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 REHEARING

LEMMON, Justice*

This rehearing was granted to reconsider the earlier decision which held unconstitutional the statutory provisions that raised the minimum drinking age in this state to twenty-one. On original hearing, a majority of this court ruled that these statutes violated the equal protection afforded by La. Const. art. I, §3 against arbitrary discrimination based on age. On reconsideration, we conclude that the statutes establishing the minimum drinking age at a level higher than the age of majority are not arbitrary because they substantially further the appropriate governmental purpose of improving highway safety, and thus are constitutional.

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*Justice E. Joseph Bleich participated in the decision on rehearing, having been elected to fill the vacancy created by the resignation of Justice James L. Dennis. Watson, J., not on panel. Rule IV, Part 2, §3.

I

In 1986, the Legislature raised the minimum drinking age in the state from eighteen to twenty-one. See La. Acts 1986, No. 33, amending and reenacting La. Rev. Stats. 14:91.1, 91.2 and 91.5. While the new statutes made drinking alcoholic beverages by a person under twenty-one a crime, there were no penalties for selling alcoholic beverages to persons below the minimum age.

In 1995, the Legislature amended and reenacted La. Rev. Stat. 26:90A(1)(a) and (b), and 26:286A(1)(a) and (b); enacted La. Rev. Stat. 14:93.10-93.14; and repealed La. Rev. Stat. 14:91.1-91.5. See La. Acts 1995, No. 639. These statutes imposed penalties for selling alcoholic beverages to persons under twenty-one, thus closing the previous "loophole" which had made the minimum drinking age law unenforceable as a practical matter.

Challenging the constitutionality of Act 639 of 1995 and seeking both declaratory and injunctive relief, plaintiffs commenced this action in the form of a class action with two plaintiff subclasses -- purchasers and retailers. The trial judge granted a temporary restraining order, prohibiting defendants from enforcing any prohibition against the purchase, possession, service or sale of alcoholic beverages to persons between the ages of eighteen and twenty-one pending the injunction hearing.

After the hearing on the preliminary injunction at which both sides presented evidence, the trial judge granted plaintiffs declaratory relief, ruling that Act 639 of 1995 constituted arbitrary age discrimination in violation of La. Const. art. I, §3. The trial court further granted injunctive relief,[1] prohibiting enforcement of the unconstitutional statutes. This direct appeal followed. La. Const. art. V, §5(D).

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[1]The parties subsequently agreed to convert the preliminary injunction to a permanent injunction, and the trial court's decision was stayed pending this court's decision.

On original hearing, a majority of this court affirmed the trial court's decision declaring the minimum drinking age provisions unconstitutional under La. Const. art. I, §3. On the State's application, we granted rehearing to reconsider the correctness of that decision.

II

La. Const. art. I, §3, provides:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime. (emphasis added).

In asserting the constitutional challenge to the minimum drinking age statutes, plaintiffs rely on the special protection against arbitrary discrimination based on age set forth in the third sentence of La. Const. art. I, §3.

In Sibley v. Board of Supervisors of Louisiana State Univ. and Agric. and Mechanical College, 477 So. 2d 1094 (La. 1985),[2] we construed this third sentence of Section 3 to mean that when a statute classifies persons on a basis therein enumerated, the statute is unconstitutional unless the proponents of the statute prove this legislative classification "substantially furthers an appropriate state purpose." Id. at 1108. In so holding, we expressly repudiated the notion that the federal system of equal protection review should be used as a model for interpreting or applying this third sentence of Section 3, concluding that "the state constitution calls for more than minimal scrutiny

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[2]In Sibley, this court held that a legislative classification between medical malpractice victims with slight or medium class injuries, who were entitled to full recovery of damages, and seriously injured medical malpractice victims, who were only entitled to a limited portion of their damages, violated the prohibition of La. Const. art. I, §3 against arbitrary discrimination based on physical condition.

of certain types of classifications, and assigns the state the burden of showing that such legislation is not arbitrary, capricious or unreasonable." Id. at 1107.

