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Equal Protection, the ADA, and Driving with Low Vision: A Legal Analysis

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Abstract: This article describes federal and state laws that affect the opportunity of people with low vision to drive and to obtain driver's licenses. Discrimination against individuals with low vision is discussed in the context of equal protection and the Americans with Disabilities Act. A review of relevant case law and implications for drivers with low vision are presented.

The ability to drive a car can have a major impact on where one lives and works. It is so significant for maintaining independence that some view it as a right. This article describes the rationale for driving with low vision, presents an overview of research on low vision, and examines the laws and judicial rulings that have had an impact on persons with low vision who want to obtain driver's licenses.

Background

With regard to driving with low vision, the major

concern has been safety. States have addressed the issue by passing laws that have established vision standards for drivers. Each state governs how drivers, regardless of their visual acuity, obtain driver's licenses and legally drive in their own and other states. Each state's legislature passes laws regarding driving, and then a regulatory agency, known by different names in different states (such as Motor Vehicle Administration or Department of Motor Vehicles) establishes regulations and regulates drivers.

As of 2002, 34 states had laws that allow drivers with low vision to obtain driver's licenses (Peli & Peli, 2002). A review of laws from even just a few states found that the legal requirements for driving with low vision vary significantly. For the purpose of this discussion, we highlight state laws that deal only with the visual acuity requirements and do not address legal requirements regarding visual fields. Some states, such as Maryland and Minnesota, limit driving to people with up to 20/100 visual acuity with conventional eyeglasses (see MD Vehicle Laws, 2003; MN Department of Public Safety, 2003). Other states, such as California and Virginia, allow drivers with up to 20/200 visual acuity with conventional correction to obtain driver's licenses and, in certain cases, to use bioptic telescopes—specialized eyeglasses with two lens systems, a regular spectacle lens and a telescope—while driving (Cal. Vehicle Code, 2003; VA Motor Vehicles, 2003). When states allow the use of bioptic telescopes, they may also require a minimum visual

acuity through the carrier lens (conventional eyeglass prescription), as well as a minimum visual acuity through the bioptic telescope.

It is important to note that once a driver has been granted a license in one state, other states must recognize that license. This principal of states' recognition of other states' acts is guaranteed in the U. S. Constitution, which requires that "full faith and credit" be given in each state to public acts and proceedings (U.S. Const. Art. IV, Sec.1). This "full faith and credit clause" of the Constitution allows for the somewhat arbitrary outcome that allows drivers who are licensed in California or Virginia who obtained their licenses with a visual acuity of 20/200 through conventional eyeglasses to drive in Maryland or Minnesota, whereas residents of these states may not obtain driver's licenses if their visual acuity is worse than 20/100 through conventional eyeglasses.

The widely varying state requirements for obtaining a driver's license point out that there is no agreed-on standard visual acuity for driving. The state requirements also show that drivers with low vision who have different acuities can and do drive.

Meeting the vision standard

The purpose of the bioptic telescope is to provide drivers with acuities of 20/100–20/200 with conventional eyeglasses the required 20/40 visual

acuity that is necessary for obtaining a licence. Using a bioptic telescope is analogous to using a rearview mirror. The rearview mirror is used in specific situations, such as just before changing lanes, braking, and turning. A quick view into a rearview mirror provides the required information to execute the necessary maneuver safely. Similarly, the user looks into a bioptic telescope to obtain the necessary visual information in specific situations—for example, to identify traffic controls at intersections; for orientation purposes, including viewing street signs and numbers on exit ramps; and in unexpected events. For example, when driving in a local residential neighborhood and seeing a small brown object crossing the street, the driver with low vision needs to identify whether the object is a brown paper bag being blown by the wind, a small dog, or a small child. While operating a vehicle, viewing through a bioptic telescope, like viewing through a rearview mirror, is done safely at prescribed times and for short periods.

