

**FROM CALIFORNIA TO ILLINOIS TO  
FLORIDA, OH MY!: THE NEED FOR A  
MORE UNIFORM DRIVER'S LICENSE  
RENEWAL POLICY**

*David Rosenfield*

*A great deal of controversy surrounds the area of driver's license renewal reform with regard to the elderly. A variety of solutions have been implemented to address this issue, resulting in inconsistent regulation throughout the country. In this note, David Rosenfield examines this issue and the need for more uniform driver's license renewal policies in which age plays a significant factor. He considers both the various current state approaches to this issue and the obstacles to federal regulation. He concludes that a federal mandate, enforced through federal funding and utilizing a combination of approaches, will best address the various problems inherent in formulating a cohesive driver's license renewal policy.*

**I. Introduction**

California State Senator Tom Hayden (D-Los Angeles) must have had a premonition. Hayden, unlike most of his

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David Rosenfield is Note Editor 2004–2005, Member 2003–2004, *The Elder Law Journal*; J.D. 2005, B.S. 2002, University of Illinois, Urbana-Champaign.

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constituents, must have realized the potential dangers that lay ahead. In 1998, a ninety-six-year-old driver, whose last driving test was in 1918, struck and killed a fifteen-year-old girl on her way to the grocery store in Santa Monica, California.<sup>1</sup> Following the crash, Hayden adamantly pushed for a law requiring the California Department of Motor Vehicles (DMV) to issue road tests to motorists aged seventy-five years and older.<sup>2</sup> The proposal was not groundbreaking by any means.<sup>3</sup> Ultimately, however, age was not mentioned in the California law, which imposes a minimum vision requirement, and calls for a road test if the DMV receives concerns about a driver's potential limitations.<sup>4</sup> Five years later, Santa Monica wishes it had heeded Hayden's advice.<sup>5</sup>

On July 16, 2003, George Russell Weller brought an issue, once thought to have calmly disappeared, back to the national forefront.<sup>6</sup> Claiming he hit the gas instead of the brake, eighty-six-year-old Weller, who was not required to take a driving test to renew his license, crashed his Buick sedan into an outdoor market in Santa Monica, killing ten people and injuring more than fifty others.<sup>7</sup> Nine days later, a seventy-nine-year-old man injured six people when he apparently lost control of his automobile at a farmer's market in Flagler Beach, Florida, a state that until recently allowed all of its drivers to renew their driver's license by mail.<sup>8</sup> Although these two incidents

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1. *New Rules for Aged Drivers*, L.A. TIMES, July 18, 2003, pt. 2, at 14.

2. Matt Lait & Sharon Bernstein, *Santa Monica Crash; Stricter Rules for Elderly Drivers Could Be Urged*, L.A. TIMES, July 17, 2003, pt. 1, at 17; see also *New Rules for Aged Drivers*, *supra* note 1.

3. See, e.g., 625 ILL. COMP. STAT. 5/6-115 (2003).

4. CAL. VEH. CODE § 12804.9 (2004); Lait & Bernstein, *supra* note 2 (suggesting the reason for defeat was due to heavy opposition from various senior citizen groups like the American Association of Retired Persons (AARP)).

5. See Henry Weinstein, Doug Smith & Carl Ingram, *Santa Monica Crash*, L.A. TIMES, July 18, 2003, pt. 1, at 30 (suggesting that a vision test would likely have resulted in at least some hesitation in renewing Weller's driver's license, as an inspection of Weller's home showed that his car had hit the wall of the garage on repeated occasions, evidencing his lack of depth perception, a commonly tested characteristic in vision tests).

6. *Id.*

7. John-Thor Dahlburg, *Crash at Florida Market Leaves 6 Injured*, L.A. TIMES, July 26, 2003, pt. 1, at 10; see also Lait & Bernstein, *supra* note 2.

8. Dahlburg, *supra* note 7; see also FLA. STAT. ANN. § 322.18 (West 2003) (amended to restrict availability of license renewal by mail for persons seventy-nine years of age or under); Meredith Coley, *Older Driver Relicensing Laws: The State of the States*, PUB. POL'Y & AGING REP., NAT'L ACAD. ON AN AGING SOC'Y, Summer 2001, at 7.

were certainly not the first of their kind,<sup>9</sup> each helped propel the issue of elderly driving back onto the political agenda.<sup>10</sup>

The issue of elderly driving is not a new one.<sup>11</sup> In fact, over the years, numerous law review articles and other scholarly works have addressed the need for driver's license renewal reform, particularly with respect to the elderly.<sup>12</sup> Nevertheless, little has been done to change the present state of driver's license renewal procedures.<sup>13</sup> This note will examine the reasons commonly offered by those in support of such a change, as well as the many difficulties that confront those seeking to implement this change.

Part II of this note discusses elderly drivers in general, focusing on the characteristics of elderly drivers and the risks they pose to themselves as well as to the general public. Part III of this note analyzes the current state of driver's license renewal procedures, particularly with respect to the elderly. Part III begins by providing an overview of the current federal approach toward driver's license renewal procedures and then moves on to examine the different license renewal procedures across the fifty states. Part III concludes by suggesting the need for a more uniform system of regulation. Part IV of this note addresses the historical and potential future obstacles to federal regulation of state driver's license renewal procedures, both from a constitutional standpoint as well as from a political/socio-demographic perspective. Finally, Part V of this note examines the various current approaches to remedying the elderly driving problem and suggests which approaches have proven to be most effective.

## II. Why Elderly Drivers?

Coincidentally, within days of the Santa Monica crash, a lobby group for the country's road engineers in Washington, D.C., released a report concluding that Americans aged seventy and older are driv-

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9. Lait & Bernstein, *supra* note 2.

10. *Id.*; Dahlburg, *supra* note 7.

11. See, e.g., John C. Bodnar, Note, *Are Older Americans Dangerously Driving into the Sunset?*, 72 WASH. U. L.Q. 1709 (1994); Jennifer L. Klein, Note, *Elderly Drivers: The Need for Tailored License Renewal Procedures*, 3 ELDER L.J. 309 (1995); Vasiliki L. Tripodis, Note, *Licensing Policies for Older Drivers: Balancing Public Safety with Individual Mobility*, 38 B.C. L. REV. 1051 (1997).

12. See, e.g., Bodnar, *supra* note 11; Klein, *supra* note 11; Tripodis, *supra* note 11.

13. Bodnar, *supra* note 11, at 1712 (“[A] majority of states . . . have not reacted to the increase in the number of older drivers or their decreased driving ability.”).

ing more today than ever before and are involved in more fatal accidents as a result.<sup>14</sup> Although at first this may seem like an obvious correlation, as one might assume that an increase in the number of elderly drivers would necessarily result in more overall fatalities among elderly drivers, a more in-depth analysis reveals there are in fact many other causes for the increased fatalities among elderly drivers.<sup>15</sup> This report, prepared by the Road Information Program, also highlights two key components that are necessary in understanding the elderly driving issue: (1) the increasing age and use of automobiles by the elderly, and (2) the increasing risk posed by elderly drivers.<sup>16</sup>

#### A. Increased Age and Use of Automobiles by the Elderly

Elderly drivers are the fastest growing segment of the driving population.<sup>17</sup> Much of this is due to the increase in population of the elderly in general, primarily as a result of the high birth rate following World War II, which led to the birth of a generation of Americans often referred to as the “baby boomers.”<sup>18</sup> These baby boomers are either just now reaching, or will soon be reaching, elderly status.<sup>19</sup> Another reason for an increasing elderly population can be attributed to the improvements in health care and medicine over the last half-century.<sup>20</sup> As a result of a growing elderly population and increased longevity through modern science, elderly issues in general, irrespec-

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14. Dahlburg, *supra* note 7 (the report covered the period from 1991 to 2001).

15. See Lait & Bernstein, *supra* note 2 (suggesting that physical frailty makes older drivers less likely to survive accidents than their younger counterparts).

16. See Dahlburg, *supra* note 7.

17. Tripodis, *supra* note 11, at 1052; see also Elizabeth Mehren, *The Nation; Where Older Drivers Are Put to Test*, L.A. TIMES, July 19, 2003, pt. 1, at 12 (stating that a recent U.S. Department of Transportation report shows that drivers aged seventy and older make up nine percent of the country's drivers, or about 18.9 million drivers, and that that figure is expected to jump to more than thirty million within the next twenty years).

18. See Klein, *supra* note 11, at 312; see also Kanoelani M. Kane, Comment, *Driving into the Sunset: A Proposal for Mandatory Reporting to the DMV by Physicians Treating Unsafe Elderly Drivers*, 25 U. HAW. L. REV. 59, 63 (2002) (stating that the U.S. Census Bureau predicts the number of Americans aged sixty-five and older will increase 137% by the year 2050, to a total population of eighty-two million); Dahlburg, *supra* note 7.

19. See Kane, *supra* note 18, at 62 (referring to those sixty-five and older as elderly). *Id.* at 63.

20. *Id.* at 62-63; Klein, *supra* note 11, at 312.

tive of the elderly driving problem, have become more prevalent today than ever before.<sup>21</sup>

A growing elderly population does not, however, necessarily dictate a corresponding increase in driving among the elderly; nevertheless, evidence supports the conclusion that such an increase has indeed been the case.<sup>22</sup> It has been suggested that one reason for such a correlation is the growing population in suburban areas, as opposed to the city.<sup>23</sup> With fewer modes of public transportation available, elderly persons residing in suburban areas are often left with no viable transportation alternative to driving.<sup>24</sup> Another reason for this correlation might be the increased dependence on the automobile as the primary mode of transportation, a phenomenon that has been realized by no single age group more than it has by the elderly.<sup>25</sup>

### B. Increased Accident Rate Among Elderly Drivers

An increasing elderly population and a growing dependence on the automobile do not, however, tell the whole story. The real problem lies in the connection between an increasing use of automobiles by the elderly and an increase in the number of automobile accidents involving elderly drivers.<sup>26</sup> Depending on how the statistics are viewed, the results can be quite misleading.<sup>27</sup> For example, by simply looking at the number of accidents involving the various different age groups, the elderly appear, at first glance, to be among the safest drivers.<sup>28</sup> But as suggested, such a view can be extremely deceptive because elderly drivers tend to drive fewer miles than other age groups and often avoid driving at night.<sup>29</sup> As a result, elderly drivers will

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21. Kane, *supra* note 18, at 62–63; Klein, *supra* note 11, at 312.

22. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., TRAFFIC SAFETY FACTS 2000, OLDER POPULATION (2000) (stating that older individuals made up ten percent of all licensed drivers in 1999, compared with eight percent in 1998); Lait & Bernstein, *supra* note 2 (stating that in California, in particular, the aging of the baby boomer generation is expected to increase significantly the number of older drivers on the road in the next ten to fifteen years).

23. Klein, *supra* note 11, at 312.

24. See Joseph F. Coughlin, *Beyond Health and Retirement: Placing Transportation on the Aging Policy Agenda*, PUB. POL'Y & AGING REP., NAT'L ACAD. ON AN AGING SOC'Y, Summer 2001, at 21.

25. Klein, *supra* note 11, at 312.

26. *Id.*

27. See Tripodis, *supra* note 11, at 1054; see also Lait & Bernstein, *supra* note 2.

28. Tripodis, *supra* note 11, at 1054.

29. Klein, *supra* note 11, at 314.

likely be involved in fewer accidents as a whole.<sup>30</sup> Consequently, in terms of absolute numbers of accidents, elderly drivers do not appear to pose a significant problem, as a study conducted by the National Highway Traffic Safety Administration (NHTSA) reveals that only 4691 drivers over the age of seventy were involved in fatal accidents in 2000, as compared to 17,525 drivers between the ages of twenty-one and thirty-four for that same year.<sup>31</sup>

When viewing statistics on the basis of miles driven by each age group, however, elderly drivers pose significant risks.<sup>32</sup> Not only are elderly drivers involved in more accidents per mile than any other age group,<sup>33</sup> but accidents involving elderly drivers are more likely to result in fatalities than accidents involving any other age group.<sup>34</sup> NHTSA, for example, reported that in the year 2000, older people made up nine percent of the population, but accounted for thirteen percent of all traffic fatalities and seventeen percent of all pedestrian fatalities.<sup>35</sup> Statistics like this should come as no surprise when one considers that elderly persons, in general, are more fragile and physically vulnerable than any other age group, and thus more likely to be injured in the event of an automobile accident.<sup>36</sup> Accordingly, when considering accident rates on a mile-for-mile basis and the likelihood of those accidents resulting in bodily harm, the issue of elderly drivers warrants considerable attention.<sup>37</sup> As Arline Dillman, a safety specialist for the Automobile Club of Southern California, puts it: “If you look at seniors as a group, they are not unsafe drivers, [but] [i]f a sen-

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30. *Id.*; Lait & Bernstein, *supra* note 2; Tripodis, *supra* note 11, at 1054.

31. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 22; *see also* Tripodis, *supra* note 11, at 1054–55.

32. Lait & Bernstein, *supra* note 2 (stating that “[w]hen mileage is taken into account, the number of serious [automobile] accidents rises [substantially] for drivers [over the age of seventy]”); Tripodis, *supra* note 11, at 1055.

33. Kane, *supra* note 18, at 64 (“[d]rivers aged seventy-five and older, for example, have a thirty-seven percent higher crash rate than younger drivers, and drivers aged eighty-five and older have a fatality rate nine times that of drivers aged twenty-five through sixty-nine”).

34. *See* Klein, *supra* note 11, at 312–14.

35. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 22.

36. Bodnar, *supra* note 11, at 1711–12; Klein, *supra* note 11, at 314; Lait & Bernstein, *supra* note 2; Mehren, *supra* note 17 (stating that the American Association of Motor Vehicle Administrators predicts that a seventy-five year old driver is three times more likely to die in a crash than a twenty year old driver).

37. Caitlin Lui, *Behind the Wheel: Refresher Classes Help Seniors Stay Safe on Road*, L.A. TIMES, pt. 2, at 2 (stating that drivers older than sixty-nine are seven times more likely to be killed or injured in a crash than younger drivers and that elderly drivers suffer higher fatality rates than any other age group with the exception of the youngest drivers).

ior is involved in a crash, they're more likely to be killed or injured than a younger person in the same accident."<sup>38</sup>

### C. Causes of Increased Accident Rate Among Elderly Drivers

Opponents of license renewal reform procedures argue that age alone is not indicative of a person's ability to operate an automobile.<sup>39</sup> Nevertheless, evidence suggests that certain characteristics associated with aging necessarily affect a person's ability to drive in a variety of different ways.<sup>40</sup> According to various studies, vision, hearing, physical strength, and reaction time all decrease with age.<sup>41</sup> With vision being the most predominant characteristic associated with driving,<sup>42</sup> elderly persons who suffer from such common visual problems as "cataracts, glaucoma, increased sensitivity to glare and decreased ability to focus on static and dynamic objects" are a particularly dangerous subset of drivers.<sup>43</sup> For example, studies suggest that drivers aged sixty and older need three times more light than they needed at age twenty, which may explain why elderly drivers often avoid driving at night altogether.<sup>44</sup>

In addition to the aforementioned characteristics, studies show that cognitive capacity, risk evaluation, and decision-making abilities often decrease with age.<sup>45</sup> Studies further show that these same characteristics, upon deterioration, impair driving performance.<sup>46</sup> In addition to these common characteristics, many elderly persons also suffer from a host of other health-related problems, all of which can lead to impaired driving performance.<sup>47</sup> Such problems include dementia, eye disease, and motor ability problems.<sup>48</sup> Alzheimer's disease, one of

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38. Lait & Bernstein, *supra* note 2.

39. Klein, *supra* note 11, at 314.

40. *Id.*

41. See Tripodis, *supra* note 11, at 1056; see also Bodnar, *supra* note 11, at 1713 n.27 (noting that "decreased reaction time is one of the best documented facts about the aged on record").

42. Tripodis, *supra* note 11, at 1056 (pointing to study that suggests vision is responsible for ninety-five percent of driving related inputs).

43. *Id.*

44. *Id.*

45. Compare *id.*, with *id.* at 1056-57 (pointing to studies that suggest visual attention and cognitive processing, rather than age, eye health, or a medical diagnosis are better predictors of elderly driving performance).

46. Bodnar, *supra* note 11, at 1713.

47. Tripodis, *supra* note 11, at 1056.

48. Bodnar, *supra* note 11, at 1714.

the leading causes of dementia affecting more than one million Americans,<sup>49</sup> in particular, affects more than ten percent of all persons aged sixty-five and older, and as much as forty-seven percent of those aged eighty-five and older.<sup>50</sup>

To counteract these various physical and psychological ailments, many elderly persons take medication.<sup>51</sup> “In fact, over eighty percent of individuals aged sixty-five and older take one or more prescription medications.”<sup>52</sup> In many instances, however, these medications have adverse side effects, thereby increasing the risk posed by elderly drivers.<sup>53</sup> For example, benzodiazepines, commonly taken for anxiety and insomnia, may cause confusion, drowsiness, decreased motor coordination, and impaired memory.<sup>54</sup> To make matters even worse, many elderly drivers are often unaware of the adverse side effects posed by these medications.<sup>55</sup>

### III. Present State of Driver’s License Renewal Procedures

#### A. The Federal Approach

To say that the federal government has taken a hands-off approach to the regulation of driver’s license renewal procedures would be a gross understatement. Traditionally, the federal government has left the regulation of driver’s license renewal procedures to the states.<sup>56</sup> The states derive this power under the police power doctrine, which grants to the states the right to enact and enforce laws in order to protect the health, safety, and welfare of its citizens.<sup>57</sup> Few cases have ever directly challenged this right. Moreover, the Supreme

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49. Tripodis, *supra* note 11, at 1057.

50. *Id.* at 1057–58.

51. *Id.* at 1058.

52. Bodnar, *supra* note 11, at 1717 n.53.

53. *Id.*

54. Tripodis, *supra* note 11, at 1058; see also *Tranquilliser Recovery and New Existence*, at <http://www.tranx.org.au/benzodiaz.html> (last visited Mar. 17, 2004) (suggesting that use of benzodiazepines can increase the risk of some side effects by as much as seventy percent and further suggesting that the “effects of benzodiazepines can be increased when combined with other central nervous system depressants, such as alcohol and pain relievers, and can lead to a dangerous increase in sedation, sometimes leading to coma”).

55. Bodnar, *supra* note 11, at 1718.

56. *Id.*

57. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972).

Court has hinted on several occasions that such a challenge would likely be unsuccessful.<sup>58</sup>

As a result, the states have been granted wide discretion in adopting driver's license renewal procedures. Such discretion has resulted in a myriad of approaches to the regulation of driver's license renewal procedures, ranging from Illinois's strict graduated age-based licensing requirement to Florida's recently amended lenient mail-in renewal program.<sup>59</sup> An in-depth look at the various procedures adopted across the fifty states will further highlight the disparity of renewal procedures among the states and the need for a more uniform renewal system.

## B. The Various State Approaches

One of the most difficult issues surrounding the regulation of driver's license renewal procedures is the lack of consistency and understanding with respect to the various tests currently imposed by the different states. Many different types of tests are available, and each state varies with respect to its particular testing preference. In order to fully comprehend this lack of uniformity among the states, we must first examine the various tests imposed by the states.

