

6/1/01

SUPREME COURT OF LOUISIANA

No. 2000-K-1246

STATE OF LOUISIANA

VERSUS

NORMAN EDWARDS

CALOGERO, Chief Justice, dissents.

Our constitution sets out mechanisms for its amendment in La. Const. art. XIII. Under that section, the constitution may undergo a change only when “two-thirds of the elected members of each house of the legislature” and “a majority of the electors voting” approve. Just such a procedure was followed in 1989 when La. Const. art. I, § 4, which previously had prohibited state taking of “personal effects other than contraband,” was amended to prohibit state taking of personal effects not related to contraband drugs. Apart from the exception for contraband drugs, the prohibition on the taking of personal effects is absolute: “Personal effects shall never be taken.” Thus our constitution, as amended in 1989, by its terms prohibits the legislature from enacting a statute like La. Rev. Stat. 14:98(D)(2)(a).

While I appreciate the desire of the legislature and this court's majority to reduce the dangers posed by intoxicated drivers, and while I appreciate the efficacy a statute like the one at issue here may have in this regard, the proper procedure for allowing the state to take an automobile used by an intoxicated driver is constitutional amendment followed by appropriate legislation, not unconstitutional legislation followed by de facto judicial constitutional amendment. Accordingly, I respectfully dissent.