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DRIVERS' LICENSES AND AGE LIMITS: IMPOSITION OF DRIVING RESTRICTIONS ON ELDERLY DRIVERS

Katherine Mikel

INTRODUCTION

In today’s world, most people perceive the ability to drive as a necessity for daily existence, and the elderly population is no exception.\(^1\) However, driving is a privilege and a skill, not a fundamental right.\(^2\) Research indicates that there is a positive correlation between increased age and decreased physical and mental capacity to drive.\(^3\) Driving requires expeditious reflexes and acute awareness.\(^4\) Considering the research results and an

\(^1\) A. James McKnight, *Too Old to Drive?*, ISSUES IN SCI. AND TECH., Winter 2000-2001, at 63 (stating that “[the elderly’s] need to move from one place to another does not end or even substantially decline with advancing years. There was a time when old people could walk to the market or drug store. However, today’s older generation is the one that led the post-World War II flight to the suburbs, where stores and other facilities are miles away, often accessible only by roads lacking any room for pedestrians . . . . The challenge facing the transportation community is how to provide the elderly with the easy mobility they have enjoyed throughout their lives . . . .”).

\(^2\) See Miller v. Reed, 176 F.3d 1202, 1206 (9th Cir. 1999). Although the Supreme Court recognized a fundamental right to interstate travel, burdens on a single mode of transportation do not implicate the right to interstate travel, and there exists no fundamental “right to drive.” *Id.* at 1205-1206.

\(^3\) McKnight, *supra* note 1, at 64.

\(^4\) See *id.*
increased awareness of the skills driving requires, a question arises: at what age is a person too old to continue driving?

Data indicates that teenaged drivers, not the elderly, are the age group that maintains the worst overall driving record.\(^5\) However, the crash rate of elderly drivers per driven mile is twice as high as the rate for middle-aged drivers.\(^6\) Elders also tend to be more physically fragile than younger drivers, which increases the likelihood for injury if involved in an accident.\(^7\)

Elderly drivers are also the fastest growing segment of the driving population, comprising 9% of the nation's drivers in 2005.\(^8\) The number of elderly drivers on the road is expected to reach more than 30 million by 2020.\(^9\) As the Baby Boomer generation ages, it will be important to recognize that Baby Boomers have likely driven cars throughout their lives, and thus may be accustomed to having the freedom to drive whenever and wherever they like.

When considering the complex issue of elderly driving, it is important to note that statistics can be, and often are, manipulated.\(^10\) Supporters of elderly driver's license freedom can use statistics to argue, for instance, that teenagers are more dangerous than elderly drivers, that elderly drivers are on the road less frequently than other drivers, and that elderly drivers' experience and years of practice actually may prevent accidents.\(^11\) In contrast, groups favoring age caps on driver's licensing, increased driver's testing, and other elderly licensing

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5. *Id.* at 63 (noting that teenagers are the age group most likely to be seriously injured or killed in an automobile accident).


7. *Id.*


9. *Id.*


11. See *id.* at 131-132 (discussing how "stat wars" occur when one group offers statistics in support of their position, and in response, the group's competitors do the same).
restrictions can use statistics to argue that elderly drivers cause many accidents. Overall, it is insufficient to consider only statistics when analyzing the complex issue of elderly driving.

Regardless of how problematic elderly driving is perceived to be, there appears to be no single, easy way to allow competent elderly drivers to remain on the roads while, at the same time, preventing unsafe elderly drivers from placing themselves, and others, in harm's way. First, mandating vision tests can be ineffective in identifying drivers whose visual impairments raise accident risks, as visual problems are only weakly associated with crash involvement and unsafe driving. Second, issuing a restricted license, such as a daytime driver's license that prohibits night driving, may not have a great impact on safety because many elderly drivers already choose not to drive at night because it makes them feel uncomfortable, and because unskilled or impaired elderly drivers can still cause accidents during the day. Lastly, imposing licensing age caps, which would deny all elderly drivers the ability to obtain a license over a certain age, seems impractical and cruel. Implementing an age cap on licensing also raises constitutional due process and equal protection concerns. Any federally imposed restrictions

