

No. SC93742

**In the
Supreme Court of Missouri**

JEFFREY S. AMICK,

Appellant,

v.

DIRECTOR OF REVENUE,

Respondent.

**Appeal from St. Louis County Circuit Court
Twenty-First Judicial Circuit
The Honorable Thomas J. Prebil, Judge**

RESPONDENT'S BRIEF

**CHRIS KOSTER
Attorney General**

**DANIEL N. McPHERSON
Assistant Attorney General
Missouri Bar No. 47182**

**P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-5391
Dan.McPherson@ago.mo.gov**

**ATTORNEYS FOR RESPONDENT
DIRECTOR OF REVENUE**

TABLE OF CONTENTS

| | |
|---|------------------|
| TABLE OF AUTHORITIES | 2 |
| STATEMENT OF FACTS | 3 |
| ARGUMENT | 5 |
| The provision of section 302.309.3, RSMo that permits the granting of a limited driving privilege to otherwise ineligible drivers who participated in or graduated from a DWI court program does not violate equal protection | 5 |
| CONCLUSION..... | 13 |
| CERTIFICATE OF COMPLIANCE..... | 14 |
| APPENDIX..... | Filed Separately |

TABLE OF AUTHORITIES

Cases

Brown v. Morris, 365Mo. 946, 290 S.W.2d 160 (1956).....6

Collins v. Dir. of Revenue, 691 S.W.2d 246 (Mo. 1985)..... 12

Hagan v. Dir. of Revenue, 968 S.W.2d 704 (Mo. 1998) 8, 9

Missourians for Tax Justice Educ. Project v. Holden,
959 S.W.2d 100 (Mo. 1997)..... 11-12

Sellenkirk v. Dir. of Revenue, 826 S.W.2d 338 (Mo. 1992)..... 12

State v. Jeffrey, 400 S.W.3d 303 (Mo. 2013)5

State v. Young, 362 S.W.3d 386 (Mo. 2012)..... 7, 8, 9

Stewart v. Dir. of Revenue, 702 S.W.2d 472 (Mo. 1986)..... 8, 10

United C.O.D. v. State, 150 S.W.2d 311 (Mo. 2004)..... 8, 9

Williams v. Schaffner, 477 S.W.2d 55 (Mo. 1972)..... 8, 10

Statutes and Constitution

Section 302.309, RSMo Cum. Supp. 2013 4, 6, 7, 11

Section 478.007, RSMo Cum. Supp. 2013 9, 11, 11 n.2

Mo. Const. art. I, § 27

U.S. Const. amend. XIV.....7

Other Authorities

Your Missouri Courts at <http://www.courts.mo.gov/page.jsp?id=250>..... 10

STATEMENT OF FACTS

Appellant Jeffrey S. Amick's driving privileges were denied by the Director of Revenue for a minimum period of ten years beginning on November 26, 2008, following Appellant's conviction for driving while intoxicated. (L.F. 3). Appellant filed a Petition for Limited Driving Privileges on August 13, 2013, in the Associate Division of the Circuit Court of St. Louis County. (L.F. 1, 3). Appellant requested the petition so that he could attend graduate education at the University of Missouri-St. Louis, employment at a landscaping company, and Alcoholics Anonymous classes, all in the St. Louis County area. (L.F. 3). The petition alleged that Appellant was not ineligible for limited driving privileges. (L.F. 3). He attached a supporting affidavit that alleged that he had served at least three years of the mandatory disqualification period and that he was a graduate of a DWI court program.¹ (L.F. 5).

¹ The latter assertion, that Appellant had graduated from a DWI court program, appears to be incorrect. *See* CaseNet docket sheets for *State v. Jeffrey S. Amick*, St. Louis County Circuit Court No. 07SL-CR02723-01. Appellant now contends on appeal that he did not participate or graduate from a DWI court program. (Appellant's Brf., p. 8).

The Director filed a motion to dismiss the petition on August 23, 2013. (L.F. 1, 24). The motion alleged that Appellant was statutorily ineligible for limited driving privileges under section 302.309.3(6)(b), RSMo, because he had a conviction for a felony the commission of which involved a motor vehicle. (L.F. 24). The motion noted that Appellant was convicted of felony driving while intoxicated in the Circuit Court of St. Louis County on October 16, 2008. (L.F. 24).

Appellant filed a “Traverse” in which he denied that he was statutorily ineligible for limited driving privileges by citing to the provisions of section 302.309.3(9), RSMo, which permits a DWI court the discretionary authority to grant a limited driving privilege to a graduate of or participant of the DWI court program who would otherwise be ineligible for the privilege under another provision of law. (L.F. 35). The traverse alternately alleged that if Appellant’s request for limited driving privileges was denied, he intended to challenge section 302.309.3(6)(b), RSMo as violating the Equal Protection Clauses of the United States and Missouri Constitutions when compared to section 302.309.3(9), RSMo. (L.F. 35).

The court granted the Director’s motion and dismissed Appellant’s petition on October 1, 2013. (L.F. 1, 40). The judgment stated that Appellant was statutorily ineligible under section 302.309.3(6)(b). (L.F. 40). Appellant timely filed his notice of appeal. (L.F. 1, 46-52).

