

SUPREME COURT

STATE OF LOUISIANA

98-CA-2442

**STATE OF LOUISIANA,
Appellant**

VERSUS

**JOSEPH DAVIS FERRIS,
Appellee.**

**ON DIRECT APPEAL FROM THE 13TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EVANGELINE, STATE OF LOUISIANA
HONORABLE PRESTON N. AUCOIN, JUDGE, PRESIDING
DOCKET NO. 56,984-T**

**ORIGINAL BRIEF ON BEHALF OF PLAINTIFF-APPELLANT,
STATE OF LOUISIANA**

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**IN THE
SUPREME COURT OF LOUISIANA**

98-CA-2442

**STATE OF LOUISIANA,
Appellant,**

VERSUS

**JOSEPH DAVIS FERRIS,
Appellee.**

**ON APPEAL FROM THE THIRTEENTH JUDICIAL DISTRICT COURT,
PARISH OF EVANGELINE,
HONORABLE PRESTON N. AUCOIN, JUDGE, PRESIDING
DOCKET NO. 56,984-T**

**ORIGINAL BRIEF ON BEHALF OF PLAINTIFF-APPELLANT,
THE STATE OF LOUISIANA**

**APPELLANT’S BRIEF IN SUPPORT OF
CONSTITUTIONALITY OF La. R.S. 14:98.1**

INTRODUCTION

MAY IT PLEASE THE COURT:

The State of Louisiana, through the office of the Attorney General, hereby appeals to this Honorable Court from the judgment of the Thirteenth Judicial District Court for the Parish of Evangeline, State of Louisiana, in the proceeding entitled “State of Louisiana v. Joseph Davis Ferris,” No. 56,984-T, **GRANTING** defendant Joseph Davis Ferris’ Motion to Quash the Bill of Information and declaring the statute upon which it was based unconstitutional, and directs this Appeal to counsel for defendant, and the Honorable Preston Aucoin, Judge, Thirteenth Judicial District Court for the Parish of Evangeline, State of Louisiana.

STATEMENT OF JURISDICTION

Appellant, the State of Louisiana, invokes the appellate jurisdiction of this Honorable Court in accordance with Louisiana Constitution, Article 5, Section 5(D) because the judgment of the Thirteenth Judicial District declared La. R.S. 14:98.1 unconstitutional. The Honorable Preston Aucoin ruled that La. R.S. 14:98.1 violates the Equal Protection rights of those adults between the ages of 17 and 21, since the effect of the statute is to lower the blood-alcohol concentration required to arrest and charge those adults with driving while intoxicated. For persons over the age of 21, the blood-alcohol concentration must be 0.10%, whereas La. R.S. 14:98.1 permits punishment of underage drinkers by lowering the level to 0.02%. Judge Aucoin rejected the important governmental interests offered by the State, and declared La. R.S. 14:98.1 unconstitutional, thus this case is properly appealable to this Honorable Court.

ASSIGNMENT OF ERROR

1. The court erred in declaring La. R.S. 14:98.1 to be unconstitutional because it unreasonably violates the Equal Protection rights of citizens between the ages of 17 and 21, and therefore erred in granting defendant's Motion to Quash.

STATEMENT OF THE CASE

On July 31, 1998, the State filed a bill of information in the Thirteenth Judicial District Court for the Parish of Evangeline, charging Joseph Davis Ferris with the crime of underage driving while intoxicated, a violation of La. R.S. 14:98.1 (Bill No. 56984-T). At the time of the offense, on or about May 22, 1998, defendant was between the ages of 17 and 21, and the test conducted by police reflects that he had a 0.07% blood-alcohol concentration, well above the 0.02% level required under the statute.

On August 11, 1998, defendant moved to quash the bill of information, arguing that the statute upon which it was based, La. R.S. 14:98.1, is unconstitutional as an unreasonable violation of the Equal Protection rights of those citizens between the ages of 17 and 21. Defendant attached a Memorandum in Support of the Motion of Quash, and the State responded on August 13, 1998, with a Memorandum in Opposition to the Motion to Quash.

