

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.

---

**REPLY BRIEF OF INTERVENOR MINNESOTA COMMISSIONER  
OF HUMAN SERVICES**

---

ULMANIEC LAW OFFICE PLLC

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

ATTORNEY FOR RESPONDENT

OFFICE OF THE ATTORNEY GENERAL  
STATE OF MINNESOTA

CYNTHIA B. JAHNKE  
Assistant Attorney General  
Atty. Reg. No. 0294858

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1468 (Voice)  
(651) 296-1410 (TTY)

ATTORNEY FOR INTERVENOR  
MINNESOTA COMMISSIONER OF  
HUMAN SERVICES

COUNTY OF SWIFT

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

ATTORNEY FOR  
APPELLANT SWIFT COUNTY

SARAH ASHBURN  
6432 Little Moon Trail  
Casper, Wyoming 82604-3714

*PRO SE* APPELLANT

---

**TABLE OF CONTENTS**

	<b>Page</b>
INTRODUCTION.....	1
ARGUMENT .....	1
I.    Substantive Due Process – Even Under An As Applied Challenge – Provides No Basis For Holding The Prohibition Against Issuing Respondent A Limited Commercial License Unconstitutional. ....	2
A.    The Prohibition On Issuing Respondent A Commercial Driver’s License Is Not Unreasonable Because He Has Every Opportunity Under Existing Law To Have His License Reinstated.....	3
B.    The Prohibition On Issuing Respondent A Limited Commercial Driver’s License Is Rationally Related To Collection Of Child Support From Respondent.....	4
II.   Equal Protection Provides No Basis For Constitutional Relief For This Respondent. ....	5
CONCLUSION .....	6
CERTIFICATE OF COMPLIANCE .....	7

## TABLE OF AUTHORITIES

	Page
<b>FEDERAL CASES</b>	
<i>Brockett v. Spokane Arcades</i> , 472 U.S. 491 (1985) .....	2
<b>STATE CASES</b>	
<i>Blanch v. Suburban Hennepin Regional Park Dist.</i> , 449 N.W.2d 150 (Minn. 1989).....	5
<i>Boutin v. LaFleur</i> , 591 N.W.2d 711 (Minn. 1999).....	2
<i>Sartori v. Harnischfeger Corp.</i> , 432 N.W.2d 448 (Minn. 1988).....	2
<b>STATE STATUTES</b>	
Minn. Stat. § 171.30 .....	4
Minn. Stat. § 171.30, subd. 1(j).....	1, 2, 5, 6
Minn. Stat. § 171.186, subd. 1 .....	1, 5, 6
Minn. Stat. §§ 518A.27-.39.....	1
Minn. Stat. § 518A.39 .....	1, 3
Minn. Stat. §§ 518A.64-.75.....	2
Minn. Stat. § 518A.69 .....	2

## **INTRODUCTION**

Respondent interprets the district court order, which holds certain Minnesota driver's license suspension statutes unconstitutional, as an "as applied" striking of the statutes with respect to Respondent – essentially conceding the constitutionality of the statutes on their face. Respondent fails to establish even the "as applied" standard because Minnesota Statutes provide Respondent an opportunity to immediately 1) enter a written payment agreement that will reinstate his driver's license and resolve his arrears, and 2) seek modification of his child support obligation, making the application of the statutes reasonable even under Respondent's circumstances. Because the law provides a remedy by which Respondent's driver's license and commercial driver's license can be promptly reinstated, the driver's license suspension statutes are constitutional as applied.

## **ARGUMENT**

Respondent argues that Minnesota Statutes sections 171.30, subdivision 1(j), and 171.186, subdivision 1, unconstitutionally deny him a driver's license – and specifically, his class A, B, or C license (hereinafter, "commercial license") – thereby denying him both substantive due process and equal protection. To give Respondent's argument necessary context, a brief review of Minnesota's child support enforcement system, expressed more fully in Intervenor's Brief at pages 4–7, is necessary. Child support obligations are determined after the district court considers statutory factors in Minnesota Statutes sections 518A.27-.39. Once the order is set, the obligor may ask the district court to modify his child support obligation in a number of circumstances including a substantial change in circumstances. Minn. Stat. § 518A.39. Additionally, if

a child support obligor fails to satisfy his child support obligation and the arrears exceed three times the monthly obligation, administrative remedies including driver's license suspension apply. Minn. Stat. §§ 518A.64-.75. An obligor may alleviate these administrative remedies by entering into a written payment agreement and complying with its terms. Minn. Stat. § 518A.69.

An as applied constitutional challenge concedes that a statute may be constitutional in many of its applications, but is not constitutional under the circumstances of a particular case. *Brockett v. Spokane Arcades*, 472 U.S. 491, 502 (1985) (citations omitted).

**I. SUBSTANTIVE DUE PROCESS – EVEN UNDER AN AS APPLIED CHALLENGE – PROVIDES NO BASIS FOR HOLDING THE PROHIBITION AGAINST ISSUING RESPONDENT A LIMITED COMMERCIAL LICENSE UNCONSTITUTIONAL.**

In challenging the prohibition against issuing his commercial driver's license, Respondent states no unique circumstances that rise to the level of a constitutional violation. The rational basis test that applies here requires that 1) the act serve to promote a public purpose, 2) the act not be an unreasonable, arbitrary or capricious interference with a private interest, and 3) the means chosen bears a rational relation to the public purpose sought to be served. *Boutin v. LaFleur*, 591 N.W.2d 711, 714 (Minn. 1999) (quoting *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988)). The legitimacy of the public purpose of Minnesota Statutes section 171.30, subdivision 1(j), is not challenged by the district court or by Respondent.

