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Revoking the Driving Privileges of High School Drop-Outs

I. INTRODUCTION

Out of growing concern for the number of high school drop-outs, several states have enacted license revocation legislation.¹ In general, a license revocation statute requires the suspension or revocation of the driver's license of any student who drops out of high school without good cause.²

*Means v. Sidiropolis*³ gave the Supreme Court of West Virginia the opportunity to hear one of the first challenges to a license revocation statute. In that case, Gregory Allen Means, seventeen, dropped-out of high school in order to support his pregnant wife.⁴ Pursuant to West Virginia's revocation statute, Means' driver's license was revoked.⁵ Although the West Virginia statute provided an exception for a student who had withdrawn due to "circumstances beyond [the student's] control,"⁶ Means apparently did not fall into this exception. The court, with two justices dissenting, sustained the statute's overall constitutionality but reversed that part of the lower court's opinion which held that the

1. States which have enacted license revocation laws include: Kentucky, Louisiana, Tennessee and West Virginia. The legislatures of several other states are currently considering similar legislation.

2. Although not included in the present discussion, West Virginia's license revocation statute also prohibits the issuance of a driver's license to students who are not making satisfactory progress in school. See W. VA. CODE § 18-8-11(a)(1) (1988).

3. 401 S.E.2d 447 (W. Va. 1990).

4. By the time the appeal was heard by the West Virginia Supreme Court, Gregory Means had reached the age of eighteen, thus outside of the statute's reach. *Id.* at 449.

5. The West Virginia provision reads:

Whenever a student sixteen years of age or older withdraws from school . . . the attendance director or chief administrator shall notify the department of motor vehicles of such withdrawal. Within five days of receipt of such notice, the department . . . shall send notice to the licensee that the license will be suspended . . . unless documentation [of enrollment] . . . is received by the department.

W. VA. CODE § 18-8-11(b) (1988).

6. *Id.* § 18-8-11(d).

statute did not violate procedural due process.⁷

The *Means* decision furnishes an interpretive template with which this article will examine the constitutional issues raised when a student's driver's license is revoked for dropping-out of school. In addition, the author will suggest a means by which state legislators may draft effective, constitutional license revocation statutes.

II. DUE PROCESS

The opinion in *Means* began by acknowledging that the revocation of a driver's license "implicates due process considerations."⁸ Indeed, regardless of whether a state denominates a driver's license as a "privilege" or "right," it is nevertheless a protected "entitlement interest" for due process purposes.⁹

Recognizing that the suspension of a driver's license implicates due process is but part of the analysis; the axiomatic question remains: What process is due to protect against unconstitutional government regulation? In cases not involving suspect classifications or fundamental rights issues, procedural due process requires that a court consider the following factors:

[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.¹⁰

The United States Supreme Court, in *Dixon v. Love*,¹¹ cited these three "*Eldridge* factors" when it upheld an Illinois statute authorizing the revocation of driver's licenses

7. *Means*, 401 S.E.2d at 450.

8. *Id.* (citing *Mackey v. Montrym*, 443 U.S. 1 (1979)).

9. See *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); accord *Bell v. Burson*, 402 U.S. 535, 539 (1970) (whether considered a privilege or a right, license revocation legislation must comport with due process); see also LAWRENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 10-9, at 686 (2d ed. 1988) [hereinafter, TRIBE].

10. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

11. *Dixon v. Love*, 431 U.S. 105, 112 (1976) (per curiam).

without a prior hearing.¹² Under the statute, the Illinois Secretary of State was given discretionary authority to revoke or suspend the license of any driver who fell into one of eighteen categories. In applying the *Eldridge* test, the Court held that since the statute contained special provisions for hardship and that the "risk of an erroneous deprivation in the absence of a prior hearing [was] not great," there was no reason to depart from the "established doctrine" of allowing "less than an evidentiary hearing . . . prior to an adverse administrative action."¹³

If the *Dixon* case demonstrates the manner in which the *Eldridge* test is applied, how may the case be reconciled with the Court's earlier holding in *Bell v. Burson*?¹⁴ In *Bell*, the Court invalidated, on due process grounds, a Georgia statute which mandatorily suspended the driver's license of motorists who were involved in injury accidents. The statute mandated the revocation if the affected motorist was unable to post a bond for the amount of potential damages incurred by injured parties. The statute in *Bell* provided for an administrative hearing, but of a statutorily limited scope. Significantly, the issue of potential liability could not be decided at the hearing.¹⁵

