

Article

**Why Ms. Daisy Was Not Allowed To Drive Herself:
An Examination Of The Need For Federally
Mandated Driver’s License Renewal
Procedures For Elderly Drivers**

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I. INTRODUCTION

On June 13, 2012, 89-year-old Margaret Tomascik was speeding

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when she failed to stop at a stop sign.¹ She proceeded to strike a passing vehicle, jump a curb, and crash onto a construction site.² Margaret Tomascik hit two individuals, Thomas Cooney and Joseph Rubino, who were working on the construction site.³ After severely injuring Thomas Cooney, and nearly killing Joseph Rubino, it remains unknown if Margaret Tomascik was charged with any driving offenses.⁴

The regulation surrounding driver's license renewal reform for elderly drivers is a growing concern.⁵ Varying solutions have been proposed or implemented regarding this issue.⁶ However, regulation across the country remains inconsistent, as states have failed to uniformly address the dangers associated with elderly drivers and their diminishing capacity to operate a motor vehicle.⁷ When the aging process begins, sensory functions that are specifically related to one's driving skills and driving ability start to decline, namely: vision, hearing, reaction time, and cognitive and motor abilities.⁸ Also, the population of elderly drivers is expected to grow over the years.⁹ Projections indicate that by 2025 those aged sixty-five and older will account for 18.2% of the population and by 2050 they will account for 20.6% of the population.¹⁰ While not all those who are categorically deemed elderly drivers necessarily lack the capability to operate a motor vehicle, there are physiological and cognitive changes associated with aging that cause problems for elderly drivers.¹¹ Experts find that an elderly driver's ability to observe and react to potential road hazards is drastically diminished because elderly individuals have visual impairments, such as reduced peripheral vision and decreased

1. See Edward Lewis, *Car Jumps Curb, Hits Workers*, THE TIMES LEADER June 14, 2012, http://issuu.com/timesleaderonline/docs/all_tl_06-14-2012.

2. *Id.*

3. *See id.*

4. *See id.*

5. See Garrick F.D. Aplin, *Elderly Drivers: Balancing Public Safety with Permanent Personal Mobility*, 87 WASH. U. L. REV. 379, 381 (2009).

6. See generally *Older Drivers*, INS. INST. FOR HIGHWAY SAFETY, HIGHWAY LOSS DATA INST. (March, 2014), <http://www.iihs.org/iihs/topics/laws/olderdrivers> [hereinafter *Older Drivers*] (observing regulation of renewal procedures on a state-by-state basis).

7. *See id.*

8. Ari N. Houser, *Older Drivers and Automobile Safety*, AARP PUB. POLICY INST. (Aug. 2005), http://www.aarp.org/home-garden/livable-communities/info-2005/fs51r_drivers.html.

9. See Katherine Mikel, *Drivers' Licenses and Age Limits: Imposition of Driving Restrictions on Elderly Drivers*, 9 MARQ. ELDER'S ADVISOR 359, 360 (2008) (noting that elderly drivers are the fastest growing segment of the population).

10. Aplin, *supra* note 5, at 382.

11. See KATHERINE SIGGERUD, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-413, *OLDER DRIVER SAFETY: KNOWLEDGE SHARING SHOULD HELP STATES PREPARE FOR INCREASE IN OLDER DRIVER POPULATION* 1, 5 (2007) (describing how physical and cognitive declines affect driving ability).

night vision.¹² Indeed, drivers aged seventy-five and older require three times more light than twenty-five year old drivers to see well at night.¹³ In addition to diminished vision, an elderly person's reduced cognitive function adversely affects his or her ability to react.¹⁴ Driving a vehicle is a complex activity and requires an acute ability to respond to traffic and road conditions.¹⁵ Because elderly persons experience difficulty in distinguishing and processing what they observe – resulting in delayed response time – they are more susceptible to errors when driving.¹⁶ The risks posed by allowing unfit elderly drivers to remain on the road are of timely concern for the nation as a result of the aging baby boomer generation.¹⁷ If the aforementioned issue continues to be ignored by the federal government, the public will be exposed to a greater risk of harm from an increasing population of elderly drivers with diminished ability to drive safely.¹⁸

This Comment argues that the federal government should implement licensing renewal standards to effectively protect the public from the growing population of elderly drivers. Part II reviews existing state statutes pertaining to license renewal procedures for elderly drivers and discusses the constitutionality of such procedures. Part III analyzes the federal government's ability to enact federally mandated licensing procedures, including the constitutionality of enacting such regulations. Part IV advances policy arguments supporting the implementation of federally mandated driving prerequisites for elderly drivers. Finally, Part V concludes that, although states have policing power, federal supremacy – made viable through the Commerce Clause – establishes a constitutionally viable basis supporting a federally mandated licensing procedure for elderly drivers.

12. Pat Martin, *Who Will Take The Keys From Grandpa?*, 21 T.M. COOLEY L. REV. 257, 261 (2004) (citing Bob Trebilcock, *Who's the Most Dangerous Driver on the Road?*, LADIES HOME J., Nov. 2003, at 122, 124, available at http://stuff.mit.edu/afs/athena/dept/agelab/news_events/pdfs/ladieshomejournalnov.pdf (emphasizing that vision begins to decline progressively at age 50)).

13. *Id.*

14. See Aplin, *supra* note 5, at 386-88.

15. *Id.* at 385.

