

Mr. Jeffrey S. Amick, Appellant, Pro Se
224 N. Hwy 67 #301
Florissant, Mo. 63101
(636) 866-4282

Cynthia L. Turley, Deputy Clerk for the Court en Banc
Supreme Court of Missouri
207 West High Street
Jefferson City, Missouri 65101

RECEIVED

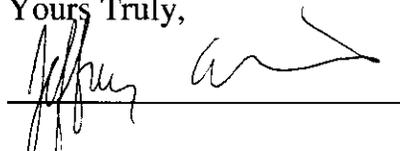
DEC 23 2013

OFFICE OF CLERK
MISSOURI SUPREME COURT 12-20-13

Dear Cynthia L. Turley,

Pursuant to our phone conversation of today I went ahead and compiled the appendix that is enclosed herein. In addition, due to some typos that were in my first brief (Appellant's Brief, dated 12-19-13) I went ahead and modified the filing and am submitting the new brief (dated 12-20-13) for filing since the previous one has not been filed yet. Please disregard the last brief and I would like Appellant's brief that is enclosed to be filed. Furthermore, I went ahead and submitted a new electronic copy (CD) of this brief and also mailed a copy of Appellant's Brief appendix, today's (12-20-13) Appellant's Brief, and a E-Copy (CD) of the 12-20-13 Appellant's brief, along with a copy of this letter to Respondent's counsel Chandreka N. Allen at 111 North 7th St., Room 401, St. Louis, Mo. 63101-2143. Thank you for all of your time, concern, and assistance in regards to this matter.

Yours Truly,



Mr. Jeffrey S. Amick

SCANNED

IN THE SUPREME COURT

STATE OF MISSOURI

JEFFREY S. AMICK,

FILED

Appellant,

DEC 28 2013

Vs.

CLERK, SUPREME COURT

**DIRECTOR OF REVENUE,
Respondent.**

CASE# SC93742

**APPEAL TO THE MISSOURI SUPREME COURT
FROM THE ST. LOUIS COUNTY, CIRCUIT COURT
21st JUDICIAL CIRCUIT, CASE# 13-SL-AC26334
THE HONORABLE MARGARET M. MCCARTNEY &
THE HONORABLE THOMAS J. PREBIL**

Appellant's Brief

Mr. Jeffrey S. Amick, Appellant, Pro Se

224 N. Hwy 67 #301

Florissant, Mo. 63031

CONTENTS

Table of Authorities.....3
Jurisdictional Statement.....4
Statement of Facts.....4-5
Sole Point Relied On:

The trial court erred when they determined Appellant was statutorily ineligible (L.F.¹ pg. 40) because all persons sentenced under R.S. Mo. 577.023.5 must be afforded the same rights and opportunities. R.S.Mo. 302.309.3(6)(b) as applied to Appellant, violates the Equal Protection Clause in this instance because it results in disparate treatment (non-eligible L.D.P. applicants applying under R.S.Mo. 302.309.3(6)(b) vs. eligible 302.309.3(9) L.D.P. Applicants) between offenders who are convicted of the same crime under R.S.Mo. 577.023.1(5). When a group of similarly situated individuals are excluded from the same opportunities as their counterparts, and it is also being done in a discriminatory manner that has no rational basis, it results in a violation to the Equal Protection Clause’s of the United States and Missouri Constitution(s). The trial Court committed reversible error by refusing to consider the merits of Appellant’s claims and violating Appellant’s Equal Protection

rights.....5
Argument.....6

¹ Signifies Legal File Herein

Standard of Review.....7

Introduction: **R.S.Mo 302.309.3(6)(b) VIOLATES THE EQUAL PROTECTION
 CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES
 CONSTITUTION AND ARTICLE I SECTION 2 OF THE MISSOURI
 CONSTITUTION WHEN APPELLANT:.....7**