ARGUMENT

The provision of section 302.309.3, RSMo that permits the granting of a limited driving privilege to otherwise ineligible drivers who participated in or graduated from a DWI court program does not violate equal protection.

Appellant claims that section 302.309.3, RSMo violates equal protection by permitting graduates of or participants in a DWI court program the opportunity to obtain a limited driving privilege while denying that opportunity to persons who have not taken part in a DWI court program. But the statute's provisions are rationally related to the State's interest in protecting the public from those drivers who present a greater risk to the protection of life and property.

A. Standard of Review.

Constitutional challenges to a statute are reviewed *de novo*. *State v. Jeffrey*, 400 S.W.3d 303, 307 (Mo. 2013). Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision. *Id.* The person challenging the statute's validity bears the burden of proving that the act clearly and undoubtedly violates the constitution. *Id.* A statute attacked as unconstitutional will be sustained if there is any reasonable theory upon

which it may be upheld. *Brown v. Morris*, 365 Mo. 946, 956, 290 S.W.2d 160, 167 (1956).

B. Analysis.

Section 302.309, RSMo sets forth the conditions under which a limited driving privilege can be granted. § 302.309, RSMo Cum. Supp. 2013. The statutory provision under which Amick's petition for a limited driving privilege was denied provides that:

(6) Except as provided in subdivision(8) of this subsection, no person is eligible to receive a limited driving privilege whose license at the time of application has been suspended or revoked for the following reasons:

(b) A conviction of any felony in the commission of which a motor vehicle was used[.]

§ 302.309.3(6)(b), RSMo Cum. Supp. 2013.

Amick's equal protection challenge also invokes the following subdivision of the statute:

(9) A DWI docket or court established under section 478.007 may grant a limited driving privilege to a participant in or graduate of the program who would otherwise be ineligible for such privilege under another provision of law. The DWI docket or

court shall not grant a limited driving privilege to a participant during his or her initial forty-five days of participation.

§ 302.309.3(9), RSMo Cum. Supp. 2013. While Amick's Point Relied On alleges that subsection (6)(b) of the statute violates equal protection, his real complaint seems to be with subsection (9) because it permits the discretionary granting of a limited driving privilege to persons otherwise ineligible for such a privilege if they are participants in or graduates of a DWI court program, while drivers who had not taken part in such a program could not receive the same privilege.

The United States Constitution provides, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. The Missouri Constitution provides in pertinent part, "[A]ll persons are created equal and are entitled to equal rights and opportunity under the law." Mo. Const. art. I, § 2. The equal protection provisions of the United States and Missouri constitutions are co-extensive. *State v. Young*, 362 S.W.3d 386, 396 (Mo. 2012).

A two-step process is employed to determine whether a statute violates equal protection. *Id.* at 397. The Court first determines whether a classification of certain persons under the law operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. *Id.* A classification affecting a

suspect class or fundamental right is subject to strict judicial scrutiny to determine whether it is necessary to accomplish a compelling state interest. *United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. 2004). If the statute does not affect a suspect class or fundamental right, the Court's review is limited to a determination of whether the classification is rationally related to a legitimate state interest. *Id.*

Suspect classes are classes such as race, national origin, or illegitimacy that command extraordinary protection from the majoritarian political process for historical reasons. *Young*, 362 S.W.3d at 397. Those persons who by their actions bring themselves into the group that is ineligible for a hardship driving privilege do not constitute a suspect class. *Williams v. Schaffner*, 477 S.W.2d 55, 57 (Mo. 1972). Fundamental rights include the rights to free speech, to vote, to freedom of interstate travel, and other basic liberties. *Id.* The driving privilege is not a fundamental right requiring heightened judicial scrutiny. *Stewart v. Dir. of Revenue*, 702 S.W.2d 472, 475 n.2 (Mo. 1986). By the same token, the granting of a hardship driving privilege during a period of revocation is a matter of grace, and there is no vested right to receive it. *Hagan v. Dir. of Revenue*, 968 S.W.2d 704, 706 (Mo. 1998). Because Appellant's claim does not involve a suspect class or fundamental right, it is subject to rational basis review, and Appellant makes a rational basis argument in his brief.

That leads to the second step of the equal protection analysis, which is to apply the appropriate level of scrutiny to the challenged statute. *Young*, 362 S.W.3d at 397. As to the rational basis of statutes, there only need be a conceivably rational basis to uphold the regulatory scheme. *United C.O.D.*, 150 S.W.3d at 313. This Court presumes that statutes have a rational basis, and the party challenging the statute must overcome this presumption by a clear showing of arbitrariness and irrationality. *Young*, 362 S.W.3d at 397.

The purpose of section 302.309.3(6)(b), RSMo is to protect the public from those drivers who present a greater risk to the protection of life and property. *Hagan*, 968 S.W.2d at 706. Appellant does not argue that the State lacks a rational basis for prohibiting persons convicted of a felony that involved the use of a motor vehicle from obtaining a limited driving privilege. His complaint is instead that no rational basis exists for granting limited driving privileges to persons convicted of such felonies that have participated in DWI court, while denying that opportunity to felony offenders that have not participated in DWI court.

