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ELDERLY DRIVERS: BALANCING PUBLIC SAFETY WITH PERMANENT PERSONAL MOBILITY

Anna Badaracco, twenty-three years old, was walking along the sidewalk at two o'clock on a Monday afternoon in August 2006, when a white Lexus suddenly veered off the road, jumped up onto the sidewalk, and struck Anna from behind, killing her.¹ The driver of the Lexus was an eighty-four-year-old woman who, according to Anna's father, was "an accident waiting to happen."² The criminal proceeding that followed uncovered evidence that the elderly driver had "uncorrected hearing problems, . . . a recent diagnosis of macular degeneration and frequent, extended periods of room-spinning dizziness."³ In addition to hearing, vision, and dizziness problems, her "frailty" was "obvious."⁴ Beyond revealing what could be characterized as age-related deficiencies, the proceeding also showed that the elderly woman had a history of dangerous driving in her home state of Florida.⁵ Despite the multiple warning signs, it was not until Anna Badaracco lost her life that the elderly driver in question relinquished her driver's license.⁶ The cost of maintaining that small slice of freedom was high. Badaracco was a graduate of Northwestern University, where she earned Phi Beta Kappa honors and competed in field hockey and track.⁷ She also had planned to obtain her master's degree at the London School of Economics and had aspirations of eventually earning a Ph.D.⁸ She had just completed a year in Manaus, Brazil, where she taught English, before returning home in the summer of 2006, when her life was tragically cut short.⁹

1. Jessica Scarpati, *85-year-old Gets 2 Years House Arrest*, THE DAILY NEWS TRIBUNE, Sept. 27, 2007, available at <http://www.dailynewstribune.com/homepage/x1343817676>; *Elderly Woman Charged in Deadly Newton Crash*, WBZTV.COM, Aug. 23, 2006, <http://wbztv.com/local/Newton.Chestnut.Hill.2.580968.html> [hereinafter WBZTV.COM]; Editorial, *Loss of Freedom Better than Loss of Life*, WICKED LOCAL, Sept. 26, 2007, <http://www.wickedlocal.com/brookline/news/opinions/x775332553> [hereinafter WICKED LOCAL].

2. Scarpati, *supra* note 1; WBZTV.COM, *supra* note 1.

3. Scarpati, *supra* note 1.

4. *Id.*

5. *Id.*

6. *Id.* As a consequence of pleading guilty to motor vehicle homicide by negligent operation, the court ordered that Lenore Liner permanently lose her driver's license. In addition, she is confined to her home for two years except for medical appointments outside the home and is under probation for four years. She cannot attend religious services and must pay over \$3,000 in court fees. Should she violate the terms of her house arrest, she could receive two and a half years in jail. *Id.*

7. Kristina M. Moore, *Badaracco Daughter Killed in Crash*, HARVARD CRIMSON, Sept. 11, 2006, available at <http://www.thecrimson.com/article.aspx?ref=514143>.

8. *Id.*

9. *Id.*

The resulting outrage following Anna's death was predictable. Joseph Badaracco, the victim's father, noted he would not object to a prison sentence for his daughter's killer, but he also contemplated the tragedy from the perspective of the elderly driver's family.¹⁰ Ultimately, criminal action, as a response to his young daughter's death, seemed to fail as a solution for all involved. Instead, the grieving father looked to how such an unfortunate accident could be prevented: "[P]erhaps Anna's tragedy and the many others like it will encourage families and governments to take steps to test elderly drivers and get the dangerous ones off the roads."¹¹ Mr. Badaracco's words reference the fact that, sadly, his family is not the only one in America to have suffered such a devastating loss; numerous similar accounts have received public attention in the past.¹² Nor was Mr. Badaracco alone, in the wake of Anna's death, in his voiced desire for a more responsible screening process of elderly drivers; a local editorial echoed Mr. Badaracco's call for action.¹³ Yet, despite the

10. Scarpati, *supra* note 1. "[I]magin[e] how you'd feel if your grandmother killed somebody. . . . If that doesn't trigger your imagination in a sense of responsibility, think about your grandmother or grandfather confined to their home for two years or more." *Id.* (internal quotations omitted).

11. Moore, *supra* note 7.

12. In the spring of 2006, a ninety-year-old woman drove through a red light in Dallas, Texas, plowing into a car driven by a seventeen-year-old who was on her way to school. The seventeen-year-old victim died five days later. See Robert J. Derocher, *Licensing Older Drivers: Renewed Calls for In-Person Testing*, 18:2 EXPERIENCE 12, 13 (2008). "In 2003, 86-year-old George Weller drove past road closure signs and wooden barriers at a Santa Monica, California, street market, killing 10 pedestrians and injuring 63 others." *Id.* at 14. "In 2005, 93-year-old Ralph Parker struck and killed a pedestrian in St. Petersburg, Florida, and then drove another 3 miles with the maimed body of the dead man lodged in his windshield. Parker, who has since died, told police he thought the body had 'fallen from the sky.'" *Id.* at 15; see also David Rosenfield, *From California to Illinois to Florida, Oh My!: The Need for a More Uniform Driver's License Renewal Policy*, 12 ELDER L.J. 449, 450 (2004) (discussing several accidents, including one in which a fifteen-year-old girl was killed by a ninety-six-year-old driver who had not undergone a driving test since 1918); Vasiliki L. Tripodis, *Licensing Policies for Older Drivers: Balancing Public Safety with Individual Mobility*, 38 B.C. L. REV. 1051, 1052 (1997) (mentioning an accident in which an eighty-four-year-old man stepped on the accelerator instead of the brake, killing a seven-week-old boy).

13. WICKED LOCAL, *supra* note 1 ("Taking driver's licenses away from elderly motorists is a touchy subject. . . . The truth is, however, that allowing frail or impaired drivers to stay behind the wheel is irresponsible, and in this case [the accident involving Anna Badaracco], deadly."); cf. Derocher, *supra* note 12, at 13 (describing the development of Texas' "Katie's Law," a law requiring in-person driver license renewals for drivers aged seventy-nine years and older and two-year renewal periods for drivers aged eighty-five and older, all in response to the accidental death of a seventeen-year-old girl who was struck by a 90-year-old woman who had run a red light); John Kreiser, *How Old is Too Old to Drive?*, CBSNEWS.COM, Feb. 3, 2007, <http://www.cbsnews.com/stories/2007/02/03/health/main2428859.shtml> (citing a mother's reaction to the death of her eight-year-old son after an eighty-four-year-old drove through an elementary school lunchroom. "We very much support a mandatory limit on the driving age for seniors."); Jim Morris, *Should Elderly Drivers be Tested?*, CNN.COM, June 28, 1999 (on file with author and Washington University Law Review) (noting a push for legislation in California concerning driver's license restrictions upon renewal for the elderly, following the death of a teenage girl in an accident with a ninety-six-year-old driver).

commonly felt desire for more testing and stricter licensing standards, most states have refused to take meaningful regulatory action.¹⁴

Unfortunately for state legislators, this issue will not disappear any time soon; in fact, it is likely that the number of deadly traffic accidents involving seniors will only increase. The primary reason is that, as a result of the aging baby-boom generation, the United States of America is “in the midst of a profound demographic change: the rapid aging of its population, as reflected by an increasing proportion of persons aged 65 and older.”¹⁵ By 2025, it is estimated that 18.2% of the American population will be at least sixty-five years old, an increase from 12.4% of the population in 2000.¹⁶ A second factor, compounding the first, is that this same large, aging generation has enjoyed significant personal mobility via the automobile throughout their lives and, not surprisingly, wish to continue driving despite their advanced age.¹⁷ However, because of the body’s reaction to increasing age, the elderly class’s driving capability, as well as their bodies’ ability to withstand automobile accidents, may be impaired.¹⁸ Therefore, increased testing and more stringent standards for the licensing of elderly drivers are needed.

This Note examines the possibility of strengthening existing state licensing standards for elderly drivers¹⁹ in order to more effectively protect the entire general population, including the elderly, and also examines the need for alternative sources of mobility resulting from the inevitable increase in citizens who will no longer hold driver’s licenses. Part I discusses elderly drivers in more detail, including the deadly risk inherently associated with an increasingly older driving population, as well as the effect of aging on the ability to drive. Part II discusses and analyzes the current range of the states’ statutory responses to the risk embodied by the elderly driving population. It focuses on licensing

14. *See infra* Part II.

15. LAURA B. SHRESTHA, CONGRESSIONAL RESEARCH SERVICE, RL32701, CRS REPORT FOR CONGRESS: THE CHANGING DEMOGRAPHIC PROFILE OF THE UNITED STATES, at Summary (2006).

16. *Id.* at 14. *Cf.* JAMES J. FAZZALARO, CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, OLR RESEARCH REPORT: ELDERLY DRIVER ISSUES 13 (2002) (“Estimates vary, but many analysts project that by 2030 at least 25% of the U.S. population may be age 65 or more.”).

17. Katherine Mikel, *Drivers’ Licenses and Age Limits: Imposition of Driving Restrictions on Elderly Drivers*, 9 MARQ. ELDER’S ADVISOR 359, 360 (2008).

