THE STATE OF SOUTH CAROLINA
In Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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S.C. Supreme Court

Case No. 2014-CP-02-00259
Appellate Case No. 2014-002728

Retail Services & Systems, Inc., dba Total Wine & More,.....Appellant,

v.

South Carolina Department of Revenue and
ABC Stores of South Carolina,.....Respondents.

FINAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE

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ISSUES ON APPEAL

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II. DID THE CIRCUIT COURT ERR IN HOLDING THAT S.C. CODE ANN. §§ 61-6-140 AND -150 DID NOT VIOLATE SOUTH CAROLINA'S EQUAL PROTECTION AND DUE PROCESS CLAUSES?

STATEMENT OF THE CASE

This action commenced after the appellant, Retail Services & Systems, Inc., dba Total Wine & More, ("the Appellant") sought a declaration that S.C. Code Ann. §§ 61-6-140 and -150 were enacted outside the scope of the State's police power and violate South Carolina's Equal Protection and Due Process Clauses. These statutes limit the number of retail liquor licenses the South Carolina Department of Revenue ("Department") can issue to an individual or corporation. Section 61-6-140 states that an individual or corporation may only hold three retail liquor licenses. Because the Appellant represents that it is seeking a fourth retail liquor license, it alleged the statutes were enacted outside the scope of the General Assembly's police powers and that it suffered deprivation of a property interest and injury because it cannot obtain another license in order to open an additional liquor store.[1]

On February 5, 2014, the Appellant commenced this action making the aforementioned arguments set forth in its complaint. The Respondents, ABC Stores of South Carolina ("ABC Stores") and the Department, filed answers opposing the Complaint on March 14, 2014, and March 20, 2014, respectively.

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[1]The Appellant has never applied for a fourth liquor license, and has never leased or purchased any property for such a business. (R., p. 145; Affidavit of Sylvia Osborne). The Appellant has not produced any evidence that it has taken any substantive action, other than filing the within lawsuit, to actually apply for a fourth retail liquor license. While the trial court did not rule on its arguments, the Department maintained before the lower court and continues to do so now before this Court that no justiciable controversy exists and that Appellant's case should be dismissed for lack of subject matter jurisdiction. See Tourism Expenditure Review Committee v. City of Myrtle Beach, 403 S.C. 76, 742 S.E.2d 371(2013) ("To fall within the intended purpose and scope of the Declaratory Judgments, the parties must seek adjudication of a justiciable controversy").

Rule 56(c), SCRCP provides that a circuit court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law."

On April 10, 2014, the Appellant filed a motion for summary judgment. (R., pp. 60-79). On May 30, 2014, ABC Stores filed a cross-motion for summary judgment. (R., pp. 103-118). On June 9, 2014, Department also filed a cross-motion for summary judgment. (R.,pp. 121-143). On August 5, 2014, the circuit court heard all three motions for summary judgment. On November 21, 2014, the court denied the Appellant's motion for summary judgment and granted Department and ABC Stores' cross-motions for summary judgment. (R., pp.9-22). Judge Early denied the Appellant's Rule 59, SCRCP motion to reconsider on December 22, 2014. **(Missing from the Record)**. The Appellant now appeals the November 21, 2014 and December 22, 2014 orders.

The Appellant owns three retail liquor stores in South Carolina: Columbia Fine Wine, Inc., Charleston Fine Wine, Inc., and Greenville Fine Wine, Inc. Pursuant to the Alcohol Beverage Control Act ("ABC Act"), each of the Appellant's stores has a retail liquor license issued by Department. The Appellant says it plans to expand its business in South Carolina by opening more retail liquor stores and intends to open a store in Aiken County, SC. The ABC Act, specifically the limitations in Sections 61-6-140 and -150, prohibits the Appellant from obtaining another retail liquor license. Therefore, the Appellant cannot proceed with its plan to license another liquor store in Aiken County, SC and has brought this action.

