

**COPY**

NO. 76590-1

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

GREGORY K. AMUNRUD,

PETITIONER,

v.

BOARD OF APPEALS AND DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES,  
STATE OF WASHINGTON,

RESPONDENT.

---

**ANSWER TO PETITION FOR REVIEW**

---

ROB MCKENNA  
Attorney General

LIANNE MALLOY  
Assistant Attorney General  
WSBA No. 15028  
670 Woodland Sq. Lp. SE  
P.O. Box 40124  
Olympia, WA 98504-0124  
(360) 459-6942

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTER-STATEMENT OF THE ISSUES.....	1
III.	STATEMENT OF THE CASE.....	2
IV.	ARGUMENT .....	5
	A. Considerations Governing Acceptance of Review .....	5
	B. It Is Well Settled That There is No Fundamental Right to Work in a Particular Occupation.....	6
	1. Overview of the constitutional right to substantive due process .....	6
	2. There is no fundamental constitutional right to work in a particular occupation .....	7
	C. The Rational Relationship Between Failure to Pay Child Support and Suspending A Parent's Driver's License Does Not Present An Important Issue To Be Resolved By This Court .....	10
	D. The decision of the court of appeals does not conflict with this Court's decision in <i>City of Redmond v. Moore</i> .....	12
V.	CONCLUSION .....	20

## TABLE OF AUTHORITIES

### Cases

<i>Alaska Dep't of Revenue, Child Support Enforcement Div. v. Beans</i> , 965 P.2d 725 (1998).....	12
<i>Amunrud v. Board of Appeals</i> , __ Wn. App. __, 103 P.3d 257 (2004) .....	4, 5, 12
<i>Bare v. Gordon</i> , 84 Wn.2d 380, 526 P.2d 379 (1974).....	4
<i>City of Cleburne, Tex. v. Cleburne Living Ctr.</i> , 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985).....	6
<i>City of Redmond v. Moore</i> , 151 Wn.2d 664, 91 P.3d 875 (2004).....	passim
<i>Dittman v. State of California</i> , 191 F.3d 1020, (9th Cir. 1999), <i>cert.</i> <i>denied</i> , 530 U.S. 1261, 120 S. Ct. 2717, 147 L. Ed. 2d 982 (2000) .....	7
<i>Duranceau v. City of Tacoma</i> , 27 Wn. App. 777, 620 P.2d 533 (1980).....	9
<i>Haley v. Medical Disciplinary Bd.</i> , 117 Wn.2d 720, 818 P.2d 1062 (1991).....	8
<i>In re Kindschi</i> , 52 Wn.2d 8, 319 P.2d 824 (1958).....	8
<i>In re Metcalf</i> , 92 Wn. App. 165, 963 P.2d 911 (1998) .....	6
<i>Johnson v. Johnson</i> , 96 Wn.2d 255, 634 P.2d 877 (1981) .....	12, 18
<i>Jones v. Leslie</i> , 61 Wash. 107, 112 P. 81 (1910).....	9
<i>Mackey v. Montrym</i> , 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979).....	18
<i>Mahoney v. Sailor's Union of the Pacific</i> , 43 Wn.2d 874, 264 P.2d 1095 (1953).....	9

<i>Massachusetts Bd. of Ret. v. Murgia</i> , 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976).....	7
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).....	14, 15
<i>Meyers v. Newport Consol. Joint Sch. Dist. 56-415</i> , 31 Wn. App. 145, 639 P.2d 853 (1982).....	8
<i>Nebbia v. People of New York</i> , 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940 (1934).....	7
<i>Schwabe v. Board of Bar Examiners</i> , 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).....	7
<i>Tarver v. City Comm'n</i> , 72 Wn.2d 726, 435 P.2d 531 (1967).....	10
<i>Thompson v. Ellenbecker</i> , 935 F. Supp. 1037 (D.S.D. 1995).....	12
<i>Tolces v. Trask</i> , 76 Cal. App. 4th 285, 90 Cal. Rptr. 2d 294 (1999) .....	12
<i>United States v. Carolene Products Co.</i> , 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938).....	11
<i>Washington Local Lodge No. 104 of Int'l Bhd. of Boilermakers v. Int'l Bhd. of Boilermakers</i> , 33 Wn.2d 1, 203 P.2d 1019 (1949).....	9
<i>Washington v. Glucksberg</i> , 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed.2d 772 (1997) .....	8, 9
<i>Williamson v. Lee Optical of Oklahoma</i> , 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955).....	10, 11

