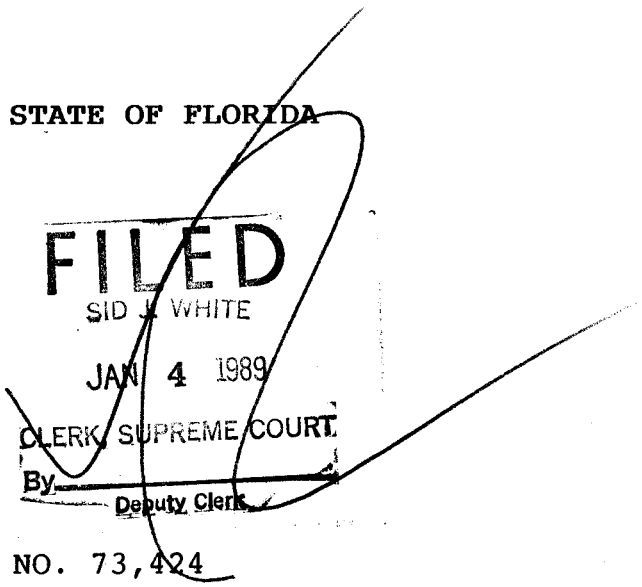
IN THE SUPREME COURT OF THE STATE OF FLORIDA



C. L. IVEY, DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, DEPARTMENT OF BUSINESS REGULATION, STATE OF FLORIDA, JACQUIN-FLORIDA DISTILLING CO., INC., and TODHUNTER INTERNATIONAL, INC.,

Appellants,

CASE NO. 73,424

vs.

BACARDI IMPORTS, COMPANY,INC., N. GOLDRING CORP., CALIFORNIA WINE INSTITUTE and TAMPA WHOLESALERS, INC.

Appellees.
_____/

ON APPEAL FROM THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA, CASE NO. 88-2881

APPELLANT IVEY'S REPLY BRIEF

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ARGUMENT

INTRODUCTION

The fundamental issue for decision is whether the Twenty-first Amendment has life and vitality in our constitutional structure or not. Under proper constitutional analysis, it does. Under the analysis suggested by Appellees, it is an empty appendage to the federal constitution - it is dead.

Under proper analysis, there can be no doubt that §. 2 of the Twenty-first Amendment empowers the States - despite the dormant Commerce Clause - to completely own and control the manufacture and distribution of alcoholic beverages within their borders and to exclude in that manner all beverages not produced by a state-run monopoly. E.g., State Bd. of Equalization of California v. Youngs' Mkt. Co., 299 U.S. 59 (1936), (hereafter "Youngs' Mkt."). There is no doubt that the States may exclusively own and control retail outlets for the sale of alcoholic beverages. Youngs' Mkt., supra; 1B Va. Code Ann., §§ 4-7, 4-15 (1988). (Ivey Reply App. p. 2). Having established state ownership of retail outlets as the exclusive lawful means of distribution, a state may validly price imported wines and liquors so that their retail price is higher than the price of locally made wines and liquors, if such action furthers the state's ability to exercise control over liquor traffic or to address health associated objectives. See Youngs' Mkt.; Ziffrin, Inc. v. Reeves, 308 U.S. 132 (1939). Either of the foregoing actions by Florida would fall squarely within the core, the "bulls eye," of Twenty-first Amendment regulatory power. Would such actions burden or impede the market in imported wines and liquors? Obviously, they would. Would such actions be subject to invalidation under the Commerce Clause? Most assuredly not. Since Florida could validly undertake either of the actions just

described under the Twenty-first Amendment is it logical to conclude that Florida may not seek to accomplish the same valid Twenty-first Amendment objectives by way of a regulatory tax policy rather than by means of direct ownership of the alcoholic beverage distribution system? Under principled constitutional analysis, most assuredly not. That is what this appeal is about.

Being unable to directly assail the logic of that position, Appellees' briefs attempt to cloud that core issue by a misconstruction of the precedents and by an argument which ignores the precedents on point regarding the Twenty-first Amendment and, indeed, misconstrues the Amendment itself. Appellees then assert a standard of review which addresses only the Commerce Clause to the total exclusion of the Twenty-first Amendment. Finally, Appellees inject issues waived at trial and which are, in any event, meritless. Since Appellees' Answer Briefs do not follow the format of Ivey's Initial Brief, to facilitate this Court's following of the arguments, Appellant Ivey will address the arguments of Appellees in the following categories: the misconstruction of the scope of state powers under the Twenty-first Amendment; the misapplication of precedents the injection of irrelevant issues; and the injection of isues waived at trial.

