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

KIMBALL, J.*

THE ISSUE

La. R.S. 14:93.10 through La. R.S. 14:93.14, La. R.S. 26:90, and La. R.S. 26:286, all relative to prohibiting and providing sanctions for the purchase by, sale to, or purchase on behalf of, alcoholic beverages by persons under twenty-one years old were declared unconstitutional by a trial court under Art. I, Sec. 3 of the Louisiana Constitution of 1974. Pursuant to Art. V, Sec. 5(D) and La. R.S. 13:4431, the defendants brought this direct appeal to this court. After thoroughly reviewing the record evidence in this case, we affirm the trial court's declaration that the challenged statutes unconstitutionally discriminate on the basis of age, in violation of Art. I, Sec. 3 of the Louisiana Constitution of 1974.

FACTS AND PROCEDURAL HISTORY

On August 15, 1995, plaintiffs Jody W. Manuel and Stacey P. Foret, citizens of Louisiana

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* Judge Burrell Carter, Jr., First Circuit Court of Appeal, sitting by assignment to fill the vacancy created by the resignation of Justice James L. Dennis. Watson, J. not on panel. Rule IV, Part 2, § 3.

under twenty-one years of age, and Burke G. Pierrotti and Wendell J. Manuel, retailers of alcoholic beverages, filed suit in Evangeline Parish requesting that enforcement of La. R.S. 14:93.10 - 93.14 and La. R.S. 26:90 and 26:286, which impose sanctions on persons under twenty-one years of age who purchase alcoholic beverages and on those who sell alcoholic beverages to persons under twenty-one years of age, be enjoined, and that the challenged statutes be declared unconstitutional as "age discrimination" prohibited by Article I, Section 3 of the Louisiana Constitution of 1974. The Attorney General of the State of Louisiana was named as a party defendant and properly served. On August 15, 1995, the trial court issued a temporary restraining order enjoining the enforcement of the challenged statutes pending a hearing on the rule for preliminary injunction.

On August 24, 1995, trial of the request for preliminary injunction was held and, following the presentation of testimony and exhibits, the trial court issued a preliminary injunction "declaring the age legislation unconstitutional, and prohibiting its enforcement throughout the State." Pursuant to La. R.S. 13:4431 and Art. V, Sec. 5(D)(1) of Louisiana Constitution of 1974, the State of Louisiana filed a Petition for Suspensive Appeal to this Court, which the trial court erroneously refused to grant. The State then filed an application for a Supervisory Writ in this court, which we granted on August 24, 1995, docketing the application as an appeal and staying the execution of the trial court's preliminary injunction and declaration of unconstitutionality pending further orders of this court.[1]

On September 21, 1995, the parties entered into a stipulation, filed into the record, that the district court's judgment of August 24, 1995, be considered as that court's judgment on the permanent injunction, subject to the appeal already pending in this court. On October 20, 1995, the parties jointly moved in this court to add plaintiffs Christopher T. Nobles and Jessica A. Slutsky, both between the ages of eighteen and twenty-one, as the original plaintiffs Jody Manuel and Stacey Foret each achieved the age of twenty-one during the pendency of these proceedings.

The constitutionality of the challenged statutes, which make it illegal for persons eighteen to twenty years old to purchase or be sold alcoholic beverages is now squarely and properly before this court. After a thorough review of the law and the record herein, we affirm the trial court's declaration of unconstitutionality of the challenged statutes insofar as those statutes make it illegal for eighteen

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[1] *Manuel, Et Al. v. State of Louisiana, Et Al.*, 95-2156 (La. 8/24/95), ___ So.2d ___.

to twenty year olds to purchase or be sold alcoholic beverages.

HISTORY OF ACT 639 OF 1995

In 1986 the Louisiana Legislature passed Act 33 of 1986, which amended and reenacted La. R.S. 14:91.1 and La. R.S. 14:91.2, and enacted La. R.S. 14:91.5, raising the minimum drinking age from eighteen to twenty-one in Louisiana. Act 33 of 1986 was passed in response to the passage by Congress of 23 U.S.C. § 158, the National Minimum Drinking Age Act, which requires states to impose a minimum age of twenty-one for the purchase or public consumption of alcoholic beverages in order to remain eligible to receive full federal highway funding. Under 23 U.S.C. § 158, a state which fails to comply and raise its minimum drinking age to twenty-one has 5% of its federal highway funds withheld during the first year of non-compliance and 10% of such funds withheld in each succeeding year.[2] While Act 33 of 1986 raised the minimum drinking age in Louisiana to twenty-one by prohibiting the purchase or public possession of alcoholic beverages by persons under twenty-one, it contained no sanctions applicable to retailers or sellers of alcoholic beverages to such persons. Though this statutory scheme apparently satisfied the requirements of 23 U.S.C. § 158, as Louisiana has continued to receive full federal highway funding since March 15, 1987, the effective date of the Act, the omission of sanctions on retailers and sellers of alcoholic beverages rendered the statutes practically unenforceable, as only the underage purchasers, and not the sellers of alcoholic beverages could be punished.

In 1995, Act 639 of 1995 amended and reenacted La. R.S. 26:90(A)(1)(a) and (b) and La. R.S. 26:286(A)(1)(a) and (b), enacted La. R.S. 14:93.10 through La. R.S. 14:93.14, and repealed

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[2] 23 U.S.C. § 158, in pertinent part, provides:

> (a) Withholding of funds for noncompliance.
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> (1) First year. The Secretary shall withhold 5 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(5) of this title on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.
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> (2) After the first year. The Secretary shall withhold 10 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(5) of this title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

former La. R.S. 14:91.1 through La. R.S. 14:91.5. These changes produced statutes almost identical to those contained in Act 33 of 1986 insofar as the provisions relating to eighteen to twenty-one year old purchasers and possessors of alcoholic beverages were concerned, but added provisions imposing sanctions on retailers for selling alcoholic beverages to those between ages eighteen and twenty-one.[3] Therefore, the changes made in Act 639 of 1995 effectively closed the "loophole" in Louisiana's drinking age law which had rendered it practically unenforceable.