As we recently explained in Moore v. RLCC Technologies, Inc., 95-2621 (La. 2/28/96); 668 So. 2d 1135, La. Const. art. I, §3 sets up a spectrum for analyzing equal protection challenges based on discriminatory classifications. At one extreme are laws that classify persons based on race or religious beliefs. Under the second sentence of Section 3, such laws are repudiated completely. See Louisiana Associated Gen. Contractors, Inc. v. State Through Div. of Admin., Office of State Purchasing, 95-2105 (La. 3/8/96); 669 So. 2d 1185.

At the other end of the spectrum are laws that classify persons on any basis other than those bases expressly enumerated in Section 3. These laws are reviewed under the standard set forth in the first sentence, which has been construed to mean that every statutory classification must pass the minimum standard of being rationally related to a legitimate governmental purpose.[3] Whenever a person disadvantaged by such a classification seeks to have the law declared unconstitutional, that person has the stringent burden of demonstrating that the law does not suitably further any appropriate state interest.

In the middle of the spectrum are laws that classify persons on the basis of the six grounds enumerated in the third sentence of Section 3: (1) birth, (2) age, (3) sex, (4) culture, (5) physical condition or (6) political ideas or affiliations. A law containing a statutory classification based on any of the six enumerated grounds does not enjoy the usual presumption of constitutionality. Moreover, with that reversal of the ordinary presumption of constitutionality comes a reversal of the rule that ordinarily places the

[3]The first sentence sets forth a general rule against discrimination and empowers the courts to expand the equal protection guarantee to other types of classifications besides those expressly enumerated.

burden of proof on the party seeking a declaration of unconstitutionality. When the court reviews such a law, the burden is on the proponent of the classification and the standard of review is heightened, requiring the proponent to establish that the classification is not arbitrary, capricious or unreasonable because it substantially furthers an appropriate governmental objective.[4] Moore v. RLCC Technologies, Inc., 95-2621, pp. 9-10 (La. 2/28/96); 668 So. 2d 1135, 1140-41.

In summary as to the two lower levels of scrutiny, the standard under the Louisiana Constitution for determining the constitutionality of a statute that sets up a classification on any basis not enumerated in Section 3 is whether the classification under the presumptively constitutional statute furthers any legitimate governmental interest, and the opponent has the burden of proof. On the other hand, the standard for determining the constitutionality of a classification based on age is stated expressly in La. Const. art. I, §3 -- the classification cannot "arbitrarily, capriciously or unreasonably discriminate." Because age classification is specifically enumerated in Section 3 and because an age classification must have a non-arbitrary basis, the burden of proof is on the proponent of constitutionality to show that the statute establishing such a classification substantially furthers an appropriate governmental purpose.

The principal differences in the standards for the two lower levels of scrutiny are

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[4]The standards of the federal system, because of the Supremacy Clause, establish the baseline minimum standard of scrutiny. Pace v. State Through La. State Employees Retirement Sys., 94-1027 (La. 1/17/95); 648 So. 2d 1302. Nevertheless, a state may adopt a greater degree of protection of individual rights. In the federal system, the standard for reviewing a statute that discriminates on the basis of age utilizes the minimum standard of scrutiny. See Vance v. Bradley, 440 U. S. 93 (1979); Massachusetts Bd. of Retirement v. Murgia, 427 U. S. 307 (1976). When such a statute is reviewed under the Louisiana Constitution, however, a higher level of scrutiny is applicable and the burden of proof is changed because the framers of the Constitution expressly enumerated in the third sentence of Section 3 a number of classifications that affect significantly important interests that do not reach the level of constitutionally suspect categories.

the placement of the burden of proof and the requirement for the middle level that the appropriate governmental purpose be a substantial reason for the classification rather than merely an incidental consideration.[5]

III

As noted above, the standard of scrutiny appropriate for review of a statute that classifies persons on the basis of age is whether the classification substantially furthers an appropriate governmental purpose. There is general agreement that improving highway safety is an appropriate governmental purpose, and an important one. The narrow issue is thus whether the age classification in these statutes substantially furthers that purpose.

