UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 62 | Number 6 Article 8

8-1-1984

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Margaret L. Milroy

North Carolina's License Revocation for Drunk Drivers: Minor Inconvenience or Unconstitutional Deprivation?

North Carolina General Statutes section 20-16.5, added by the 1983 North Carolina Safe Roads Act,[1] establishes a mandatory, immediate, ten-day, pretrial license revocation for certain drivers charged with driving while intoxicated (DWI).[2] Since possession of a driver's license is a property interest protected by the notice and hearing guarantees of due process,[3] section 20-16.5 implicates these due process guarantees. The leading United States Supreme Court case in this area, *Mackey v. Montrym*,[4] establishes a "balancing of competing interests" test to determine when the revocation of a driver's license without a prior hearing is constitutional.[5] The test set out in *Mackey*, however, ignores the Court's earlier decision in *Bell v. Burson*.[6] The *Bell* rule states that a presuspension hearing *always* must be held before deprivation of an important property interest[7] unless an emergency[8] exists. This note applies both the *Mackey* "competing interests" test and the *Bell* "emergency" test to section 20-16.5 and concludes that under either test the new provision is unconstitutional.

There are two types of individuals whose licenses are revoked under the mandatory provisions of section 20-16.5—those who refuse a chemical test after a DWI arrest, and those who take the test and show a blood alcohol concentration of 0.10 percent or more.[9] The revocation occurs without a hearing. A judicial official[10] determines, based on the revocation report filed by the charging officer and the chemical analyst,[11] whether there is probable cause to believe that the conditions requiring revocation are present.[12] If he finds

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1. Act of June 3, 1983, ch. 435, § 14, 1983 3 N.C. Adv. Legis. Serv. 52 (codified at N.C. GEN. STAT. § 20-16.5 (1983)).

2. *Id.* DWI is the term applied to the impaired driving offenses consolidated under the Safe Roads Act.

3. *See infra* note 22 and accompanying text.

4. 443 U.S. 1 (1979).

5. *Id.* at 5.

6. 402 U.S. 535 (1971).

7. *Id.* at 537.

8. *See infra* notes 26-28 and accompanying text.

9. N.C. GEN. STAT. § 15A-101(1) (1983).

10. *Id.* § 15-105(5) defines a "judicial official" as "a magistrate, clerk, judge, or justice of the General Court of Justice."

11. *Id.* § 20-16.5(a)(4). Section 20-16.5(c) provides that "[i]f the person has refused to submit to a chemical analysis, a copy of the report to be submitted . . . may be substituted for the revocation report if it contains the information required by this section."

12. *Id.* § 20-16.5(b). The judicial official makes the probable cause determination only if the revocation report is filed with the judicial official while the DWI offender is present. *Id.* § 20-16.5(e). If a blood test is given, so that the offender already will have been released when the results are received, or if a DWI offender is given a citation rather than arrested, the procedure enumerated in § 20-16.5(f) applies. In that case the revocation report will be presented to the clerk of court, who will determine probable cause on the basis of the report and any other evidence presented to him. If probable cause is found the clerk will mail a revocation order to the offender. J. DRENNAN, THE SAFE ROADS ACT OF 1983: A SUMMARY AND COMPILATION OF STATUTES AMENDED OR AFFECTED BY THE ACT 24 (1983).

probable cause, the judicial official is required to enter an order revoking the individual's license for ten days.[13] The revocation is absolute—no temporary permits or limited driving privileges are provided.[14] Section 20-16.5(g), however, does provide for a postrevocation hearing to determine whether the revocation was proper. The judicial official must inform the individual charged with DWI, both personally and in the revocation order, of his right to a hearing.[15] The individual then may submit a written request for a hearing, but his license remains revoked pending that hearing.[16] The hearing must be held within three working days of the issuance of the order (five if the hearing is before a district court judge),[17] and the decision is final.[18]

