INCREASED DRIVING REGULATIONS FOR THE ELDERLY: A CASE STUDY IN NEW YORK CALLING FOR THE EXPANSION OF CURRENT REGULATIONS

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* B.A., Lafayette College; J.D. Albany Law School, 2008. I would like to thank Professor Evelyn Tenenbaum for her incredible dedication and support throughout this arduous process. I could not have accomplished this article without her help. I also would like to thank my wife Jessica for her love and support. Lastly, I would like to thank the Albany Government Law Review for this opportunity and my article editor Mark Skanes.
INTRODUCTION

The stories are similar across the country, but the most disastrous accident involving an elderly man took place in California in 2003.\(^1\) George Weller made a deadly mistake when he became confused while driving in Santa Monica, California.\(^2\) Instead of pushing the brake, George Weller hit the accelerator, and when he “regained his composure, 10 people were dead, [and] 63 people were injured, with one body at the edge of his tires, which the prosecutor referred to as ‘a human brake.’”\(^3\) Not only did Mr. Weller jump a curb into a Santa Monica farmers market, but when his car finally came to a stop, he had traveled three hundred yards at the speed of forty to sixty miles per hour.\(^4\) Mr. Weller was later convicted of ten counts of vehicular manslaughter.\(^5\)

In Texas, in 2007, seventeen year-old Katie Bolka was on her way to school to take an algebra test when she was killed by an elderly driver who drove through a red light.\(^6\) Elizabeth Grimes, a ninety year-old woman who lived on Meader Lane in Texas for fifty years, drove through the red light and slammed into Katie Bolka, who died five days later.\(^7\) Another recent incident involving a child took place in Illinois.\(^8\) An eighty-four year-old driver drove through an elementary school lunchroom killing an eight year-old boy.\(^9\)

In Rochester, New York, an eighty-nine year-old man drove “into pedestrians and vendors at an open-air public market” injuring himself and nine market goers.\(^10\) The police said that the

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2. LeDuff, supra note 1.
3. Id.
4. Id.
5. Richard Winton, Farmers Market Crash Payouts Reach $21 Million, L.A. TIMES, May 21, 2008. Though Mr. Weller faced up to 10 years in prison, the judge, taking into account his age, then ninety-one years, and deteriorating health instead sentenced him to five years probation. Id.
6. Robert Davis & Anthony DeBarros, Stopping Older, Dangerous Drivers a Growing Problem as Elderly Population Booms, States Seek Answers, USA TODAY, May 2, 2007, at 1A.
7. Id.
9. Id.
10. Police Say Elderly Driver Likely Won’t Face Charges, ALBANY TIMES UNION,
man’s foot “apparently slipped off the brake and hit the accelerator.”†1

The accidents are similar across the country and people continue to die because older drivers fail to realize that they lack the mental acuity necessary to continue driving. According to the U.S. Department of Transportation (USDOT), in 2000 “about 6200 drivers over [the age of] 65 were involved in fatal crashes” and by 2030 this number is expected to double or even triple.†2 For the age group of eighty years plus, the rate of driver deaths per crash “is over four times that for drivers in the 30-59 age group.”†3 The question remains as to why there has not been more legislation aimed toward ensuring that elderly drivers are able to safely operate their automobiles.

This article will first examine how statistical data portraying elderly drivers as one of the safer groups of drivers is actually very misleading. When additional factors, such as the number of miles driven, are taken into account, the problem with older drivers becomes apparent. In addition, this first section will explain some of the reasons why older drivers present a greater risk on the road. The next section will review some recent Federal programs that are designed to make our roadways safer, yet may have a very minor impact on elderly drivers. Additionally, this section examines the limited nature of New York State’s driving regulations compared to other state’s license renewal procedures. Finally, this article develops a solution for New York State that expands current regulations and can still withstand constitutional concerns.

I. THE CURRENT PROBLEM WITH OLDER DRIVERS

A. The Current Statistics, Are They Misleading?

![Figure 2: Total Crash Incidence, Fatal Crash Incidence, and Injury Crash Incidence, per Licensed Driver, by Age, 2003](http://www.eyes.uab.edu/safemobility/SafeMobility.pdf)
The elderly population appears to be among the safer groups of drivers when the statistics are based on all licensed drivers and fail to take into account that older drivers tend to drive fewer miles. The American Association of Retired Persons (AARP) presents the statistical evidence shown above to demonstrate that “[p]ersons age 65 and older have lower rates of crashes and crashes involving injury per licensed driver than younger drivers.” The evidence, when presented by various organizations aimed at protecting elderly rights, views only the number of crashes per licensed driver. These statistics show that the average annual number of crashes is 68 per 1,000 licensed drivers compared to only 37 crashes per 1,000 licensed drivers for those drivers over the age of sixty-five. According to these statistics, there does not appear to be a problem with elderly drivers because these drivers have below the average number of crashes per licensed driver. However, this picture changes drastically when the number of miles driven and the fatalities per licensed driver are taken into account. While the AARP admits that fatal crashes continue to increase for those seventy and older, statistics presented in various studies, including studies done by the AARP, fail to take into account that elderly drivers tend to drive fewer miles. In fact, the elderly are actually involved in