The Appellant belongs to a class of businesses engaged in the retail of liquor in the State of South Carolina. Each of these is subject to the laws and regulations of South Carolina and has voluntarily entered this field of business knowing both the benefits and the limitations therein. Because the Appellant does not wish to conform its business plans to the South Carolina Code of Laws, it now seeks to have sections of the law ruled unconstitutional. The Appellant could not meet its burdens of proof in the circuit court and now is now seeking this appeal.

ARGUMENTS

The Appellant seeks this appeal because its plans to expand its business do not fit squarely with the South Carolina Code of Laws, namely Sections 61-6-140 and -150 of the ABC Act. The Appellant now seeks to have these statutes declared unconstitutional. The Appellant argues Sections 61-6-140 and -150 were enacted outside the General Assembly's police powers and violate South Carolina's Due Process and Equal Protection Clauses. These arguments failed in the circuit court and the Appellant now seeks this appeal.

The Respondent argues, as it did in the circuit court, that the Appellant has failed to meet the burden of proof for any of the issues it raised. The statutes were enacted pursuant to the General Assembly's police power and do not violate either the Due Process or Equal Protection clauses of the South Carolina Constitution. The circuit court agreed. The Respondent now respectfully requests that the Court uphold the order of the circuit court.

I. THE GENERAL ASSEMBLY ACTED WITHIN THE SCOPE OF ITS POLICE POWERS WHEN IT ENACTED SECTIONS 61-6-140 AND -150.

A. Sections 61-6-140 and -150 were enacted under the State's valid police power.

S.C. Const. art. VIII, -A provides:

> In the exercise of the police power, the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture, sell, and retail alcoholic liquors or beverages within the State under the rules and restrictions it considers proper. The General Assembly may prohibit the manufacture, sale, and retail of alcoholic liquors and beverages within the State, and may authorize and empower state, county, and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it considers expedient. (Emphasis added.)

The General Assembly enacted legislation to further the State Constitution's mandate for the regulation of alcoholic beverages, most recently with the passage of the ABC Act. The ABC Act regulates the sale, manufacture, and distribution of alcohol via licensing. Section 61-6-140 states unambiguously that "No more than three retailer dealer licenses may be issued to one licensee...". The reason for a statutory limitation of three liquor licenses to a single applicant is explained in John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in S.C. 272 (S.C. Bar CLE Div., 2007) which Judge Early cited heavily in his opinion. These cites bear repeating:

> In South Carolina, the retail sale of alcoholic liquors for off-premises consumption may only be made from stand-alone liquor stores. That is, bottles of liquor may not be sold from grocery stores, convenience stores, or other retail food and beverage outlets, but may only be sold from specialized liquor stores. And, perhaps somewhat unfairly, these liquor stores are subject to the most stringent regulations of South Carolina's alcoholic beverage laws.

> The ABC Act also places strict restrictions on how many liquor stores a single licensee may own and operate. Specifically, a single retail liquor licensee, whether an individual or a corporation, may not be issued more than three retail dealer licenses, and these licenses may only be issued to one member of a single household. Beyond these restrictions upon formal licensure, the Act also prohibits a retail liquor license from holding a financial interest, either directly or indirectly, in more than three liquor stores. This type of regulation of the number of licenses that may be issued to one person is aimed at "controlling the tendency toward concentration of power in the liquor industry[,] preventing monopolies[,] avoiding practices such as indiscriminate price cutting and excessive advertising[,] and preserving the right of small, independent liquor dealers to do business." and these restrictions have been held not to violate the due process or equal protection rights of liquor licensees.
>
> Laws regulating the manufacture, sale, and consumption of alcoholic beverages have been with South Carolina for as long as the states have had laws. Within the first four recorded acts of the colonial government, enacted on May 26, 1682, was "An Act for the suppression of the Idle, Drunken and Swearing Persons, inhabiting within this Province," and, just over a year later, on September 25, 1683, South Carolina would enact its first law directly regulating the sale of alcoholic beverages in an act requiring licenses for taverns and "punch houses." (Emphasis added) (Order p. 3) .