LAW

Article I, Section 3 of the Louisiana Constitution of 1974 contains an equal protection, or "Individual Dignity" clause, unlike that of any other state's constitution or the United States Constitution. *Sibley v. Board of Supervisors of Louisiana State University,* 477 So.2d 1094 (La. 1985). La. Const. Art. I, Sec. 3, states:

> Section 3. 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.

La. Const. Art. I, Sec. 3 (1974)(emphasis added).

In *Sibley,* this court recognized and discussed the unique language of Art. I, Sec. 3 which evidenced an intent to expand the scope of protection provided by the guarantee of equal protection under our constitution beyond that provided by the Fourteenth Amendment. Because of the clear differences between that section and the Fourteenth Amendment's equal protection clause, which simply states "No State shall... deny to any person within its jurisdiction the equal protection of the laws," this court rejected the federal approach for analysis of equal protection claims as an inappropriate model for equal protection analysis under the Louisiana Constitution. *Sibley,* 477 So.2d at 1105-08. In rejecting the federal approach, this court noted "[w]ith the adoption of these guarantees Louisiana moved from a position of having no equal protection clause to that of having

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[3] We note that 23 U.S.C. § 158 does not require states to prohibit the *sale* of alcoholic beverages to persons under twenty-one. Instead, it only requires states to prohibit the "purchase or public possession" of alcoholic beverages by persons under twenty-one. *See supra,* note 2. As Louisiana has been receiving its full share of federal highway funds since the effective date of Act 33 of 1986, that Act apparently satisfied the requirements of 23 U.S.C. § 158. There was therefore no need for the State to enact Act 639 of 1995 in order for Louisiana to continue to receive its full share of federal highway funds.

three provisions going beyond the decisional law construing the Fourteenth Amendment," *Id.* at 1108, and held that the adoption of Article I, Section 3:

> ... commands the courts to decline enforcement of a legislative classification of individuals in three different situations: (1) When the law classifies individuals by race or religious beliefs, it shall be repudiated completely; (2) *When the statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, its enforcement shall be refused unless the state or other advocate of the classification shows that the classification has a reasonable basis;* (3) When the law classifies individuals on any other basis, it shall be rejected whenever a member of a disadvantaged class shows that it does not suitably further any appropriate state interest.

Sibley, 477 So.2d at 1107-08 (emphasis added, notes omitted). This court went on to explain that when a statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, "the state is assigned the burden of justifying such a classification *by showing that it substantially furthers an appropriate state purpose.*" *Id.* at 1108 (emphasis added).

More recently, in *Pace v. State, Through Louisiana Employees Retirement System*, 94-1027 (La. 1/17/95), 648 So.2d 1302, this court explained:

> ... Article I, §3 designates certain types of legislative classifications that cannot be used to arbitrarily, capriciously, or unreasonably discriminate against a person. When a statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, *it is presumed to deny the equal protection of the laws and to be unconstitutional unless the state or other advocate of the classification shows that the classification substantially furthers an important governmental objective.* This intermediate type of analysis was not fully articulated in this court's interpretation of Article I, § 3 until its decision in *Sibley*, supra. Nevertheless, all of this court's decisions that have carefully examined such legislative classifications of persons are consistent with this form of intermediate review.
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> The United States Supreme Court uses a similar intermediate standard of review in analyzing legislative classifications challenged as denying the equal protection of the laws.

Pace, 94-1027 at 3-5, 648 So.2d at 1305-06 (emphasis added, citations omitted).

In determining whether the State has met its burden of showing a classification based on any of the attributes listed in the third sentence of Art. I, Sec. 3 is not arbitrary, capricious, or unreasonable because it "substantially furthers an important governmental objective," Louisiana courts examine several factors, including: (1) whether each interest asserted by the state is actually implicated by the classifications employed in the statutory scheme; (2) whether there are reasonable

non-discriminatory alternatives to the challenged statutory scheme by which the state's asserted interest and objectives might be satisfied; and (3) whether the discriminatory classifications contained in the challenged statutory scheme undercut any other countervailing state interests. *Pace*, 94-1027 at 11-14, 648 So.2d at 1309-10.

The requirement that a proponent of a law which classifies persons on the basis of age must prove the challenged classification is not arbitrary, capricious or unreasonable by showing the classification substantially furthers an important State objective is compelled by the straightforward language and structure of Art. I, Sec. 3 and, as we noted in *Sibley*, clearly reflects the intent of the drafters of the Louisiana Constitution of 1974. *Sibley*, 477 So.2d at 1105-08. Requiring that the proponent of such a law need only show the law has any governmental justification, however remote or attenuated, would write out of the constitution the specific protections carefully considered and included in Art. I, Sec. 3, and would reduce the protection afforded enumerated classes to the same level as every other unlisted classification which the State might make among persons. This, of course, would render superfluous the drafters' explicit listing of these specific classes and would clearly conflict with both the express language of Art. I, Sec. 3 and the intent of the drafters of the Louisiana Constitution of 1974. *See* Katherine Shaw Spaht, et al., *The New Forced Heirship Legislation: A Regrettable "Revolution,"* 50 La. L. Rev. 409, 422-429 (1990), and sources cited therein; John Devlin, *Louisiana Constitutional Law*, 51 La. L. Rev. 295, 306-12 (1991).