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15 Rosenfield, supra note 1, at 453.
16 HOUSER, supra note 14.
18 Id. §§ III-1, 2.
19 See HOUSER, supra note 14 (“Older drivers drive less frequently than other age groups . . . but by crashes per mile driven, the data show a substantial rise in crash incidence after age 70.”).
20 See id.; Rosenfield, supra note 1, at 453; TRANSPORTATION RESEARCH
more accidents per mile driven than younger drivers.\textsuperscript{21} A study performed by the Automobile Association of America (AAA) and Carnegie Mellon revealed that once drivers reach the age of sixty-five, fatality rates begin to rise, and for drivers eighty-five and older, the fatality rate “skyrockets to nearly four times higher than that for teens.”\textsuperscript{22}

One of the growing concerns about elderly drivers is fatal crashes occurring at intersections.\textsuperscript{23} When drivers eighty-five years and older are making left-hand turns at intersections, they are “10 times as likely as 40-49 year olds to be in fatal multiple-vehicle crashes.”\textsuperscript{24} Older drivers also have a disproportionately high number of crashes involving “right turns, U-turns, backing[up], starting in the roadway, and parking or leaving a parked position.”\textsuperscript{25} There is also a direct correlation with elderly drivers being at-fault in crashes as they get older.\textsuperscript{26} In fact, “nearly 70 percent of drivers 75 and older involved in fatal two-vehicle crashes were at fault, compared with less than 40 percent for drivers 45-64.”\textsuperscript{27} These statistics demonstrate that as people age, their ability to safely operate vehicles decreases, which creates a real threat to themselves and other drivers on the road.

\textbf{B. Reasons Why Elderly Drivers Present a Greater Danger on the Road}

The AARP has determined that older drivers present a higher risk on the road because “as one ages, specific functions related to driving skills may decline; these functions include vision, hearing, reaction time, and cognitive and motor abilities.”\textsuperscript{28} Studies demonstrate that older people “have reduced visual acuity, narrower visual fields, poorer nighttime vision, greater sensitivity

\begin{footnotesize}
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\item \textsuperscript{21} Rosenfield, supra note 1, at 454 (“[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.”)
\item \textsuperscript{22} Davis & DeBarros, supra note 6 (demonstrating that between 1999 and 2004 the sixteen to twenty age group accounts for 3.03 fatalities per 100 million miles driven while the age group of eighty-five or over accounts for 11.47 driver fatalities).
\item \textsuperscript{23} See Transportation Research Board, supra note 17, § III-2.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id. § III-3.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Houser, supra note 14.
\end{itemize}
\end{footnotesize}
to glare,” and reduced peripheral vision, which greatly affects their ability to see potential dangers on the road.\textsuperscript{29} Because the elderly have a “reduced area of visual attention” they have a much higher risk of “colliding with vehicles” or pedestrians at intersections due to their field of view greatly diminishing with age.\textsuperscript{30}

Elderly people who develop cataracts or glaucoma have an “increased sensitivity to glare and decreased ability to focus on static and dynamic objects” which makes this age group even more dangerous over time.\textsuperscript{31} Studies demonstrate that drivers ages sixty and older require three times more light compared to drivers in their twenties and therefore have limited night vision, increasing the risk of an accident.\textsuperscript{32} The ability to see road markings and small lettering can also be more difficult and confusing for people as they age.\textsuperscript{33} This can result in not only a delayed response, but a potentially incorrect reaction.\textsuperscript{34}

Elderly drivers also have reduced sensitivity to changes in motion, which can affect a person’s judgment in determining how fast an object is moving.\textsuperscript{35} Specifically, on crowded roads, the ability of a driver to determine the size of gaps between cars becomes increasingly important and as a person ages his or her brain has more difficulty interpreting images quickly.\textsuperscript{36} Also, as one ages, the ability to recall recent information and respond to


\textsuperscript{30} TRANSPORTATION RESEARCH BOARD, supra note 17, § III-5. See also NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, supra note 29, § 1A2(C)).

\textsuperscript{31} See Rosenfield, supra note 1, at 455 (quoting Vasiliki L. Tripodis, Note, Licensing Policies for Older Drivers: Balancing Public Safety with Individual Mobility, 38 B.C. L. REV 1051, 1056 (1997)).

\textsuperscript{32} Rosenfield, supra note 1, at 455.

\textsuperscript{33} See Houser, supra note 14.

\textsuperscript{34} Martin, supra note 29, at 262.

\textsuperscript{35} See TRANSPORTATION RESEARCH BOARD, supra note 17, § III-5 (“Motion detection influences judgments about an object’s distance and how fast it is moving.” An example of this would be a “car approaching as a driver waits to turn left at an intersection.”).

\textsuperscript{36} See id.
multiple pieces of information decreases. The “decline in this functional ability may occur gradually through normal aging processes” and can greatly accelerate with dementia. This may have an enormous impact on driving safety. For example, a driver entering onto a highway must be cognizant of the curvature of the ramp in addition to other drivers on the highway as he or she begins to merge because losing track of the road or other cars can have disastrous consequences.