16. See *id.* at 386-88.

17. See U.S. DEP'T OF TRANSP., SAFE MOBILITY FOR A MATURING SOCIETY: CHALLENGES AND OPPORTUNITIES 1, 9 (Nov. 2003), <http://ntl.bts.gov/lib/24000/24700/24703/SafeMobility.pdf> [hereinafter SAFE MOBILITY] (recognizing the necessity of taking proactive measures to enhance roadway safety as a result of the growing number of elderly drivers)

18. See *id.*

II. BACKGROUND

A. EVIDENCE SUPPORTING THE FEDERALIZATION OF DRIVING STANDARDS FOR THE ELDERLY

The United States Department of Transportation (“USDOT”) reported that in the year 2000 alone roughly 6,200 drivers over the age of sixty-five were involved in fatal collisions and this number is projected to at least double by the year 2030.¹⁹ In 2003, the National Highway Traffic Safety Administration (“NHTSA”) released information indicating that elderly drivers play a substantial role in creating unsafe roadways.²⁰ In addition, federal crash statistics have shown that elderly drivers are involved in three fatal accidents a day.²¹ The USDOT has recognized the growing problems associated with elderly drivers and called for programs that create safer roadways, walkways, and automobiles, and more accessible public transportation systems.²² However, USDOT has only provided suggestive measures rather than proactive means.²³

B. CURRENT STATUTORY PROVISIONS FOR DRIVER'S LICENSING RENEWAL FOR THE ELDERLY

Renewal procedures for elderly drivers vary considerably across the United States.²⁴ The regular license renewal period ranges from four to ten years, and twenty states have accelerated renewal procedures for elderly drivers.²⁵ However, the majority of states have failed to institute renewal procedures particular to elderly drivers.²⁶ Remarkably, in Tennessee, once drivers reach the age of sixty-five, they are issued a perpetual license with no expiration date.²⁷ In addition, a Tennessee elder's license to drive will only be revoked if the driver is involved in a fatal collision.²⁸ Not surprisingly, Tennessee is ranked sixth highest in acci-

19. See *SAFE MOBILITY*, *supra* note 17, at 4.

20. See Thomas M. Granda & Shirley Thompson, *The Older Driver Comes of Age*, 69 *PUBLIC ROADS*, no. 4, Jan. 2006, available at <http://www.fhwa.dot.gov/publications/publicroads/06jan/04.cfm>.

21. Robert Davis & Anthony DeBarros, *Older, Dangerous Drivers a Growing Problem*, *USA TODAY* (May 2, 2007, 2:31 PM), http://usatoday30.usatoday.com/news/nation/2007-05-02-older-drivers-usat1a_N.htm.

22. See *SAFE MOBILITY*, *supra* note 17, at vi.

23. See *id.*

24. See *Older Drivers*, *supra* note 6 (describing state-by-state regulation of renewal procedures through the implementation of “special provisions” for aged drivers).

25. *Id.*

26. *Id.*

27. *Id.* at n.13.

28. Margaret F. Brinig, *The Public Choice of Driving Competence Regulations*, 21 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 405, 416 (2007).

dents that include drivers over the age of sixty-four.²⁹

A number of states have adopted special licensing renewal provisions for elderly drivers and these regulations vary widely by jurisdiction.³⁰ As part of their renewal procedures, several states require vision testing for older drivers.³¹ Hawaii, New York, and South Carolina have implemented more restrictive vision testing standards based on a specified field of vision test.³² Notably, Illinois has implemented the most stringent renewal procedures for elderly drivers.³³ Not only has Illinois accelerated the licensing renewal period for drivers over eighty-one, the state also requires that drivers aged seventy-five and older undergo mandatory on-road testing.³⁴ Similar to Illinois, New Mexico requires annual license renewal for drivers seventy-five and older.³⁵ Additionally, California, Massachusetts, and Texas, among other states, require in-person license renewal for drivers beginning between the ages of sixty-nine and seventy-nine.³⁶ Markedly, Washington, D.C. requires that drivers seventy years of age and older bring a doctor's certification verifying their ability to safely operate a vehicle.³⁷

Taking an active governmental role in combating harms created by unregulated elderly drivers addresses a compelling concern of injuries that are preventable. By following several of the states' models of regulation for driver's license renewal procedures for elderly drivers, the formulation of a federal uniform code would benefit those on the road by implementing active monitoring of elderly drivers. The most notable state regulations include: Illinois' required on-road test for drivers seventy-five and older; New Mexico's annual license renewal for drivers seventy-five and older; and Washington, D.C.'s medical clearance requirement for drivers seventy and older. Including the aforementioned provisions in a federal uniform code of driver's license renewal procedures for elderly drivers would create a mandate that is founded on legally permissible grounds, as upheld by the states, and includes viable safety enhancements that serve as safeguards against potential harm.

In *Yanulavich*, the New York Supreme Court affirmed a decision that revoked an 80-year-old man's driver's license after he struck a flag

29. *Id.*

30. See *Older Drivers*, *supra* note 6.

31. See *Brinig*, *supra* note 28, at 414; *Older Drivers*, *supra* note 6.

32. See *Brinig*, *supra* note 28, at 414 n.49 (noting that 20/40 acuity and 140-degree vision standards require a driver to have 20/40 corrected vision in at least one eye).

33. See *Older Drivers*, *supra* note 6.

34. See 625 ILL. COMP. STAT. 5/6-115 (2012); *Older Drivers*, *supra* note 7.

35. See *Older Drivers*, *supra* note 6.

36. *Id.*

37. *Id.*

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person while operating a motor vehicle.³⁸ The court held that the Department of Motor Vehicles (“DMV”) had reasonable grounds to require on-road re-examination given that the elderly driver suffered from identified physical handicaps.³⁹ The court further held that the DMV had the discretionary power to revoke the elderly man’s driver’s license because he was not qualified to drive, and he posed a threat to others.⁴⁰

C. CONSTITUTIONALITY OF FEDERALLY REGULATED DRIVING LAWS

The powers of Congress are enumerated in the Constitution to delineate the authoritative capacity of Congress.⁴¹ Not only does Congress have the authority to formulate and implement legislation, but it also has the authority to incentivize regulatory means and regulate commercial transactions through powers granted under the Taxing and Spending Clause and Commerce Clause.⁴² It is through authorization granted by the aforementioned powers that Congress can effectively carry out its duty to foster and protect the nation from harm on the roadways.