12. See id.
13. See id. at 5-6 (discussing how statistics can be used and manipulated to prove anything, and that it is important to think critically when weighing statistics).
15. U.S. DEP’T OF TRANSP., THE EFFECTS OF AGE ON THE DRIVING HABITS OF THE ELDERLY: EVIDENCE FROM THE 1990 NATIONAL PERSONAL TRANSPORTATION STUDY 2-3, available at http://ntl.bts.gov/DOCS/t-95.html. “Elderly drivers reduce exposure more as they age and tend to avoid high-risk conditions, such as driving at night and during peak hours.” Id. at 3.
17. Stutts & Wilkins, supra note 6, at 431. Older drivers who have relinquished their licenses “experience decreased life satisfaction and a loss of independence and personal identity.” Id.
18. See Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976) (holding that age classification must be rationally related to a legitimate state purpose so as to not
on driver's licensing cannot be at odds with the Fourteenth Amendment.19

**CURRENT STATE TESTING INITIATIVES**

Driver's licensing is controlled by state governments, not the federal government.20 Some states appear particularly lenient in their licensing and testing of elderly drivers.

First, consider the initiatives taken by the state of Florida. Florida imposes testing requirements on elderly drivers,21 but since the laws permit drivers to renew their licenses by mail for up to twelve years,22 the laws may be seen as lenient. Florida mandates that drivers over the age of seventy-nine who wish to renew their licenses must pass vision tests.23 However, drivers can renew either by visiting the Department of Motor Vehicles to take the test or by submitting results from an approved test conducted by an eye doctor or physician by mail.24 One can argue that passing a vision test does not ensure that the test-taker is a proficient driver, regardless of age. While assuring drivers have adequate vision is important, testing may ultimately fail to detect unsafe elderly drivers.

Most states do not require road tests to renew a license at any age.25 Road tests are considered inconvenient, time-

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19. See Western Airlines Inc. v. Criswell, 472 U.S. 400 (1985) (discussing the equal protection aspects of age classifications); Bell, 402 U.S. at 539-543 (discussing the procedural aspects of license restrictions).


22. § 322.18 (8).

23. § 322.18 (5)(a)(1).

24. § 322.18 (5)(a)(2).

25. See U.S. Gov't Accountability Office, supra note 20, at 3. Only two states have mandatory road tests for seniors. Id.
AGE RESTRICTIONS ON ELDERLY DRIVERS?

consuming, and expensive. However, this means that most drivers have not taken a road test in years, and many drivers have not taken a test since the age of sixteen. This lack of monitoring may be perceived as a way to enable elderly drivers with poor vision, reflexes, and overall ability to remain licensed.

The laws of the District of Columbia provide that elderly drivers may be required to take written and road tests. In May 2005, the District of Columbia Department of Motor Vehicles required elderly drivers to take written and road tests every five years at renewal, and required drivers over seventy to submit to vision and medical tests. However, these testing initiatives may end; in March 2007, in response to complaining seniors, Jim Graham of the District of Columbia Council introduced legislation that would eliminate written and road tests for seniors older than seventy-four years of age. Councilman Graham stated that he was not convinced that the current testing program served a useful purpose. If the bill passes, the thirty-four-year-old law will be repealed.

Illinois also has a strict testing initiative in place for elderly drivers who seek to renew their licenses. Illinois law mandates that at age seventy-five, a driver must pass a road test to renew his or her license. Until the age of eighty-one, a driver must renew his or her license every four years. Drivers between the ages of eighty-one and eighty-six must renew every two years,

26. McKnight, supra note 1, at 66.
28. Id.
32. Id.
33. See 625 ILL. COMP. STAT. 5/6-115 (2002).
34. 625 ILL. COMP. STAT. 5/6-109(b) (2002).
35. 625 ILL. COMP. STAT. 5/6-115(a).
and drivers over eighty-seven must renew every year.\textsuperscript{36} The Illinois measures allow for the frequent monitoring of licensed elderly drivers.\textsuperscript{37} Despite Illinois' rigid standards, data has not shown that Illinois has achieved remarkably fewer accidents involving elderly drivers than other states.\textsuperscript{38} In fact, vision and road tests have not ensured that competent elderly drivers can continue to drive and maintain independence, and that unsafe elderly drivers are prevented from driving.\textsuperscript{39}

The arguable lack of success of road and vision testing could lead one to argue that imposing an age cap on licensing and renewal would be more efficient and successful until new technology is developed and implemented. However, the prospect of imposing age caps on licensing is controversial. From one perspective, a cap may be seen as necessary as a matter of public safety, and from another, imposing a cap may seem an overly harsh policy.

To consider the viability of age caps, a thorough examination of relevant criteria and similar scenarios is in order. Primarily, one must consider whether an age cap on license issuance is legally and constitutionally permissible, let alone prudent. Keeping in mind the current variance in state licensing practices, the potential for age caps and other restrictions can be examined by looking to other situations involving the elderly population and age classifications.

