

**IN THE SUPREME COURT OF MISSOURI**

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**SC93047**

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**ROBERT BRIAN BONE,**

**Respondent,**

**v.**

**DIRECTOR OF REVENUE,**

**Appellant.**

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**From the Circuit Court of Jefferson County,  
The Honorable Robert G. Wilkins.**

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**APPELLANT'S BRIEF**

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## **JURISDICTIONAL STATEMENT**

The circuit court declared “[t]hat Sections 302.500 and 302.700 RSMo are unconstitutional.” This appeal thus involves the validity of a statute and falls within this Court’s exclusive jurisdiction pursuant to Art. V, § 3 of the Missouri Constitution.

## STATEMENT OF FACTS

Respondent Bone was “the holder of a Class A Commercial Driver’s License [“CDL”] in the State of Missouri.” Legal File (LF) 4. He challenged the Director of Revenue’s decision to disqualify him from holding a CDL “effective May 14, 2012, for allegedly operating a motor vehicle while intoxicated on January 27, 2012 in Jefferson County, Missouri.” *Id.*

The circuit court found that the arresting officer “had probable cause to arrest [Bone] for an alcohol related traffic offense, and that [Bone] was operating a motor vehicle with blood alcohol concentration of 0.08% or higher.” Legal File LF 16. Under §§ 302.500-302.540, RSMo 2000, and § 302.755.1(1), RSMo Cum. Supp. 2012, Bone was thus disqualified from his commercial driving privileges. LF 16.

The circuit court, however, held that §§ 302.500 and 302.700 are unconstitutional, and ordered the Director of Revenue to restore Bone’s commercial driving privileges. LF 16.

## POINTS RELIED ON

### I.

The circuit erred in entering a judgment ordering the Director to reinstate respondent Bone's driving privileges on the basis that §§ 302.500, RSMo 2000, and 302.700, RSMo Cum. Supp. 2012, are unconstitutional on the ground that Congress acted in excess of its constitutional authority in enacting a statute that prompted a change in Missouri law because that claim was not timely raised by Bone in his petition, in that Bone did not cite § 302.500, nor did he identify any federal constitutional provision that would support the claim that Congress exceeded its authority, nor any state constitutional provision that would prevent the General Assembly from enacting § 302.500, RSMo 2000, or § 302.700, RSMo Cum. Supp. 2012, pursuant to a federal law later declared invalid.

*City of Florissant v. Rouillard*, 495 S.W.2d 418, 419 (Mo. 1973)

## II.

The circuit erred in entering a judgment ordering the Director to reinstate respondent Bone's driving privileges because the statutes that require that Bone be disqualified from holding such privileges are constitutional in that there is no restriction in the Missouri Constitution nor in federal law to enacting those statutes, and they are were validly enacted by the General Assembly, and the U.S. Supreme Court decision cited by the circuit court is inapposite.

23 U.S.C. § 163(a)

## ARGUMENT

### Introduction

As the circuit court found, Respondent Bone “was operating a motor vehicle with blood alcohol concentration 0.08% or higher” (LF 11)—the standard set in § 302.505.1, RSMo Cum. Supp. 2012. Thus, pursuant to § 302.520, the officer took his license and notified him that it would be suspended. Pursuant to § 302.525.2(1), the suspension was for 30 days.

Section 302.755.1(1) “disqualif[ies] a person] from driving a commercial motor vehicle ... if convicted of a first violation of ... an alcohol-related enforcement contact as defined in subsection 3 of section 302.525.” The referenced section defines “alcohol-related enforcement contact” to include “include any suspension or revocation under sections 302.500 to 302.540.” The suspension of Bone’s driver’s license thus qualified as an “alcohol-related enforcement contact,” and resulted in the disqualification of his commercial driving privileges.