DISCUSSION

Since the adoption of the Louisiana Constitution of 1974, this court has not had occasion to address the constitutionality of a law which discriminates on the basis of age. 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. We further hold the State's eligibility to obtain or to continue to receive federal funding is not, by itself, a

legitimate state interest sufficient to abridge the constitutionally protected rights of classes of persons specifically protected in Art. I, Sec. 3 of the Louisiana Constitution of 1974.

Burden of Proof

The challenged statutes classify persons on the basis of age by prohibiting the sale or purchase of alcoholic beverages to or by persons eighteen to twenty years old. Due to Louisiana's unique constitutional equal protection clause, the challenged statutes, which classify persons on the basis of age, are *presumed* unconstitutional. *Pace,* 94-1027 at 4, 648 So.2d at 1305. The State therefore bears the burden of overcoming this presumption by proving the classifications substantially further an important governmental objective. *Id.* To meet this challenge, the State has advanced two governmental objectives which it alleges are important and are substantially furthered by the classifications contained in the challenged statutes: (1) the State's need for continued receipt of its full share of federal highway funds under the National Minimum Drinking Age Act; and (2) highway safety. We will consider the State's stated objectives in inverse order.

Highway Safety

As its "important governmental objective" justifying the challenged statutes' classification of persons on the basis of age, the State argues prohibiting the purchase and sale of alcoholic beverages to those between eighteen and twenty-one years old will improve highway safety, reduce the incidence of driving while intoxicated ("DWI") among persons in that age group, and reduce the number of injury and fatality automobile accidents in that age group.

Before discussing the evidence introduced by the State in support of its highway safety justification, however, it is first necessary to explain why the *only* potentially legitimate justification offered by the State is the improvement of highway safety in general. As previously noted, the State argues that prohibiting the purchase by and sale to eighteen to twenty year olds of alcoholic beverages will improve highway safety, reduce the incidence of driving while intoxicated among persons *in that age group,* and reduce the number of injury and fatality automobile accidents *in that age group.* Arguing that reducing the incidence of driving while intoxicated of eighteen to twenty year olds and reducing the number of injury and fatality accidents involving eighteen to twenty year olds are important governmental objectives which are substantially furthered by prohibiting the purchase or sale of alcohol by or to that very group, however, is both circular and illegitimate. First, targeting a specific group of adults for reduction of DWI's and alcohol related accidents *in that group* begs the

question of whether there is a legitimate reason which is not arbitrary, capricious, or unreasonable for so classifying or targeting that group in the first place. Second, as the statistics submitted by both sides show, *every* age group of licensed drivers has some incidence of driving while intoxicated and some number of alcohol related fatality and injury accidents. Obviously, prohibiting the purchase or sale of alcohol by or to any specific age group will lead to a reduction of the incidence of driving while intoxicated and the number of alcohol related accidents in that age group. This, however, does not in any way explain or justify the initial selection of that group for discriminatory classification and treatment. Finally, the reasoning in support of these particular objectives is circular. In the challenged statutes, the State classifies the target group solely on the basis of age, then attempts to justify the classification by showing the benefits which will accrue to that age group by so classifying them and by claiming that that classification substantially furthers an important governmental objective, which is to reduce the incidence of DWI's and alcohol related accidents among that age group. The legitimacy of this classification, however, is exactly what is at issue. Under this line of reasoning, there would be no reason why the State could not choose *any* age group and justify prohibiting the purchase or sale of alcoholic beverages to that age group by simply asserting that the law will reduce DWI's and alcohol related accidents *for that group.* Because these purported governmental objectives are invalid, there is only one remaining legitimate important governmental objective which the State can argue is substantially furthered by the age classification contained in the challenged statutes: highway safety in general.

As previously stated, in determining whether the State has carried its burden of proving the presumptively unconstitutional age classification contained in the challenged statutes is not arbitrary, capricious, or unreasonable because it substantially furthers the important governmental objective of highway safety, we will examine the record in the instant case for evidence as to the following factors: whether the State's objective of highway safety is directly implicated by the age classification; whether there are any reasonable non-discriminatory alternatives to the age classification by which the State could satisfy its objective; whether and, if so, the extent to which the challenged age classification undercuts any countervailing state interests. *Pace,* 94-1027 at 11-14, 648 So.2d 1309-10. Furthermore, because the instant case involves discrimination against a particular age group, we also examine the record to determine whether the age group contained in the challenged statutes will produce the largest improvement in highway safety, *i.e.,* to determine whether eighteen to twenty

year olds are responsible for the greatest number of alcohol related accidents and/or DWI's. This is so because, as previously noted, a prohibition on the purchase and sale of alcohol by or to *any* specific age group will necessarily lead to *some* improvement in highway safety. Thererfore, unless the evidence justifies the State's designation of the particular age group at issue for discriminatory treatment by showing that that group is the group most responsible for the problem addressed in the statutes, the State would be free to select any age group for such discriminatory treatment. Finally, we examine the record to determine whether the eighteen to twenty year old age group is the group responsible for the greatest number of these types of accidents *in Louisiana,* as the State's objective is to improve highway safety in Louisiana, and Louisiana is the only place in which the State's discriminatory classification will have effect. With these precepts in mind, we now turn to an examination of the evidence presented.

The State introduced affidavits from James Hedlund, Acting Associate Administrator for Traffic Safety Programs, and Director of the Office of Alcohol and State Programs, NHTSA, and Bette Theis, Executive Director for the Louisiana Highway Safety Commission, each of which contained exhibits in the form of statistical studies of alcohol involved accidents, as well as testimony from Capt. Ronald B. Jones, Commander of Troop A of the Louisiana State Police, who was qualified as an expert in traffic enforcement and policy development, and Dr. Richard Scribner, an expert in public health, who also relied on a 1987 Governmental Accounting Office study evaluating other statistical studies of alcohol involved accidents. A review of this evidence shows the following.