#### Statutes

42 U.S.C. § 466(a)(10).....	3
42 U.S.C. § 666(a)(16).....	1, 18
RCW 26.23.045, 050 .....	19

RCW 26.23.050(7).....	17
RCW 34.05.562 .....	4
RCW 46.20.289 .....	13, 14
RCW 46.20.324(1).....	13, 14
RCW 74.20.010 .....	18
RCW 74.20.320 .....	17
RCW 74.20A.020(18).....	4, 16
RCW 74.20A.320.....	1
RCW 74.20A.320(2).....	4
RCW 74.20A.320(6).....	3, 16
RCW 74.20A.330.....	17, 18
WAC 388-14A-4520.....	20
WAC 388-14A-4530.....	4, 16

**Other Authorities**

<i>Essentials for Attorneys in Child Support Enforcement, Appendix</i> (3rd Ed. 2002) .....	19
Mark R. Fondacaro & Dennis P. Stolle, <i>Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Implications</i> , 5 Cornell J.L. & Pub. Pol’y 355. (1996).....	8, 12

**Rules**

RAP 13.4..... 20

**Regulations**

45 C.F.R. § 303.8..... 3

## I. INTRODUCTION

Appellant Gregory K. Amunrud is a taxi driver who has a long history of refusing to comply with his court orders requiring him to support his son. Federal and state laws authorize the suspension of professional, business, occupational, and driver's licenses of parents who do not pay their child support obligations as a method of enforcing compliance. 42 U.S.C. § 666(a)(16); RCW 74.20A.320. Mr. Amunrud's driver's license was suspended under this authority, but only after a full administrative hearing, pursuant to RCW 74.20A.320.

Although Mr. Amunrud's petition for review does not specifically address the criteria governing this Court's acceptance of review, he appears to claim: (1) the suspension of his driver's license raises a significant constitutional question; and (2) the court of appeals decision in this case conflicts with this Court's recent decision in *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). See Petition for Review. This case does not merit review. It involves the straightforward and correct application of settled constitutional principles.

## II. COUNTER-STATEMENT OF THE ISSUES

1. Does the suspension of the occupational or driver's license of a parent who repeatedly fails to pay child support involve a fundamental right that is subject to strict scrutiny?

2. Does suspending a parent's driver's license for failure to pay child support meet the rational basis standard when the state has a compelling interest in enforcing child support obligations and license suspension is a highly effective enforcement tool?
3. When the petitioner had a pre-suspension administrative hearing before the Department of Social and Health Services that was subject to judicial review, does the three-part test set forth in *Mathews v. Eldridge* require petitioner to have a second administrative hearing before the Department of Licensing before his driver's license can be suspended?

### III. STATEMENT OF THE CASE

In 1997, the trial court ordered Mr. Amunrud to pay \$350 per month for the support of his son, Sean. CAR at 54.<sup>1</sup> Mr. Amunrud usually paid \$75 each month--significantly less than he was ordered to pay. CAR at 64-65.<sup>2</sup>

In 2002, Mr. Amunrud complained that he could not afford to pay his child support obligation; and, at his request, the Department of Social and Health Services (DSHS) filed a modification action in King County Superior Court. VRP at 17<sup>3</sup>. The trial court rejected Mr. Amunrud's

---

<sup>1</sup> "CAR" is used throughout this answer to abbreviate Certified Administrative Record. "VRP" is used throughout this brief to abbreviate the Verbatim Report of Tape Recorded Proceedings.