18. U.S. GOV’T ACCOUNTABILITY OFFICE, REPORT TO THE SPECIAL COMMITTEE ON AGING, U.S. SENATE, OLDER DRIVER SAFETY: KNOWLEDGE SHARING SHOULD HELP STATES PREPARE FOR INCREASE IN OLDER DRIVER POPULATION 1 (2007) [hereinafter GAO] (“As people age, their physical, visual, and cognitive abilities may deteriorate, making it more difficult for them to drive safely. Furthermore, older drivers are more likely to suffer injuries or die in accidents than drivers in most other age groups, in part because of the greater frailty that comes with age.”).

19. “Elderly drivers” can be defined in numerous ways. This Note examines a range of ages considered as “elderly,” but generally refers to “elderly drivers” as those aged sixty-five years and older.

renewal procedures—highlighting the more stringent Illinois procedure, the more lenient Florida procedure, and examining the various other procedures employed by the states.²⁰ Part III addresses the probable obstacles to additional licensing requirements for the elderly, including constitutional discrimination issues and the powerful political voice comprised of, and on behalf of, the elderly. Finally, Part IV proposes solutions to the problem represented by an older driving population. The primary solution concerns various reformations of the licensing procedures for elderly drivers. The secondary solution outlines necessary alternative transportation options for seniors who will no longer be permitted to drive under the more stringent proposed licensing standards.

I. THE PROBLEM OF AN INCREASINGLY OLDER DRIVING POPULATION

A. *The Aging of the General Population and the Driving Population*

Both the general population and the driving population are increasing in age, a trend that began in 1950, continues today, and promises to endure well into the future.²¹ This trend is largely the result of the so-called “baby-boom generation,” delineated by those born between 1946 and 1964.²² The number of persons in America aged sixty-five and older represented 8.1% of the total population in 1950, 10.5% in 1975, and 12.4% in 2000, constituting a general trend in recent history of a slow, but steady, increase in the number of older Americans.²³ But as the “baby-boom generation” now approaches the age of sixty-five, that percentage is projected to increase dramatically to 18.2% in 2025 and to 20.6% in 2050.²⁴ In numerical terms, this projected percentage means the population of those sixty-five and older is expected to increase from roughly thirty-five million people in 2000, to about fifty-five million people in 2020, and

20. Illinois and Florida are frequently identified as representing opposite ends of the spectrum in terms of relative strictness of states’ licensing procedures. *See, e.g.,* Mikel, *supra* note 17, at 362–63.

21. SHRESTHA, *supra* note 15, at 13.

The population of the United States had been relatively “young” in the first half of the 20th century, a consequence of a history of three demographic trends acting in concert—relatively high fertility, declining infant and childhood mortality, and high rates of net immigration to the United States by young workers and families. Since 1950, the United States has been in the midst of a profound demographic change: rapid population aging, a phenomenon that is replacing the earlier “young” age-sex structure with that of an older population.

Id.

22. *Id.* at 14, 16. Baby boomers will begin reaching the 65-year-old plateau in 2011. U.S. DEP’T OF TRANSP., SAFE MOBILITY FOR A MATURING SOCIETY: CHALLENGES AND OPPORTUNITIES 1 (2003) [hereinafter DOT].

23. SHRESTHA, *supra* note 15, at 14.

24. *Id.*

to about eighty-seven million people in 2050.²⁵ In addition to the factor of a large and aging baby-boom generation, increased life expectancy has contributed to a larger elderly population.²⁶ It is overwhelmingly clear that “older adults are the fastest-growing segment of the U.S. population.”²⁷

As a logical result of this continually expanding older population, the driving population is aging as well.²⁸ In 2006, thirty million people aged sixty-five and older were licensed to drive in the United States, representing an 18% increase from ten years earlier.²⁹ Over the same ten-year period, “the total number of licensed drivers increased by only 13[0%].”³⁰ As such, in 2006, the number of drivers aged sixty-five and older represented 15% of the total number of licensed drivers, up from 14% in 1996.³¹ Already, the effect of the “baby-boom generation” is beginning to manifest itself in the number of older licensed drivers.³²

25. GAO, *supra* note 18, at 9. The population of Americans aged 85 and older also will continue to increase dramatically.

In 2000, there were about 4.3 million Americans aged 85 and older, according to the Beverly Foundation, a nonprofit advocacy group for senior transportation and mobility. By 2030 that number is estimated to more than double to 9.6 million, and by 2050, estimates peg the 85-and-over population at nearly 21 million.

Derocher, *supra* note 12, at 13. Therefore, “Americans 85 and older comprise the fastest-growing segment of the population.” AARP, ENHANCING MOBILITY OPTIONS FOR OLDER AMERICANS: A FIVE YEAR NATIONAL ACTION AGENDA 2 (2005) [hereinafter AARP].

26. “Life expectancy has increased by 28 years since 1900. During the twentieth century, the number of people 65 years of age and older in the United States increased elevenfold as compared with only a threefold increase for younger people.” DOT, *supra* note 22, at 1.

27. GAO, *supra* note 18, at 8. A Government Accountability Office analysis provides a more specific breakdown of the U.S. Census Bureau data, revealing an even more dramatic change in the next twenty years. In 2010, the percentage of the population that will be aged sixty-five years and older is projected to be 13%; in 2020, it will be 16%; and in 2030, it will reach 20%. *Id.* at 9.

28. In addition to the factor of a generally older population, the driving population is increasing in age for other reasons. “[F]uture generations of older drivers are expected to drive more miles per year and at older ages compared with the current older-driver cohort.” GAO, *supra* note 18, at 8; *see also* INS. INST. FOR HIGHWAY SAFETY, FATALITY FACTS 2006: OLDER PEOPLE, http://www.iihs.org/research/fatality_facts_2006/olderpeople.html (last visited Feb. 22, 2009) [hereinafter IIHS, FATALITY FACTS]. “Proportionally, fewer older people are licensed to drive compared with those ages 20–69, and they drive fewer miles per licensed driver. However, increasingly mature drivers are keeping their licenses longer and driving more miles than ever before.” GOVERNORS HIGHWAY SAFETY ASSOC., MATURE DRIVERS, <http://www.ghsa.org/html/issues/olderdriver.html> (last visited Feb. 22, 2009) [hereinafter GHSA]. *Cf.* FAZZALARO, *supra* note 16, at 13 (“These trends [increasing older driving population] mirror overall population trends as older people are living longer and relatively healthier lives and, thus, frequently maintain their mobility later into their lives.”).

29. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 810 992, TRAFFIC SAFETY FACTS: 2007 DATA 1 [hereinafter NHTSA].

30. *Id.*

31. *Id.*

32. “By 2012,” observes mobility expert Sandra Rosenbloom, “almost every U.S. man and more than nine out of 10 U.S. women will enter their retirement years as drivers.” AARP, *supra* note 25, at 8 (quoting Sandra Rosenbloom, *Mobility of the Elderly: Good News and Bad News*, in TRANSPORTATION IN AN AGING SOCIETY: A DECADE OF EXPERIENCE 3, 5–6 (2004)). “About three out of every four people over the age of 70—an estimated 20 million out of 27 million people—are licensed drivers, according to the American Automobile Association Foundation for Traffic Safety. If that ratio stays approximately on track, the number of drivers over 70 will swell to more than 27

B. Statistics Representing the Relative Danger Posed by Elderly Drivers

While the numbers concerning the increasing age of both the general and driving population are clear, statistical analyses concerning fatal accidents involving older drivers offer mixed results. Opponents of applying stricter licensing standards solely to elderly drivers rather than to all drivers, reasoning that the elderly are unfairly singled out for such disparate treatment, can point to the statistics regarding the number of fatal accidents per licensed driver. The rate of fatal accidents per licensed driver for the age group of sixty-five and older is the lowest such rate when compared to the age groups of twenty-four and younger (which is not surprisingly the highest) and twenty-five to sixty-four.³³ Furthermore, that rate of fatal accidents per licensed driver for drivers aged sixty-five and older has actually decreased slightly from 1995 to 2005.³⁴

Upon deeper analysis, however, this data might not be sufficiently representative of the danger posed by elderly drivers. First, while a person may be over the age of sixty-five and possess a license, he or she may not actually drive³⁵—perhaps as a self-imposed revocation of driving privileges in response to a recognition of a decreased driving ability. This possibility can thus distort the statistic in terms of being representative of the actual number of licensed drivers on the street. Second, some older drivers avoid driving at riskier times, when there is a greater chance of being involved in an accident, such as at night or during rush hour.³⁶ Third, just as elderly drivers tend to avoid other risk factors, they are far less likely to be intoxicated, which consequently leads to fewer accidents but is entirely disassociated with the inherent ability to drive safely.³⁷ Finally, older drivers tend to drive significantly fewer miles than younger drivers, providing less of an opportunity to be involved in a fatal accident.³⁸

million by 2030 and more than 38 million by 2050, based on U.S. Census Bureau projections.” Derocher, *supra* note 12, at 14. Furthermore, “[t]wo-thirds of individual trips by people in the United States age 65 and older are as drivers of private vehicles. . . . Seven of 10 people age 80–84 have drivers licenses as do almost half of those age 85 or more.” FAZZALARO, *supra* note 16, at 13.

33. GAO, *supra* note 18, at 7. The data is current through 2005. *Id.*

34. *Id.*

35. *Id.* at 6.