### 1. AGE-BASED APPROACH

Presently, eleven states mandate a shorter license length as the driver ages.<sup>60</sup> With a shorter license length, these states reason that they are better able to stay informed of the changes occurring with a

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58. *Hess v. Pawloski*, 274 U.S. 352, 356 (1927) (suggesting that a "[s]tate may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways").

59. *See Tripodis*, *supra* note 11, at 1060–61; *see also Coley*, *supra* note 8, at 8 (showing that Illinois renews driver's licenses for up to five years until the driver reaches the age of eighty-one, for two years if the driver is between the ages of eighty-one and eighty-seven, and for one year once the driver reaches the age of eighty-seven); FLA. STAT. ANN. § 322.18(5) (Supp. 2004); 625 ILL. COMP. STAT. 5/6-115(a)(5) (2003).

60. ARIZ. REV. STAT. § 28-3171 (2004) (Arizona, age sixty-five); HAW. REV. STAT. § 286-106 (2003) (Hawaii, age seventy-two); 625 ILL. COMP. STAT. 5/6-115 (2004) (Illinois, age eighty-one); IND. CODE § 9-24-12-1 (2004) (Indiana, age seventy-five); IOWA CODE § 321.196 (2004) (Iowa, age seventy); KAN. STAT. ANN. § 8-247 (2003) (Kansas, age sixty-five); LA. REV. STAT. ANN. § 32:412 (West 2004) (Louisiana, age seventy); ME. REV. STAT. ANN. tit. 29-A, § 1406 (West 2004) (Maine, age sixty-five); MO. ANN. STAT. § 302.177 (West 2004) (Missouri, age seventy); MONT. CODE ANN. § 61-5-111 (2003) (Montana, age seventy-five); N.M. STAT. ANN. § 1978, 66-5-19 (Michie 2004) (New Mexico, age seventy-five).

particular individual driver over the years.<sup>61</sup> Yet, the age at which these states impose shorter license lengths varies among the eleven states.<sup>62</sup> The discrepancy as to what age these eleven states begin to impose shorter license lengths marks the first major issue when it comes to regulating the renewal of driver's licenses based on age: What constitutes old?<sup>63</sup>

"The classic retirement age of sixty-five is a convenient benchmark," but it seems to bear little relevance in helping to determine an individual's capacity to operate an automobile.<sup>64</sup> Studies have shown that night vision deteriorates as early as age forty, yet forty is likely an unreasonable age to impose stricter license renewal requirements, as few programs, if any, use forty as a cutoff point.<sup>65</sup> The real problem lies once again in the fact that most commentators agree that age alone "is a poor indicator of physical or cognitive capacity."<sup>66</sup>

On a broader note, the term "old" is difficult to quantify, particularly for license renewal purposes, because old is a highly subjective characteristic.<sup>67</sup> Many consider old anyone who is fifteen to twenty years their senior.<sup>68</sup> This relative view of the term "old," however, does little in helping to set an across the board standard appropriate for the regulation of driver's license renewal programs. The subjectivity of the word "old" makes setting an age for driver's license renewal purposes a threshold problem faced by all states wishing to enact an age-based license renewal system.

In addition to a variance in the age at which the eleven states require shorter license lengths, many states alter other aspects of their residents' driving privileges at various ages.<sup>69</sup> Such aspects include

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61. Coley, *supra* note 8, at 8.

62. *Id.*

63. *Id.* at 3.

64. *Id.* at 4.

65. *Id.* at 3.

66. *Id.* at 4.

67. *Id.*

68. *Id.*

69. See, e.g., ARIZ. REV. STAT. § 28-3172(A)(2)(c)-(d) (2004) (allowing mail registration if the applicant is under seventy years of age or if over sixty-five with a vision test); COLO. REV. STAT. § 42-2-118(1.5)(a) (2004) (allowing renewal of driver's license by electronic means if under sixty-one years of age); ILL. COMP. STAT. 5/6-109(b)-(c) (2004) (requiring actual demonstration of the applicant's ability to exercise ordinary and reasonable control of the operation of a motor vehicle if the applicant is seventy-five years of age or older); MO. REV. STAT. § 302.177(1)-(2), (4)-(5) (2004) (allowing renewal at different prices if the applicant is sixty-nine years of age or older); NEB. REV. STAT. § 60-4, 122(8) (2004) (allowing one-time elec-

the method of renewal, whether it must be done in person or by mail, the type of testing required, and whether it involves a physical, visual, or mental test.<sup>70</sup> As a result, even where states have agreed on a particular age, these same states may disagree as to what privileges should be affected and what procedures should be required for renewal once a person reaches that age.

Consequently, even if policymakers could agree that age was a good indicator of reduced driving performance, determining at what age such reduction occurs and determining what privileges should be altered at that particular age would likely prove very difficult. In the end, the policy implications associated with age-related restrictions are so abundant that often states simply avoid the issue altogether by enacting no special rules for persons considered to be old.<sup>71</sup>

## 2. PHYSICAL TESTING APPROACH

While some states, adhering to an age-based approach, simply issue a driver's license for a shorter length of time as a person ages, other states require physical testing.<sup>72</sup> Physical testing refers to any type of test a person must take in order to renew his or her driver's license, excluding a mental assessment examination.<sup>73</sup> Physical testing can include any type of visual, driving, written, or oral test.<sup>74</sup>

*a. Vision Testing* All states require some form of visual testing upon the issuance of an original driver's license.<sup>75</sup> States vary dramatically, however, on the matter of whether further vision testing is required for issuance of a renewed driver's license.<sup>76</sup> All but eleven states require that all of its residents undergo some form of renewal or periodic vision testing without regard to age.<sup>77</sup> Pennsylvania, one of those eleven states that does not require all of its residents to undergo

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tronic renewal if a qualified licensee is between twenty-one and sixty-five years of age).

70. See generally Coley, *supra* note 8, at 7–10.

71. *Id.* at 3–4.

72. *Id.* at 5, 7–10

73. *Id.* at 4.

74. *Id.* at 5.

75. *Id.*

76. *Id.*

77. *Id.* (showing that the eleven states that do not require renewal or periodic vision testing include Alabama, Connecticut, Kentucky, Mississippi, New Jersey, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, and West Virginia).

periodic testing, has instead adopted a program under which only those drivers over the age of forty-five are selected to undergo vision testing.<sup>78</sup> Pennsylvania's program further differs from the majority approach in that it randomly selects drivers over the age of forty-five to undergo vision testing,<sup>79</sup> rather than requiring all of its drivers over the age of forty-five to undergo such testing.

Assuming that a state could agree to pass a law allowing for visual testing prior to receiving a renewed driver's license, it would still face the issue that other states have struggled with for years: defining the criterion for such visual testing.<sup>80</sup> In particular, states that do require visual testing for renewed driver's licenses vary with respect to the specific visual acuity requirements needed to pass such a test.<sup>81</sup> Most states, however, require at least 20/60 vision in order to pass a visual test.<sup>82</sup>

*b. Knowledge and Road Testing* Fourteen states have a system in place that requires knowledge or road testing in order for the driver to maintain a valid driver's license.<sup>83</sup> These fourteen states vary, however, in deciding under what circumstances such a test is required.<sup>84</sup> Some of these states, for example, require such a test with each renewal,<sup>85</sup> whereas other states only test the driver if he or she has received a motor violation since the last renewal or if their license has been expired for a certain period of time.<sup>86</sup> Still, other states, operating

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78. See 75 PA. CONS. STAT. ANN. § 1514(b) (West 2004); see also Tripodis, *supra* note 11, at 1061 (citing Elaine Thompson, *Safety Factor Shadows Elderly Drivers*, WORCESTER TELEGRAM & GAZETTE (Mass.), Dec. 15, 1996, at A1).

79. Tripodis, *supra* note 11, at 1061; see also PA. DEP'T OF AGING & PA. DEP'T OF TRANSP., PUB. 345 (4-04), TALKING WITH OLDER DRIVERS: A GUIDE FOR FAMILY AND FRIENDS 5, available at [http://www.dot4.state.pa.us/pdotforms/misc/Pub\\_345.pdf](http://www.dot4.state.pa.us/pdotforms/misc/Pub_345.pdf).

80. Coley, *supra* note 8, at 5.

81. See generally *id.* at 7-11 (ranging from 20/40 to 20/70 in visual acuity and varying in whether to test for peripheral vision. For those states that do test for peripheral vision, the specific range of vision required varies from 110 to 140 degrees).

82. *Id.* at 5; see also St. Luke's Cataract & Laser Institute, at <http://www.stlukeseye.com/eyeq/vision.asp> (last visited Mar. 17, 2004) (explaining that the numerator in the fraction is the distance in feet a patient is positioned from an eye chart during an eye exam while the "denominator represents the distance an eye with 'normal' vision can read the same line").

83. Coley, *supra* note 8, at 5.

84. *Id.*

85. *Id.*

86. *Id.*

under a more discretionary-based system, only test the driver if the examiner feels the driver should be further tested.<sup>87</sup> Finally, states like Illinois, commonly thought to have the most stringent driver's license renewal procedures, require a knowledge or road test for all drivers over a certain age, though in Illinois, the examiner is allowed discretion in requiring driving examinations for all drivers, regardless of age.<sup>88</sup> Only four states require knowledge or road testing automatically upon the expiration of a driver's license.<sup>89</sup>

*c. Medical Testing* Two states, Louisiana and Washington, require testing based on the applicant's physical or mental condition.<sup>90</sup> Once again, however, there is some variance with respect to what conditions warrant such a test. For example, in Louisiana, only first time applicants over the age of sixty are required to submit a doctor's report.<sup>91</sup> The State of Washington, adhering to a discretionary-based system, requires reexamination only if merited by physical or mental condition.<sup>92</sup>

### 3. MENTAL TESTING APPROACH

No state requires, as a prerequisite for obtaining renewal, that an applicant undergo a mental or competency test once he or she reaches a certain age.<sup>93</sup> States that do require an applicant to see a doctor do so only at the discretion of the examiner.<sup>94</sup> Some states specifically pose questions to prospective applicants of license renewals addressing the applicant's medical history or current health status.<sup>95</sup> Other states will only require a mental health examination if notified by a doctor, police officer, or relative of the applicant in question.<sup>96</sup> The remaining states do not have any formal system for requiring a medical exam, but rather, only subject an applicant to such an exam if the applicant appears mentally unable to operate an automobile.<sup>97</sup> In the

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87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 7-8.