1. *Congressional Authority Granted Under the Spending Power*

Under the Spending Power, Congress has the authority to tax and spend for the general welfare of the nation.⁴³ Also under the Spending Power, Congress may conditionally restrict a state’s receipt of federal funding based on non-compliance with a federal requirement.⁴⁴ However, Congress must allocate conditional funding unambiguously so that states and affected parties are informed of their choices and are aware of the consequences of noncompliance.⁴⁵ Conditional spending must also relate to a national interest and may not be excessively coercive.⁴⁶

Under Congress’ Spending Power, Congress has the ability to regulate the growing population of elderly drivers because this group of drivers is jeopardizing the welfare and safety of the general public. In *United States v. Butler*, it was contended that an Act authorizing the setting of limits on the production of certain crops and the imposition of taxes on

38. *Yanulavich v. Appeals Bd. of Admin. Adjudication Bureau of N.Y. State Dep’t of Motor Vehicles*, 767 N.Y.S.2d 528, 529 (App. Div. 2003) (affirming the dismissal of an elderly person’s driver’s license after failing an on-road re-examination).

39. *Id.* at 529-30 (noting that “adequate eyesight, knowledge of the fundamental rules of the road and acceptable skill in operating a vehicle” are basic qualifications for a driver’s license).

40. *See id.* at 530.

41. U.S. CONST. art. I, § 8.

42. *Id.*

43. U.S. CONST. art. I, § 8, cl. 1

44. *See* Jesse H. Choper, *The Supreme Court and Unconstitutional Conditions: Federalism and Individual Rights*, 4 CORNELL J.L. & PUB. POL’Y 460, 464-65 (1995).

45. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

46. *See id.* at 207-11.

crops produced in excess of the set limits was unconstitutional.⁴⁷ The Court held that under the Constitution, Congress is not limited in its ability to authorize the allocation of public funds for public purposes.⁴⁸

2. *Congressional Authority Granted Under the Commerce Clause*

Under the Commerce Clause, Congress has the exclusive power to oversee and regulate trade with foreign countries and among the states.⁴⁹ Pursuant to modern Commerce Clause jurisprudence, Congress may regulate the channels and instrumentalities of persons in, and activities substantially related to, interstate commerce.⁵⁰ This regulatory power enables Congress to ensure that the flow of interstate commerce is free from local restraints imposed by the states and to eliminate differences between the states.⁵¹ The Commerce Clause also empowers Congress to exercise its control over activities that are intrastate in nature, but have a substantial effect on interstate commerce.⁵²

The Commerce Clause further authorizes Congress to implement a federally mandated code of license renewal procedures for elderly drivers. In *South Dakota v. Dole*, the Court executed its ability to condition federal funding by requiring compliance with federal statutory and administrative directives.⁵³ The Court held that Congress had authority under the Spending Power to enact legislation directing the Secretary of Transportation to withhold a percentage of federal highway funds from states who allowed anyone under the age of twenty-one to lawfully purchase or consume alcohol.⁵⁴ The Court justified its holding on the basis that the varied legal drinking ages in the respective states created an interstate problem that invoked national concern.⁵⁵

3. *Constitutional Challenges to Laws under the Equal Protection Clause*

Over the years, the Supreme Court has developed three levels of review under the Equal Protection Clause.⁵⁶ Historically, the Court fa-

47. See *United States v. Butler*, 297 U.S. 1, 57 (1936).

48. See *id.* at 64-65 (emphasizing that Congress' powers are not confined to the explicit verbiage found in Constitutional provisions).

49. U.S. CONST. art. I, § 8, cl. 3.

50. *United States v. Morrison*, 529 U.S. 598, 609 (2000).

51. See *id.* at 611 (identifying that Congress regulates in order to "build a stable national economy").

52. *Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (citing *Wickard v. Filburn*, 317 U.S. 111, 127-28 (1942)).

53. *South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987).

54. *Id.* at 211-12.

55. *Id.* at 208.

56. *Clark v. Jeter*, 486 U.S. 456, 461 (1988); See also Emma Freeman, Note, *Giving Casey Its*

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vored two levels of review: strict scrutiny and rational basis review.⁵⁷ The courts apply strict scrutiny analysis to interests and distinctions that require special protection by the Constitution, such as race discrimination, and free speech.⁵⁸ Conversely, rational basis review applies to ordinary social and economic interests, such as the privilege to drive.⁵⁹

Equal Protection analysis invokes strict scrutiny when legislation violates an individual's fundamental right, or serves to disadvantage a suspect class.⁶⁰ Rational basis review, however, is the default standard when the classification does not pertain to a suspect class.⁶¹ Under the rational basis test, a "classification must be sustained unless it is 'patently arbitrary' and bears no rational relationship to a legitimate governmental interest."⁶²

The Fourteenth Amendment allows the court to interpret the applicability of a contested law and apply the appropriate level of scrutiny based on this determination.⁶³ The Equal Protection Clause of the Fourteenth Amendment guarantees that states cannot deny the equal protection of the laws to any person within its jurisdiction.⁶⁴ However, not all persons must be treated the same in order to satisfy the Constitutional standards for Equal Protection.⁶⁵ For the purpose of evaluating Equal Protection claims, the Court makes distinctions between suspect and non-suspect classifications.⁶⁶ Suspect classifications based on race, national origin, or religion⁶⁷, are subject to the highest level of review – strict scrutiny – because class members have historically been subject to discrimination.⁶⁸ Conversely, non-suspect classifications based on age, intelligence, or physical disability, are subject to the lowest level of scrutiny – rational

Bite Back: The Role of Rational Basis Review in Undue Burden Analysis, 48 HARV. C.R.-C.L. L. REV. 279, 282 (2013) (discussing the three levels of judicial scrutiny: rational basis review, intermediate scrutiny, and strict scrutiny).

57. See Freeman, *supra* note 56, at 284.

58. See Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. Rev. 1267, 1268-69 (2007).

59. See *State v. Bell*, 572 N.W.2d 910, 911 (Iowa 1997) (acknowledging that driving privilege is not a fundamental right); Edward L. Barrett, *The Rational Basis Standard for Equal Protection Review of Ordinary Legislative Classifications*, 68 Ky. L.J. 845, 845 (1979-80).

60. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976).

61. Freeman, *supra* note 56, at 282-83.

62. *Frontiero v. Richardson*, 411 U.S. 677, 683 (1973).

