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

VICTORY, J., dissenting.

Article 1, Section 3, of the 1974 Louisiana Constitution allows laws to discriminate against persons because of their age, so long as the law does not "arbitrarily, capriciously, or unreasonably discriminate." *Sibley* correctly interpreted this language to mean that the classification had to have a "reasonable basis." *Sibley* first explained that this burden is met by showing that the classification reasonably furthers a legitimate state purpose. *Sibley*, at 1108. However, within one paragraph, the test was expanded to "substantially furthers an appropriate state purpose." *Sibley*, at 1108. In early 1995, this Court in *Pace* again expanded the requirement by holding that the classification must "substantially further[ ] an important governmental objective." 648 So.2d 1305.

The majority in the instant case, citing *Pace*, has again expanded the test, stating that Louisiana courts examine several factors, including whether: (1) each interest asserted by the state is actually implicated by the classifications employed in the statutory scheme; (2) there are no reasonable nondiscriminatory alternatives to the challenged statutory scheme by which the state's asserted interests and objectives might be satisfied; and (3) the

discriminatory classifications contained in the challenged statutory scheme do not undercut any other countervailing state interest.

Further, the majority has now decided:

> We hold today, as explained *infra*, that in the context of a law which singles out a particular age group of adults for treatment different under the law from other adults, the classification can only be found constitutional if it is the classification which most directly implicates or furthers the asserted governmental interest. In other words, if the evidence shows there are other age groups which would better further the State's asserted interest, then the classification chosen is inherently arbitrary, capricious and unreasonable where there are no other asserted State interests which would justify choosing the challenged classification over the group which better furthers the asserted State interest.

In my view, this Court in its prior cases, and the majority in this case, have distorted what Article 1, Section 3, actually means. As so eloquently stated by Mr. Roy at the Constitutional Convention, the phrase "no law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of . . . age" simply means that the "state must show a reasonable basis for it." *Sibley*, 1108 n. 24. Thus, the state may meet its burden of proof by showing that the classification reasonably furthers any legitimate state purpose. Today the majority raises the standard so that reasonableness can only be met if, in the subjective judgment of the majority, the legislature's choice to further highway safety is the best one, i.e., it most directly implicates or furthers the asserted governmental interest.[1]

The undisputed evidence produced by the state shows beyond question that the Legislature was not arbitrary, capricious, or unreasonable in passing this Act, because it reasonably furthers the state interest of highway safety. The majority acknowledges that the state's evidence shows that nationwide, drinking laws, such as at issue here, have been proven to save lives. FRAS data and studies show an over involvement of eighteen- to twenty-year-olds in alcohol-related car crashes, such as: (1) in 1994, 44% of traffic

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[1]Chief Justice Rehnquist warned of the problems with this approach in his dissenting opinion in *Craig v. Boren*, 429 U.S. 190, 221-22, 97 S.Ct. 451, 469-70 (1976):

> How is this Court to divine what objectives are important? How is it to determine whether a particular law is "substantially" related to the achievement of such objective, rather than related in some other way to its achievement? Both of the phrases used are so diaphanous and elastic as to invite subjective judicial preferences or prejudices relating to particular types of legislation, masquerading as judgments whether such legislation is directed at "important" objectives or, whether the relationship to those objectives is "substantial" enough.

fatalities involving eighteen- to twenty-year-olds were alcohol-related, as compared to 40.8% for all traffic fatalities; (2) alcohol-related traffic fatality rates, on a per capita basis are over twice as great for eighteen- to twenty-year-olds as for the population over twenty-one years old; (3) in 1994, more eighteen- to twenty-year-olds died in low-blood alcohol level (.01 to .09) traffic accidents than any other three-year age group; and (4) Louisiana had the fourth highest percentage of alcohol-related traffic fatalities of fifteen- to twenty-year-olds of all states. A 1989 National Highway Transportation Safety Administration study estimated that minimum drinking age laws have been responsible for a 12% reduction in fatal crash involvements of drivers affected by such laws, and NHTSA estimated in 1994 that minimum drinking age laws have reduced traffic fatalities involving eighteen- to twenty-year-olds by 13% and have saved an estimated 14, 816 lives nationwide since 1975. The majority simply dismisses all of this undisputed factual information as irrelevant. Although sufficient for Congress to justify enacting the National Minimum Drinking Act, the majority erroneously discards the evidence and states that the only relevant inquiry in this case is the "greatest number of alcohol-related accidents in Louisiana."