DWI courts or dockets combine judicial supervision, drug testing, continuous alcohol monitoring, substance abuse traffic offender program compliance, and treatment of DWI court participants. § 478.007.2, RSMo Cum. Supp. 2013 (Appendix, p. A1). The stated goal of the DWI court “is to protect public safety by using the drug court model to address the root cause

of impaired driving – alcohol and other drugs of abuse.” Your Missouri Courts at <http://www.courts.mo.gov/page.jsp?id=250> (accessed on Feb. 8, 2014) (Appendix, p. A2). To achieve that goal, “DWI courts often enhance their close monitoring of offenders using home and field visits, as well as technological innovations such as ignition interlock devices and transdermal alcohol detection devices.” *Id.*

The legislature could rationally determine that offenders who go through the enhanced treatment and supervision provided by the DWI court are less likely to reoffend and thus pose less of a risk to the public safety than offenders who have not received those services. Statutes that serve the laudable purpose of removing drivers from the roadways who are most likely to be unable to operate an automobile safely due to excessive intoxication demonstrate a rational basis. *Stewart*, 702 S.W.2d at 475; *see also Williams*, 477 S.W.2d at 56-57 (finding that prior version of section 302.309, RSMo that imposed a longer period of revocation for second DWI offense than for first offense was a reasonable exercise of the police power to protect the public).

Appellant raises an additional argument that he was subject to discrimination based on poverty because he could not afford to pay for a DWI court program. That argument relies on factual assertions that are outside

the record and can be rejected on that basis alone.² Nor is it apparent that DWI court participants are treated differently than non-participants when it comes to costs associated with obtaining a limited driving privilege. The statute establishing DWI courts gives the court discretion as to whether to assess the costs of participation against the participant. § 478.007.2, RSMo Cum. Supp. 2013. A person who truly cannot afford the cost of the DWI court program thus has the opportunity to request that the court waive the assessment of costs. And it bears noting that even those drivers that have not participated in or graduated from a DWI court have to bear certain expenses to obtain a limited driving privilege, such as maintaining personal financial responsibility and having a certified ignition interlock device installed in their vehicle. § 302.309.3(3),(4), RSMo Cum. Supp. 2013. Furthermore, classifications based on wealth and poverty are not suspect classes entitled to heightened scrutiny. *Missourians for Tax Justice Educ. Project v. Holden*, 959

² Appellant claims that he was asked to pay for a DWI court program prior to his original conviction. But Appellant pled guilty in 2008 to the felony that resulted in the denial of his request for a limited driving privilege, while the legislation establishing DWI courts was enacted in 2010. See CaseNet docket sheets for *State v. Jeffrey S. Amick*, St. Louis County Circuit Court No. 07SL-CR02723-01; § 478.007, RSMo Cum. Supp. 2013.

S.W.2d 100, 103 (Mo. 1997). Assessing the cost of court programs against program participants serves a legitimate state interest in controlling state finances and is rationally related to that interest. Appellant has failed to demonstrate an equal protection violation based on costs that may be associated with the DWI court.

Appellant makes additional arguments that other programs besides DWI courts are equally effective at rehabilitation and that participants in those programs should also be eligible for a limited driving privilege to the same extent as DWI court participants. This Court does not sit as a “super legislature” to rule on the wisdom of legislative determinations that result in disparate treatment but do not affect fundamental rights. *Collins v. Dir. of Revenue*, 691 S.W.2d 246, 250 (Mo. 1985), *overruled on other grounds by*, *Sellenriek v. Dir. of Revenue*, 826 S.W.2d 338, 341 (Mo. 1992). It is sufficient that the legislative distinction is not clearly arbitrary and unreasonable. *Id.* The legislature’s determination that the unique characteristics of the DWI court make it appropriate to treat participants or graduates of the court differently than participants in other programs is not clearly arbitrary and unreasonable, and is not a violation of equal protection. Appellant’s point should be denied.

CONCLUSION

In view of the foregoing, Respondent submits that the judgment of the circuit court should be affirmed.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Daniel N. McPherson
DANIEL N. McPHERSON
Assistant Attorney General
Missouri Bar No. 47182

P. O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-3321
Fax: (573) 751-5391

ATTORNEYS FOR RESPONDENT
DIRECTOR OF REVENUE

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 2,388 words as calculated pursuant to the requirements of Supreme Court Rule 84.06, as determined by Microsoft Word 2007 software; and
2. That a copy of this brief was mailed, postage prepaid, on this 21st day of February, 2014, to:

Jeffrey S. Amick
Appellant *Pro Se*
224 N. Hwy. 67, #301
Florissant, MO 63031

/s/ Daniel N. McPherson
DANIEL N. McPHERSON
Assistant Attorney General
Missouri Bar No. 47182

P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573) 751-3321
Fax (573) 751-5391

ATTORNEYS FOR RESPONDENT
DIRECTOR OF REVENUE