**A. The Prohibition On Issuing Respondent A Commercial Driver's License Is Not Unreasonable Because He Has Every Opportunity Under Existing Law To Have His License Reinstated.**

The prohibition on issuing Respondent a commercial license is not unreasonable because the law provides Respondent with an effective and readily available remedy to cure his commercial license suspension – he may enter into a written payment agreement with the county child support enforcement office, which will immediately result in reinstatement of his driver's license and, accordingly, his commercial driver's license. Respondent makes no claim that he is without access to the county child support enforcement office that would preclude him in any way from entering into a written payment agreement that would fully restore his driver's license including his commercial license. It is well-documented that Respondent has availed himself of this option numerous times. *Intervenor's Brief*, pp. 7-11.

Similarly, Respondent makes no claim that he is unable to access the district court to seek temporary modification of his child support obligation. Doing so would allow Respondent an opportunity to reduce his monthly obligation and, as a result, further alleviate his current financial hardship and increase his chances of successfully complying with a written payment agreement. Minn. Stat. § 518A.39. Respondent has had, and continues to have, every opportunity to make such a motion but has never availed himself of this option. Memorandum of Law, dated April 4, 2012, p. 1.

Time and time again, Respondent has entered into a written payment agreement and his driver's license has been reinstated. *See Intervenor's Brief*, pp. 7-11. Note that when his driver's license is reinstated, the prohibition on issuance of commercial license

is no longer applicable. Yet, even with his driver's license, Respondent has failed to comply with a written payment agreement for any substantial period of time, usually making no more than one payment during a three month period, or to obtain employment as a commercial truck driver. When Respondent fails to comply with the agreement, it terminates and he again loses his license. *See id.*

Respondent also has the option to seek a limited license – even when he is under suspension – if it is necessary for him to continue employment. Minn. Stat. § 171.30. This option is important should Respondent find employment opportunities that do not require a commercial license yet require him to drive because of his remote location. Respondent offers no reason, no showing of employment opportunities, no plan as to how this court's blanket alleviation of driver's license restrictions would be any more effective in alleviating his current financial hardship than the access he has had to his driver's license during his numerous periods of reinstatement. Without a plan, this court's action is unlikely to effect the change in circumstance Respondent claims – a change he has not been able to accomplish with the same restrictions lifted many times.

**B. The Prohibition On Issuing Respondent A Limited Commercial Driver's License Is Rationally Related To Collection Of Child Support From Respondent.**

The prohibition on issuing Respondent a commercial driver's license, even in Respondent's case, is rationally related to the State's purpose of ensuring that Respondent makes timely child support payments. In the event that Respondent does enter a written payment agreement and secure a commercial driving job, the prospect that Respondent may again lose his commercial license if he fails to pay child support as

required by the agreement is encouragement to continue making payments rather than diverting his earnings to other endeavors. Respondent's circumstances are not unique in this respect and do not provide a basis for holding Minnesota Statutes section 171.30, subdivision 1(j), unconstitutional as it applies to Respondent.

Respondent asks for the opportunity to drive as necessary for employment and, most preferably, drive commercially so that he can pay his child support. The remedies Respondent seeks are all available to him without holding Minnesota laws unconstitutional as applied. Where the remedies are available under the law, the court ought not use the exceptional remedy of striking down statutes as unconstitutional. *See Blanch v. Suburban Hennepin Regional Park Dist.*, 449 N.W.2d 150, 157 (Minn. 1989).

## **II. EQUAL PROTECTION PROVIDES NO BASIS FOR CONSTITUTIONAL RELIEF FOR THIS RESPONDENT.**

For purposes of regaining his class D driver's license, Respondent is no less favorably positioned than less-isolated Minnesota child support obligors. Respondent makes no claim that he is without access to the district court or to county child support enforcement authorities to establish a workable child support obligation and written payment agreement. Accordingly, the law provides Respondent equal access to remedies available to other child support obligors who fail to pay child support. Minnesota Statutes section 171.186, subdivision 1, ought not be struck down as unconstitutional under the principles of equal protection in Respondent's case as a short-cut to reinstating his driver's license.

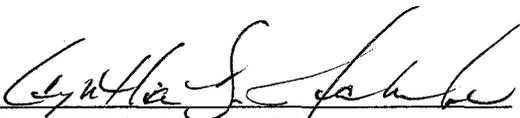
## CONCLUSION

For these reasons, Respondent's claims that Minnesota Statutes sections 171.30, subdivision 1(j), and 171.186, subdivision 1, are unconstitutional as applied under principles of substantive due process and equal protection should be rejected.

Dated: December 4, 2012.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota

  
A handwritten signature in cursive script, appearing to read "Cynthia B. Jahnke", is written over a horizontal line.

CYNTHIA B. JAHNKE  
Assistant Attorney General  
Atty. Reg. No. 0294858

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1468 (Voice)

ATTORNEY FOR THE  
MINNESOTA COMMISSIONER  
OF HUMAN SERVICES

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

The undersigned certifies that the Brief submitted herein contains 1,307 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.

OFFICE OF THE ATTORNEY GENERAL  
State of Minnesota



CYNTHIA B. JAHNKE  
Assistant Attorney General  
Atty. Reg. No. 0294858

445 Minnesota Street, Suite 1100  
St. Paul, Minnesota 55101-2128  
(651) 757-1468 (Voice)  
(651) 296-1410 (TTY)

ATTORNEY FOR THE  
MINNESOTA COMMISSIONER  
OF HUMAN SERVICES