The fourteenth amendment guarantees an individual the due process protections of notice and hearing before being deprived of an important property interest.[19] Due process analysis[20] of summary license revocation involves examination of two issues: whether the right in question is protected and what procedural protections must be accorded an individual possessing the right.[21] Once granted, a driver's license is an important interest entitled to fourteenth amendment protection.[22] Thus, the question of constitutionality centers on

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13. N.C. GEN. STAT. § 20-16.5(e) (1983). The revocation period begins at the time the order is issued and the license surrendered and continues for ten days (or until the revocation is rescinded under § 20-16.5(g)), and a $25 fee, *see id.* § 20-16.5(j), has been paid. If the person does not have a valid license, the revocation continues until ten days from the date the revocation order is issued. *Id.* § 20-16.5(e).

14. *Id.* § 20-16.5(i).

15. *Id.* § 20-16.5(e).

16. *Id.* § 20-16.5(g).

17. *Id.* If the hearing does not take place within these time limits, and the person contesting the revocation has not contributed to the delay, the revocation is rescinded. *Id.*

18. *Id.*

19. U.S. CONST. amend. XIV.

20. The constitutionality of pretrial license revocation has been challenged on other grounds than due process. Both equal protection and right-to-travel arguments have been proffered, but no court has accepted them.

Right-to-travel cases concern the right of a person to go to a certain location; they do not establish a constitutional right to travel by a certain mode of transportation. Suspension of a driver's license does not prevent an individual from traveling wherever and whenever he chooses; it merely limits his mode of getting there. McGue v. Sillas, 82 Cal. App. 3d 799, 805, 147 Cal. Rptr. 354, 357 (1978).

The equal protection argument asserts that, for some people, deprivation of a driver's license is equivalent to deprivation of the ability to work, causing a hardship of varying degrees. Section 20-16.5 presents no equal protection problems, however, because no particular class of persons is selected for suspension. *Cf.* Kellum v. Thorneycroft, 113 Ariz. 115, 116-17, 649 P.2d 994, 995-96 (1982); Murphey v. Department of Motor Vehicles, 86 Cal. App. 3d 119, 122-23, 150 Cal. Rptr. 20, 22 (1978); Pepin v. Department of Motor Vehicles, 275 Cal. App. 2d 9, 11, 79 Cal. Rptr. 657, 659 (1969).

21. *Bell*, 402 U.S. at 539.

22. *Bell* states that *how* possession is achieved is irrelevant to the protection granted:

> Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural Due Process required by the Fourteenth Amendment. This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege."

Id. at 539 (citations omitted). *See also* Dixon v. Love, 431 U.S. 105, 112 (1977). Therefore, that

whether the procedural due process requirements of notice and hearing are satisfied by pretrial revocation statutes.

In *Bell* the Supreme Court addressed the constitutionality of the Georgia Motor Vehicle Safety Responsibility Act,[23] which provided for automatic suspension of the license of any uninsured motorist involved in an accident, irrespective of fault, unless he posted security to cover the amount of damages. The Act provided an administrative hearing before suspension, but limited the issues that could be raised in this summary proceeding.[24] The Supreme Court held that this scheme violated the fourteenth amendment by failing to afford petitioner a prior hearing on liability, and stated that "except in emergency situations . . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and an opportunity for hearing appropriate to the nature of the case' *before* the termination becomes effective."[25]

Bell left open the question of what constituted an emergency sufficient to justify dispensing with notice and the opportunity for a hearing. In *Fuentes v. Shevin*,[26] however, the Court defined "emergencies" for due process purposes. *Fuentes* dealt with state laws authorizing the prehearing seizure of property upon the *ex parte* application of any individual claiming a right to that property.[27] The Court established three requirements that had to be satisfied before such a seizure would be within the "emergency exception" to the due process requirement of a prior hearing.