The Supreme Court held that because liability was an inseparable part of the state's statutory scheme, the inability of the administrative hearing to consider the question of liability amounted to a denial of due process. In the Court's opinion, due process required two things of the administrative hearing. First, the hearing must adjudicate the issue of liability prior to revoking a motorist's license. Second, the hearing is required to be one which would be both "meaningful" and "appropriate to the nature of the case."¹⁶ As it was, the administrative hearing provided for by the Georgia legislature was neither meaningful, in that it could not consider the core issue of liability, nor appropriate to the nature of the case, for precisely the same reason.

The Court in *Dixon* "fully" distinguished *Bell* on the

12. ILL. REV. STAT. ch. 95½, § 6-206(a) (1975).

13. *Dixon*, 431 U.S. at 113 (citing *Eldridge*, 424 U.S. at 343).

14. *Bell v. Burson*, 402 U.S. 535 (1970).

15. See *id.* at 538.

16. *Id.* at 542 (quoting *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 313 (1950)).

ground that the statute in *Dixon* was directed toward an "important public interest in safety on the roads and highways, and in prompt removal of a safety hazard."¹⁷ By contrast, the statute invalidated in *Bell* was presumably directed toward ensuring that parties injured by negligent drivers would be compensated.

The following rule can be extracted from the *Bell* and *Dixon* decisions: Where a license is to be revoked pursuant to a statutory scheme, the focus of which (whether explicit or implicit) is on the existence of a particular factor, the licensee must be afforded a hearing, prior to revocation, which has the power to decide that issue. The only exception to this rule arises when a public safety interest is involved.

The West Virginia statute which came before the court in *Means* could not possibly pass muster under this rule. Gregory Means was not provided a hearing to determine whether his withdrawal from school was for reasons "beyond his control."¹⁸ Moreover, a reduction of the number of high school drop-outs, not any public safety interest, was the primary motivation behind the statute. However, this apparent failure of due process does not require the conclusion that legislation of a similar nature is doomed; there are often more ways than one to sustain an act.

III. AVOIDING THE DUE PROCESS ANALYSIS

In *Means*, the majority tried to hedge its conclusion that a state may revoke or suspend student driver's licenses for a legitimate legislative end (albeit one wholly unrelated to public safety). The court intimated that the due process analysis might not even be necessary.¹⁹ Whereas the majority conceded that *issued* licenses are protectable entitlements, nothing in the decision suggests that the majority considered *probationary* licenses to be of the same genre.

The court's opinion began: "[I]t is important to point out that persons between the ages of sixteen and eighteen are not entitled to regular, unconditional driver's licenses. Rath-

17. *Dixon*, 431 U.S. at 114.

18. See W. VA. CODE § 18-8-11(d).

19. See *Means*, 401 S.E.2d at 452.

er, under [the statute] a person under the age of eighteen is entitled only to a 'junior' or 'probationary' driver's license."²⁰ Indeed, this view appears consistent with the bulk of traditional thought.²¹ Whether a protectable entitlement exists depends upon the wording and construction of the particular statute which creates the benefit and upon the "pertinent understanding between government and individuals."²² Thus when a statute bestows a benefit which creates the *reasonable expectation* that such benefit will continue, an "entitlement" is said to be created. Conversely, when a benefit is bestowed under clearly understood terms or under conditions which avoid the creation of an expectancy, no property interest is formed.²³ In context, when a driver receives his or her license with a clear understanding that such license is only *probationary* or *conditional*, the state may regulate or restrict its use without fully comporting with traditional due process requirements.²⁴ The United

20. *Id.*

21. See *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth*, the terms of employment between a state university and a professor were such that the university retained the right not to renew the professor's contract without giving a reason for its decision. The Court held that the professor had no protectable property interest since the contract could not have engendered an expectation that it would be renewed or that the university's exercise of its option not to renew would be based on good cause. See *id.* at 578; see also NOWAK, ET AL., CONSTITUTIONAL LAW 547 (2d ed. 1983) [hereinafter NOWAK]. But at least one commentator has already criticized the *Means* opinion, maintaining that the majority in *Means* fostered a "profound misconception concerning the nature of licenses and benefits . . ." Charles A. Reich, *The Individual Sector*, 100 YALE L.J. 1408 (1991).

