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The West Virginia Statute Conditioning Possession of a Student Driver's License on School Attendance: Constitutionally Deficient and Demonstrably Ineffective

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THE WEST VIRGINIA STATUTE CONDITIONING POSSESSION OF A STUDENT DRIVER'S LICENSE ON SCHOOL ATTENDANCE: CONSTITUTIONALLY DEFICIENT AND DEMONSTRABLY INEFFECTIVE

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I. Introduction

High school dropouts form a disturbingly large minority of their age-group population. From 1986 to 1990, between 4,535 and 4,725 West Virginia pupils dropped out of school each year while between 21,824 and 22,886 graduated.¹ Nationally, only 71% of public high school students graduated in 1989, which leads to the disquieting realization that one in every four students fail to complete their education.²

Significant concrete effects, such as higher unemployment rates and lower earnings, result from persons dropping out of school. For the period of 1987 to 1990, across the nation dropouts confronted an unemployment rate over twice that of high school graduates.³ Further, even when employed, dropouts earn less than high school graduates: from 1987 to 1989, dropouts made approximately one-fourth less than did persons finishing school.⁴

¹. Memoranda from the West Virginia Department of Education (on file with Bob Boggs, Attendance Coordinator for the West Virginia Department of Education).
³. Telephone Interview with Thomas Nardone, Bureau of Labor Statistics for the Department of Labor (Aug. 26, 1991). The following unemployment rates for high school graduates and dropouts were determined for the month of October each year:

<table>
<thead>
<tr>
<th>Month</th>
<th>H.S. Graduates</th>
<th>Dropouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 1990</td>
<td>15.7%</td>
<td>32.3%</td>
</tr>
<tr>
<td>Oct. 1989</td>
<td>12.2%</td>
<td>28.0%</td>
</tr>
<tr>
<td>Oct. 1988</td>
<td>13.5%</td>
<td>28.7%</td>
</tr>
<tr>
<td>Oct. 1987</td>
<td>15.5%</td>
<td>37.8%</td>
</tr>
</tbody>
</table>

⁴. Telephone Interview with Chuck Nelson, Chief of Income Statistics for the Bureau of the Census (Aug. 26, 1991). For persons 25 years of age and older, the median earnings per year for high school graduates and dropouts were:

<table>
<thead>
<tr>
<th>Year</th>
<th>H.S. Graduates</th>
<th>Dropouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>$16,777</td>
<td>$12,018</td>
</tr>
<tr>
<td>1988</td>
<td>$16,205</td>
<td>$11,613</td>
</tr>
<tr>
<td>1987</td>
<td>$15,605</td>
<td>$11,842</td>
</tr>
</tbody>
</table>
In 1988, in an attempt to boost school attendance, West Virginia passed a statute conditioning successful application for a driver’s license on continued high school attendance as well as providing for its revocation if the student withdraws. A driver’s license is an entitlement, and its revocation, therefore, demands provision of due process to the individual involved. A recent West Virginia Supreme Court of Appeals decision, Means v. Sidiropolis, considers this constitutional issue.

This Note deals primarily with the constitutionality and effectiveness of the statute. In order to thoroughly consider these questions, the statute itself will first be reviewed. Second, the majority and dissenting opinion of Means will receive comprehensive treatment. Third, procedural due process requirements for license revocation in general will be discussed. Fourth, these general, precedential requirements will be applied to Means. Fifth, this application of precedent will be compared to the majority and dissenting opinions’ handling of the procedural due process issue. Sixth, similar statutes from other jurisdictions will be examined. Seventh, the findings of two Rutgers University professors in their report on the statute will be laid out. Lastly, constitutionally required revisions will be set forth and the statute’s overall utility considered.

II. THE WEST VIRGINIA STATUTE: CONDITIONING THE POSSESSION OF A DRIVER’S LICENSE ON SCHOOL ATTENDANCE

The statute provides that the Department of Motor Vehicles (DMV) will deny an automobile license or permit to anyone under the age of eighteen who is (1) not enrolled in high school nor holding a high school diploma; (2) not enrolled in a general education development (GED) course nor holding a GED certificate; and (3) not excused because of circumstances beyond her control. The legis-

8. 401 S.E.2d 447.
10. Id.
lature enacted the statute in an attempt to encourage school attendance.¹¹

The procedural aspect of the statute originates with the school’s chief administrator who keeps track of student attendance¹² and provides the student with documentation of her enrollment status upon application for a license. Upon a student’s withdrawal from school, the administrator contacts the DMV.¹³ In turn, the DMV notifies the student that her license will be suspended within thirty days unless it receives documentation that the student has fulfilled the statutory requirements.¹⁴ The statute defines withdrawal as “more than ten consecutive or fifteen days total unexcused absences during a single semester.”¹⁵ If the student withdraws because of circumstances beyond her control, the school district superintendent exempts her from the statute’s provisions.¹⁶ Further, the school district superintendent, with the assistance of other school officials, “shall be the sole judge of whether such withdrawal is due to circumstances beyond the control of such person.”¹⁷ When the DMV suspends the student’s license, West Virginia Code Section 17B-3-6¹⁸ provides that the DMV will inform the aggrieved individual of her right to a hearing upon request. The hearing will take place within twenty days after receipt of such a request.¹⁹

III. MEANS v. SIDIROPOLIS²⁰

A. Background

Michael Means appealed to West Virginia’s Supreme Court of Appeals after the Circuit Court of Kanawha County upheld the

¹³ Id.
¹⁴ Id.
¹⁵ Id.
¹⁶ Id.
¹⁷ Id.
¹⁹ Id.
DMV's suspension of his driver's license. At the time of appeal, Mr. Means had attained the age of eighteen and, therefore, West Virginia Code Section 18-8-11 no longer applied. Nevertheless, the Court heard Mr. Means' case because it "presents an issue 'which may be repeatedly presented to the trial court, yet escape[s] review at the appellate level because of [its] fleeting and determinate nature.'"

To obtain employment and financially provide for his pregnant wife, Mr. Means withdrew from school under the authority of West Virginia Code Section 18-8-1. At the time of his withdrawal, Mr. Means possessed a valid West Virginia driver's license. The DMV's Student Attendance Program sent Mr. Means a "Notice of Suspension" on January 10, 1989. After notifying him that his license would be suspended on February 11, 1989, the DMV cited West Virginia Code Section 17B-3-6(10) and informed Mr. Means that the suspension would occur because he was under eighteen and had withdrawn from school. The notice also advised him of his right to a hearing. After receiving Mr. Means' request for a hearing on January 19, 1989, the Department notified him that although it had arranged for a hearing on January 31, 1989, the Commissioner had postponed it and would subsequently inform him of the new date.