95. *Id.* at 7, 9, 10.

96. *Id.* at 7, 10.

97. *Id.* at 6.

event this occurs, most states have in place some type of medical review board to assess such an applicant.<sup>98</sup>

### C. The Need for a More Uniform System of Regulation

As suggested, to say that the various state approaches to the regulation of driver's license renewal procedures varies widely would be a gross understatement. With such widespread disparity among the different states, the general public and elderly persons in particular are in need of a more uniform system of regulation. Hence, the federal government needs to either adopt, or more likely encourage the states to adopt, a more uniform system of regulation, particularly one in which age plays a significant factor. Although federal regulation of state driver's license renewal procedures is feasible, there are some obstacles that need to first be overcome. We must address each of these obstacles, and the barriers they present, before proceeding to the precise form of federal intervention that is recommended.

## IV. Historical Obstacles to the Federal Regulation of State Driver's License Renewal Procedures

There are three distinct types of arguments that can be raised against an attempt by the federal government to regulate state driver's license renewal procedures in a manner in which age plays a significant factor. The first two arguments rest in law and find support in the U.S. Constitution; the first is a threshold question dealing with state sovereignty rights and the states' right to self-regulate under the Tenth Amendment.<sup>99</sup> The second argument deals with an individual's constitutional rights, granted to him via the Equal Protection Clause of the Fourteenth Amendment and via the Due Process Clause of the Fourteenth Amendment.<sup>100</sup>

The third, and perhaps most troublesome argument, has nothing to do with legal limitations. Rather, this argument is based upon political and socio-demographic implications advanced by both the elderly, as federal intervention would affect them directly, as well as by the federal government itself, who, for its own self-serving reasons, would similarly be affected by federal intervention. For the elderly,

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98. *Id.*

99. *See* U.S. CONST. amend. X.

100. Tripodis, *supra* note 11, at 1065.

this argument asserts an elderly individual's independence and sense of dignity as reasons for not imposing stricter requirements when it comes to the regulation of driver's license renewal procedures.<sup>101</sup> For the federal government, this argument addresses the various political reasons that have likely resulted in the federal government's "hands off" approach toward these renewal procedures.<sup>102</sup>

## A. Constitutional Arguments

### 1. STATE SOVEREIGNTY AND A STATE'S RIGHT TO SELF-REGULATE

The first question we must ask in addressing whether the federal government possesses the power to interfere with a state's current right to regulate driver's license renewal procedures is whether such intervention, irrespective of age, is permitted by the U.S. Constitution. A quick overview of the history of the Commerce Clause and the Tenth Amendment and their interpretation by the courts over the years will shed valuable light in helping to address this question.

*a. Congress's Power Under the Commerce Clause* A cursory view of the U.S. Constitution and some case law shows us that with little hesitation, one can affirmatively argue that the federal government, under the Commerce Clause, has the power to regulate driver's license renewal procedures.<sup>103</sup> Under Article I, Section 8 of the U.S. Constitution, Congress has the power to "regulate commerce with foreign nations, and among the several states."<sup>104</sup> While Congress's precise power under the Commerce Clause has varied over time, ranging from a strict scrutiny approach prior to 1936,<sup>105</sup> to a rational basis test from 1936 through 1995,<sup>106</sup> to today's "substantially affects" test,<sup>107</sup> the

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101. Klein, *supra* note 11, at 329.

102. Bodnar, *supra* note 11, at 1738–39.

103. See *United States v. Morrison*, 529 U.S. 598 (2000) (outlining the Supreme Court's modern interpretation of the Commerce Clause and Congress's powers under it). See generally U.S. CONST. art. I, § 8.

104. U.S. CONST. art. I, § 8.

105. See, e.g., *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (holding that Congress did not have the power to regulate hours and wages); *Hammer v. Dagenhart*, 247 U.S. 251 (1918) (holding that Congress did not have the power to regulate child labor, even among manufacturers that engaged in interstate commerce).

106. See, e.g., *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964) (upholding an injunction preventing a hotel from refusing to rent rooms to African Americans because the cumulative impact of such a refusal would be to discour-

Supreme Court has traditionally allowed Congress to regulate three broad categories of interstate commerce.<sup>108</sup> The modern view of Congress's role under the Commerce Clause is best exemplified by the Supreme Court's decision in *United States v. Morrison*,<sup>109</sup> which reiterates the three broad categories of interstate commerce which Congress can regulate, as well as explains where today's substantially affects test falls in relation to the Court's previous strict scrutiny and more recent rational basis test.<sup>110</sup>

This overview shows us that Congress likely possesses the power to pass laws regulating driver's license renewal procedures, as elderly persons and automobiles are people and goods capable of traveling across state lines, and those instrumentalities, even if remaining purely intrastate, are likely to substantially affect interstate commerce under the cumulative impact principle.<sup>111</sup> Determining that Congress has the power under the Commerce Clause to regulate driver's license renewal procedures, however, is only the first part of the equation, for under the Tenth Amendment, the states maintain

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age African Americans from traveling interstate, thus affecting interstate commerce); *Wickard v. Filburn*, 317 U.S. 111 (1942) (adopting the cumulative impact principle and upholding a congressional penalty for raising bushels of wheat for personal consumption because when considering the cumulative impact of such individual consumption, Congress had a rational basis for believing the price of wheat would be affected); *United States v. Darby*, 312 U.S. 100 (1941) (overruling *Hammer v. Dagenhart* and holding that Congress is free to exclude from commerce any articles it perceives to be injurious to the public health, morals, or welfare, and that Congress only needs a rational basis for doing so, thus allowing Congress to enact the Fair Labor Standards Act).

107. *United States v. Lopez*, 514 U.S. 549, 559 (1995).

108. *See id.* at 549 (holding that Congress has the power to regulate instrumentalities in purely intrastate matters, but only if the instrumentality substantially affects interstate commerce, and consequently striking down the Gun Free School Zone Act which attempted to make it a federal crime to possess a gun within a school zone); *see also* *Champion v. Ames*, 188 U.S. 321 (1903) (holding that Congress has the power to regulate the movement of instrumentalities across state lines and consequently allowing Congress to pass the Federal Lottery Act, in effect granting to Congress the power to regulate the lottery system); *Gibbons v. Ogden*, 22 U.S. 1 (1824) (holding that Congress has the power to regulate the movement of people and goods across state lines and consequently striking down a New York statute that granted the exclusive right to navigate steamboats in state waters to two parties).

109. *United States v. Morrison*, 529 U.S. 598 (2000).

110. *See id.* (explaining that the substantially affects test is somewhere in between the Court's previous strict scrutiny and more recent rational basis test, and consequently striking down a law allowing for victims of gender motivated violence to sue for civil remedies).

111. *See id.* (explaining the three areas which Congress can regulate under the Commerce Clause).

sovereignty rights which prohibit the federal government from imposing certain restrictions upon them.<sup>112</sup>

*b. The Tenth Amendment Problem* The Tenth Amendment holds that “the powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the states respectively, or to the people.”<sup>113</sup> The Tenth Amendment, like the Commerce Clause, has undergone several interpretations over the years.<sup>114</sup> The Court’s most recent interpretation of the Tenth Amendment can best be exemplified by its ruling in *Printz v. United States*,<sup>115</sup> holding that Congress cannot commandeer a state executive or state legislative official unless certain requirements are met.<sup>116</sup> Those requirements typically include: (1) that the activity which Congress purports to regulate not be a traditional public function; (2) that Congress must have either previously regulated or will concurrently regulate this activity in the private sector; and (3) that such regulation must be prohibitory, rather than affirmative.<sup>117</sup> While the Court was careful not to hold that all three factors must be present in order for Congress to succeed in passing its legislation, the Court did place a strong emphasis on the presence of the third factor, reasoning that it would be unfair for the federal government to: (1) place an affirmative duty upon the states, thereby requiring the states to spend much needed and presumably previously budgeted federally provided funds in order to enforce the legislation; and (2) allow a state to take the blame, in the

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112. U.S. CONST. amend. X.

113. *Id.*

114. See, e.g., *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985) (overruling *Nat’l League of Cities v. Usery* and upholding the Fair Labor Standards Act with respect to the mass transit system, announcing that so long as Congress passes a generally applicable law, that law can apply to the states as well as to private individuals); *Nat’l League of Cities v. Usery*, 426 U.S. 833 (1976) (overruling *Maryland v. Wirtz* and holding that the federal government cannot regulate a traditional state function); *Maryland v. Wirtz*, 392 U.S. 183 (1968) (upholding the Fair Labor Standards Act to state public schools and hospitals and announcing that the states are not immune from federal regulation).

115. *Printz v. United States*, 521 U.S. 898 (1997).

116. *Id.* (striking down the Brady Act which required state executive officials to run background checks to determine if the sale of a handgun was legal).