Paragraph A) **Receives Disparate Treatment in Comparison to Others Who Have
 Been Convicted of the Same Crime Under R.S.Mo. 577.023.1(5);7-8**

Paragraph B) **Receives Dissimilar Treatment to Others who are Similarly Situated,
 that Denies Equality, Serves No Rational Basis, and is Unrelated, or Irrelevant to
 the Underlying Purpose of the State’s Objective;.....8-11**

Paragraph C) **Is Subjected to Invidious Discrimination Based on Poverty Since this
 Results in a Defacto Exclusion From an L.D.P. Opportunity Which is Based on an
 Irrational, Unrelated, and Irrelevant State Interest;.....12-13**

Paragraph D) **Is Subjected to Invidious Discrimination Based on the Fact That DWI
 Court is the Only Option.....13-14**

Conclusion.....14

Certificate of Service and Compliance.....15

TABLE OF AUTHORITIES

Cases

Glossip V Missouri Dept. of Transp. and Highway Patrol Employees' Retirement System, 411 S.W. 3d. 796 (Mo. banc 2013).....8

Gurley v. Missouri V. Missouri Bd. of Private Investigator Examiners, 361 S.W. 3d. 406 (Mo. banc 2012).....7,8

Hagan V Director of Revenue, 968 S.W. 2d 704 (Mo. banc 1998).....9

Millsap V Quinn, 785 S.W. 2d. 82 (Mo. banc 1990).....5,13

State V Baker, 524 S.W. 2d 122 (Mo. banc 1975).....5,9-11

State V Day-Brite Lighting, Inc., 240 S.W. 2d 886, 893 (Mo. banc 1951).....5,8

State V Kerr, 905 S.W. 2d 514, 515 (Mo. banc 1995).....7

Taylor V Steele, 341 S.W. 3d 634, 664 (Mo. banc 2011).....9

Constitutional Provisions

U.S. Constitutional Amendment 14.....4-9

Missouri Constitution Article I Section 2.....4-9

Missouri Constitution Article V Section 3.....4

Missouri Statutes

R.S.Mo. 302.309.3(6)(b).....*passim*

R.S.Mo. 302.309.3(9).....*passim*

R.S.Mo. 577.023.1(5).....*passim*

JURISDICTIONAL STATEMENT

This action involves Appellant’s Constitutional challenge of R.S.Mo. 302.309.3(6)(b) since it results in dissimilar and discriminatory treatment between him and others who are similarly situated under R.S.Mo. 577.023.5. This Honorable Court is vested with exclusive jurisdiction to determine the Constitutional validity of a statute pursuant to Article V section 3 of the Missouri Constitution.

STATEMENT OF FACTS

After Appellant was convicted of a felony involving the use of a motor vehicle, he petitioned the Circuit Court of St. Louis County for a limited driving privilege (L.D.P. herein). In his petition (L.F. 3-19), Appellant brought forth sufficient facts to demonstrate the need and adequacy of a L.D.P. and why an undue hardship would occur if this privilege were not granted. Thereafter, Respondent filed a motion to dismiss (L.F. 24-33) which claimed that Appellant was statutorily ineligible, because he had been convicted of a felony Driving While Intoxicated offense. Appellant responded with a traverse (L.F. 34-36) which averred that he was not ineligible and provided reasons in support of this contention. Alternately, Appellant argued that if he were denied because of the felony Driving While Intoxicated (D.W.I. herein) that he would challenge R.S.Mo. 302.309.3(6)(b) under the Equal Protection Clause of the 14th Amendment to the United States Constitution and the Equal Rights and Opportunities Clause enunciated under Article I Section 2 of the Missouri Constitution. On September 24, 2013, the Honorable Margaret M. McCartney held a hearing in this matter and Appellant verbally brought

forth his claims listed below while reiterating the ones announced in his original petition and traverse and summarized by stating that he planned to file an appeal into this Honorable Court if his L.D.P. application were denied on an ineligibility basis. The Court thereafter ruled Appellant was statutorily ineligible for a L.D.P. and on 10-1-13, the Honorable Thomas J. Prebil upheld the ruling (L.F. pg. 40). This appeal follows from those events.