36. *Id.*

37. NHTSA, *supra* note 29, at 2. The number of drivers aged sixty-five and older who were involved in fatal crashes and whose blood alcohol level (BAC) was at least .08 grams per deciliter represented only 6% of the total number of drivers aged 65 and older involved in fatal crashes. *Id.* This is by far the lowest proportion of any age group. See also IIHS, FATALITY FACTS, *supra* note 28, at 8 (citing the percentage of drivers aged sixty to sixty-nine whose BAC was at least .08 as 15% and the percentage for drivers at least seventy years old as 6%).

38. GAO, *supra* note 18, at 6. The fact that elderly drivers tend to drive less than their younger counterparts has been offered as support for the argument that elderly drivers are therefore less dangerous. See Mikel, *supra* note 17, at 360. However, the counterargument to this is that, just as

Therefore, when examining the possible danger posed by elderly drivers, the more appropriate measurement concerning the number of fatal accidents involving elderly drivers is the rate of fatal accidents per miles driven. This statistic is more representative of the relative risk involved when an elderly person gets behind the wheel because the risk factors for accidents not generally associated with elderly drivers, such as driving during rush hour or driving while intoxicated, are discounted. The rate of fatal accidents per miles driven for drivers aged sixty-five to seventy-four is higher than all of the younger age groups except drivers aged sixteen to twenty-four.³⁹ More alarmingly, the rate of fatal accidents per miles driven for drivers aged seventy-five and older is higher than any other age group, including drivers aged sixteen to twenty-four.⁴⁰ Such drastic fatality rates for elderly drivers may at least partially be attributed to their inability to drive safely compared with their younger counterparts.⁴¹ There is another important contributing factor that is frequently posited: “[E]lderly drivers are simply more fragile.”⁴² Thus, it seems clear that elderly drivers represent a very real, serious danger when they drive, not only to other drivers, but to themselves as well.

C. Aging’s Effect on the Ability to Drive Safely

Is it rational to assert that increased age can have an effect on the ability to drive safely? There are two factors to consider when answering this question: (1) What skills or tools are needed to drive safely? and (2) Does aging affect these skills? The United States Government Accountability Office, in its report to the United States Senate concerning the safety of elderly drivers, answers the first question: “Driving is a complex task that depends on visual, cognitive, and physical functions that enable a person to[:] see traffic and road conditions; recognize what is seen, process the information, and decide how to react; and physically act to control the vehicle.”⁴³ Vision does seem particularly integral to driving

practice makes perfect, less time spent on the road results in a greater feeling of unfamiliarity, hesitation, and tentativeness, and can therefore logically create a greater risk of having an accident.

39. GAO, *supra* note 18, at 6, 8.

40. *Id.*

41. *See supra* Part I.C.

42. A. James McKnight, *Too Old to Drive?*, ISSUES SCI. & TECH. 63 (2000–01). “Thus, when involved in an accident, they are more likely to be seriously hurt. . . . Elderly drivers take a significantly greater risk every time they get behind the wheel.” *Id.*; *see also* IIHS, FATALITY FACTS, *supra* note 28, at 1 (noting that the higher rate of fatal crashes per miles driven for elderly drivers is “largely due to their increased susceptibility to injury, particularly chest injuries, and medical complications”).

43. GAO, *supra* note 18, at 5. “The excess crash rate of mature drivers results from impairments in three functions that are important for driving: vision, cognition and motor function.” GHSA, *supra* note 28; *see also* A. JAMES MCKNIGHT, AMERICAN ASSOCIATION OF MOTOR VEHICLE

because most decisions while driving are based on sight—Is this the street I need to turn onto? How far away from that vehicle am I? What did that sign say? Are those police lights behind me?⁴⁴ Reaction time and motor ability also seem important, especially when considered in the context of a possible fatal accident.⁴⁵ Physical impairments, such as arthritis, may limit a driver's range of motion so that odd turns or merging into traffic may be more difficult.⁴⁶ Finally, perhaps the most important factor affecting safe

ADMINISTRATORS, AAMVA GUIDELINES FOR KNOWLEDGE AND SKILLS TESTING 24 (1999) [hereinafter MCKNIGHT, AAMVA] (“The specific driving skills addressed by the guidelines are those that are considered critical for the safety of both the driver and other road users. . . . The skills that are required in safe automobile operation are divided into the following three categories: *Perceptual*—the ability to perceive characteristics of the highway traffic environments in a way that permits safe vehicle operation, e.g. judging gaps, identifying hazards[;] *Attentional*—the ability to focus and shift attention, e.g. to monitor traffic ahead and to the side in a merge[;] *Motor*—[t]he ability to manipulate controls in order to maneuver the vehicle, e.g. ability to rotate the steering wheel in relation to the motion of the vehicle and intended path when turning a corner.”).

44. GAO, *supra* note 18, at 5. “For example, vision declines may reduce the ability to see other vehicles, traffic signals, signs, lane markings, and pedestrians. . . .” *Id.* See also FAZZALARO, *supra* note 16, at 14 (“Declining visual acuity can make reading road signs more difficult. . . . Contrast sensitivity decreases can make it more difficult to discern pedestrians or other objects in low light conditions or to see worn lane markings. . . . Glare sensitivity makes night driving and certain situations like entering and exiting tunnels more difficult.”); Rosenfield, *supra* note 12, at 455 (“[V]ision [is] the most predominant characteristic associated with driving. . . .”); GHSA, *supra* note 28 (“Vision is the primary sense utilized in driving.”). The AAMVA Guidelines for Skill Testing refer to the use of vision in its critical skills category of “perceptual skills.” MCKNIGHT, AAMVA, *supra* note 43, at 24.

Perceptual Skills

Spatial judgment—Judging the nature and magnitude of changes in speed and direction of other road users

Gap judgment—Judging the adequacy of gaps when merging, crossing, or entering traffic

Distance judgment—Judging the adequacy of distance of an oncoming vehicle when passing

Hazard detection—Detecting hazards in the characteristics and motion of other road users and in the roadway environment.

Id. at 25.

45. GAO, *supra* note 18, at 5. “[P]hysical declines may reduce the ability to perform movements required to control the vehicle.” *Id.*

46. FAZZALARO, *supra* note 16, at 14. “Motor abilities such as muscle strength, endurance, flexibility and proprioception (the subconscious awareness of weight, posture, movement, position in space in relationship to the body, based on sensory input from the joints and muscles) are necessary for operating vehicle controls and turning to view traffic.” GHSA, *supra* note 28.

Routine Motor Skills

Acceleration—Regulating pedal force to accelerate on level and inclined surfaces

Shifting—Coordinating clutch, accelerator, and shift lever if manual transmission is used

Maintaining speed—Regulating accelerator force in order to maintain a steady speed

Lane keeping—Coordinating speed and steering in order to keep the vehicle position within lane on straight and curved paths

Turning—Coordinating speed and steering when turning corners

Slowing—Regulating brake and accelerator to reduce speed

Stopping—Coordinating brake, accelerator (and clutch) to bring the vehicle to a stop at a given point

Backing—All of the above in moving the vehicle backward

driving, especially with respect to seniors, is mental clarity.⁴⁷ Even if a driver's vision and physical skills remain competent, a mental mistake can have significant consequences. For example, under intense pressure to react, a less-than-sharp mind might mistake the accelerator pedal for the brake pedal.⁴⁸

Admittedly, not everyone ages in the same manner; this is readily apparent.⁴⁹ Nevertheless, it is well-documented that aging can affect the mind and body in ways that impair the ability to drive.⁵⁰ Even critics of age-based legal restrictions admit that "some functional ability is clearly age-related."⁵¹ The most widely recognized functions affected by age include vision and cognitive ability, functions closely associated with driving safely.⁵² Symptoms of these impaired abilities manifest themselves

Adjusting to limited traction—All of the above when operating on slippery surfaces.

McKNIGHT, AAMVA, *supra* note 43, at 25.

47. GAO, *supra* note 18, at 5 ("[C]ognitive declines may reduce the ability to recognize traffic conditions, remember destinations, and make appropriate decisions in operating the vehicle. . . ."); *see also* FAZZALARO, *supra* note 16, at 14 ("Declines in working memory function can make it difficult to process information on signs that are located close together. . . . Processing speed can affect perception and reaction time and, in intersection turning situations, the ability to judge the gap before oncoming vehicles."); GHSA, *supra* note 28 ("Driving is a complex activity that requires a variety of high-level cognitive skills, including memory, visual processing, attention and executive skills."). Attentional skills are described by the AAMVA: "Attentional Skills[:] *Attention-sharing*—Controlling and maneuvering a vehicle while attending to traffic controls and other road users (search, signaling, and space management)[:] *Attention shifting*—Shifting attention as needed (ahead, to the side, and to mirrors)." McKNIGHT, AAMVA, *supra* note 43, at 25.

48. Tripodis, *supra* note 12, at 1052.

49. *See, e.g.*, LISA J. MOLNAR ET AL., UNIV. OF MICH. TRANSP. RESEARCH INST., PROMISING APPROACHES FOR ENHANCING ELDERLY MOBILITY 7 (2003), <http://deepblue.lib.umich.edu/bitstream/2027.42/15364/97337.pdf> ("[N]ot all drivers experience these declines in the same way, or even experience them at all . . .").

