

There are 4 constitutional issues involved. The first is whether the ordinance violates the economic substantive due process rights of BA + AJ. The second is whether the ordinance violates the dormant commerce clause. The third is whether the ordinance violates the free exercise clause. The fourth is whether the ordinance violates the establishment clause.

The first constitutional issue is whether the ordinance violates the economic substantive due process rights of BA + AJ. Economic substantive due process means that the laws themselves are fundamentally fair, not arbitrary, unreasonable or capricious, and violate a person's economic freedom to contract or engage in other economic activities without gov. intervention and regulation. In Lochner v. NY, the court held that a baker's freedom to contract was violated when the gov. instituted hour limitations on his profession. However, Lochner has been rejected by West Coast Hotel, and US v. Carolene has adopted the Rational Basis test to determine whether the gov. rationally had any legitimate reason to interfere with the economic rights of its citizens. This shift towards lessening the burden of proof is in favor of government intervention was a result of the industrial revolution where the gov. realized it needed to protect the workers and their economic

rights because they were losing the ability to feed for themselves.

Using the rational basis test to see whether the economic ^{substantive} due process rights of BA + AJ were violated, the City of Clintonville can argue that they had a legitimate reason to offer a general + neutral law that gave rest and relaxation to every member of the community. BA + AJ can argue that their economic rights to conduct business have been violated because 40% of their business comes as a result of their Sunday sales. However, the courts will probably determine that the City of Clintonville had a rational basis to pass the law.

The second constitutional issue is whether the ordinance violates the dormant commerce clause. The ~~dormant~~ ^{Commerce} clause states that the Congress has the right to regulate trade between the states, Indian tribes + foreign nations. The dormant commerce clause states that just because the Fed. gov. / Congress hasn't acted to regulate, ~~the~~ doesn't mean the states can. Gibson v. Ogden used the rational basis test to determine whether the Commerce clause power was not ~~is~~ abused. However, recently Justice Rehnquist has limited the scope of the commerce clause power to only those 1) instruments; 2) channels; and 3) activities that substantially affect commerce

can be regulated by his decision in US v. Lopez.
The court have held that activities that indirectly affect commerce, such as ~~the~~ a labor strike in a steel mill, can be regulated. NLRB v. J+L Steel. Also, any good or product, such as pigs, in the stream of commerce can be regulated. Swift + Co. v. US.

In order for states to regulate commerce, they must show 1) legitimate state interest; 2) the law is rationally related to that interest. City of Clintonville will argue that the retail businesses of BA + AJ substantially affect the local commerce ~~with them~~ and they have a legitimate state interest in providing their local citizens with a day of rest. The law that prohibits the opening of stores on Sunday is rationally related to that objective. Therefore, it is unlikely that BA + AJ can challenge the constitutionality of the ordinance ~~of~~ on the grounds of violating the dormant Commerce Clause.

The third issue is whether the ordinance violates the free exercise clause. The Free Exercise Clause is contained in the First Amendment and states that the gov. shall not inhibit anyone's freedom to exercise their religion or religious practices. The current test used by the Supreme Court is the one proffered by Justice Scalia in Employment Division v. Smith (II).

That test rejects the strict scrutiny test of Yoder + Shubert and states that criminal statutes outweigh religious practices that violate it. Scalia says that it is up to the legislature to make exceptions to allow for religious practices. Scalia ~~to~~ uses a 2 part test to determine if the Free Exercise Clause has been violated ~~by~~ which is 1) the ~~reg.~~ regulation must not specifically target a religion or religious practice; and 2) the regulation must not compel or coerce a religious belief or practice. This test led to the Religious Freedom Restoration Act which was ruled unconstitutional in City of Boerne v. Flores because it violated the separation of powers and judicial review ~~was~~ because it told the court what test to use.

Using this test, it can be argued by BA + AJ that the ordinance specifically targeted 7th day Adventist's + Jewish people who already take Saturday off. The result of having 2 days off in a row would inhibit their business and possibly cause them to compromise their religion by reopening on Saturday. ~~It can~~ BA + AJ can also argue that it compels them to practice the Christian tradition of having Sunday off. It promotes Christianity and inhibits their religion.

BA + AJ could also argue that the Shubert

and Yoder test is still alive. The test is that 1) compelling interest; 2) no other way; 3) least intrusive means. However, Smith (II) said that to use this strict scrutiny test, you must have another fundamental right being violated, which makes religion surrogage. BA + AJ could argue that their economic freedom or privacy was violated. The courts will probably rule that the ordinance violated the Free Exercise Clause.

The fourth, and probably best argument, ~~is~~ is that the Establishment clause was violated. The Lemon v. Kurtzman test to determine if the ordinance violated the establishment clause is that the regulation 1) must be secular; 2) must not advance or inhibit a religion or religions practice; and 3) must not lead to excessive entanglements.

BA + AJ can argue that the purpose of the ordinance was religiously motivated to promote Christianity, not serving a ~~secular~~ secular purpose. Also, it violates the 2nd element in that it advances ~~the~~ Christianity at the expense of 7th day adventist's and Jewish people. Finally, it leads to excessive entanglement with religion by trying to accommodate one religion over another.

The purpose of the establishment clause is to prevent the establishment of a state religion. The Clintonville ordinance violates this religion clause and will be held unconstitutional.