On original hearing, the majority applied the above-stated standard to the evidence and framed the relevant inquiry as "whether eighteen to twenty year olds are the age group responsible for the greatest number of alcohol related accidents in Louisiana." 95-2189 (La. 3/8/96), p. 14 (emphasis added). In concluding that the evidence failed to establish that this age group was responsible for the greatest number of alcohol-related accidents in this state, the majority compared age groups in three-year segments. The majority rejected evidence that the eighteen-to-twenty-year-old age group was "over-represented"[6] to a greater degree than other three-

[5]The phrase "substantially furthers" in the standard for reviewing discriminatory statutes based on age imposes the requirement that the government purpose must be a substantial, as opposed to merely an incidental, reason for the classification. The intermediate standard of scrutiny thus accords less deference to the legislative branch than the rational relationship standard.

[6]"Over-represented" means that a certain age group has more licensed drivers involved in alcohol-related accidents on a percentage basis than the group's respective percentage of total licensed drivers. Illustrating this concept, the majority noted that the State's evidence showed that eighteen to twenty year olds in 1993 accounted for five percent of licensed drivers in this state, yet were involved in ten percent of the alcohol-

year age groups in alcohol-related accidents, because other three-year age groups with a larger number of licensed drivers were involved in a larger number of alcohol-related accidents. The majority also rejected the national statistics presented by the State, reasoning that while the national data provided sufficient justification for Congress under the Commerce Clause to enact the National Minimum Drinking Age Act, see South Dakota v. Dole, 483 U. S. 203 (1987), that national data did not provide sufficient justification for an increase in the minimum drinking age in Louisiana. Using this focus on absolute numbers and Louisiana statistics, the majority concluded that "eighteen to twenty year olds are not the group responsible for the greatest number of alcohol-related accidents in Louisiana." 95-2189 (La. 3/8/96), p. 14 (emphasis added).

On rehearing, we frame the relevant inquiry differently and employ a different focus.

The statute under review involves a change in the minimum drinking age. The precise question is whether the raising of the minimum drinking age from eighteen to twenty-one, which discriminates against adults in the lowest range of adulthood by postponing their legal access to alcoholic beverages, substantially furthers the governmental objective of improving highway safety. The inquiry should focus on the reasons for and effect of removing eighteen-to-twenty-year-old persons from the group of licensed drivers who are allowed to drink alcohol legally. The analysis should examine the relation of the two classes to each other by comparing licensed drivers in the eighteen-to-twenty-year-old group in alcohol-related accidents with licensed drivers in the age group of twenty-one and above. The inquiry should also include consideration of the reasons, presented by the evidence, for raising the minimum drinking age in order to affect highway safety.

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related fatal and injury accidents. Hence, that age group was "over-represented." 95-2189 (La. 3/8/96), p. 14 n. 7.

IV

A detailed summary of the evidence introduced at trial is attached to this opinion as an appendix.

The governmental objective at issue is improving highway safety. The means chosen by the Legislature to improve highway safety in these particular statutes are aimed generally at the problem of drinking and driving, a problem that pervades all age groups, but specifically at the problem of youthful drinking and driving. The eighteen-to-twenty-year-old age group, who are barely experienced at driving legally, are totally inexperienced at drinking legally. In the words of the Commander of the Louisiana State Police, allowing this group to use alcohol has a detrimental effect on highway safety because the group "is not only inexperienced at driving but is also inexperienced at drinking." The Commander, based on his experience, expressed his expert opinion that the statutes under review are a "most critical and fundamental improvement" in attacking the problem of intoxicated drivers.

Increasing the minimum drinking age clearly is a rational and non-arbitrary approach to solving the particular problem of youthful drinking and driving, as well as the overall problem of intoxicated driving.[7] Forty-nine other states and the federal system have adopted this approach as a non-arbitrary method of attaining improvement in the problem. Admittedly, those legislative decisions are not subject to the same equal protection scrutiny as the Louisiana statutes. Nevertheless, unanimous utilization of this approach to the problem is a significant indication that this approach

[7]As noted, the challenged statutes focus on the problem of youthful drinking and driving. If youthful drinking and driving is a substantial problem in highway safety and if increasing the minimum drinking age is an appropriate means of attacking that problem, the minimum drinking age can only be increased at the lowest level - the eighteen, nineteen and twenty-year-old group. Thus, the statutes do not single out the members of this three-year age group for unequal treatment as compared to other three-year age groups. This is the only age group that can be affected by a three-year increase in the minimum drinking age.