<sup>2</sup> Mr. Amunrud's assertion that he made his regular child support payments until his accident is unsupported by the record. See Petition for Review at 7. The record shows that Mr. Amunrud paid \$150 per month through December 1997 and that he paid \$75 most months thereafter. CAR at 63-64. Similarly, Mr. Amunrud's claim that he is now receiving "state welfare" is not supported by any evidence in the record. See Petition for Review at 7.

<sup>3</sup> The State is required by federal law to review orders and initiate child support modification or adjustment actions in appropriate circumstances when requested by a custodial or non-custodial parent, regardless of whether the family receives public

assessment of his earning ability. CAR at 41-42. Instead of reducing Mr. Amunrud's monthly child support obligation, the trial court imputed gross income at \$2,116 per month--the same gross income that was used to calculate Mr. Amunrud's child support obligation in 1997. CAR at 47, 59. It then increased Mr. Amunrud's child support obligation to \$421 per month effective April of 2002. CAR at 42. The increase was warranted because Sean was then 15 years old. CAR at 41.<sup>4</sup>

After the modification action was completed, DSHS took action to suspend Mr. Amunrud's driver's license based on his long history of failing to meet his child support obligation. CAR at 33-36. Mr. Amunrud owed in excess of \$16,000 in back child support in April 2002 when DSHS initiated the administrative process to suspend his license. VRP at 6; CAR at 33-35.<sup>5</sup>

Mr. Amunrud requested an administrative hearing to challenge the suspension. CAR at 29-30. Administrative hearings to dispute license suspensions for non-payment of support are limited to determining if the person whose license is to be suspended owes at least six months of back

---

assistance, or the income of the requesting parent. 42 U.S.C. § 466(a)(10); 45 C.F.R. § 303.8.

<sup>4</sup> The Washington State Child Support Schedule creates a higher presumptive obligation for children aged twelve and older than it does for younger children.

<sup>5</sup> Mr. Amunrud mistakenly asserts that his license was revoked in April of 2002. See Petition for Review at 7. Although he was served with a notice of non-compliance and intent to suspend license in April 2002, his license would not have been suspended until after the administrative process was completed on December 6, 2002. CAR at 1-2, 33-35; RCW 74.20A.320(6).

child support. RCW 74.20A.320(2); RCW 74.20A.020(18); WAC 388-14A-4530. Mr. Amunrud did not dispute that he owed in excess of six months back child support, and the hearing examiner ruled that it was appropriate to suspend Mr. Amunrud's license. CAR at 12-16. The hearing examiner did not consider Mr. Amunrud's constitutional defenses to his license suspension because the hearing examiner does not have jurisdiction to consider these claims. CAR at 14; *See, also, Bare v. Gordon*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).

Mr. Amunrud appealed to King County Superior Court, raising several issues, including alleged procedural and substantive due process rights violations. CP 1-6. The King County Superior Court affirmed. CP 7-8<sup>6</sup>; RCW 34.05.562. Mr. Amunrud appealed.

The Court of Appeals affirmed, holding, first, that the suspension of Mr. Amunrud's license did not violate his constitutional rights. *Amunrud v. Board of Appeals*, \_\_ Wn. App. \_\_, 103 P.3d 257 (2004). The court concluded that Mr. Amunrud did not have a fundamental right to earn a living in his chosen occupation, and that the suspension of Mr. Amunrud's driver's license was rationally related to a legitimate state purpose of enforcing child support obligations. *Id.* The court noted that

---

<sup>6</sup> The order signed by the superior court judge is mistakenly captioned "Order Granting DSHS's Motion for Summary Judgment". CP-7-8. This matter came before the superior court in its appellate capacity to review an administrative decision. No motion for summary judgment was filed by either party.