Not until April 21, 1989 did the DMV hear Mr. Means' case. Once convened, the subject of the hearing focused on only two

21. Id. at 449.
22. Id.
23. Id. (quoting Israel v. Secondary Schools Act Comm'n, 388 S.E.2d 480, 483 (W. Va. 1989)).
25. W. Va. Code § 18-8-1 (Supp. 1991) provides: "Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday."
27. W. Va. Code § 17B-3-6 (1989) provides:
The department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee: . . . (10) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven [§ 18-8-11], article eight, chapter eighteen of this code.
28. Means, 401 S.E.2d at 449.
29. Id.
30. Id.
31. Id.
elements: (1) whether Mr. Means was less than eighteen, and (2) whether he had withdrawn from school, either voluntarily or involuntarily.\textsuperscript{32}

On May 31, 1989, the Commissioner sent Mr. Means notice that his license was to be suspended, effective June 2, 1989, until he turned eighteen or until he conformed with the statutory guidelines.\textsuperscript{33} Apprising Mr. Means of his decision on April 21, 1989, the Commissioner pointed out that ""the law, as contained in W. Va. Code § 18-8-11(D) contemplates that the school superintendent (and those who assist him) be the sole judge of whether a student who has withdrawn from school should be accorded an exemption from complying with the provisions of W. Va. Code § 18-8-11.""\textsuperscript{34} The Commissioner went on to say that since he had no appellate jurisdiction over the superintendent, he could not decide whether Mr. Means should be exempted from the statute's requirements.\textsuperscript{35}

Mr. Means appealed first to the Circuit Court of Kanawha County.\textsuperscript{36} Limiting its focus to the conditioning of a student driver's license on school attendance, the court failed to address whether the procedure followed by the school superintendent in designating Mr. Means' withdrawal was within his control.\textsuperscript{37} The court determined that (1) school enrollment as a condition of possessing a driver's license was constitutional, and (2) the hearing conducted by the Department's examiner satisfied the requirements of due process.\textsuperscript{38} Mr. Means next appealed to the West Virginia Supreme Court of Appeals.

\textsuperscript{32} \textit{Id.}
\textsuperscript{33} \textit{Id.} at 449-50. Although the Commissioner provided Mr. Means with a hearing prior to suspension, W. Va. Code § 17B-3-6 (1989) specifically provides that the DMV has authority to suspend a driver's license without a preliminary hearing:

The department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee: . . . (10) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven [§ 18-8-11], article eight, chapter eighteen of this code.
\textsuperscript{34} \textit{Id.} (quoting the Commissioner).
\textsuperscript{35} \textit{Id.} at 450.
\textsuperscript{36} \textit{Id.}
\textsuperscript{37} \textit{Id.}
\textsuperscript{38} \textit{Id.}
B. The Majority Opinion By Justice Neely

Justice Neely divides his opinion into three separate discussions: (1) whether the statute provides adequate guidelines by which a court can determine if the school official has reasonably exercised her discretion;39 (2) whether the statute is constitutional (the means chosen to accomplish the public purpose of increased school attendance must bear a rational relation to this end);40 and (3) whether the hearing provided by the state meets the requirements of due process.41

1. Whether the Statute Provides Adequate Guidelines for the Court’s or the School Official’s Determination

Mr. Means contends that the statute fails to establish satisfactory standards by which to measure the reasonableness of the school official’s discretion.42 In response, Justice Neely asserts that “the words ‘circumstances beyond their control’ create a quite specific standard.”43 Analogizing this phrase to the phrase “reasonable doubt” used in criminal cases, Justice Neely asserts that further definitions of such phrases “are useless” and probably would confuse more than clarify.45 Justice Neely cites several examples of “circumstances beyond their control”:

children who withdraw from school because they are needed to support their families; children who withdraw from school because of physical disabilities that preclude further attendance between the ages of sixteen and eighteen; and, children who withdraw from school because both the children and the schools agree that further attendance will be less beneficial than on-the-job training or some other program of personal development.46

39. Id. 450-51.
40. Id. at 451-52.
41. Id. at 453.
42. Id. at 450.
43. Although Justice Neely quotes the statute in this manner, the statute actually employs the language, “circumstances beyond his or her control” and “circumstances beyond the control of such person.” W. Va. Code § 18-8-11 (1988).
44. Id. at 451.
45. Id. at 451, n.1.
46. Id. at 451.
2. Whether the West Virginia Statute is Rationally Related to Encouraging School Attendance

Since Means involves neither a suspect classification\(^{47}\) nor a fundamental right,\(^{48}\) Justice Neely finds that the "reasonable relationship" test\(^{49}\) constitutes the appropriate standard of constitutional review. The statute satisfies the reasonable relationship test if the means (the revocation of a student's license upon withdrawal from school) rationally relates to the end (encouraging school attendance).\(^{50}\) To address this issue, Justice Neely first examines Mr. Means' contentions that (1) school attendance and driver's licenses are not rationally related, and (2) in order for the rational relationship test to be satisfied, the legislature should have enacted a statute raising the age of compulsory attendance to eighteen.\(^{51}\)

Regarding the first prong of Mr. Means' charge, Justice Neely attempts to justify the statute by maintaining that "a child who has a driver's license but is not meaningfully employed during the day by attending school or working at a serious job, has a higher likelihood than children so occupied of being out and about making mischief with his or her car."\(^{52}\) This rationale, however, only explains how forfeiture of a student driver's license rationally relates to the goal of preventing minors from causing "mischief" when they are not in school. This argument fails to explain how the license revocation will encourage school attendance.

Addressing the second prong of Mr. Means' argument, Justice Neely reasons that compulsory school attendance until the age of eighteen creates the problem that "children would remain in school who are not suited by disposition to the school environment and senior high schools would face far more disciplinary problems than they face now."\(^{53}\) Thus, the statute provides a compromise solution permitting "the peaceful departure of those students who will profit

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47. Id.
48. Id. at 451 n.2.
49. Id. at 451.
50. Id. at 450.
51. Id. at 451-52.
52. Id. at 452.
53. Id.

https://researchrepository.wvu.edu/wvlr/vol94/iss2/6
not at all from continuing formal education, allowing, then, the schools to protect from disruptive influences the students who want to learn."54 Furthermore, the statute provides a third group of students, who may not want to learn but who would nevertheless profit somewhat from further education, with the incentive to overcome "peer pressure" and continue their education.55

3. Whether the Hearing Provided by the State Meets the Requirements of Due Process

Justice Neely "disagree[d] with the circuit court that the hearing mechanism applied in this case was appropriate."56 Mr. Means' hearing fell short of due process requirements because a hearing examiner appointed by the Commissioner of the DMV heard his case rather than the appropriate party, a school official:

The ultimate judge of whether a person has withdrawn 'due to circumstances beyond the control of such person' is the superintendent, his delegate or the appropriate school official of any private secondary school, so it becomes only reasonable that the hearing should be held before the responsible public or private school official.