63. U.S. CONST. amend. XIV, § 1 (forbidding State laws that abridge the "privileges or immunities" of U.S. citizens); See 16B AM. JUR. 2d *Constitutional Law* § 857 (2014)

64. U.S. CONST. amend. XIV, § 1.

65. *State v. Bell*, 572 N.W.2d 910, 912 (Iowa 1997)

66. See *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313-14 (1976).

67. Freeman, *supra* note 56, at 284

68. *Murgia*, 427 U.S. at 313 (citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)); see generally *Constitutional Law*, *supra* note 63 (describing the four factors relevant to determining whether a classification warrants higher scrutiny).

basis review – because such classes have not historically been the target of invidious discrimination.⁶⁹

While many classifications are subject to the mere rationality standard, strict scrutiny has been applied to classifications burdening fundamental rights.⁷⁰ In *Skinner v. Oklahoma*, the Court considered an Oklahoma law requiring the sterilization of persons convicted of three or more felonies involving moral turpitude.⁷¹ The Court held that the law was invalid and demonstrated its tendency to apply strict scrutiny to cases implicating rights of a fundamental nature, such as marriage and procreation.⁷²

In *State v. Bell*, the court upheld a statute that included a mandatory license revocation provision that pertained to drug offenders.⁷³ The court recognized that driving privileges do not fall within the category of fundamental rights.⁷⁴ Because the statute did not infringe upon a fundamental right or include a suspect classification, the court examined the claim under rational-basis review.⁷⁵ The court held that license revocation was rationally related to the government's interest in public safety and deterring crime.⁷⁶

In *Iowa Department of Transportation v. Iowa District Court for Pottawattamie County*, the court faced an Equal Protection challenge after the Department of Transportation refused to grant a temporary restricted license to a habitual offender pursuant to state law.⁷⁷ The court applied rational basis review,⁷⁸ and the complainant failed to meet his burden of disproving every possible basis upon which the classification could rest.⁷⁹ The court emphasized that Equal Protection is not denied when similarly situated persons are treated equally, and a reasonable classification results in some form of inequality.⁸⁰ It asserted that practical governmental problems allow for otherwise unfavorable circumstances, and a “classification will be upheld if any state of facts reasonably can be conceived to justify it.”⁸¹

In *Massachusetts Board of Retirement v. Murgia*, the Court again ap-

69. *Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-43 (1985).

70. *Constitutional Law*, *supra* note 63.

71. *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 536 (1942).

72. *Id.* at 541.

73. *See State v. Bell*, 572 N.W.2d 910, 914 (Iowa 1997).

74. *Id.* at 911.

75. *Id.*

76. *Id.* at 914.

77. *See Iowa Dep't of Transp. v. Iowa Dist. Court*, 592 N.W.2d 41, 42-43 (Iowa 1999).

78. *Id.* at 43

79. *See Id.* at 43, 45.

80. *Id.* at 43

81. *Id.* (quoting *Bell*, 572 N.W.2d at 912).

plied the lowest standard of review as the case pertained to a non-suspect, age-based classification, and a non-fundamental right, government employment.⁸² In *Murgia*, the Court upheld a mandatory retirement provision for all police officers reaching age fifty.⁸³ The validity of the statute was maintained because removing police officers with diminished physical fitness was rationally and reasonably related to a legitimate governmental interest in promoting public safety.⁸⁴

In *Gregory v. Ashcroft*, legislation was challenged that required judges to involuntarily retire at the age of seventy.⁸⁵ The Court analyzed the Equal Protection claim under rational basis review asserting that age-based classification is not suspect.⁸⁶ The Court acknowledged that individuals may experience diminished physical and mental capacity as a result of the natural aging process.⁸⁷ Accordingly, the Court found that voters could rationally conclude that requiring judges to retire at a specified age would ensure that the state had a judiciary competent to perform the arduous duties required of judges.⁸⁸ Thus, the Court held that the age-based mandate was constitutional and did not violate the equal protection clause.⁸⁹

In *Manuel v. State*, the court upheld a statute that was based on age specifications.⁹⁰ The State of Louisiana raised the minimum drinking age from eighteen to twenty-one, and the Louisiana Supreme Court held that although persons twenty and under would be denied the right to purchase alcohol, the removal of this right was not "arbitrary, capricious, or unreasonable."⁹¹ The court found that the age-based classification "substantially furthered the appropriate governmental purpose in improving highway safety, and was thus constitutional."⁹²

4. *Constitutional Challenges to Laws Under the Due Process Clause*

The Due Process Clause of the Fourteenth Amendment limits a state's ability to interfere with an individual's rights and ensures procedural safeguards before a person can be deprived of certain rights.⁹³ The Due Process Clause grants both procedural and substantive due process

82. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 308, 313-14 (1976).

83. *Id.* at 314, 317.

84. *Id.* at 314-15.

85. *Gregory v. Ashcroft*, 501 U.S. 452, 455 (1991).

86. *Id.* at 470.

87. *Id.* at 472.

88. *Id.* at 472-73.

89. *Id.* at 473.

90. *Manuel v. State*, 677 So. 2d 116, 118 (La. 1996).

91. *See id.* at 118-19.

92. *Id.* at 118.

93. *See* U.S. CONST. amend. XIV, § 1.

rights to citizens.⁹⁴ Procedural due process requires that the government provide an individual with notice and hearing.⁹⁵ For purposes of procedural due process, a court must first determine whether a protected right is implicated.⁹⁶ A procedural due process violation is only established when an existing protected right has been violated.⁹⁷ On the other hand, a substantive due process analysis asks whether the government has a legitimate reason for eradicating certain rights.⁹⁸ Substantive due process requires that governmental action that deprives an individual of a right must satisfy the rational basis test

In *Miller v. Reed*, the court dismissed the contention that an individual's due process rights were violated when the respective party was deprived of the ability to renew their driver's license.⁹⁹ Accordingly, the court held that the right to drive is not a fundamental right and the DMV did not "unconstitutionally impede his right to interstate travel by denying him a driver's license."¹⁰⁰ The court indicated that placing burdens "on a single mode of transportation does not implicate the right to interstate travel."¹⁰¹ The court further held that complainant was not being prevented from traveling interstate by other means of transportation.¹⁰² While lacking the ability to be a licensed driver may be inconvenient, the court maintained that inconvenience does not deprive an individual of a fundamental right, such as the right to interstate travel.¹⁰³