the Division of Child Support's research showed that license suspension or the threat of license suspension resulted in a sizeable increase in the amount of child support that it was able to collect. *Id.* at 260. The court then held that Mr. Amunrud's procedural due process rights did not require the opportunity to show he was an adequate driver. *Id.* at 260-61. The court reasoned that this was really a substantive due process argument, not a procedural due process argument. *Id.* The court of appeals explained that it had already rejected the argument that a license could not be suspended without a showing of impaired driving ability since DSHS had shown that there was a rational relationship between the suspension and a legitimate legislative purpose. *Id.* at 261. The court distinguished Mr. Amunrud's situation from that considered in *City of Redmond v. Moore*. The court explained that unlike the defendants in *Moore*, Mr. Amunrud asked for and received an administrative hearing before his license was suspended. *Amunrud*, 103 P.3d at 261.

#### **IV. ARGUMENT**

##### **A. Considerations Governing Acceptance of Review**

The Rules of Appellate Procedure require that a petition for review include a concise statement of the reason why review should be accepted under one or more of the tests established in RAP 13.4(b). Mr. Amunrud fails to identify the reasons this Court should accept review. He appears to

argue that a significant question of law under the United States Constitution is involved; and that the court of appeal's decision is in conflict with a decision of this Court. RAP 13.4(b).

**B. It Is Well Settled That There Is No Fundamental Right to Work in a Particular Occupation**

**1. Overview of the constitutional right to substantive due process**

The due process clause of the fourteenth amendment to the United States Constitution provides that no state shall "...deprive any person of life, liberty or property, without due process of law . . . ." When evaluating whether a statute violates due process rights protected under the Constitution, it is first necessary to determine the nature of the right affected so the court can employ the correct standard of review. If the statute limits a fundamental, constitutionally secured right or implicates a suspect class, the strict scrutiny test is employed. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); *In re Metcalf*, 92 Wn. App. 165, 176-77, 963 P.2d 911 (1998). If no suspect class is involved or no fundamental constitutional right is implicated, the court looks to see if there is a rational basis for the governmental action. *Id.* Mr. Amunrud does not claim to be a member of a suspect class. Instead, he argues that he has a fundamental right to pursue his occupation as a taxi driver.

**2. There is no fundamental constitutional right to work in a particular occupation**

Neither this Court nor the United States Supreme Court has ever held that the “right” to pursue a particular profession or occupation is a fundamental right, such that any state interference or limitation on that “right” would be subject to strict scrutiny. *See, e.g., Dittman v. State of California*, 191 F.3d 1020, 1031, n.5 (9th Cir. 1999), *cert. denied*, 530 U.S. 1261, 120 S. Ct. 2717, 147 L. Ed. 2d 982 (2000); *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314-14, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976) (no fundamental right to government employment); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 756, 1 L. Ed. 2d 796 (1957) (no fundamental right to practice as an attorney); *Nebbia v. People of New York*, 291 U.S. 502, 527-28, 54 S. Ct. 505, 78 L. Ed. 940 (1934) (the right to work in a particular profession or trade is a protected right, but one only subject to rational regulation).

In the context of substantive due process, fundamental rights have been limited to specific freedoms protected by the Bill of Rights, familial relations, such as the right to marry or make child rearing decisions, or they have fallen under the general category of “privacy” rights, such as being able to use contraception or have an abortion without state interference. *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct.

2258, 2267, 138 L. Ed.2d 772 (1997); Mark R. Fondacaro & Dennis P. Stolle, *Revoking Motor Vehicle and Professional Licenses for Purposes of Child Support Enforcement: Constitutional Challenges and Implications*, 5 Cornell J.L. & Pub. Pol'y 355, 373. (1996).