> First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance.[28]

Following *Fuentes*, several courts applied this three-prong test to determine the constitutionality of pretrial driver's license revocation for failure to submit to chemical testing under implied consent laws.[29] All fifty states have

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North Carolina courts have termed the possession of a driver's license a "conditional privilege" rather than a "right," Joyner v. Garrett, 279 N.C. 226, 235, 182 S.E.2d 553, 559 (1973), has no bearing on the State's power to terminate possession.

23. Motor Vehicle Safety Responsibility Act, GA. CODE ANN. § 92A-601 (1983).

24. The issue of fault could not be raised. The only evidence allowed to be considered during the administrative hearing was "(a) [whether] the petitioner or his vehicle [was] involved in the accident; (b) [whether] petitioner complied with the provisions of the Law as provided; or (c) [whether] petitioner [came] within any of the exceptions of the Law." *Bell*, 402 U.S. at 537-38.

25. *Id.* at 542 (citations omitted).

26. 407 U.S. 67 (1972).

27. *Id.* at 68.

28. *Id.* at 91.

29. *See, e.g.*, Slone v. Kentucky Dep't of Transp., 379 F. Supp. 652 (E.D. Ky. 1974), *aff'd*, 513 F.2d 1189 (1975); Chavez v. Campbell, 397 F. Supp. 1285 (D. Ariz 1975); Holland v. Parker, 354 F. Supp. 196 (D.S.D. 1973); Graham v. State, 633 P.2d 211 (Alaska 1981).

"implied consent" laws.[30] Under these statutes, a motorist, simply by driving on the roads of a state, gives implied consent to chemical testing of his alcohol concentration level if he is arrested for DWI.[31] If the motorist refuses a chemical test, his license is suspended for some statutorily determined period of time.[32] Applying the *Fuentes* test, courts generally have held that license revocations under implied consent laws are not related directly to an emergency and, therefore, are unconstitutional under *Bell*.[33]

The Supreme Court applied a different analysis, however, in *Mackey v. Montrym*,[34] and held a similar statute constitutional. Under the Massachusetts implied consent law challenged in *Mackey*, a driver's license was automatically suspended for ninety days upon refusal to take a breath analysis test when arrested for DWI.[35] The statute provided an immediate hearing before a state official at any time *after* the license was suspended, but provided no procedure for a presuspension hearing.[36] The Court stated that "the paramount interest the Commonwealth has in preserving the safety of its public highways . . . distinguishes this case from [*Bell*]."[37] Thus, the Court, without discussion, assumed that the case presented an emergency, and that the requirement of a presuspension hearing therefore was negated. The Court, however, did not analyze the statute under the three-prong *Fuentes* test; instead, the Court applied the "balancing of interests" test, first set out in *Mathews v. Eldridge*,[38] to determine whether the procedure satisfied due process. In *Mathews* the Court had held that due process analysis requires consideration of three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through

30. Note, *Implied Consent Laws: Some Unsettled Constitutional Questions*, 32 RUTGERS L.J. 99, 99 n.2 (1980) (citing to the laws of all fifty states).

31. *Id.* at 101.

32. *See, e.g.*, N.C. GEN. STAT. § 20-16.2 (1983) (automatic 12-month revocation).

33. In *Holland v. Parker*, 354 F. Supp. 196, 202 (D.S.D. 1973), the United States District Court for the District of South Dakota applied *Fuentes* to that State's implied consent law, stating, "[t]here is an important governmental and general public interest in keeping the drunk driver off the road . . . . Secondly, it could be argued that there is a special need for 'very prompt action,' and finally the person initiating the seizure is a 'government offical' (a law enforcement officer)." Although the statute ostensibly met the *Fuentes* criteria, the *Holland* court found the statute unconsitutional under *Bell* because the summary procedure was not in response to an emergency. The court reasoned that since *only* those drivers who refused the test, and not those who failed the test, had their licenses revoked, it was clear that the summary revocation was not related directly to the State's need to keep drunk drivers off the road. The court's analysis does not apply to North Carolina's Safe Roads Act, since North Carolina's § 20-16.2 provides for revocation both for motorists who refuse alcohol testing and for those who show 0.10% or more blood alcohol concentration.

