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### Constitutional Law—Due Process—Arkansas' Sunday Closing Law is Declared Unconstitutionally Vague

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## NOTES

CONSTITUTIONAL LAW—DUE PROCESS—ARKANSAS' SUNDAY CLOSING LAW IS DECLARED UNCONSTITUTIONALLY VAGUE. *Handy Dan Improvement Center, Inc. v. Adams*, 276 Ark. 268, 633 S.W.2d 699 (1982).

Seven private individuals and five retail establishments in Pulaski County brought suit to enjoin competing retailers from conducting retail sales on Sunday in violation of Arkansas' closing law (blue law).<sup>1</sup> The Pulaski County Chancery Court found the Sunday closing law constitutional and held that the defendants had violated its provisions. The court issued a decree permanently enjoining the defendants from selling prohibited articles on Sunday.

The defendants appealed to the Arkansas Supreme Court, challenging the law on due process and equal protection grounds.<sup>2</sup> The

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1. The central provision of the Arkansas blue law (1965 Ark. Acts 135) was the sales prohibition section, ARK. STAT. ANN. § 41-3853 (1977):

It shall be unlawful for any person to sell, or offer for sale, or to employ others to sell or offer for sale, the following commodities on the first day of the week, commonly known as Sunday: clothing and wearing apparel; clothing accessories; household utensils, glassware and china; home, business or office furniture; mechanical or electrical household or office appliances; hardware, tools and paints; building and lumber supply materials; jewelry, silverware, watches and clocks; luggage and leather goods; musical instruments and recordings; radios and television sets, receivers, record players, recording devices and components and parts therefor; lawn mowers and other manual and power driven outdoor gardening equipment; cameras, projectors and parts and equipment therefor (except film, flash bulbs and batteries); and linens, yard goods, trimmings and sewing supplies. (Act of Mar. 1, 1965, No. 135, § 2, 1965 Ark. Acts 391).

ARK. STAT. ANN. § 41-3858 (1977) provided that the sale of any prohibited articles on Sunday was a public nuisance, and allowed any citizen to file suit to enjoin violators from conducting illegal sales. ARK. STAT. ANN. § 41-3860 (1977) provided for criminal sanctions, beginning with a \$100 fine for the first offense and providing for a \$200 fine or 30 days imprisonment for subsequent violations.

2. ARK. CONST. art. II, § 8 provides in pertinent part: "No person shall be . . . deprived of life, liberty or property, without due process of law."

ARK. CONST. art. II, § 3, provides in pertinent part: "The equality of all persons before the law is recognized, and shall ever remain inviolate . . . ."

U.S. CONST. amend. XIV, § 1 provides in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

defendants alleged that the Arkansas blue law was unconstitutionally vague because it failed to give reasonable notice of proscribed conduct and thus violated due process of law. They also alleged that the blue law's statutory classifications of prohibited commodities denied merchants equal protection under the law. The Arkansas Supreme Court denied relief based upon the equal protection argument but declared that, as written, the Arkansas closing law was unconstitutionally vague and violative of the due process clauses of the United States and Arkansas constitutions. *Handy Dan Improvement Center, Inc. v. Adams*, 276 Ark. 268, 633 S.W.2d 699 (1982).

The historical antecedents to modern Sunday closing statutes may be found in the traditional concepts of the Judeo-Christian ethic.<sup>3</sup> An edict of the Roman Emperor Constantine<sup>4</sup> proscribed all work on "the Day of the Sun . . . which is celebrated on account of its own veneration."<sup>5</sup> This was the first recorded compulsory observance of Sunday as the Sabbath, although Christians had by that time been worshipping on Sundays for several centuries.<sup>6</sup>

The Anglo-Saxon King Ina was the first ruler to prohibit Sunday labor in England. In 691 A.D. he declared Sunday a day of rest and forbade all labor.<sup>7</sup> As years passed, English monarchs enacted progressively more restrictive Sunday laws. The declared justification was concern for the subjects' well-being and the protection of the king's peace.<sup>8</sup>

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3. The Jewish and Christian tradition of revering one day of the week by refraining from business and unnecessary labor dates back to the Mosaic code and the Israelites' time of wandering in the wilderness. Specifically, the Fourth Commandment brought by Moses from Mt. Sinai has been thought to be the beginning of Sunday legislation. See L. PFEFFER, CHURCH, STATE AND FREEDOM 270 (rev. ed. 1967). The Biblical injunction is *Exodus* 20:8-11:

Remember the sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work; but the seventh day is the sabbath of the Lord thy God; in it thou shalt not do any work . . . For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the sabbath day, and hallowed it.

