support and health coverage, changes in income, and changes resulting from recalculation

of their child support obligation under statutory guidelines. Minn. Stat. § 518A.39, subd. 2(b).

Additionally, an obligor may make a showing that the existing child support obligation is unreasonable or unfair if the obligor shows a substantial change in income for the obligor or obligee, a substantial change in need, a new or changed receipt of public assistance by the obligor or obligee, a change in the cost of living for either party, extraordinary medical expenses for the child, a change in the availability of health coverage for the child, a change in child care expenses, or the emancipation of a child. Minn. Stat. § 518A.39, subd. 2(a). Child support obligations may be retroactive to the date a motion for modification is served and filed. Minn. Stat. § 518A.39, subd. 2(e). The state court administrator's office makes forms for modification of child support publicly available so that modification may be easily sought without the assistance of counsel. See Minn. Stat. § 518A.39, subd. 6; see also <http://www.mncourts.gov/selfhelp/?page=344> (Minnesota Judicial Branch Self-Help Center for Child Support).

In this case, Respondent has failed to take advantage of the opportunities to avoid driver's license suspension. Since he was first ordered to pay child support in December of 2001, Respondent has *never* – in nearly 11 years – attempted to modify his child support obligation. And while Respondent has entered into written payment agreements on three separate occasions – causing his driver's license suspension to be lifted in each case – he has failed to comply with the payment agreements *despite* having his driver's license, including his commercial license, reinstated. Respondent can make no showing

sufficient before this Court that the remedies provided in Minnesota law to avoid the equivalent of a commercial license revocation are unreasonable.

Minnesota Statutes section 171.30, subdivision 1(j), particularly with remedies to avoid suspension in the first place, is not unreasonable and is rationally related to the State's purpose.

**C. The Legislature Carefully Enacted – And Continues To Ensure – That Driver's License And Occupational License Suspension Statutes Are Rationally Related To Ensure Payment Of Child Support Obligations.**

To sustain against a constitutional challenge, the law enacted by the legislature to achieve the State's purpose must bear a rational relation to the public purpose the law is intended to serve. *Boutin*, 591 N.W.2d at 718. In a substantive due process challenge, the party challenging the constitutionality of the statute bears the burden of proving that "the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981).

Minnesota's driver's license and occupational license suspension laws are rationally related to the State's purpose of ensuring child support obligations are met. In evaluating whether a statute is rationally related to a legitimate governmental objective, the United States Supreme Court has cautioned that courts are not to review the correctness of factual determinations that a legislature may have made. *Clover Leaf Creamery Co.*, 449 U.S. at 464. In particular, the Supreme Court offered this admonition:

[C]ourts do not sit as Legislatures, either state or national. . . . *When the action of a Legislature is within the scope of its power, fairly debatable questions as to its reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body, on which rests the duty and responsibility of decision.*

*South Carolina State Highway Dep't v. Barnwell Bros.*, 303 U.S. 177, 190–91 (1938)

(emphasis added) (holding that state highway weight and width restrictions do not violate substantive due process) (citations omitted). Legislation “will not be set aside if any state of facts reasonably may be conceived to justify it.” *Doll*, 693 N.W.2d at 463 (citing *Blue Earth County Welfare Dep't v. Cabellero*, 225 N.W.2d 373, 381 (Minn. 1974); see also *Heller v. Doe*, 509 U.S. 312, 320 (1993) (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”).

Minnesota’s legislature enacted a number of administrative tools including driver’s license suspension, occupational license suspension, motor vehicle liens, recreational license suspension, and other administrative enforcement remedies to secure significant federal financial contributions to fund the State’s child support enforcement program and to compel obligors to remain current and timely with the child support obligations. See Minn. Stat. §§ 518A.64 *et seq.* To receive federal approval from the federal Administration of Children & Families (“ACF”), Minnesota must have a state plan that includes administrative enforcement tools to ensure collection of child support from delinquent child support obligors. 42 U.S.C. § 666(a). Federal law specifies the enforcement tools that states are required to have including driver’s license and

occupational license suspension authority. *Id.* For its compliance, Minnesota received over \$121 million in SFY 2010 and continues to receive funds each year. CAPP6.

The Minnesota legislature also enacted these provisions based on its conclusion that ACF has the expertise to determine which administrative tools are effective to compel compliance with child support obligations, the legislature can reasonably conclude that the threat of administrative remedies such as suspending a commercial driver's license for non-payment of child support are a strong incentive to compel compliance with child support obligations. The legislature requires that the effectiveness of these remedies be reviewed by DHS biannually and presented to the legislature for its review. Minn. Stat. § 518A.65(f).

