

The main Constitutional issue present in this situation involves the religion clauses of the 1<sup>st</sup> Amendment to the Constitution. The 1<sup>st</sup> Amendment says that no government shall prohibit the free exercise of religion nor shall government establish any religion. This case also deals with "government ~~on~~ the backs of the people" in that it tells them when to how to their businesses. After a review of the Supreme Court's view on this matter, the local court will decide that this new Sunday closing ordinance is unconstitutional.

The Everson case, where the court held that government could fund busing of children to parochial schools, also held that the religion clauses were applicable to the states. The court has also said that when the 1<sup>st</sup> Amendment refers to "No government", that includes federal, state, and local government. So the 1<sup>st</sup> Amendment obviously applies here.

Beth Avramone (BA) & Al Jacobs (AJ) would both argue that this ordinance not only inhibits the free exercise of their religion (worshipping on Saturdays) but also is a prime example of the government advancing the establishment of religion on Sundays. The government will argue that this law has nothing to do with religion and only promotes health.

The Sherbert case stressed the importance of the state having a compelling state interest in creating such laws. The court, in Sherbert held that it was constitutional for a woman to receive unemployment benefits for not working on the Sabbath. Sherbert said that these religion cases must be analyzed in a manner of strict scrutiny. This must be the least intrusive means by the government and there must be no other way to reach the end result. I think the city father's argument would be questionable here. Yes, the city has an interest in promoting the health of the community, but this Sunday closing law is certainly not the only way to do it. Beth Aumone is also promoting the health of the community by providing a health food store for the citizens. By closing her down on Sundays seems to contradict the city's purpose in promoting health. Furthermore, the Sunday closing law is very intrusive upon the way BA + AJ wish to run their businesses.

The Smith II case, dealing with the religious use of peyote, has been controversial but still is good law. Scalia, writing for the majority, said that there must be another right to go along with the 1<sup>st</sup> amendment right to challenge such laws that encroach upon religious rights.

← As in Yoder, where both religious and parental rights were at issue, ~~this~~<sup>our</sup> case also deals with another right: a business and economic right. If BA + AJ had to close on Sundays they would not only lose 1/3 of their business, but ~~would~~ their businesses will be ruined. Forcing them to open their business on Saturday instead will inhibit their freedom to practice their religions.

Our case here is also similar to the conflicts that have arisen regarding school prayer. If the ~~state~~<sup>city</sup> selects Sunday "as their day of rest" the city, like that in Lee v. Weisman, is promoting one religion over another. Why does the city choose to close on Sunday rather than Saturday? It is promoting those religions that worship on Sunday.

Finally, in regards to religion, the city's test fails the Lemon test regarding establishment. The city fathers argue that the ordinance has a secular <sup>legislative</sup> purpose to promote health. While that is debatable, the ordinance does fail the last two prongs of the Lemon test. First, the law may not inhibit or advance religion and this law does both. This law would force AJ + BA to open on Saturdays and therefore inhibiting the practice of their

religions. Second, the law advances those religions which worship on Sundays, truly giving them a day of rest. Finally, I feel that AJ + BA could argue that the ordinance fails the last prong of the Lerner test - it involves an excessive entanglement of government and religion. This ordinance is clearly unconstitutional under the 1st Amendment.

The city is also encroaching on the rights of private business owners. The court in Lochner held that private business owners had rights under substantive due process. Although, Lochner has been rejected (but not overruled), I think it is important for AJ + BA's benefits to point out that the city is walking on a thin line. The Framers wanted the government off the backs of the people. This ordinance not only tells people how to run their businesses, it tells them when they can shop, go to the drugstore, etc. Allowing Clintonville to do this would open the floodgates.

In conclusion, the city will find this ordinance unconstitutional. The ordinance will inhibit BA and AJ's practice of their religions. The ordinance ~~also~~ also promotes + advances those religions that worship on Sunday. The ordinance crosses the line telling private business

owners how to run their business. And though the city has a strong interest in the community health, it is not strong enough to permit the ordinance. BA + AF should succeed in challenging the new ordinance.