Nevertheless, the majority in *Means* did not go so far as to say that revoking the privilege of a probationary license does not require due process.

22. TRIBE, *supra* note 9.

23. Nowak put it thus:

The Court will recognize interests in government benefits as constitutional[ly protectable] "property" where a person can be deemed to be "entitled" to them. Thus, the applicable federal, state or local law which governs the dispensation of the benefit must define the interest in such a way that the individual should continue to [expect to] receive it under the terms of the law.

See NOWAK, *supra* note 21 at 547. Are there any limits to this? Nowak himself suggested:

[I]f a town refused to accept a particular child into its primary educational system, even though the child appeared to qualify under applicable law, it is difficult to believe that the concept of . . . entitlement would eliminate the requirement of a fair procedure to determine the basis for this action.

Id. But cf. *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975) (entitlement to education implicates due process).

24. However, this is not true in the case of entitlements which create a depen-

States Supreme Court has only required clarity in understanding as touching the terms or conditions placed upon state-created benefits.²⁵

At a minimum, to avoid a procedural due process challenge to their license revocation legislation, states should make it clear at issuance that the license is both probationary and conditional, and emphasize that the condition placed upon the license is the student's continued enrollment in school.²⁶

IV. PROBLEMS WITH THE EQUAL PROTECTION CLAUSE

Unfortunately, the Due Process Clause is not the only constitutional hoop through which a legislative act must jump. Statutes of this type are often ripe with equal protection issues. When a statute burdens a specific class of individuals "courts must reach and determine the question whether the classifications drawn in [the] statute are reasonable in light of its purpose."²⁷ Reasonableness, in turn, depends on whether or not the class burdened by the statute is one "*rationaly related* to furthering a legitimate state interest."²⁸

License revocation statutes affect only a particular class of individuals: student drivers under the age of eighteen. Regardless of educational background, drivers over eighteen are not burdened under these laws. Assuming that probationary driver's licenses *are* protectable property interests, would it violate the Equal Protection Clause of the Fourteenth Amendment to burden current student drivers, but leave untouched those drivers who dropped-out decades earlier?

dent relationship with the government regarding basic needs. In such circumstances, an opportunity to be heard must be afforded. See *TRIBE supra* at note 9, 686; see also *United States Dep't of Agric. v. Murrey*, 413 U.S. 508 (1973).

25. See *Board of Regents v. Roth*, 408 U.S. 564 (1972). It remains to be seen, however, whether one can argue that a sixteen-year-old who receives a license—even a probationary license—fully understands that the license may be revoked for reasons wholly unrelated to public safety.

26. In those few states which have license revocation statutes, most require proof of enrollment before issuance of the first license. This undoubtedly goes a long way towards instilling upon young drivers the conditional nature of the license. *E.g.*, W. VA. CODE § 18-8-11(a) (1988).

27. *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964).

28. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976) (*per curiam*) (*italics added*).

Equal protection's "rationality standard" requires only that states have a legitimate interest in creating a particular classification. Historically, the courts have given great deference to most state legislative classifications. Discussing the rationality standard, the *Means* majority cited *McGowan v. Maryland*.²⁹ The Supreme Court in *McGowan* held that the rationality standard only requires that a legislative classification be founded on a set of facts which "reasonably may be conceived to justify it."³⁰ In the case of license revocation statutes, the obvious interest served by the law is a reduction in the number of high school drop-outs. Whether such statutes are effective in attaining this goal can be questioned, but few would argue that the goal itself is illegitimate. It also goes without saying that such a statute must necessarily burden high school students. Because of the degree of judicial deference afforded legislative classifications in cases like *McGowan* and *DeCastro*,³¹ it is not surprising that West Virginia's statute, reviewed in *Means*, experienced no difficulty under the Equal Protection Clause.