DHS has complied with this requirement and its analysis documents the effectiveness of these tools including driver's license suspension and the related suspension of a commercial driver's license. The 2011 Legislative Report, prepared by DHS, shows that administrative enforcement tools including driver's license suspension and suspension of occupational licenses, including commercial driver's licenses, have contributed to the collection of \$31.9 million dollars for State Fiscal Year ("SFY") 2010. CAPP26. Notices alone of driver's license suspension have caused approximately twenty percent of delinquent obligors to enter into payment agreements, which resulted in collections of \$2.8 million in SFY 2010. *See id.* Another ten percent of obligors paid their arrearages in full to avoid suspension, resulting in \$3.2 million in collections in SFY 2010. CAPP26–CAPP27. While the data collected by DHS could not attribute a precise dollar amount to the suspension of a driver's license and the resulting impact on a

commercial driver's license, there is clearly ample evidence to support that administrative measures such as this are effective in compelling obligors to meet their child support obligations.

Further, Minnesota's legislature continues with an ongoing evaluation of the effectiveness of Minnesota's child support enforcement measures to ensure that they achieve the State's interest. The legislature requires DHS to submit a report to the legislature every two years and provide the following information:

- (1) the number of child support obligors notified of an intent to suspend a driver's license;
- (2) the amount collected in payments from the child support obligors notified of an intent to suspend a driver's license;
- (3) the number of cases paid in full and payment agreements executed in response to notification of an intent to suspend a driver's license;
- (4) the number of cases in which there has been notification and no payments or payment agreements;
- (5) the number of driver's licenses suspended;
- (6) the cost of implementation and operation of the requirements of this section; and
- (7) the number of limited licenses issued and number of cases in which payment agreements are executed and cases are paid in full following issuance of a limited license.

Minn. Stat. § 518A.65(f). DHS has expanded this report to include extensive information intended to provide the legislature with sufficient data to improve the effectiveness of child support enforcement efforts in Minnesota and with recommendations for improvement of the child support program. CAPP5; CAPP17–CAPP18. The 2011 Legislative Report reviews current data and recommendations of a consulting firm

and notifies the legislature of a “high level committee,” to include stakeholders in child support enforcement, that has been convened by DHS to study and develop a recommended framework to provide, among other things, improved program performance for parents and children. *See id.* The legislative reports, by their requirement and the veracity with which DHS has approached its obligation under the requirement, provide strong, direct evidence that the legislature has not simply passed measures such as driver’s license suspension, commercial license restriction, and occupational license suspension without thought or relation to its goal of ensuring child support payments to Minnesota’s children.

Neither the law on its face nor in application here violate the substantive due process principles. Minnesota Statutes section 171.30, subdivision 1(j), should be found constitutional because it is rationally related to legitimate legislative goals of protecting the welfare of Minnesota children by encouraging non-custodial parents to pay child support, and preserving federal funding for Minnesota’s child collection efforts. Accordingly, the district court’s order holding Minnesota Statutes section 171.30, subdivision 1(j), unconstitutional must be reversed.

**II. DRIVER’S LICENSE SUSPENSION RESULTING FROM FAILURE TO PAY CHILD SUPPORT SATISFIES EQUAL PROTECTION REQUIRED BY THE UNITED STATES AND MINNESOTA CONSTITUTIONS.**

Suspension of a driver’s license resulting from a failure to pay child support satisfies the principles of equal protection guaranteed by the United States and Minnesota Constitutions. Equal protection does not deny the states all power of classification. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 271 (1979). “Most

laws classify, and many affect certain groups unevenly, even though the law itself treats them no differently from all other members of the class described by the law.” *Id.* at 272. Basic classifications that unevenly affect particular groups within a class are ordinarily of no constitutional concern if the classification itself is rationally based. *Id.* “The calculus of the effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility.” *Id.*

In assessing an equal protection challenge of a basic classification, the court’s obligation is to measure the validity of the legislative classification. *Id.* When there is “no reason to infer antipathy, it is presumed that even improvident decisions will eventually be rectified by the democratic process.” *Id.* (quotations and citations omitted). Certain classifications such as race and gender may require a heightened standard of review; however, the classification at issue here – child support obligors who are three or more months in arrears and child support obligors who are not – is neutral on its face and raises no fundamental right or suspect classifications recognized in the law. *See id.* (certain classifications require heightened scrutiny); *Kadrmas v. Dickinson Pub. Schools*, 487 U.S. 250, 257 (1988). Accordingly, the classification must only withstand rational basis review.