\textbf{AGE CAPS ON LICENSING: CONSTITUTIONAL CONCERNS}

Instituting an age cap on driver's licensing is an issue for state legislatures to consider.\textsuperscript{40} However, it appears that an elderly

\begin{itemize}
\item \textsuperscript{36} 625 ILL. COMP. STAT. 5/6-115(g).
\item \textsuperscript{37} Id.
\item \textsuperscript{38} FAZZALARO, supra note 16, at 19. Figure Six indicates that Illinois is not among the five states that have the lowest number of fatal accidents involving older drivers. Id.
\item \textsuperscript{39} Older Drivers Up Close: They Aren't Dangerous, Except Maybe to Themselves, STATUS REPORT, INC. INST. FOR HIGHWAY SAFETY, Sept. 2001, at 6-7, available at http://www.iihs.org/sr/pdfs/sr3608.pdf.
\item \textsuperscript{40} See generally Woodlee, supra note 29, at B2 (noting that it is up to a state to
person upon whom an age cap is placed could contest an age cap on Fourteenth Amendment grounds, invoking either the Equal Protection Clause or the Due Process Clause.

First, consider a situation where a state imposes strict testing requirements for all drivers over the age of eighty who want to renew their licenses. The Equal Protection Clause mandates that "states treat similarly situated people in a similar way." Nevertheless, testing requirements may not violate the Equal Protection Clause because issuing licenses only to drivers who proficiently perform on tests may be seen as rationally related to a legitimate state interest, to ensure safe roadways.

The testing requirements may violate procedural due process. The Due Process Clause protects certain rights by limiting a state's ability to interfere with individual rights by providing procedural safeguards prior to deprivation. Procedural due process entitles a person to notice and the opportunity for a hearing appropriate to the nature of the case prior to deprivation of an important property interest. The Supreme Court has held that a person has a property interest in his or her driver's license, and thus licensing is subject to procedural due process guarantees. However, relevant case law does not involve elderly drivers.

It is interesting to note that there appears to be no viable constitutional challenge to the requirement that a person be at least sixteen years old before obtaining a license. If age is a

change its regulations concerning testing).

41. BLACK'S LAW DICTIONARY 577 (8th ed. 2004).
42. See Mackey v. Montrym, 443 U.S. 1, 25 (1979) (recognizing the state's interest in safe roadways as a legitimate state interest).
43. See generally id. at 13; Bell, 402 U.S. at 541-42.
44. Bell, 402 U.S. at 539.
45. Mackey v. Montrym, 443 U.S. at 13; Bell, 402 U.S. at 541-42.
46. Bell, 402 U.S. at 539. Once licenses are issued, their "continued possession may become essential in the pursuit of a livelihood ... [and] licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment." Id.
47. See id. at 535-540 (involving the suspension of driver's licenses of uninsured motorists).
48. William F. Foster, Annotation, Validity, Construction, and Application of Age
valid restriction for the young, perhaps age should be a valid restriction for the elderly. Also, more than half of the states that have imposed restrictions on elderly drivers have restrictions more strict than those imposed on teenaged drivers. Restrictions include “more frequent renewals (sixteen states), mandatory vision screening (ten states), in-person renewals (five states), and mandatory road tests (two states) for older drivers.” Nonetheless, overall assessment of these programs is largely unknown.

**COMPARING AGE CAPS ON LICENSING TO MANDATORY RETIREMENT**

Under the police powers doctrine, a state has authority to pass and enforce laws to protect the health, safety, and general welfare of its citizens. Under this doctrine, a state can regulate the use of its highways. It appears that states have the authority to regulate drivers, regardless of driver age. However, state laws and regulations vary, and states can have in place very lenient or very strict policies. These state restrictions and regulations could arguably violate the Constitution.

When states make age-based laws, those distinctions face a lower standard of scrutiny than other classifications, such as for race-based classifications. Since age is not a suspect class, courts apply rational basis scrutiny. Rational basis scrutiny makes it easier for a state to impose age-based restrictions than

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50. Id.

51. Id.

52. **BLACK’S LAW DICTIONARY** 1196 (8th ed. 2004).

53. Hess v. Pawloski, 274 U.S. 352, 356 (1927). “In the public interest, the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways.” Id.

54. **FAZZALARO**, supra note 16, at 3-4 (listing renewal methods, as well as age-specific vision or road testing at renewal, by state).

55. **Murgia**, 427 U.S. at 312.