“Approximately thirty-five percent of drivers over the age of seventy-five, and forty-five percent over the age of eighty-five, have mental deficits related to dementia or Alzheimer’s disease.”

A person with even mild dementia may be severely impaired because of the decline in “[p]erception, attention, and decision making processes necessary for safe driving.” Drivers suffering from the early stages of dementia are “two to six times more likely to be involved in an automobile accident” compared to those similarly aged without dementia. It is even more frightening that drivers with these ailments may not be aware that they have become impaired because they may not go for routine checkups. Some drivers have important reasons for denying any impairment. For many of the drivers living in rural settings, public transportation may not be an option, so these people have to continue driving even though they are dangerous on the roads.

While the current statistics may be misleading, when the number of miles driven and the fatalities per licensed driver are taken into account, older drivers present a greater danger on the roadways. Severe medical impairments account for a large proportion of the difficulties that older drivers encounter on the roads, yet the current regulations fail to address this problem.

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37 Id. §§ III-5, 6.
38 Id. § III-6.
39 Id. § III-5.
40 Martin, supra note 29, at 262.
42 Id.
43 See, e.g., Martin, supra note 29, at 262.
44 See id. (“Elderly drivers with even mild forms of dementia may not realize that they are becoming impaired and are less likely to restrict or moderate their own driving.”); U.S. DEPT OF TRANSP., supra note 12, at v.
45 U.S. DEPT OF TRANSP., supra note 12, at 1.
II. CURRENT REGULATIONS

A. Recent Federal Programs Designed to Increase Safety for an Aging Population

The growing elderly population in the United States has made it increasingly important to focus our attention on making the roadways safer. Currently, thirty-five million Americans are aged sixty-five and older, approximately thirteen percent of the total population. It is expected that “[b]y 2030, this number will double, to 70 million people.” Each year the percentage of drivers over the age of sixty-five who retain their driver’s licenses continues to increase: sixty-one percent in 1980, seventy-two percent in 1990 and eighty percent in 2003. By the year 2020, “experts project 42.5 million drivers will be over the age of sixty-five, representing nearly twenty-five percent of the total driving population.” Due to the increasing age of the baby boomers, road safety analysts predict that the number of fatal crashes involving older drivers will continue to increase drastically.

The nation has only started to recognize this growing problem created by the increased proportion of elderly drivers on the roads. The U.S. Department of Transportation has made improvements in highways and vehicles, and implemented other programs designed to increase safety on the road. Some of the recent programs that the Department of Transportation has been focusing on include: (1) safer, easier-to-use, roadways and walkways; (2) safer, easier-to-use, automobiles; (3) improved public transportation services; and (4) better public information to help educate elderly drivers and to identify unsafe drivers. This plan does not place any specific restrictions on the elderly, but is instead aimed at making the roads safer for all licensed drivers. While the federal government plans to spend millions of dollars to improve the highway infrastructure, the plan, so far, has had only a minimal impact on the elderly population.
programs implemented thus far have resulted in reductions in
the number of fatalities for people under the age of sixty-five, but
for those drivers sixty-five and older, there has only been a minor
improvement in the number of accidents.\footnote{Id. at v (“The rates
for older persons, however, have declined far more
modestly, despite substantial reductions over the last 5 years.”).}

The AARP has designed a number of programs to educate
elderly drivers.\footnote{See AARP.org, Driver Safety Education
Program from AARP, http://www.aarp.org/families/driver_safety/driver_ed/
(last visited Oct. 5, 2008).} The AARP has repeatedly argued that there
should not be any age-based driving restrictions, but has
acknowledged that there has been a rise in the number of
accidents involving elderly drivers and is developing programs
aimed at reducing the current trend.\footnote{See LaToya M. Smith,
Vision Test for Elderly Drivers Debated, LOWELL
cms/news/?dept=1368&id=47161 (A spokeswoman for AARP said that “[b]eing a
safe driver is not based on age.”).} One solution to the
problem, endorsed by the AARP, is use of the American
Occupational Therapy Association (AOTA).\footnote{AMERICAN
ASSOCIATION OF RETIRED PERSONS, ENHANCING MOBILITY
OPTIONS FOR OLDER AMERICANS: A FIVE YEAR NATIONAL AGENDA (2005),
available at http://aarpvolunteers.com/dsp/Mobility_options.pdf.}
The purpose of the American Occupational Therapy Association (AOTA) is to help
evaluate elderly drivers and, “where appropriate, to provide
rehabilitation to strengthen skills used in driving.”\footnote{The American Occupational Therapy
(last visited Oct. 5, 2008).} This
organization understands how important maintaining
independence is to older drivers.\footnote{See id. (“Staying connected to your community is an
important part of your
well-being.”).} This training is intended to
allow the elderly to regain the privilege of driving that may have
been taken away.\footnote{See id. (“[O]ccupational therapists have the skills . . . to provide
rehabilitation to strengthen skills used in driving.”).}

AOTA also publishes several articles designed to help older
drivers “overcome or compensate for some of the physical and
cognitive changes that may affect their safety behind the wheel.”\footnote{THE AMERICAN
OCcupATIONAL THERAPY ASSOCIATION, INC., SAFE DRIVING
ODbrochure.pdf [hereinafter AOTA].}

Some of these tips include: “[a]djust[ing] the driver’s seat so that
your chest is 10 inches or more from the steering wheel” and
 “[a]djust[ing] your side-view mirrors to . . . minimize the ‘blind
spot,’” planning routes ahead of time to limit the amount of left
turns, and traveling during less congested times. Another important function of this program is conducting driving tests to help identify some of the problems that “affect a person’s ability to drive safely.” For those people who no longer feel comfortable behind the wheel, AOTA “can help identify alternative transportation and provide training in its use.”