Pursuant to S.C. Const. art. VIII-A and with respect to the clarification provided by Judge Geathers, the regulation of liquor licensing is well within the State's police powers. Indeed, the regulation of alcoholic beverages is an enumerated responsibility. The General Assembly has utilized its police power to enact the ABC Act, in its entirety, to meet its constitutional obligation.

B. The Appellant's argument that Sections 61-6-140 and -150 were enacted for purposes of economic protectionism is without merit.

The Appellant argues that Sections 61-6-140 and -150 were enacted outside the scope of the General Assembly's police powers and are born solely of economic protectionism. The Appellant relies heavily upon State ex rel. George v. City Council of Aiken, 42 S.C. 222, 247, 20 S.E. 221, 230 (1894). Unfortunately for the Appellant, this case offers little to support its argument; the facts and holding in the case have the opposite effect.

In State ex rel. George, the Court dismissed a challenge to the 1893 Dispensary Act, upholding it as a valid exercise of State police power. Said the Court:

> The validity of a law ought not, then, to be questioned unless it is so obviously repugnant to the constitution that when pointed out by the judges all men of sense and reflection in the community may perceive the repugnancy.
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> Before proceeding to a consideration of the specific objections urged against the constitutionality of the act, we desire to state at the outset that in our opinion the following propositions embody the principles governing the case: (1) That liquor, in its nature, is dangerous to the morals, good order, health, and safety of the people, and is not to be placed on the same footing with the ordinary commodities of life, such as corn, wheat, cotton, tobacco, potatoes, etc. (2) That the state, under its police power, can itself assume entire control and management of those subjects, such as liquor, that are dangerous to the peace, good order, health, morals and welfare of the people, even when trade is one of the incidents of such entire control and management on the part of the state. (3) That the act of 1893 is a police measure.

In State ex rel. George, the South Carolina Supreme Court heralded that liquor is dangerous, in its nature, to morals, good order, health and safety and explicitly stated that the regulation thereof is a valid measure under the State's police power. More recent and

relevant cases further the Respondent's position that the police power, not economic protectionism, is the basis for the statutes at issue.

In Davis v. Query, 209 S.C. 41, 56, 39 S.E. 2d 117, 124 (1946) the Court provided the legal basis for the circuit court's ruling in the instant case. The Court in Davis recognized that a liquor retailer:

> [I]s not engaged in an ordinary business and has no vested right to operate, despite his license, in a manner other than dictated by the State; his is a perilous business... [m]any state and federal decisions were reviewed to demonstrate that whiskey and governmental attempts at control of its sale and consumption have been well-nigh universally held to protect the health, morals, and safety of the people, to all of which the intemperate use of liquor is concededly, gravely dangerous.

This furthers the Respondent's argument, and supports the circuit court's order that the regulation of alcohol is directly connected to the State's police powers.

Likewise, Pendarvis v. Berry, 214 S.C. 363, 367 52 S.E. 2d 705 (1949) provides that the limitation on alcohol licenses is within the State's the police power:

> The Alcohol Beverage and Control Act [ABC] of 1945 is a typical exercise of the police power of the state and is designed for the protection of the morals and welfare of public. The universality of this conception of legislation looking to control of liquor traffic was pointed out in Davis v. Query."

Despite the above, the Appellant still argues that Sections 61-6-140 and -150 are not valid exercises of the State's police power, yet offers no specific authority in support of its argument. In addition, these cases clearly establish the precedent that the regulation of alcoholic beverages is designed for the welfare and protection of the public and therefore, well within the State's police power. As such, the current limitation placed on

the number of licenses allowed under Sections 61-6-140 and -150 is a valid exercise by the General Assembly and thus constitutional.

The Appellant's argument that Sections 61-6-140 and -150 were enacted solely for reasons of economic protectionism is also wanting. The Appellant offers no definition of economic protectionism in its argument. Rather, the Appellant attempts merely to distinguish a difference between the law and its desires. The Appellant goes as far as to suggest the General Assembly's only design in enacting the statutes in question was to "protect the economic interests of certain existing retail store owners." (See Retail Services' Initial Brief, p.6). However, the Appellant offers no evidence of any improper legislative intent; it simply posits economic protectionism as a theory without evidence to support its claims.

