SUPREME COURT OF LOUISIANA

No. 95-CA-2189

**JODY W. MANUEL, STACEY P. FORET,
BURKE G. PIERROTTI and WENDELL J. MANUEL**

versus

**STATE OF LOUISIANA;
HONORABLE EDWIN W. EDWARDS, GOVERNOR;
RICHARD P. IEYOUB, ATTORNEY GENERAL;
J. WILLIAM PUCHEU, DISTRICT ATTORNEY; and
TERRY PITRE, COMMISSIONER, LOUISIANA OFFICE
OF ALCOHOL BEVERAGE CONTROL, DEPARTMENT
OF REVENUE AND TAXATION**

ON DIRECT APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT, PARISH OF EVANGELINE, STATE OF LOUISIANA

KIMBALL, J., Dissenting.

This case is not about whether 18-20 year olds should be allowed to purchase and consume alcoholic beverages in Louisiana. This case, instead, is about the proper interpretation of the Constitution of the State of Louisiana, as it exists in its present form. If the people of the State of Louisiana desire to prohibit 18-20 year olds from purchasing or consuming alcoholic beverages, the proper method for accomplishing such a result is to amend the Constitution of State of Louisiana. This, of course, is already in the process of being done, as the legislature has placed just such an amendment on the ballot for congressional general elections this year.[1] The function of this Court is to enforce the Constitution of the State of Louisiana, not find ways to justify unconstitutional legislative enactments that we *believe*, on the basis of "experience and logic" (as opposed to the record evidence), are nevertheless sound social policy. Because the majority herein has conveniently ignored the Constitution of the State of Louisiana, ignored the record evidence, sidestepped the manifest error rule, and disavowed this Court's prior jurisprudence in this area to reach a result not otherwise properly obtainable, I respectfully dissent.

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[1] *See* 1996 La. Sess. Law Serv., Act No. 100 (West 1996). Of course, by upholding the constitutionality of the statutes at issue herein, this Court has effectively removed the issue from the ballot and pretermitted a decision on the issue by the people of the State of Louisiana, as Section 2 of Act 100 of 1996 states that this issue shall not be submitted to the electors if this Court upholds the validity of the statutes at issue on rehearing.

Article I, Section 3 of the Louisiana Constitution, in pertinent part, states: "No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations." Though the majority scarcely acknowledges it, *ante* at 8, the fact is that Article I, Section 3 of the Louisiana Constitution clearly and explicitly requires greater protection against discrimination on the basis of age than either the United States Constitution or any other State Constitution.[2] Relying on "common sense and logic," *ante* at 9, 16, instead of the record evidence which clearly shows that, *in Louisiana*, eighteen to twenty year olds are not the group responsible for the greatest number of alcohol related accidents, the majority holds that it is not "arbitrary, capricious, or unreasonable" for the State to skip over other age groups responsible for the greatest number of alcohol related accidents and penalize a group of adults that has been shown by the record evidence to be responsible for less accidents than the other, non-penalized age groups. In doing so, the majority has conveniently ignored the specific directive of Art. I, Sec. 3 of the Louisiana Constitution that the government shall not arbitrarily or capriciously discriminate against persons on the basis of age, and conveniently ignored the record evidence. Classifying persons on the basis of age, where the record evidence shows the age group singled out is not the group most responsible for the evil which the government seeks to address, is *inherently* arbitrary and capricious.[3]

Under the majority's reasoning, the legislature could constitutionally decide, on the basis of "logic and experience," that since men are overrepresented in alcohol related accidents, men may not

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[2] Though Article II, Section 4 of the Constitution of the State of Montana (the "Individual Dignity" clause) does not list "age" as a protected class, Article II, Section 14 of that Constitution states: "A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages." As previously noted, *see supra* note 1 and accompanying text, the people of this State are, of course, free to amend their Constitution to remove the age classification protection entirely, or to explicitly except protection regarding the purchase, possession or consumption of alcoholic beverages, as has been done in Montana. Whatever their decision, amendment of the Constitution by the people of this State is clearly preferable to alteration of the document by judicial fiat.

[3] Obviously, this Court's analysis of the statutes at issue, as was done in our original opinion using the *Sibley* and *Pace* factors, can have no effect on any other particular age classification which exists in Louisiana law. It is elementary that a determination as to the constitutionality of a particular statute or statutes can have no effect on a determination as to the constitutionality of any other statute, *as each case is decided (or should be) on the record evidence at issue in that particular case.* There is, therefore, no basis in fact for any expressed or implied concern that a determination of unconstitutionality of the statutes at issue herein would automatically lead to a determination that all other statutes which classify persons on the basis of age are unconstitutional.

purchase or consume alcohol. This, of course, is what the Oklahoma legislature decided in a statute which was struck down as unconstitutional under federal intermediate scrutiny by the United States Supreme Court in *Craig v. Boren,* 429 U.S. 190 (1976), a standard the majority herein acknowledges "is virtually the same as the standard for review of age classification applicable in this case." *Ante* at 15, n.11. Recognizing both the similar nature of the issues involved and the applicable levels of review, the majority herein nevertheless holds that there is "a common sense and experience-based relationship" between the challenged classification and the State's stated objective, despite the fact that the record evidence shows otherwise. In our legal system, contested issues should be decided on the basis of evidence properly adduced at trial. I therefore cannot in good conscience ignore both the Constitution of this State and the record evidence to decide this case on the basis of my, or any other judge or group of judges', "common sense and logic."

Of course, by ignoring the prohibitions of Art. I, Section 3 of the Louisiana Constitution, the majority has also conveniently sidestepped the manifest error rule by first deciding that the trial judge erred as a matter of law in his analysis. When the issue is properly analyzed under Article I, Sec. 3, as was done by the trial judge and as was done by this Court in its original opinion, there is no basis whatsoever for reversing the trial court's factual findings and, therefore, no basis for reversing his determination that the challenged statutes' classification of 18-20 year olds arbitrarily, capriciously and unreasonably discriminates against them on the basis of age.

Finally, it has been said that "hard cases make bad law." Such is clearly the case in the instant matter. In *Pace v. State, Through La. Employees Retirement System,* 94-1027 (La. 1/17/95), 648 So.2d 1302, this Court *unanimously* decided that a statute which classified persons on the basis of birth or legitimacy was unconstitutional. In deciding that case, this Court employed several factors, including whether each governmental interest was actually implicated by the statutory scheme, whether any non-discriminatory alternatives which dealt directly with the asserted governmental interest existed, and whether the discriminatory classification undercut any countervailing State interests, to determine whether the discriminatory classification at issue could withstand constitutional challenge. Now, only 18 months later, the majority effectively completely disavows this Court's decision in *Pace,* ostensibly because the factors described were "simply a specific application of the *Sibley* standard to a concrete factual record." *Ante* at 12. In my view, *Pace* and the analysis employed therein would not be so lightly discarded today but for the purpose of reaching a desired

result in the matter at issue herein.

I respectfully dissent.