The AARP also provides suggestions to elderly drivers to reduce their risk of accidents and, in the event of an accident, to increase their chance of survival. In addition to encouraging the use of seatbelts, the AARP also suggests that elderly drivers “avoid[] rush hours, major highways, and bad weather conditions.” This can help “compensate for particular impairments for drivers of any age.” The AARP also encourages the elderly to be aware of the fact that certain medications may affect their driving ability and suggests they monitor any changes that may occur.

While the AARP continues to provide important programs designed to provide elderly drivers with greater education to reduce the risk of accidents, the U.S. Department of Transportation agrees that in order to make real improvements, state and local governments “must share in the responsibility of developing, implementing, and evaluating a comprehensive action plan to address the safety and mobility needs of the growing elderly population.” One way in which states are able to regulate drivers is by implementing more stringent driver’s license renewal procedures.

B. The Current Regulation of Elderly Driving in New York State

While several states have been moving toward age-based restrictions on driver’s license renewals, the State of New York still has only very limited restrictions in place for elderly drivers.

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63 Id.
65 AOTA, supra note 62.
67 Id.
68 Id.
69 Id.
70 See Transportation Research Board, supra note 17, § V-5 (stating that a number of states have already started to create plans to reduce the safety problems for the elderly).
71 See Rosenfield, supra note 1, at 456-57.
In New York, the only testing performed during the license renewal process is a vision examination. However, unsafe drivers may be reported to the New York State Department of Motor Vehicles (NYSDMV) if they suffer from medical conditions that may impair their driving ability. The NYSDMV may receive this information from an “accident report, a physician’s report, a police report, a report by a member of the family of the driver, or from another citizen.”

When a physician reports to the DMV that a patient has an impairment that may affect their driving ability, the DMV then has the option of suspending the person’s license. To report an impairment, physicians must complete the DS-6 “Physician’s Request for Driver Review,” which asks for the condition the patient is suffering from as well as whether the condition would affect his or her driving ability. Based on these answers, the DMV has the option of suspending the patient’s license until the physician believes the condition will no longer affect the patient’s driving ability.

In addition to reports made by physicians, anyone who suspects that a person may be dangerous on the road can report their concerns to the DMV. Based on this report, the DMV may schedule a re-examination of the driver or schedule an interview with the driver to determine whether or not his or her present condition will likely affect his or her ability to drive. This is the only option in New York for family or friends of an unsafe driver to suspend or revoke that person’s license as a result of a medical condition that inhibits his or her ability to drive safely.

There are several problems with the New York system where the DMV has to rely solely on others to report medical conditions and potentially dangerous drivers. Because not everyone has

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72 NYS DMV, Driver License, Learner Permit and Non-Driver Photo ID Card, available at http://www.nydmv.state.ny.us/license.htm [hereinafter NYS DMV].
73 Id.
74 Id.
75 Id.
77 NYS DMV, supra note 72.
78 Id.
79 Id. See NYS DMV, DS-7: Request for Driver Review, available at http://www.nysdmv.com/forms/ds7.pdf (asking for your relationship with driver, detailed explanation as to why that person should not be able to have a license, as well as other people to confirm this reasoning) [hereinafter Request for Driver Review].
80 See Request for Driver Review, supra note 79.
physical examinations regularly, there may be many older people who currently have a license and are suffering from ailments such as dementia. These same people may even be aware that physicians in New York have a great deal of authority and can write a detailed report to the DMV explaining that the person’s license should be suspended. As result of the current regulations elderly drivers may be deterred from going for routine physicals because of the possibility of losing their driving privileges.

Another problem with the current approach in New York is that family and friends may be upset that their elderly relatives or close friends continue to drive; yet, they understand that a person’s license represents a form of independence and they are unwilling to take this privilege away. Family members and friends realize that “a driver’s license holds special meaning for older persons” and may be a “symbol of freedom, independence and self-sufficiency.”

Currently in New York, if a person fails to go for routine physicals, the burden is on family and friends to notify the DMV and show cause as to why that person should not be able to drive. The courts have been reluctant to establish a duty on the part of a younger relative to report medical conditions which may cause unsafe driving. One reason for this is that “[f]amilies may be faced with few choices if the community lacks public transportation or social-service agencies that provide transportation for seniors.”

Another downfall of this system is the potential to make family members adversaries against his or her relative’s right to retain a driver’s license. Therefore, unless a family member comes forward and is comfortable restricting what may be his or her relative’s last form of independence, or the elderly person voluntarily visits a physician who is willing to send a report to the DMV, that person continues to have a New York State driver’s license and threatens his own life as well as the lives of others on the road.