34. 443 U.S. 1 (1979).

35. MASS. GEN. LAWS ANN. ch. 90, § 24(1)(f) (West Supp. 1983).

36. *Id.* § 24(1)(g) (West 1975). The hearing would have resolved all questions about whether grounds existed for the suspension. *Mackey*, 443 U.S. at 7.

37. *Mackey*, 443 U.S. at 17. The Court apparently based the distinction on the fact that *Bell* concerned revocation for failure to post security, a situation that did not threaten public safety.

38. 424 U.S. 319 (1976). *Mathews* involved termination of disability benefits. The Court balanced the governmental and private interests and determined that an evidentiary hearing is not required prior to termination of payments and that the administrative procedures set out in the Social Security Act comport with due process.

> the procedures used, and the possible value, if any, of additional or substitute safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[39]

The *Mackey* Court applied this test to the Massachusetts license suspension provision, recognizing the importance of the private interest affected, that of "continued possession and use of the license pending the outcome of the hearing."[40] The weight given to this important interest, as balanced against the governmental interest, was to be determined by weighing, in turn, three additional factors devised by the *Mackey* Court: the duration of the revocation; the availability of hardship relief; and the availability of prompt post-revocation review.[41] Although acknowledging a substantial private interest, the *Mackey* Court also recognized the strength of the government's interest in preserving the safety of the highways[42] and in easing fiscal and administrative burdens.[43] The availability of prompt postrevocation review for correction of any erroneous deprivation[44] tipped the balance in favor of the State interest; the *Mackey* Court therefore held that the Massachusetts implied consent statute was constitutional.[45] The Court believed that "the compelling interest in highway safety justifies the Commonwealth in making a summary suspension effective pending the outcome of the prompt postsuspension hearing available."[46]

Justice Stewart, however, believed that *Bell* mandated a presuspension hearing in *Mackey*.[47] He reemphasized that under *Bell* the presuspension hearing requirement is negated only in an emergency, and stated that the Mas-

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39. *Id.* at 335.

40. *Mackey*, 443 U.S. at 11. The Court in Dixon v. Love, 431 U.S. 105, 113 (1977), recognized that the interest in a driver's license is a substantial one, since the State cannot make a driver whole for any personal inconvenience and economic hardship suffered by reason of any delay in redressing an erroneous suspension through postsuspension review procedures.

41. *Mackey*, 443 U.S. at 12.

42. *Id.* at 18. The Court found that summary suspension was justified because its existence acted to deter drunk driving and contributed to highway safety by removing drunk drivers from the roads.

43. *Id. See also* Reese & Burgel, *Summary Suspension of Drunken Drivers' Licenses—A Preliminary Constitutional Inquiry*, 35 AD. L. REV. 313 (1983). "[W]hen considering the government's interest, it is also necessary to determine whether that interest would be defeated or severely limited by the time delay inherent in providing a pre-deprivation hearing." *Id.* at 320 (citation omitted).

44. *Mackey*, 443 U.S. at 13. In construing this second prong of the *Mathews* test, the Court stated,

> [T]he Due Process Clause has never been construed to require that the procedures used to guard against an erroneous deprivation of a protectible "property" or "liberty" interest be so comprehensive as to preclude any possibility of error. . . . And, when prompt post-deprivation review is available . . . we generally have required no more than that the deprivation procedures used be designed to provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible governmental official warrants them to be.

Id. (citations omitted).

45. *Id.*

46. *Id.* at 19.