"substantially furthers [the] appropriate state purpose" contemplated in Sibley. Id. at 1108.

Logic and experience were the principal bases for the governmental conclusion that an increase in the minimum drinking age will substantially further the objective of improving highway safety. Statistics were primarily used at trial to provide corroborative support for that conclusion.

The trial court, affirmed by the majority on original hearing, concluded that the statistics did not support that governmental decision. On reconsideration of the evidence and arguments of counsel, we conclude that the trial court erred manifestly on the mixed question of law and fact by using an incorrect method of analysis, and the majority on original hearing fell into the same error.

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 accidents 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.

The State's principal argument, which we deem valid, is that prohibiting use of alcohol by eighteen-to-twenty-year-old licensed drivers will improve highway safety for all motorists by removing from the general group of alcohol-using licensed drivers the specific group of alcohol-using licensed drivers who are, by percentage, the drivers most frequently involved in alcohol-related accidents. The overall statistical evidence

supports this argument.

Of the statistical evidence, the most significant by far was the data obtained by the National Highway Transportation Safety Administration (NHTSA) from studies that were undertaken for the specific purpose of evaluating the effectiveness on highway safety of laws that raised the minimum drinking age to twenty-one. These statistics compared the specific group disadvantaged by the discrimination with the general group of licensed drivers and established, among other things, that the disadvantaged group was involved in twice as many accidents per capita as the general group and that Louisiana ranked above forty-six other states in the percentage of alcohol-related fatalities involving drivers under twenty-one. Other studies combined to conclude that minimum drinking age laws were responsible for significant reductions in traffic fatalities among motorists generally.

The executive director of the Louisiana Highway Safety Commission concluded from Louisiana and national data that alcohol-related fatalities involving young drivers increased significantly at age seventeen and peaked at age twenty. Particularly important was her testimony that persons in the disadvantaged group represented only five percent of the licensed drivers, but were involved in ten percent of the alcohol-related accidents involving injuries or fatalities. The latter statistics are particularly significant because if an increase in the drinking age to twenty-one eliminates drinking by the group of licensed drivers that are involved in twice the number of alcohol-related accidents proportionate to the percentage of drivers in that group, then clearly the increase substantially furthers the goal of improving highway safety. Prohibition of drinking by persons who are proportionately the most dangerous group of drinking drivers has to increase highway safety substantially, as opposed to incidentally.

Other reports outlined in the evidence established that the increase in the

drinking age substantially reduces alcohol-related traffic accidents. Although any prohibition in the use of alcohol would have some beneficial effect on alcohol-related accidents, the specific evidence referred to in the previous paragraph establishes that the increase in the drinking age to twenty-one would have a significantly greater effect in reducing alcohol-related accidents.

The trial court's finding that the challenged classification does not substantially further the State's interest in improving highway safety because members of the disadvantaged group in Louisiana are neither arrested in greater numbers for intoxicated driving nor involved in greater numbers of alcohol-related accidents was erroneous as a matter of fact and law. First, there was no reason to reject from consideration the statistical data, studies, reports and expert opinions from outside Louisiana, and especially those studies that were specifically performed to evaluate the effectiveness of the increase in the minimum drinking age to twenty-one.[8] Second, the court erred in considering a reduction in the gross number of accidents as the only means of improving highway safety. The State sought to improve highway safety by removing access to alcohol from the age group that is most likely, by percentage of licensed drivers, to be involved in alcohol-related accidents. The government may choose one of several appropriate methods for improving highway safety, as long as the method chosen substantially furthers that purpose. The proper approach for evaluating the statistical support for the method chosen by the State was to compare the disadvantaged group with the group of licensed drivers above twenty-one and to determine if the disadvantaged group was involved proportionately in significantly more

[8]The trial court's apparent reliance on statistics of DWI arrests in Evangeline Parish was particularly inappropriate. Not only did the statistics not show the percentage of drivers in the disadvantaged group in the parish, but also there was no consideration that young drinking drivers are frequently not arrested for the first incident.

alcohol-related accidents. Use by the trial court, as approved by this court's original hearing majority, of absolute numbers of accidents in each group (or in three-year age groups), without reference to the number of drivers in each group, was an improper focus for determining whether the classification is substantially related to the achievement, by the means chosen by the government, of an improvement in highway safety for motorists of all ages. These errors in method of analysis led to a manifestly erroneous conclusion.