I. CORE POWERS OF THE TWENTY-FIRST AMENDMENT INCLUDE REGULATIONS TO MAXIMIZE REGULATORY CONTROL AND TO ADDRESS HEALTH CONCERNS.

This point addresses arguments made in point II. A. of the Brief of California Wine Institute (hereafter Cal. Wine) and point II. B. of the Brief of Bacardi Imports, Inc. (hereafter Bacardi).

Appellees would have this Court adopt the proposition that the only core objective of the Twenty-first Amendment is temperance. They further construe temperance in the context of the Twenty-first Amendment to mean an equal or "even-handed" reduction of both domestic and imported intoxicants.

They assert that, since Ch. 88-308 does not promote "temperance" as they restrictively define it, it cannot be within the ambit of the Twenty-first Amendment. That is the lynchpin of their arguments. Appellees' arguments on that score are logically flawed and completely ignore precedent which undermines their premise.

First, examine the logical fallacy. Construed as the Appellees would have it, the Twenty-first Amendment means nothing in constitutional analysis. Under the Commerce Clause, without the aid of the Twenty-first Amendment, a state may freely effectuate temperance, as Appellees define it; the state does not need the protection of the Twenty-first Amendment to do so. Under the Commerce Clause, the states may already regulate interstate and domestic commerce evenhandedly to further general health, safety and welfare concerns. E.g., Fulford v. Graham, 418 So.2d 1204 (Fla. 1st DCA 1982). Construed as Appellees would have it, the power to regulate importation of intoxicants in the Twenty-first Amendment is mere surplusage, a non-functional appendage to the Constitution, because, according to Appellees, the Amendment confers no power to do anything other than what is already permissible for the states under the Commerce Clause.

The precedents underscore the fallacy of Appellees' analysis of the Twenty-first Amendment's scope. In his initial brief, Ivey pointed out that, in enacting regulations governing the channelization of alcoholic beverages and the relationship between industry segments, such as Tied-House Evil statutes, the States are acting with such constitutional power that even conflicting federal requirements are subordinated to the state's action. Wine Industry of Florida, Inc. v. Miller, 609 F.2d 1167 (5th Cir. 1980); Castlewood Int'l Corp. v. Simon, 596 F.2d 638 (5th Cir. 1979); Washington Brewer's Institute v. United States, 131 F.2d 964 (9th Cir. 1964), cert.

denied, 320 U.S. 776 (1965). If Appellees are correct that temperance (as they define it) is the sole Twenty-first Amendment power of the State, how then do they explain these cases? They do not; they simply ignore them. If Appellees are correct that temperance is the sole valid Twenty-first Amendment objective, how then do they explain the Court's upholding of California's regulation governing nude dancing in bars as a valid police power action in view of the Twenty-first Amendment? California v. LaRue, 409 U.S. 109 (1972). They do not; they simply ignore it. If the decision in Youngs' Mkt. is no longer the law, as Appellees assert, why then did the United States Supreme Court in Bacchus Imports, Ltd. v. Dias, 104 S.Ct. 3049 (1984) reaffirm but distinguish it as a regulation aimed at policing liquor traffic? Id. at 3057, n. 13. Appellees offer no answer to that question. If Appellees are correct, then how do they explain Joseph E. Segram & Sons, Inc. v. Hostetter, 384 U.S. 35, 47 (1966): "[N]othing in the Twenty-first Amendment . . . requires that state laws regulating the liquor business be motivated exclusively by a desire to promote temperance"? The statute upheld in that case had exactly the opposite effect from promoting temperance; it operated to hold down liquor prices and thus make intoxicants more readily available. Again Appellees do not address this precedent.

Appellees ignore all those points because to address them is to acknowledge what is obvious: When States act under the Twenty-first Amendment to directly regulate the importation of alcoholic beverages, for any health, safety or regulatory goal, and do so in a rational way, they are not confined by the Commerce Clause but only by the requirement of rationality. In the wake of Bacchus, the Twenty-first Amendment is in full force and effect, save only the cicumscription that the goal of the state's action is not merely (only) economic protection.