III. ANALYSIS

A. THE ILLINOIS, NEW MEXICO, AND WASHINGTON, D.C. STATUTES CREATE A TEMPLATE FOR ESTABLISHING UNIFORMED GUIDELINES PERTAINING TO DRIVER'S LICENSE RENEWAL PROCEDURES FOR THE ELDERLY

Taking an active governmental role in combating harms created by unregulated elderly drivers addresses a compelling interest of public safety, but only if such regulations have effective provisions. As the regulation of elderly drivers currently stands, the most notable state regulations include: Illinois' regulation requiring an on-road test for drivers

94. *See id.*

95. *Vill. Villa v. Kansas Health Policy Auth.*, 291 P.3d 1056, 1068 (Kan. 2013) (citing *Winston v. State Dep't of Soc. & Rehab. Servs.*, 49 P.3d 1274, 1283 (Kan. 2002)).

96. *Id.*

97. *Winston*, 49 P.3d at 1284-85.

98. *See Pearson v. Grand Blanc*, 961 F.2d 1211, 1223 (6th Cir. 1992).

99. *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999).

100. *Id.*

101. *Id.* at 1205.

102. *Id.* at 1206 (citing *Berberian v. Petit*, 374 A.2d 791 (R.I. 1977)).

103. *Id.* (citing *City of Houston v. FAA*, 679 F.2d 1184, 1198 (5th Cir. 1982)).

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seventy-five and older; New Mexico's annual license renewal for drivers seventy-five and older; and the District of Columbia's medical clearance requirement for those drivers seventy and older.¹⁰⁴ Road tests are not only a fundamental aspect of initially obtaining a driver's license, but they are also catalysts of determining a driver's qualification over the course of an individual's motor vehicle licensure.¹⁰⁵ In *Yanulavich*, the New York Supreme Court's Appellate Division, held that the DMV may require a driver to complete a road test if reasonable grounds exist to believe the driver is not qualified to drive.¹⁰⁶ Tailoring on-road testing for use with elderly drivers would allow for the identification of those elderly individuals that are unfit to operate a vehicle, similar to the required on-road retesting of the elderly driver in *Yanulavich*. Establishing testing criteria and performance standards on areas in which elderly persons are susceptible to have diminished capacity would serve as a viable indicator of those elderly individuals who are lacking the requisite skills to safely operate a vehicle.

Similar to on-road testing, accelerated in-person renewal periods attempt to achieve the goal of ensuring roadway safety.¹⁰⁷ Additionally, elderly persons are susceptible to deteriorating changes in their health.¹⁰⁸ Therefore, allowing lengthy time delays between driver's license renewals for elderly drivers leaves open the potential for allowing unidentified, unfit drivers to remain on the road. Like the court in *Yanulavich* that granted administrative discretion to conduct on-road reexamination of an elderly driver based on safety concerns, implementing annual driver's license renewals for elderly drivers would similarly serve to promote roadway safeguards and mollify safety concerns. By allowing for the detection of unfit drivers through timely physical observation, harm to others can be mitigated.

Fusing the models of regulation for driver's license renewal procedures for elderly drivers currently utilized by Illinois', New Mexico's, and Washington, D.C., would lead to the creation of a federal renewal code that has a firm foundation. Using components of the aforementioned states' mandates would allow for the creation of purposeful driving prerequisites because the specified individual components would work most effectively when combined. In working together to identify unsafe elderly drivers, the respective components would address the target-testing areas

104. See *Older Drivers*, *supra* note 6.

105. See *Yanulavich v. Appeals Bd. of Admin. Adjudication Bureau*, 767 N.Y.S.2d 528, 529-30 (N.Y. App. Div. 2003).

106. See *id.* at 530.

107. See Robert J. Derocher, *Licensing Older Drivers: Renewed Calls for In-Person Testing*, 18-WTR EXPERIENCE 12, 13-14 (2008).

108. See *id.* at 14.

identified in *Yanulavich* – that would otherwise not be addressed.¹⁰⁹ Using the specified elements of the ascertained state statutes would serve to close any potential gap in weighing effectiveness and would satisfy voids or weaknesses in areas where the individual components alone could not otherwise fill. Including Illinois', New Mexico's, and the District of Columbia's provisions in a federal uniform code of driver's license renewal procedures for elderly drivers would create a mandate that is founded on legally permissible grounds because the merged provisions would include viable safety enhancements that would serve as safeguards against potential harm.

B. CONGRESS HAS THE AUTHORITY TO IMPOSE UNIFORM DRIVER'S
LICENSE RENEWAL PROCEDURES FOR ELDERLY DRIVERS PURSUANT
TO THE POWERS GRANTED UNDER THE SPENDING POWER
AND THE COMMERCE CLAUSE

1. *Congress has the Authority to Impose Driving Prerequisites for
Elderly Drivers Under the Spending Power*

Congress' Spending Power justifies the enactment a federally mandated uniform code of driver's license renewal procedures for elderly drivers from which the general public would benefit.¹¹⁰ The Spending Power not only authorizes Congress to allocate public funds for specified purposes, but it also allows Congress to withhold such funds.¹¹¹ Because the problems associated with non-regulated elderly drivers are public welfare concerns, Congress has the capability to withhold funds for the purposes of encouraging implementation of regulations of elderly drivers.¹¹² Because driving prerequisites would serve a legitimate governmental interest in promoting safer roadways for the public, they would be upheld. A federal mandate pertaining to elderly drivers may be imposed with voluntary notions, but may be implemented with involuntary practice.¹¹³ While it may be contended that a federal mandate of this kind goes beyond the scope of Congress's power, such a contention would fail because the legislative power granted by the Constitution does not limit Congress' ability to implement legislation that reasonably coerces sub-

109. See *Yanulavich v. Appeals Bd. of Admin. Adjudication Bureau*, 767 N.Y.S.2d 528, 529-30 (N.Y. App. Div. 2003) (identifying target-testing areas).