V. THE VOID FOR VAGUENESS DOCTRINE AND STATUTORY EXCEPTIONS

The Constitution requires that a statute provide a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."³² Admittedly, this measure of vagueness is itself somewhat vague. To make matters worse, courts have often used the vagueness doctrine to curb legislation for reasons other than fair notice.³³ With license revocation statutes, the question

29. *Means*, 401 S.E.2d at 451 n.2. The court in *Means* considered *McGowan's* holding germane to both its equal protection and substantive due process inquiries. See generally *McGowan v. Maryland*, 366 U.S. 420 (1961).

30. *McGowan*, 366 U.S. at 426.

31. In *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976), the Court held that, for a classification to fall to an equal protection challenge, there is a required showing that the classification is "clearly wrong, [or] a display of arbitrary power" See also *Railway Express v. New York* 336 U.S. 106 (1949). "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Id.* at 110.

32. *Jordan v. DeGeorge*, 341 U.S. 223, 231-32 (1951), quoted in GERALD GUNTHER, CONSTITUTIONAL LAW 1156-57 n.20 (11th ed. 1985) [hereinafter GUNTHER].

33. GUNTHER, *supra* note 32, at 1157 n.20 (quoting Note, "The Void-For-Vagueness Doctrine in the Supreme Court," 109 U. PA. L. REV. 67 (1960)).

of vagueness turns on the degree of specificity found in the language of the statutory exceptions. The *Means* dissent, lead by Justice McHugh, attacked the inexplicit language in West Virginia's statutory exceptions, contending: "It is the general principle of statutory law that a statute must be definite to be valid."³⁴

Notwithstanding McHugh's fervor, his bald statement did little to clarify what the standard should be. McHugh did say, however, that the vagueness of a statute depends upon the *type* of statute involved.³⁵ Accordingly, he noted that under the conventional rule, the void-for-vagueness doctrine should be more forgiving when applied to economic regulation as opposed to those statutes which impose criminal penalties. Justice McHugh concluded: "Certainly then, the statute at issue in this case . . . would be subject to more scrutiny under the vagueness doctrine than a statute involving economic matters"³⁶

McHugh's principal complaint was directed toward the statute's "beyond [the student's] control" exception.³⁷ The West Virginia legislature left the availability of the exception to the exclusive, unreviewable discretion of school officials. In *Hague v. CIO*,³⁸ the Supreme Court confronted a similar vagueness issue, albeit in a more traditional sense. In *Hague*, the Court invalidated, on vagueness grounds, a city ordinance which gave wide discretion to city authorities in issuing permits for public assembly. The Court held that such discretionary authority would provide city officials the wherewithal to use "mere opinion" as "an instrument of arbitrary suppression."³⁹ This conclusion was aided, in part, by the fact that the city ordinance in *Hague* was obviously

One commentator has expressed dissatisfaction with the void-for-vagueness doctrine, and called for its demise: "[T]he Court should determine the case on its merits in relation to established constitutional guarantees, rather than evade constitutional issues on the ground of vagueness." Sanford H. Kadish, *Methodology and Criteria in Due Process Adjudication: A Survey and Criteria*, in SELECTED ESSAYS ON CONSTITUTIONAL LAW 522, 595 n.272 (1963) (quoting Note, *Void For Vagueness: An Escape From Statutory Interpretation*, 23 Ind. L. J. 272, 285 (1948)).

34. *Means*, 401 S.E.2d at 455 (McHugh, J. dissenting) (citing 16A AM. JUR. 2D *Constitutional Law* § 818 (1979)).

35. *See id.* at 455-56 (citing *Hartsock-Flesher Candy Co. v. Whelling Wholesale Grocery Co.*, 328 S.E.2d 144 (W. Va. 1984)).

36. *Id.* at 456.

37. *See id.*

38. 307 U.S. 496 (1939).

39. *Id.* at 516.

being used by city officials as an instrument to prevent the circulation of pro-union pamphlets.