Research on driving

Acknowledging that some amount of vision is required to drive, researchers have attempted to relate visual status to driving performance. Some studies have examined the driving record of drivers with low vision and concluded that these drivers have higher crash rates than do drivers who are fully sighted (Janke, 1983). Lippman, Corn, and Lewis (1988) concluded in their review of the literature that these rates are similar

to those of drivers with other types of disabilities, such as neurological impairments. Clinicians who prescribe bioptic telescopes or offer training programs have concluded, on the basis of follow-up data on clients, case studies, and their own professional judgment, that some individuals with low vision can drive safely (Feinbloom, 1977; Huss, 1988; Korb, 1970; Park, Unatin, & Park, 1995), with Korb showing that 128 users of bioptic telescopes had lower accident rates than did drivers in the general population. Unfortunately, these studies lacked the necessary research controls (to account for driving times and distances and rural versus urban driving environments), have used small samples, and have lacked randomized and age-matched control groups that would be needed to offer firm conclusions. One study that did provide experimental control (Szlyk et al., 2000), demonstrated the effectiveness of training in the use of bioptic telescopes for functional tasks, including driving. However the study did not attempt to evaluate drivers' performance in the real world or to follow drivers over time to study their history of accidents.

A growing body of more systematic research on driving with low vision has been evolving (Owsley & McGwin, 1999). For example, Wood and Mallon (2001) found that unsafe drivers were more likely to be older and to have visual impairments. In addition, Owsley, Stalvey, Wells, Sloane, and McGwin (2001) examined the relationship of visual risk factors in older drivers with cataracts and found that lack of contrast

sensitivity is associated with crashes—drivers who have had a crash are six times more likely to have severely impaired contrast sensitivity. Furthermore, some studies have shown that the combination of increased age and decreased vision has negative consequences on safe driving (McGwin, Chapman, & Owsley, 2000; Owsley, McGwin, & Ball, 1998).

Despite the finding that contrast sensitivity is related to driving performance, research has been far from conclusive in relation to supporting the current laws as they apply to an entire class of people: drivers with low vision. As Gregory Goodrich (quoted in Bioptic Driving Network, 2004) noted:

> Driving for anyone, but particularly those with a sensory or motor impairment, is a step best taken with considered deliberation. It is an individual consideration, one the individual should make with the best input possible. A priori, there is little reason some people with a visual impairment should not drive, as many have done before them. Legislation/regulation that prohibits even the consideration to be able to drive without adequate consideration of the individual is, I believe, discriminatory.

Goodrich's point is to put driving by persons with low vision in the same category as driving by persons with spinal cord injury, who use hand controls rather than foot controls, or those who are totally deaf (Gregory Goodrich, personal communication, January 2004).

Supporting the idea that vision standards should not, a priori, eliminate an applicant for a driver's license, this

statement by the American Academy of Ophthalmology was approved in October 2001:

> The license to drive a car on public roads is a privilege rather than a right. It should not be extended indiscriminately. Nevertheless, in a society where the personal vehicle is the primary, and often the only mode of transportation, cessation of driving results in personal hardship and licensure should not be withheld without clear justification.

The key point of this statement is that people with low vision should be given the opportunity to be evaluated and judged as individuals with various abilities, rather than as a class of people (those who have low vision) who are treated differently.

Individual rights and equal protection

The right of each U.S. citizen to personal liberty is guaranteed by the Constitution (U.S. Const. Art. I, § 9), Bill of Rights, and Amendments 13, 14, 15, and 19 to the Constitution. However, these guarantees of personal liberty must be balanced against the government's interest in proper governance and, among other things, in protecting public safety. In the specific context of drivers with low vision, the individual's rights are balanced with statutes and regulations that are tailored to minimize concerns about traffic safety. Of the constitutional amendments granting individual rights, the 14th Amendment, which guarantees all citizens equal protection under the law,

is the most relevant for the purposes of analyzing the laws related to drivers with low vision.

Equal protection under the 14th Amendment does not require that the government treat everyone alike; rather, as it has been interpreted, it means that the government cannot govern citizens differently according to unreasonable or arbitrary criteria, such as race or gender. In the case of driving with low vision, the question is whether a driver with low vision should be treated the same under the law as a driver who is fully sighted.

Illustrative cases are presented throughout this article. Note that although some cases are specifically related to vision, to examine the legal issues involved, certain non-vision-related cases are used when no example involving vision is on point. As of the time of writing, all cases cited were “good law”—that is, although they may not have been decided in the past few years, they are still valid precedent that a subsequent court, reviewing the same matter, would need to consider or follow.