Further, the Appellant wishes this Court to draw a distinction in the ABC Act between statutes specifically mentioning the negative impact of alcohol on society and those that do not. The Appellant argues all such statutes that fail to specify a relationship to the statute itself and the State's police power should be discarded. This overlooks the General Assembly's intention for the ABC Act as a whole to govern the sale, manufacturing, distribution and licensing of alcoholic beverages in this State. The Appellant provides no basis for requiring every statute in the ABC Act to state the social ills associated with alcohol licensing and consumption, especially when the Act itself seeks to address these issues by its very existence.

C. Other states have determined that their Legislatures' limitation of licenses is within their police powers.

In its order, the circuit court offered rulings from courts outside of South Carolina to support its legal conclusions. While only persuasive, these cases establish that other state Legislatures have exercised their police powers in a similar manner to restrict the number of liquor licenses per person or corporation. "Many sound reasons have been advanced to support restrictions on the number of liquor licenses allowed any one business." Johnson v. Martignetti, 375 N.E.2d 290, 297 (Mass. 1978). "The concentration of retailing in the hands of an economically powerful few, would intensify the dangers of sales stimulations and other abuses and would be inimical to temperance and trade stability." Grand Union Co. v. Sills, 204 A.2d 853, 859 (1964). The circuit court also cited 45 Am.Jur. 2d Intoxicating Liquor Sec. 102:

> As a general rule, a state may, without impairing constitutional rights, limit the number of liquor licenses that may be issued within a given area or political subdivision when the public good seems to so require. Placing a limitation on the number of licenses which will be issued for the sale of intoxicants within a given area is not in itself prohibitory, and is recognized as a legitimate regulation tending to promise public health, safety, and welfare within the police power. (Emphasis added.)

D. The Circuit Court held correctly that the General Assembly acted within the scope of its police powers when it enacted Sections 61-6-140 and -150.

The Appellant has not provided any evidence to support its argument that the General Assembly acted outside the scope of its police powers when it enacted the statutes in question. Further, the Appellant has shown no evidence that anything other than the health, welfare, safety and morals of the citizenry is the basis of Sections 61-6-140 and -150. Because the Appellant failed to prove the statutes were outside the scope of the State's police power, the circuit court found for the Respondents. We ask this Court

to do the same. For all of the preceding reasons, the Court should uphold the circuit court's decision that Sections 61-6-140 and -150 are within the scope of the General Assembly's police power.

II. SECTIONS 61-6-140 AND -150 DO NOT VIOLATE SOUTH CAROLINA'S EQUAL PROTECTION AND DUE PROCESS CLAUSES.

A. Sections 61-6-140 and -150 do not violate South Carolina's Due Process Clause.

The Appellant argues that because it cannot obtain more than three retail liquor licenses that the statutes in question violate its due process rights.[2] In R.L. Jordan Company, Inc. v. Boardman Petroleum, Inc., 338 S.C. 475, 527 S.E.2d 763 (2000), the South Carolina Supreme Court adopted the current due process standard, stating, "[we] adopt this standard for reviewing all substantive due process challenges to state statutes: 'Whether it bears a reasonable relationship to any legitimate interest of government.'" (Emphasis added). The Court also stated in In Re Treatment and Care of Luckabaugh, 351 S.C. 122. 568 S.E. 2d 338 (2002): "this Court only requires the act to be reasonably designed to accomplish its purpose."