II. THE PRECEDENTS RELIED ON BY APPELLEES DO NOT ADDRESS THE TWENTY-FIRST AMENDMENT.

Aside from Bacchus, which Ivey analyzed in his initial brief, and one federal district court case discussed below, no case cited by Appellees speaks to the issue here: the Twenty-first Amendment versus the dormant Commerce Clause. Every case cited by Appellees is either a pure Commerce Clause case, unrelated to the Twenty-first Amendment[1] or a case involving, not the dormant Commerce Clause, but the tension between an affirmative exercise of Congressional power to regulate commerce juxtaposed to a state regulation on the general subject of alcoholic beverages, but not directly regulating the importation of alcoholic beverages.[2]

The only exception is Loretto Wines, Ltd. v. Gazzara, 601 F.Supp. 850 (S.D.N.Y. 1985). That decision misconstrues Capital Cities Cable, Inc. v. Crisp, supra, to conclude that "direct regulation of the sale of intoxicating liquors" under §.2 of the Twenty-first Amendment is limited to temperance. Id. at 861. Capital Cities Cable, as noted above, was not a dormant Commerce Clause case at all. Instead, it was a case involving the clash of Congressional regulatory legislation and a state regulation not relating directly to the importation of alcoholic beverages, but to cable television

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[1] New Energy Co. of Indiana v. Limbaugh, 108 S.Ct. 1803 (1988); Boston Stock Exchange v. State Tax Commission, 429 U.S. 318 (1977); Guy v. Baltimore, 100 U.S. 434 (1879); Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977); City of Philadelphia v. New Jersey, 437 U.S. 617 (1978); North West Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959); Edgar v. MITE Corp., 457 U.S. 624 (1982); Pike v. Bruce Church, Inc., 397 U.S. 137 (1970); Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429 (1978); Hughes v. Oklahoma, 441 U.S. 322 (1979); Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 (1928); Dean Milk Co. v. City of Madison, 340 U.S. 349 (1964).

[2] Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691 (1984); California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97 (1980).

advertising of some alcoholic beverages. The Gazzara opinion mischaracterizes, and, in fact, misquotes the opinion of the United States Supreme Court in Capital Cities Cable. At page 861 of Gazzara, the federal district court characterized Capital Cities Cable as holding that temperance is "the core of §.2 power." Yet, the actual language referred to appears in Capital Cities Cable, as follows:

> In rejecting the claim that the Twenty-first Amendment ousted the Federal Government of all jurisdiction over interstate traffic in liquor, we have held that when a State has not attempted directly to regulate the sale or use of liquor within its borders-the core of §.2 power-a conflicting exercise of federal authority may prevail."

104 S.Ct. 2694, at 2707. (Empahsis supplied). The true nature of the Capitol Cities Cable holding is summarized by the United States Supreme Court, as follows:

> "In contrast to state regulations governing the conditions under which liquor may be imported or sold within the State therefore, the application of Oklahoma's advertising ban to the importation of distant signals by cable television operators engages only indirectly the central power reserved by §2 of the Twenty-first Amendment -- that of exercising 'control over whether to permit the importation or sale of liquor and how to structure the liquor distribution system'."

Id. 2709 (quoting MidCal Aluminum, supra.).

The only mention of temperance in the Capitol Cities Cable opinion appears at 104 S.Ct. 2708. There the Court notes that temperance was the Twenty-first Amendment purpose put forward by Oklahoma in that case. The opinion does not suggest that temperance is the only Twenty-first Amendment objective available to the states. Moreover, the Gazzara opinion is directly in conflict on this point with the holding of the United States Supreme Court in Joseph E. Segram & Sons, Inc. v. Hostetter, supra, that State regulation under the Twenty-first Amendment is not limited to temperance objectives.

The error of the federal district court in Gazzara is thus clear. Further, Gazzara involved a case analogous to Division of Alcoholic Beverages and Tobacco v. McKesson, Corp., 524 So.2d 1000 (Fla. 1988), and not a direct regulation of the importation of alcoholic beverages. 601 F.Supp 852, 858. Finally, the Gazzara court found that the means chosen by the Legislature in that case were so underinclusive that the statute there could not be said to serve "an arguable police power purpose of the state," and expressly declined to express an opinion on a state of facts where, as here, the state's regulation does indeed promote a valid regulatory objective in a rational manner. 601 F.Supp. 858.

III. CHAPTER 88-308 IS RATIONALLY RELATED TO OBJECTIVES WITHIN FLORIDA'S TWENTY-FIRST AMENDMENT POWERS.

Since the objectives of maximizing regulatory control over the distribution system for wines and liquors and minimizing health risks are clearly within the reach of Florida's power under the Twenty-first Amendment, and, therefore, beyond the reach of the Commerce Clause, Appellees adopt fall-back positions: that the means chosen are not rationally related to those objectives, that the Legislature must have expressly considered those objectives for the law to be valid, and that the subjective motivations of legislators expressed in floor debate are controlling on the issue of constitutional power. Each of these positions is spurious.