V

The trial court further erred in accepting plaintiffs' argument that the decision in Pace v. State Through La. State Employees Retirement Sys., 94-1027 (La. 1/17/95); 648 So. 2d 1302 imposed three additional requirements to the burden of proof established by Sibley.

In their trial brief, plaintiffs set forth their interpretation of Pace as adding three additional requirements to the Sibley standard for determining whether legislation falling within the intermediate level of scrutiny under La. Const. art. I, §3 substantially furthers an appropriate governmental interest. These three "requirements" were reiterated in brief to this court as follows:

> Accordingly, the Age Legislation must survive the three Pace tests:
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> First, each interest must actually be implicated by the statutory scheme, Pace, 648 So.2d at 1309;
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> Second, there must be no non-discriminatory "alternatives which deal directly" with the asserted interest, Id.; and
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> Third, the age discrimination must not "undercut" a "countervailing state interest." Id. at 1310.

Plaintiffs' argument in the present case that Pace imposed additional requirements for intermediate review is erroneous. In Pace, this court merely reaffirmed that the

proper standard for intermediate review of the statutory classifications expressly enumerated in the third sentence of Section 3 is the standard articulated in Sibley. We now clarify that Pace was simply a specific application of the Sibley standard to a concrete factual record and that Pace neither altered nor expanded the Sibley standard.

The Pace decision involved a challenge to a retirement statute that classified persons on the basis of birth or legitimacy. This court, using the Sibley standard for the enumerated categories in La. Const. art. I, §3, held that the statute which required an illegitimate child of a male member of the retirement system to obtain a judgment of filiation in order to receive survivors' benefits, while not imposing the same requirement on legitimate children of members or on illegitimate children of female members, did not substantially further the State's asserted interests in the orderly disposition of property at death and the prevention of fraudulent or stale claims. The decision additionally noted, clearly for purposes of that factual situation only, that the former interest, although usually an important concern as to parental inheritance by illegitimate children, is "not implicated by the instant statutory scheme" (which provided for fixed monetary benefits) and does not involve the ownership of immovables or the need for finality required in succession proceedings. Id. at 1309.

The Pace decision further mentioned that there was a more effective non-discriminatory means of preventing fraudulent claims by the use of extremely reliable evidence, available through advances in modern scientific technology, to prove filiation, and that the strength of the asserted state interest in preventing fraudulent claims was undercut by a countervailing state interest in ensuring that genuine claims for child support are satisfied.

While these three factors perhaps were relevant for rejecting the classification in the factual context of Pace, these factors were neither part of the holding in Pace nor

were these adopted as mandatory requirements for the intermediate level of scrutiny. Nevertheless, because the trial judge in the present case found a deficiency in the State's case based on failure to prove these factors, we discuss each separately.

A

The trial court ruled that the State failed to prove that the asserted governmental interest in improving highway safety was actually implicated by the classifications in the statutory scheme, as required by Pace.[9]

The innocuous language in the Pace decision that the State's interest in the orderly disposition of property at death was not actually implicated by the statutory scheme that provided for fixed benefits hardly suggests that Pace added a significant burden to Sibley's intermediate scrutiny standard. Rather, the language in Pace indicates that there simply was not a substantial relationship in that case between the classification and the asserted governmental interest, which is essentially an application of the Sibley standard.