47. Justices Brennan, Marshall and Stevens joined Justice Stewart in dissent. *Id.*

sachusetts statute was not concerned with an emergency situation.[48] Justice Stewart acknowledged that "the dimensions of a prior hearing may . . . vary depending upon the nature of the case, the interests affected, and the prompt availability of adequate postdeprivation procedures," but believed that "when adjudicative facts are involved, when no valid governmental interest would demonstrably be disserved by delay, and when full retroactive relief cannot be provided, an after-the-fact evidentiary hearing on a crucial issue is not constitutionally sufficient."[49] The dissent believed that the *Bell-Fuentes* test, rather than the *Mathews* test, was applicable.

The Supreme Court has not determined the constitutionality of an implied consent statute that suspends licenses *both* for refusing to take a chemical test and for failing the test, but the Minnesota Supreme Court in *Hedden v. Dirkswager*[50] was faced with such a question. The Minnesota implied consent statute mandates a ninety-day suspension for failing a chemical test by registering blood alcohol concentration of .10 percent or more and a six-month suspension for refusing to take the test.[51] The statute also provides for the automatic issuance of a temporary seven-day license upon revocation and establishes a form of postsuspension administrative review.[52] The *Hedden* Court, relying on *Mackey*, held that the Minnesota scheme was constitutional.[53] The court stated that since "drunken drivers pose a severe threat to the health and safety of the citizens of Minnesota, the compelling interest in highway safety justifies the State of Minnesota in making a revocation pending the outcome of the prompt post-suspension hearing."[54]

To determine whether section 20-16.5 is constitutional, the North Carolina courts probably will apply the *Mackey* test. The *Mackey* Court, however, incorrectly applied the balancing of interests test set out in *Mathews*.[55] The Supreme Court specifically stated in *Bell* that due process requires a presuspension hearing except in an emergency situation.[56] Thus, according to *Bell*, the *Mackey* Court should have applied the three-prong *Fuentes* test[57] to determine whether the Massachusetts prehearing revocation scheme was constitutional as an exception to the general rule requiring hearings.

The summary revocation of section 20-16.5 is unconstitutional under *Bell* because the ten-day automatic revocation of DWI offenders' licenses does not respond to an emergency. Under the first criterion of the *Fuentes* test, license revocation without prior hearing is justifiable only when it is "directly neces-

48. *Id.* at 20 (Stewart, J., dissenting) ("The suspension penalty itself is concededly imposed not as an emergency measure to remove unsafe drivers from the roads, but as a sanction to induce drivers to submit to breath-analysis tests.").

49. *Id.* at 21-22.

50. 336 N.W.2d 54 (Minn. 1983).

51. MINN. STAT. ANN. § 169.123 (West Supp. 1983).

52. *Id.*

53. *Hedden*, 336 N.W.2d at 56.

54. *Id.* at 63.

55. *See supra* note 39 and accompanying text.

56. *See supra* note 25 and accompanying text.

57. *See supra* note 28 and accompanying text.

sary to secure an important governmental or general public interest"[58] Further, under the second criterion, there must be a "special need for very prompt action" that is served by the revocation.[59] Although North Carolina has an important interest in protecting its citizens from drunk drivers,[60] the mandatory license suspension of section 20-16.5 goes far beyond what is "directly necessary" to effectuate that interest. Before automatic ten-day revocation of the DWI offender's license can be justified as a "directly necessary" response to an emergency situation, or to a "special need for very prompt action,"[61] it must be presumed that these individuals would drive drunk during that ten-day period. Although there is a need for very prompt action when the driver is drunk and on the road, the fact that the driver may be removed from the road by arrest, and held until he is sober enough to drive, makes it unlikely that the ten-day revocation is "necessary and justified"[62] by the need for prompt action. The act of arrest itself suffices to protect the government's interest in public safety by removing immediately the drunk driver from the highways. Thus, section 20-16.5 overreaches the governmental interest. Since the automatic, ten-day revocation is not "directly necessary" to keep North Carolina's roads safe, section 20-16.5 fails under the *Fuentes* emergency exception, and the prehearing suspension is unconstitutional under *Bell*.