Evaluating discrimination

Many laws and regulations, not just those on driving, draw distinctions among people and thus are susceptible to the allegation of unfair discrimination and, in a court of law, an equal-protection challenge under the 14th Amendment. When a court has been

presented with an equal-protection claim, it evaluates the allegedly discriminatory law, regulation, or governmental action in question. The court would consider such things as how the law distinguishes or classifies the different groups of people who are affected by it (such as people who are fully sighted versus those with low vision) and the law's stated purpose or how the law treats people differently (Chemerinsky, 2002). The court may ask whether the law is under-or overinclusive, that is, whether the law captures too few people in the classification or too many (Chemerinsky, 2002). The court may also examine the relationship of the means the law uses to accomplish its purpose to the end the law seeks to accomplish. It begins by evaluating the claim of discrimination and, in all cases, determines which level of scrutiny or review it would use to decide on the case.

Establishing a claim

There are two ways to establish a claim of discrimination: Showing that the discrimination exists on the face of the law or that the law has a discriminatory impact (Chemerinsky, 2002). The classic example of discrimination on the face of the law would be different rules for different races of people. Laws that determine who can have a driver's license and who can practice optometry also involve classifications on the face of the law. That is, there are specific visual acuity and other visual testing requirements for the individual who wants to drive, and

there are specific educational requirements and testing for the practice of optometry.

Another step in the equal-protection analysis is to identify the level of scrutiny that the court will apply (Chemerinsky, 2002). Discrimination between or among classifications of people is subject to one of three levels of scrutiny, or review. The first or highest level of review, *strict scrutiny*, is the standard used by courts for discrimination on the basis of such factors as race and national origin. Under strict scrutiny, the law is upheld only if it is proved necessary to support a compelling governmental purpose. Under strict scrutiny, the government has the burden of proof and must show there is a truly compelling reason for the discrimination. The government must also demonstrate that it cannot achieve the sought-after objective through a less-discriminatory alternative. Strict scrutiny is often fatal to the challenged law; that is, when a law is reviewed using the strict-scrutiny standard, it is often struck down as unconstitutional (Gunther, 1972).

The second level of review, *intermediate scrutiny*, is used for discrimination based on such factors as gender or the status of children born outside of marriage, so-called illegitimacy (Chemerinsky, 2002). Under intermediate scrutiny, a law is upheld if it is substantially related to an important governmental purpose. Again, the government has the burden of proof under intermediate scrutiny.

The third and lowest level of review, *rational-basis review*, is used for all other forms of discrimination (Chemerinsky, 2002). A law is upheld using this standard if it is rationally related to a legitimate governmental purpose. At this level of review, the burden shifts from the government to the plaintiff. Placing the burden of proof on the plaintiff makes it more difficult for the plaintiff to win the case. Rational-basis review is deferential to the government, and there is a strong presumption in favor of the existing law.

Although a driver with low vision may challenge the laws or regulations regarding driving on the grounds that they deny equal protection under the law, the U.S. Supreme Court has generally held that laws and regulations such as these are entitled only to rational-basis review (see, for example, *City of Cleburne v. Cleburne Living Center*, 1985; *Heller v. Doe*, 1993). Following the lead of the Supreme Court, state courts that have addressed the issue of drivers with low vision have also used a rational-basis review. For example, in the class action suit of *Sharon v. Larson* (1986), *Sharon* represented a class of all those who could not meet Pennsylvania's acuity requirements but could meet the standard if permitted to use bioptic telescopes. The plaintiffs challenged a Department of Transportation (DOT) regulation prohibiting the use of bioptic telescopes to satisfy the minimum visual acuity standard for obtaining a driver's license. The court cited several studies that it claimed demonstrated that

even with individualized testing and screening programs, drivers who use bioptic telescopes would pose “appreciable safety risks” to themselves and other drivers. Sharon and the class cited the Rehabilitation Act and the equal-protection clause. The court analyzed the equal-protection issue using the rational-basis test and reasoned that the challenged regulation served an important state interest, that of promoting highway safety. Pennsylvania’s ban on the use of bioptic telescopes was therefore held not to violate the equal-protection clause.

In another case using the rational-basis level of scrutiny, *Gooch v. Iowa Department of Transportation* (1987), the plaintiff had a job that required an Iowa driver’s license. Gooch had macular degeneration with 20/300 visual acuity. (Case facts, including medical information, have been taken from publically available sources.) With a bioptic telescope, his vision was corrected to between 20/40 and 20/50. Gooch challenged a DOT rule that did not allow it to license individuals who must wear bioptic telescope to meet the visual acuity standards required for a license. Among other things, he argued that the DOT rule denied him equal protection of the law. He also argued that the rule irrationally distinguished between people with different kinds of eye disease. The court, using a rational-basis review, analyzed whether there was a rational relationship to a legitimate governmental interest. It reasoned that the rule prohibited the use of bioptic telescopes because of the impairment that the

telescopes caused to a driver's field of vision. It held that the denial of a license to a driver who used bioptic telescopes did not violate equal protection of the law because of the rational relationship between the law and the legitimate governmental purpose of safe driving. As *Gooch* (1987) and *Sharon* (1986) illustrated, the distinction between drivers on the basis of visual acuity or other tests of visual ability is not drawn according to any characteristic or classification that triggers a review in which the burden of proof is on the government (strict or intermediate scrutiny).