Since few classifications provide for a perfect fit[10] between the classification and

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[9]The majority on original hearing went far beyond the Sibley intermediate scrutiny standard and required that the age classification chosen by the Legislature be the one "which most directly implicates or furthers the asserted governmental interest. 95-2189, p. 6. (emphasis added). Sibley has no requirement that the Legislature's choice of means for furthering an appropriate objective be the best choice of several means. This requirement has only been applied in federal strict scrutiny situations involving suspect classes or fundamental rights.

[10]The relationship between a classification and the governmental purpose is sometime referred to as classificatory fit. Classificatory fit is generally analyzed for legislative rationality as a function of underinclusiveness and overinclusiveness of the classification, an approach posited by a seminal article, Joseph Tussman and Jacobus tenBroek, The Equal Protection of the Laws, 37 Cal.L.Rev. 341 (1949).

An underinclusive classification is one that "contains all similarly situated people but excludes some people who are similar to them in terms of the purpose of the law." Ronald D. Rotunda and John E. Nowak, 3 Treatise on Constitutional Law §18.2 (2d ed. 1992). An overinclusive classification is one that

the asserted governmental purpose or for a completely irrational mismatch of classifications with purposes, "[t]he key factor in reviewing classifications is the degree of correlation between the means and the ends that is required by the judiciary and the extent to which the judiciary will analyze the permissible purpose of the legislation." Ronald D. Rotunda and John E. Nowak, 3 Treatise on Constitutional Law §18.2 (2d ed. 1992). This factor is dependent upon the standard of scrutiny applicable to the legislation in question.

In applying the federal intermediate standard of scrutiny in a case involving gender classification, the Supreme Court in Craig v. Boren, 429 U. S. 190, 197 (1976), framed the inquiry as whether the classification serves "important governmental objectives and [is] substantially related to achievement of those objectives,"[11] and focused on the classificatory fit. Considering a challenge to a statute that prohibited the sale of "nonintoxicating" 3.2% beer to males under the age of twenty-one and to females under the age of eighteen, the Court held that statistics broadly establishing 0.18% of females and 2% of males in that age group were arrested for alcohol-related driving offenses could not support the use of gender as a classifying device. The Court

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"includes all persons who are similarly situated in terms of the law plus an additional group of persons." Id. Often, as in the present case, classifications are both under and overinclusive. Id.

The age classification at issue here is underinclusive because it does not address a major portion of the perceived problem, adults between twenty-one and thirty. It is overinclusive because it prohibits young adults from drinking even when they would not be driving. South Dakota v. Dole, 483 U. S. 203, 214-15 (1987) (O'Connor, J., dissenting). The overinclusiveness of the Louisiana minimum drinking age laws at issue, however, is somewhat overcome by the exceptions which permit young adults to drink in specified settings, such as private residences and with parents.

[11]The intermediate scrutiny standard used in Craig to review gender discrimination -- the classification must serve important governmental objectives and must be substantially related to achievement of those objectives -- is virtually the same as the standard for review of age classification applicable in this case.

commented that the correlation between the gender classification and the objective of enhancing traffic safety was "an unduly tenuous `fit.'" Id. at 202. Noting that the limited statistical data failed to consider the dangerousness of "non-intoxicating" 3.2% beer as opposed to alcohol generally, the suggestion that young men who drink and drive are transformed into arrest statistics while their female counterparts are chivalrously escorted home, or the fact that the statute only prohibited selling 3.2% beer to young males (and not their drinking the beverage), the Court held that the relationship between the gender classification and the goal of traffic safety was far too tenuous to support a conclusion that the classification was substantially related to achievement of the statutory objective.[12]

In the present case, 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. That relationship is supported by statistical data, when viewed in the proper focus. Although there is the difficulty noted in Craig of proving broad sociological propositions by statistics, the statistics in the present case were only necessary to provide corroborative support for the proposition, widely accepted by experts, that raising the minimum drinking age is substantially related to the improvement of overall highway safety by reducing alcohol-related accidents.[13]

We conclude that there is a substantial relationship in the present case, that was absent in the Pace case, between the classification and the asserted governmental interest, which is all that Sibley requires.

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[12]While the percentages for males was ten times that for females, the percentages were so small as to be of questionable accuracy, especially in view of the value problems pointed out by the Court for such limited statistics.