On August 14, 1998, the Honorable Preston Aucoin, Judge presiding, granted defendant's Motion to Quash the bill of information, and declared La. R.S. 14:98.1 to be an unconstitutional violation of the Equal Protection Clause of the Louisiana Constitution of 1974, Article 1, Section 3. The State appeals from this ruling.

ARGUMENT

Under Louisiana's Equal Protection Clause (Louisiana Constitution Article I, Section 3), a law which classifies persons on the basis of age is subject to intermediate scrutiny, and is presumed to be unconstitutional. Pace v. State, 94-1027 (La. 1/17/95), 648 So.2d 1302, 1305. Because the effect of La. R.S. 14:98.1 is to treat adults between the ages of 17 and 21 differently from those over the age of 21, this statute falls subject to intermediate scrutiny. Thus, the onus is upon the State to overcome this presumption by proving that there is an important governmental objective, and that the law in question substantially furthers that objective. *Id.* The statute used to further the objective need not be the least discriminatory means, nor must the State prove that there are no non-discriminatory methods of achieving this objective - La. R.S. 14:98.1 need only "substantially further" the "important governmental objective." Manuel v. State, 95-2189 (La. 3/8/96), 692 So.2d 320, 324. As set forth in its Memorandum in Opposition to Motion to Quash, the State contends that there are two important government objectives which are substantially furthered by the statute in question: improving highway safety and promoting the welfare of underage drinkers.

I. Highway Safety

It is firmly established that the right to drive a motor vehicle in Louisiana is not a constitutional right but rather a privilege granted by the State. Progressive Security Insurance Company v. Foster, 97-2985 (La. 4/23/98), 711 So.2d 675. Furthermore, there is an important State interest to protect the public from persons who drive while intoxicated. Thus, it is without question that improving highway safety is an important governmental objective.

The issue is whether La. R.S. 14:98.1, by establishing a lower threshold for prosecution of those adults between the ages of 17 and 21, substantially furthers the goal of improving highway safety. In Manuel, this Honorable Court stated that, “. . . there is a common sense and experience-based relationship between the classification resulting from the increase in the minimum drinking age and the statutory objective of reducing youthful drinking and driving to improve highway safety.” *Supra* at 345. The State suggests that this same sound reasoning applies in this case, since the basis for the constitutional challenge, that of the important State interests, and the statistical data are identical in both cases.

Statistics aside, there is an intuitive understanding that underage drinkers must be subject to a separate system of prosecution, conviction and punishment. This is because there is an automatic analogy made between the age of delineation for drinking rights, and for all other rights. That is, citizens under the age of 18 are treated differently from those over the age of 18 in certain situations, and, similarly, citizens under the age of 21 are treated differently from those over the age of 21, who have obtained the legal right to purchase and to consume alcohol without parental supervision. Furthermore, just as people under the age of 18 may be treated like those over 18 if their behavior rises to a certain level of severity (first degree murder, for example), so too may those persons under the age of 21 be treated similarly to those persons over the age of 21 in situations where their blood-alcohol level is 0.1% or greater. These perceptions should be taken into account, along with the offered statistics to get a clear understanding of the nature of La. R.S. 14:98.1, as this Honorable Court noted in Manuel, when it held that it is often difficult to prove, “. . . broad sociological propositions by statistics . . .,” but that such statistics need not be the sole basis upon which the substantial relationship between the means and the end is proven. *Id.*

The State offers a variety of statistical data to demonstrate that there is a strong relationship between lowering the blood-alcohol concentration requirement for 17- to 21-year-olds, and improving highway safety:

- 1) 1994 National Highway Traffic Safety Administration’s Report based on its Fatal Accident Reporting System (FARS):
 - a. 44% of 18- to 20-year-old traffic fatalities in 1994 were alcohol-related, as compared to 40.8% for all other traffic fatalities;
 - b. Alcohol-related traffic fatality rates (fatalities per capita) were over twice as great for 18- to 20-year-olds in 1994 as for the population over 21;
 - c. More 15- to 20-year-olds died in low (.01 to .09) blood-alcohol level traffic crashes than any other group in 1994.
- 2) 1992 Louisiana Traffic Records Data Report from the Louisiana Highway Safety Commission
 - a. 101 occupants age 24 and under were killed in traffic crashes during 1992 - 63% of these fatalities were within the 15- to 24-year-old age group;
 - b. 52% of the occupant fatalities involved alcohol, and 55% of the occupant fatalities occurred while riding in a vehicle with a driver from between the ages of 15 and 24;

- a) Drivers between 15 and 24 years of age are over-represented in traffic crashes - in 1992, they were involved in 26% of all fatal and injury crashes, and in 41% of all Alcohol-Involved fatal and injury crashes.

Taken as a whole, these statistics indicate that citizens between the ages of 17 and 21 are involved in a disproportionate number of alcohol-related accident fatalities and injuries, a fact that was recognized by this Honorable Court in Manuel. Those citizens who have demonstrated higher levels of responsibility by being involved in fewer alcohol-related traffic accidents need not be subject to the more onerous standard set forth in La. R.S. 14:98.1. Only those citizens whose age group has shown, by their involvement in a disproportionately-high amount of accidents, their propensity to risk public safety by driving after consuming alcohol, need the added deterrence of a .02% blood-alcohol concentration. Providing for a lower blood-alcohol concentration to establish that a person 17- to 20-years old is driving while intoxicated reduces the temptation of underage drinkers to drive after drinking.

Furthermore, La. R.S. 14:98.1 complements the constitutional change made by the State of Louisiana of raising the legal drinking age to 21 in order to decrease the number of alcohol-related traffic fatalities. This Court held in Manuel that it was a constitutionally allowed infringement upon the rights of citizens between the ages of 17 and 21 to raise the drinking age to 21, because the illegality of drinking deterred the high-risk group of 17- to 20-year olds from drinking and driving. Similarly, an increase in the chance of being found guilty of driving while intoxicated will further decrease the number of 17- to 20-year olds who drink and drive. By lowering the allowable blood-alcohol concentration, but limiting this stricter standard only to the high-risk 17- to 20-year old group, the legislature has substantially furthered the important governmental objective of improving highway safety, while as narrowly as possible infringing upon the rights of Louisiana citizens. Thus, the two-step intermediate scrutiny test requiring an important governmental objective, and the means which substantially further that objective, is satisfied when viewed from the perspective of highway safety.

It is important to note that at least fifteen other states have passed statutes similar to La. R.S. 14:98.1. Such states include: Arkansas (AR Code Ann., Title 5, Subt. 6, Ch. 65, Subch. 3, § 5-65-303); California (CA Vehicle Code, Div. 11, Ch. 12, art. 1.5, § 23140); Texas (TX Transportation Code, Title 7, Subtitle B, Ch. 524, Subch. C, § 521.298); Mississippi (MS Code Ann. 1972, Title 63, Ch. 11, § 63-11-30); Idaho (ID Sessions Laws 1998, Ch. 70, Senate Bill 1303, § 18-8004); Iowa (IA Code Ann., Title VIII, Subtitle 2, Ch. 321J, § 321J.2A); Kentucky (KRS 189A.010(1)(e)); Montana (MT Code Ann., Title 61, Ch. 8, Pt. 4, § 61-8-410); Ohio (OH Rev. Code Ann., Title XLV, Ch. 4511, § 4511.19); Tennessee (TN Code Ann., Title 55, Ch. 10, § 55-10-415); Washington (WA Revised Code, Title 46, Ch. 46.61, § 46.61.503); West Virginia (WV Code 1966, Ch. 17C, art. 5 § 17C-5-6a); North Carolina (NC Gen. St., Ch. 20, art. 3, Pt. 10, § 20-138.3); Utah (UT Code Ann. 1953, Ch. 3, Pt. 2, § 53-3-231); and Nebraska (NE Rev. St., Ch. 60, art. 6, §60-6,211.01). Similar to the national movement to raise the drinking age to 21, Louisiana now has the

opportunity to be one of the leaders in taking this step to improve highway safety and to save the lives of Louisiana citizens by finding La. R.S. 14:98.1 constitutionally valid.