SOLE POINT RELIED ON

The trial court erred when they determined Appellant was statutorily ineligible (L.F. pg. 40) because all persons sentenced under R.S. Mo. 577.023.1(5) must be afforded the same rights and opportunities. R.S.Mo. 302.309.3(6)(b) as applied to Appellant, violates the Equal Protection Clause in this instance, because it results in disparate treatment (non-eligible L.D.P. applicants applying under R.S.Mo. 302.309.3(6)(b) vs. eligible 302.309.3(9) L.D.P. Applicants) between offenders who are convicted of the same crime under R.S.Mo. 577.023.1(5). When a group of similarly situated individuals are excluded from the same opportunities as their counterparts, and it is also being done in a discriminatory manner that has no rational basis, it results in a violation to the Equal Protection Clause's of the United States and Missouri Constitution(s). The trial Court committed reversible error by refusing to consider the merits of Appellant's claims and violating Appellant's Equal Protection rights.

State V Day-Brite Lighting, Inc., 240 S.W. 2d 886 (Mo. banc 1951)

State V Baker, 524 S.W. 2d 122 (Mo. banc 1975)

Millsap V Quinn, 785 S.W. 2d. 82 (Mo. banc 1990)

Missouri Constitution Article I Section 2

United States Constitutional Amendment 14

R.S.Mo. 302.309.3(6)(b)

R.S.Mo. 302.309.3(9)

R.S.Mo. 577.023.1(5)

R.S.Mo. 577.600

ARGUMENT

The trial court erred when they determined Appellant was statutorily ineligible (L. F. pg. 40) because all persons sentenced under R.S. Mo. 577.023.5 must be afforded the same rights and opportunities. R.S.Mo. 302.309.3(6)(b) as applied to Appellant, violates the Equal Protection Clause in this instance, because it results in disparate treatment (non-eligible L.D.P. applicants applying under R.S.Mo. 302.309.3(6)(b) vs. eligible 302.309.3(9) L.D.P. Applicants) between offenders who are convicted of the same crime under R.S.Mo. 577.023.1(5). When a group of similarly situated individuals are excluded from the same opportunities as their counterparts, and it is also being done in a discriminatory manner that has no rational basis, it results in a violation to the Equal Protection Clause's of the United States and Missouri Constitution(s). The trial Court committed reversible error by refusing to consider the merits of Appellant's claims and violating Appellant's Equal Protection rights

STANDARD OF REVIEW

“An appellate Court reviews a trial Court’s grant of a motion to dismiss de novo”...”The issue of whether a statute is Unconstitutional is a question of law subject to de novo review”. See *Gurley v. Missouri V. Missouri Bd. of Private Investigator Examiners*, 361 S.W. 3d. 406, 411 (Mo. banc 2012) (internal citations omitted) See also *State V Kerr*, 905 S.W. 2d 514, 515 (Mo. banc 1995) “To withstand an equal protection challenge, a statute must meet the ‘rational basis’ test. The ‘rational basis’ test requires the state have a legitimate interest in the subject matter of the statute and that the statute be rationally related to that interest.” (internal citation omitted)

INTRODUCTION

R.S.Mo 302.309.3(6)(b) VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 2 OF THE MISSOURI CONSTITUTION WHEN APPELLANT:

A) Receives Disparate Treatment in Comparison to Others Who Have Been Convicted of the Same Crime Under R.S.Mo. 577.023.1(5);

“In the context of an equal protection challenge to a statute, standing requires the plaintiff to: (1) identify a statutory classification that distinguishes between similarly-situated persons in the exercise of a right or the receipt of a benefit; (2) show that plaintiff is a member of the disadvantaged class; and (3) demonstrate that, but for the challenged classification, the plaintiff would be eligible for the benefit.” *Glossip V Missouri Dept. of Transp. and Highway Patrol Employees’ Retirement System*, 411 S.W. 3d. 796, 803