56. Id. at 314.
race restrictions, as the state does not need compelling reason to impose the age-based restriction. The state only needs a rational basis for imposing an age restriction.

Age caps on elderly licensing can be considered in light of the age-based distinctions made in mandatory retirement. In 1976, the Supreme Court held that a rule requiring Massachusetts police officers to automatically retire at age fifty did not violate the Equal Protection Clause. The Court found that the age-based restriction rationally related to a legitimate state interest. The state imposed the mandatory retirement because it sought to protect the public by assuring physical preparedness of its police. The Court recognized a correlation between age and decreasing physical ability required of a police officer. There was evidence that younger officers were in better physical condition than officers over fifty, and since ensuring public safety was a legitimate state interest, the Court found no equal protection violation.

It can be argued that, as with mandatory retirement when a person becomes too old to perform a job affecting public safety, there should be "mandatory expiration" of driving privileges when a driver reaches a certain age because an "expiration" or age cap would be rationally related to a state interest in roadway safety. One may contend that the imposition of an age cap would not violate the Equal Protection Clause, as an elderly person would have a difficult time proving that a cap does not rationally relate to a legitimate state interest.

57. Id.
58. Id.
59. Id.
60. Id. at 315-316.
61. Id.
62. Id. at 314.
63. Id. at 315-316.
64. Id. at 314-316.
65. See, e.g., BLACK'S LAW DICTIONARY 1196 (8th ed. 2004).
66. See generally Murgia, 427 U.S. at 312, 316 (noting that even though a statute may be over- or under-inclusive, the state does not need to choose the best means to accomplish its purpose in order to satisfy rational basis scrutiny).
However, there appears to be a stark contrast between placing a mandatory retirement requirement on police officers and placing an age cap on driving privileges. A police officer forced to retire may not necessarily be denied income, as he or she likely has retirement benefits. In contrast, if an age cap revokes an elderly driver’s license, the cap can deny the driver his or her only means of transportation. Some elderly people may have alternative transportation available if they have public transit located near their homes, or if they have family or friends willing and available to assist them. However, seniors can live in areas like suburbs and rural areas without public transit, and some may not have family or friends willing or able to provide them with transportation. Perhaps these transportation problems could be mitigated if the cap is applied prospectively, or if a state permitted driving for an extended time until drivers could make other arrangements. However, it appears that imposing a cap would impose tremendous hardship, both on proficient and unsafe elderly drivers.

**Comparing Age Caps and Licensing Restrictions to the Age Discrimination in Employment Act of 1967**

In order for any sort of restriction on licensing elderly drivers to succeed, it should not be discriminatory. Discrimination often stems from ageism, which occurs when people hold negative evaluations of the elderly as a group based solely on their status. Age discrimination can include avoiding contact with the elderly, victimizing the elderly, or causing other forms of mental injury to the elderly.

Age discrimination is an issue that arises in employment context, and its prevalence led to the passing of the Age

67. See, e.g., LAWRENCE A. FROLIK & ALISON MCCRYSTAL BARNES, ELDER LAW CASES AND MATERIALS 85 (4th ed. 2007) (noting that the Age Discrimination in Employment Act was passed to prohibit arbitrary and unjust discrimination in the employment context).
68. Id. at 37.
69. Id.
Discrimination in Employment Act of 1967 ("ADEA"). One can consider the possibility of a discriminatory impact of age caps or other licensing restrictions by way of examining age discrimination in employment.

**Disparate Impact**

The ADEA prohibits employment practices that have a disparate impact, which are practices that are facially neutral in their treatment of different groups, but in practice fall more harshly on the elderly and cannot be justified by business necessity. The ADEA protects employees age forty and older. Although the ADEA only protects the older age group from discrimination in employment, an elderly driver could point to the ADEA as recognizing "the elderly" as a class deserving protection from discrimination. An elderly driver could challenge a state-imposed elderly driving restriction by raising an argument similar to the disparate impact theory.