C. Driver’s License Renewal Procedures in Other States

License renewal programs vary throughout the country

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81 Tripodis, supra note 31, at 1052.
82 See Request for Driver Review, supra note 79.
83 Martin, supra note 29, at 272-73.
84 Id. at 273 (highlighting that more than 70 percent of people over the age of seventy-five live in suburbs and small towns).
ranging “between two and ten years.” There are five states that prohibit discrimination based on age by not requiring any additional tests for elderly drivers and two states where the driver’s license renewal requirements are actually easier for older drivers. For example, in Tennessee people over the age of sixty-five are not even required to renew their license because it does not expire. Unless they are involved in a fatal accident, their ability to drive is never reviewed at all. As a result of this policy, Tennessee has “the sixth highest accident rate (0.094) of drivers over age sixty-four.”

Another option employed by Maine, Oregon, and Pennsylvania “involves relatively lax licensing standards coupled with mandatory physician reporting of dementia or vision problems.” The doctors in these states have the burden of determining whether their patients suffer from either of these ailments and then must report the problem to the department of motor vehicles. The most restrictive states require mandatory road-testing for seniors. In the District of Columbia, road-testing begins at the age of seventy-five, and the senior driver must also obtain “a physician’s certification of driving ability, vision, and sometimes competency tests.” In the District of Columbia and all the other states that require mandatory road-testing, only in Illinois was the accident rate slightly higher for seniors than the national average.

A fourth option currently utilized in New York, Hawaii, and South Carolina involves restricting license renewal, but in a non-discriminatory manner “through 20/40 acuity, 140-degree field of vision licensing.” The major difference between these three states is that, while both Hawaii and South Carolina require a

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85 Id. at 267.
86 Id.
88 Id.
89 Id.
90 Id. (citing ME. REV. STAT. ANN. tit. 29-A, § 1258(3) (2005) (“The Secretary of State may request . . . reports of the board and determine the competency of a person to operate a motor vehicle.”)).
91 Brinig, supra note 87, at 416-17.
92 Id. at 419-20.
93 Id. at 420.
94 Id. (“The rates of older drivers in accidents for these three jurisdictions [the District of Columbia, Illinois, and New Hampshire] were 0% (out of 180 drivers in accidents), 0.05%, and 0.003%.”).
95 Id. at 414.
shorter renewal period based on age, New York does not. All drivers in New York have a five-year renewal period. It is not surprising then that both Hawaii and South Carolina have lower accident rates for drivers over the age of sixty-four, while New York’s accident rate for drivers over sixty-four is above the national average.

In most states, vision testing is part of the renewal process. Currently, Florida, Maine, Maryland, Oregon, South Carolina, Utah, and Virginia all require vision examinations, but the age requirements for this testing vary depending on the state. In Florida, the only renewal requirement is that once a person reaches eighty years of age, he or she must pass a vision examination every four to six years. Based on these lax renewal procedures, it is not surprising that Florida ranks in the bottom third of all states based on percentages of elderly drivers in accidents.

There are currently many different and effective approaches for regulating elderly drivers. In determining an approach to improve upon New York’s current system, there are constitutional concerns that arise because of the age-based classifications.

III. THE SOLUTION

A. Constitutional Issues: Equal Protection and Due Process

Horrifying stories appear on the front page of newspapers daily, and states are just beginning to propose stricter license renewal requirements for those over sixty-five years of age. This state regulation is permitted by the police power doctrine, “which grants to the states the right to enact and enforce laws in order to

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96 Brinig, supra note 87, at 415.
97 Id. (Hawaii requires a personal appearance over the age of sixty-five and then has a two-year renewal period for divers over seventy-two, while South Carolina “reduces its normal ten-year cycle to five years for those over sixty-five.”).
98 Id. (New York has an accident rate of 0.06%, which represents “four persons over [the] age [of] sixty-four in accidents per every thousand licensed drivers over age sixty-four.”).
99 Id. at 420.
100 Id. at 420-21.
102 Brinig, supra note 87, at 421 (Florida’s average accident rate for elders is 0.057227%).
protect the health, safety, and welfare of its citizens.” States have the authority to implement age-based driver’s license renewal procedures so long as these procedures do not violate the Equal Protection or Due Process Clause of the Fourteenth Amendment.

Singling out the elderly for stricter license renewal requirements raises several legal issues. Imposing restrictions affecting only elderly drivers creates an age-based classification system that treats people differently based solely on their age. The Equal Protection Clause of the Fourteenth Amendment guarantees that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause “mandates that states treat similarly situated people in a similar way” unless there is some legitimate state interest for treating one class of people differently.