(Mo. banc 2013) (1) The statutory distinction in the L.D.P. applications rests between 577.023.1(5) offenders that are graduates, or participants of a D.W.I. Court program that are eligible for a L.D.P. pursuant to R.S.Mo. 302.309.9 and those that are not D.W.I Court graduates, or participants, and are ineligible pursuant to R.S.Mo. 302.309.3(6)(b); (2) Plaintiff is a member of the disadvantaged class in this aspect, because he did not participate/graduate from a D.W.I. Court program and therefore was not eligible for a LDP pursuant to R.S.Mo. 302.309.3(9); (3) But if not for falling under the 302.309.3(6)(b) classification, Appellant could have been eligible for the L.D.P.

Appellant asserts that under these facts, he is similarly situated to other persons convicted under R.S.Mo. 577.023.1(5) and has the necessary standing to challenge the Constitutionality of R.S.Mo. 302.309.3(6)(b) as it applies to him. Appellant further asserts that the statutory application violates his Equal Protection rights, because it prescribes different punishments or different degrees of punishment, along with different rights and opportunities pertaining to the same conduct committed under the same circumstances by persons similarly situated. “When all persons within the purview of a statute are subjected to like conditions, then they are afforded equal protection of the law” *State V Day-Brite Lighting, Inc.*, 240 S.W. 2d 886, 893 (Mo. banc 1951)

B) Receives Dissimilar Treatment to Others who are Similarly Situated that Denies Equality, Serves No Rational Basis, and is Unrelated, or Irrelevant to the Underlying Purpose of the State’s Objective;

Since appellant has demonstrated that he is similarly situated to other offenders convicted under R.S.Mo. 577.023.5 but has been placed in a disadvantageous class

pursuant to R.S.Mo. 302.309.3(6)(b), the next inquiry should consist of determining the rationality of this underlying distinction and classification. See *State ex rel. Taylor V Steele*, 341 S.W. 3d 634, 664 (Mo. banc 2011) citing *State V Baker*, 524 S.W. 2d 122 (Mo. banc 1975) “For this reason, for equal protection purposes, they were similarly situated and must be similarly treated, for ‘Equal protection does not require that all persons be dealt with identically, but it does require that a distinction have some relevance to the purpose for which the classification is made.’ Id. at 129.”

Appellant cannot make any reasonable or rational distinctions towards a purpose that could apply to him but then would not correspondingly, also equally apply to the D.W.I. court participants/graduates that were previously sentenced under 577.023.1(5) too.

Undoubtedly the primary purpose of 302.309.3(6)(b) is to keep multiple alcohol offenders who pose a greater risk to public safety off the roadways. See e.g., *Hagan V Director of Revenue*, 968 S.W. 2d 704, 706 (Mo. banc 1998) for this general proposition. If the purpose of 302.309.3(6)(b) is to keep a 577.023.5 convicted offender (like Appellant) off the roadways to ensure public safety, then why does this reasoning and purpose not equally apply to all persons convicted under the same statute?

When one looks at the history of the limited (hardship) driving privilege it makes logical sense why multiple alcohol offenders were previously in a mandatory need of being kept off of the roadways. Before our current technological age, which now allows the imposition of ignition interlock devices, that have photo identification technology, and gps satellite tracking, a Court was forced to place a L.D.P. driver on an honor system.

One can surely see how taking an alcoholic's, or repeat offender's word that they "promised" not to drink and drive anymore (without any safeguards in place) could be problematic towards a public safety interest.