4. In 321 A.D. Constantine declared Sunday a *dies non juridicus* and a day of rest. *City Council of Charleston v. Benjamin*, 33 S.C.L. (2 Strob.) 508, 49 Am. Dec. 608, 617 (1846).

5. C. PHARR, THE THEodosian CODE 44 (1952).

6. McGowan v. Maryland, 366 U.S. 420, 470 (1961) (citing the Justinian Code). See also Rodman v. Robinson, 134 N.C. 503, 511, 47 S.E. 19, 21 (1904) (citing the Justinian Code and giving an extensive examination of Sunday legislation in ancient Rome and in Europe during the Dark Ages).

7. Rodman v. Robinson, 134 N.C. 503, 511, 47 S.E. 19, 21-22 (1904).

8. In 1237 Henry III forbade marketing on Sunday; in 1444 Henry VI outlawed

The first Sunday law enacted in North America was the Virginia Colony Act of 1610.<sup>9</sup> The other American colonies soon followed and passed their own legislation that severely restricted labor and retailing on Sunday. A prominent feature in all these statutes was a strict admonition to respect the Christian Sabbath by refraining from labor, travelling and sport.<sup>10</sup> The first Pennsylvania Sunday law, dated 1682, mandated religious toleration for all persons believing in a Supreme Being, and prohibited labor on Sunday so that people could worship as they pleased.<sup>11</sup> In some instances the statutes compelled church attendance.<sup>12</sup>

In the latter half of the nineteenth century, court challenges to state blue laws became frequent.<sup>13</sup> Judicial opinions upholding

churchyard fairs on Sunday; and in 1625 Charles I banned all travel out of one's own parish for sports and other recreation. 27 Hen. 6, ch. 5: 1 Car. I, Chl. An act of Charles II, published in 1676 and entitled "for the better observation and keeping holy the Lord's day," 29 Car. II, ch. 7, § 1, is the basic, often amended, Sunday law of England, and was the model for colonial American closing laws. *People v. Abrahams*, 40 N.Y.2d 277, 281, 386 N.Y.S.2d 661, 663, 353 N.E.2d 574, 576 (1976) (English Sunday observance law of Charles II was adopted by American colonists when they enacted Sunday statutes); *see generally* *McGowan v. Maryland*, 366 U.S. 420, 431-35 (1961).

9. Virginia Colony Act of May 24, 1610, *as amended*, Act of June 22, 1611. *See* *McGowan v. Maryland*, 366 U.S. 420, 434-35, 543-50 (1961) for a listing of colonial American closing laws.

10. These colonial laws were aimed at the curtailment of Sunday activities to ensure a properly tranquil and sanctified atmosphere for Christian worship. *See, e.g.*, Act of Oct. 22, 1695, ch. 52 (1695) New York Colony Laws 356-57, "An act against profanation of the Lord's day, called Sunday"; Act of Oct. 22, 1692, ch. 22 (1692) Mass. Bay Prov. Acts 57-59, "An act for the better observance and keeping of the Lord's Day." The Massachusetts statute is typical, in that it prohibited all labor, business, sports, recreation, and unnecessary travelling, while excepting works of necessity and charity. *See also* The New Haven Code of 1656, authorizing the death penalty for those who violate their blue laws "proudly, presumptuously, and with a high hand committed against the known command and authority of the blessed God . . . ."

11. "Every first day of the week, called the Lord's day, people shall abstain from their usual and common toil and labor. That . . . they may the better dispose themselves to read the scriptures . . . as may suit their respective persuasions." The Body of Laws of the Province of Pennsylvania, 1682-1700.

12. Compulsory church attendance was at one time required in colonial Connecticut, Georgia and Massachusetts. *See* *McGowan v. Maryland*, 366 U.S. 420, 488 (1961).

13. There are relatively few cases dating from before the middle of the nineteenth century that question the propriety of state regulation of activity on Sunday. One of the earliest reported cases appears to be *Stansbury v. Marks*, 2 Dall. 213 (Penn. 1793) (Jew who refused to be tried on Sunday, because it was his Sabbath, was fined by the court.)