States often require drivers to submit to road tests, written tests, and vision exams in order to ensure that drivers are fit for the road and to detect unfit drivers in order to prevent them from driving in the future. It seems logical for states to test all drivers from all age groups to improve overall road safety. However, states facing budget constraints and increased responsibilities are often forced to cut back on testing. Data shows that drivers age eighty-five and older are involved in the most fatal accidents of any age group per mile driven, and so states may focus on testing the elderly as a target group. States already restrict teenaged drivers, an age group similar to the elderly in their accident fatality rates, by requiring driver's

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70. See id. at 85.
71. Id. at 119.
72. FROLIK & BARNES, supra note 67, at 87.
73. See, e.g., id.
74. McKnight, supra note 1, at 65.
75. Id.
76. Id.
77. See FAZZALARO, supra note 16, at 16.
education courses or graduated driver's licenses.\(^7\)

Consider a scenario where a state imposes procedures that solely test a driver's reflexes, eyesight, hearing, and awareness of surroundings. Perhaps an elderly driver could argue that testing only those attributes would have a disparate impact on the elderly. He or she can assert that the elderly often have decreased vision, attention span, memory, and reaction times compared to other age groups, and thus are more likely to fail the tests.\(^7\) The elderly driver would likely have to argue that the testing adversely impacts the elderly as a class more than it does other classes. He or she also would likely have to provide statistical evidence demonstrating that the elderly experience greater impact.\(^8\)

**Disparate Treatment**

Under the ADEA, an employee can bring a disparate treatment action for age discrimination by showing that the employer treated the employee differently than other similarly situated employees because of age.\(^8\) The employee must show that: (1) he or she was a member of the protected elderly class; (2) he or she performed the job satisfactorily; (3) he or she was discharged; and (4) either he or she was either replaced by a younger employee with equal or fewer qualifications, or that circumstantial, statistical, or direct evidence shows that he or she was dismissed under circumstances inferring age discrimination.\(^8\) The burden of production then shifts to the

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78. See Grabowski & Morrisey, supra note 14, at 517-19, 524 (discussing driver's education courses and graduated licensing).

79. See McKnight, supra note 1, at 67 (discussing declined abilities of the elderly); see also Tina de Benedictis et al., Senior Citizens Driving: Warning Signs and Helping an Unsafe Driver to Stop Driving, HELPGUIDE.ORG, http://www.helpguide.org/elder/senior_citizen_driving.htm (last visited Feb. 2, 2008).

80. See Frolik & Barnes, supra note 67, at 133 (citing Smith v. City of Jackson, 544 U.S. 320 (2005)) (discussing how employees must to show that the employment practices are responsible for observed statistical disparities).

81. Id. at 119.

82. Id. at 119-20 (citing Lowe v. City of Monrovia, 775 F.2d 998, 1009 (9th Cir. 1985)).
employer to assert a legitimate reason for the action taken other than age discrimination.\textsuperscript{83} If the employer meets its burden of production, the employee must contend that the reasons articulated by the employer are merely pretextual, and that age actually motivated the adverse action.\textsuperscript{84}

An elderly person subject to driving restrictions or prohibitions may make an argument similar to a disparate treatment claim under the ADEA. Indeed, some states are developing programs that appear to target elder drivers in their testing procedures.\textsuperscript{85} Pennsylvania has the second-largest population of elderly drivers,\textsuperscript{86} and it randomly selects 1,650 licensed drivers over the age of forty-five to undergo medical examinations and vision screening.\textsuperscript{87} The program appears to target elderly drivers directly, since the likelihood of being selected for testing increases with age.\textsuperscript{88} Many of the selected drivers subsequently receive restricted licenses or are denied license renewal.\textsuperscript{89} An elderly driver may argue that if an employer refused to promote an older employee because of his or her age instead of qualifications, the employer would be engaging in disparate treatment. In the same vein, if a state refuses to renew an elderly person’s license, the elderly person should be able to contend that the action was motivated by age discrimination, not by any legitimate nondiscriminatory reason.

Consider a scenario where a state refuses to renew an eighty-five year old man’s license. The state claims that it

\begin{itemize}
  \item \textsuperscript{83} Id. at 119, 122.
  \item \textsuperscript{84} Id. at 119.
  \item \textsuperscript{85} McKnight, supra note 1, at 66 (discussing how the Maryland Motor Vehicle Administration is evaluating a program that tests vision, memory, and mobility of a driver’s head, neck, and limbs).
  \item \textsuperscript{86} Elaine Thompson, Safety Factor Shadows Elderly Drivers, TELEGRAM \& GAZETTE (Worcester, Mass.), Dec. 15, 1996, at A1.
  \item \textsuperscript{88} See Thompson, supra note 86, at A1.
  \item \textsuperscript{89} Id. (noting that 28% of drivers tested did not get their licenses renewed, and another 26% receive a restricted license).
\end{itemize}
denied renewal because it believes the man’s slight impairments, including poor eyesight and slow reflexes, make him a dangerous driver. The man suspects that the impairments cited by the state are pretextual, and that the state seeks to revoke his license in an effort to reduce the number of elderly drivers because the state presupposes that all seniors are unsafe drivers. The man files suit.