It is not implausible that a license revocation statute, which places discretion solely in the hands of school officials, could be subjected to similar discriminatory application. Such unreviewable discretion ought not be given to school officials to determine whether a student has dropped out of school "due to circumstances beyond his or her control," or "for good cause."⁴⁰

A few examples by way of illustration are in order. Imagine a case in which a student, sixteen, quits school to work in order to pay for his girlfriend's abortion. Will the School Superintendent's discretion be affected by her personal views on abortion? Suppose instead, a seventeen-year-old drops out to marry his pregnant girlfriend but needs full-time employment to support her and the child? (The *Means* case) Perhaps an equally difficult question arises when a student drops out to pursue a career such as acting, or to join the professional tennis circuit. Does the potential for a six-figure income constitute "good cause?" Should such a student (who, despite an initially rosy outlook, may end up completely impecunious) be favored over one who quits school to go fishing?

In court, statutes which place discretionary exemptions solely in the hands of school officials will not stand up as well as those which employ exceptions in the form of a "laundry list." Nor will such legislation be congenial to judicial scrutiny when the only court involvement is tied to a constitutional challenge. When addressing the problem of vagueness, the legislatures in each state must weigh the benefits and burdens of these two alternatives.

A. *Return to Entitlement Analysis*

Perhaps Justice McHugh was unjustified in implying that West Virginia's revocation statute imposes a punitive sanction,⁴¹ thereby requiring a more rigorous vagueness analysis. McHugh's argument for a higher standard necessarily hinges on the notion that a probationary driver's

40. *E.g.*, W. VA. CODE § 18-8-11(d) (1988) (exception to statute phrased as "circumstances beyond student's control"); *see also* LA. REV. STAT. ANN. § 32:431 (West Supp. 1991) (standard for exemption listed as "acceptable circumstances").

41. *See Means*, 401 S.E.2d at 455 (McHugh, J. dissenting).

license is a protectable entitlement. Indeed, an anomaly would certainly exist if West Virginia's "criminal" statute penalized an individual by taking away a right which did not exist or by confiscating property which the defendant did not own. In other words, is McHugh wasting ink by attacking as unconstitutionally vague a statute which infringes on a mere revokable privilege? Were the majority in *Means* given a second chance to counter Justice McHugh's assertion, it might well emphasize that West Virginia's statute imposes no penalty, but simply sets forth the conditions that accompany the issuance of every probationary license. Again, this argument depends upon the "understanding" that existed between the Department of Motor Vehicles and the student licensee at the time of issuance. Where conditions imposed on a probationary driver's license are deemed perfunctory or "vague" so as to give a student licensee the justified expectation that the license is irrevocable, the statute will likely encounter obstacles in its enforcement.

VI. DRAFTING THE PERFECT STATUTE

There is no "perfect" statute and license revocation statutes are no exception. States that wish to enact such laws must always balance the risks involved. Defending a statute in court is never cheap. Moreover, those jurisdictions which have poor urban areas may not see a lot of benefit, since fewer students living in crowded, inner-city wards have access to an automobile. Revoking the driver's license of a youth who customarily walks or rides the subway will not have a significant effect. On the other hand, in those cases in which a statute proves effective, the results will likely be dramatic.

From the preceding discussion, certain guidelines may comfortably be set. First, the importance of avoiding the creation of an entitlement interest cannot be underestimated. Conditions affecting probationary licenses need to be made clear from first issuance. Second, notice should be given prior to revocation.⁴² Third, an opportunity to appeal

42. The Tennessee revocation statute, TENN. CODE. ANN. § 49-6-3017 (1988), requires that notice be sent *prior* to the suspension of the license. In Louisiana, LA. REV. STAT. ANN. § 32:431 (West Supp. 1991) also provides for notice to be sent prior to the actual cancellation of the student's driver's license, but explicitly states that "[t]he cancellation shall be imposed without hearing." See *id.*, § 32:431B(2).

or assert an exemption should be had before officials who are empowered to adjudicate all of the operative elements and exceptions listed in the statute. Finally, exceptions and exemptions should be phrased in language which does not create a doubt as to whom they will benefit. As stated earlier, such exceptions should be laundry-listed to avoid confusion.

VII. CONCLUSION

Innovative legislation always brings mixed results. Because there is no fool-proof guide through the judicial landscape, legislatures often resort to using a degree of "ouija" analysis in drafting law. Nevertheless, by adhering to the guidelines diagrammed above, states should have a better chance of drafting legislation which will both withstand constitutional challenge and assist educators in improving the graduation rate of high school students.

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