... [T]he Department should inform students at the time it notifies them that their licenses will be suspended that they have a right to a hearing before the appropriate school official.57

Thus, Justice Neely concludes that the statute provides adequate guidelines with which to determine the reasonableness of the school official's decision.58 Moreover, the goal of encouraging school attendance rationally relates to the means of student driver's license revocation.59 However, finding the hearing provided by the state to be inappropriate, Justice Neely held that the hearing should take place before a school official.60

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54. Id.
55. Id.
56. Id. at 450.
57. Id. at 453.
58. Id. at 451.
59. Id. at 452.
60. Id. at 453.
C. *The Dissenting Opinion By Justice McHugh*\(^61\)

Justice McHugh disagrees with Justice Neely in two major areas. First, Justice McHugh charges that the statute is unconstitutional because it fails to provide a hearing prior to revocation.\(^62\) Second, because the statute fails to define the phrase "circumstances beyond the control" of the student, it is void for vagueness.\(^63\) These failures render the statute invalid.\(^64\)

1. The Absence of a Presuspension Hearing as a Violation of Procedural Due Process

Citing relevant portions of the *West Virginia Code*, Justice McHugh first observes that "procedural due process is required in administrative proceedings."\(^65\) Furthermore, "the United States Supreme Court has articulated the view that before a driver[']s license may even be suspended, procedural due process is required."\(^66\) In direct conflict with this constitutional mandate, the state provides no opportunity for the individual to be heard before her license is revoked.\(^67\) Justice McHugh points out that under the statute the school superintendent notifies the DMV of the student's withdrawal if she determines the withdrawal to be beyond the student's control.\(^68\) At this point, the DMV hears the case, but the hearing focuses solely on whether the student is under eighteen and has withdrawn from school.\(^69\) As a result, "at no point does the student have an opportunity to demonstrate to either the superintendent or the Department of Motor Vehicles that the circumstances for withdrawal are beyond his or her control."\(^70\)

Justice McHugh observes that Justice Neely attempts "to save the statute from a constitutional failure" by judicially amending it.\(^71\)

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\(^{61}\) Justice Miller joins Justice McHugh in this dissent. *Id.* at 457 (McHugh, J., dissenting).

\(^{62}\) *Id.* at 455.

\(^{63}\) *Id.* at 455-56.

\(^{64}\) *Id.* at 456.

\(^{65}\) *Id.* at 453.

\(^{66}\) *Id.* at 455.

\(^{67}\) *Id.* at 453-54.

\(^{68}\) *Id.* at 454.

\(^{69}\) *Id.*

\(^{70}\) *Id.*

\(^{71}\) *Id.*
Justice Neely held that (1) the hearing should be conducted by a school official, and (2) the DMV should inform the student of her "right to a hearing before the appropriate school official."72 However, Justice McHugh criticizes Justice Neely's creation of these non-legislative amendments on the ground that Justice Neely "fails to articulate any specific procedure that the Department must follow so as to ensure that the revokee is fully apprised of his or her right to a hearing before school officials.... Consequently, the procedures set forth by the majority opinion are as vague as the statute itself."73

A better solution lies in another state's legislation. In contrast to West Virginia, Kentucky created a statute entitling the student to a postsuspension *ex parte* hearing before a district court of record.74 The student may appeal to a circuit court.75 Significantly, the Kentucky statute includes a provision declaring that revocation "shall not be permitted unless the local school district shall operate an alternative education program approved by the Department of Education designed to meet the learning needs of students who are unable to succeed in the regular program."76 Justice McHugh praises Kentucky's appreciation of the "drastic" nature of license revocation and its willingness to employ "every possible means to keep students in school."77

Finally, Justice McHugh addresses Justice Neely's suggestion that driving is akin to a *privilege*, rather than a *right*.78 However, Justice McHugh asserts that "this fact will not support overlooking the procedural due process deficiencies" of the statute at issue.79 In support of his conclusion, Justice McHugh recognizes that "the United States Supreme Court has articulated the view that before a driver[']s

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72. *Id.*
73. *Id.* at 454 n.2.
74. *Id.* at 454.
75. *Id.* at 455.
76. *Id.* at 455 n.3 (quoting KY. REV. STAT. ANN. § 159.051(2) (Michie/Bobbs-Merrill 1990)).
77. *Id.*
78. *Id.* at 451.
79. *Id.* at 455.
license may even be suspended, procedural due process is required. In so holding, the Supreme Court does not differentiate student drivers under the age of eighteen from other drivers.' Justice McHugh concludes that procedural due process requires a prerogation hearing to examine the circumstances of the student’s withdrawal.

2. The Statute’s Violation of the “Void for Vagueness” Doctrine

Citing prior decisions of the court and American Jurisprudence, Justice McHugh asserts that the vagueness doctrine exists along a continuum: one end concerns economic matters and demands less specificity, while the other end deals with more significant matters (such as criminal penalties) and demands more specificity. Thus, the revocation provision “would be subject to more scrutiny under the vagueness doctrine than a statute involving economic matters, as the object of the statute in this case is to revoke a driver’s license.” Upon such close scrutiny, Justice McHugh discovers three ways in which the statute violates the vagueness doctrine.

First, the phrase “circumstances beyond the control” of the student “is not defined by the statute nor are there any guidelines which the superintendent may follow in determining whether a student’s withdrawal is due to circumstances beyond his or her control.” Yet if the student withdraws because of circumstances beyond her control, the school official exempts her from the statute’s application. As a result of its determinative effect, this passage requires further definition to guide the school superintendent in her revocation decision.

Second, the statute neglects the situation where the DMV suspends the license of a student who, later, cannot return

80. Id. (citing Bell v. Burson, 402 U.S. 535 (1971)).
81. Id.
82. Id. at 455 (citing Hartsook-Flesher Candy Co. v. Wheeling Wholesale Grocery Co., 328 S.E.2d 144 (W. Va. 1984); State v. Flinn, 208 S.E.2d 538 (W. Va. 1974)).
83. Id. (citing 16A Am. Jur. 2d Constitutional Law § 818 (1979)).
84. Id. at 455-56.
85. Id. at 456.
86. Id.
87. Id.
88. Id.
to school due to circumstances beyond her control. Third, the statute demands that the school official notify the DMV each time a student withdraws, regardless of whether that student possesses a license. This requires the DMV to figure out to whom the statute applies. Accordingly, the statute falls short of the demands placed on it by the vagueness doctrine and should be declared void.

As a consequence of not providing a hearing before revocation and failing to define "circumstances beyond the control" of the student, the statute "does not pass constitutional muster." This constitutional failure demands that the statute be proclaimed void.

IV. PROCEDURAL DUE PROCESS REQUIREMENTS FOR LICENSE REVOCATION: RELEVANT UNITED STATES SUPREME COURT DECISIONS

The Fourteenth Amendment declares that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." Consequently, United States Supreme Court decisions control state law issues invoking the Fourteenth Amendment due process clause. Procedural due process considerations involve determinations of (1) whether a constitutionally protected interest exists, and (2) what type of process must be provided. In Bell v. Burson, the United States Supreme Court established that a driver's license, as an entitlement, merits procedural due process protection. In two subsequent opinions, Dixon v. Love and Mackey v. Montrym, the Court applied the following guidelines to determine the kind of pro-

89. Id.
90. Id.
91. Id.
92. Id.
93. Id.
94. Id.
95. U.S. Const. amend. XIV, § 1.
96. GERALD GUNThER, CONSTITUTIONAL LAW 567 (11th ed. 1985).
97. Id. at 584.
100. 443 U.S. 1, 10 (1979).
cess required: the private interest involved, the risk of an erroneous deprivation, and the state or government interest. Application of these principles to Mr. Means' case and the West Virginia statute reveals the cogency of Justice McHugh's dissent.