117. *Reno v. Condon*, 528 U.S. 141 (2000) (unanimous decision upholding the power of Congress to pass the Driver’s Privacy Protection Act which barred state Driver Motor Vehicle Departments from disclosing personal information required for a driver’s license, primarily because such regulation placed only a prohibitory rather than affirmative duty upon the states). See generally *id.*; *New York v. United States*, 505 U.S. 144 (1992).

event of failure, for a federally created program.<sup>118</sup> Arguably, in a time of massive budget cuts such as we are in today, the Court would be even more adamant in demanding the presence of this third factor.<sup>119</sup>

In the context of driver's license renewal procedures, it seems fairly likely that the Court would strike down a piece of federal legislation attempting to directly regulate state driver's license renewal procedures. Such legislation, the Court could arguably reason, would place an affirmative duty upon the states to spend already allocated funds in order to put into effect, and maintain, the newly imposed driver's license renewal procedures. Further, in the event of failure, the states would be forced to shoulder the burden of public criticism, even though the program was federally created and required. Such an affirmative duty was precisely the Court's primary concern in *Printz* and would likely remain enough of a concern to cause the Court to strike down such congressional legislation under the Tenth Amendment.

*c. The Way Around the Tenth Amendment Problem: The Conditioning of Federal Funds* Just because Congress is likely to run into Tenth Amendment issues, thus prohibiting it from passing legislation requiring the states to adopt and enforce new driver's license renewal procedures, does not necessarily mean that the federal government is left with no alternatives. Rather, under the Spending Clause, Congress most definitely has the power to either withhold the distribution of federal funds to those states that do not adopt driver's license renewal procedures to Congress's liking, or to condition the receipt of future federal funds upon the enactment and execution of driver's license renewal procedures as suggested by Congress.<sup>120</sup> Similar to Congress's power under the Commerce Clause and its reciprocal lack

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118. *Reno*, 528 U.S. at 150.

119. Peter Daniels, *US: State Governments Enacting Budget Cuts and Tax Hikes*, World Socialist Web Site (Dec. 27, 2002), at <http://www.wsws.org/articles/2002/dec2002/budg-d27.shtml> (last visited Mar. 17, 2004) (explaining that "[s]tate governments in the US are facing budget crises without precedent since the Great Depression of the 1930s").

120. See *South Dakota v. Dole*, 483 U.S. 203 (1987) (explaining the Supreme Court's modern interpretation of the Spending Clause).

of power under the Tenth Amendment, the conditioning of federal funds has had a turbulent ride through the history of our courts.<sup>121</sup>

The Court's modern interpretation of the rule permitting Congress to withhold federal funds from states that do not comport with its demands can best be exemplified by the Court's reasoning in *South Dakota v. Dole*.<sup>122</sup> In *Dole*, the Court upheld a law that withheld five percent of federal highway funds, otherwise allocable to the states, from any state where the possession of alcohol by persons under the age of twenty-one was lawful.<sup>123</sup> Ironically, the Court's holding in *Dole* allowed Congress to achieve that which it was otherwise unable to achieve directly by the passage of the Eighteenth Amendment to the U.S. Constitution,<sup>124</sup> protecting the right of the states to adopt their own laws with respect to the consumption of alcohol.<sup>125</sup> In *Dole*, the Court declared the standard under which the conditioning of federal funds would be subjected: so long as the condition is fairly related to the expenditure, which must be used for the general welfare,<sup>126</sup> then the condition will be upheld.<sup>127</sup>

*Dole* is an excellent example of how Congress, rather than confronting potential Tenth Amendment problems by attempting to directly regulate the states, simply uses the Spending Clause to obtain the same result.<sup>128</sup> In fact, *Dole* has become such a mainstay of American constitutional law that since *Dole*, the Supreme Court has never struck down an attempt by Congress to condition federal funds upon the states.<sup>129</sup> Needless to say, an attempt by Congress to withhold federal funds, particularly federal highway funds, would likely go unchallenged, as the Court could quite easily find that the condition (that the states adopt a uniform system of driver's license renewal

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121. See *United States v. Butler*, 297 U.S. 1 (1936) (invalidating the Agricultural Adjustment Act, which attempted to authorize the government to contract with farmers to reduce acreage for particular commodities in exchange for benefit payments, by finding that the power to withhold benefits is the power to coerce).

122. *Dole*, 483 U.S. at 203.

123. *Id.*

124. U.S. CONST. amend. XXI, § 1 (repealing U.S. CONST. amend. XVIII, § 1, which prohibited the consumption of alcohol).

125. *Dole*, 483 U.S. at 211.

126. U.S. CONST. art. I, § 8 ("Congress shall have power to . . . provide for the common defense and general welfare").

127. *Dole*, 483 U.S. at 203.

128. See *id.*

129. See, e.g., *United States v. Am. Library Ass'n*, 539 U.S. 194, 213 (2003) (noting that "Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives").

procedures) is fairly related, if not more so, to the expenditure (federal highway funds), which most certainly serves the general welfare.<sup>130</sup>

## 2. INDIVIDUAL CONSTITUTIONAL RIGHTS

Although it may not have the power to directly impose upon the states an affirmative duty to adopt a more stringent, uniform system of driver's license renewal procedures, the federal government does indeed have the power to encourage the states to adopt such procedures through the conditioning of federal funds. Consequently, we must move on to the next two constitutional challenges facing the federal government. These challenges, unlike the previous one, only arise as a result of age playing a significant factor in the regulation of driver's license renewal procedures.

Two potential arguments can be raised by individual elderly persons against the imposition of age-based driver's license renewal procedures.<sup>131</sup> Both of these arguments arise out of the Fourteenth Amendment to the U.S. Constitution, which states that "[n]o [s]tate shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>132</sup> The first argument seeks support under the Equal Protection Clause of the Fourteenth Amendment, which protects persons against discrimination by granting equal protection to all citizens.<sup>133</sup> The second argument relies on the Due Process Clause of the Fourteenth Amendment, which protects certain property interests of citizens.<sup>134</sup> Again, it is important to note that both of these arguments apply to the federal government's regulation of driver's license renewal procedures in the same manner as it applies to the states' regulation of those procedures. In fact, these arguments do not arise as a result of federal regulation at all, but rather, arise only after an attempt by the government, state or federal, to regulate driver's license renewal procedures using age as a primary criterion.

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130. See generally *Dole*, 483 U.S. at 207–08 (outlining the Supreme Court's modern requirements for Congress's conditioning of federal funds).

131. Klein, *supra* note 11, at 329; Tripodis, *supra* note 11, at 1065.

132. U.S. CONST. amend. XIV, § 1.

133. Klein, *supra* note 11, at 329.

134. *Id.*

a. *Equal Protection Clause of the Fourteenth Amendment* The Equal Protection Clause requires states to treat similarly situated people in a similar manner.<sup>135</sup> The Equal Protection Clause does not prevent the states from drawing certain classifications, but it does require that those classifications be sufficiently justified.<sup>136</sup> Over the years, the Supreme Court has carefully identified three standards of review for equal protection claims: strict scrutiny, intermediate scrutiny, and a rational basis test.<sup>137</sup> The applicable standard depends on the nature of the alleged discriminatory activity.<sup>138</sup>

Whereas racial classifications are subject to strict scrutiny<sup>139</sup> and sex classifications are subject to intermediate scrutiny,<sup>140</sup> the Supreme Court has held, most notably in *Massachusetts Board of Retirement v. Murgia*,<sup>141</sup> that age classifications only need to meet the rational basis test.<sup>142</sup> Under this test, a state must show that the classification is rationally related to furthering a legitimate state interest.<sup>143</sup> The Court reasoned that rationality was the proper standard for age classifications because people are not frequently discriminated against because of their age and because classifications based on age do not make distinctions sufficiently akin to classifications based on race or sex due to the fact that old age marks a stage that every person will reach if they live out their normal life span.<sup>144</sup> In reaching this result, the Court also considered important the fact that older drivers do not represent a suspect class and the fact that operating an automobile is not a fundamental right.<sup>145</sup>

In *Murgia*, the Court upheld a mandatory retirement age of fifty for persons working for the police force, reasoning that removing people from police service whose fitness for work presumptively has diminished with age was rationally related to protecting the public.<sup>146</sup> Similarly, in the context of regulating driver's license renewal proce-

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135. Tripodis, *supra* note 11, at 1065.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Palmore v. Sidoti*, 466 U.S. 429, 432–33 (1984).

140. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982).

141. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307 (1976).

142. *See id.* at 312 (where police officer challenged a state statute requiring uniformed officers to retire at age fifty).

143. *Id.* at 314.

144. *Id.* at 313.

145. *Id.* at 313–14.

146. *Id.* at 315; *see also* Tripodis, *supra* note 11, at 1067.

dures, the Court, if confronted with such a challenge, could arguably come to the conclusion that using age as a criterion in regulating these procedures is rationally related to serving the public interest, especially in light of recent statistics relating to elderly drivers.<sup>147</sup> Moreover, because the party claiming age discrimination bears the burden of proving irrationality, elderly drivers are at a further disadvantage.<sup>148</sup> Consequently, any suit brought against the government asserting an Equal Protection claim as a result of a new driver's license renewal procedure in which age plays a significant factor is likely to be defeated.

*b. Due Process Clause of the Fourteenth Amendment* The Due Process Clause of the Fourteenth Amendment presents a much stronger argument for elderly drivers, although it too is likely to be defeated.<sup>149</sup> In *Bell v. Burson*,<sup>150</sup> the Supreme Court held that a driver's license is a constitutionally protected property interest under the Due Process Clause of the Fourteenth Amendment.<sup>151</sup> Further, the Court held that when a state seeks to terminate a driver's license, it must afford a person notice and an opportunity for a hearing.<sup>152</sup> In *Mathews v. Eldridge*,<sup>153</sup> the Court developed a test for determining when a hearing is specifically required.<sup>154</sup> Under this test, the Court weighs three distinct factors: the private interest that will be affected by the state action; the risk of an erroneous deprivation and probable value, if any, of additional procedural safeguards; and the government's interest, including the administrative burden that the additional safeguard would require.<sup>155</sup>

In *Dixon v. Love*,<sup>156</sup> the Court applied the *Mathews* test in the context of suspending or revoking a person's driver's license.<sup>157</sup> In *Dixon*,

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147. See generally *Murgia*, 427 U.S. at 307 (providing an overview of the Supreme Court's interpretation of the rational basis test as applied to age discrimination).