Besides keeping offenders off the roadways, another objective of 302.309.3(6)(b) is to punish 577.023.5 offenders by disallowing them the benefit of receiving a limited driving privilege. This Honorable Court has been approached with a similar problem before. See *State V Baker*, supra id. at 127 "it is evident that the purpose of this statutory provision is to insure that some multiple offenders are punished more severely than others. However, it is equally apparent that the section does not apply to all convicted multiple offenders.....The question presented is whether such a classification is reasonable. Does it result in irrational inequality of treatment of multiple criminal offenders?"

While it is unremarkably clear that the 577.023.5 offender applying for an LDP under 302.309.3(6)(b) is treated differently than their counterpart who applies under 302.309.3(9) the question of rationality in the inequality of treatment and the reasonableness in the classification still remains.

The answers to these questions are very simple, first there is no Constitutional justification in the inequality of treatment for similarly situated offenders who are both convicted under 577.023.1(5). All have been convicted of the same offense and should be entitled to the same benefits and opportunities.

Secondly, one cannot make a rational, or legitimate distinction between a D.W.I. Court graduate/participant and a non graduate/participant for limited driving purposes.

Any attempt at a differentiation is irrational, irrelevant, and merely (treatment) happenstance *Baker* id. Any offender convicted under R.S.Mo. 577.023.1(5) and receiving a L.D.P. is required to have an ignition interlock device equipped to their vehicle pursuant to R.S.Mo. 577.600. An ignition interlock device has no way to determine if the driver it is testing is a DWI Court graduate/participant, or a non one, and the device will equally not start when alcohol is detected from either a D.W.I. graduate/participant or a non one. Therefore, R.S.Mo. 302.309.3(6)(b) “mandates different treatment of defendants without any reasonable or rational basis for that difference.” *Baker* id.

The D.W.I. Court does not act as the peacekeeper in this equation, by keeping a constant and vigilant eye over the multiple offender to ensure public safety. The safeguard (the all seeing and knowing eye, for L.D.P. purposes) is the ignition interlock, and this device ensures public safety by it’s unwillingness to start for anyone (no matter their prestige or status) who has consumed alcohol. Therefore, the D.W.I. Court (and whether you are a participant/graduate of a D.W.I. Court) is not rationally related towards the state’s objective of keeping multiple alcohol offenders off the roadways.

C) Is Subjected to Invidious Discrimination Based on Poverty Since this Results in a Defacto Exclusion From a L.D.P. Opportunity Which is Based on an Irrational, Unrelated, and Irrelevant State Interest;

Previous to Appellant originally being convicted pursuant to R.S.Mo. 577.023.1(5) his lawyer asked him if he could self pay for a D.W.I. Court program. Based upon the extreme monetary burden that would have been placed upon him, Appellant decided that

he could not afford it, without foregoing the basic necessities of life. Therefore, Appellant's indigent stature was a discriminatory factor, which precluded him from receiving the benefit of being accepted into the D.W.I. Court program. A D.W.I. Court charges their participants a substantial fee to participate in their program and stipulates that all costs are to be assessed against the participant.

Ordinarily, this monetary exclusion might be inconsequential, but since there is a Legislative prerequisite that Appellant must participate/graduate from a D.W.I. Court to receive an L.D.P. this now creates a mandate that Appellant also not be in an impoverished state to receive L.D.P. consideration. In operation, this essentially provides a defacto refusal of a L.D.P. for all those offenders who are indigent. On the other hand, it allows the L.D.P. to potentially extend to all those offenders who are not indigent and can afford to pay the exuberant amount of monies it will cost to participate in D.W.I. Court.

Apparently, this is a classic rich man vs. poor man in the L.D.P. arena which maybe could still withstand a Constitutional inquiry, if the D.W.I. Court had a rational purpose in the state's underlying objective towards a L.D.P. applicant. Since the D.W.I. Court is a unrelated, and irrational requirement for the L.D.P. applicant and the D.W.I. Court discriminates against the poverty stricken, the requirement that the L.D.P. applicant be a D.W.I. Court graduate/participant when filing after a conviction under R.S.Mo. 577.023.1(5) should be modified.