The motivation behind the legislature's adoption of such a stringent measure, which bears only a tangential relationship to the interest it ostensibly seeks to protect, is clear. Justice Stewart's criticism of the Massachussetts license suspension provision examined in *Mackey* is applicable equally to the North Carolina provision: "The suspension penalty itself is concededly imposed not as an emergency measure to remove unsafe drivers from the roads, but as a sanction . . . ."[63] Although there is a justifiable governmental interest in maintaining safe roads, there is an equally strong desire, among the legislators and the public, to punish DWI offenders. Commentary on the adoption of the Safe Roads Act bears out this presumption.[64] Proponents of the Act stressed the need for "an immediate 'slap in the face' to virtually all drivers charged with DWI" and for certainty of punishment for DWI offenders.[65] Indeed, the very title of the bill seems to indicate that punishment of drunk drivers was at least as important a force behind the enactment of the bill as protection of the citizenry.[66] Punishment of the DWI offender, even though

58. *Fuentes*, 407 U.S. at 91.

59. *Id.*

60. *See, e.g.*, State v. Carlisle, 285 N.C. 229, 232, 204 S.E.2d 15, 16 (1974): "The purpose of a revocation proceeding is not to punish the offender, but to remove from the highway one who is a potential danger to himself and other travelers." (citation omitted). *See also* Harrell v. Scheidt, 243 N.C. 735, 740-41, 92 S.E.2d 182, 186 (1956).

61. *Fuentes*, 407 U.S. at 91.

62. *Id.*

63. *Mackey*, 443 U.S. at 30 (Stewart, J., dissenting).

64. *See infra* note 76 and accompanying text.

65. J. DRENNAN, LEGISLATION OF INTEREST TO PUBLIC OFFICIALS 117 (1983). *See also* J. DRENNAN, *supra* note 12, at 1.

66. The Safe Roads Act was entitled "An Act to Provide Safe Roads By Requiring Mandatory Jail Terms for Grossly Aggravated Drunken Drivers, Providing an Effective Deterrent

a legitimate governmental purpose when effectuated by other means, does not support license revocation without the usual due process requirement of prior hearing under either the *Bell-Fuentes* emergency rule or the *Mackey-Matthews* balancing test.

In applying the *Mathews* test, the *Mackey* Court implictly overruled *Bell* in part. Because *Bell* requires a hearing *before* terminating an important property interest unless an emergency is involved,[67] there is no room under the *Bell* rule for weighing competing interests in determining whether a presuspension hearing is required. The *Mackey-Matthews* test, however, depends on balancing the private interest of "continued possession and use of the license pending the outcome of the hearing"[68] against the government's interest in safe roads. This private interest is an important one, and the balance can tip in favor of allowing prehearing revocation only when sufficient remedies to protect the private interest exist.[69] The *Hedden* court applied the *Mackey* test and found the prehearing suspension under the Minnesota implied consent law to be constitutional. That revocation scheme, however, unlike the North Carolina provision, provided for protection of the private interest in possession of the license.[70] Besides including provisions for prompt postrevocation review, the Minnesota statute allowed a limited driving permit to be granted in hardship cases.[71] In addition, a seven-day, temporary license was granted to all offenders upon revocation.[72] Since the statute in *Hedden* is analogous to section 20-16.5, the North Carolina courts are likely to apply the *Mackey* analysis to determine the constitutionality of the ten-day revocation.[73] Because section 20-16.5 is distinguishable from the Minnesota statute, however, the North Carolina statute arguably is unconstitutional even under the *Mackey* test.

Section 20-16.5 provides no protection for the private interest affected.[74] The ten-day revocation is automatic and absolute; no temporary license is granted. An automatic grant of a temporary license may not be required to protect the private interest, but some type of provision must be made for hard-

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to Reduce the Incidence of Impaired Driving, and Clarifying the Statutes Related to Drinking and Driving." Act of June 3, 1983, ch. 435, 3 1983 N.C. Adv. Legis. Serv. 52.