Mr. Hedlund's affidavit, relying on statistical data obtained by NHTSA through their Fatal Accident Reporting System ("FARS") and from reports studying age twenty-one drinking law effectivebness, asserts that age-21 drinking laws have been proven to save lives and that FARS data and the studies show an over-involvement of eighteen to twenty year olds in alcohol related crashes. He states FARS data and the studies show that: (1) in 1994, 44% of eighteen to twenty year old traffic fatalities 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; (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) in 1994, Louisiana had the fourth highest percentage of alcohol related traffic fatalities of fifteen to twenty

year olds of all States. Mr. Hedlund's affidavit also refers to: (1) a Governmental Accounting Office ("GAO") report to Congress, "Drinking Age Laws - An Evaluation Synthesis of Their Impact On Highway Safety, March 1987," which concludes on the basis of the report's review of fourteen leading traffic accident studies that raising the drinking age has a direct effect on reducing alcohol related traffic accidents among youth affected by such laws; (2) a 1989 NHTSA study, "The Impact of Minimum Drinking Age Laws On Fatal Crash Involvements: An Update of NHTSA Analyses," which estimates minimum drinking age laws have been responsible for a 12% reduction in fatal crash involvements of drivers affected by such laws; and (3) NHTSA's 1994 estimates that minimum drinking age laws have reduced traffic fatalities involving eighteen to twenty year olds by 13% and saved an estimated 14,816 lives nationwide since 1975.

Ms. Theis, relying on the Louisiana Highway Safety Commission 1993 Traffic Records Data Report and the NHTSA FARS 1994 Data Summary Report, states that Louisiana data for 1993 shows alcohol involved fatalities of young drivers increases significantly at age seventeen, peaks at age twenty, and begins to decline between ages twenty two and twenty four. Ms. Theis further states that though eighteen to twenty year old drivers represented 5% of the licensed drivers in Louisiana in 1993, they were involved in 10% of the alcohol and fatal injury accidents.

Capt. Jones, Commander of Troop A of the Louisiana State Police, testified that based on his personal experience, the challenged statutes could be "the most critical and fundamental improvement in traffic safety when it comes to alcohol in this state." He further testified that in his opinion, access to and use of alcohol by eighteen to twenty year olds had a detrimental effect on highway safety because that age group "is not only inexperienced at driving but is also inexperienced at drinking."

Finally, Dr. Scribner, qualified by the State as an expert in public health, testified that in his opinion, alcohol is the leading cause of death among eighteen to twenty year olds. He testified that by this he meant that although the three leading causes of death among eighteen to twenty year olds are accidents, homicide, and suicide, alcohol plays a part in a significant number of deaths attributed to these causes. On the basis of a 1987 GAO Report, *see supra* at 10, Dr. Scribner further testified that raising the drinking age decreases alcohol related fatal and injury accidents, and that the younger the driver, the greater the over-representation in alcohol involved auto accidents. On the basis of the GAO Report, he estimated that enforcement of the challenged Act would result in a 5% - 28%

decrease in alcohol involved fatal injury crashes in Louisiana.

The trial court found, as a matter of fact, that the state's interest in highway safety is not substantially furthered by the challenged classification because, at least in Louisiana, eighteen to twenty year olds are neither arrested in greater numbers than other age groups for driving while intoxicated nor, according to the State's own data compilations,[4] involved in or responsible for a greater number of alcohol related injury and fatality producing accidents. After thoroughly reviewing all of the record evidence, we find the trial court's conclusion was not clearly wrong or manifestly erroneous. Instead, our review of the evidence reveals the State's own statistics clearly show that, in Louisiana, persons between the ages of twenty-one and twenty-three are involved in significantly higher numbers of alcohol related injury and fatality accidents than eighteen to twenty year olds. Indeed, certain statistical evidence showed eighteen to twenty year olds are not even the group second most responsible for alcohol related accidents. Nor are eighteen to twenty year olds the group with the highest incidence of DWI arrests or convictions. As such, prohibiting the purchase by or sale to eighteen to twenty year olds of alcoholic beverages does not prohibit the age group *most* responsible for alcohol related accidents on the State's highways from the purchase or public possession of alcoholic beverages.

The Louisiana Traffic Data Report for 1986 shows the eighteen to twenty year old age group had a total of 854 accidents involving alcohol, injury and/or death in 1986. By comparison, the report shows that the twenty-one to twenty-three year old age group had a total of 924 such accidents, the twenty-two to twenty-four year old age group had 916 such accidents, the twenty-three to twenty-five year old age group had 877 such accidents, and the twenty-four to twenty-six year old age group had 837 such accidents. In sum, the report shows that in Louisiana in 1986, every three year age group, up to and including the twenty-three to twenty-five year old group, was involved in more alcohol related accidents than the eighteen to twenty year old age group.

The Louisiana Traffic Data Report for 1992 shows there were 337 alcohol related fatal and injury accidents in 1992 involving persons fifteen to twenty years old. By comparison, the report shows that there were 402 such accidents involving persons twenty-one to twenty-four years old, and

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[4] Relevant portions of the 1986, 1991, 1992, and 1993 Louisiana Traffic Records Data Reports, compiled by the Louisiana Highway Safety Commission, were all submitted into evidence in the trial court.

