

SUPREME COURT OF LOUISIANA

No. 00-CA-1176

EUGENE C. LATOUR, II, CLYDE LAFLEUR
AND JOSEPH LACHNEY, JR.

Versus

STATE OF LOUISIANA; HONORABLE M. J. “MIKE” FOSTER,
GOVERNOR; RICHARD P. IEYOUB, ATTORNEY GENERAL; WILLIAM R.
“RUT” WHITTINGTON, SUPERINTENDENT,
STATE POLICE

LEMMON, J., Dissenting

In age discrimination cases, the standard for determining the constitutionality of a statutory classification based on age is whether the classification substantially furthers a significant governmental interest. La. Const. art. I §3; Manuel v. State, 95-2189 (La. 7/2/96), 692 So. 2d 320 (on reh’g).

In Manuel, this court upheld the statutory provisions raising the minimum drinking age to twenty-one years. In so doing, this court focused on whether the statutes’ drawing the line at an age higher than the age of majority substantially furthered the State’s significant interest in improving highway safety. In concluding that a sufficient relationship existed, we relied primarily on national statistical data, which we found supported by experience, logic and common sense. Experience showed that a significant reduction in traffic fatalities among motorists in general occurred in other jurisdictions when the minimum drinking age was raised. Logic and common sense showed that increasing the drinking age establishes a “[p]rohibition of drinking by persons who are proportionately the most dangerous group of drinking drivers” and therefore “has to increase highway safety substantially, as opposed to incidentally.” 95-2189 (on reh’g) at p. 10, 692 So. 2d at 342. Further, we quoted a

seasoned state trooper's apt remark that this age group "'is not only inexperienced at driving but is also inexperienced at drinking.'" 95-2189 (on reh'g) at p. 8, 692 So. 2d at 341.

In the present case, the majority concludes that the State met its elevated burden of establishing that the statutes which increased the minimum age for operating video poker devices and purchasing lottery tickets substantially, as opposed to incidentally, furthers the appropriate governmental objectives of protecting young adults from their vulnerabilities, of protecting the public health and general welfare, and of preserving the gambling industry. I disagree.

The trial court concluded that the evidence failed to establish that the statutes substantially furthered the stated governmental objectives. The court reasoned that the beneficial effects of the statutory classification did not reach beyond the eighteen-to-twenty-year old group. This court in Manuel addressed the problem with relying on a justification that only benefits the age group that experiences the discrimination, explaining:

The majority on original hearing took a mistaken view of the State's argument, noting that the State attempted to justify the classification on the basis that the statutes would reduce the incidence of intoxicated driving and alcohol-related accident in the eighteen-to-twenty age group. Of course, if that had been the State's argument, there was insufficient justification for a conclusion that the classification substantially furthered the improvement of highway safety in general. As the majority on original hearing noted, prohibiting use of alcohol by any age group would reduce the incidence of intoxicated driving and alcohol-related accidents in that age group and would not justify the discriminatory classification.

95-2189 at p.9, 692 So. 2d at 341-42 (emphasis in original). This court concluded that the appropriate governmental objective of improving highway safety in general was satisfied, reasoning that "[a]lthough any prohibition in the use of alcohol would have some beneficial effect on alcohol-related accidents, the specific evidence [in the record] establishes that the increase in the drinking age to twenty-one would have a

significantly greater effect in reducing alcohol-related accidents [in general].” 95-2189 at pp.10-11, 692 So. 2d at 342.

An analysis that focuses only on the impact on the discriminated-against age group could be extended to any type of activity and thus is insufficient to satisfy the State’s elevated burden. The State’s proof, in the present case, as the trial court correctly concluded, shows only that the statutory classification will benefit the eighteen-to-twenty-year old adults; adults twenty-one years and older will still experience gambling problems and will not be substantially benefitted. Although some decrease in social costs will be obtained, the same could be said regardless of which age group of adult citizens was eliminated from gambling.