Courts have also addressed the issue of overinclusiveness under the equal-protection analysis. A law is considered overinclusive if it covers more people than it needs to in order to accomplish its purpose. Courts have concluded that substantial overinclusiveness is tolerated under rational-basis review (see, for example, *New York City Transit Authority v. Beazer*, 1979). A driver with low vision, using the overinclusiveness argument, could make the case that current driving and visual acuity regulations are overinclusive because the underlying causes of impaired visual acuity are varied, and as a class of drivers, each driver learns to compensate for his or her specific impairment. A stronger and more persuasive argument is that drivers in other states obtain licenses with different levels of visual acuity and adaptive techniques or equipment. Specifically, a driver with low vision who has a license from one state can legally drive in another state, even though he or she would not

meet the vision requirements for a driving license in the second state. However, a court could uphold the visual acuity and driving law or regulation under rational-basis review, citing public safety on the roads.

The chance that the level of scrutiny can be changed, thereby shifting the burden from the driver with low vision to the government, is slim. The U.S. Supreme Court has ruled that only rational-basis review applies to discrimination based on disability (*City of Cleburne v. Cleburne Living Center*, 1985). In *Heller v. Doe* (1993), it again reaffirmed that only rational-basis review should be used for discrimination based on disability.

Although the additional requirements for drivers with low vision may be considered to be discriminatory, following the long line of equal-protection cases, combined with the decisions in cases that specifically deal with driving, a court would probably hold that state driving requirements are rationally related to a legitimate state interest. While disability classification receives only rational-basis review under the equal-protection clause and is thus likely to be a difficult argument to use and win, a federal statute, the Americans with Disabilities Act (ADA), broadly prohibits discrimination on the basis of disability. We now turn to an analysis of the ADA in relation to drivers with low vision.

The ADA

The ADA was passed to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities (ADA, 2003). It prohibits discrimination by employers with 15 or more employees, employment agencies, labor organizations, or joint labor-management committees (known in legal terms as *covered entities)* and state and local governments and their departments and agencies (known in legal terms as *public entities).* As defined in the ADA, *disability* means, with respect to an individual, (1) a physical and mental impairment that substantially limits one or more of the individual's major life activities, (2) a record of such impairment, or (3) being regarded as having such impairment. Although the definition seems broad and straightforward, the U.S. Supreme Court has interpreted the definition of disability narrowly by holding that a medical diagnosis alone does not establish that an employee is disabled and that the court must consider the extent to which the impairment limits the activities that are of central importance to most people's daily lives (see, for example, *Sklar v. PA D.O.T. Bureau of Licensing,* 1999; *Toyota Motor Mfg., Kentucky, Inc. v. Williams,* 2002).

Relevant ADA titles

The ADA consists of five titles. The first two, concerning employment and public services, are discussed here because a driver with low vision may

typically proceed under either of them, for example, as an employee who must drive as part of work (Title I prohibits employment discrimination against a qualified individual with a disability) or as a private citizen who must comply with state regulatory and other driving requirements (Title II prohibits discrimination in the "services, programs, or activities, of a public entity" (ADA, 2003).

While the term *disability* maintains its meaning regardless of the title being considered under the ADA, the term *qualified individual* does not. To be qualified under Title I (employment), one must satisfy the requisite skill, experience, educational, and other job-related requirements of the employment position at issue (see Equal Employment Opportunity Commission, EEOC, 2003). In addition, an individual must be able to perform the job's essential functions with or without a reasonable accommodation (ADA, 2003). When a person is determined to be a qualified individual with a disability, Title I generally requires the use of a "reasonable accommodation." A reasonable accommodation means modifications or adjustments that enable a person with a disability to be considered for a position. It can also mean adjustments to the work environment that enable a person with a disability to perform the essential functions of the job (EEOC, 2003). However, the employer is not required to make a reasonable accommodation if doing so would present an undue hardship, such as if the accommodation would have a significant negative

impact on operations or if the cost of the modification would be much too high, given the overall financial resources of the employer (ADA, 2003; EEOC, 2003).

