(1) BESIDES A Possible violation of the religious clauses of the first Amendment, this issue also presents an interesting interplay between federalism, Due process & the Dormant Commerce clause.

(2) The Religious Clauses in the 1st A. were incorporated to State & Local action in Everson, making this a federal issue that gives federal courts jurisdiction through Art. III §2 and Marbury. Beth and Al (B+A) may claim that this ordinance violates their free exercise, as well as advances religion.

To prove an exercise violation, B+A will have to convince the Court that the Standard in Smith II of upholding generally applicable laws only pertains to criminal behavior, a difficult task. If this were the case, B+A can raise this issue under the Stricter Sherbert Standard, forcing the city to prove that there is no other way to accomplish these means with the least intrusive means. B+A could claim that simply 1 day off a week, not necessarily Sunday, would satisfy

The city however will rely on Smith's language which does not distinguish between Criminal and Civil ordinances, and can simply state that B+A can refrain from working the whole weekend. Due to the clearness of Smith's language,

as well as the trend of the Court in recent years to devitalize exercise (See also City of Boerne), the city would win this point

The next issue is whether or not the ordinance is respecting the Sunday sabbath by requiring that businesses

Close on that day. A law may appear neutral on its face, but its application must be neutral as well (Yick wo)

B+A can claim that the ordinance violates the ~~first +~~ second prongs of the Lemon test since it advances the Sunday Sabbath's religion at the expense of Sat. Sabbath religions, since they are forced to work to compete. However the law is neutral and does not present any coercion under the Lee v. Weisman standard ~~or threat~~, that would make the court look to Lemon (since it is rarely used anymore in the face of neutrality). The ordinance is not forcing B+A to work on Saturday and is ~~com~~ couched in the premise of the States 10th Amendment powers.

This brings us too the next issue. The 10th Amendment reserves all powers not expressly granted to the federal government to those of the States (local). Among these powers are the rights to provide for the health, safety, and welfare of the public; known primarily as the States 'police powers.' The City ordinance was passed to foster the health of the city, causing it to be qualified as a "police power."

Though the ordinance seems to infringe upon the economic rights of B+A, B+A have a 60 year battle to fight if they take this route. Standing with Justice Harlan's dissent in Lochner, focusing on these state Economic regulations, the Court slowly moved in the direction that Economic right infringements were constitutional under the 14th Amendment. C.J. Hughes in his famous opinion in West Coast Hotel, finally made Justice Harlan's Lochner dissent the Courts majority.

View, and since 1937, the High Court has not struck down an economic infringing statute. From that point, if a state had a legitimate objective, such as health, any means rationally related to it would be upheld. Giving the residents a day off from work satisfies this, since the court has been upholding limited working hours since 1937.

However B+A can make the claim (albeit a stretch) that this ordinance and power violates the Dormant Commerce Clause. If the Congress has not acted, ~~stat~~ on an issue, states may still be preempted of certain actions that would restrict the free flow of commerce (Mobile Bay Case). The clause exists ~~for~~ response to the mayhem caused by the articles of confederation in the hopes of fostering a single National Economic unit. As Justice Cardozo aptly put it: "We all must sink or swim together."

The mere fact that the ordinance requires all retail outlets and Gas Stations to be closed may discourage travel and sales to and through this "Mid-Size" city of Clintonville. The Court has regulated local activity before in such a manner (see Wickard, ~~Heart of~~ Katzenbach v. McClung) using the "cumulative effects" test of Wickard. This may be a long shot but may be the only one B+A may have.

Another long shot may be ~~to~~ for B+A to challenge the ordinance on the basis that their religious beliefs ~~ma~~ qualify them as "discrete and insular minorities" (Carolene Products, Justice Stones f/N) that require special protection if they are to be included under "Madison's umbrella" free from the

tyranny of the majority. However, since they seem to be without relief under the religious clauses, and the fact that this is an economic regulation, B+A will most likely find their challenge to be fruitless, as the ordinance will most likely be upheld.