[13]See Government Accounting Office, Report to Congress entitled Drinking-Age Laws -- An Evaluation Synthesis of Their Impact on Highway Safety (March 1987).

B

The trial judge also imposed a burden on the State to prove that there were no non-discriminatory alternative methods for reducing accidents caused by intoxicated driving. The judge listed alternatives, among others, such as public education, lowering the legal blood-alcohol level for drivers, and mandating lengthy driver's license suspensions.

This burden imposed on the State by the trial judge, at plaintiffs' suggestion that Pace required this burden, is seldom appropriate in intermediate scrutiny cases. In the federal system, cases requiring strict scrutiny because suspect classes or fundamental rights are involved sometimes mandate that the classification be narrowly tailored to achieve the specific governmental objective.[14] Ronald D. Rotunda and John E. Nowak, 3 Treatise on Constitutional Law §18.3 (2d ed. 1992). The intermediate scrutiny standard adopted by Sibley for review of age classification statutes falls far below the strict scrutiny standard in the federal system. Indeed, the Sibley standard -- the classification must substantially further an appropriate governmental interest -- is virtually the same as the intermediate scrutiny standard enunciated in Craig v. Boren, 429 U. S. 190 (1976) -- the classification must serve important governmental objectives and must be substantially related to achievement of those objectives. Neither the Sibley intermediate standard nor the Craig intermediate standard requires that the proponent of the statute prove there are no non-discriminatory methods of achieving the objective sought by the statute, as the trial judge required in the present case.

C

[14]Less restrictive alternatives may be required in cases involving overinclusive classifications. Laurence H. Tribe, American Constitutional Law §16-4 n.23 (2d ed. 1988).

The trial judge indicated that the State had the burden to prove that the age classification does not undercut any countervailing governmental interest. However, the judge did not discuss this "requirement" any further in reasons for judgment. Suffice it to say, the Sibley intermediate standard contains no "requirement" that the proponent of the statute prove the classification does not undercut any countervailing governmental interest, and the trial judge erred in imposing this requirement.[15]

VI

Plaintiffs' final argument is that even if implementation of the prohibitions in the challenged statutes would substantially further the governmental objective of improving highway safety, the statutes contain so many exceptions that the asserted objective "is not even implicated, much less substantially furthered."

La. Rev. Stat. 14:93.12 makes it a crime for a person under the age of twenty-one to purchase or to have public possession of alcoholic beverages. La. Rev. Stat. 14:93.10 defines "public possession" to include "consumption, on any street or highway or in any public place or any place open to the public, including a club which is de facto open to the public," but carves out of that definition the exceptions at issue. The exceptions exclude from "public possession" the possession or consumption of alcoholic beverages in the following five settings:

(i) For an established religious purpose.

(ii) At a function sponsored by a bona fide nonprofit organization under 26 U.S.C. 501(c) where an individual had received or purchased a ticket

[15]The majority on original hearing stated that the age classification undercuts the countervailing governmental interest of according "adult" or "major" status to members of this age group. The majority pointed out many responsibilities and obligations assigned to persons of the age of majority. While these observations are persuasive arguments against legislative adoption of the classification, the function of this court is not to pass on the desirability or wisdom of the Legislature, but to determine the constitutionality of the legislative enactment.

for admittance.

(iii) When a person under twenty-one years of age is accompanied by a parent or legal custodian twenty-one years of age or older.

(iv) For medical purposes when prescribed or administered by a licensed physician, dentist, nurse, hospital, or medical institution.

(v) In private residences.

La. Rev. Stat. 14:93.10(2)(a).[16]

The State argues that almost all of the other forty-nine state statutes have similar exceptions permitting under-aged persons to drink in certain situations. Plaintiffs counter that while the minimum drinking age laws of other states contain similar exceptions, no minimum drinking age law of any state contains as many exceptions as the Louisiana statute. Plaintiffs contend that the inconsistencies presented by the exceptions undermine any furtherance of the governmental purpose. Noting that under-aged persons can nevertheless drink alcohol legally in their residences, at religious events, with parents and at bona fide nonprofit functions, plaintiffs submit that the statutes, when considered with the numerous exceptions, authorize public possession and consumption of alcohol by this age group in so many settings that the statutes cannot substantially further the governmental interest of improving highway safety.