Title II of the ADA covers discrimination primarily in governmental services. To be qualified under Title II, an individual must meet the eligibility requirements to participate in the government's programs or activities (ADA, 2003). The key to meeting eligibility requirements is whether the individual can do so with reasonable modifications, the removal of barriers, or the provision of auxiliary aids and services (D'Agostino, 1996).

In the event that a person is determined to be a qualified individual with a disability under Title II, he or she can expect the use of "reasonable modification." A reasonable modification is a change in rules, policies, or practices that enables a person with a disability to gain access to programs or services. A modification is not required, however, if the modification would fundamentally alter the nature of the affected service or program (U.S. Department of Justice, 2003a).

Defenses to charges of discrimination

Title I provides employers with certain defenses to charges of discrimination; for instance, they are permitted to require that disabled individuals do not pose a direct threat to the health and safety of

themselves or others (ADA, 2003). Among other defenses, employers may also successfully defend a challenge to the qualification standards by showing that the standards are job related and are consistent with the needs of the businesses (ADA, 2003).

Just as an employer's obligation to provide reasonable accommodation under Title I is tempered by a defense of undue hardship, under Title II, a governmental agency's requirement to make reasonable modifications is tempered by the concept of fundamental alteration. That is, a governmental agency is not required to make a reasonable modification if doing so would fundamentally alter the nature of the service or program at issue or would impose undue financial or administrative burdens (U.S. Department of Justice, 2003b).

Legal options

Administrative processes

Individuals who want to sue an employer under the ADA must first file with the federal EEOC or a state or local fair employment practices agency. If the EEOC concludes that there is reasonable cause to believe there has been a violation, it will attempt to negotiate a conciliation agreement between the parties (D'Agostino, 1996). A conciliation agreement is simply an agreement between the employer and employee in which the employer, among other things,

agrees to stop the unlawful employment practice. In certain instances, such as when no conciliation agreement can be reached, the individual may file a lawsuit.

Lawsuits under the ADA

The threshold issue when an ADA claim (lawsuit) is brought before a court is whether the plaintiff is disabled and is a qualified individual within the meaning of the act. A court will then review the alleged discrimination. If the court determines that the individual is not a qualified individual with a disability or that the alleged discrimination was permissible under the ADA, any claims based on the act may have to be abandoned or the plaintiff's lawsuit may be dismissed by the court. (Many individual lawsuits are based on a number of claims; for example, a disability discrimination case may be based on ADA claims, equal-protection claims, and state law). If the person qualifies as disabled, the court must then decide if the disability is an impairment that substantially limits a major life activity. Although the ADA does not define "major life activity," the regulations implementing the act provide a nonexhaustive list of examples, including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working (EEOC, 2003). Driving is not listed among the examples, although "seeing" is. Many would argue that driving is a major life activity.

Although many affected drivers have brought claims under the ADA, many states have similar laws that prohibit discrimination against individuals with disabilities. In a Minnesota case, a bus driver was fired after he failed to meet the visual acuity requirements for his employment (the driver's vision was measured as count fingers 6–8 feet with his left eye). He alleged discrimination using a St. Paul human rights ordinance, but the Supreme Court of Minnesota held that the bus driver could pose a serious threat to the safety of others and allowed the firing to stand (*Lewis v. Metro. Transit Comm'n*, 1982).

Employment claims

Upon suing an employer for a violation under Title I, the plaintiff must prove that she or he met the qualification for the job in question, that is, the plaintiff was able to perform the essential functions of the job, with or without a reasonable accommodation (ADA, 2003). Assuming that a plaintiff with low vision can establish the necessary qualifications, she or he will confront the safety issue—whether she or he poses a direct threat to the health or safety of other individuals.

The issue of public safety has been an important issue in driving cases. In *Chenoweth v. Hillsborough County* (2002), a county employee suffered a seizure and was diagnosed with focal-onset epilepsy; she was told not to drive until she had gone six months without

experiencing a seizure. Chenoweth sought accommodation from the county because she could not drive to the facilities in which she reviewed medical records; her ability to review the records was not affected by her condition. The court held that driving to work is not a major life activity, reasoning that driving requires a license from the state that can be revoked for many reasons and that millions of Americans do not drive themselves to work. The court also held that an employee's condition, which prevented her from driving or taking certain types of public transportation, was not disabling within the meaning of the ADA, since driving and taking public transportation are not major life activities. Because the plaintiff in this case was found not to be disabled, the question of whether accommodation needed to be extended to her was not considered by the court.