Because the Court's rulings are tantamount to a rational basis test, the circuit court looked to whether the three liquor license limit bore a reasonable relationship with a legitimate government interest. Therefore, the burden is on the Appellant to show that the limitations set forth in Sections 61-6-140 and -150 do not bear a reasonable relationship with a legitimate government interest. The Appellant failed in circuit court to disprove a

[2]As previously noted, the Appellant has never applied for a fourth liquor license, and has never leased or purchased any property for such a business. (Affidavit of Sylvia Osborne). (R., p. 145). The Appellant has not produced any evidence that it has taken any substantive action, other than filing the within lawsuit, to actually apply for a fourth retail liquor license.

reasonable relationship to Sections 61-6-140 and -150 and a legitimate government interest and also failed in its burden to prove that the statutes aren't reasonably designed to accomplish their purpose. The Appellant has yet to meet this burden. The Respondent's position is that these statutes do bear a reasonable relationship to a legitimate government interest, specifically the constitutional mandate that the General Assembly utilize its police power to regulate alcohol within the State.[3]

B. Sections 61-6-140 and -150 do not violate South Carolina's Equal Protection Clause.

The Appellant argues that Sections 61-6-140 and -150 discriminate against liquor retailers who desire to expand their businesses in order to protect those who do not. In Fraternal Order of Police v. South Carolina Department of Revenue, 352 S.C. 420, 574 S.E.2d 717 (2002), the Supreme Court declared the Equal Protection test:

> The requirements of equal protection are satisfied as long as (1) the classification bears a reasonable relationship to the legislative process sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. Id. According to the United States Supreme Court, [u]nless a classification trammels

[3]To prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Grimsley v. S.C. Law Enforcement Div., 396 S.C. 276, 721 S.E. 2d 423 (2012). A retail liquor license is not a property right. "Liquor licenses are neither contracts nor rights of property." Feldman v. S.C. Tax Comm., 203 S.C. 49, 26 S.E.2d 22 (1943). See also, Mibbs v. S.C. Dept. of Revenue, 337 S.C. 601, 524 S.E.2d 626 (1999) (involving a "Takings Clause" analysis, where in the Court held "an interest that depends totally upon regulatory licensing is not a property interest that is compensable under the takings clause."). There has been no denial of substantive due process in this case as no "property interest" has been taken. See Feldman, 203 S.C. 49, 26 S.E.2d 22 (1943). Rather the Legislature, in its unquestionable wisdom, has provided that no further privilege is to be granted because the statutes place limitations on the number of, and financial interest in, retail liquor licenses an individual may have in this State.

> fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only tha the classification challenged be rationally related to a legitimate state interest.

In American Service Corp. of S.C. v. Hickle, 312 S.C. 520, 435 S.E.2d 870 (1993) the Court similarly stated:

> In determining whether a statute violates the equal protection clauses of state and federal constitutions, we must give great deference to the classification passed by the legislature, and the classification will be sustained against a constitutional attack if it is not plainly arbitrary and there is 'any reasonable hypothesis' to support it. Smith v. Smith, 291 S.C. 420, 424, 354 S.E.2d 36, 39 (1987) [citing Gray Concrete Products, Inc., v. Riley, 285 S.C. 498, 331 S.E.2d 335 (1985)]. Equal protection is satisfied if: "(1) the classification bears a reasonable relation to a legitimate purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis." Samson v. Greenville Hospital System, 295 S.C. 359, 364, 368 S.E.2d 665, 667 (1988).
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> A statute enacted pursuant to the legislature's powers is presumptively constitutional. 435 S.E.2d at 871.

The circuit court relied on these cases to reach its legal conclusions that the Appellant failed to prove that: (1) the three liquor license limit does not bear a reasonable relation to the legislative process sought to be effected; (2) the members of the class are not treated alike; and (3) the classification does not rest on some reasonable basis. The Appellant has yet to offer any evidence that the three license limit does not bear a reasonable relation to the legislative process sought to be effected or that the classification does not meet a reasonable basis. Thus, the Appellant fails to meet its burden because it cannot prove the elements of the Court's equal protection test.