I. Welfare of Underage Drinkers

The above-cited statistics also support the contention that lowering the blood-alcohol concentration required for underage driving while intoxicated directly improves the welfare of would-be underage drinkers. That is, La. R.S. 14:98.1 substantially furthers the important governmental objective of protecting underage drinkers from illegally consuming alcohol, and thus protecting them from the penumbra of complications that arise predominantly in the age group of 17 to 20. The last years of high school and the first years thereafter are highly volatile formative years in which young adults map their path of behavior for the future. The pressure of adjusting to adulthood that is peculiar to this age group stresses the importance of apprehending these underage offenders and giving them the assistance they need to prevent future alcoholism and destructive behavior as well as to save their lives and the lives of others. Again, treating 17- to 20-year olds differently from adults over the age of 21 is not a novel idea - this Honorable Court affirmed the validity of such a scheme in Manuel.

The substantial connection between the objective and the means in this case is reflected by the fact that La. R.S. 14:98.1 provides for a substantially lower penalty than La. R.S. 14:98 - for a first offense, there is a maximum fine of \$200, as opposed to a maximum fine of \$1000 plus six months in jail under 14:98. Also, the underage DWI provision mandates participation in a court-approved substance abuse program for first-time offenders, whereas the same is discretionary under 14:98.

Furthermore, these substance abuse programs are required by the statute to be customized to the particular offender's needs. Unlike convictions under La. R.S. 14:98, which are expunged from the records every ten years, convictions for underage driving under the influence are expunged from the records after only three years. What emerges from this statute is a system in which underage drinkers are not simply "lumped in" with everyone over the age of 21, rather they are recognized as having certain needs and problems unique to their age group which require specialized treatment, not only for the benefit of public safety, but also for the welfare of the underage drinkers themselves. Abandoning this statute would serve to forsake a segment of the population that is most at-risk of falling into a pattern of destructive behavior.

CONCLUSION

La. R.S. 14:98.1 is a carefully-drafted statute which was promulgated by the legislature to deal with the unique problems presented by underage drinking and driving, while simultaneously infringing as little as possible upon the rights of Louisiana citizens. Highway safety and the welfare of the underage drinkers themselves are both important governmental objectives, and La. R.S. 14:98.1 is a means which substantially furthers those interests. Even though this statute represents an increased financial and resource burden for Louisiana the

State took the initiative to effectuate this scheme anyway, thereby indicating the importance of the governmental objective involved. La. R.S. 14:98.1 passes intermediate scrutiny, and is therefore constitutionally valid.

Therefore, Applicant, the State of Louisiana, respectfully submits that the trial court's order granting defendant's Motion to Quash, and declaring La. R.S. 14:98.1 to be unconstitutional, should be reversed by this Honorable Court.

Respectfully Submitted,

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VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

MARY ELLEN HUNLEY

who, being duly sworn, deposed and said:

THAT she is counsel of record representing the State of Louisiana, applicant in the foregoing Appeal;

THAT she has prepared and read said Appeal and that all allegations contained therein are true and correct;

THAT copies of this Appeal were duly served upon the Honorable Preston Aucoin, Judge, 13th Judicial District Court, Parish of Evangeline, State of Louisiana; upon District Attorney C. Brent Coreil, 13th Judicial District, Parish of Evangeline, State of Louisiana, P.O. Drawer 780, Ville Platte, Louisiana 70586; and upon defendant, Joseph Davis Ferris through his attorney A. Bruce Rozas of Rozas & Rozas, Attorneys at Law, P.O. Drawer 280, 1212 East Street, Mamou, Louisiana 70554-0280, by placing copies in the United States mail, properly addressed, postage prepaid, on the _____ day of _____, 1998.

MARY ELLEN HUNLEY

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of _____, 1998.

NOTARY PUBLIC