Although this case did not involve a driver with low vision, the plaintiff was considered to be capable of doing the job but was unable to drive to the various locations that she needed to go to in order to do her job. This case suggests that a driver with low vision would have a difficult time winning a case in which he or she requested a reasonable accommodation associated with commuting to various work locations during the workday, even if the driver was otherwise well qualified for the job. As in *Chenoweth v. Hillsborough County* (2002), the question of reasonable accommodation may not be considered because the court may decide that the driver is not

disabled.

Courts have also considered the effects of mitigating factors in determining whether an individual's impairment qualifies as a disability under the ADA. In *Sutton v. United Airlines, Inc*. (1999), two severely myopic twin sisters, both of whom had corrected vision that was 20/20 or better, challenged United's refusal to hire them as commercial airline pilots because they could not satisfy United's minimum visual acuity requirement for pilots. The U.S. Supreme Court reasoned that because the sisters could fully correct their visual acuities, they were not substantially limited in any major life activity. The court held that the use of a corrective device does not necessarily determine whether an individual is disabled. This ruling has ramifications for drivers with low vision because mitigating measures, such as the use of bioptic telescopes, may be taken into consideration but would not be a definitive determination of whether an individual with low vision was disabled within the meaning of the ADA.

In another employment case, *Albertson's Inc. v. Kirkingburg* (1999), an employee with ambylopia and thus monocular vision, challenged his employer's decision to discharge him when he could not meet a DOT vision requirement for commercial truck drivers. The U.S. Supreme Court held that individuals with monocular vision are not disabled per se within the meaning of the ADA but must prove their disability on

a case-by-case basis and that the employer could use the governmental safety regulations to justify its job-qualification standard for visual acuity.

These cases illustrate the difficulty faced by an individual with low vision in proving disability within the meaning of the ADA. Employers are given considerable leeway in limiting employees' activities or the ability of individuals to become or continue to be employees in the name of public safety.

Claims against state and local governments

The U.S. Department of Justice's regulations implementing Title II of the ADA prohibit governments and their agencies from administering a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination because of their disabilities (U.S. Department of Justice, 2003b). Also according to the regulations, the government may not establish requirements that subject qualified individuals with disability to discrimination on the basis of disability (U. S. Department of Justice, 2003b).

Because Title II prohibits discrimination in governmental services and programs, lawsuits concerning discriminatory regulations for drivers' licenses are typically brought against the state agencies that promulgate driving regulations. Just such a case against the Kansas director of vehicles was argued and

decided in 1999. In *Bailey v. Anderson* (1999), a motorist sued, claiming discrimination under the ADA. Bailey was diagnosed with aniridia; her eyesight was 20/400 in the right eye and 20/200 in the left. The left eye could be corrected to 20/40 with a bioptic telescope. Instead of taking a driving test, Bailey opted for an instruction permit, which would allow her to drive with a licensed adult in the car. The permit had no restriction but required an annual report of driving ability. The first optometrist that Bailey saw did not recommend driver training, noting that she could safely operate a motor vehicle. When the instruction permit lapsed, Bailey reapplied and, as required, submitted a visual acuity report, this time from a different optometrist who recommended that she take a driver's instruction program. She was given another permit but did not submit a report indicating that she had taken driver's training. Ultimately, the permit was revoked because she did not take driver's instruction, as recommended by the second optometrist.

Bailey sued and argued that the state violated the ADA. Although both optometrists who examined her thought that she could safely operate a motor vehicle, the second one had suggested training, and the state required her to take this training as a condition of having a valid instruction permit. The court held that there was no violation of the ADA, reasoning that the director of vehicles is authorized to make reasonable restrictions on a person's driving privileges. As the facts were presented in this case, the Kansas director of

vehicles was merely requiring the driver who used a bioptic telescope to comply with her optometrist's suggestion for driver training. The court took note of the fact that both optometrists said that Bailey could drive safely with a bioptic telescope; she chose not to proceed with driver's training, resulting in the loss of her instructional permit.