As the number of elderly drivers increases, individual states must have the power to create legislation aimed at making the roads safer. A major concern for states interested in regulating elderly drivers is whether or not age-based driving restrictions are constitutional. The Supreme Court held in Massachusetts Board of Retirement v. Murgia that, because the elderly population is not a suspect class and the driving of an automobile is not a fundamental right, the proper test when reviewing state laws affecting the elderly is the lowest standard—rational basis. The rational basis test is a more “relaxed standard” that requires only that there be a legitimate government interest and that the interest be rationally related to achieving its purpose. This lowest standard of scrutiny “is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State’s objective.” “The rational basis test is enormously deferential to the government, and only rarely have laws been declared unconstitutional for failing to meet this level of review.” In Murgia, a Massachusetts state police officer was

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103 Rosenfield, supra note 1, at 456.
104 U.S. CONST. amend. XIV, § 1.
105 Tripolis, supra note 31, at 1065.
106 See id. ("[S]tates that enact age-based licensing requirements may face age discrimination challenges by older drivers based on the Equal Protection Clause or Due Process Clause . . . ").
108 Murgia, 427 U.S. at 314.
forced to retire at the age of fifty based on the, “demands involved in the performance of uniformed police functions.” The court found that because there was a direct correlation between aging and safely performing police functions, the state had a legitimate reason for the mandatory retirement age.

Several other cases have upheld age-based classifications based on a legitimate state interest. For example, in Gregory v. Ashcroft, the Court found that mandating that judges retire at the age of seventy was constitutional because it met the rational basis test. The court relied on evidence which demonstrated how “physical and mental capacity sometimes diminish[es] with age” and that having a mandated retirement policy would ensure “a judiciary fully capable of performing the demanding tasks that judges must perform.” The court acknowledged that not all judges will “suffer significant deterioration in performance at age 70.” However, the court still found that the mandatory retirement policy met the rational basis test because of the high risk that judges’ mental capacity will begin to deteriorate at the age of seventy.

New York has followed the Ashcroft decision in holding that a mandatory retirement age for judges does not violate the Equal Protection Clause of the Fourteenth Amendment. In Savarese, two criminal judges were granted extensions in order to complete their terms beyond the age of seventy by the Chief Administrator of the Courts. The court followed the Ashcroft decision and denied the extensions because the mandatory retirement age classification passed the rational basis test.

New York faces similar Equal Protection challenges if it mandates additional testing requirements for elderly drivers. “Retesting only older drivers could be considered discriminatory since accident rates per miles of travel show both drivers over age

111 Murgia, 427 U.S. at 309, 311.
112 Id. at 315, 325.
114 Id. at 472.
115 Id. at 473.
116 Id.
118 Id. at 608-09.
119 Id. at 610.
120 See SafeNY.com, Older Drivers and Aging Index and Overview, http://www.safeny.com/ndx.htm#top (last visited Oct. 6, 2008) [hereinafter Older Drivers] (asserting that statistic show that in New York drivers between the ages of 16 and 24 and drivers over age
75 and drivers between the ages of 16 and 24 are at high risk.” 121 Therefore, there may be no rational basis for restricting elderly drivers more than those between the ages of sixteen and twenty-four. While this argument may have some validity and may even be sufficient to overcome the initial burden of proving discrimination, the State of New York would ultimately prevail on such a challenge. New York does have a legitimate state interest in issuing some restrictions on elderly drivers in order to reduce the number of fatal accidents and to make this age group safer on the roads.

As the statistics demonstrate, elderly drivers are a high-risk group and, while the AARP may argue that younger drivers are just as dangerous, there are already restrictions in place for younger drivers. 122 In New York, junior drivers may only have a limited number of passengers in the car at one time, the passengers must be over a certain age, and they may only drive at certain times. 123 Former New York Governor Eliot Spitzer created the “Office of the Younger Driver,” which has been working on legislation aimed at “prohibit[ing] 16- and 17-year-old drivers from giving rides to passengers younger than age 21” and increasing the number of practice hours prior to receiving a license. 124 Currently, New York only mandates twenty hours of practice time, but under the new bill, there would be a mandatory fifty hours of practice for junior drivers prior to applying for a license. 125

While there is legislation directed at younger drivers, there has been nothing directed at the elderly in New York. Based on the current legislation, it has become increasingly apparent that New York is not focusing on regulating elderly drivers. However, statistics indicate that the elderly account for a similar number of accidents to those drivers under the age of twenty-one. 126 Protecting the lives of the elderly and others on the road is a legitimate state interest that can overcome the rational basis test. As long as the solution proposed to regulate elderly drivers is

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121 Id.
123 See id. (restricting junior drivers to no more than two passengers in the car under the age of twenty-one, unless they are immediate family members and restricting by geographical region after nine o’clock p.m.).
125 Id.
126 See Older Drivers, supra note 120.
rationally related to this interest, there is no Equal Protection concern.

The second constitutional concern that states face when proposing restrictions on a specific age group is affording the elderly Due Process rights under the Fourteenth Amendment. The Due Process Clause limits a “state’s ability to interfere with an individual’s rights and provides procedural safeguards before a person can be deprived of certain rights.” The Due Process Clause imposes both procedural and substantive due process rights. Procedural due process involves “what kind of notice and what form of hearing the government must provide,” while “substantive due process asks whether the government has an adequate reason for taking away” certain rights. Because the rational basis test is applied to age-based classification systems, substantive due process rights are met “so long as the law is rationally related to a legitimate government purpose.” The focus of the Due Process concerns is whether elderly drivers are afforded notice and a hearing.