Washington courts have likewise determined the right to work in one's chosen profession is not a fundamental right. In *Meyers v. Newport Consol. Joint Sch. Dist.* 56-415, 31 Wn. App. 145, 639 P.2d 853 (1982), the court considered an equal protection challenge. A provisional teacher was terminated because of his failure to comply with a residency policy that required provisional, but not non-provisional employees to live within school district boundaries. The court held that a school district employee's "...employment is not a fundamental right . . . ." *Id.* at 150. Accordingly, the court, applied the rational basis test to uphold the residency requirement for provisional teachers. *Id.* 150-153.

*See also, In re Kindschi*, 52 Wn.2d 8, 12, 319 P.2d 824 (1958) (suspension of physician's license after physician was convicted of tax fraud upheld because there was a *rational connection* between income tax fraud and one's fitness of character or trustworthiness to practice medicine); *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 723-25, 733-34, 818 P.2d 1062 (1991) (physician found unfit to practice medicine after his sexual relationship with a minor because the suspension was

*rationaly related* to a legitimate state interest of protecting the public). The use of the rational basis test by these courts show they implicitly rejected the notion of a fundamental right to work in one's chosen field.

Mr. Amunrud has not cited cases that support his claim that he has a fundamental constitutional right to be employed as a taxi driver. His reliance on *Mahoney v. Sailor's Union of the Pacific*, 43 Wn.2d 874, 879, 264 P.2d 1095 (1953), *Jones v. Leslie*, 61 Wash. 107, 112 P. 81 (1910) and *Washington Local Lodge No. 104 of Int'l Bhd. of Boilermakers v. Int'l Bhd. of Boilermakers*, 33 Wn.2d 1, 203 P.2d 1019 (1949) are misplaced. None of these cases is on point because they all involve actions between individuals and non-governmental entities. The due process clause is not implicated unless a person is deprived of life, liberty or property by *the government*. *Glucksberg*, 521 U.S. at 719-20.

Mr. Amunrud's reliance on *Duranceau v. City of Tacoma*, 27 Wn. App. 777, 620 P.2d 533 (1980) is similarly misplaced. See Petition for Review at 9-10. Mr. Duranceau was denied employment with a private logging company because he was a resident of Lester. *Id.* at 779. The City of Tacoma wanted to discourage residency in Lester to protect a watershed. *Id.* The City would not let the logging company use a vital access road if it employed Lester residents although the company could employ anyone else. *Id.* The Court held that the City had no duty to make

the road available for private purposes, but if it did so, it needed to do so, on a non-discriminatory basis. *Id.* at 780. The court held that the plaintiff in that case had the fundamental right to hold specific private employment free from *unreasonable* government interference. *Id.* Hence, the *Duranceau* court essentially applied the rational relationship test to review the City of Tacoma's objective of protecting its watershed. The law in this area is well settled. Mr. Amunrud has no fundamental constitutional right to work as a taxi-driver and his claim of such a constitutional right does not raise a significant question under the United States Constitution.

**C. The Rational Relationship Between Failure to Pay Child Support and Suspending A Parent's Driver's License Does Not Present An Important Issue To Be Resolved By This Court**

When no fundamental right is at stake, the appropriate standard of review for determining the constitutionality of government action is the rational basis test. *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955). The requirement of due process is satisfied under this standard if challenged statutes have "...a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory . . . ." *Nebbia*, 291 U.S. at 537, 54 S. Ct. at 516, 78 L. Ed. 2d at 957. *See also Tarver v. City Comm'n*, 72 Wn.2d 726, 435 P.2d 531 (1967) (applied arbitrary and capricious standard to due process challenge under the Fourteenth Amendment). "A court may hypothesize reasons

supporting the rational basis for a statute if the legislature fails to do so.” *United States v. Carolene Products Co.*, 304 U.S. 144, 154, 58 S. Ct. 778, 82 L. Ed. 1234 (1938). Rational basis exists if “...there is an evil at hand for correction, and . . . it might be thought that the particular legislative measure was a rational way to correct it.” *Dittman v. State of California*, 191 F.3d at 1020, citing *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 487-88, 75 S. Ct. 461, 99 L. Ed. 2d 563 (1955).