The legislator's prerequisite that a LDP applicant convicted under R.S.Mo. 577.023.1(5) must be a D.W.I. graduate/participant is similar to the facts in *Millsap V*

Quinn 785 S.W. 2d. 82 (Mo. banc 1990), in which this Honorable Court struck down the requirement that the board of freeholders be landowners.

Likewise the requirement that a person convicted under R.S.Mo. 577.023.1(5) be a D.W.I. Court graduate/participant or is ineligible for an LDP pursuant to R.S.Mo. 302.309.3(6)(b) is irrelevant, because initially it is not rationally related to a legitimate state objective, and subsequently it results in a Constitutionally impermissible discrimination towards destitute persons.

D) Is Subjected to Invidious Discrimination Based on the Fact That D.W.I. Court is the Only Option.

In conjunction to Appellant's conviction under R.S.Mo. 577.023.1(5) the sentencing Court required that he complete an alcohol treatment program. The Missouri Department of Revenue also required Appellant to complete an acceptable course pursuant to the Substance Abuse Traffic Offender's Program. Appellant has also attended AA classes and not consumed alcohol for approximately 7 years. Appellant decided to completely quit drinking alcohol the next day after he was arrested for D.W.I. Furthermore, Appellant wants to become an alcohol (drug) counselor, so he can help aide and be a potential inspiration for other alcohol (drug) offenders. Appellant is currently enrolled in a Master's Degree Program for Counseling, so he can hopefully achieve this goal.

Under 302.309.3(6)(b) all of these facts are irrelevant and instead because of the felony conviction involving the use of a motor vehicle, the only inquiry is whether I am a participant/graduate of a D.W.I. Court program, which will then make me eligible for the

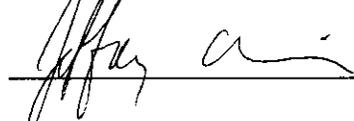
L.D.P. In action R.S.Mo. 302.309.3(9) assumes a D.W.I. Court participant/graduate who is freshly being associated with (potential) sobriety and the rehabilitation concept (as opposed to Appellant's proven and prolonged rehabilitation and sobriety) is better suited than Appellant to be considered for a L.D.P.

The interpretation seems to be that the DWI Court is the one and only holy grail that can lead to the L.D.P. consideration for the convicted offender under R.S.Mo. 577.023.1(5). On top of this view being illogical, it is also Unconstitutional. Initially the D.W.I. Court is inaccessible for the impoverished, and subsequently it is also not the only form of treatment that can work in the rehabilitation process. Many treatment programs, theories, and strategies have been proven to be effective, and excluding everything else but a D.W.I. Court in relation to the L.D.P. inquiry is a discriminatory procedure.

CONCLUSION

WHEREFORE, Appellant requests that this Honorable Court rule that he is eligible to receive a limited driving privilege based on the foregoing reasons.

RESPECTFULLY SUBMITTED,



Mr. Jeffrey S. Amick, Appellant, Pro Se

CERTIFICATE OF SERVICE AND COMPLIANCE

On this 19th day of December, 2013, 1 standard and 1 (virus free) electronic copy (compact disc-word format) of Appellant's brief was mailed first class postage prepaid to Respondent's Counsel Chandreka N. Allen at 111 North 7th St., Room 401, St. Louis, Mo. 63101-2143.

Appellant asserts that this certification includes the information required by Mo. Ct. Rule 55.03, complies with the limitations contained in Mo. Ct. R. 84.06(b) and the word count is 3,450 prepared in microsoft word format with a Times New Roman 13 (excluding cover page) font. Lastly, Appellant asserts that the electronic copy (compact disc-word format) that accompanied the original copy of Appellant's brief is virus free.



Mr. Jeffrey S. Amick, Appellant, Pro Se
224 N. Hwy 67 #301
Florissant, Mo. 63101
(636) 866-4282