A. Bell v. Burson

Georgia had enacted a Motor Vehicle Safety Responsibility Act requiring an uninsured motorist to post a bond for damages when requested by the parties following an accident. Failure to do so resulted in suspension of the driver's license and registration. The Department of Public Safety (DPS) provided a hearing before suspension took place. However, the hearing barred any discussion of the driver's fault or liability. The petitioner, Mr. Bell, argued to the Georgia Court of Appeals that the Act's failure to supply a hearing on the issue of fault violated the due process clause. In response, the court maintained that "[f]ault or 'innocence' are completely irrelevant factors." On appeal, the Georgia Supreme Court denied review.

102. Id. at 535-36.
103. Id. at 536.
104. Id.
105. Id.
106. Mr. Bell, a minister, routinely drove to three communities in Georgia as part of his clerical duties. One Sunday, a five-year-old child rode her bicycle into Mr. Bell's car, resulting in an accident. Reporting the accident to the DPS Director, the child's parents demanded $5,000 worth of damages for their daughter's injuries. In turn, the Director notified Mr. Bell that if he was not insured, he must either (1) put up a bond or cash security deposit of $5,000 (2) show a notarized release from liability along with proof of future financial responsibility, or (3) suffer suspension of his driver's license and registration. At this point, Mr. Bell asked for a hearing in order to demonstrate that he was not at fault, and that he would be substantially limited in the performance of his professional duties by such revocation. The Director replied that he had scheduled a hearing but that only these issues would be considered: "(a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law." Ga. Code Ann. § 92A-602 (1958). Prohibiting Mr. Bell's attempt to introduce evidence on liability, the Director found that Mr. Bell did not fall under any of the exceptions and gave him 30 days to satisfy the statute's security provisions or have his license revoked.

107. Id.
108. Id. at 536-37.
109. Id. at 537.
In delivering the opinion of the Supreme Court, Justice Brennan addresses two issues. First, he considers whether a driver’s license represents an entitlement protected by procedural due process. Second, Justice Brennan inquires into the type of hearing required. This inquiry further splits off into contemplation of the subject matter of the hearing and whether the hearing should take place before or after suspension of the license.

Justice Brennan begins with the observation that the statute would not have violated due process if it had prohibited the issuance of licenses to uninsured drivers. However, [once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Furthermore, procedural due process is required "whether the entitlement is denominated a 'right' or a ' privilege.'"

The second part of the opinion addresses the kind of procedural due process required. Procedures vary according to the type of entitlement involved. In Mr. Bell’s case, the hearing on the issue of fault does not require full adjudication because "[t]hat adjudication can only be made in litigation between the parties involved in the accident." Further, the subject of the hearing may be confined to the question of "whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee," since the sole purpose of the statute is to procure security for such judgments.
Yet Georgia argued that a fault inquiry hearing was unnecessary because fault was "irrelevant to the statutory scheme." Justice Brennan responded by pointing out several occasions where liability "plays a crucial role" in the Act, and "[s]ince the statutory scheme [made] liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing." Thus, Mr. Bell's hearing violated this standard since it prohibited deliberation upon the critical element of fault.

Lastly, Justice Brennan addresses Georgia's contention that the hearing on liability does not have to take place before suspension of the licenses and registration. Rejecting this argument, Justice Brennan held that, absent an emergency situation, a prerevocation hearing is an essential requirement of the due process clause.

B. Dixon v. Love

In Dixon, an Illinois statute enabled the Secretary of State to act "without preliminary hearing upon a showing by his records or other sufficient evidence" that a person falls into one of eighteen categories as a result of his driving. Prior to revocation, written notice must be "immediately" provided, although the statute requires no prior hearing. Further, the Secretary must provide a "full evidentiary hearing" within twenty days of the licensee's written request. The Secretary's determination may be reviewed by the Illinois courts. Persons who have suffered a hardship because of

121. Id. at 541.
122. Id.
123. Id.
124. Id. at 542.
125. Id.
126. Id. (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)).
128. Id. at 107 (citing ILL. REV. STAT. c. 95 1/2, § 6-206(a) (1974)).
129. Conviction of three moving traffic violations within a 12-month period comprises one such category resulting in suspension. Another arises when an individual "has been suspended thrice within a 10 year period." Id. at 107-09.
130. Id.
131. Id. at 109-10.
132. Id. at 110.
the license revocation or who require a license for commercial use may procure a restricted permit.\textsuperscript{133}

Following the Secretary’s revocation of his license, Mr. Love\textsuperscript{134} brought an action before the United States District Court for the Northern District of Illinois.\textsuperscript{135} The district court held the statute unconstitutional,\textsuperscript{136} asserting that \textit{Bell v. Burson} mandates a pre-revocation hearing.

The Supreme Court, citing \textit{Bell v. Burson}, begins its analysis by identifying that “the Due Process Clause applies to the deprivation of a driver’s license by the State.”\textsuperscript{137} Since Mr. Love did not question the administrative hearing itself, the only remaining issue concerned whether due process requires a hearing prior to suspension. Finding the case akin to \textit{Mathews v. Eldridge},\textsuperscript{138} the Court chooses to determine the case before it along the same guidelines:

[I]Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, 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 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.\textsuperscript{139}

In terms of the first \textit{Eldridge} factor, the Court compares the private interest represented by a driver’s license with that represented by social security payments dealt with in \textit{Eldridge}.\textsuperscript{140} On one hand, a driver’s license involves a less important private interest than social

\textsuperscript{133} \textit{Id.}

\textsuperscript{134} In the course of his employment as a truck-driver, appellee Mr. Love acquired the following violations: (1) license suspension in 1969 for three convictions within a 12-month period, (2) a subsequent suspension in 1970 for driving with a suspended license, (3) two convictions for speeding in 1974, and (4) a third citation for speeding in February of 1975. Mr. Love was informed on March 27 that his license would be suspended if he was convicted of the third violation. The conviction took place on March 31, and Mr. Love received a notice on June 3 that suspension would occur on June 6. \textit{Id.} at 110-11.

\textsuperscript{135} \textit{Id.} at 111.

\textsuperscript{136} \textit{Id.} at 111-12.

\textsuperscript{137} \textit{Id.} at 112.

\textsuperscript{138} 424 U.S. 319 (1976).


\textsuperscript{140} \textit{Id.} at 113.
security benefits because recipients of benefits use them for subsis-
tence.141 On the other hand, a driver’s license may involve a greater
private interest than social security benefits because a licensee cannot
be compensated for the period of suspension in the manner a social
security recipient can be paid retroactively.142 However, in light of
the restricted permit provision for hardship and commercial use, the
Court holds that “something less than an evidentiary hearing is suf-
ficient prior to adverse administrative action” for the private interest
in this case.143

Second, the absence of a prior hearing creates no great risk of
an erroneous deprivation, because the determinations of whether to
revoke are basically automatic.144 Mr. Love had already been af-
forded a full judicial hearing for all his traffic convictions.145 There-
fore, the Court “conclude[s] that requiring additional procedures
would be unlikely to have significant value in reducing the number
of erroneous deprivations.”146

Third, a pretermination hearing would invite affected persons to
delay, creating an obstacle to administrative efficiency.147 More im-
portantly, however, the public interest in safety mandates the im-
mediate removal of the danger represented by the repeatedly convicted
driver.148 “This factor fully distinguishes Bell v. Burson149 . . . where
the ‘only purpose’ of the Georgia statute there under consideration
was ‘to obtain security from which to pay any judgments against
the licensee resulting from the accident.’”150