110. See *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (noting that the spending power of the federal government must be "in pursuit of the 'general welfare'").

111. See *id.* at 203, 211 (Congress' conditional withholding of funds to North Dakota found to be constitutional).

112. See *United States v. Butler*, 297 U.S. 1, 65 (1935).

113. See *id.* at 71-72 (stating that "[t]he power to confer or withhold unlimited benefits is the power to coerce or destroy.").

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mission to federal regulation.¹¹⁴

2. *Congress has the Authority to Pass Driving Prerequisites for Elderly Drivers Under the Commerce Clause*

The objective of creating uniformly tailored driver's license renewal procedures for elderly drivers would promote safer roadways for drivers and passengers on the road.¹¹⁵ Safety concerns pertaining to unregulated elderly drivers continue to grow as a result of the increasing number of elderly drivers.¹¹⁶ As elderly persons begin to spend more time on the road than before, their reduced cognitive capacity becomes a greater concern for the general public.¹¹⁷ While elderly drivers may have a tendency to spend less time on the road, the majority of elderly drivers utilize motor vehicles as their primary source of transportation.¹¹⁸

Since motor vehicles are created to allow their owner to be mobile, the owners are able to travel across state lines. Similar to the individuals in *South Dakota v. Dole*, who traveled across state lines to purchase and consume alcohol, elderly drivers also have the ability and freedom to travel from state-to-state.¹¹⁹ In *Dole*, the Court justified its holding regarding changes to the drinking age on the basis that the varying drinking ages from state-to-state created an interstate problem that invoked national concern.¹²⁰ Elderly drivers may be less likely to drive long distances to get to another state, but they often travel interstate through the use of other means, such as airplanes, and drive once they arrive at their destination.¹²¹ Because elderly drivers move from state to state and carry with them a heightened risk of danger when behind the wheel of a vehicle in any state in which they are present, Congress has the power to regulate under the provisions of the Commerce Clause.¹²²

114. See generally *id.* at 73-74 (noting that the implied powers of Congress enable it to enact a mandate that serves as a regulatory means through reasonable coercion).

115. See generally SAFE MOBILITY, *supra* note 17, at v-vi (highlighting the need for improving roadway safety as pertaining to elderly drivers).

116. See Katherine Siggerud, U.S. Gov't Accountability Office, GAO-07-413, Older Driver Safety: Knowledge Sharing Should Help States Prepare for Increase in Older Driver Population: Highlights 1 (2007), AVAILABLE AT <http://www.gao.gov/products/GAO-07-413>.

117. See SIGGERUD, *supra* note 11, at 5 (emphasizing the concerns stimulated by the physical and mental deficiencies that the aging process has on the body).

118. See Granda & Thompson, *supra* note 20.

119. See *South Dakota v. Dole*, 483 U.S. 203, 208 (1987).

120. See *id.*

121. See generally Brinig, *supra* note 28, at 407 (observing the mobility of elderly persons).

122. See *id.* (recognizing that travel by elderly persons raises cause for concern on an interstate level, thus invoking federal regulatory interest).

C. DRIVING PREREQUISITES FOR ELDERLY DRIVERS ARE
CONSTITUTIONAL BECAUSE MINIMUM DRIVING REQUIREMENTS DO
NOT VIOLATE THE NOTIONS OF DUE PROCESS
AND EQUAL PROTECTION

1. *Regulation of a Class of Persons Based on Age Is Not
Unconstitutional Under Notions of Equal Protection Because
Elderly Persons Are Not a Protected Class*

Legislation frequently involves making classifications that advantage or disadvantage a particular group.¹²³ For example, states allow individuals of a specified age to drive, while not permitting individuals under that age to drive.¹²⁴ Therefore, it can be inferred that the Equal Protection Clause does not require the government to treat all drivers the same.¹²⁵ Identification of elderly drivers as a class of persons, for the purposes of implementing a federally uniformed code, could be contested on the basis of discrimination.¹²⁶ However, such contentions would not likely prevail, because laws that create such classifications must be sustained unless they are arbitrary and not rationally related to a legitimate governmental interest.¹²⁷

Because the purported mandate would apply equally to a class of persons, some may argue that the mandate is unconstitutional based on involuntary participation, but this contention would fail pursuant to the holdings in *Murgia*.¹²⁸ In *Murgia*, a police officer challenged a statute that required involuntary retirement from the police force at age fifty.¹²⁹ The court asserted that the elderly population is not a suspect class; therefore, rational-basis review was appropriate and the regulation was upheld.¹³⁰ A uniform code of mandatory driver's license renewal procedures for elderly drivers would similarly stand because elderly drivers would be provided with finality of notice that at a triggering age new license renewal procedures would apply. A mandate is further supported by the findings in *Murgia* in that a uniform code of renewal procedures for the elderly is rationally and reasonably related to a legitimate govern-

123. See *Iowa Dep't of Transp. v. Iowa Dist. Court for Pottawattamie Cnty.*, 592 N.W.2d 41, 43 (Iowa 1999) (recognizing that disparate effects do not invoke constitutional violations).

124. See INS. INST. FOR HIGHWAY SAFETY, HIGHWAY LOSS DATA INST., *TEENAGERS: DRIVING CARRIES EXTRA RISK FOR THEM* (2012) [hereinafter *TEENAGERS*], available at <http://www.iihs.org/iihs/topics/laws/graduatedlicenseintro/mapunsuperviseddrivingage>.

125. See *Iowa Dep't of Transp.*, 592 N.W.2d at 43.

126. See generally Brinig, *supra* note 28, at 406-08 (identifying issues associated with the removal of an elderly person's driver's license).

127. See *Iowa Dep't of Transp.*, 592 N.W.2d at 43.

128. See *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 311-15 (1976) (holding that physical preparedness is rationally related to a legitimate governmental interest in protecting the public).

129. *Id.* at 308-10.

130. *Id.* at 312-14.