The Petitioner appears to argue that the rational relationship between failure to pay child support and suspension of a driver’s license presents an important issue to be resolved by this Court. In fact, the court of appeals properly applied the rational basis standard. The proper application of the rational basis standard does not present an issue that needs to be resolved by this Court.

Mr. Amunrud does not argue that there is no rational basis between the suspension of his driver’s license and a legitimate legislative purpose. *See* Petition for Review at 12-13. Instead, he asserts that the rational basis test requires his license suspension to be reasonably related to his ability to drive. *Id.* He cites no authority to support this interpretation of the rational basis test, nor can he. The rational basis test does not require licensing sanctions to be directly related to lack of skill so long as it is related to a legitimate state interest. *See Haley*, 117 Wn.2d at 733-34; *In*

*re Kindschi*, 52 Wn.2d at 12. Here, where the state has a compelling interest in enforcing child support; and license suspension has been a highly effective enforcement tool, that standard is easily met. *Johnson v. Johnson*, 96 Wn.2d 255, 262-63, 634 P.2d 877 (1981). *Amunrud*, 103 P.3d at 260; *Revoking Motor Vehicle and Professional Licenses* at 397.

Other jurisdictions which have considered due process challenges to analogous license suspension schemes have upheld them under a rational basis test. *Alaska Dep't of Revenue, Child Support Enforcement Div. v. Beans*, 965 P.2d 725, 727 (1998) (suspension of driver's license was rationally related to collecting child support from the class of persons who did not willingly pay support even if it was not effective with respect to the specific litigant before the court); *Thompson v. Ellenbecker*, 935 F. Supp. 1037 (D.S.D. 1995) (restricting the right of child support obligors to drive was not arbitrary or irrational even though it was unrelated to the individual's ability to safely operate a motor vehicle because it helped support enforcement efforts); *Tolces v. Trask*, 76 Cal. App. 4th 285, 90 Cal. Rptr. 2d 294 (1999) (suspending the licenses of delinquent child support obligors was rationally related to improving the enforcement of support obligations).

**D. The decision of the court of appeals does not conflict with this Court's decision in *City of Redmond v. Moore***

Finally, Mr. Amunrud argues that the Court should grant review because the decision below conflicts with this Court's decision in *City of Redmond v. Moore*. No such conflict exists. Both *Moore* and the decision below involve the application of *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The reason there is a different result is that the underlying facts of the two cases are very different. The straightforward and correct application of *Mathews* does not present an issue that needs to be resolved by this Court.

Mr. Amunrud asserts that his license suspension hearing was not meaningful because he was not permitted to show that he was unable to pay his court-ordered child support obligation. Therefore, he reasons the court of appeal's decision conflicts with *City of Redmond v. Moore*. See Petition for Review at 13. There is no conflict. Rather, Mr. Amunrud mischaracterizes this Court's decision.

In *Moore*, two individuals challenged driver's license suspension statutes related to driving infractions. This Court held that two statutes, RCW 46.20.289 and RCW 46.20.324(1), were unconstitutional. *Moore*, 151 Wn.2d at 677. The first statute, RCW 46.20.289, directed the Department of Licensing (DOL) to suspend driving privileges when it received notice from a court that a person failed to respond or otherwise comply with a notice of traffic infraction. The second statute, RCW

46.20.324(1), provided that drivers were not entitled to a hearing when DOL's action is mandated by law.

Under the statutory scheme examined in *Moore*, when DOL received notice from the court, DOL would send a letter notifying the driver that his or her license was suspended and the reason for the suspension. *Id.* at 677. The suspension became effective in 30 days unless the driver received a certificate from the court showing the matter had been adjudicated. *Moore*, 151 Wn.2d at 680 (Bridge, J., dissenting). DOL did not provide an administrative hearing before or after the license suspension because the agency was *required* to suspend the license upon receiving notification from the court. *Moore*, 151 Wn.2d at 668; RCW 46.20.289; RCW 46.20.324(1).