Based on a disparate treatment model, the man first must prove that he is a member of the elderly class. Next, he must show that he had been a proficient driver in the past. He could present evidence that he has no diagnosed physical ailments impairing his driving ability, that he has not been in an accident in the last twenty years, and that while his vision is not perfect, he wears glasses. The man must show that the state revoked or restricted his license, and that there exists circumstantial evidence that the state did so because of age discrimination.

Next, to satisfy its burden of production, the state would have to argue that regardless of the man’s perfect driving record and lack of diagnosed deficiencies, his slight impairments are enough to render him dangerous. The man could then provide statistics or circumstantial evidence demonstrating that other elderly drivers were denied licenses for similarly vague reasons, and that the state’s proffered reason that his alleged impairments warranted license revocation or limitations is merely pretextual in the absence of clear proof of deficiency.90 However, it may be difficult to determine whether the reasons proffered by the state are pretextual because it is difficult to draw the line between who is considered proficient and who is considered deficient.91 Poor test results of vision and reflexes can serve as indicators, but it is hard to determine what impairment is required and how severe it must be before it

90. FROLIK & BARNES, supra note 67, at 119 (disparate treatment focuses on the motive underlying the decision).

91. See Benedictis et al., supra note 79 (noting that everyone ages differently, that some drivers in their nineties are safe drivers, and that physical and environmental risk factors impact a driver’s ability).
renders a person an incompetent driver.\textsuperscript{92}

Furthermore, age discrimination may be permitted if it is rationally related to a legitimate state interest, as in the context of mandatory retirement.\textsuperscript{93} Termination based on factors that may accompany advancing age can be legitimate.\textsuperscript{94} The state could perhaps argue that it has a legitimate interest in providing safe roads, and that removing elderly drivers with impaired abilities, or removing all elderly drivers over a certain age, is rationally related to its interest in increased safety.

Using the ADEA analogy, states could assert a "bona fide occupational qualification" defense.\textsuperscript{95} A bona fide occupational qualification permits discrimination when the distinction made between groups is necessary for the occupation.\textsuperscript{96} The qualification must be reasonably necessary to the business, and the employer should have reason to believe that all people in a class would be unable to safely perform necessary functions.\textsuperscript{97} The employer must make a substantial showing that it must rely on age as a substitute for other available evaluative criteria.\textsuperscript{98} Applying the same logic, a state could argue that safe driving is "reasonably necessary" for the "job" of being a responsible citizen and age is a factor that contributes to unsafe driving. A state could argue that restricting all elderly drivers over a certain age is necessary because it is reasonably certain that the elderly are unable to safely perform the task of driving, and that the state cannot rely on any other reliable evaluation criteria.

In \textit{Rasberg v. Nationwide Life Insurance Company}, an Ohio federal court granted summary judgment for the defense,
holding that a corporation's policy of requiring pilots to retire at age sixty-two was justifiable because age was a bona fide occupational qualification for the job. 99 The court determined that younger age was a reasonable job qualification in order to ensure safe transport of passengers. 100 The court also held that potential age defects could not be accurately tested, and simulations would be impractical. 101

A state may be able to argue that restrictions on elderly driving are similar to the bona fide occupational qualification of age allowed for pilots. With the bona fide occupational qualification defense, the state is not claiming that it has reason other than discrimination to act as it does; instead, the state concedes that age was the factor taken into consideration. 102 Further, regardless whether the state's defense is that it had a legitimate reason other than discrimination, or that it has a valid reason for making age distinctions, a state should emphasize that its restrictions center on ability rather than age.

To further extend the comparison between employment and licensing, many employers offer incentives to employees to voluntarily retire at an earlier age. 103 Perhaps using an incentive program to encourage elderly drivers to limit or relinquish their driving privileges could be beneficial, but it likely would be expensive to fund whatever benefits that the elderly would receive to do so, as well as to provide them with alternative transportation.

**DO CHILDREN HAVE A DUTY TO KEEP AGING PARENTS OFF THE ROADS?**

Parents generally have the duty to support and care for their children until they become adults. 104 Playing on the notion of

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100. Id. at 497.
101. Id.
102. FROLIK & BARNES, supra note 67, at 134-37.
103. Id. at 139.
104. Seymour Moskowitz, Adult Children and Indigent Parents: Intergenerational
reciprocity, filial responsibility statutes rest on the belief children should support their parents if the parents are in need later in life. Filial responsibility statutes mandate that adult children support their elderly, needy parents if the child is able. Such statutes aim to alleviate the burden on society to financially support needy elderly individuals. However, these statutes are not widely enforced.