479 such accidents involving persons twenty-five to twenty-nine years old. Consistent with the 1986 report, the 1992 report shows that in Louisiana, persons twenty-one to twenty-four years old were responsible for more alcohol related injury and fatality accidents than persons eighteen to twenty years old.[5]

An affidavit by Mary Jane Marcantel, a paralegal employed by plaintiffs to perform statistical research, states that she personally searched the records of the Clerk of Court's Office for the Parish of Evangeline in Ville Platte, Louisiana, and the booking records of the Sheriff's Office for Evangeline Parish, for the calendar year 1986 and the period of January 1, 1994 through July 28, 1995, to ascertain the number of persons charged with DWI during the time periods listed and the age of those persons at the time of their arrests. Ms. Marcantel's affidavit states her research showed of the 92 DWI arrests in Evangeline Parish in 1986, nine were of persons eighteen to twenty years old. By comparison, her research showed there were thirteen persons twenty-one to twenty-three years old and twelve persons twenty-four to twenty-six years old arrested for DWI in Evangeline Parish during the same time period. Ms. Marcantel's affidavit further states that of the 179 DWI arrests in Evangeline Parish during the January 1, 1994 to July 28, 1995, time frame, ten were of persons eighteen to twenty years old. By comparison, her affidavit states her research showed there were sixteen persons twenty-one to twenty-three years old and twenty-five persons twenty-four to twenty-six years old arrested for DWI in Evangeline Parish during the same time period. In sum, Ms. Marcantel's research shows that fewer eighteen to twenty year olds were arrested for DWI in Evangeline Parish in either time period examined than either twenty-one to twenty-three or twenty-four to twenty-six year olds.[6]

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[5] Plaintiffs also introduced the 1991 Louisiana Traffic Data Report, but in that report the state employed a method of data reporting different from that employed in both the 1986 and 1992 reports, dividing persons involved in alcohol related accidents into four year age groups. The change in reporting methodology makes it impossible to compare the rate of accidents involving eighteen to twenty year olds with other three year age groups, since the age group divisions made in the 1991 report, unlike those used in the 1986 or 1992 reports, divide the eighteen to twenty year old age group into two different categories (*i.e.*, ages fifteen to nineteen, twenty to twenty four).

[6] Plaintiffs also introduced an affidavit by Charles Lombardino, stating that he requested and received statistical evidence from the Shreveport and Bossier City, Louisiana Police Departments listing the number of DWI citations issued, by age, in Shreveport in 1994 and in Bossier City from April 11, 1994 through December 31, 1994. While the Shreveport statistics are of no use in the instant case as they are broken down into age groups which split the eighteen to twenty year old age group into different categories, the Bossier City statistics show that there were 22 DWI citations issued to drivers twenty and under, while there were 119 DWI citations issued to drivers

The affidavit of Joseph W. Demourelle, Chief of Detectives of the Evangeline Parish Sheriff's Office, was also introduced by plaintiffs. Detective Demourelle states he researched and reviewed the criminal arrest and probation records of Evangeline Parish for the period of January 1, 1995 to July 31, 1995, to ascertain the number of DWI convictions in Evangeline Parish during that time period and the age of the persons convicted. Detective Demourelle states that his research shows that of the 79 DWI convictions in Evangeline Parish during that time period, only one was of a person under twenty-one years old.

The affidavit of Dr. Robert Gramling, a Professor of Sociology at the University of Southwestern Louisiana, was also introduced by plaintiffs. Dr. Gramling's affidavit states that his research, consisting of studies done in 1986 and 1992 comparing drinking habits of young adults in Louisiana and North Carolina, reveals there is a lack of empirical evidence to support the assumption that raising the drinking age to twenty-one years old will result in less alcohol consumption by eighteen to twenty year olds. Dr. Gramling's affidavit further states his research strongly suggests that greater quantities of alcohol may be consumed by eighteen to twenty year olds where the drinking age is raised to twenty-one. Finally, Dr. Gramling concludes raising the legal drinking age in 1986 did not significantly change the alcohol consumption of eighteen to twenty year olds in Louisiana.

Furthermore, on cross-examination by plaintiffs, Dr. Scribner admitted *his* research has also shown that peak alcohol consumption among young people occurs in their twenties, and not in their late teens. Dr. Scribner testified that peak alcohol consumption occurs at ages twenty to twenty-four, and that drivers through age thirty are over-represented in alcohol related injury and fatality accidents. Dr. Scribner also agreed that the risk to others on the highways, *i.e.,* the public at large as opposed to alcohol impaired drivers, of alcohol related accidents is greater with drivers in the twenty-one to twenty four year old age group, because not only are they over-represented in alcohol related accidents, there are numerically more licensed drivers in that age group. Finally, Dr. Scribner agreed on cross-examination that the rate of alcohol related deaths, regardless of the attributed cause of death, *i.e.*, accidents, homicide, suicide, was consistent among all age groups up to and including

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twenty-one to thirty years old. Assuming, for comparison purposes, an even distribution of citations among the twenty-one to thirty year olds, every three year age group in that range had an average of 36 DWI citations during the same time period.

persons fifty-four years old, in that alcohol related violent deaths consistently accounted for 47-48% of all violent deaths among every age group up to fifty-four years old.

On the other hand, the statistical evidence presented by the State, as reviewed earlier, primarily consists of national statistical data on alcohol related fatal and injury accidents. This data, sufficient to provide Congress with justification for enacting the National Minimum Drinking Age Act under its Commerce Clause powers, *see South Dakota v. Dole*, 483 U.S. 203, 107 S.Ct. 2793 (1987), is not sufficient to carry the State's burden in the instant case in light of the Louisiana statistical evidence introduced by plaintiffs showing that eighteen to twenty year olds are not the group responsible for the greatest number of alcohol related accidents in Louisiana. The relevant inquiry in this case is whether eighteen to twenty year olds are the age group responsible for the greatest number of alcohol related accidents *in Louisiana*. The statistical evidence presented by plaintiffs, primarily consisting of the State's own data compilations, clearly shows that twenty-one to twenty-four year olds are responsible for far more alcohol related accidents in Louisiana than eighteen to twenty year olds.