A. THE MEANS CHOSEN ARE RATIONAL.

The correct test under which to judge a statute enacted pursuant to an affirmative grant of constitutional power is succinctly set forth in United States v. Carolene Products Co., 304 U.S. 144 (1938): Such statutes are to be presumed constitutional and the sole constitutionally relevant inquiry is whether "any state of facts either known or which could reasonably be assumed affords support" for the Legislature's judgment. Id. at 154. If the question

of supporting facts is at least fairly debatable, the statute must be held valid. Id. Accord, Minnesota v. Clover Leaf Creamery Co., 101 S.Ct. 715, 724-727 (1981); Fulford v. Graham, supra at 1205.

To arguably show irrationality, Appellees point out that the import tax is not imposed on beer. (Bacardi Brief, p. 25). Yet, it is clear that a statute need not address all aspects of a problem or none to be rational and constitutional. Eg., Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 509-510 (1937); Federal Distillers, Inc. v. State, 229 N.W. 2d 144 (Minn. 1975), appeal dismissed 96 S.Ct. 209, 210. The evidence showed at trial that the presence of harmful impurities in combination with ethanol renders those impurities more likely to cause ill effects. (R.V. 8, pp. 1284-1296; V. 9, pp. 1421-1424, 1516). The evidence also showed that beer is 4.75% ethanol, while wine and liquor are much higher in ethanol content. (R.V. 8, pp. 1332-1336) (Ivey Reply app., p.6). Accordingly, it is rational for Florida to impose its policy on beverages with a higher ethanol content, since it is the interaction of ethanol and the impurities which creates the greatest risk.

Bacardi attempts to show that the 185 proof, Florida-inspected requirement is an illusory health issue, (Bacardi Brief, p. 38). Bacardi cannot escape the fact, however, that the scientific community accepts the proposition that the harmful impurities are a significant risk to which exposure should be limited. (R. V. 8, pp. 1272-1300; V. 9, pp. 1403-1411, 1511-1515). That such impurities appear in some food is no serious challenge to a policy which encourages the use of alcoholic beverages from which they have been removed. In contrast to foodstuffs, alcohol is a product with no social value and which increases the potency of the harmful chemicals.[3]

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[3] It must be pointed out at this juncture that, in addition to misapplying precedents, Bacardi misstates the facts in support of this argument. At page 41 of his brief, Bacardi asserts that 25%

Bacardi spends a great deal of time arguing that the costs of the Division of Alcoholic Beverages and Tobacco, on a per-gallon measure, are not higher for regulation of imported alcoholic beverages. (Bacardi Brief, pp. 25-29. See also California Wine Institute brief at 39.) Ivey does not argue that they are. The fallacy of limiting one's view to DABT is pointed out in Ivey's initial brief. Moreover, Bacardi misses the point of the State's evidence on costs. That evidence shows that Ch. 88-308, in practical operation and effect, on the facts now known and reasonably ascertainable, fairly apportions the total societal cost of the consumption of wines and liquors between imported and domestic products according to those groups' relative contributions to the problem of alcohol consumption. Chapter 88-308 does so while advancing legitimate Twenty-first Amendment goals, a fact which serves to show that the statute in practical effect is not "mere economic protectionism."

California Wine's argument at pp. 39-40 of its brief over the State's ability to impose discriminatory measures on imported alcohlic beverages reduces to nothing more than a complaint that the Twenty-first Amendment is in the Consitution. The State's "carte blanche" authority, railed against by

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of the Florida market is in vodka. There is no evidence to support that assertion. See, R. V. 8, pp. 1336-1338, Ivey Reply App., p. 7. Again at page 42 of its brief, Bacardi asserts that Jacquin adds flavoring extracts containing some of these substances to its products. The alleged support for that statement comes from the testimony of James Hammond, admitted over State's objection. Mr. Hammond testified that he had ceased employment with Jacquin prior to the time that Chapter 88-308 was passed and did not know the current Jacquin practices. R.V. 8, pp. 1319-1321. At page 23 of its brief, Bacardi twists the State's evidence by misconstruing the meaning of "quality" and asserts that no evidence was presented that Chapter 88-308 fosters the objective of discouraging lower quality beverages. However, the State presented evidence that distillation above 185 proof always creates a product of pure ethanol content with less harmful impurities than distillation below 185 proof. The legislative meaning of "quality" is tied to that purity concept.