Furthermore, under tort law, a parent can have a duty to control the acts of his or her children. Parents are obligated to protect third parties if they reasonably believe their children will cause harm. However, at least one court has held that an adult grandchild has no duty to control the acts of his or her grandparent to prevent harm. It is possible that the children or grandchildren of an elderly driver are in a better position to judge the elder's driving ability than the state. An adult child with reasonable knowledge that his or her elderly driving parent is a danger to himself or third parties should act to prevent harm.

It is interesting how common it is for states to impose driving restrictions on teenaged drivers. For instance, Maryland law prohibits newly-licensed teenagers from using cellular telephones and transporting non-familial minor passengers until the teenagers have held licenses for 151 days without moving violations. Such rules are imposed because

105. Id. at 422-423 (noting how thirty states have filial responsibility laws, and most statutes reflect "a seemingly reciprocal contract obligation - because parents have provided support in the past, the adult children now owe support to needy parents.").
106. Id. at 423.
107. Id.
108. FROLIK & BARNES, supra note 67, at 22.
110. Id.
113. MARYLAND MOTOR VEHICLE ADMIN., FREQUENTLY ASKED QUESTIONS ON NEW TEEN DRIVING LAWS, http://www.marylandmva.com/DriverServ/ROOKIE
teenaged drivers are viewed as inexperienced and more likely to take risks while driving, as evidenced by statistics showing that teenage drivers get into more accidents than any other age group. The Teen Driver, 118 Pediatrics 2570, 2571-72 (2006), available at http://pediatrics.aappublications.org/cgi/reprint/118/6/2570 (noting that "in terms of total crashes per million miles driven, sixteen to nineteen year olds have a crash rate almost twice that of twenty to twenty-four year olds, almost three times that of twenty-five to twenty-nine year olds, and more than four times that of thirty to sixty-nine year olds," and adolescent risk-taking puts them at greater risk for accidents).

115. See generally The Hartford, Family Conversations with Older Drivers, http://www.thehartford.com/talkwitholderdrivers/ (last visited Feb. 2, 2008) (discussing preparation and discussion strategies to talk with elderly drivers about driving restrictions, and how to prepare for the impact that the discussion might have on relationships and the elderly driver).

116. See Fazzalaro, supra note 16, at 13-14 (comparing the fatality rates of elderly drivers to other age groups).
should be considered when addressing the elderly and driving. These include the retirement age, statutory construction of age cap laws, lobbying for the elderly, and medical problems afflicting the elderly.

**RETIREMENT AGE**

For Social Security purposes, the age at which people reach "full retirement age" is gradually increasing,\(^{117}\) which could impact elderly driver license provisions. Older people who desire to continue working may lose more than their means of transportation if their licenses are restricted or revoked. They may lose their sense of personal autonomy,\(^{118}\) and if they lose their jobs due to a lack of transportation to work, they may end up needing Supplemental Security Income.\(^{119}\)

**STATUTORY CONSTRUCTION AND INTERPRETATION OF AGE CAPS**

If a state enacts age-based restrictions on licensing, the state must make a bright-line determination as to the age when a driver is considered to be "elderly." Chronologically, sixty-five years demarcates old age, but this is merely a rough chronological indicator of what it means to be "elderly" or "old."\(^{120}\) Furthermore, people age sixty-five to seventy-five are considered the "young-old,"\(^{121}\) and it seems too early to restrict or revoke all licenses at that age. The "full retirement age" to receive Social Security is gradually rising to age sixty-seven.\(^{122}\) While concerns about elderly driving often stem from studies that show increased accident rates with age because of deteriorating visual, cognitive, and motor functions, there is no

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117. FROLIK & BARNES, supra note 67, at 166.
118. See id. at 22-26 (discussing personal autonomy interests).
119. See id. at 194 (noting that Congress enacted the Supplemental Security Income [SSI] program "to ensure that all of the elderly have at least a small monthly income").
120. Id. at 2.
121. Id. at 7.
122. Id. at 166.
definitive age when a safe driver becomes an unsafe one.123