Implications for drivers with low vision

Various individuals and groups have made efforts to stop or mitigate the effects of the differences in how drivers with low vision are treated by different states. In the following sections, we present methods that may be used by drivers with low vision who believe that discrimination exists. It should be noted that although there are options for an applicant with low vision who wants to obtain a driver's license in a state in which he or she does not meet the vision requirements for driving, these options are not always so easy to exercise. Options for a person with low vision in this situation are to (1) move to a state where driving laws are favorable; (2) become an advocate for change in his or her state of residence; (3) use an administrative remedy, if applicable to the situation; or (4) file a lawsuit on the basis of discrimination.

Selection of a favorable state

In this country, changing jobs, homes, and even

regions of the country is common. We move to improve job prospects, to obtain an education, to be closer to loved ones, for a different climate, or to change our lifestyles. The selection of a state to live in based on the visual requirements for driving can be a consideration. Just as a person may want to live in the Southwest and will make the necessary sacrifices to his or her career and the loss of proximity to family and friends, a person can make sacrifices because of the priority of obtaining a driver's license. This strategy allows the driver to benefit from the differences in state laws.

It may also be possible to live in a border state that will grant a driver's license while one works in one that does not. For example, a person could live in northern Virginia, where the licensing requirement allows for 20/200 visual acuity with conventional eyeglasses and a visual acuity of 20/40 with a bioptic telescope, and drive in Maryland, where the acuity limit is 20/100 with conventional eyeglasses.

Become an advocate

One way that laws are created or changed is through grassroots movements. Since drivers with low vision are a small group of voters, education and relationship building with legislators and their staffs may be required. Resources are available to assist with this effort. The web site <www.BiopticDriving.org> can provide materials and guidance. Working

collaboratively with local eye care specialists and national medical groups may also prove beneficial. Model legislation for regulations to govern driving with low vision may be created that can be advocated to state governments. Such model legislation, based on statistical information about driving with low vision, can be used to decrease the variability in how states govern drivers with low vision because the legislation could be used as a starting point for all the states that choose to adopt it.

Seek a conciliation agreement

Working to find common ground between an employer and employee can be a powerful tool. A good conciliation agreement, for example, negates the need to go further with a lawsuit.

File a lawsuit

Another way to make law or change law is by filing a case in a court. One example of an attempt to do so was the class action *Sharon* case. Not all cases involving driving with low vision have met such a fatal end (see, for example, *Bailey*). However, bringing and winning a case presents multiple challenges to the plaintiff, such as time, emotional stamina, and money. Ultimately, only the individual can determine if he or she has the time and financial and emotional resources to commit to this endeavor.

Conclusions

As can be seen from this review of the driving laws and regulations of various states, requirements for testing visual acuity for driving vary significantly. Without the support of research to argue against restrictive laws, drivers with low vision and their advocates have been left to argue that their right to equal protection, their rights under the ADA as citizens with disabilities, or both, have been violated. Unfortunately, the argument for a violation of equal protection is judged on the lowest of the three levels of scrutiny, the rational-basis review, which means that an applicant with low vision who wants to challenge a discriminatory law or regulation will have the burden of proof and the lowest standard of review for the case. Although some may consider the additional requirements for drivers with low vision to be discriminatory, following the long line of equal-protection cases, courts have and will probably continue to hold that driving requirements are rationally related to a legitimate governmental function —public safety.

While the federal ADA and state analogs prohibit discrimination in theory, these laws may not always accomplish their proposed purposes in fact. The ADA provides for reasonable accommodation or reasonable modifications to allow individuals with disabilities to participate in employment and to receive services, but employers and the government are protected by the

argument of undue hardship and undue burden. As with equal protection, the highest hurdle for drivers with low vision is the perceived threat to public health and safety.

As shown in the cases that have been described here, courts may hold that driving is not a major life activity and thus that the individual who claims a disability under the ADA may be considered not to be disabled. Some states, such as Pennsylvania and Iowa, do not take a favorable view of driving with low vision, as shown in the decision on *Gooch* (1987) and the class action suit of *Sharon* (1986). However, the case law on driving with low vision is not all bad. In Kansas, for example, the use of bioptic telescopes was viewed somewhat favorably by the court (as a result of eye specialists' reports), but the driver chose not to obtain additional training, and her ability to drive was curtailed by the state. Ultimately, it is only through careful analysis and understanding of the laws and options that individuals who want to obtain driver's licenses can make the best choice for their circumstances.

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