Furthermore, the national data introduced by the State merely shows that eighteen to twenty year olds are "over-represented" to a greater degree than other age groups in alcohol related accidents,[7] not that eighteen to twenty year olds are the group involved in the highest number of alcohol related accidents. Such a showing is not relevant in the instant case, however, as prohibiting an age group because they are over-represented in alcohol related accidents to a greater degree than other age groups will not decrease the number of actual traffic accidents and concomitantly increase highway safety nearly as much as would prohibiting the age group responsible for the greater number of accidents from purchasing or publicly consuming alcohol. While the State also introduced evidence to show that, given the relative number of licensed drivers in each age group, eighteen to twenty year olds are over-represented to a greater degree than twenty-one to twenty-four year olds in such accidents in Louisiana as well, this, as Dr. Scribner admitted and as we have previously

[7] "Over-representation," in the context of this opinion, occurs where a particular age group, on a percentage of the total number of licensed drivers basis, accounts for more accidents, on a percentage of total accidents basis, than their percentage number of licensed drivers. For example, *see supra* at 10, the State maintains that in 1993, eighteen to twenty year old drivers accounted for 5% of the licensed drivers in Louisiana but were involved in 10% of the alcohol related fatal and injury accidents. Therefore, according to the State's evidence, in 1993, eighteen to twenty year olds were "over-represented" in alcohol related fatal and injury accidents in Louisiana.

explained, is not the proper measure of whether the Act substantially furthers the State's objective of increased highway safety.

In sum, the record evidence in the instant case shows that in Louisiana, eighteen to twenty year olds are not the group responsible for the greatest number of alcohol related accidents. The evidence as to this factor therefore points toward the unconstitutional nature of the challenged age discrimination, as the State's objective of increased highway safety is neither directly implicated nor substantially furthered by the discriminatory classification of eighteen to twenty year olds contained in the challenged statutes.[8]

The trial also court found that there are several non-discriminatory alternatives available to address the state's highway safety concerns. Our review of the record evidence reveals no error in the trial court's finding. In this regard, though Capt. Jones, a state witness, testified he believed a minimum drinking age law set at twenty-one years of age could "be the most critical and fundamental improvement in traffic safety when it comes to alcohol in this state," he later acknowledged on cross-examination by plaintiffs that a law prohibiting persons twenty-one to twenty-three years old would also save lives, and that the twenty-one to twenty-three year old age group also has a very high rate of alcohol related accidents. Capt. Jones further admitted activities such as school educational programs, public advertising, education and training of retailers of alcohol, improved highway designs, and tougher DWI laws are all important and effective methods of combatting drinking and driving and improving highway safety. Of course, absolute prohibition of all alcohol sales in the State of Louisiana would also achieve the State's objective of increased highway safety without discriminating against persons eighteen to twenty years old. The record evidence in this case as to this factor therefore also points toward the unconstitutional nature of the challenged age discrimination, as reasonable non-discriminatory alternatives to the classifications contained in the challenged statutes by which the State could achieve its objective of increased highway safety exist.

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[8] We note that State's inability to prove its case at this time, due to the circumstances heretofore and presently existing in Louisiana, as revealed by the relevant statistical data introduced by the parties, does not mean that the State is forever precluded from prohibiting eighteen to twenty year olds from purchasing or publicly consuming alcohol. Should eighteen to twenty year olds ever become the age group responsible for the greatest number of alcohol related accidents in Louisiana, the State would then be free to enact an Act containing the very classification rejected herein. In other words, the statistics available at the present time simply do not support the State's presumptively unconstitutional discriminatory classification of eighteen to twenty year olds, but, should the circumstances change, the result obtained herein may well be altered.

Finally, we agree with the trial court's finding that the classification contained in the challenged statutes undercuts countervailing interests of the State. Our Civil Code accords majority status to persons upon reaching the age of eighteen. La. C.C. art. 29. Consistent with that Article, our constitution, in Art. I, Sec. 10, accords that most fundamental of rights in a democratic society, the right to vote, to citizens upon their reaching the same age, eighteen.[9] Upon attaining the age of eighteen, persons are treated as adults under the law, and are accordingly assigned the responsibilities and obligations of an adult under the law.[10] The challenged statutes, however, in derogation of the general principle contained in La. C.C. art. 29, create a situation where eighteen to twenty year olds are accorded the responsibilities and obligations of an adult under the law, but are treated as though they are still children when it comes to the purchase and public consumption of alcoholic beverages.[11] Such discrimination against these otherwise similarly situated adults clearly undercuts the State's consistently expressed countervailing interest in according eighteen to twenty year olds "adult" or

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[9] *See* La. C.C. art. 29, stating "Majority is attained upon reaching the age of eighteen years." *See also* Art. I, Sec. 10 of the Louisiana Constitution of 1974, providing citizens with the right to vote upon reaching the age of eighteen.

[10] Additionally, upon attaining the age of eighteen, persons in Louisiana have the right to: serve in the legislature, Art. 3, Sec. 3, Louisiana Constitution of 1974; witness an execution, La. R.S. 15:570; serve on a Parish School Board, La. R.S. 17:52; serve as a law enforcement officer, La. R.S. 33:1432.1; refuse medical or surgical treatment, La. R.S. 40:1299.56; serve on a jury panel, La. Code Cr.P. art. 401; or get married without parental or judicial consent, La. Ch. Code art. 1545. Upon attaining the age of eighteen, persons in Louisiana can be licensed to work as: a collection agent, La. R.S. 9:3576.9; a school bus driver, La. R.S. 17:160; a notary public, La. R.S. 35:191; an accountant, La. R.S. 37:78; a barber, La. R.S. 37:354; a dental hygenist, La. R.S. 37:764; a funeral director, La. R.S. 37:842; a medication attendant, La. R.S. 37:1025; a real estate agent, La. R.S. 37:1437; a pawnbroker, La. R.S. 37:1787; a stress analyst, La. R.S. 37:2868; an electrologist, La. R.S. 37:3071; an auctioneer, La. R.S. 37:3113; a radiologic technologist, La. R.S. 37:3208; and a respiratory therapist, La. R.S. 37:3354. Attaining the age of eighteen in Louisiana also means such persons: are adults for purposes of custodianship of property, La. R.S. 9:751(1); are no longer protected from dangerous occupations such as work with explosives, in mines, or mills, La. R.S. 23:161; and qualify as an adult for purposes of mental health statutes and regulations, La. R.S. 28:2 and 28:822. Upon attaining the age of eighteen in Louisiana persons have the right to have contact with regulated products considered harmful to children, such that they may: obtain tobacco products, La. R.S. 14:91.6 and 14:91.8; get a tattoo, La. R.S. 14:93.2; purchase a lottery ticket, La. R.S. 47:9070; play video poker machines, La. R.S. 33:4862.19; and purchase firearms, La. R.S. 14:91. Finally, upon attaining the age of eighteen in Louisiana, persons may: hold a permit to sell alcoholic beverages, La. R.S. 26:80(A)(1), and handle alcoholic beverages on the job, La. R.S. 14:93.10(2)(b). This list, though extensive, is by no means exhaustive.