50. GAO, *supra* note 18, at 5. "Although the aging process affects people at different rates and in different ways, functional declines associated with aging can affect driving ability." *Id.*; *cf.* FAZZALARO, *supra* note 16, at 13 ("The aging process in all people affects physical, sensory, and cognitive skills."); DOT, *supra* note 22, at 2 ("With passing age, older persons often find driving more difficult as a result of vision problems, cognitive limitations, side effects of medications, slower reaction times, muscular difficulties, diseases, and other conditions.").

51. Barbara Abel, *Who's Too Old to Drive?* (Oct. 28, 2003) (on file with author and Washington University Law Review) (internal quotations omitted) ("Cheryl Matheis, AARP's director of state affairs, has said: ' . . . It's undeniable that people's abilities decline with age.'"). "[T]he process of aging often involves a deterioration of physical and functional skills that can make driving much more difficult." AARP, *supra* note 25, at 7. "The aging process does affect specific functions related to driving skills, such as vision, hearing, and cognitive and motor abilities, resulting in an increased risk of accident involvement." *Id.* at 8; *see also* Mikel, *supra* note 17, at 379 ("Many seniors have chronic conditions and other physical or mental incapacities that are not tested or regulated by state licensing agencies, including declined attention span, memory, and reaction times.").

52. Abel, *supra* note 51.

Those functions can include reduced vision, caused by diseases such as cataracts, [and] macular degeneration (the leading cause of blindness in older people) Other limiting conditions that increase with age are hearing loss, decline of cognitive ability (such as dementia), physical impairments like arthritis and the risk of sudden cardiac death.

Id.; *see also* McKNIGHT, *supra* note 42, at 67 ("Research has indicated that a host of abilities, including vision, attention span, memory, and reaction times, decline with age.").

in the most common errors that elderly drivers tend to make: “fail[ing] to yield the right of way, making too-wide left turns and colliding with cars when backing up.”⁵³

A primary vision impairment and one notably afflicting the elderly driver responsible for Anna Badaracco’s death,⁵⁴ Age-Related Macular Degeneration (AMD) is described by the National Eye Institute as “a disease associated with aging that gradually destroys sharp, central vision. Central vision is needed for seeing objects clearly and for common daily tasks such as reading and driving.”⁵⁵ Furthermore, “[t]he greatest risk factor is age. Although AMD may occur during middle age, studies show that people over age sixty are clearly at greater risk than other age groups.”⁵⁶ Additional visual disorders that generally afflict the elderly include glaucoma, a symptom of which is “reduced peripheral vision,” and cataracts, which result in “blurry or double vision” and “difficulty seeing at night.”⁵⁷

In addition to the effect aging has on one’s vision, it is also the “most significant risk factor for developing dementia.”⁵⁸ Almost fifty percent of all people aged eighty-five and older are likely to develop dementia.⁵⁹ Like

53. Abel, *supra* note 51, at 2. “Research from the Insurance Institute for Highway Safety suggests that left turns onto divided highways present special challenges to older drivers, who may have limited vision, impaired depth perception and other physical limitations.” Melissa A. Savage et al., *Traffic Safety and Public Health: State Legislative Action 2007*, National Conference of State Legislatures, Transportation Series No. 32, Dec. 2007, at 15 (2007).

54. Scarpati, *supra* note 1.

55. National Eye Institute, Age-Related Macular Degeneration, http://www.nei.nih.gov/health/macularden/gen/armd_facts.asp (last visited Jan. 2, 2010).

56. *Id.*

57. Erica B. Stern, *Common Medical Diagnoses That Affect Older Drivers*, 18:2 EXPERIENCE 17, 18 (2008). In the context of driving, these visual disorders can cause a failure to see pedestrians at crosswalks, cross traffic at intersections, merging traffic, and surrounding car signals. *Id.*

Adequate visual acuity and field of vision are important for safe driving, but tend to decline with age as a result of physiologic changes and an increase in diseases such as cataracts, glaucoma, macular degeneration and stroke. Glare, impaired contrast sensitivity, and an increase in time to adjust to changes in lightness and darkness are other problems commonly experienced by mature drivers. According to the AAA Foundation for Traffic Safety, a person’s eyesight deteriorates to such an extent that ten times the amount of light is necessary to see objects at age 60 as that needed at age 16.

GHSA, *supra* note 28.

58. GAO, *supra* note 18, at 5; see also National Institute on Aging, Alzheimer’s Information, <http://www.nia.nih.gov/Alzheimers/AlzheimersInformation/GeneralInfo/> [hereinafter NIA] (last visited Feb. 22, 2009) (“[T]he risk of [Alzheimer’s disease] increases with age. . . . and the number of people with AD doubles for every 5-year interval beyond age 65.”).

59. GAO, *supra* note 18, at 5.

A study released in fall 2007 by the National Institute of Health estimates that one in seven people age 71 and older suffer from some form of dementia, with Alzheimer’s disease (2.4 million of 3.4 million dementia cases) being the most prevalent form. The study further estimated that the rate of Alzheimer’s jumps from 2 to 18 percent between ages 71–79 and ages 80–89.

Derocher, *supra* note 12, at 14.

age-related vision problems, dementia can have a strong effect on driving. Because dementia can cause disorientation, afflicted drivers are two to eight times more likely to be involved in a crash than those who are not similarly afflicted.⁶⁰

Yet another impact that age can have on the ability to drive comes from an indirect source, the side effects of medication. Individuals aged sixty-five and older typically take some form of medication, which may have an adverse side effect on the skills associated with driving.⁶¹

In addition, other age-related conditions like strokes, transient ischemic attacks (TIA), congestive heart failure, high or low blood pressure, diabetes, Parkinson's disease, and arthritis can all create potential driving problems.⁶² All of these age-related factors impair the ability to drive and can result in severe accidents, but the states have failed thus far to adequately address these impairments with effective licensing procedures tailored to test all of these individual functions.

II. STATES' STATUTORY RESPONSES TO THE PROBLEM POSED BY ELDERLY DRIVERS

While the states' responses to the problem posed in the form of an increase in elderly drivers has been inconsistent, incomplete, and mostly ineffective, it has not been altogether lacking. In fact, a majority of the states "have more stringent licensing requirements" for elderly drivers than for other drivers.⁶³ The most common procedural requirement imposed on elderly drivers is a shorter period between renewals.⁶⁴ Sixteen

60. GAO, *supra* note 18, at 5. Symptoms of dementia, Alzheimer's disease and other diseases affecting mental processes include: "[r]educed memory, slowed decision making, poor accuracy of judgment[,] [d]ifficulty . . . understanding written . . . language[, and] [s]lowed reaction time." Stern, *supra* note 57, at 19. In the context of driving, these symptoms can cause:

- [P]oor accelerator control . . .
- Increased likelihood of getting lost . . .
- Decreased ability to handle unexpected changes (detours; changes for road work . . .)
- Inappropriate application of a rule (stop at green light; wait for stop sign to "change color")
-
- Slow decision making—sit at green light and go on red
- Tak[ing] only 1 step in a 2 step action (collision because person removed foot from accelerator but failed to brake or move to shoulder . . .)

Id.

61. See John C. Bodnar, Note, *Are Older Americans Dangerously Driving into the Sunset?*, 72 WASH. U. L.Q. 1709, 1717 (1994). "Certain medical conditions (such as dementia) and medications that are common in the older population have a large impact on cognition." GHSA, *supra* note 28.

62. Stern, *supra* note 57, at 18–19; GHSA, *supra* note 28 ("Changes related to age and musculoskeletal diseases (such as arthritis) can decrease an individual's ability to drive safely and comfortably.").

63. GAO, *supra* note 18, at 28.

64. *Id.*

states have accelerated renewal procedures for drivers older than a certain age.⁶⁵ Generally, the typical period between renewal is four or five years, which is implemented both by states that have shorter renewal periods for elderly drivers and by those that do not.⁶⁶ For example, Colorado normally allows a ten-year period before renewal is required, but it shortens that period to five years for drivers aged sixty-one and older.⁶⁷ Massachusetts, on the other hand, does not accelerate the renewal period for people over a certain age, but the generally applicable renewal period is only five years.⁶⁸ Only Florida, Oregon, Virginia, New York, and Wisconsin allow longer periods than five years for elderly drivers.⁶⁹ Hawaii, Illinois, Indiana, Iowa, Missouri, Rhode Island, and Texas accelerate renewal more than the average four- or five-year period.⁷⁰ Despite the mild consensus of states authorizing shorter periods between the renewal of a driver's license for elderly drivers, the effectiveness of such a measure in screening out unsafe drivers has not been sufficiently proven.⁷¹ This might, in part, be due to the fact that renewal procedures generally involve only a review of the driver's record for suspensions or revocations, the payment of renewal fees, and a vision test, though some states have imposed additional conditions.⁷² Thus, accelerated renewal by itself does not appear to be an effective solution to the elderly driving problem, though combination with other testing or procedures may prove to be quite effective.