148. Klein, *supra* note 11, at 330.

149. *Id.*

150. *Bell v. Burson*, 402 U.S. 535 (1971).

151. *Id.* at 539.

152. See *id.* at 535; see also Klein, *supra* note 11, at 331.

153. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

154. *Id.*

155. *Id.*

156. *Dixon v. Love*, 431 U.S. 105 (1977).

the Court concluded that an immediate hearing after the suspension or revocation was sufficient to satisfy the Due Process Clause of the Fourteenth Amendment.<sup>158</sup> In reaching this conclusion, the Court considered significant the fact that a driver's license is not essential for survival like other entitlements such as social security payments; the fact that if an erroneous deprivation were to occur, a person would have an opportunity for a full judicial hearing in order to appeal the revocation; and the fact that an important public interest in safety was being served by the procedure.<sup>159</sup>

Despite this precedent, the aforementioned cases all dealt with the revocation of a person's driver's license, rather than his or her nonrenewal.<sup>160</sup> The Supreme Court has never specifically addressed the due process requirements for nonrenewal as opposed to revocation.<sup>161</sup> Further, the Court has never assessed the due process requirements for age-based licensing policies. Yet, in *Kantor v. Parsekian*,<sup>162</sup> the New Jersey Superior Court Appellate Division did address these issues. In doing so, *Parsekian* held that policies for the reexamination of elderly drivers did not violate the Due Process Clause.<sup>163</sup> Although it remains uncertain what kind of procedural due process would be required by the U.S. Supreme Court, it is likely that the Court would adhere to a *Love* rationale in holding that so long as the state allows for an immediate postrevocation hearing, a licensing procedure using age as a criterion does not, in and of itself, violate the Due Process Clause. If a state were, however, to adopt a procedure using age as the only criterion, then perhaps a Due Process Clause argument could succeed, as the risk of an erroneous deprivation would now be much greater, possibly even enough to outweigh the substantial public interest in safety being served by the procedure.<sup>164</sup>

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157. *Id.* at 112–13 (involving a truck driver who had his license suspended for a variety of reasons, including three convictions within the past year, driving while his license was suspended, and three convictions of speeding).

158. *See id.*; *see also* Mackey v. Montrym, 443 U.S. 1 (1979) (suggesting that a summary suspension of a driver's license does not violate procedural due process so long as the scheme allows for an immediate post-suspension hearing).

159. Tripodis, *supra* note 11, at 1069–70 (citing *Dixon*, 431 U.S. at 110–15).

160. Klein, *supra* note 11, at 332.

161. *Id.*

162. *Kantor v. Parsekian*, 179 A.2d 21, 23 (N.J. Super. Ct. App. Div. 1962).

163. *Id.* (suggesting that so long as the classifications and standards were reasonable and reasonably administered, the state can likely defeat a Due Process Clause claim).

164. Klein, *supra* note 11, at 314 (affirming that age alone is not a good indicator of driving ability). This suggests that any license renewal system which uses

## B. Nonconstitutional Arguments

The third and final barrier to the federal regulation of state driver's license renewal procedures has nothing to do with the U.S. Constitution. In fact, this barrier is not a legal barrier by any means. Rather, this barrier has to do with an elderly person's status within society and the government's standing among its elderly citizens.<sup>165</sup> This argument posits two theories for the historical reluctance on the part of the federal government to interfere with driver's license renewal procedures, particularly in a manner in which age plays a significant factor.<sup>166</sup> The first theory stems from the sense of independence and dignity felt by elderly persons as a result of owning a driver's license.<sup>167</sup> The second theory stems from the fact that elderly persons represent a strong political voice in society, resulting in the federal government's desire to cater to their wishes, which clearly preference a license renewal procedure in which age does not play a significant factor.<sup>168</sup>

### 1. INDEPENDENCE AND SENSE OF DIGNITY

For many elderly persons, a driver's license represents a "passport to independence—the last stop before a nursing home."<sup>169</sup> As one commentator suggests:

In a nation in love with the automobile, driving is more than a simple matter of mobility; it's a sign of competence and independence. . . . Elder drivers who cannot or do not drive frequently become isolated and depressed. This is because losing the ability to drive an automobile after being dependent on it creates a dramatic change in a person's life.<sup>170</sup>

The change in lifestyle felt by elderly persons who lose their driving privileges is even more apparent if that person has become dependent on his or her license, which is often the case with most elderly persons.<sup>171</sup> The changing effect is felt even more if that person lives in an

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age as a sole criterion will necessarily result in erroneous deprivations of driver's licenses.

165. *See id.* at 328–29.

166. *See id.*; Bodnar, *supra* note 11, at 1738–39.

167. Klein, *supra* note 11, at 329.

168. Bodnar, *supra* note 11, at 1738–39.

169. Klein, *supra* note 11, at 329.

170. David V. Lampman, II, *Fun, Fun, Fun, 'Til Sonny (or the Government) Takes the T-bird Away: Elder Americans and the Privilege to be Independent*, 12 ALB. L.J. SCI. & TECH. 863, 871 (2002).

171. *Id.*

area that has a poor, or possibly nonexistent, public transportation system.<sup>172</sup> Again, with an increasing number of elderly persons either moving to or living in suburban areas, this change in lifestyle is being felt by more and more elderly Americans.<sup>173</sup>

Moreover, when elderly people stop driving, they lose more than just their independence; they also lose their sense of dignity and their perceived status in society.<sup>174</sup> "So much of the misery of getting old is about status. Losing your license is about status."<sup>175</sup> Our society places a great importance on having the ability to drive, and consequently, when that ability is taken away from a person, society perceives that person as being less important.<sup>176</sup> Put simply, "it's a terrible thing to have to stop driving."<sup>177</sup>

## 2. POLITICAL OBSTACLE

Even more persuasive in causing the federal government to refrain from interfering with states' driver's license renewal procedures, particularly in a manner in which age plays a significant factor, is the federal government's recognition of the political strength held by the elderly and the possibility of retaliation by the elderly.<sup>178</sup> The elderly represent a strong political voice in our society.<sup>179</sup> Not only do elderly persons constitute a large portion of the voting age population, but elderly people in general tend to vote on a more consistent basis than most other age groups.<sup>180</sup> As a result, government officials must constantly be aware of where the elderly population stands on a particular issue, and when it comes to the issue of age-based driver's license renewal procedures, the elderly position is fairly clear.<sup>181</sup>

The American Association of Retired Persons (AARP), consisting of thirty-five million members, all over the age of fifty, is the leading

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172. See Coughlin, *supra* note 24, at 21.

173. *Id.*

174. Lampman, II, *supra* note 170, at 871.

175. *Id.*

176. *Id.* at 872.

177. Lui, *supra* note 37, at 2 (quoting Betty Klapman, a seventy-four year old retired teacher in Santa Monica, California).

178. See Bodnar, *supra* note 11, at 1738 n.194.

179. See *id.* at 1738-40.

180. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 (Feb. 2002) (reporting that "the peak age group for voting participation is 65 to 74 years").

181. Bodnar, *supra* note 11, at 1739 (noting that many legislators refuse to vote in favor of bills opposed by elderly organizations because they fear repercussions).

lobbyist group among the elderly.<sup>182</sup> As the nation's second largest organization, with membership comprising nearly twenty-five percent of all registered voters, the AARP carries substantial political influence in every area of the law.<sup>183</sup> A prime example of this influence was seen in the defeat of Senator Tom Hayden's proposal for a mandatory age-based driving test in the State of California.<sup>184</sup> Not coincidentally, this defeat came after numerous elderly groups, including the AARP, touted the proposal as discriminatory.<sup>185</sup> As a result of this political influence, federal government officials have been, and will likely remain, hesitant to pass any legislation adamantly opposed by the elderly, and particularly by the AARP.<sup>186</sup>

## V. Resolution

Having examined the current federal and state approaches to driver's license renewal procedures as well as the historical and potential future obstacles that stand in the way of a more federally dominated driver's license renewal procedure system, particularly one in which age plays a significant factor, it is now time to examine the various approaches that have been suggested to remedy the elderly driving problem facing America today.<sup>187</sup> When doing so, it is important to keep in mind that the goal here is two-fold: (1) to find a workable solution that provides uniformity across the states, and (2) to ensure that this uniform system adequately and effectively addresses the current problem posed by elderly drivers without jeopardizing the elderly person's independence and sense of dignity. Consequently, when analyzing each of these potential alternatives, the following two questions must be answered in the affirmative in order for the alternative to be acceptable: (1) whether this system can be uniformly adopted by each of the fifty states, either through the state's own initiative or through the encouragement of the federal govern-

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182. American Association of Retired Persons, *AARP History*, at <http://www.aarp.org/leadership/Articles/a2003-01-13-aarphistory.html>.

183. Bodnar, *supra* note 11, at 1739; *see also* AM. ASS'N OF RETIRED PERS., JOIN AARP, at <http://www.aarp.org/membership/aarp/Articles/join.html> (explaining that the process for becoming a member of AARP only requires that the applicant be over the age of fifty and pay a small annual fee).

184. Lait & Bernstein, *supra* note 2.

185. *Id.*

186. *See* Bodnar, *supra* note 11, at 1738-39.