[11] The Twenty-first Amendment, which vests authority for the regulation of the sale and consumption of alcohol in the states, does not in any way alter the proper equal protection analysis. "We thus hold that the operation of the Twenty-first Amendment does not alter the application of equal protection standards that otherwise govern this case." *Craig v. Boren,* 429 U.S. 190, 209, 97 S.Ct. 451, 463 (1976).

"major" status. Furthermore, the State's proclamation that eighteen to twenty year olds need special regulation of their alcohol consumption, despite the factual evidence to the contrary showing that eighteen to twenty year olds are involved in less alcohol related accidents than certain other age groups, undercuts the State's countervailing interest in addressing the broader problem of alcohol impaired driving on the highways of Louisiana. By targeting only eighteen to twenty year olds, the State is failing to address this problem. Therefore, once again, the record evidence in this case points toward the unconstitutional nature of the challenged age discrimination, as the classification contained in the challenged statutes undercuts countervailing state interests.

Our review of the record in this case shows the factual findings of the trial court in this case are well supported by record evidence and are not clearly wrong or manifestly erroneous. The trial court's declaration of unconstitutionality of the challenged statutes on the basis of those factual findings is also correct. When properly evaluated in light of the unique protection against age discrimination afforded persons under Article I, Sec. 3, of the Louisiana Constitution of 1974, the State has clearly failed in the instant case to carry its burden of proving this presumptively unconstitutional classification on the basis of age substantially furthers the important governmental objective of improving highway safety.[12] The evidence before us fails to show that eighteen to twenty year olds are the group most responsible for alcohol related accidents in Louisiana. As such, the State's objective of improved highway safety is not directly implicated by the discriminatory classification contained in the challenged statutes.[13] Furthermore, the evidence shows there are

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[12] Though our holding is based entirely on the record evidence and proper application of the standards enunciated in *Sibley* and *Pace*, a simple hypothetical explains why the classification contained in the challenged statutes is unconstitutional. Suppose, in an effort to increase highway safety, the State enacted statutes prohibiting the sale to or purchase by forty to fifty year olds of alcoholic beverages. Would such a law survive a constitutional challenge? We think not, because a decision to discriminate against a class of persons specifically protected by the third sentence of Art. I, Sec. 3, without any factual basis for doing so is inherently arbitrary, capricious, and unreasonable. Our review of the Louisiana Traffic Records Data Reports submitted in this case shows that there is no factual basis for the State to discriminate against forty to fifty year olds by prohibiting them from being sold or purchasing alcoholic beverages. There are no relevant differences in the legal status of eighteen to twenty year olds and forty to fifty year olds. Just as it would be arbitrary, capricious, and unreasonable to single out forty to fifty year olds for such discriminatory treatment where there is no factual basis for doing so, it is arbitrary, capricious, and unreasonable for the State to single out eighteen to twenty year olds for such discriminatory treatment without a factual basis for doing so.

[13] The trial court further found that the State's asserted objective was not implicated by the classification contained in the challenged statutes because La. R.S. 14:93.10(2)(a) contains numerous exceptions allowing persons eighteen to twenty years old to consume and publicly

reasonable, non-discriminatory alternatives available to the State which would substantially further the governmental objective of increased highway safety, and there are significant, countervailing State interests which are undercut by this discriminatory classification. As the United States Supreme Court stated when presented with a somewhat similar case involving a law requiring gender discrimination in the purchase of alcoholic beverages, "[i]n sum, the principles embodied in the Equal Protection Clause are not to be rendered inapplicable by statistically measured but loose-fitting generalities concerning the drinking tendencies of aggregate groups." *Craig v. Boren*, 429 U.S. 190, 208-09, 97 S.Ct. 451, 463 (1976).

Loss of Highway Funds

As an alternative justification for the challenged statutes' classification of persons on the basis of age, the State asserts that a declaration of unconstitutionality of the challenged statutes in this case will result in Louisiana having no law fixing the minimum drinking age at twenty-one and will cause the State to fall out of compliance with 23 U.S.C. § 158, the National Minimum Drinking Age Act. Non-compliance, the State alleges, will cost Louisiana millions of dollars in federal highway funding. At trial, the State introduced affidavits from John Womack, acting Assistant Chief Counsel of the National Highway Traffic Safety Administration ("NHTSA"), the federal agency in charge of determining state compliance with 23 U.S.C. § 158, and Sharon Lyles, Deputy General Counsel for the Louisiana Department of Transportation and Development, to support this allegation. Mr. Womack's affidavit indicates that the lack of an age twenty-one drinking requirement will result in the loss of an estimated $14.7 million in 1996, while Ms. Lyles' affidavit indicates the state would lose $8,979,400.00 in the first year of non-compliance and $18 million per year every year thereafter. The State argues that few "important governmental objectives" are more important than balancing the State's budget through the continued receipt of millions of dollars in federal funds which are not otherwise available.