In *Bell v. Burson*, the “Court held that a driver’s license is a constitutionally protected property interest under the Due Process Clause of the Fourteenth Amendment” and that the court upon termination of a person’s license must afford that person notice and opportunity to be heard. Similarly, the New York State Court of Appeals has held that “a driver’s license is a substantial property interest that may not be deprived without due process of law.” While the New York courts have not specifically addressed due process rights with regard to age-based renewal regulations, the New Jersey Superior Court Appellate Division has “held that policies for the reexamination of elderly drivers did not violate the Due Process Clause” because drivers were guaranteed a formal hearing.

In New York, a hearing is required before a person’s license is suspended. Similar requirements could be mandated for the

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127 See U.S. CONST. amend. XIV, § 1 (“nor shall any State deprive any person of life, liberty, or property, without due process of law”).
128 Tripodis, supra note 31, at 1068.
129 CHEMERINSKY, supra note 110, at 521.
130 Id.
131 Id. at 524.
135 See People v. Osborn, 749 N.Y.S.2d 853, 854 (Sullivan County Ct. 2002) (“[T]he court must hold a suspension hearing before the conclusion of the
nonrenewal of a license, based on the inability to drive safely. “The driver’s right to a hearing before he may be deprived of his license... accords him all of, and probably more than, the process that the Federal Constitution assures.” Therefore, constitutional concerns should not prevent New York State from passing age-based restrictions for older drivers. The state’s legitimate interest in the safety of its roadways and the provision of a right to a hearing should address these concerns.

B. A Proposed Solution for New York State

The accident rate for elderly drivers in New York is currently above the national average. Adhering to the five-year renewal period for people of all ages will not reduce the number of accidents. A program tested in California is the 3-Tier Assessment System. The purpose of this assessment is to determine “the usefulness of [] nondriving tests for detecting impairment and predicting road test performance.” The first tier consists of short screening tests: a Pelli Robson chart that displays letters with different shades of gray to determine contrast sensitivity; observation and recording of health problems which may cause a driving problem; a visual acuity test; and a standard exam to demonstrate a person’s knowledge of the rules of the road. The second tier consists of more complex testing: perceptual speed demonstrated by flashes of vehicles on a computer screen; a visual search to place numbers in order on a computer screen; and finally a critical cue recognition test that simulates driving. The final tier consists of an actual driving

proceedings required for arraignment and before the driver's license must be suspended.” (citing Pringle, 668 N.E.2d at 1379).

136 Pringle, 668 N.E.2d at 1381 (citing Illinois v. Batchelder, 463 U.S. 1112, 1119 (1983)).

137 Brinig, supra note 87, at 415.

138 See, e.g., Stacy Forster, Elderly Drivers May Face Stricter State Regulations, MILWAUKEE JOURNAL SENTINEL, Mar. 4, 2005, available at http://www.jsonline.com/story/index.aspx?id=306630 (explaining that efforts of Wisconsin state lawmakers “are considering legislation that would require drivers over age 75 to renew their licenses more frequently, take more frequent vision tests and, after age 85, pass a traffic skills test.”).

139 See Mary Janke, California Department of Motor Vehicles, 3-Tier Assessment System (1999), available at http://www.dmv.ca.gov/about/profile/rd/resnotes/3_tier.html.

140 Id.

141 Id.

142 Id.
performance test on the road.\textsuperscript{143}

In New York, a less extensive solution that would expand upon current regulation involves mandatory physical examinations. While Maine, Oklahoma, and South Carolina require physician reporting of dementia or vision problems, the proposed solution would include a physical examination to determine whether the person has the skills necessary for driving. The physical examination for license renewals would be required starting at seventy-five years of age. The reasons for increasing the requirements for license renewal starting at seventy-five years of age are that the driver fatality rate begins to sharply increase at that age, night vision continues to deteriorate, and the elderly increasingly suffer from dementia or Alzheimer's disease.\textsuperscript{144} The physical examination for renewal of a driver's license would take place every five years for people over the age of seventy-five. At the age of eighty-five, the examinations would be required every two years. When a person is eighty-five years of age and older, the driver fatality rate increases drastically, and almost fifty percent of drivers suffer from a mental deficit.\textsuperscript{145} While New York currently provides physicians with the authority to suspend the license of a person who may be affected by a medical condition, this solution mandates that people over seventy-five years of age who have a current New York State driver's license and wish to renew must complete a physical examination.

The physical examination for those over the age of seventy-five would be created by the American Medical Association (AMA) together with the Department of Motor Vehicles. The Transportation Research Board has already determined several of the specific functions that greatly affect a person's driving ability as they age.\textsuperscript{146} These functions include: vision, cognition, and psychomotor and physical function.\textsuperscript{147} The American Medical Association (AMA) currently requires physicians to recognize impairments and contact the local department of motor vehicles if a patient poses a serious threat to oneself and others on the road.\textsuperscript{148} A report written by the AMA details a physician's

\begin{footnotes}
\footnote{143}{Id.}
\footnote{144}{See Martin, supra note 29, at 262 (“Approximately thirty-five percent of drivers over the age of seventy-five, and forty-five percent over the age of eighty-five, have mental deficits related to dementia or Alzheimer's disease.”); see also Houser, supra note 14.}
\footnote{145}{See Martin, supra note 29, at 262.}
\footnote{146}{Transportation Research Board, supra note 17, §§ III-4, III-6.}
\footnote{147}{Id.}
\footnote{148}{American Medical Association, E-2.24 Impaired Drivers and Their}
\end{footnotes}
responsibilities in terms of having to report both physical and mental impairments affecting the driving ability of a patient:

Physicians should assess patients’ physical or mental impairments that might adversely affect driving abilities. Each case must be evaluated individually since not all impairments may give rise to an obligation on the part of the physician.