The second-most common procedural requirement in licensing elderly drivers is a mandatory vision test.⁷³ Nine states and the District of Columbia have such a requirement: Colorado, Florida, Georgia, Maine,

65. *Id.* “[In 2007,] New Hampshire introduced a bill that would require those age 70 year [sic] and older to renew and to undergo reexamination for their driver's license every two years; those age 76 and older would need to retake the driver's examination and renew their license annually.” Savage, *supra* note 53, at 15. However, this bill did not pass, though it was “reserved for 2008 carryover.” *Id.*

66. INS. INST. FOR HIGHWAY SAFETY, LICENSING RENEWAL PROVISIONS FOR OLDER DRIVERS (2009), <http://www.iihs.org/laws/OlderDrivers.aspx> [hereinafter IIHS, LICENSING RENEWAL]. In fact, thirty-seven states have renewal periods of either four or five years. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* Oregon, Virginia, New York, and Wisconsin have no accelerated renewal period and regularly allow an eight-year period before renewal is required. *Id.*

70. *Id.* Hawaii requires renewal every two years for drivers aged seventy-two and older; Indiana requires renewal every three years for drivers aged seventy-five and older; Iowa requires renewal every two years for drivers aged seventy and older; Missouri requires renewal every three years for drivers aged seventy and older and twenty-one and younger; Rhode Island requires renewal every two years for drivers aged seventy-five and older; Texas requires renewal every two years for drivers aged eighty-five and older. *Id.* Texas' decision in 2007 to require a shorter renewal period for drivers aged eighty-five and older was part of a legislative response to a tragic accident involving a seventeen-year-old girl's death. See *supra* note 12. The renewal period of two years for drivers aged eighty-five and older differs from the six-year period for other adult drivers. Savage, *supra* note 53, at 15.

71. GAO, *supra* note 18, at 31–32.

72. IIHS, LICENSING RENEWAL, *supra* note 66.

73. GAO, *supra* note 18, at 28.

Maryland, Oregon, South Carolina, Utah, and Virginia.⁷⁴ Interestingly, with the exceptions of New York and Wisconsin, the states that employ longer-than-average periods between renewal seem to have compensated with mandatory vision screenings. The average age triggering the requirement of a vision test in these states is sixty-two, but Maine and Maryland both begin vision testing at the age of forty, whereas both Florida and Virginia require the test only for those aged eighty and older.⁷⁵ The substance of this mandatory vision test typically measures visual acuity or sharpness, testing how clearly a person can see from a distance.⁷⁶ However, while visual acuity is clearly a skill applicable to driving and thus an important part of driver screening and assessment, other aspects of eyesight that are relevant to driving and which may be affected by age (such as peripheral vision, contrast sensitivity, and glare sensitivity) are not tested.⁷⁷

Other procedural requirements currently imposed by some states when licensing elderly drivers include in-person renewals and mandatory road tests. Only five states—Alaska, Arizona, California, Colorado, and Louisiana—require elderly drivers to renew their licenses in person while allowing others to renew by mail.⁷⁸ Colorado requires drivers aged sixty-six and older to renew in person; Alaska starts its requirement at age sixty-nine; and Arizona, California, and Louisiana require drivers aged seventy and older to renew in person.⁷⁹ Research suggests that requiring an elderly driver to appear in person before a state licensing employee in order to renew his or her driver's license is one procedural requirement which appears to be effective in preventing accidents, judging by the lower accident rates of those concerned.⁸⁰ In particular, in-person renewals have

74. IIHS, LICENSING RENEWAL, *supra* note 66.

[In response to the Weller accident,] [t]he state [California] subsequently developed a pilot program that introduced more stringent vision tests at license renewals, rather than just reading a simple eye chart. People who fail any part of that test were required to take a test that examines response times, with those failing that test required to take a road test.

Derocher, *supra* note 12, at 15; *see also supra* note 12.

75. GAO, *supra* note 18, at 29.

The horrific accident [involving a ninety-three-year-old driver who drove for three miles after contact with a victim lodged in his windshield] renewed debate in Florida about road testing of older drivers and similar initiatives to assess driving skills. In 2004, Florida began requiring vision exams for drivers 80 and older, which took an estimated 7 to 20 percent of such drivers off the road.

Derocher, *supra* note 12, at 15; *see also supra* note 12.

76. GAO, *supra* note 18, at 29 & n.18.

77. *See supra* note 44.

78. GAO, *supra* note 18, at 29.

79. IIHS, LICENSING RENEWAL, *supra* note 66. Elderly Colorado drivers can “renew by mail if a licensed physician or optometrist certifies that they passed a vision exam given within the prior six months.” *Id.*

80. GAO, *supra* note 18, at 31.

proven to be effective in preventing accidents among drivers aged eighty-five and older.⁸¹ Finally, only two states—Illinois and New Hampshire—require mandatory road tests at all renewals for drivers aged seventy-five and older.⁸² At this point, there is “insufficient evidence” for determining whether such mandatory road tests have been effective in their goal of preventing accidents involving elderly drivers.⁸³

In addition to procedures imposed upon elderly drivers by the states for the renewal of a driver’s license, some states do rely on other assessment practices that may lead to a more searching review of a driver’s fitness for a license. First, thirty-five states and the District of Columbia employ medical advisory boards, which are composed of medical practitioners, to review evidence of the individual’s medical and driving history in order to assess the driver’s fitness.⁸⁴ In addition, all states accept reports from both physicians and any other third parties (such as police officers) that call into question a person’s ability to drive.⁸⁵ Furthermore, a handful of states require a physician to report certain relevant medical diagnoses, but the absence of an assurance of confidentiality may have the effect of chilling such reports.⁸⁶ However, despite such varied attempts to improve the assessment of an individual’s fitness to drive, a glaring error is apparent. No state has the assessment tools in place to test cognitive and physical functions as a precondition to renew a driver’s license.⁸⁷ As previously noted, these are highly relevant skills associated with driving, which can be severely impaired as a result of age.⁸⁸

Illinois provides a prime example of a more stringent state licensing procedure for elderly drivers. First, as previously noted, it is one of only two states (the other being New Hampshire) that requires, upon each renewal, a road test for drivers aged seventy-five and older.⁸⁹ This is an especially important requirement considering the otherwise complete absence of assessment procedures that test physical and cognitive functions in relation to driving.⁹⁰ While there may be no evidence at this point in time that such mandatory road testing is effective in achieving its goal of preventing fatal accidents with elderly drivers,⁹¹ it does seem

81. *Id.*

82. *Id.* at 29.

83. *Id.* at 32.

84. GAO, *supra* note 18, at 30.

85. *Id.*

86. *Id.* California requires physicians to report a diagnosis of dementia. Delaware, New Jersey, and Nevada require physicians to report diagnoses of epilepsy and other cases involving a loss of consciousness. *Id.*

87. *Id.* at 31.

88. *See supra* notes 44, 46, 47.

89. GAO, *supra* note 18, at 29; 625 ILL. COMP. STAT. 5/6-109(b) (West 2008).

90. *See supra* note 87 and accompanying text.

91. *See supra* note 83 and accompanying text.

logical to assume that direct personal evaluation of an elderly driver's performance on the road would provide at least some effective screening of an elderly driver's actual functional capability of driving safely.⁹² Furthermore, Illinois has one of the most aggressive accelerated renewal policies (along with Hawaii, Iowa, Rhode Island, and Texas) requiring renewal every two years for drivers aged eighty-one to eighty-six, and then every year for drivers aged eighty-seven and older.⁹³ This accelerated renewal program is thus seemingly much more effective than any other state system in assessing elderly drivers' capability because it is combined with the procedural requirement of a road test. Finally, Illinois is the only state that combines accelerated renewal with road tests.⁹⁴

Florida provides an example of a more lenient state licensing procedure for elderly drivers. The Florida statute concerning driver's license procedures was recently amended, effective October 1, 2008, to increase the general period between renewal from four to eight years, as applicable to all drivers under the age of eighty.⁹⁵ This amendment provision was enacted in conjunction with an amendment provision establishing an accelerated renewal period of six years for drivers aged eighty and above.⁹⁶ So, on the face of this statutory amendment, it would appear that Florida established a more stringent standard for elderly drivers. However, because the previous renewal period was four years, which was applicable to all but those drivers with a clean record for the previous three years,⁹⁷ the practical effect was to lengthen the renewal period for all elderly

92. See *infra* notes 145–49 and accompanying text.

93. 625 ILL. COMP. STAT. 5/6-115(g) (West 2008); IIHS, LICENSING RENEWAL, *supra* note 66. Hawaii, Iowa, and Rhode Island all begin their accelerated renewals at an earlier age than Illinois. Iowa requires accelerated renewal for drivers aged seventy and older; Hawaii requires accelerated renewal for drivers aged seventy-two and older; and Rhode Island requires accelerated renewal for drivers aged seventy-five and older. IIHS, LICENSING RENEWAL, *supra* note 66. Illinois is the only state that has an accelerated renewal period of one year. *Id.*

94. IIHS, Licensing Renewal, *supra* note 66. New Hampshire, though requiring a road test for all renewal applicants aged seventy-five and older like Illinois, has no accelerated renewal program. *Id.* Elderly drivers, therefore, are only required to take a road test every five years upon renewal.

95. FLA. STAT. ANN. § 322.18(2)(b) (West Supp. 2009): “An applicant who has not attained 80 years of age applying for a renewal issuance shall be issued a driver's license that expires at midnight on the licensee's birthday that next occurs 8 years after the month of expiration of the license being renewed.” The renewal period formerly was four years. See *infra* note 97.

96. *Id.* (“An applicant who is at least 80 years of age applying for a renewal issuance shall be issued a driver's license that expires at midnight on the licensee's birthday that next occurs 6 years after the month of expiration of the license being renewed.”).