The trial court further found “as a fact that the defendants have not shown credible evidence which tends to establish problems related to gambling among 18 to 20 year olds to be greater than that found among those citizens 21 year old, or over.”

The majority attempts to cure the proof problem by reasoning that an additional justification for the discriminatory classification is the need to protect this age group from their combined inexperience not only at gambling, but also at decision making. This observation apparently is an attempt to track the reasoning in Manuel that “[t]he eighteen-to-twenty-year-old group, who are barely experienced at driving legally, are totally inexperienced at drinking legally.” 95-2189 at p. 8, 692 So. 2d at 341. The synergistic effect of that group’s inexperience not only with drinking, but also with driving, we held, resulted in a substantial improvement in highway safety in general by removal of that age group from drinking and driving. We concluded that this analysis provided the substantial furtherance of a significant governmental objective required

for upholding such a discriminatory classification.¹

There is a huge leap from the result in Manuel to the result in the present case. Raising the minimum drinking age not only benefitted the pertinent age group in particular and society in general to the extent of benefits from withholding alcohol from the young and inexperienced, but also benefitted every motorist in this country by reducing alcohol consumption in the age group most responsible proportionately for alcohol-related highway accidents. No such significant benefit to safety, or to health and welfare, has even been suggested in the present case. On this record, the classification simply does not substantially further any significant government objective such as promoting highway safety, a significant state and national concern. Furthermore, statistical experience is lacking in the gambling disorder field. Indeed, the expert evidence in this case pales in comparison to the detailed statistical evidence summarized in the appendix to Manuel. While the record in this case includes a National Gambling Impact Study Commission Report dated June 1999 which recommends that all legal gambling should be confined to those aged twenty-one or above, that same report acknowledges that “[t]he overall amount of high-quality and relevant research in this area is still extremely limited” and that “many policymakers have been forced to make decisions about expanding gambling with virtually no

¹After Manuel, this court in State v. Ferris, 99-2329 (La. 5/16/00), 762 So.2d 601, upheld the statute setting a lower blood alcohol concentration level for intoxicated persons under twenty-one. In Ferris, the State relied on the same evidence it introduced in Manuel. As in Manuel, we took judicial notice that almost all the states have enacted similar zero tolerance laws. We concluded that the age classification provided an ever closer “classificatory fit” than in Manuel. While the statutes in Manuel addressed only underaged drinking, we noted the repeated reference in Manuel to the real problem targeted being “youthful drinking and driving.” In Ferris, the statute addressed the dual activities of drinking and driving. Hence, we concluded that the State established the age classification substantially, not just incidentally, furthered the appropriate governmental purpose of improving overall highway safety.

credible studies to rely on and, at best, only an assessment of the perceived social impacts.” The executive summary of the Report likewise states that while it is known that adolescent gambling is a problem, “the full scope of this problem remains to be defined.” Even the State’s expert stated in a 1996 publication that:

[t]here are significant deficiencies in the epidemiological data on pathological gambling in Louisiana which are critical to planning intervention programs and making rational social policy decisions. Minimal data are available on the incidence and prevalence of gambling disorders in adolescents. The stability over time of the prevalence rates is also unknown especially in light of the rapid expansion of gambling in Louisiana.

James R. Westphal, MD, and Jill Rush, MD, DRPH, Pathological Gambling in Louisiana: An Epidemiological Perspective, 148 J. La. State Med. Soc. 353, 357-58 (1996).

Nor does common sense support the contested classification. Indeed, there is an inherent problem with the majority’s reliance on the decision-making inexperience (immaturity) of eighteen-to-twenty-year old adults as a justification for this classification. This factor clearly was considered when the age of majority was lowered to eighteen, thereby setting the time at which these young adults have contractual capacity. See La. Civ. Code art. 29 (setting the age of majority at eighteen). To assert such inexperience at decision-making as support for age discrimination against the eighteen-to-twenty-year old group defies logic.

The majority’s conclusion that the age discrimination at issue is constitutional is an unwarranted extension of Manuel.