In conclusion, the Court holds that the substantial public inter-
est interests involved allows the state to make an initial decision without
providing a hearing.151

141. Id.
142. Id.
143. Id. (quoting Mathews v. Eldridge, 424 U.S. 319, 343 (1976)).
144. Id.
145. Id.
146. Id. at 114.
147. Id.
148. Id.
151. Id. at 115.
C. Mackey v. Montrym\textsuperscript{152}

The Massachusetts implied consent law presumes that any person driving on Massachusetts roads consents to a breath-analysis test upon arrest for drunken driving.\textsuperscript{153} Although the arrested person may refuse the test, the commonwealth will suspend her license for ninety days for doing so.\textsuperscript{154} Subsequent to Mr. Montrym’s license suspension\textsuperscript{155} under the implied consent statute, he filed suit in United States District Court charging that the statute was unconstitutional.\textsuperscript{156} The district court, citing Bell v. Burson, agreed with Mr. Montrym that due process required a presuspension hearing.\textsuperscript{157}

In its opinion, the Supreme Court applies the three-factor balancing test of Eldridge examining the private interest involved, the risk of an erroneous deprivation, and the government interest at issue.\textsuperscript{158} As in Love, the private interest consists of the continued

\begin{itemize}
  \item \textsuperscript{152} 443 U.S. 1 (1979).
  \item \textsuperscript{153} Justice Burger provides the following portion of Mass. Gen. Laws Ann. ch. 90, § 24(1)(f):
      Whoever operates a motor vehicle upon any [public] way . . . shall be deemed to have consented to submit to a chemical test or analysis of his breath in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor . . . .
      If the person arrested refuses to submit to such test or analysis, after having been informed that his license . . . to operate motor vehicles . . . in the commonwealth shall be suspended for a period of ninety days for such refusal, no such test or analysis shall be made, but the police officer before whom such refusal was made shall immediately prepare a written report of such refusal.

  \item \textsuperscript{154} Id., at 3-4.
  \item \textsuperscript{155} On May 15, 1976, a police officer arrested Mr. Montrym for driving under the influence of intoxicating liquor at the site of Mr. Montrym’s automobile accident. After being taken to the police station, Mr. Montrym refused to take a breath-analysis test. Shortly thereafter, Mr. Montrym changed his mind and sought to take the test. Following the statute’s demand that an immediate report of the refusal be made, the police officer denied the request. The officer then filed his report of Mr. Montrym’s refusal with the Registrar of Motor Vehicles.
      On June 2, a state court dismissed Mr. Montrym’s driving under the influence charge, apparently because the police had failed to honor Mr. Montrym’s second request for the breath-analysis test. Although Mr. Montrym’s lawyer notified the Registrar of this dismissal, the Registrar suspended Mr. Montrym’s license because he had no authority to do otherwise. He also informed Mr. Montrym of his right to appeal the suspension. Although a hearing before the Registrar was available, Mr. Montrym chose instead to appeal to the Board of Appeal. However, after threatening to sue the Registrar, Mr. Montrym brought suit in United States District Court, abandoning his administrative appeal. \textit{Id.} at 4-8.
  \item \textsuperscript{156} Id. at 8.
  \item \textsuperscript{157} Id. at 9.
  \item \textsuperscript{158} Id. at 10.
\end{itemize}
use of a driver’s license.\textsuperscript{159} Although noting the interest to be “substantial” because of the inability to “make whole” a driver with an erroneously suspended license, the Court maintains that the interest here is less weighty than in \textit{Love}, because here the maximum suspension duration is ninety days and in \textit{Love} it was one year.\textsuperscript{160} Moreover, the Court declares that the timing of the postsuspension hearing comprises one of the most important considerations.\textsuperscript{161} In \textit{Love}, a postsuspension hearing need not be scheduled until twenty days after the request was made; the restricted permit for hardship or commercial use offsets the harshness of this delay.\textsuperscript{162} In contrast, the Massachusetts statute provides for an immediate postsuspension hearing.\textsuperscript{163} Therefore, “[n]either the nature nor the weight of the private interest involved in this case compels a result contrary to that reached in \textit{Love}.”\textsuperscript{164}

Concerning the erroneous deprivation prong of the \textit{Eldridge} test, the Supreme Court first asserts that the risk of an erroneous reporting of the facts by the police officer “seems insubstantial.”\textsuperscript{165} Second, factual disputes rarely arise, as indicated by \textit{Montrym} itself: Mr. Montrym’s complaint involved the legal, rather than factual, question of whether the policeman’s refusal to administer a breath-analysis test invalidated Mr. Montrym’s suspension.\textsuperscript{166} Third, even when factual disputes occur, the risk of error is not substantial enough to warrant delay of suspension.\textsuperscript{167} Fourth, the nonevidentiary presuspension hearing suggested by the district court would only correct clerical errors which, if material, the Registrar previously would have noticed.\textsuperscript{168} Fifth, although a presuspension evidentiary hearing might reveal factual disputes between the driver and officer, “the Registrar is not in a position to make an informed-probable cause determi-
nation or exercise of discretion prior to an evidentiary hearing."\textsuperscript{169} Therefore, a presuspension hearing would not "materially enhance" reliability.\textsuperscript{170}

Finally, as in \textit{Love}, the significant governmental interest involved concerns public safety, "fully distinguish[ing] this case from \textit{Bell v. Burson}.\textsuperscript{171} The summary suspension serves this public interest by: (1) deterring intoxicated driving, (2) providing an incentive to take the breath-analysis test so that reliable evidence for criminal prosecutions may be procured, and (3) ridding the highways of a significant hazard.\textsuperscript{172} Furthermore, drivers would utilize a presuspension hearing as a means of delay, placing a significant fiscal and administrative burden on Massachusetts.\textsuperscript{173}

In sum, the Court rules that highway safety constitutes a weighty governmental interest justifying license suspension without a hearing, as long as a hearing is promptly provided following suspension.\textsuperscript{174}

\textbf{D. Means in the Face of Precedent}

Although the majority and dissenting opinions of \textit{Means} touched on some of the constitutional requirements addressed by the United States Supreme Court’s decisions, a thorough discussion of how these decisions apply to the \textit{Means} case is essential to understanding the appropriateness of that decision.

1. Application of the Bell Principles to Means

In \textit{Bell}, Justice Brennan holds that (1) the subject matter of the hearing must be comprised of important statutory elements,\textsuperscript{175} and (2) notice and an opportunity for a hearing must be given prior to termination.\textsuperscript{176} Analyzing \textit{Means} in the context of these mandates reveals the West Virginia statute to be deficient in both areas.

\begin{thebibliography}{99}
\bibitem{169} Id. at 16-17.
\bibitem{170} Id. at 17.
\bibitem{171} Id.
\bibitem{172} Id. at 18.
\bibitem{173} Id.
\bibitem{174} Id. at 19.
\bibitem{176} Id. at 542.
\end{thebibliography}
In both *Bell* and *Means*, the state failed to allow the individuals to address issues critically significant (because these issues determined whether revocation would occur). In *Bell*, the hearing official refused to let Mr. Bell introduce evidence of liability;\textsuperscript{177} in *Means*, Mr. Means was not allowed to address the circumstances of his withdrawal.\textsuperscript{178} Yet Justice Brennan declared that “[s]ince the statutory scheme makes liability an important factor in the State’s determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in its prior hearing.”\textsuperscript{179} Thus, since the West Virginia statute makes “circumstances beyond the control” of the student a significant element, it cannot be excluded from consideration.