97. FLA. STAT. ANN. § 322.18(2)(b) (West 2005) (effective July 1, 2005 to Sept. 30, 2008):

An applicant applying for a renewal issuance or renewal extension shall be issued a driver's license or renewal extension sticker which expires at midnight on the licensee's birthday which next occurs 4 years after the month of expiration of the license being renewed, except that a driver whose driving record reflects no convictions for the preceding 3 years shall be issued a driver's license or renewal extension sticker which expires at midnight on the licensee's birthday which next occurs 6 years after the month of expiration of the license being renewed.

drivers from four to six years. The new accelerated renewal period for drivers aged eighty years and above is also less demanding compared to the majority of other states' accelerated renewal programs in two ways: (1) the threshold age requirement is older than the parallel requirement in any other state except Texas, which imposes a much shorter two-year renewal period for drivers aged 85 and older, and Illinois, which also imposes a two-year renewal period for drivers aged eighty-one to eighty-six, and only one year for drivers aged eighty-seven and older; and (2) the six-year renewal period is longer than the renewal periods of all but four states.⁹⁸ In short, Florida's accelerated renewal program appears to be a weak compromise between reformers and a substantial elderly electorate. Finally, Florida does have a mandatory vision test as a condition for renewal, but like its accelerated renewal program, its protection is limited when compared to other similar state standards.⁹⁹ First, it applies only to drivers aged eighty and older, a higher threshold age requirement than the thresholds of all similar state standards except for Virginia.¹⁰⁰ Second, the statute allows the driver to send vision test results through the mail rather than requiring an in-person vision test.¹⁰¹

III. PROBABLE OBSTACLES TO LICENSING REQUIREMENTS FOR ELDERLY DRIVERS

The typical response in opposition to more stringent licensing requirements for elderly drivers is a call of unfair discrimination.¹⁰² Framed another way, opponents of stricter licensing policies for elderly drivers may wish to argue that they are a form of age discrimination and a violation of the Fourteenth Amendment's Equal Protection Clause.¹⁰³ However, this challenge is not likely to succeed, especially when made in response to accelerated renewal periods and skills-testing which are rationally related to the objective of protecting the public from unsafe

98. IIHS, LICENSING RENEWAL, *supra* note 66.

99. FLA. STAT. ANN. § 322.18(5)(a) (West Supp. 2009):

A licensee who is otherwise eligible for renewal and who is at least 80 years of age:

1. Must submit to and pass a vision test administered at any driver's license office; or
2. If the licensee applies for a renewal using a convenience service as provided in subsection (8), he or she must submit to a vision test administered by a physician . . . or an optometrist . . . , must send the results of that test to the department on a form obtained from the department and signed by such health care practitioner, and must meet vision standards that are equivalent to the standards for passing the departmental vision test.

100. IIHS, LICENSING RENEWAL, *supra* note 66.

101. *See supra* note 99.

102. *See* Morris, *supra* note 13. "[C]ritics attack [restrictions on elderly drivers seeking to renew their licenses] as discriminatory." *Id.* "[Senior citizen] groups consider the Hayden bill an example of age discrimination." *Id.*

103. *See* Bodnar, *supra* note 61, at 1731–32.

drivers. In *Massachusetts Board of Retirement v. Murgia*,¹⁰⁴ the Supreme Court held that age-based classifications—unlike the suspect classifications of race, alienage, or ancestry—are not subject to strict scrutiny but rather are subject to the rational basis standard, meaning the state action must be rationally related to furthering a legitimate state interest if it is to pass an equal protection challenge.¹⁰⁵ A state's police power gives a state the authority to create and enforce laws which are meant to protect the people's health, safety, and welfare.¹⁰⁶ Thus, a state's policy in reducing the number of unsafe drivers on the road is well within the police power and is therefore a legitimate state interest.¹⁰⁷ As long as the licensing policies are rationally related to that end, it is not likely that the state action will be considered in violation of the Equal Protection Clause.¹⁰⁸

Despite the seemingly futile discrimination challenge, the sentiment of protecting the elderly from discrimination is nevertheless highly relevant to the discussion of adopting more stringent licensing procedures for elderly drivers. Though claiming discrimination may not be a successful legal argument, it is a widely held, fervent basis of opposition to stricter testing standards for the elderly. Cheryl Matheis, the American Association of Retired Person's (AARP) director of state affairs, explained AARP's position opposing licensing standards tailored to the elderly: "Age-based road testing is not a good solution. It's undeniable that people's abilities decline with age, but they decline differently at different ages."¹⁰⁹ Beverly Moore, a representative of Illinois' AARP, has also said,

104. 427 U.S. 307 (1976).

105. *Id.* at 313–14. The Court noted that an age classification does not invoke a more searching judicial inquiry because, among other things, everyone ages and that, therefore, the elderly are not a group in need of protection from the political process. *Id.*

106. *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); *see also Prince v. Massachusetts*, 321 U.S. 158, 168–69 (1944).

107. *Tripodis*, *supra* note 12, at 1078. "In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways." *Hess v. Pawloski*, 274 U.S. 352, 356 (1927). The Court upheld the Massachusetts statute in *Murgia* which sought to protect the public. 427 U.S. at 314.

108. *Rosenfield*, *supra* note 12, at 469–70. *Murgia* upheld a mandatory retirement statute that applied to police officers who had reached the age of fifty because "physical ability generally declines with age," and the statute was therefore "clearly . . . rationally related to the State's objective." 427 U.S. at 315. However, the Due Process Clause of the Fourteenth Amendment presents more of a challenge. Even though driving is not considered a fundamental right, a driver's license has been deemed by the Supreme Court to be a constitutionally protected entitlement. *Bell v. Burson*, 402 U.S. 535, 539 (1971). Therefore, certain procedural safeguards are required if and when a person is deprived of that property. *Id.* However, re-examination policies do not violate due process requirements, according to a New Jersey appellate court. *Kantor v. Parsekian*, 179 A.2d 21, 23 (N.J. Super. Ct. App. Div. 1962). Because the Supreme Court has not weighed in on this issue, it remains unclear what process is due in terms of licensing policies, but it seems unlikely that due process would be violated as long as there is notice and an opportunity for some kind of hearing.

109. *Abel*, *supra* note 51.

“[t]he issue is not age; it has to do with the person’s physical and mental limitations, and that goes beyond age.”¹¹⁰ In essence, these statements are consistent with AARP’s main argument: discrimination.¹¹¹ Why single out the elderly for more stringent testing solely because they are old?

In addition to the discrimination argument, however, there is a more personal, deep-seated basis for opposition to more stringent licensing requirements. As one commentator notes, despite the steady adherence to a public condemnation of discrimination, “[t]here is general acceptance of the need to require older drivers, at some point, to demonstrate that they really can drive safely, although acceptance by many of the older drivers themselves is more in principle than in personal practice.”¹¹² This personal hesitation is a result of the long-held and highly valued immersion in independence.¹¹³ “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.”¹¹⁴ To overcome this intense, personal connection with the automobile, an adequate alternative mode of transportation must offer at least a semblance of this independence.

This commonly held desire by the elderly and their representatives can result in a strong political voice. As previously noted, the fastest growing segment of the population is the elderly bloc.¹¹⁵ Thus, the sheer number of voices represents a formidable obstacle to any controversial reformation affecting the elderly.¹¹⁶ In addition to the size of their political clout, the elderly have been consistently strong in voter turnout.¹¹⁷ Consequently, the elderly electorate is a significant political force which must be recognized,

110. Kreiser, *supra* note 13.

111. *See infra* note 125 and accompanying text.

112. McKnight, *supra* note 42, at 65–66.

113.

Many people remember the feeling of freedom that came after they first got their driver’s license—the rich array of destinations and activities that came into reach. Losing the ability to drive reverses that expansion of possibilities. The loss is intensified by years of habit and entrenched by location and activity decisions that were based on the ability to travel independently.

DOT, *supra* note 22, at 5. While this hesitation is understandable, its inevitable consequence exemplifies the very need to screen and assess elderly drivers.

Many older people who are considered unfit to drive refuse to quit in spite of efforts by their children or health providers to keep them from driving. The tenacity with which some older people cling to the wheel is evidence of the value they place on their mobility and independence.

Id.

114. 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) (internal quotations omitted).

115. *See supra* note 27 and accompanying text.

116. *See Rosenfield, supra* note 12, at 473.

117. *Id.*

and their concerns must be addressed if there is any hope of achieving a successful reformation of elderly driver licensing standards.

The power of organizations that lobby on behalf of the elderly is notably potent.¹¹⁸ Certainly the largest and most powerful group representing the interests of the elderly is the AARP.¹¹⁹ It has forty million members aged fifty and over.¹²⁰ “As the nation’s second largest organization, with an estimated ten billion dollars in annual cash flow and membership comprising nearly twenty-five percent of all registered voters, the AARP wields substantial political influence in every state.”¹²¹ AARP has made it clear that one of its prominent priorities is to protect seniors’ access to and enjoyment of individual mobility.¹²² There are numerous examples of AARP’s long-armed influence overcoming potential reform legislation. In Florida, in the early 1990s, proposed legislation that contained requirements for drivers aged eighty years and older to take vision, hearing, and road tests every two years was defeated.¹²³ More than a decade later and across the nation in California, a similar proposal to mandate driving tests for the elderly was struck down.¹²⁴ In both cases, the AARP was cited as successfully opposing the proposed legislation by attacking it as “discriminatory.”¹²⁵ It is not difficult to understand why legislators may become hesitant to act when it comes to taking on such a powerful, consistently successful voice like the AARP and its millions of elderly, politically aware members.¹²⁶ But perhaps meeting the war-cry of discrimination head on, as well as looking deeper into the motivations of the elderly position, can achieve the reform that is needed to help ensure

118. See Bodnar, *supra* note 61, at 1738–39. “This hesitancy [by state legislatures to reform licensing laws] is largely attributable to opposition from senior citizen lobbying groups.” *Id.* at 1738.