187. *See generally* Klein, *supra* note 11, at 332-39; Lampman, II, *supra* note 170, at 877-90; Tripodis, *supra* note 11, at 1082-88.

ment by the withholding of federal funds; and (2) whether this system will meet both society's interest in preserving the health and safety of all of its citizens as well as the needs and interests of the group most likely to be affected by any new initiative, the elderly themselves. With this in mind, let us now look at the various alternative approaches.

#### A. Driver Improvement Courses

All fifty states and the District of Columbia presently offer driver improvement courses to their residents.<sup>188</sup> Because many older drivers never completed formal training and consequently may never have been granted the opportunity to attain safe driving skills, driver improvement courses can be a useful tool to teach older drivers the proper procedures to improve driving performance and to enhance driving safety.<sup>189</sup> The largest driving program, 55 Alive/Mature Driving Course, offered periodically by the AARP, consists of two four-hour sessions that utilize videos, quizzes, and classroom discussions to teach older drivers how to compensate for the physical changes that occur with aging, how to identify the warning signs of decreased driving performance and how to improve accident avoidance.<sup>190</sup> Since its inception in 1969, the program has served more than 2.7 million elderly drivers.<sup>191</sup>

The two most commonly complained of drawbacks to driver improvement courses include: (1) providing incentive to elderly persons to register for and participate in the course; and (2) most courses, including the one offered by the AARP, do not provide in-car training.<sup>192</sup> Each of these drawbacks can be remedied. As for providing incentive to elderly drivers, many states have laws requiring automobile insurers to offer insurance discounts to elderly drivers who complete a driver improvement course.<sup>193</sup> A federally imposed uniform law requiring all insurers to provide this incentive will only further improve elderly driving performance and awareness. As for the lack

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188. Tripodis, *supra* note 11, at 1062.

189. *Id.* at 1063 (One study found a ten-percent reduction in serious driving accidents for elderly drivers who had participated in this type of course).

190. *Id.* at 1062-63.

191. *Id.* at 1063.

192. *See id.* at 1086.

193. *Id.* at 1063 (noting that thirty-four states and the District of Columbia presently have laws requiring such).

of in-car training, this can be remedied by providing these programs with simulation instruction, whereby elderly drivers would be required to perform a variety of in-car maneuvers through the use of a computer-based program designed to resemble real-world driving.<sup>194</sup> Although admittedly more expensive, by splitting the cost between insurance carriers, the government and the driving participants themselves, the benefits of in-car training could potentially outweigh its costs.<sup>195</sup>

### B. Highway and Automobile Improvements

Improved driving conditions on the road, both generally and with respect to the specific needs of the elderly driver, can go a long way in addressing the elderly driving problem. Generally speaking, improved lighting on highways and at intersections would likely benefit all drivers.<sup>196</sup> With respect to elderly needs in particular, a more recent solution is to make road signs bigger and brighter, thus compensating for the loss of visual acuity associated with aging.<sup>197</sup>

While some states have focused on improving highway and road conditions, other states have turned to automobile manufacturers for assistance, hoping to alleviate any potential problem at its source.<sup>198</sup> Perhaps more encouraging, some automobile manufacturers, such as General Motors and Ford Motor Company, have taken it upon themselves to address the problem posed by elderly drivers.<sup>199</sup> General Motors, for example, recently made an effort to address the needs of

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194. *Id.* at 1086.

195. *Id.*

196. See Klein, *supra* note 11, at 326–27.

197. Tripodis, *supra* note 11, at 1064, 1086 (New Jersey, for example, recently modified its roadways by providing larger letters and highly reflective material for its road signs. The hope is to accommodate elderly drivers with slower reaction times and visual problems stemming from night glare.); see also Lampman, II, *supra* note 170, at 887 (“Highway signs can be made easier for the elderly to see and read by using fluorescent lighting, reduced background clutter, increased size and reflectivity of letters, certain fonts for text, and symbols instead of words.”).

198. Tripodis, *supra* note 11, at 1063 (New York, for example, has developed the Car Care Council to examine possible ways to tailor the manufacturing of a car to the specific needs of the elderly.).

199. *Id.* at 1087 (General Motors, for example, began this trend by manufacturing cars with bigger buttons and mirrors designed to reduce glare.); see also Lampman, II, *supra* note 173, at 880 (Ford Motor Company, for example, recently developed the “Third Age Suit,” which allows younger engineers to personally experience some of the challenges that elderly drivers face on a daily basis).

the elderly driver by designing a system aimed at enhancing night vision as well as by designing a collision warning system.<sup>200</sup>

Again, the major downside to highway and automobile improvements is cost.<sup>201</sup> Although little argument can be made against improving highway and automobile quality to the extent necessary to at least be able to meet the needs of the average elderly driver, one possible way to minimize the cost of additional improvements is to perform research on road conditions and automobiles geared towards addressing the needs of elderly drivers.<sup>202</sup> Such research probably would screen out some of the more unnecessary improvements and instead would focus only on those improvements that provide more tangible benefits to the elderly driver.<sup>203</sup> Furthermore, the federal government should continue passing legislation, such as the High Risk Drivers' Act, to promote research aimed at addressing the needs of elderly drivers as well as encourage states to study their own elderly drivers' needs.<sup>204</sup>

Automobile improvements aimed at addressing the needs of the elderly driver have their own distinct drawbacks. One such drawback is that elderly drivers typically rely on experience, and any new technology necessarily requires that elderly drivers learn how to use these new devices, thus requiring them to deviate from their routine practice.<sup>205</sup> Another drawback to improved automobile technology is that elderly drivers typically have difficulty in multitasking, and many new devices specifically require this capability.<sup>206</sup> Possible ways to minimize these drawbacks include involving elderly drivers in the testing of these new devices, providing elderly drivers with training

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200. Joachim Meyer & Joseph F. Coughlin, *Older Drivers and New In-Vehicle Technologies: Promises and Challenges*, PUB. POL'Y & AGING REPORT, NAT'L ACAD. ON AN AGING SOC'Y, Summer 2001, at 11-12; *see also* Lampman, II, *supra* note 170, at 882 ("'Night Vision' works by detecting the heat of objects on the road and then project[ing] it onto the automobile's dashboard.").

201. *See* Tripodis, *supra* note 11, at 1086.

202. Klein, *supra* note 11, at 338.

203. *See id.*

204. *Id.* at 335.

205. Lampman, II, *supra* note 170, at 892. (One study indicated that sixty percent of elderly drivers admitted that they are anxious when forced to use new technology. Furthermore, studies have indicated that it takes elderly persons up to forty percent longer to respond in vehicles equipped with new technologies than it does for younger drivers to respond in them.).

206. Meyer & Coughlin, *supra* note 200, at 13.

on how to properly use these new devices, and customizing automobiles to the specific needs of a particular elderly driver.<sup>207</sup>

### C. Individual Counseling

A remarkably simple method for minimizing the risk posed by elderly drivers is for the federal government to provide, or at least encourage the states to provide, individual counseling to all elderly persons. Under these programs, elderly drivers, with the help of a professional counselor, will be able to evaluate their own driving abilities.<sup>208</sup> These self-analysis counseling programs will not only encourage elderly drivers to evaluate their own skills, but will also encourage them to recognize their potential limitations.<sup>209</sup> Several states have already taken it upon themselves to adopt similar programs.<sup>210</sup> Although these programs will not solely alleviate the elderly driving problem, implementation of counseling programs will help elderly drivers become more responsible and aware.<sup>211</sup>

### D. Physician Reporting Laws and Medical Advisory Boards

Perhaps the most controversial approach to addressing the problem posed by elderly drivers is to require physicians, including optometrists, to report patients they deem to be a potential driving threat to the appropriate state driving authority.<sup>212</sup> Although such a policy may sound overly intrusive to the elderly patient, it is by no means a radical approach.<sup>213</sup> An argument often advanced in favor of such a proposal is that because nearly all elderly persons see a physician of some sort on a regular basis, physician reporting laws could

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207. See *id.* at 14; see also Lampman, II, *supra* note 170, at 888–91 (discussing the ways in which new automobile models can be tailored to address the needs of elderly persons suffering from arthritis and other common ailments).

208. Klein, *supra* note 11, at 328.

209. *Id.*

210. *Id.* (pointing to Oregon's program, whose goal is to keep elderly drivers on the road as long as possible while ensuring public safety).

211. *Id.*

212. See Tripodis, *supra* note 11, at 1082–83.

213. *Id.* at 1082 (citing to states such as Maine and Pennsylvania, whose physician reporting laws give physicians an important role in a performance-based licensing process. Pennsylvania, for example, requires all physicians to report the name, date of birth, and address of all persons over the age of fifteen who have been diagnosed as having any disability that might affect driving performance. Maine, similarly, provides its physicians with guidelines to assist them in evaluating a patient's ability to drive safely.).

serve as an efficient, cost-effective way to identify all elderly drivers who pose a potential driving risk.<sup>214</sup> Some commentators have gone even further and suggested that states adopt and encourage anonymous reporting of poor drivers, which could arguably result in the reporting of more elderly drivers.<sup>215</sup> Such a proposal may prove ineffective, however, as many people may be hesitant to make these reports, particularly when the driver is an elderly person.<sup>216</sup> Moreover, physician reporting laws may very well bump against the Health Insurance Portability and Accountability Act of 1996 (HIPAA).<sup>217</sup>

With respect to physician reporting, many drawbacks have also been raised.<sup>218</sup> Perhaps the most practical drawback is simply that many physicians choose to ignore the requirement for fear of jeopardizing their relationships with their patients.<sup>219</sup> This drawback could be addressed, however, by establishing consequences for a physician's failure to report patients with potential driving limitations.<sup>220</sup>

A corollary to physician reporting is the suggestion that all states be required to establish a medical advisory board composed of resident physicians whose purpose should be to assist in identifying disorders and disabilities that impair the ability of a person to drive safely.<sup>221</sup> Like physician reporting, the suggestion of medical advisory boards is not new.<sup>222</sup>

#### E. Restricted Licenses

Another approach geared towards ameliorating the elderly driving problem is the concept of restricted licenses.<sup>223</sup> Most states that have adopted restricted licenses have adhered to the general norm of issuing daylight driver's licenses, whereby certain drivers are only

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214. *Id.*

215. Klein, *supra* note 11, at 326.

216. *Id.*

217. Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

218. Tripodis, *supra* note 11, at 1082.

219. *Id.*

220. *Id.* (suggesting, for example, that a state could either revoke a physician's license or impose liability on a physician who fails to report a patient who later causes a collision).