Under the Minnesota Constitution, which requires a more rigorous rational basis review in equal protection matters than the United States Constitution,<sup>2</sup> a classification is constitutional if it meets the following criteria:

(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; (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

*Russell*, 477 N.W.2d at 888 (citations omitted).<sup>3</sup> Social and economic measures will violate the equal protection clause only when “the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature’s actions were irrational.” *MSM Farms v. Spire*, 927 F.2d 330, 332 (8th Cir. 1991) (citing *Kadrmas*, 487 U.S. at 463).

The district court overturned Minnesota Statutes section 171.186, subdivision 1, which requires suspension of a driver’s license for persons who are “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,” holding that its

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<sup>2</sup> Under the United States Constitution, that state need only show that the challenged classification is rationally related to a legitimate governmental purpose. *Kadrmas*, 487 U.S. at 457.

<sup>3</sup> The legitimacy of the State’s interest in ensuring adequate and timely child support payments is recognized by the district court and discussed at length above. Accordingly, Intervenor Commissioner defers to its arguments *supra*.

classification violates equal protection because it discriminates against rural Minnesotans. To withstand such a challenge, a statutory classification “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.” *Russell*, 477 N.W.2d at 888.

It is difficult to conceive of a classification that falls more squarely within constitutional parameters. The legislature sought to determine a group of child support obligors for whom additional measures were necessary to encourage compliance with court-ordered child support payments. The classification identified by the legislature is the group of child support obligors who are in significant arrears with court-ordered child support and who have failed to avail themselves of administrative remedies, specifically written payment agreements, to resolve their delinquency. Minn. Stat. § 171.186, subd. 1 (child support obligors three months or more in arrears and not in compliance with a written payment agreement under Minnesota Statutes section 518A.69 are subject to driver’s license suspension).

Similarly, the classification squarely satisfies the second prong of the *Russell* analysis because persons falling within the class subject to driver’s license suspension are unwilling or unable to make child support payments for multiple months and are similarly unwilling or unable to comply with a written payment agreement to make up the missed payments going forward. The remedy – a bigger stick to encourage efforts toward compliance – is clearly warranted for child support obligors who have repeatedly failed to address their child support obligation.

To be clear, the district court does not quibble about the amount of the arrearages that cause a child support obligor to fall subject to suspension. Rather, the district court challenges the classification for its disparate impact on rural and urban obligors who are subject to suspension. CADD8. But both rural and urban residents need to drive and both populations may obtain a limited class D license to permit them to conduct their daily affairs, so it is unclear how the statute treats them any differently.

While troubling for those it impacts, the disparate impact cited by the district court is one that should be remedied by the democratic process. *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 143 (Minn. 1980) (“If the classification has some reasonable basis, it does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality.”); *John Hancock Mut. Life. Ins. Co. v. Comm'r of Revenue*, 497 N.W.2d 250, 253 (Minn. 1980) (“When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern.”) (citation omitted). The classification does not impact a fundamental right or suspect class and does not create a disparate impact effecting such a right or class. Accordingly, satisfaction of the rational basis standard is sufficient to uphold the constitutionality of the classification under Minnesota’s equal protection analysis. Because Minnesota’s equal protection analysis is more stringent than the federal equal protection analysis, the classification also withstands challenge under the United States Constitution.

For these reasons, Minnesota Statutes section 171.186, subdivision 1, satisfies the requirements of equal protection, and the district court order – to the extent it holds Minnesota Statutes section 171.186, subdivision 1, unconstitutional – must be reversed.

### CONCLUSION

The prohibition on issuance of a limited commercial driver's license to delinquent child support obligors, which is consistent with the legislature's suspension of occupational licenses, is rationally related to the State's legitimate interest in ensuring adequate and timely payment of child support obligations, and accordingly, satisfies the requirements on substantive due process. Similarly, driver's license suspension for child support obligors who are in arrears on their child support obligations is rationally related to the State's interest. Disparate affects on rural Minnesotans do not render the classification unconstitutional. For these reasons, the district court order – in so far as it holds Minnesota Statutes sections 171.30, subdivision 1(j), and 171.186 unconstitutional – should be reversed.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE  
WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that the Brief submitted herein contains 6,944 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 is stated in reliance on Microsoft Word 2003, the word processing system used to prepare this Brief.

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