119. *Id.* at 1739. “Foremost among the senior citizen lobbying groups is the American Association of Retired Persons (AARP) . . . the nation’s second largest organization. . . .” *Id.*; see also Rosenfield, *supra* note 12, at 473–74 (“The American Association of Retired Persons (AARP) . . . is the leading lobbyist group among the elderly.”). “AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole.” AARP, *supra* note 25, at 1.

120. AARP, About AARP, http://www.aarp.org/aarp/About_AARP/ (last visited Jan. 2, 2010).

121. Bodnar, *supra* note 61, at 1739.

122. “As one of the ten goals in our Social Impact Agenda, AARP has made a commitment to ensuring that Americans 50+ are able to sustain mobility as they age.” AARP, *supra* note 25, at 3. “In June 2004, AARP hosted a two-day Mobility Forum involving over 40 experts, policymakers, and practitioners in the fields of aging and transportation.” *Id.*

123. Bodnar, *supra* note 61, at 1739.

124. Rosenfield, *supra* note 12, at 474.

125. *Id.*; Bodnar, *supra* note 61, at 1739.

126. See Bodnar, *supra* note 61, at 1739 (“Accordingly, many legislators refuse to vote in favor of bills opposed by the AARP because they fear the possible political repercussions.”); see also Rosenfield, *supra* note 12, at 474 (“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.”).

public safety as well as provide safe elderly drivers the continued privilege of individual mobility.

IV. PROPOSALS AND SOLUTIONS

A. Meeting the Concerns of the Elderly

Addressing the concerns of the elderly must be the primary focus of elderly driving licensing reform because, as demonstrated, proposed legislation has little hope of making a dent in the powerful opposition presented by the political lobbying power wielded by senior citizens. For this reason, the elderly's main complaint, discrimination, must first be addressed. A key strategy has been identified that, if developed and implemented, could help address the AARP's concerns.

1. Driver Screening and Assessment

The most important step in achieving elderly licensing reform is to create and implement an effective driver assessment program for driver's license renewals.¹²⁷ With a more comprehensive, efficient and effective assessment program of potential drivers, the AARP's concerns about discrimination can at the very least be mitigated because age would not be the sole factor considered before harsher standards are imposed. A more effective screening program would also further the primary objective of preventing high-risk drivers from roaming the streets. Current state driver assessment systems are simply inadequate in providing for the public safety.¹²⁸ The biggest challenges in reforming the assessment programs are determining what specific skills need to be tested and then determining how to test these skills in both an effective and efficient manner.¹²⁹ The National Highway Traffic Safety Administration (NHTSA) initiated the Model Driver Screening and Evaluation Program in 1996 with this objective in mind: to examine "innovative policies and practices to reduce

127. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., OLDER DRIVER TRAFFIC SAFETY PLAN 3 (2005), <http://www.nhtsa.dot.gov/people/injury/olddrive/OlderDriverPlan/images/OlderDriverSafetyPlan.pdf>. "The most important work on older driver safety that needs to occur in the next five years is on refining screening and assessment tools and getting them into the hands of the users who need them." *Id.*

128. "Traditional tests currently used in driver reexaminations have not been found to be predictive of crash involvement. . . . [T]hose who are most likely to observe the characteristics indicative of unsafe driving are often reluctant to report the need to reexamine." DOT, *supra* note 22, at 15.

129. "Research needs to be conducted to better identify the characteristics that cause older drivers to be at increased risk of crashing." *Id.* at 14. "Unfortunately, to test everyone on all the functional disabilities that could affect safe driving is impractical, particularly in a driver licensing setting because of costs and personnel considerations." *Id.* at 15.

the incidence of ‘driving while *functionally* impaired’ while extending the benefits of safe mobility to our oldest citizens.”¹³⁰ The research project evaluated a variety of screenings intended to test visual, physical, and cognitive functions; all meant to be applicable in a licensing agency setting, and which would “effectively identify drivers at an increased risk of being involved in a crash.”¹³¹ While this research is ongoing, it is a vital step to improve the present licensing system for all involved.

2. *Alternative Transportation that Provides Similar Freedom*

Part of the difficulty of identifying a solution to the problem of unsafe elderly drivers is that there might not be a solution that achieves the same totality of freedom one’s own car can provide.¹³² However, a reasonable alternative source of transportation would certainly help the pill go down more smoothly.¹³³ Because “[t]oday, public transportation is structured primarily to accommodate suburban commuters, and foot travel is often precluded by the distances involved and the absence of pedestrian facilities along many streets,” those whose licenses are taken from them may face an absolute dearth of transportation possibilities.¹³⁴ Thus, readily available, reasonable, efficient, alternative transportation options must be established so that the elderly who are no longer able to drive are not and do not feel completely cut off from the world in which they live.

3. *Communicating the Benefit of Stricter Standards to the Elderly*

Finally, through public discussions, the elderly must be confronted with the fact that more stringent licensing requirements for elderly drivers are not intended solely for the benefit of others, but rather are likewise beneficial to the elderly themselves.¹³⁵ The reason for this is the well-documented fragility and vulnerability of the older generation. Recall that the rate of fatal accidents per miles driven for elderly drivers aged seventy-

130. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 809 582, MODEL DRIVER SCREENING AND EVALUATION PROGRAM: FINAL TECHNICAL REPORT 1 (2003).

131. GAO, *supra* note 18, at 32–33.

132. “Granted, none of these options are as liberating as just hopping in the car and going wherever your heart desires.” WICKED LOCAL, *supra* note 1.

133. “The U.S. population is aging, and transportation is critical to helping individuals stay independent as they age.” U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-04-971, TRANSPORTATION-DISADVANTAGED SENIORS: EFFORTS TO ENHANCE SENIOR MOBILITY COULD BENEFIT FROM ADDITIONAL GUIDANCE AND INFORMATION 1 (2004).

134. McKnight, *supra* note 42, at 68.

135. “Some older drivers, . . . particularly those with cognitive deficits and other diminished functional abilities, may not recognize their condition and may not properly reduce or cease driving.” DOT, *supra* note 22, at 14.

five and older represented the highest fatality rate among any age group.¹³⁶ “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.”¹³⁷ Thus, the higher risk of severe injury, even death, resulting from what might otherwise be a mild accident should be considered by those older drivers looking to hold onto their keys for just one more ride around the block. The safety of everyone, including the elderly, is at issue when discussing the possibility of stricter licensing standards.

B. Stricter Licensing Procedures

Aside from those particular aspects of licensing procedures that must be implemented in order to address the major concerns of elderly citizens, the states have employed some procedural requirements aimed at elderly drivers which should be retained or expanded.

1. Accelerated Renewal Periods

Accelerated renewal periods are a vital licensing procedure that help to achieve the objective of eliminating unsafe drivers.¹³⁸ Eighteen states have some type of shorter renewal periods for older drivers.¹³⁹ New York, Oregon, Virginia, and Wisconsin all allow for renewal after eight-year periods and do not shorten that period for older drivers.¹⁴⁰ Due to the rapid change in health that can occur particularly in senior citizens, this is simply too long of a period to go without some type of a validating, qualifying procedure. The majority of renewal periods are either four or five years.¹⁴¹ This period should be reduced to two years, consistent with Illinois’ initial renewal period applying to elderly drivers.¹⁴² The other related issue is at what age renewal periods should be accelerated. Based on crash fatality rates, it is reasonable to begin accelerated renewal periods at the age of seventy-five.¹⁴³ This would be consistent with the procedures employed by Indiana, Montana, New Mexico, and Rhode Island; later than Arizona, Colorado, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine,

136. See *supra* note 40 and accompanying text.

137. Rosenfield, *supra* note 12, at 454.

138. Accelerated in-person renewal periods provide agencies with the opportunity to assess potential problem drivers personally. See Derocher, *supra* note 12, at 14.

139. IIHS, LICENSING RENEWAL, *supra* note 66; see *supra* note 65 and accompanying text.

140. IIHS, LICENSING RENEWAL, *supra* note 66; see *supra* note 69 and accompanying text.

141. IIHS, LICENSING RENEWAL, *supra* note 66; see *supra* note 66 and accompanying text.

142. IIHS, LICENSING RENEWAL, *supra* note 63; see *supra* note 93 and accompanying text.

143. See *supra* note 40 and accompanying text.

Missouri, North Carolina, and South Carolina, which begin on average at sixty-five; and earlier than Florida, Illinois, and Texas.¹⁴⁴ It is important to note that accelerated renewal periods by themselves have not been proven to be as effective as if that renewal process is coupled with more testing. Therefore, this proposal must be combined with some form of additional screening and testing.