IMPACT OF LOBBYING FOR THE ELDERLY

Senior citizens' groups are some of the most powerful lobbies in the country, and these groups typically oppose age-based caps or renewal licensing requirements.124 Senior citizens' groups often challenge legislation when the groups view it as specifically targeting the elderly.125 The American Association of Retired Persons ("AARP") is a nonprofit, nonpartisan entity that possesses considerable clout because of its more than thirty-five million members.126 Groups like the AARP may block legislation that negatively impacts its constituents, as many legislators may refuse to support legislation opposed by the groups, fearing political repercussions.127 One legislator who proposed a bill that would restrict elderly drivers found no co-sponsors and had difficulty rendering testimony in favor of the proposal.128 The legislator's staff referred to the bill as "an act to lose elderly votes," as it would require drivers over eighty-five years of age to retake vision and road tests every five years.129

That is not to say that groups similar to, and including, the AARP are not concerned about the effects of aging on driving ability. In fact, the AARP sponsors the largest driver improvement course, the "AARP Driver Safety Program."130

123. McKnight, supra note 1, at 67.
124. Morris, supra note 27.
125. Id.
129. Id.
This program is designed to teach elderly drivers how to understand mental and physiological changes that accompany aging, to make adaptations to those changes, and to identify warning signs that it may be time to stop driving.131

**MEDICAL PROBLEMS**

Many seniors have chronic conditions and other physical or mental incapacities that are not tested or regulated by state licensing agencies, including declined attention span, memory, and reaction times.132 Because of the relationships that family doctors can have with elderly patients, the idea arises that these doctors may be able to determine whether a patient should stop driving. It could be argued that states should require doctors to take a more active role in elder driving regulation.133 Doctors could examine each elderly patient as normal, but could be trained to identify the patients that lack the physical or mental capacity to drive.134 The doctors could refer patients to the state agencies responsible for regulating driving, who could then test only the referred drivers.135

However, doctors have an ethical duty to keep patient communication confidential, as confidentiality encourages patients to be candid with doctors, which is important for diagnostic purposes.136 Still, there are exceptions, including reasons relating to public health and safety.137 One might argue that doctor referrals to the state should not be seen as a breach of

131. *Id.*
133. See generally *id.* at 66 (discussing referral processes by which "anyone having reason to believe a person is incapable of driving safely can report that driver to license authorities. Such reports can be tendered by police, relatives and neighbors of the driver, medical practitioners ...").
134. See *id.* (discussing Pennsylvania's mandatory reporting system in which doctors are required to report patients' with questionable driving abilities).
135. See *id.*
137. *Id.* at 49-50.
their duty because of the overriding social safety considerations. It should be noted that it is likely that not all elderly people regularly see a doctor, and allowing for an exception to the doctor-patient privilege may discourage some seniors from seeking out care, perhaps out of fear that they may lose their licenses.

CONCLUSION

When considering the issue of elderly driving, it is important to recognize that there likely are a lot of "bad drivers" in all age groups. Perhaps the problem is broader, and the proper solution should be to require frequent renewals and more strict testing requirements for every driver. However, limits on the states' time and resources can make it impractical to test everyone. Such constraints seem to have caused states to focus on identifying high-risk drivers, including the elderly.

It appears that society does not always condemn elderly drivers. Some insurance companies provide senior policyholders with discounts on the theory that the elderly are less likely to drive aggressively. These discounts appear to qualify as a form of positive age discrimination, which is discrimination that favors the elderly. Society approves of positive age discrimination and condemns negative acts of age discrimination. Some may argue that the discounts are unwise because elderly drivers may be encouraged to drive even after they have become unable to do so safely. Also, some insurance companies provide discounts to allow elderly drivers

138. See generally id.
139. See McKnight, supra note 1, at 65 (noting that testing all drivers could be the simple answer on how to determine that unsafe drivers do not obtain licensing).
140. Id.
142. See generally FROLIK & BARNES, supra note 67, at 32 (discussing positive age discrimination).
143. Id. at 32-33.
to take defensive driving courses. While these discounts may assist some drivers, it appears that some seniors may simply be physically incapable of improvement. Perhaps an age cap would better address the problem of unsafe elderly driving, but as discussed, caps can be accompanied by a host of new logistical and legal problems.

People in every age group appear to view driving as a necessity, not a privilege. In fact, the Supreme Court has held that individuals have a property interest in their licenses. However, there appears to be a significant conflict of interests involved in the issue of elderly driving; elderly drivers desire to maintain personal autonomy, while states wish to increase road safety. Personal autonomy and protection have an inverse relationship because as dependency on others increases, autonomy declines. While state regulations appear to protect seniors from themselves, as well as other drivers, regulations could very well lead to a small, but critical, loss in independence that undermines the self worth and dignity of the elderly population.

146. FROLIK & BARNES, supra note 67, at 22-24.
147. See id.