In *Moore*, this Court held that DOL could not suspend driving privileges without first affording drivers the opportunity to administratively resolve potential ministerial errors such as misidentification of the driver, miscalculation of the fine, or errors on the conviction form. *Moore*, 151 Wn.2d at 675. The Court did not employ a "strict scrutiny" test to reach this decision as alleged by Mr. Amunrud. *See* Petition for Review at 13. Rather the *Moore* Court relied on the three-part test set forth in *Mathews v. Eldridge*. *Moore*, 151 Wn.2d at 670. This test requires consideration of the following factors:

[F]irst, the private interest that will be affected by the official action; second the risk of erroneous deprivation of such interest through the procedures used, and the probable value if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements entail.

Mathews v. Eldridge, 424 U.S. at 335

In *Moore*, when this court analyzed the first *Mathews* factor, it concluded that individuals have a substantial interest in maintaining their driving privileges. The court expressed concern that a driver had no guarantee that he or she would be able to obtain a timely hearing and explained, "The public is left to its own devices to secure a timely hearing from a court to reverse the error before the suspension takes effect." *Moore*, 151 P.2d at 671. The Court next assessed the risk of erroneous deprivation and the value of additional procedural safeguards, when it analyzed the second *Mathews* factor. The Court concluded that there was a substantial risk of error. *Moore*, 151 Wn.2d at 674. Lastly, the Court considered the third *Mathews* factor dealing with the nature of the government's interest and the fiscal and administrative burdens additional procedural protections would entail. *Moore*, 151 Wn.2d at 676-77. The Court characterized the level of the State's interest in efficiently administering traffic regulations as important but not compelling. *Id.* at

677. The *Moore* court then held that “RCW 46.20.289 and RCW 46.20.324(1) are contrary to the guarantee of due process because they do not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver’s interest in the continued use and possession of his or her driver’s license.” *Moore*, 151 Wn.2d at 677.

The *Mathews* test does not lead to the same result when applied to license suspensions predicated on failure to pay child support because the underlying process is significantly different. Parents who fail to support their children, like Mr. Amunrud, receive greater due process protections than those available to the drivers in *Moore*. Unlike the criminal defendants in *Moore*, Mr. Amunrud did have an administrative hearing before his driver’s license was suspended. The administrative hearing afforded Mr. Amunrud an opportunity to dispute the fact that he was required to pay child support under a court order and that he was at least six months in arrears. RCW 74.20A.020(18); WAC 388-14A-4530. Under the statute, this hearing right must be provided before a license can be suspended for failure to pay child support. RCW 74.20A.320(6). Furthermore, Mr. Amunrud was able to appeal the administrative decision judicially and obtain temporary stay of the license suspension under RCW 34.05.550 if any of his constitutional defenses had merit.

While Mr. Amunrud has a substantial interest in maintaining his driving privileges under the first *Mathews* factor, he was afforded an administrative hearing prior to the suspension of his license. RCW 74.20.320. Persons facing license suspension for non-payment of child support do not trigger the due process concerns addressed in *Moore* because they receive a timely hearing. .

When this Court examined the second *Mathews* factor in the *Moore* case, it concluded there was a substantial risk of error which could be corrected by a pre-license suspension hearing. *Moore*, 151 Wn.2d at 671-76. Here, there was a pre-suspension hearing. Mr. Amunrud does not allege (nor could he) that any ministerial error was made in his--or any other--case. There is simply no evidentiary basis for this court to conclude that an additional administrative hearing is justified to avoid ministerial errors by DOL. Furthermore, it would be duplicative and burdensome for persons that allegedly owe back child support to have a pre-suspension hearing before a DSHS hearing examiner and a second pre-suspension hearing before a DOL hearing examiner. The risk of a ministerial error is low because DSHS has names, social security numbers, driver's license numbers, birth dates and addresses of those ordered to pay child support. RCW 26.23.050(7). DSHS provides this information to DOL when it certifies that someone's license should be suspended. RCW 74.20A.330.