Early cases arising from violations of blue laws include *Chesapeake & O. Canal Co. v. Bradley*, 5 F. Cas. 562 (C.C.D.C. 1831) (No. 2,646) (notice required by statute may not be lawfully served on Sunday); *South's Heirs v. Thomas' Heirs*, 23 Ky. (7 T.B. Mon.) 59 (1828) (parties are not required to travel on Sunday to appear in court on Monday); *Pearce v. Atwood*, 13 Mass. 324 (1816) (legislature has power, inherent by the incorporation of the English common law, to set aside Sunday as a day of rest); *Crocket v. Vanderdeer*, 3 N.J.L.

those statutes grounded their decisions in part on the preservation of Christian traditions.<sup>14</sup> Many decisions attributed religious purpose to the closing laws of that era.<sup>15</sup> The justification expressed by the courts for upholding those blue laws evidenced an evolution from a desire to enforce compulsory religious observation to a goal of encouraging worship by prohibiting onerous labor.<sup>16</sup>

Early challenges to blue laws attacked the statutes because of their religious basis, and the nineteenth century courts chose not to strike the laws. The courts' decisions, then as now, frequently found justification for those laws in the concept of a secular "day-of-rest."<sup>17</sup> An early example of the notion of Sunday as an institution to be enjoyed as one saw fit, aside from any religious connotations, was a report in favor of retaining closing laws, presented to the New York state judiciary committee in 1838.<sup>18</sup> A similar report was is-

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(2 Penning) 856 (1811) (court won't aid the execution of a contract made in violation of Sunday law); *Myers v. State*, 1 Conn. 502 (1816) (leasing of carriage on Sunday, in the belief that it will be used in the case of charity or necessity, when in fact it was used for profit, wasn't a violation of Sunday law); *Mayo v. Wilson*, 1 N.H. 53 (1817) (statute authorizing local officials to arrest person travelling unnecessarily on Sunday not unconstitutional); *Commonwealth v. Wolf*, 18 Pa. (3 Serg. & Rawl.) 48 (1817) (statute prohibiting any business or employment on Sunday aids in reminding citizens of their religious duties). A beneficial discussion of the nature of litigation on blue laws at mid-century is found in *Annot.*, 49 Am. Dec. 616-23 (1846).

14. *Shover v. State*, 10 Ark. 259 (1850); *State v. Ambs*, 20 Mo. 214 (1854); *City Council of Charleston v. Benjamin*, 33 S.C.L. (2 Strob.) 508, 49 Am. Dec. 608 (1846). *Cf.* *Varney v. French*, 19 N.H. 233 (1848); *Adams v. Gay*, 19 Vt. 358 (1847).

15. *O'Donnell v. Sweeney*, 5 Ala. 467, 39 Am. Dec. 336 (1853); *Bennett v. Brooks*, 91 Mass. (9 Allen) 118 (1864); *Pearce v. Atwood*, 13 Mass. 324 (1816); *Brimhall v. Van Campen*, 8 Minn. 13, 82 Am. Dec. 118 (1862); *People v. Ruggles*, 8 Johns. 290, 5 Am. Dec. 335 (N.Y. Sup. Ct. 1811); *Sellers v. Dugan*, 18 Ohio 489 (1849); *Parker v. State*, 84 Tenn. 476, 1 S.W. 202 (1886).

16. *See State v. Ambs*, 20 Mo. 214 (1854); *George v. George*, 47 N.H. 27 (1866); *Lindenmuller v. People*, 33 Barb. 548, 21 How. Pr. 156 (N.Y. Sup. Ct. 1861); *Johnston v. Commonwealth*, 22 Pa. 102 (1853).

17. "That which is properly made a civil duty by statute is nonetheless so because it is also a real or supposed religious obligation; nor is the statute vitiated, or in any wise weakened, by the chance, or even the certainty, that in passing it, the legislative mind was swayed by the religious rather than the civil aspect of the measure." *Hennington v. Georgia*, 163 U.S. 299, 307 (1896) (Sunday closing laws are a permissible exercise of state's power to promote the public welfare); *Soon Hing v. Crowley*, 113 U.S. 703 (1885) (state may forbid labor on Sunday to guard against evils of uninterrupted work week). *See infra* note 28 and accompanying text.