... [I]t is the physician’s responsibility to report “medical conditions that would impair safe driving...”149

Rather than imposing additional driving tests on the elderly population for license renewal, it makes more sense to rely on what is already in place. Physicians are already responsible for “recogniz[ing] impairments in patients’ driving ability that pose a strong threat to public safety...”150 Specifically, “[t]he physician must be able to identify and document physical or mental impairments that clearly relate to the ability to drive.”151 Prior to reporting to the department of motor vehicles, the physician must discuss with the patient some of the risks associated with his or her impairment.152 The physician may even discuss with other family members the possibility of a more “restricted driving schedule” before having to report to the department of motor vehicles.153

Creating a mandatory physical examination for license renewal and thereby allowing doctors to determine whether an elderly person is a capable driver expands upon guidelines issued by the AMA. The AMA is in the best position to establish a physical examination that tests the skills necessary to determine whether a person is a safe driver.

Some of the main concerns with creating a mandatory physical examination prior to license renewal are liability, costs, and public policy issues surrounding elderly drivers finding alternative transportation. The physicians who will be administering the exam would be liable if they did not report an elderly driver who is a serious risk on the roadways. Similar to New York’s dram shop law, where liability for damages caused by an intoxicated person attaches to whomever illegally supplied said person with alcohol, doctors who fail to recognize an elderly

149 Martin, supra note 29, at 263-64 (citing AMA, supra note 148).
150 See AMA, supra note 148.
151 Id.
152 Id.
153 Id.
driver’s impairments that should reasonably have been recognized would be liable for any injuries suffered. Another concern is that because doctors have discretion in determining which patients are safe drivers, they will likely err on the side of caution to avoid liability and report a patient to the DMV if they have any apprehension. To avoid this situation, doctors could avoid liability by requesting that the DMV mandate a road test for an elderly driver who has an impairment that could potentially impact his or her driving. Not only would this then reduce the liability imposed on doctors, but it would also allow the DMV to make the final decision on which drivers are unsafe.

The costs for both doctors and patients may increase under this proposed plan. Doctors may have increased malpractice insurance premiums due to this additional burden. Also, if Medicare does not cover the entire cost of the physical, elderly patients may have to bear the additional expense of having to take a physical exam to maintain their driving privileges.

Finally, elderly drivers who are unable to pass the physical examination due to their impairments will lose the “freedom, independence and self-sufficiency” that a driver’s license affords. For many older people, having the independence to continue driving is extremely important and losing this privilege can be a drastic transition. The U.S. Department of Transportation and the AARP have been working on programs designed to make this transition smoother. This transition is even more difficult for older people who live in rural communities with limited public transportation. One of the programs initiated by the U.S. Department of Transportation is aimed at creating “[b]etter-designed public transportation facilitating wider use by older people.” The problem with these programs is that it may take many years before they can be implemented and until then older drivers have few options.

CONCLUSION

Across the country, elderly drivers who suffer from physical or mental impairments continue to drive. In some cases, these people are unaware of the fact that they are impaired and are a

155 Tripodis, supra note 31, at 1052.
156 U.S. DEPT OF TRANSP., supra note 12, at 21.
danger on the road. Unfortunately, the attention of lawmakers remains focused on restricting younger drivers, while older drivers in several states may not even have to renew their licenses.

The statistics involving fatal accidents are similar in both age groups; however the number of accidents involving older drivers will continue to rise as the elderly population continues to increase. In an effort to offset this, the Department of Transportation has begun implementing programs designed to increase safety for elderly drivers on the roadways. The AARP has also developed and endorsed several programs designed to raise awareness among older drivers. However, in order to make significant improvements, the states need to change their license renewal procedures.

In New York, the current policy of a vision examination every five years and the requirement that physicians report severe impairments are not sufficient. New York is an ideal example of a place where there are already policies in place to restrict older drivers and by simply expanding those restrictions, there could be a major impact on the number of dangerous accidents. The American Medical Association already requires physicians to recognize impairments that may affect a patient’s driving ability and report problems to the department of motor vehicles. Unfortunately, many older drivers are aware of this authority and may not go for routine physicals to avoid having their licenses revoked.

The proposed solution in this Comment is that New York should expand its current regulations to require mandatory physical examinations starting at the age of seventy-five. This will result in a minor burden on older drivers, but will help save lives by identifying drivers who are impaired and cannot drive safely. While constitutional concerns continue to be at the forefront of this discussion, the proposed solution is rationally related to the state’s legitimate interest in the safety of its roads and does not severely burden older drivers. Mandatory physical examinations beginning at the age of seventy-five will save lives and hopefully prevent incidents similar to the accident in California, where ten people were killed because of the failure to regulate older drivers.