In another relevant portion of his opinion, Justice Brennan declares that absent an emergency circumstance, due process mandates that the state provide “notice and opportunity for hearing appropriate to the nature of the case” prior to revocation.\textsuperscript{180} In reference to *Means*, *West Virginia Code* Section 18-8-11 provides that the DMV will give the student a thirty-day notice of suspension.\textsuperscript{181} However, *West Virginia Code* Section 17B-3-6(10) provides for only a post-suspension hearing where a licensee “[i]s under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school.”\textsuperscript{182} Since the interest involved in *Means* is the same as in *Bell*, a presuspension hearing must occur. However, the subsequent decisions of *Love* and *Montrym* further refine timing considerations.

Thus, the West Virginia statute violates procedural due process by failing to provide a hearing addressing the circumstances of the student’s withdrawal. The *Bell* decision additionally represents the proposition that procedural due process requires a presuspension hearing in license revocation cases.

\textsuperscript{177} Id. at 538.
\textsuperscript{179} Bell, 402 U.S. at 541.
\textsuperscript{180} Id. at 542 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)).
\textsuperscript{181} W. VA. Code § 18-8-11 (1988).
\textsuperscript{182} W. VA. Code § 17B-3-6(10) (1991).
2. Application of the Love Principles to Means

Regarding the first element of the Eldridge test used by the Love Court, the affected private interest, one major difference between the Illinois statute discussed in Love and the West Virginia statute must be addressed. On one hand, the Love statute contains a provision whereby an individual suffering a hardship or requiring a license for commercial use can obtain a restricted permit. On the other hand, the West Virginia statute, although exempting those students who withdraw due to circumstances beyond their control, fails to provide restricted permits or specifically identify a "hardship" provision. Consequently, the West Virginia statute adversely affects the private interest more dramatically than does the Illinois statute.

Furthermore, the second factor, the risk of an erroneous deprivation, involves different elements here than in the Illinois statute. In Love, little risk of an erroneous deprivation existed because revocation decisions were primarily automatic, based on prior violations. In contrast, the risk of an erroneous deprivation in Means is greater because the decision to revoke depends on the discretion of one person — the school district superintendent. Moreover, discrepancies may arise between the student's and superintendent's factual presentations that may increase the risk of an erroneous deprivation. Finally, an erroneous deprivation may occur as a result of a misinterpretation of the phrase, "circumstances beyond the control" of the student.

The third factor consists of the governmental interest involved. In Love, the governmental interest in public safety mandated the immediate removal of the repeatedly convicted driver from the road. Here, however, no such imminence exists; possession of driv-

184. Id. at 110.
187. Id. at 113.
190. Id. at 114.
ers' licenses by high school dropouts poses no threat to public safety. Although encouraging students to continue their education is laudable in purpose, it certainly weighs less in terms of importance than public highway safety.

The net result of balancing these three factors demonstrates that the private interest here deserves greater procedural due process protection than it did in *Love*. Not only does the *Means* private interest lack the protection of a restricted permit and a hardship provision,\(^\text{191}\) the governmental interest of indirectly encouraging school attendance demands less consideration than *Love*'s governmental interest in public safety.\(^\text{192}\) Moreover, *Means* involves a greater risk that a student will be erroneously deprived of her driver's license than the analogous risk in *Love*, where revocation decisions were mainly automatic.\(^\text{193}\)

3. Application of the *Montrym* Principles to *Means*

As in *Love*, the *Montrym* Court employed the *Eldridge* balancing test.\(^\text{194}\) Comparison of the relative private interests reveals the *Means* interest to be most affected, because the possible suspension period is longer than in *Montrym* and *Love*.\(^\text{195}\) Although the risk of an erroneous deprivation of a driver's license appears equal in *Montrym* and *Means*, the *Montrym* governmental interest of public safety overshadows the *Means* governmental interest of school attendance.\(^\text{196}\)

The *Montrym* Court asserted that the private interest there, involving a maximum suspension period of ninety days, was less than in *Love*, in which the uppermost revocation period was one year.\(^\text{197}\) These periods pale by comparison, however, to the two-year sus-
pension period in Means. Of the statutes represented in these cases, the West Virginia statute yields the greatest penalty. Therefore, the private interest here outweighs the private interests in either Love or Montrym.

Looking to the second portion of the Eldridge test, an approximately equal risk of an erroneous deprivation of the private interest exists here as in Montrym. In both Montrym and Means, the risk of an erroneous deprivation derives from (1) the possibility of a discrepancy between the factual accounts of the driver and official involved, and (2) the discretionary nature of the decision (in Montrym, the police officer must judge whether the driver appears intoxicated; in Means, the school official must determine if withdrawal was beyond the student’s control).

However, the third factor, the governmental interest, is greater in both Montrym and Love than here. Public safety and the importance of immediate action in eradicating the danger represented by either intoxicated or unsafe drivers outweights the Means governmental interest of encouraging school attendance.

In conclusion, as demonstrated by the above analysis, greater procedural due process protection must be conferred on a licensee under the West Virginia statute than under the analogous statutes in Montrym and Love.

4. The Majority and Dissenting Opinions Considered in Light of These Applications

The United States Supreme Court decisions, in sum, have held that procedural due process requires, at a minimum, that the statute provides for a hearing that addresses the most important aspects of the statute that affect the private interest involved. Further, specific

201. Montrym, 443 U.S. at 18.
hardship provisions, such as those in *Love*, ensure the satisfaction of procedural due process. Finally, the amount of procedural due process protection that the private interest demands relates directly to how much the governmental interest affects it, as well as the likelihood of the private interest being erroneously deprived. These factors take on greater significance in the West Virginia statute — where the private interest is greater and the public interest less — than in either of the statutes discussed in *Love* or *Montrym*.

In the majority opinion, Justice Neely asserts that (1) the hearing should be conducted by a school official,204 (2) the DMV should inform the student of her right to a hearing before the appropriate school official,205 and (3) "the words 'circumstances beyond their control' create a quite specific standard."206 In terms of the first assertion, the real issue concerns the subject matter of the hearing. The student must be heard on the question of the circumstances of her withdrawal since this determines whether revocation will occur. Justice Neely’s point that the hearing should be held by the school superintendent207 follows logically from the student’s need to be heard on the circumstances of her withdrawal; clearly, the student whose license has been revoked should be able to address the person who determined the nature of her withdrawal. Regarding Justice Neely’s second element, without question the DMV must inform the student of her right to a hearing before a school official which deals with the circumstances of withdrawal. But, in addition, the student’s right to a hearing on the subject of circumstances beyond her control should be included in the statute. Justice Brennan first states this principle — that the licensee be heard on the issue determining revocation — in *Bell*.208 In the subsequent decisions of *Love* and *Montrym*, both of the statutes that the Court upholds also provide for substantive considerations.209

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204. *Id.* at 450.
205. *Id.* at 453.
206. *Id.* at 451.
207. *Id.* at 450.
In terms of the third element, in addition to stating that "the words 'circumstances beyond their control' create a quite specific standard," Justice Neely holds that further definitions "are useless." Yet Justice Neely himself provided several examples which help elucidate the meaning of these words. If West Virginia placed defining terms in the statute, as Illinois did in Love, the statute's constitutionality would be safeguarded.

