

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 18, 2026*

Decided August 20, 2026

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 25-3077

JEFFREY COLE ERB,
Plaintiff-Appellant,

v.

KRISTINA BOARDMAN, Secretary of the
Wisconsin Department of Transportation,
Defendant-Appellee.

Appeal from the United States
District Court for the Western
District of Wisconsin.

No. 23-cv-329-wmc

William M. Conley,
Judge.

ORDER

Jeffrey Erb, whose driving privileges were revoked after he pleaded guilty to operating a motor vehicle while intoxicated, *see* WIS. STAT. § 343.31(1m)(b), challenges the dismissal of his complaint under 42 U.S.C. § 1983 contesting the constitutionality of

* After examining the briefs and record, we have concluded that oral argument is unnecessary. *See* Fed. R. App. P. 34(a); Cir. R. 34(f).

Wisconsin's statute. The district court dismissed the complaint for failure to state a claim.

We view the complaint in the light most favorable to Erb and accept all well-pleaded facts in his favor. *Wince v. CBRE, Inc.*, 66 F.4th 1033, 1039 (7th Cir. 2023). In March 2021 Erb was charged with operating a motor vehicle while intoxicated, his sixth such offense in Wisconsin. See WIS. STAT. § 346.63(1)(a). He pleaded guilty and was sentenced to two years' imprisonment and two years' supervision. See *Wisconsin v. Erb*, No. 21-CF-309 (St. Croix Cnty. Sept. 3, 2021). He completed a substance-abuse program and was released to supervision in January 2023.

As a result of his conviction, the Wisconsin Department of Transportation revoked his license to drive under WIS. STAT. § 343.31(1m)(b), which provides that the Department "shall revoke" drivers' "operating privilege[s] permanently" when it receives records showing that they have four or more alcohol or drug impairment-related offenses, and the most recent offense occurred within 15 years of the last offense. *Id.* Drivers may apply to reinstate their licenses after ten years of revocation have passed. *Id.*

Erb, a lawyer representing himself,¹ sued the Secretary of the Department, contending that Wisconsin's statute violates his rights under the Fourteenth Amendment to equal protection, procedural due process, and substantive due process.

The district court granted the Secretary's motion to dismiss. The court noted that Erb had "fallen well short" of pleading that Wisconsin's mandatory-revocation statute is facially unconstitutional; the court thus asked whether the statute is unconstitutional as applied to Erb. 2025 U.S. Dist. LEXIS 220581 *4 (W.D. Wis. Nov. 7, 2025). And the complaint failed to state a claim for any constitutional violation, the court concluded.

Erb's equal protection theory — which is subject to rational-basis review — fails because the statute promotes public safety and reduces recidivism among repeat offenders. It also incapacitates persons who seemingly cannot be deterred from drunk driving.

Erb's procedural due process theory fails because a statutory consequence of a conviction may be imposed without extra hearings. *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 7–8 (2003). Erb had plenty of process when responding to the criminal charges; he is not entitled to a separate hearing about the revocation because

¹ Erb reports that his Minnesota law license has expired for nonpayment of fees.

that consequence is mandatory and therefore does not depend on facts to be established at a hearing. (Erb does not deny that he has at least four qualifying convictions.)

As for substantive due process: that doctrine applies only to fundamental rights that either are identified in the Constitution itself or have deep historical provenance. *See Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 237–40 (2022); *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). But no one has a “fundamental” right to keep driving after multiple convictions demonstrate that the person poses a danger to the public when behind the wheel.

We have considered Erb's other arguments, which are too undeveloped to justify discussion.

AFFIRMED