Despite failing to prove the elements of the Court's equal protection test, the Appellant alleges discrimination in an attempt to overcome this failure. The crux of the Appellant's equal protection argument is that it is being discriminated against because it will not be issued an additional license and that the statutory limitation of three liquor licenses harms those retailers who also wish to acquire additional licenses. However, all retail liquor licensees and applicants are treated the same. For decades, retail liquor licensees and those seeking a license have entered this field of business with Sections 61-6-140 and -150 as the law of the State. The Appellant enjoys the same privileges as other members of its class, to wit, it has the ability to be granted up to three retail liquor licenses. The Appellant receives no additional benefit or detriment than any other similarly situated retail liquor licensee in the State. Because of this, the circuit court found that the Appellant is treated the same as members of the class. The Appellant has not met any of the three elements required to successfully argue that the statutes in question violate the State's Equal Protection clause.[4]

C. Limitations on the number of liquor licenses have been upheld in virtually every case considering the issue.

The circuit court stated in its Order,

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[4]In this regard, the Appellant continues to argue that the existence of the "grandfather clause" in Section 61-6-150 deprives it of equal protection. In relevant part, Section 61-6-150 provides that "[t]he prohibitions in this section do not apply to a person having an interest in retail liquor stores on July 1, 1978." It is true that in the State of South Carolina, one entity holds four retail liquor licenses instead of three by virtue of the grandfather clause contained in Section 61-6-150 (Affidavit of Tammy Young). (R., p. 144). However a grandfather clause, permitting one entity to hold more than three licenses does not equate to a violation of equal protection. See Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (the fact that a classification may result in some inequity does not render it unconstitutional under the equal protection clause). Moreover, this one entity may well sell its business(es) over time negating any claim of disparate treatment.

> "Virtually every court which has examined limitations on the number of licenses against due process and equal protection claims has upheld them. See Parks v. Allen, 426 F.2d 610 (5th Cir. 1970) (2 licenses per family); People Super Liquor Stores, Inc. v. Jenkins, 432 F.Supp.2nd 200 (2006) (3 licenses); Johnson v. Martignetti, 374 Mass. 784, 375 N.E.2d 290 (1978) (3 licenses); Granite State Grocers Assoc. v. State Liquor Commission, 112 N.H. 62. 289 A. 2d 399 (1972) (2 licenses); and The Grand Union Co. v. Sills, 43 N.J. 390, 204 A.2d 853 (1964) (2 Licenses). See also, Maxwell's Pic-Pac, Inc. v. Dehner, F.3d. 936 (Sixth Cir. 2013) (Kentucky statute which barred grocery and convenience stores from selling liquor while permitting drug stores and others from doing so did not violate due process.)..."

South Carolina is not the only state to have legislation that limits liquor licenses challenged. Yet courts in the states cited above have held, like the circuit court here that challenges to state laws limiting the number of liquor licenses allowed do not violate due process or equal protection.

D. The Circuit Court held correctly that Sections 61-6-140 and -150 do not violate South Carolina's Due Process and Equal Protection Clauses.

The Appellant has not met its burden in proving that Sections 61-6-140 and -150 violate either the due process or equal protection clauses of the South Carolina Constitution. With regard to the Equal Protection Clause, the Appellant has failed to prove it has been treated differently than members of the same class, namely retail liquor license holders. Because the Appellant failed to prove the statutes at issue violate the due process or equal protection clauses in South Carolina, the circuit court found for the Respondents. We ask this Court to do the same. For all of the preceding reasons, the Court should uphold the circuit court's decision that Sections 61-6-140 and -150 do not violate South Carolina's Due Process or Equal Protection clauses.

CONCLUSION

It is difficult to imagine the repercussions of a case where a party that has no injury can successfully challenge the constitutionality of statutes after failing to meet the requisite burdens of proof. Because the Appellant cannot obtain a fourth retail liquor license, it argues Sections 61-6-140 and -150 were enacted outside the scope of the General Assembly's police powers and that the statutes violate the Due Process and Equal Protection Clauses of the South Carolina constitution. This case hinges on the Appellant's ability to meet certain burdens of proof, which it has not done. However, the fact that the Appellant has yet to apply for a fourth retail liquor license calls into question whether the opportunity should be afforded for it to meet that burden.