The question before the circuit court was the constitutionality of the scheme under which a suspension for driving any vehicle results in disqualification from driving a commercial vehicle. But the circuit court leapt past the equal protection and due process claims actually made by Bone in his Petition. As discussed in Point I, established Missouri law bars the circuit court from making that leap. But as discussed in Point II, the basis for the

circuit court's holding of unconstitutionality is without merit in any event. The same is true for the constitutional claims that Bone actually did assert, as discussed in Point III.

## I.

**The circuit erred in entering a judgment ordering the Director to reinstate respondent Bone’s driving privileges on the basis that §§ 302.500, RSMo 2000, and 302.700, RSMo Cum. Supp. 2012, are unconstitutional on the ground that Congress acted in excess of its constitutional authority in enacting a statute that prompted a change in Missouri law because that claim was not timely raised by Bone in his petition, in that Bone did not cite § 302.500, nor did he identify any federal constitutional provision that would support the claim that Congress exceeded its authority, nor any state constitutional provision that would prevent the General Assembly from enacting § 302.500, RSMo 2000, or § 302.700, RSMo Cum. Supp. 2012, pursuant to a federal law later declared invalid.**

In his Petition, Respondent Bone asked the circuit court to hold that §§ 302.700 and 302.755, RSMo Cum. Supp. 2012, are unconstitutional. LF 11. Those are part of the “Uniform Commercial Driver’s License Act.” § 302.700.1, RSMo Cum. Supp. 2012. Bone claimed that those sections violated the equal protection and due process clauses of the U.S. and Missouri constitutions. He challenged the link between blood alcohol concentration suspensions based on driving a personal vehicle and disqualification from driving a commercial vehicle. And he challenged the

absence of notice of collateral consequences of a test showing that his blood alcohol concentration was over 0.08%. Specifically, he alleged:

- a. There is no rational relationship between any legitimate government purpose and the law providing that the holder of a CDL license [commercial driver's license] shall suffer a CDL disqualification if arrested and charged with Driving While Intoxicated in a non-commercial motor vehicle.
- b. [Bone] was not notified at the time he was allegedly asked to submit to a chemical test of his breath that his CDL license would be disqualified if he tested over the legal limit.

*Id.* at 12.

The circuit court did not address whether, to quote from Bone's petition, "Section 302.700 and 302.755 RSMo. are unconstitutional and violate Petitioner's right to equal protection and due process of the law, as guaranteed him by Article I, Sections 2 and 10 of the Missouri Constitution."

LF 11. Instead the circuit court held "[t]hat Sections 302.500 and 302.700 RSMo are unconstitutional based on U.S. Supreme Court decision in National

Federation of Independent Business v. Sebelius,” 132 S.Ct. 2566 (2012). LF  
16.

Missouri courts have a longstanding rule of timing and specificity about constitutional challenges: a “constitutional question must have been presented in the trial court at the earliest opportunity, and the party presenting the constitutional issue must specify for the benefit of the trial court the constitutional provisions which he invokes.” *City of Florissant v. Rouillard*, 495 S.W.2d 418, 419 (Mo. 1973). Here, Bone did neither, as to the sole basis for the circuit court’s decision. Nowhere in his petition is there any identification of the *Sebelius* decision, nor of any constitutional provision at issue in that case. That omission barred the circuit court from deciding as it did. The decision should be reversed.

## II.

**The circuit erred in entering a judgment ordering the Director to reinstate respondent Bone's driving privileges because the statutes that require that Bone be disqualified from holding such privileges are constitutional in that there is no restriction in the Missouri Constitution nor in federal law to enacting those statutes, and they are were validly enacted by the General Assembly, and the U.S. Supreme Court decision cited by the circuit court is inapposite.**

Even if Bone had timely raised the claim that the circuit court actually decided, it would fail. The authority that the circuit court cited addresses Congressional authority, not the authority of the Missouri General Assembly to enact the statutes under which Bone was disqualified from commercial driving.