Yet the State presented compelling evidence about Louisiana accidents. 1986 Louisiana traffic records data reports compiled by the Louisiana Highway Safety Commission clearly show that eighteen- to twenty-year-old drivers had fatal and injury-producing accidents at the rate of 1 for every 191 drivers in that age group, whereas all other age groups had a substantially higher per capita rate of fatal and injury-producing accidents. The next closest group, the twenty-one- to twenty-four-year-olds, had a per capita rate of 1 out of every 217 drivers. This statistic showed that drivers in the eighteen- to twenty-year-old age group have fatal and injury-producing accidents at a 12% higher rate than the next highest group, the twenty-one- to twenty-four-year-old age group. Further, Ms. Theis's affidavit that eighteen- to twenty-year-old drivers were only 5% of the licensed drivers in Louisiana in 1993 but were involved in 10% of the alcohol-related and fatal injury accidents, also clearly shows a much higher per capita rate for eighteen- to twenty-year-olds for alcohol-involved and fatal and injury car crashes. Again, the majority erroneously dismisses

this evidence simply because the twenty-one- to twenty-four-year-old group has a higher number of drivers, thus resulting in a total number of fatal and injury accidents greater for that age group than the eighteen- to twenty-year-old group.

In spite of this overwhelming and compelling statistical evidence which clearly shows the Act does not arbitrarily, capriciously, or unreasonably discriminate based on age, the majority holds that the trial court was not manifestly erroneous in concluding as a factual matter that the state's interest in highway safety is not substantially furthered by the Act. The majority points to statistical evidence, such as eighteen- to twenty-year-olds are neither arrested in greater numbers in Evangeline Parish than other age groups for DWI, and eighteen- to twenty-year-olds are not the age group with the highest incident of DWI convictions in Evangeline Parish. This evidence is easily explained by the fact that eighteen- to twenty-year-olds only make up 5% of the drivers. Further, Ms. Marcantel's statistics for 1986 show 9 of 92 DWI arrests in Evangeline Parish were eighteen- to twenty-year-olds, over 10% of the total arrests. Her statistics for 1994-95 reveal 10 of 179 arrests for eighteen- to twenty-year-olds, which is 5.6% of the total arrests, larger than the percent of 5% for eighteen- to twenty-year-old drivers in Louisiana. Even if Marcantel's statistics had shown fewer arrests per capita for eighteen- to twenty-year-olds, there are many explanations as to why eighteen- to twenty-year-olds may not be arrested or convicted as frequently as other age groups including: (1) there are fewer eighteen- to twenty-year-old drivers; (2) police officers may be less inclined to arrest young adults for DWI, preferring to take them home instead; and (3) the fewer the arrests, the fewer the convictions. In my view, the evidence presented for arrests in Evangeline Parish supports the reasonableness of the Act because it shows more per capita arrests for eighteen- to twenty-year-olds than any other three-year age group.

Having concluded that the trial court was not manifestly erroneous in finding that the state failed to carry its burden of proof that highway safety is not substantially furthered by the Act, the majority turns it attention to whether or not there are reasonable nondiscriminatory alternatives to the challenged statutory scheme by which the state's

asserted interests and objectives might be satisfied. The majority suggests to avoid losing federal funding that the state could: (1) impose an absolute prohibition on the purchase, sale or possession of alcohol beverages of all persons of all ages in the state; or (2) raise the age of majority in the state to twenty-one so that eighteen- to twenty-year-olds would then be minors and would be subject to treatment as such. The majority's first suggestion, prohibition, conjures up the days of speak-easys, tommy-guns, and illegal importation of alcohol. Surely, it is an alternative that was tried and discarded decades ago. The majority's second suggestion that eighteen- to twenty-year-olds be reclassified by the Legislature to be minors, not adults, would not only deprive them of all of the other advantages that they gained by being classified as adults at age eighteen, but would also raise serious equal protection problems under the majority's own test herein. Would not a law to reclassify eighteen- to twenty-year-olds as minors simply to deny them the right to drink alcohol be arbitrary, capricious, and unreasonable under the majority's determination that state highway safety is not substantially furthered by denying them the right to drink?

In summary, every state (but Louisiana) and the federal government have drinking laws similar to the one in question. Common sense dictates that the legislatures of all other states and the Congress would never have passed such laws without a reasonable basis. The reasons are obvious -- traffic safety. The undisputed evidence introduced by the state shows that Louisiana drivers in the age group of eighteen- to twenty-year-olds have a much greater frequency of fatal and injury-producing accidents than any other three-year age group. The trial court was not free to disregard or minimize this evidence nor is this Court. In my view, the evidence presented shows a reasonable basis for the law, and the legislature did not arbitrarily, capriciously, and unreasonably discriminate against the eighteen- to twenty-year-olds. I would reverse the trial court's ruling of unconstitutionality and dismiss plaintiffs' claims.