California Wine, is not a carte blanche at all. It is hemmed in by the requirement that the choice of legislative means be rational. As demonstrated in Ivey's initial brief, it is entirely consistent with both Bacchus and McKesson to uphold the rational exercise of the State's Twenty-first Amendment police powers in this case.

California Wine labors to show that the Florida-inspected requirement and the 185 proof requirement have no rational relationship to wines. (Cal. Wine Brief at p. 43). Like Bacardi, California Wine simply chooses to ignore the evidence of record in making that argument. James Hammond testified without contradiction that the careful control of the wine fermentation process can reduce harmful impurities. By controlling the fermentation base (Florida inspection) and the fermentation process (regulatory control), the State can advance legitimate health interests. See pp. 33-34, Ivey's Initial Brief. That Florida was not more coercive in this regard goes to the wisdom of the enactment, not to its constitutionality.

B. NEITHER SUBJECTIVE MOTIVATIONS NOR ABSENCE OF EXPRESS LEGISLATIVE CONSIDERATION OF FACTS PROVED AT TRIAL IS RELEVANT TO THE CONSTITUTIONAL ANALYSIS OF THE LEGISLATION.

Having failed to show a lack of legitimate objectives for Ch. 88-308 and having failed to show that Ch. 88-308 does not rationally relate to legitimate objectives, Appellees attempt here, as they did at trial, to divert the Court's attention to matters which are wholly irrelevant to the issue of the legislature's constitutional power to act. Indeed, most of Appellees' briefs are devoted to reciting that some members of the legislature were personally motivated to promote Ch. 88-308 because of perceived benefits to their districts. Such matters are relevant, if at all, only in a pure Commerce Clause case where the issue for determination is whether a facially neutral statute is in fact designed to impede interstate

commerce. See, e.g. Best & Co. v. Maxwell, 311 U.S. 454 (1940). Here, the statute plainly on its face has that effect. No one contends otherwise.

The only question here is whether that effect is rationally related to a Twenty-first Amendment regulatory power reserved to the State and, therefore, outside of normal Commerce Clause constraints. If so, the judicial inquiry is at an end.

In addition to being constitutionally irrelevant, Appellees' use of committee hearings and floor debates in this case is wholly out of line with the proper usage of legislative history. The proper use of reference to individual legislators' remarks is limited to cases where there is a need to clarify ambiguous statutory language. Department of Legal Affairs v. Sanford-Orlando Kennel Club, 434 So.2d 879, 882 (Fla. 1983); Jacksonville Electric Auth. v. Department of Revenue, 486 So.2d 1350, 1353 (Fla. 1st DCA 1986), review denied, 492 So.2d 1331 (Fla. 1986); R. M. Rhodes & S. Seereiter, "The Search for Intent: Aids to Statutory Construction in Florida, An Update," 13 Fla. State U. L. Rev. 485, 501-504, (1985). Such remarks are not properly used to decide a question of constitutional power to enact an unambiguous law such as Ch. 88-308. Such an analysis would make the constitutionality of state laws dependent upon the subjective motivations of individual legislators, a proposition never adopted by this or any other court, even in a pure Commerce Clause case. See, e.g., McKesson, supra.

Equally erroneous is Bacardi's argument that, for Ch. 88-308 to be valid, the legislature must be demonstrated to have known of and expressly considered the facts adduced at trial which show legitimate Twenty-first Amendment purposes. That is completely contrary to established precedent. The existence of facts supporting constitutionality, and legislative

awareness of such facts, is to be presumed. United States v. Carolene Products Co., supra. Accord, Cilento v. State, 377 So.2d 663 (Fla. 1979); State v. Bales, 343 So.2d 9 (Fla. 1977); Fulford v. Graham, supra; Publix Cleaners, Inc. v. Florida Dry Cleaning & Laundry Bd., 32 F.Supp. 31, 33 (S.D. Fla. 1940).