Justice McHugh, in the dissenting opinion, finds the statute to be unconstitutional, as it fails to: (1) clearly define "circumstances beyond the control" of the student, which due process requires because of its determinative effect, and (2) provide the student with an opportunity to be heard on the issue of the circumstances of her withdrawal (3) prior to revocation of her driver's license. First, although failure to clearly define "circumstances beyond the control" of the student will not necessarily violate due process, the inclusion of further defining terms can only help ensure the statute's compliance with procedural due process. Other states enacted similar statutes providing specific mention of financial hardship as a reason for exempting the student from the statute's effects.

Second, Justice McHugh correctly identifies that consideration of the circumstances of the student's withdrawal needs to take place

three major elements of the statute: "(1) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any [public] way . . . (2) was such person placed under arrest, and (3) did such person refuse to submit to such test or analysis." Mackey v. Montrym, 443 U.S. 1, 7 n.5 (1979) (alteration in original).

211. Justice Neely provided the following several examples: "children who withdraw from school because they are needed to support their families; children who withdraw from school because of physical disabilities that preclude further attendance between the ages of sixteen and eighteen; and, children who withdraw from school because both the children and the schools agree that further attendance will be less beneficial than on-the-job training or some other program of personal development." Id. at 451.
212. Id. at 456 (McHugh, J., dissenting).
213. Id. at 454.
214. Id. at 455.
at the hearing.\textsuperscript{216} As noted above, Justice Brennan first articulates this principle in \textit{Bell}.\textsuperscript{217} Third, the issue of whether the hearing must occur prior to suspension hovers on the periphery of a more central point: that the private interest in \textit{Means} deserves greater procedural due process protection than the skeletal postrevocation hearing afforded by West Virginia. Greater protection could be provided either by a presuspension hearing or a full evidentiary, postsuspension hearing. Although in \textit{Bell} the Court considered a pretermination hearing essential,\textsuperscript{218} in the later decisions of \textit{Love}\textsuperscript{219} and \textit{Montrym}\textsuperscript{220} the Court held post-termination hearings to be acceptable. Yet in both \textit{Love} and \textit{Montrym}, the private interests were less and the governmental interests greater than in \textit{Means}. Further, the post-suspension hearings discussed in \textit{Love} and \textit{Montrym} provide greater procedural due process protection of the private interest than does the West Virginia statute.\textsuperscript{221} Therefore, since the private interest here deserves more procedural due process protection, the private interest mandates that the state supply either a presuspension hearing or a posttermination hearing involving some elevated form of judicial or administrative process.

Thus, although Justice Neely attempts to judicially constitutionalize the statute by ruling that the hearing should be conducted before a school official, his efforts fall short of the precedential mandate that the statute specifically identify the student's right to a hearing on the circumstances of her withdrawal. Justice McHugh, on the other hand, accurately asserts that the statute's failure to provide a hearing on the reasons for withdrawal and the inadequacy of the postrevocation hearing render the statute unconstitutional. Accordingly, the West Virginia legislature should amend the statute to include identification of a hearing for consideration of circumstances

\textsuperscript{218} \textit{Id.} at 542.
\textsuperscript{220} Mackey v. Montrym, 443 U.S. 1, 19 (1979).
\textsuperscript{221} The Illinois statute in \textit{Love} affords the licensee a full evidentiary hearing. Dixon, 431 U.S. at 109. The Massachusetts statute in \textit{Montrym} makes available to the revokeree a hearing before the Registrar of Motor Vehicles which may be appealed to the Board of Appeal, which, in turn, is subject to judicial review. Montrym, 443 U.S. at 6 n.4, 7.
beyond the control of the student. Furthermore, the legislature must convert the existing postrevocation hearing into either a presuspension hearing or some heightened judicial or administrative hearing to shelter the vulnerable private interest at stake. Finally, the phrase "circumstances beyond the control" of the student should be further defined by a hardship provision to ensure the statute’s constitutionality.

V. SIMILAR STATUTES IN OTHER JURISDICTIONS

A total of eleven states, including West Virginia, have enacted laws which in some way condition driver’s license possession on school attendance. Of these, three states need not address procedural due process concerns because their statutes do not include suspension provisions. All of the remaining states, with the exception of Wisconsin, hold the private interest in greater regard than West Virginia.

The statutes of Indiana, Texas, and Virginia require school attendance before a student can obtain a license. However, none of these statutes contain revocation provisions. Consequently, these states need not be concerned about violating procedural due process. Although a state must provide due process when removing an existing entitlement, it may withhold an entitlement without doing so. These states choose, nevertheless, to provide the minor who has been denied a license with the opportunity to be heard.

222. Arkansas, Florida, Indiana, Kentucky, Louisiana, Ohio, Tennessee, Texas, Virginia, West Virginia and Wisconsin. Mississippi also enacted a statute conditioning the possession of a driver’s license on high school attendance, scheduled to become effective on July 1, 1990. Miss. Code Ann. § 63-1-54 (Supp. 1990). However, the state conditioned the statute’s implementation on the legislature passing a resolution which dedicated sufficient funds to such implementation. As a consequence of the funds not being provided, the statute never became effective. The preceding information was provided, in part, by a state official in Mississippi. Telephone Interview with T.C. Ward, Director of Legislative Services for the State Senate of Mississippi (Sept. 12, 1991).

223. Indiana, Texas, and Virginia.


A fourth state differing substantially from the others, Wisconsin, requires school attendance until the age of eighteen. Failure to comply with the compulsory attendance law may lead to license suspension. Wisconsin’s statute does not mention the right to a hearing.

Tennessee has enacted a statute similar to West Virginia’s. Both statutes exempt a student who has withdrawn “due to circumstances beyond his or her control.” Yet, ironically, neither state permits discussion of why the student withdrew from school at the hearing they provide. However, Tennessee provides that the licensee’s case will be heard and decided prior to revocation if the licensee requests an administrative review within fifteen days after being notified of revocation.

Louisiana also passed a statute much like West Virginia’s which excuses the student from the statutory penalty when withdrawal is “due to circumstances deemed acceptable.” Yet Louisiana affords the minor heightened due process protection by providing her with a post-suspension hearing before the Department of Public Safety and Corrections appealable to a court. Arkansas and Florida both provide for a presuspension hearing in their statutes, as well as an exception for hardship. The statutes of Kentucky and Ohio also contain hardship provisions. Kentucky makes available a post-suspension full judicial hearing in district court with a right to appeal in circuit court; Ohio provides for a presuspension hearing with

237. Id.
238. Id.
the school superintendent and a postsuspension hearing before the juvenile court.\textsuperscript{244}

Thus, of all the state statutes invoking procedural due process protection for an aggrieved individual, West Virginia provides the least procedural due process protection. West Virginia must include a hearing on the circumstances of a student’s withdrawal and a presuspension or heightened postsuspension hearing in its statute to rise to the constitutional level of other states.