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mental interest.¹³¹ Where the respective class of police officers in *Murgia* were purported to have diminished capacity in carrying out their duties as a result of the aging process, so too do elderly drivers have diminished capacity in operating vehicles.¹³² Elderly drivers, like the older police officers, present a heightened risk of harm to the public.¹³³ Like the prohibition on police officers over the age of fifty in *Murgia*, a federal uniform code would serve as a protective agent for the public against exigent and preventative harms.¹³⁴

Similarly, the Court in *Ashcroft* recognized that the aging process adversely affects both the physical and mental capability of elderly persons.¹³⁵ While not all elderly persons necessarily suffer from diminished capacity, as highlighted in *Ashcroft*, the aging process does have an inherently adverse affect on the human body.¹³⁶ In like manner to the judges in *Ashcroft*, anatomical changes that are triggered at certain ages make elderly drivers more susceptible to significant deteriorations in performance.¹³⁷ A federally uniform code pertaining to driver's license renewal procedures for elderly persons would be upheld because elderly drivers have similar heightened risk of diminished physical and mental capacity as the judges in *Ashcroft*. While the judges in *Ashcroft* were agents of the Court acting in a legal capacity, they nevertheless posed a risk to the general public from the harms that could result from potential misjudgment such as improper sentencing and procedural errors.¹³⁸ Similar to the judges in *Ashcroft*, elderly drivers pose a higher threat to the public because their misjudgment while operating a vehicle could result in harm to others from not obeying traffic laws.

In applying the rational-basis test, identifying elderly drivers as a class of persons for the purposes of implementing driver's license renewal procedures is constitutional. Driving prerequisites pertaining to a class of persons based on age would stand because the classification is not demonstrably arbitrary and bears a rational relationship to a legitimate governmental interest in promoting roadway safety. Similar to the class of persons in *Bell*, the class of persons that the purported federal mandate would encompass would include all elderly persons of a specified age range.¹³⁹ In *State v. Bell*, the defendant unsuccessfully contended that a

131. See *id.* at 313.

132. See *id.* at 315.

133. See *id.* at 314-15.

134. See *id.*

135. *Gregory v. Ashcroft*, 501 U.S. 452, 472 (1991).

136. See *id.*

137. See *id.* at 472-73.

138. See *id.* at 472 (inferring the damage that could result from an elderly person's diminished mental and physical capability).

139. See *State v. Bell*, 572 N.W.2d 910, 912 (Iowa 1997).

statutory provision was arbitrary because it called for mandatory revocation of licenses that singled out drug offenders.¹⁴⁰ While elderly drivers would be singled out in the proposed federal mandate like the drug offenders were singled out in *Bell*, such distinctions are permissible because not all persons need to be treated unequivocally the same.¹⁴¹ When defining limits pertaining to a classification of persons, the court has a broad range of discretion.¹⁴² While the court seeks to protect the tenets of the Constitution as it pertains to an individual's rights, it does not seek to favor claims of justifiable inequality.¹⁴³ Instituting a classification that includes all persons of a certain age does not discriminate against any person that is part of the purported class.¹⁴⁴

Because the Equal Protection Clause allows Congress to treat people the same if they are similarly situated, a federal mandate invoking uniform driver's license renewal procedures for elderly drivers would be permissible. This type of mandate would not obviate from this constitutional requirement because the license renewal procedures would equally apply to all drivers seeking to drive at a specified age for the purposes of achieving a legitimate governmental interest. In *Iowa Dep't of Transp.*, the Iowa Supreme Court upheld a statutory scheme involving the issuance of temporary restricted licenses for habitual offenders.¹⁴⁵ The court upheld the statutory scheme because the complainant failed to negate any and all conceivable justifications for the statutory scheme.¹⁴⁶ The court held that the statute passed rational-basis review because, in part, the statutory scheme sought to prevent future harms to the general public.¹⁴⁷ The court further reasoned that differentiating between the complainant and other driving violators did not violate notions of Equal Protection because the legislature could have concluded the complainant posed a greater risk of harm than other offenders.¹⁴⁸ Similar to the complainant in *Iowa Dep't of Transp.*, elderly drivers pose a greater risk of harm to the general public than other drivers as a result of their diminished capacity. It is observable that elderly drivers have the propensity to have impaired driving skills and expose others to a heightened risk of harm. Specifically subjecting elderly drivers to more rigid driver's license

140. *Id.* at 912-13.

141. *Id.* at 912.

142. *Id.*

143. *See id.*

144. *See id.*

145. *Iowa Dep't of Transp. v. Iowa Dist. Court for Pottawattamie Cnty.*, 592 N.W.2d 41, 45 (Iowa 1999).

146. *See id.*

147. *See id.* (highlighting that the instant statute was enacted "to protect the public from drivers who refuse to observe the rules of prudence and safety.")

148. *See id.*

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renewal procedures would, therefore, not violate notions of Equal Protection because such procedures would serve a legitimate governmental interest – ensuring public safety.

2. *Regulation of a Class of Persons Based on Age Is Not Unconstitutional Under Notions of Due Process Because Driving is Not a Fundamental Right*

The Court has identified situations where enacted legislation has gone beyond the parameters of power granted to Congress by the Constitution and has resulted in the violation of an individual's "basic civil rights."¹⁴⁹ Such inherent rights include one's ability to marry and one's ability to procreate.¹⁵⁰ The aforementioned civil liberties are considered fundamental rights because they are intrinsic to one's existence.¹⁵¹ Depriving an individual of their fundamental right to marry or procreate would leave an individual dispossessed and without a basic liberty.¹⁵²

Driving, however, is not a fundamental right.¹⁵³ In *Miller*, the court held that a party's due process rights were not violated when an individual was deprived of the ability to renew a driver's license.¹⁵⁴ The court maintained that the complainant was not entitled to strict scrutiny analysis because the right to drive was not fundamental.¹⁵⁵ Because the court in *Miller* did not allow an individual to renew a driver's license for failure to complete the requisite procedures, the federal government could impose required renewal procedures on elderly drivers in a similar fashion.¹⁵⁶ While the court in *Miller* recognized that there is a fundamental right to interstate travel, it noted that previous courts held burdens on a single mode of transportation do not implicate the right to interstate travel.¹⁵⁷ Moreover, while elderly drivers might be burdened by the potential of losing their licenses, such an inconvenience does not serve as a compelling argument that a fundamental right is infringed upon.¹⁵⁸ Implementing driver's license renewal procedures for elderly drivers does not result

149. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

150. *Id.*

151. *Id.*

152. *See id.* (noting "[t]here is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty.").