221. *Id.* at 1062.

222. *Id.* (pointing out that in fact forty-one states have established medical advisory boards of some sort).

223. *Id.* at 1084-85.

permitted to drive during the daytime hours.<sup>224</sup> Some states, however, have further restrictions, such as not permitting certain drivers to operate motor vehicles during periods of heavy traffic, most frequently rush hour.<sup>225</sup> These restricted licenses are often referred to as graduated licenses.<sup>226</sup> The most common argument advanced in support of these types of licenses is that by issuing restricted licenses, an elderly driver is able to maintain his or her independence while limiting his or her safety risk on the road, thereby providing a desired balance between safety and mobility.<sup>227</sup>

Despite their popularity, it is uncertain how effective, if effective at all, restrictive licenses really are.<sup>228</sup> First, often times a restricted license is issued for the wrong reasons, such as pity for an elderly driver, when in fact the license should never be granted in the first place.<sup>229</sup> Second, many elderly drivers place their own restrictions on their driving, often refusing to drive at night, thereby defeating the need for restricted licenses.<sup>230</sup> Third, studies have shown that most accidents involving elderly drivers occur during the daytime, again minimizing the need for restricted licenses.<sup>231</sup>

#### F. Transportation Alternatives

Perhaps the most practical and realistic approach to addressing the problem posed by elderly drivers is the simple concept of improving current transportation alternatives available to the elderly.<sup>232</sup> Beginning with public transportation, the federal government should make it a goal to provide safe, convenient, and rapid service to all elderly persons.<sup>233</sup> Presently, less than ten percent of all elderly persons use public transportation.<sup>234</sup> This is largely due to the fact that most of our country's public transportation system is limited to suburb-to-city or city-to-city transit, yet nearly seventy percent of the elderly popula-

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224. Klein, *supra* note 11, at 325.

225. *Id.*

226. *Id.* at 337.

227. Tripodis, *supra* note 11, at 1085.

228. *See id.* at 1084.

229. *Id.* at 1085.

230. *Id.*

231. Klein, *supra* note 11, at 326 (pointing to a study that shows that seventy-nine percent of all fatal accidents involving persons over the age of sixty-five occur during the daytime).

232. *See generally* Coughlin, *supra* note 24.

233. Tripodis, *supra* note 11, at 1087.

234. Coughlin, *supra* note 24, at 21.

tion lives in suburban and rural locations, where public transportation is either limited or nonexistent.<sup>235</sup> Until this disparity is addressed, public transportation will not be a viable alternative to the elderly driving problem.

Despite the current state of public transportation, the federal government has made strides to improve.<sup>236</sup> Nonetheless, most of these efforts have produced very few tangible improvements, as a number of challenges have kept transportation off the national agenda.<sup>237</sup> With no sign of change in the near future, we must look beyond the help of the federal government for improving the transportation alternatives available to the elderly.

Irrespective of whether the government becomes involved in improving transportation alternatives available to the elderly, the private sector should take the initiative of getting involved, as many commercial enterprises already have.<sup>238</sup> Communities can also help in this regard by either directly providing transportation alternatives to elderly persons through the many social outlets utilized by elderly persons in those communities or by encouraging those social outlets to provide alternatives themselves.<sup>239</sup> Examples of such social outlets include religious institutions, elderly organizations, and elderly homes.<sup>240</sup> Finally, the elderly themselves should also take the initiative to seek out viable alternative modes of transportation through their common social outlets.<sup>241</sup>

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235. *Id.*

236. *Id.* at 23 (noting that in 1995, the White House Conference on Aging adopted Resolution 30: Maximizing Transportation Choices. This resolution sought to ensure more low-cost public transportation for elderly persons with disabilities by providing more resources and funding additional research.).

237. *Id.* (citing a number of impediments to getting transportation onto the national agenda, including a bias limiting the entry of new issues onto the national agenda, the concern over health care costs and Social Security relating to the elderly, the absence of a powerful pressure group willing to place transportation at the top of its agenda, and most ironically, the uncertainty over whose responsibility it should be to address transportation issues, the federal government or that of the states).

238. Tripodis, *supra* note 11, at 1087 (pointing to businesses that have recognized the spending power of elderly citizens and consequently have provided free or low-cost busing services from distant and rural areas to attract elderly business).

239. *Id.*

240. *Id.*

241. *Id.*

### G. Finding the Right Driver's License Renewal Policy

Although all of the aforementioned approaches, if implemented, should go a long way in helping to remedy the elderly driving problem, in the end, we must still address the most glaring deficiency when it comes to the elderly driving problem: the lack of consistency among the states in selecting an effective driver's license renewal procedure.<sup>242</sup> Having examined all of the various state approaches, from Illinois's strict graduated license renewal procedure to Florida's most lenient procedure, a few common trends seem to stick out as being most effective at addressing the elderly driving problem, while still maintaining an elderly person's independence and sense of dignity.<sup>243</sup>

#### 1. PERFORMANCE-BASED TESTING WITH AGED-BASED TRIGGERING

After examining all of the various state testing procedures, the best approach appears to be implementation of a performance-based renewal procedure, with age acting only as the trigger for more comprehensive and frequent testing.<sup>244</sup> Performance-based testing with an age-based trigger mechanism not only ensures that all elderly persons will be examined on a periodic basis, but also ensures that only those elderly persons who pose actual safety risks will be subjected to actual driving limitations.<sup>245</sup> Furthermore, performance-based testing with age-based triggering seems to strike a balance between meeting society's interest in road safety and an elderly person's interest in protection against age discrimination.

#### 2. REAL-WORLD TESTING

In order to ensure that performance-based testing accurately identifies those elderly persons who do indeed pose public safety risks, the performance-based test must include some sort of test that resembles real driving conditions, including testing an elderly person's basic motor skills, sensory perception, and reaction time.<sup>246</sup> Consequently, even Illinois's mandatory road testing falls short of meeting

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242. See generally Coley, *supra* note 8, at 7–10.

243. See generally *id.*

244. Bodnar, *supra* note 11, at 1726.

245. See *id.* at 1726–27.

246. See Tripodis, *supra* note 11, at 1083.

these requirements, as it only tests for a driver's basic operational skills.<sup>247</sup>

One type of real-world test that has gained considerable attention over the last few years is driving simulators.<sup>248</sup> These computer-based programs accurately identify drivers with cognitive, motor, and visual-processing difficulties that are likely to cause accidents.<sup>249</sup> The downsides to driving simulators, however, include the cost of production and implementation and the lack of familiarity that most elderly persons have with computers in general, let alone with driving simulators.<sup>250</sup> As technology continues to advance, however, and computers become even more integrated into our society, these drawbacks should be minimized.

### 3. MEDICAL QUESTIONNAIRES

Although the issue of requiring physicians to report elderly patients who may pose driving risks presents considerable controversy, there should be no debate over whether elderly persons themselves should be required to report their own medical conditions and medical usage.<sup>251</sup> By requiring elderly drivers to fill out routine, but detailed, medical questionnaires, we can effectively screen out elderly drivers who may pose a potential risk to others, conduct more research on the correlation between certain medical illnesses and medications and their effect on driving performance, and ensure that elderly drivers are aware of these potential risky effects.<sup>252</sup>

## VI. Conclusion

Despite any apparent effectiveness of these common trend solutions, implementing them will do little good in helping to remedy the elderly driving problem if not adopted uniformly by the states. For not only are America's roadways an inherently national problem, but any proposed solution stands little chance for survival when numer-

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247. *See id.*

248. *See id.* at 1084.

249. *Id.*

250. *Id.*; see also Jeffrey Patch, *Driving-Simulator Officials to Ponder Fees*, THE DAILY IOWAN ONLINE EDITION, Oct. 1, 2002, at <http://www.dailyiowan.com/news/2002/10/01/Metro/Driving.Simulator.Officials.To.Ponder.Fees-286162.Shtml> (last visited Aug. 8, 2004) (noting that one particular driving simulator cost \$80 million to build and \$1000 per hour to maintain).

251. Bodnar, *supra* note 11, at 1729.

252. *See id.*

ous alternatives exist in the very state next door. Because it appears unlikely that the states themselves will come together to uniformly address this national problem, the federal government should answer the call through the withholding of federal funds, an often-used mechanism to pass good policy and at the same time avoid citizenry backlash.<sup>253</sup> By choosing a well-balanced approach that incorporates age-based triggering with performance-based driving, real-world testing, and medical questionnaires to be filled out by the elderly drivers themselves, we can assure future safety on our roadways and at the same time preserve elderly independence and dignity. If we allow the states to continue to choose from a hodgepodge of alternative remedies, however, we can rest assured that the most effective solution will continue to fail to serve as the norm, and perhaps even worse, elderly dignity and independence will continue to be compromised.

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253. See, e.g., *South Dakota v. Dole*, 483 U.S. 203 (1987) (explaining the Supreme Court's modern interpretation of the Spending Clause).