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[16]We take judicial notice of the fact the Legislature amended these exceptions after our decision on original hearing, totally repealing the exception for bona fide nonprofit organizations and slightly amending the wording of the remaining four exceptions. See La. Act 1996, No. 78. More precisely, the statutory exceptions, as amended, now read as follows:

(i) For an established religious purpose.

(ii) When a person under twenty-one years of age is accompanied by a parent, spouse, or legal guardian twenty-one years of age or older.

(iii) For medical purposes when purchased as an over the counter medication, or when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution.

(iv) In private residences.

La. Rev. Stat. 14:93.10(2)(a).

The issue is determined by examining the State's purpose--improving highway safety--and determining the effect, if any, the exceptions have on that purpose. Therefore, the statutory exceptions must be individually and collectively examined to determine whether they, as the trial court concluded, undercut the State's appropriate objective of improving highway safety.

No one disputes the exceptions for medical and religious purposes. See Felix v. Milliken, 463 F. Supp. 1360 (E.D. Mich. 1978) (noting accepted notion that religious and medical purposes are exceptions from such statutory and constitutional drinking age provisions). Rather, the dispute is over the other three exceptions.

The exceptions for consumption in a private residence or consumption with a parent or legal custodian share the common notion of family occasions, and we therefore address them together.

The trial judge concluded that since these exceptions allowed under-aged persons to consume alcoholic beverages "as much as they want" in certain settings uncontrolled by governmental supervision over alcoholic beverages, the exceptions effectively undermined the stated objectives of improving protection of the motoring public from youthful driving and drinking, as well as undermining the governmental policy favoring temperance.

Contrary to the trial judge's suggestion, this is not a temperance statute. Rather, the purpose of this statute is to curtail the ready availability of alcohol to inexperienced drivers and drinkers in this age group. The real danger at which the minimum drinking age law is aimed is the situation of under-aged persons' buying drinks at bar rooms and convenience stores before driving around in their vehicles. This is the setting in which the greatest danger of accidents is presented. On the other hand, when under-aged persons drink alcohol at home or with parents or guardians, theoretically their parents

or guardians are not likely to allow them to drive on the highways after such drinking, and thus theoretically far less danger is presented.

This theoretical division between public settings and family settings is based on family controls versus societal controls on drinking and driving. Tracking that division, the exceptions restrict alcohol consumption by this age group to family-controlled settings, leaving the prohibition applicable primarily to non-family settings in public places. The statutory objective of reducing the ready availability of alcohol to under-aged persons likely to drive after drinking thus is not undercut by the two exceptions which permit consumption in family-controlled settings.

The exceptions also recognize the reality that the Legislature can control alcohol acquisition, possession and consumption in certain settings, but cannot exercise control, short of enacting a temperance statute, in certain other settings. When these exceptions are viewed in accordance with the division of control between the State and parents, the statutory exceptions do not undermine the statute's furtherance of the governmental purpose.

As to the final exception for consuming alcohol at ticketed functions sponsored by bona fide nonprofit organizations, we take judicial notice of the fact the Legislature recently amended La. Rev. Stat. 14:93.10(a) and totally repealed this exception. La. Acts 1996, No. 78. While this exception no longer affects the constitutionality of the present statute, we nevertheless analyze the effect of the exception as it existed at the time of the trial of this case.

Allowing persons between eighteen and twenty-one to drink alcohol at a ticketed event sponsored by a bona fide nonprofit organization is a very narrow exception to the prohibitory law against "public" possession and consumption of alcohol by this age group. The exception distinguishes between (1) a public place or a club which is de

facto open to the public and (2) a single ticketed event held by a good faith nonprofit organization. While there is some "public" nature to this type of function, the effect of this infrequently anticipated occasion for drinking alcohol under this now repealed exception cannot truly be said to undermine the effect of the overall prohibition on the improvement of highway safety.

For these reasons, the judgment of the trial court is reversed, and plaintiffs' action is dismissed.