Sections 61-6-140 and -150 were enacted under the General Assembly's police power. The South Carolina constitution mandates the General Assembly to regulate the manufacture, sale, and retail of alcoholic liquors within the state. In upholding its constitutional responsibility, the General Assembly enacted the ABC Act, which includes the statutes in question. In order to successfully challenge the statutes, the Appellant must show the General Assembly acted outside its authority, that the statutes have no rational basis to a legitimate government interest. The Appellant argues the General Assembly enacted Sections 61-6-140 and -150 for reasons of economic protectionism rather than to further a legitimate interest. This Court has held that the regulation of alcoholic beverages and limitations placed on the number of alcohol licenses that may be obtained are within the State's police power. This Court's previous rulings in favor of the regulation of alcoholic beverages and the limitations on retail licenses thereof, in conjunction with the General Assembly's constitutional mandate, comprise a clear

indication that the ABC Act and Sections 61-6-140 and -150 are well within the General Assembly's police power. Despite this the Appellant alleges the statutes are ultra vires, yet offers no evidence to support its allegations. The Appellant has offered nothing to show Sections 61-6-140 and -150 are unrelated to a legitimate government interest.

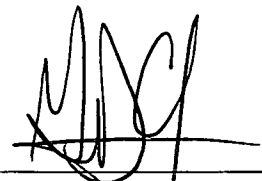
The Appellant alleges that Sections 61-6-140 and -150 violate South Carolina's Due Process and Equal Protection Clauses. The statutes violate neither. Because the Appellant is unable to obtain a fourth retail liquor license, it claims the statutes violate its due process rights and that it is being discriminated against. Here again, these allegations are unsupported.

Sections 61-6-140 and -150 do not violate the Appellant's due process rights. This Court has adopted a rational basis test in reviewing whether a statute is violative of due process. Again, the burden is on the Appellant to show the limitations codified in Sections 61-6-140 and -150 do not bear a reasonable relationship with a legitimate government interest. The Appellant has failed to offer sufficient evidence that the statutes aren't reasonably designed to accomplish their purpose. Further, this Court has held there is no constitutional right to have a retail liquor license. In light of this, there can be no dispute that the Appellant has no right to a fourth retail liquor license, especially when it has never applied to the Department of Revenue for an additional license. Because there is no property interest in question, there has been no denial of due process. Therefore, the Appellant cannot meet its burden in proving the statutes violate its due process rights.

Sections 61-6-140 and -150 do not violate the Appellant's equal protection rights. The Appellant argues the statutes in question discriminate against retailers who seek to expand their businesses beyond three licenses. Again, the Appellant has not applied to the

Department of Revenue for another retail liquor license. In addition, the Appellant has failed to avail itself of any of the elements of this Court's Equal Protection test and it has suffered no injury. Finally, the Appellant, like all applicants seeking a retail liquor license, undertakes the same process and is subject to the same law as any other applicant or liquor retailor.

For the aforementioned reasons, pursuant to Rule 220(c), SCACR, and for any other reasons appearing in the record, the Respondent respectfully requests that this Court uphold the order of the circuit court.



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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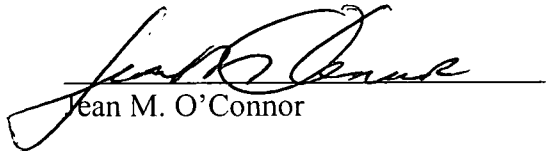
PROOF OF SERVICE

I, Jean M. O'Connor, do hereby certify that I have caused to be mailed, postage pre-paid, a copy of the Department's Final Brief in the above-referenced matter to Dwight F. Drake, Esquire and Brian M .Barnwell, PO Box 11070, Columbia, SC 29201 and Baylen T. Moore, Esquire, 7001 St Andrews Road, Suite 316, Columbia, SC 29212, and Burnet R. Maybank, III, Esquire, PO Box 2426, Columbia, SC 29202-2426 this 31st day of July 2015.



Jean M. O'Connor