153. *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999).

154. *Id.*

155. *See id.* at 1205-06.

156. *See id.* (suggesting that driver's license renewal procedures can serve as conditions to receiving a renewed license).

157. *Id.*

158. *See id.* (articulating that an individual's lack of choice in their mode of transportation may be unfavorable, but it is not unconstitutional) (quoting *Monarch Travel Servs., Inc. v. Associated Cultural Clubs, Inc.*, 466 F.2d 552, 554 (9th Cir. 1972)).

in an interference with elderly drivers' fundamental right to interstate travel since there are alternative means of transportation.¹⁵⁹ Because driving is not a fundamental right and, therefore, driving prerequisites would not interfere with a fundamental right, contentions against license renewal procedures for elderly drivers would not be substantiated or sustained.

IV. POLICY RECOMMENDATIONS

A. CONTINUED MOBILITY FOR THE ELDERLY WHO ARE UNABLE TO SAFELY OPERATE MOTOR VEHICLES CAN BE ENCOURAGED THROUGH THE DEVELOPMENT OF VIABLE MEANS OF ALTERNATIVE TRANSPORTATION

If stricter renewal procedures are implemented, there will be an inevitable influx of elderly individuals who are no longer permitted to drive.¹⁶⁰ The creation and maintenance of a viable means of alternative transportation for the elderly serves an important role in supporting the implementation of driving prerequisites for elderly drivers.¹⁶¹ An individual's loss of mobility would not change that individual's need to travel, whether it is for leisure, medical, social, or other routine purposes.¹⁶² Society must consider providing alternative means of mobility for elderly drivers so that individuals affected by the driving prerequisites can still fulfill basic needs even though operating a motor vehicle is no longer a viable option.

However, not all elderly persons subjected to license renewal procedures would necessarily lose their driving rights.¹⁶³ But, for those elderly drivers who would lose their driver's licenses because they were proven unfit to drive, a federally funded transportation system that offers safe mobility for elderly persons and allows them to remain independent would serve as a viable alternative to operating a motor vehicle.¹⁶⁴ Developing this form of alternative transportation infrastructure would require a concerted effort by those overseeing its structuring and would take several years before it could be plausibly implemented.¹⁶⁵ However, like all forms of newly enacted legislation that entails a component of

159. See *id.* (highlighting the difference between convenience and mobility).

160. See SIGGERUD, *supra* note 11, at 4 (recognizing the effects of implementing stricter driver's license renewal procedures for elderly drivers).

161. See *id.* (emphasizing a solution to a purported problem).

162. See generally SAFE MOBILITY, *supra* note 17, at v-vi, 1 (recognizing several reasons why elderly persons seek to remain mobile).

163. See *id.* at 14 (noting less than five percent of elderly drivers lost their license due to state licensing authorities).

164. See *id.* at 16-17.

165. See *id.* at v-vii, 9.

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developmental production, strategic planning and phasing would serve to promote successful discharge of the program.¹⁶⁶

B. THE BENEFITS OF STRICTER DRIVER'S LICENSE RENEWAL PROCEDURES SHOULD BE COMMUNICATED TO THE ELDERLY

Compiling information on safety awareness and communicating this information to the elderly would help raise support for stricter licensing renewal procedures.¹⁶⁷ By directly confronting the issues associated with incapable elderly drivers, the elderly would come to understand that imposing licensing renewal prerequisites would benefit the general public, including elderly drivers themselves. Not only are elderly drivers susceptible to diminished capacity, but they also are more vulnerable to injury in the event of a motor vehicle accident.¹⁶⁸ Creating awareness for elderly drivers would expose the higher risks of injury and fatalities for elderly drivers in accidents that would otherwise be considered mild. Making elderly drivers aware of the safety implications and protections that licensing renewal procedures could offer them would create room for valid consideration on the part of affected parties. Implementing driver's license renewal procedures for elderly drivers invokes safety implications for all individuals affected by its provisions, and communicating this information at the outset would provide a better understanding of why the procedures were created and implemented.

V. CONCLUSION

As the number of elderly drivers across the nation continues to grow, so does the number of crash-related incidences involving elderly drivers.¹⁶⁹ The problem of unregulated elderly drivers remains a timely issue that has been inadequately addressed. The majority of states have no regulatory means in place to combat the dangers posed by those elderly drivers whose diminished capacity renders them unfit to operate a motor vehicle.¹⁷⁰ Although there may be contentions thwarted regarding the constitutionality of regulating elderly drivers, the proposed federal uniform code of driver's license renewal procedures for elderly drivers would be upheld as constitutional because it is rationally related to the government's interest in promoting roadway safety.

While elderly drivers may experience a minor burden if their licenses are not approved for renewal, the proposed solution would contribute to

166. *See id.*

167. *See generally id.* at v, 14 (recognizing that stricter licensing renewal procedures for elderly drivers have a broad scope of protective interests).

168. *See SIGGERUD, supra* note 11, at 1.

169. *See SAFE MOBILITY, supra* note 17, at 4.

170. Davis & DeBarros, *supra* note 21.

saving lives by identifying unfit, dangerous drivers, and removing them from the roadways as vehicle operators. Creating public awareness and encouraging individuals to learn about the diminished capacity of elderly drivers would serve a proactive purpose by illustrating how roadway harms caused by elderly drivers could be reduced through enacting regulations. Additionally, forward-thinking proposals such as those to create elderly-accessible public transportation, easier-to-use motor vehicles and easier-to-use roadways can be coupled with elderly driver regulation.¹⁷¹ While a federal uniform code would require funding by the government, the code would be a new solution to an old problem, as opposed to breaking down and restructuring the current mobile environment. Unless the federal government acts by creating and enacting uniform preemptive measures, this national problem will continue to worsen and grow without discourse.

171. See Granda & Thompson, *supra* note 20.