67. *See supra* notes 23-25 and accompanying text.

68. *Mackey*, 443 U.S. at 11.

69. *See supra* notes 38-41 and accompanying text.

70. *See supra* notes 44-45 and accompanying text.

71. MINN. STAT. ANN. § 169.123 (West Supp. 1983).

72. *Id.*

73. The Minnesota statute and § 20-16.5 are not analogous. Section 20-16.5 augments North Carolina's implied consent law, and imposes an additional revocation penalty on DWI offenders. However, the Minnesota law is similar in that it does revoke licenses immediately for both failure of the test and refusal to take it.

74. For temporary permit provisions similar to the Minnesota provision in *Mackay*, see ALASKA STAT. § 28.15.165(a)(3) (Supp. 1983) (7 days); GA. CODE ANN. § 40-5-69(b) (Supp. 1983) (180 days or until license is suspended or revoked); IND. CODE ANN. § 9-11-4-7(b)(1) (Burns Supp. 1983) (until license is suspended); IOWA CODE ANN. § 312B.16 (West Supp. 1983) (20 days); MISS. CODE ANN. § 63-11-23(2) (Supp. 1983) (30 days); NEV. REV. STAT. § 484.385(1) (1983) (7 days); N.D. CENT. CODE § 39-20-03.1(1) (Supp. 1983) (20 days); OKLA. STAT. ANN. tit. 47, § 754(2) (West Supp. 1983) (30 days). Only Connecticut immediately revokes the license without issuing a temporary permit, but the revocation is only for 24 hours. CONN. GEN. STAT. ANN. § 14-227a(h) (West Supp. 1983).

ship cases. A provision that provides at least temporary relief to those individuals who depend on their ability to drive for their livelihoods would more likely survive the *Mackey* balancing test.[75]

The ten-day revocation also tips the balance in favor of the private interest. A ten-day revocation may not appear to be oppressive, but the absolute nature of the revocation increases the severity of the sanction. The Governor's Task Force on Drunken Drivers[76] reasoned that "many drivers faced with a sudden ten-day loss of license would be able either to take time off as vacation or get friends and family to drive them for such a short period."[77] This response ignores the fact that many motorists depend on driving for their livelihood and may not be able to make other plans. For them, "such a short period" might well be economically disasterous.[78]

Prompt postrevocation review is available under section 20-16.5, but revocation is not stayed pending appeal. The *Mackey* Court found that a stay provision, in conjunction with the temporary licenses, was sufficient to tip the balance in favor of the governmental interest. Given the recognized importance of the affected private interests, however, prompt postrevocation review is not sufficient to tip the balance in favor of the State. In sum, the unavailability of hardship relief and the duration of the revocation add up to an unconstitutional deprivation of private property by the State. Under either *Mackey* or *Bell*, section 20-16.5 is unconstitutional.

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75. A selective hardship provision would serve the government's goal as well as an absolute revocation procedure. Because of the possibility of equal protection arguments against selective permits, the administrative burdens, and the severe, unprotected intrusion of an absolute revocation on the private interest, a better solution is to issue automatically a temporary permit to all DWI offenders.

76. The Task Force drew up the recommendations for the Safe Roads Act. Watts, *The Drinking-Driving Problem: Assessing Some Proposed Solutions*, 48 POPULAR GOV'T 20, 30 (1983).

77. *Id.*

78. Justice Stewert recognized this in his *Mackey* dissent.

> The Court has never suscribed to the general view "that a wrong may be done if it can be undone." We should . . . be even less enchanted by the proposition that due process is satisfied by delay when the wrong cannot be undone at all, but at most can be limited in duration. Even a day's loss of a driver's license can inflict grave injury upon a person who depends upon an automobile for continued employment in his job.

Mackey, 443 U.S. at 30 (Stewart, J., dissenting) (citation omitted).