The precedents cited by Bacardi in support of this proposition have absolutely no application here and are cited out of context. Grayson-Robertson Stores v. Oneida, Ltd., 75 S.E. 2d 161 (Ga. 1953) held that a statute had to be judged against the controlling federal law - the Anti-trust Act - as the federal law stood at the time of the state law's passage. Gallatin County v. McClue, 721 p. 2d 338 (Mont. 1986) and State ex. rel. Woodahl v. Dist. Court, 511 P. 2d 318 (Mont. 1973), dealt with the question of whether a statute passed under a prior State constitutional provision was lawful in light of a subsequent change in the constitutional provision. Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924), likewise, does not stand for the proposition that the legislature must have expressly considered facts in existence in order to uphold the validity of a statute. Instead, it holds that a law which depends for its constitutionality on the continued existence of an emergency situation is no longer valid when the facts change and the emergency ceases. Space does not permit a full analysis of each precedent cited by Bacardi on this issue, but Ivey urges this Court to review each of them, for none stand for the proposition asserted by Bacardi. Rather, the law is that legislative knowledge of any state of facts supporting constitutionality is presumed and one challenging the statute must show that the facts do not exist, rather than that the legislature did not consider them. E.g., Cilento v. State, supra.[4]

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[4] Likewise, Bacardi cites out of context the cases in support of

Bacardi compounds this error by limiting its analysis to facts relating to its myopic view of the Twenty-first Amendment purposes served by Ch. 88-308: The allocation of costs on a per-gallon basis in relation to the operational expenses of only the Division. Neither the legislature nor the courts are bound by that narrow field of vision in regard to this law. Instead, the courts are to take an expansive view in upholding such statutes. United States v. Carolene Products, supra.

In addition to the improper use of legislators' statements Appellees improperly refer to post-enactment hearsay statements of the General Counsel and the Secretary of the Department of Business Regulation, expressing their opinions as to the legislative purposes of Chapter 88-308 and their opinions as to its constitutionality. Bacardi brief, p. 13-14; Cal. Wine brief, p. 16. Bacardi introduced those statements in evidence by way of memoranda, over the State's objection. R.V. 7, pp. 1185-1189; V. 9, pp. 2700-2701, 2706-2716. Those statements are wholly irrelevant to any issue in this case. The authors of the memoranda are not legislators, nor were the memoranda addressed to legislators. Neither author was a party to this lawsuit. Neither is competent to testify as to the motivations of legislators voting for Chapter 88-308, even if such motivations were relevant, which they are not. The authors' expressions of opinions as to the constitutionality of the

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its position that the trial court's judgment is a factual one, clothed with a presumption of correctness. See, Bacardi Brief, p. 25. Each of those cases deals with appeals of judgments attacking findings of fact. Here the issue is not whether the fact is more probably "A" than "B". The constitutional question is instead whether it is "at least debatable" that the facts support the legislative judgment. E.g., Minnesota v. Clover Leaf Creamery Co., supra. The trial court's resolution of such issues of law does not enjoy a presumption of correctness on appeal as do purely factual determinations. Id. See generally Union Planters National Bank of Memphis v. United States, 426 F.2d 115, 117 (6th Cir. 1970).

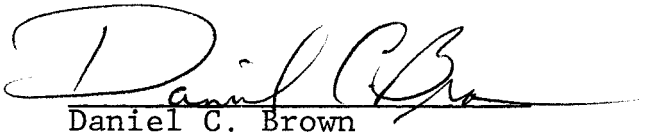
law are wholly irrelevant. See, §90.401, Fla. Stat. (1987) (relevancy relates to a material fact, not to conclusion of law by executive branch functionary on constitutional issue). Moreover those statements are rank hearsay, §90.801, Fla. Stat. (1987), and not within either the public records or business records exception. §90.803(6), (8), Fla. Stat. (1987). The memoranda were written by an agency which was hostile from the outset to the amendments in question, R.V. 9, pp. 2737, 2778-2779, 2858-2859, and were written for the admitted purpose of persuading the Governor to veto Chapter 88-308. Id. They were animated by bias and predisposition and exhibit the lack of trustworthiness which prevents their introduction in evidence under either exception to the hearsay rule. Their sole use below was to prejudice the mind of the trial court. Admission of those memoranda and consideration of them by the trial court was, in itself, reversible error.

Space limitations prevent further response to Appellees' briefs here. Ivey therefore adopts the Reply Brief of Jacquin-Florida Distilling Co., Inc. on all issues not herein addressed.

CONCLUSION

For the reasons advanced herein, in Appellant Ivey's Initial Brief, and in Jacquin-Florida's Reply Brief, Appellant Ivey urges the Court to reverse.

Respectfully submitted,



Daniel C. Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellant Ivey's Reply brief has been furnished by the method indicated on the attached mailing list this 4th day of January 1989.

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