2. *Mandatory Road Tests*

In conjunction with accelerated renewal, road tests should be required for each renewal application by a driver aged 75 and older, consistent with New Hampshire and Illinois road testing procedures.¹⁴⁵ Road tests are a fundamental part of initial licensing procedures.¹⁴⁶ The strengths of a road test in assessing driving skills are well recognized and contribute to the purpose of ensuring the “safety and mobility of the motoring public.”¹⁴⁷ So the absence of a requirement of a road test upon license renewals for the elderly is puzzling, even in light of noted deficiencies.¹⁴⁸ The effectiveness of a road test in screening out those drivers who do not have the requisite skills to drive a vehicle safely depends in large part on the criteria and performances which the tester is required to observe.¹⁴⁹ Therefore, the success of road tests is closely tied to the continuing development of effective screening procedures. It is clear that a vision test alone simply does not address the other possibly impaired functions related to driving, including physical and cognitive functions. A mandatory road test as part

144. IIHS, LICENSING RENEWAL, *supra* note 66.

145. *Id.*; see *supra* note 89 and accompanying text.

146. “The most commonly employed method of assessing driver skill is through examiner observations performed while the applicant operates a vehicle on public streets and highways. The widespread use of road testing as a measure of driving skill reflects its several strong points.” MCKNIGHT, AAMVA, *supra* note 43, at 26.

147. *Id.* at 24.

First, since it represents a slice of driving itself; the skills assessed in a road test are those required in everyday driving. Second, the applicant’s familiarity with the vehicle in which the test takes place allows performance on the road test to provide a more accurate reflection of driving skill than would a test taking place in a simulator. Finally, the test is given in the applicant’s vehicle on public streets, avoiding some of the costs incurred in a simulator or closed course tests. Testing costs are limited to those associated with the examiner’s time which, of course, is not insubstantial.

Id. at 26.

148. “Road tests are considered inconvenient, time-consuming, and expensive.” Mikel, *supra* note 17, at 362–63. “Despite Illinois’ rigid standards, data has not shown that Illinois has achieved remarkably fewer accidents involving elderly drivers than other states.” *Id.* at 364.

149. See MCKNIGHT, AAMVA, *supra* note 43, at 34–38. “Research shows that, by concentrating their [observers’] attention on a specific set of performances at the point where those performances are most likely to be required, examiners will actually see more than they will if they try to observe everything.” *Id.* at 29. “Thus far no . . . controlled evaluation road test effectiveness appears to have been conducted. Acceptance of improved road testing procedure has stemmed primarily from the accepted validity of their content and, in some cases, their demonstrated reliability.” *Id.* at 38.

of the renewal process is vital to ensuring public safety as it would test the very abilities in question, in real time, in real situations, and under supervised control.

A related issue is whether simulators should be used in place of personally observed road tests.¹⁵⁰ The option of using simulators must be seriously considered given the recognizable benefits of such a procedure, including uniformity of testing and screening drivers with a minimal agency workforce.¹⁵¹ This technology may be an important part of assessment in the future, but until the simulator technology improves and becomes a less-expensive option for states struggling in the current economy, it is most likely not a feasibly effective option at the present time.¹⁵² However, while simulators may not be able to replace road tests, they may be utilized as an important pre-screening assessment tool used to determine which potential drivers should be more closely observed and which particular skills should be tested.¹⁵³

3. *Mandatory Vision Tests*

Considering the importance of vision to driving and the strong possibility of age-related impairment, mandatory vision tests should be utilized in state licensing procedures. The mandatory vision test for elderly drivers is currently employed in ten states.¹⁵⁴ Being able to see street signs clearly and ahead of time—as well as lights, pedestrians, and peripherals—is a vital component of driving safely and effectively and must be tested. Because of the increased risk of macular degeneration present in the elderly beginning at age sixty,¹⁵⁵ it would be reasonable to trigger vision testing at that age.

C. *Alternative Forms of Transportation for the Elderly*

Finally, perhaps the most important solution to be addressed and implemented in response to the problem of an increasingly older driving population is the creation and maintenance of viable alternative forms of transportation.¹⁵⁶ When more stringent licensing requirements are

150. Simulators are described as “observing the performance of applicants responding to highway traffic conditions simulated through displays and controls that demand of drivers the same skills required in operating an automobile.” *Id.* at 26.

151. *See id.* at 41.

152. *Id.* at 41–42.

153. *Id.* at 41.

154. IIHS, LICENSING RENEWAL, *supra* note 66; *see supra* note 74 and accompanying text.

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

156. *See* AARP, *supra* note 25, at 4.

implemented, the inevitable consequence will be an influx of individuals who will no longer be able to drive themselves, whether their purpose of mobility is to obtain medical supplies, groceries, or other necessary items, or simply to engage in social activities with friends and family.¹⁵⁷ It is important, therefore, for society to provide these individuals with options for mobility, in place of the personal automobile, which can fulfill these basic needs when the automobile is no longer a realistic option.

1. Challenges in Implementing Alternative Transportation

The first major obstacle to achieving an effective system of alternative transportation is that the majority of elderly Americans do not live in concentrated urban environments where most public transportation generally exists.¹⁵⁸ In rural environments, transportation providers are confronted with the challenge of a far more distributed population than the elderly population in a city—making scheduled routes difficult and inhibiting cost-effectiveness.¹⁵⁹ The second challenge that must be met is fully engaging the elderly population in the planning of community transportation decisions.¹⁶⁰ This has been a problem in both urban and rural environments.¹⁶¹ Finally, reforming transportation systems takes time, and—in order to meet the impending problem of a rapidly aging population—steps to improve the system must be taken immediately.¹⁶²

2. Existing Examples of Effective Alternative Transportation

In developing programs to assist the elderly population after their driving privileges are withdrawn, communities and entrepreneurs should look to the few existing programs as a template for successful implementation of alternative methods of transportation. In particular, the

In April 2004, the Surface Transportation Policy Project, in coordination with AARP and the American Public Transportation Association, published *Aging Americans: Stranded without Options*. . . . The study's recommendations included increasing investment in public transportation systems, increasing funding for specialized transportation programs that provide mobility for older adults, incorporating older Americans' mobility needs into the planning of transportation projects, [and] improving coordination between service providers.

Id.

157. *See DOT, supra* note 22, at 1 (“While some services exist to help people get to essential activities like medical appointments and grocery shopping, many older individuals have difficulty getting to social or recreational activities that are an equally important part of their lives.”).

158. AARP, *supra* note 25, at 11.

159. “Rural transportation providers often must cover vast service areas for relatively few riders, making reliable and cost-effective service a challenge.” *Id.* at 12.

160. *See id.* at 18 (noting the lack of participation by the elderly in such decisions).

161. *Id.* at 10–11.

162. DOT, *supra* note 22, at 6.

Independent Transportation Network (ITN)—a community-based organization in Portland, Maine that provides transportation for seniors aged sixty-five and older¹⁶³—and the transportation program provided by the St. Johns County Council On Aging¹⁶⁴ are excellent examples of viable alternative forms of transportation. One thing that sets these programs apart is their efficient use of technology.¹⁶⁵ ITN also boasts several other innovations, including incentives for volunteer drivers, which have established the possibility of its nationwide development.¹⁶⁶ When deciding what alternative transportation programs to create and maintain, it is important to recognize the value of paratransit options in addition to the more conspicuous fixed-route services already commonly in place.¹⁶⁷ Seniors who lose their driver's licenses may be left without a viable option of transportation if forced to rely on fixed-route services, such as trains or buses, because their likely infirmities that preclude them from driving also hinder their general mobility, yet do not qualify them for disability-related transportation benefits.¹⁶⁸

The sources that currently or may in the future provide transportation services vary and include caregivers and nonprofit organizations.¹⁶⁹ These providers face many challenges that impair their efficiency and effectiveness; including funding, coordination between providers, and obtaining responsible personnel.¹⁷⁰ However, these community programs prove that individual mobility can be maintained throughout one's life while still ensuring public safety and should be examined fully as examples of potential alternatives.

V. CONCLUSION

Because aging increases the risk of impairment of basic functions utilized in driving, stricter licensing procedures for elderly drivers are necessary to ensure the safety of both the general public and the elderly

163. AARP, *supra* note 25, at 22 (discussing the benefits of ITN).

164. *Id.* at 21 (discussing the benefits of the St. John's County Council On Aging).

165. *See id.* at 21–22.

166. *Id.* at 22.

167. *See id.* at 12 (“In fixed-route services, vehicles such as trains and buses run along an established path at preset times. Demand-response services, also known as ‘paratransit,’ are transit services that pick up and transport passengers upon request to and from their destinations.”).

168. *Id.* “Paratransit and human services transportation are important mobility options for older adults, particularly those with disabilities or who are the frailest.” *Id.* at 17.

169. *Id.* at 9.

Human service agencies such as senior centers and health care institutions, as well as private transportation providers, have moved in to fill the gap. . . . Entrepreneurial nonprofit organizations in rural communities have developed model volunteer driver programs and made excellent use of advanced technology to improve services, among other innovations.

Id. at 12.

170. *Id.*

drivers themselves. In addition to these stricter licensing procedures, it is vital to provide alternative transportation that fulfills the needs of seniors who will continue to require a means to maintain their freedom, autonomy, and personal transportation for the duration of their lives.

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