Though the trial court failed to specifically address in his reasons for judgment the State's asserted interest in the receipt of federal highway funds, our review of the record shows the trial court was presented with argument and evidence on the issue by both the State and plaintiffs, and that he subsequently considered and rejected the State's argument. After careful consideration, we must

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possess alcoholic beverages. However, in light of our decision herein we need not reach this issue.

agree with the trial judge.

Although the State's objective of continued receipt of its full share of federal highway funds is an understandable and desirable goal, it is, nevertheless, not legitimate in the context of the instant case. Simply stated, where there is no other governmental interest which justifies the discrimination, the State's inability to obtain certain discretionary federal funds cannot suffice as a legitimate reason for the presumptively unconstitutional discrimination.

One of, if not **the** most important governmental objectives of the State is the securing and protection of the rights of its citizens which are enumerated in the constitution of the State of Louisiana. *See* Art. I, Sec. 1, Louisiana Constitution of 1974. One of those enumerated rights is the right to live free from arbitrary, capricious, or unreasonable discrimination by the state on the basis of age. Art. I, Sec. 3, Louisiana Constitution of 1974. We have already determined herein there is no basis in fact for the designation of eighteen to twenty year olds as the only group of adults in Louisiana as to which the sale or purchase of alcoholic beverages can be prohibited. In the face of this finding, the State's desire to maintain a certain level of federal highway funding at the expense of the abridgment of certain citizens' constitutional rights cannot be countenanced.[14] As the United States Supreme Court has stated, "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Watson v. Memphis*, 373 U.S. 526, 537, 83 S.Ct. 1314, 1321 (1963).

Furthermore, even if this court were willing to entertain the proposition that a straightforward "sale" of its citizens' constitutional rights could possibly be upheld under some particular set of circumstances, examination of other relevant factors in this case, i.e., whether reasonable non-discriminatory alternatives by which the State's objective could be satisfied exist and whether the discriminatory classifications contained in the challenged statutes undercut any countervailing State interests, also point toward the unconstitutional nature of the challenged age classification. First, in the instant case non-discriminatory alternatives are available to the State to maintain its eligibility to

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[14] Though the State's inability to obtain certain federal funds was not raised in *State v. Church*, 538 So.2d 993 (La. 1989), the potential, nevertheless, existed. Under 23 U.S.C. § 410(d), states which employ roadblocks for detection and prevention of intoxicated driving along with other alcohol-impaired driving countermeasures may be eligible for the receipt of federal funds in the form of federal grants. However, this Court declared such roadblocks unconstitutional in *Church* as violative of Art. I, Sec. 5 of the Louisiana Constitution of 1974, thus limiting the State's ability to secure such funds.

continue to receive full federal highway funding. For instance, the State has the power to impose an absolute prohibition on the purchase, sale or possession of alcoholic beverages by persons of all ages. This, of course, would maintain the State's ability to receive full federal funding without discriminating against any particular protected class of persons. Further, raising the age of majority in the State of Louisiana to twenty-one would also accomplish the State's objective without discrimination, as persons under twenty-one would then be minors, not adults, as a matter of law. While neither of these examples may be politically desirable or palatable to the State, they are nevertheless reasonable in light of our constitutional prohibition against arbitrary, capricious or unreasonable discrimination on the basis of age.

Second, as we previously explained, our Civil Code accords majority status to persons upon reaching the age of eighteen. Upon attaining the age of eighteen in Louisiana, persons are treated as adults under the law for all purposes, and are accordingly assigned the responsibilities and obligations of an adult under the law. The discriminatory classification contained in these statutes to acquire federal funds clearly undercuts the State's consistently expressed countervailing interest in according eighteen to twenty year olds "adult" or "major" status. We therefore hold the trial court was correct in rejecting the State's continued receipt of its full share of federal highway funds as sufficient reason to discriminate against otherwise similarly situated adults solely on the basis of their age. When measured against the constitutional presumption against discrimination on the basis of age, the availability of non-discriminatory alternatives, and the State's countervailing interest in having its young adults act responsibly in accordance with their legal status as majors for all purposes under Louisiana law, discrimination by the State solely on the basis of age for the purpose of continued receipt of its full share of federal highway funds is not only discrimination in furtherance of an illegitimate governmental purpose, but is arbitrary, capricious, and unreasonable discrimination under Art. I, Sec. 3.[15]

CONCLUSION

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[15] It should be emphasized that the State's receipt of its' full share of federal highway funds under 23 U.S.C. § 158 is *conditioned* on the State's setting of its' minimum drinking age at twenty-one. As the United States Supreme Court noted in *Dole, supra,* "the enactment of such laws remains the prerogative of the States not merely in theory but in fact." *Dole,* 483 U.S. at 211 - 212, 107 S.Ct. at 2798. Our resolution of the matter herein is entirely dependent upon the fact that the State is free to choose whether to comply with 23 U.S.C. § 158 in order to receive its full share of federal highway funds.

The trial court correctly held the State failed to overcome the presumption of unconstitutionality accorded the age classification contained in the challenged statutes and failed to carry its burden of showing the statutes' discriminatory classification of eighteen to twenty year olds substantially furthers an important governmental objective. We therefore affirm the trial court's declaration that La. R.S. 14:93.10 through La. R.S. 14:93.14, La. R.S. 26:90 and La. R.S. 26:286, insofar as they prohibit the sale to, purchase by, or purchase on behalf of, alcoholic beverages to persons eighteen to twenty years old, violate the prohibition against discriminatory classification of persons on the basis of age contained in Article I, Section 3 of the Louisiana Constitution of 1974.

AFFIRMED.