The circuit court's decision is sketchy, but that court's logic must go something like this:

1. Congress coerced the General Assembly to lower the permissible blood alcohol concentration in § 302.505.1<sup>1</sup> to 0.08% by threatening to eliminate all or most highway

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<sup>1</sup> It appears that the circuit court meant to declare unconstitutional § 302.505; none of the definitions in § 302.500 implicate *Sebelius*.

funding. *See* 23 U.S.C. § 163(a) and Pub. L. 106-346, § 101(a), 114 Stat. 1356, 1356A-34.

2. The U.S. Supreme Court held in *Sebelius* that to coerce the states in that fashion is beyond the scope of Congressional power. 132 S.Ct. at 2607.
3. Because the motivation for the Missouri General Assembly's change in § 302.505 was an unconstitutional federal act, the change itself was unconstitutional.

As to (1), there was nothing before the circuit court to show that the General Assembly was motivated by the threat of losing highway funds—though that may well have been the key to the legislative decision. As to (2), that is certainly an open question, given the decision in *Sebelius* regarding Medicaid expansion. But regardless, as to (3), the circuit court's logic fails.

The circuit court does not suggest that the enactment of §§ 302.500 and 302.700 by the Missouri General Assembly violated any procedural, substantive, or other limitation imposed by the Missouri Constitution nor by federal law. Absent such a violation, the statutes are valid and enforceable. That the enactment was the result of some federal promise or threat, valid or not, does not matter. Perhaps the General Assembly would not have reduced the blood alcohol concentration level to 0.08% if Congress had not coerced state action. But perhaps the General Assembly would have done so anyway,

recognizing the need to aggressively attack drunk driving. In any event, it is for the General Assembly, not the courts, to decide whether to raise the limit and test whether the *Sebelius* holding would apply to highway funding. Until the General Assembly acts, the limit remains 0.08%.

### III.

**The circuit court could not have granted Bone relief on the constitutional grounds he actually asserted because the statutes at issue do not violate Bone’s equal protection or due process rights.**

The bases for relief that do appear in Bone’s petition are also without merit.

There is a rational basis for the General Assembly to declare that those who drive their personal vehicles while intoxicated shall be disqualified from driving larger, more dangerous commercial vehicles. A person who is willing to drive his car home drunk demonstrates a lack of judgment that could carry over to driving larger, more dangerous vehicles. Moreover, federal law requires the states to recognize such a relationship: the states lose their highway funding if they grant commercial drivers’ privileges to those whose drivers’ licenses are “revoked, suspended, or canceled.” 49 U.S.C.

31311(a)(10). It is rational for the State to comply with federal law by excluding from commercial driving everyone whose license is suspended.

And there is no due process requirement that an officer who stops a driver when the officer has probable cause to believe the driver is intoxicated must detail to the driver all collateral consequences of a blood alcohol concentration test. Drivers, like all citizens, are presumed to know the law.

*E.g., State v. Bridges*, 398 S.W.2d 1, 5 (Mo. banc 1966) (“It is a rule deep

within our law that ignorance of the law is no excuse, and under this maxim defendant is presumed to know the law.”). Indeed, this Court has held that although a driver must be informed that revocation will result from refusing a breath test, the officer is not required to catalog the possible effects of taking, and failing, such a test:

Nothing in [§ 577.041.1] requires the arresting officer to inform the defendant of the multiplicity of consequences which might occur if the driver submits to the examination. The statute requires only that the officer inform the arrestee of the consequences for *refusing* to submit to the examination as well as why the test is being administered.

*Collins v. Director of Revenue*, 691 S.W.2d 246, 252 (Mo. banc 1985) (emphasis in original). That should certainly be true for a commercial driver, trained in the skills and legal requirements of his job.

Because the disqualification of Bone’s driving privileges violates neither the equal protection nor the due process clauses of the U. S. and Missouri constitutions, there is no need for a remand.

## CONCLUSION

For the reasons stated above, the decision of the circuit court should be reversed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE AND COMPLAINT

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet and served electronically this 8<sup>th</sup> day of February, 2013, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains 2,400 words.

*/s/ James R. Layton*  
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