The two agencies are able to confer and promptly resolve mistakes if one is brought to their attention. *Id.*

When this Court considered the final *Mathews* factor in the *Moore* case, it concluded that the additional burden of a pre-suspension hearing did not outweigh the benefit of providing administrative hearings to correct potential ministerial errors. *Moore*, 151 Wn.2d at 676-77. Here, in contrast, there was an administrative hearing before a DSHS hearing examiner. A second administrative hearing before a DOL hearing examiner imposes an additional burden on the state, and on children who are deprived of the financial support of a parent, without any evidence that errors are being made or that errors will be reduced. The mere possibility of error does not constitute a violation of due process. *Mackey v. Montrym*, 443 U.S. 1, 13, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1979).

It is also significant that the state has "compelling interests" in enforcing child support obligations to protect a child's fundamental right to support as well as to reduce public assistance expenditures. RCW 74.20.010; *Johnson v. Johnson*, 96 Wn.2d at 262-63. Congress has supported this compelling interest by continuing its historical pattern of strengthening child support enforcement remedies by requiring states to suspend driver's licenses of delinquent child support obligors. 42 U.S.C. § 666(a)(16); *Essentials for Attorneys in Child Support Enforcement*,

Appendix (3rd Ed. 2002)<sup>7</sup>. The state's compelling interests in enforcing child support obligations are greater than the important interest the state has in efficiently administering traffic regulations. These compelling interests outweigh the benefits of requiring DOL to provide a second administrative pre-suspension hearing. Indeed, a second hearing would only cause further delay and expense; and would prejudice the State's ability to safeguard the right of children to receive parental support.

Mr. Amunrud asserts that his administrative hearing was not constitutionally meaningful because he was not given an opportunity during that hearing to show that he cannot afford to pay his child support obligation. Petition for Review at 13. However, Mr. Amunrud was afforded a judicial hearing on this issue during his child support modification action. If he did not agree with his child support order, his remedy was to appeal it. The DSHS hearing examiner had no authority to reverse the finding of the trial court. DSHS is required to enforce court orders, not to change or reject them. RCW 26.23.045, 050.

This Court's ruling in *Moore* does not conflict with the decision of the court of appeals. Mr. Amunrud had the opportunity to fully litigate the amount of support he should be ordered to pay; and whether his failure to

---

<sup>7</sup>This federal governmental publication can be accessed at <http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/essentials/index.html>.

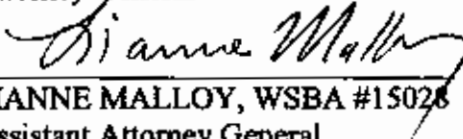
meet that obligation satisfied the statutory criteria for license suspension. Application of the three-part balancing test set forth in *Mathews* does not support the conclusion that Mr. Amunrud is constitutionally entitled to additional procedural due process protection. Although Mr. Amunrud is correct in asserting that he cannot modify his child support obligation retroactively, this does not mean a prospective modification cannot benefit him, if it is determined his support obligation should be lowered. See Petition for Review at 14. Mr. Amunrud is entitled to have his license reinstated if he pays his current child support obligation and regular payments on his arrearages. WAC 388-14A-4520.

#### V. CONCLUSION

This court should decline to accept review of this case. None of the criteria for accepting review set forth in RAP 13.4 has been satisfied.

RESPECTFULLY SUBMITTED this 10th day of February, 2005.

ROB MCKENNA  
Attorney General

  
LIANNE MALLOY, WSBA #15028  
Assistant Attorney General  
670 Woodland Sq. Lp. SE  
Olympia, WA 98504-0124  
(360) 459-6942