VI. THE RUTGERS REPORT\textsuperscript{245}

David J. Armor\textsuperscript{246} and Jackson Toby\textsuperscript{247} conducted a study of \textit{West Virginia Code} Section 18-8-11 in order to determine its efficacy. The report utilizes data on West Virginia dropouts that focuses on the period from 1984 to 1990.\textsuperscript{248} In carrying out this analysis, Armor and Toby determined, and subsequently tested, key assumptions underlying the statute.\textsuperscript{249} Further, they formulated two significant research questions: (1) the effect of the statute on dropout rates, and (2) the effectiveness and impact of enforcement.\textsuperscript{250} Finally, the researchers answered these questions and determined their causes.

Utilizing data obtained primarily from the West Virginia Department of Education and the DMV,\textsuperscript{251} Armor and Toby conducted a state-wide inquiry. The researchers utilized three bases of analysis: raw numbers, state rates, and annual rates. All three showed similar patterns.\textsuperscript{252} The analysis indicates that between 1984-85 and 1986-87 the dropout figure decreased by over 600.\textsuperscript{253} In 1988-89, the number of dropouts fell again by almost 200 students.\textsuperscript{254} However, the re-

\textsuperscript{245} David J. Armor & Jackson Toby, \textit{The West Virginia Driver’s License Law For Dropouts} (March 1991) (unpublished manuscript, on file with Rutgers University).
\textsuperscript{246} David J. Armor is a Visiting Professor at Rutgers University.
\textsuperscript{247} Jackson Toby is a Professor of Sociology at Rutgers University.
\textsuperscript{248} Armor & Toby, \textit{supra} note 245, at 14.
\textsuperscript{249} \textit{Id.} at 7-8.
\textsuperscript{250} \textit{Id.} at 8.
\textsuperscript{251} \textit{Id.} at 10.
\textsuperscript{252} \textit{Id.} at 13.
\textsuperscript{253} \textit{Id.}
\textsuperscript{254} \textit{Id.} at 17-18.
searchers believed that the 1988-89 decline in the number of dropouts was caused not by the passing of the statute in 1988, but rather by a trend already in existence.255 Further reinforcement for this theory derives from the 1989-90 increase in the dropout number by 200.256 Concerned that the 1989-90 rise in the dropout population might indicate that the law had "an adverse impact on the dropout process," Armor and Toby researched the possibility that other factors caused the increase.257 One possibility involved changing trends in dropout-correlated variables such as more students riding buses, lower academic achievement scores, higher poverty levels, higher pupil-teacher ratios, and the provision of fewer special education services.258 This research revealed that these trends should actually have produced a reduction, rather than an increase, in dropout rates.259 Finally, after speaking with state and local officials about the 1989-90 increase, Armor and Toby posited that the statute and its reporting procedures caused an increase in careful reporting, resulting in more students recorded as having withdrawn from school.260

To analyze the statute in reference to this data, Armor and Toby outlined three assumptions underlying the statute.261 First, a substantial portion of sixteen and seventeen year-old dropouts desire possession of driver's licenses.262 Second, successful enforcement must occur.263 Third, those students hoping to obtain a driver's license would choose possession of a license and staying in school over dropping out and forfeiting their license.264

In testing these assumptions, the researchers discovered the first and third to be largely invalid. Regarding the first assumption, approximately eighty percent of reported dropouts either (a) do not possess licenses, or (b) are beyond the age of eighteen and, therefore,
unaffected by the statute.\textsuperscript{265} On the other hand, enforcement has been "reasonably effective."\textsuperscript{266} The third assumption, however, proved untrue; only twenty-eight percent of those students whose licenses were suspended during the first two years since the statute's enactment went back to school or pursued a GED course.\textsuperscript{267}

Armor and Toby answered the first research question by stating that

the new law has not lowered dropout rates state-wide, at least during this initial two year period . . . . The reasons are, simply, that too many dropouts either (1) do not have driver's licenses, (2) are 18 or over, or (3) place too little value on licenses compared to the perceived burden of remaining in school.\textsuperscript{268}

Responding to the second research question, the researchers asserted that efficient enforcement of the law has little impact because the statute applies to only a limited portion of the dropout population.\textsuperscript{269}

In conclusion, the researchers warn that "even if small effects can be demonstrated, they will require significant administrative and law enforcement efforts from agencies that may well already be overburdened . . . . The reduction in dropout rates must be compared to the cost of prevention."\textsuperscript{270}

\section{VII. Conclusion}

Society pays dearly for dropouts because of their high unemployment rate and lower earning power. Although laudable in its intent to remedy this problem, the West Virginia statute encounters obstacles in terms of constitutionality and effectiveness.

Regarding constitutionality, the statute's most glaring deficiency concerns its failure to specify the student's right to a hearing at which the circumstances of her withdrawal will be considered. Further, although the United States Supreme Court has upheld post-suspension hearings in license revocation statutes, the private interest

\begin{itemize}
\item \textsuperscript{265} Id. at 24.
\item \textsuperscript{266} Id.
\item \textsuperscript{267} Id. at 24-25.
\item \textsuperscript{268} Id. at 25.
\item \textsuperscript{269} Id. at 16.
\item \textsuperscript{270} Id. at 26.
\end{itemize}
involved here is greater in relationship to the public interest than in those cases. As a result, the bare-boned post-termination hearing offered by West Virginia fails to constitutionally protect the fragile private interest. To protect this private interest from infringement by governmental directives, the state must supply the licensee with either a presuspension hearing or some elevated judicial or administrative process following suspension. Finally, inclusion of a hardship provision will further protect the important private interest at stake.

Other jurisdictions271 have followed West Virginia’s example in seeking to address the dropout problem through legislation which conditions possession of a driver’s license on school attendance. Of the eight states272 whose statutes contain suspension clauses, West Virginia protects the private interest less than all but Wisconsin. The other six states273 offer the licensee enhanced due process protection with presuspension hearings or postsuspension hearings with the right of appeal. In an effort to further shield the private interest, four state statutes274 contain hardship provisions.

In addition to constitutional weakness, the statute bears the unfortunate stamp of ineffectiveness. As demonstrated by the Rutgers Report, the statute has not decreased the number of dropouts primarily because (1) it affects too small a portion of the dropout population, and (2) of those affected, many still choose withdrawal over continued attendance, even if their licenses are suspended. Finally, a balancing of the administrative cost of the statute against its utility suggests that the statute is not cost-effective.

Unquestionably, dropouts represent a major concern to society. In resolving this problem, however, state government must be ever-vigilant to constitutionally protect the private interest of the individual. Furthermore, if the financial burden imposed by the state’s

272. Arkansas, Florida, Kentucky, Louisiana, Ohio, Tennessee, West Virginia, and Wisconsin.
274. Arkansas, Florida, Kentucky, and Ohio.
administrative cost continues to outweigh the yet to be demonstrated benefit of fewer dropouts, West Virginia should abandon the current statutory solution.

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