18. "The experience of mankind has shewn that occasional rest is necessary for the health of the laborer and for his continued ability to toil; that the 'interval of relaxation which Sunday affords to the laborious part of mankind, contributes greatly to the comfort and satisfaction of their lives . . .'" Report of the Committee of the Judiciary, 5 State of New York, Assembly Docs., Doc. No. 262 (1838), at 7. *See McGowan v. Maryland*, 366 U.S. 420, 500 (1961).

sued in Massachusetts in the early part of this century. It expressed the same purpose behind laws prohibiting labor and commerce on Sunday.<sup>19</sup>

The "common day of rest" rationale is the declared objective of surviving blue laws.<sup>20</sup> Statutory mechanisms have been developed to adapt the wide prohibitions of Sunday closing laws to both practical circumstances<sup>21</sup> and the shifting wants and needs of the American public.<sup>22</sup> These fall into three broad categories: regulation by business size (as determined by the number of employees),<sup>23</sup> classification according to the type of business or occupation,<sup>24</sup> and regula-

19. "The committee are of one mind as to the need of a weekly day of rest for the preservation of the health and strength of the community . . . . In so far as possible, Sunday should be maintained as the weekly day of rest . . . ." Report of the Joint Special Committee to Revise, Consolidate and Arrange the General Laws . . . Relating to the observance of the Lord's Day, Mass. Leg. Docs., H. Doc. No. 1160 (1907), at 9. See *McGowan v. Maryland*, 336 U.S. 420, 500 (1961).

20. See, e.g., MD. ANN. CODE art. 27, § 521 (1982 & Supp. 1982) (sale of merchandise on Sunday); MASS. GEN. LAWS ANN. ch. 136, §§ 1-11 (West 1974 & Supp. 1976) (common day of rest).

21. The concept of "necessity and charity" exemptions from general labor prohibitions has survived from Charles II's time to the present. See ARK. STAT. ANN. § 41-3854 (1977) (refers to "charitable or governmental purposes").

22. Whatever the motive of prior legislative attempts to regulate Sunday trade and labor, it is not now practical to halt all commercial activities on the Christian Sabbath. Power, emergency, health, and police services must be continuous. Many modern blue laws are direct descendants of colonial and early nineteenth century closing schemes; they are often amended and their general prohibitions are riddled with exceptions. See, e.g., ARK. STAT. ANN. §§ 41-3851 to -3863 (1977) (contains fourteen general categories of prohibited commodities with enumerated exceptions); MASS. GEN. LAWS ANN. ch. 136 §§ 6(1)-6(5) (1974 & Supp. 1982-83) (contains fifty exemptions to the ban on Sunday business activities, including the operation of a store during the Sundays of the Christmas shopping season); cf. LA. REV. STAT. ANN. §§ 51-191 to -194 (West 1965), as amended (Supp. 1982); PA. STAT. ANN. tit. 18, § 7361(b) (Purdon 1973).

The early religious basis of many state statutes is still evidenced by some of the phraseology in their provisions. See IND. CODE ANN. § 35-1-86-1 (Burns 1975) (statute refers to "sabbath breaking", repealed 1977 Ind. Acts. P.L. 26, § 25); ME. REV. STAT. ANN. tit. 17, §§ 3201-09 (1964 & Supp. 1982-83) (reference is to "Lord's Day"); N.H. REV. STAT. ANN. §§ 332D:2, 332D:4 (Supp. 1981) (also termed "Lord's Day").

23. This system of regulation has been upheld in *Woonsocket Prescription Center, Inc. v. Michaelson*, 417 F. Supp. 1250 (D.R.I. 1976); *State v. S.S. Kresge, Inc.*, 364 A.2d 868 (Me. 1976); *Giant of Md., Inc. v. State's Attorney*, 267 Md. 501, 298 A.2d 427 (1973); *Opinion of the Justices*, 108 N.H. 103, 229 A.2d 188 (1967); *City of Bismark v. Materi*, 177 N.W.2d 530 (N.D. 1970); *Bertera's Hopewell Foodland, Inc. v. Masters*, 428 Pa. 20, 236 A.2d 197 (1967), *appeal dismissed*, 390 U.S. 597 (1968); *State v. Smith*, 271 S.C. 217, 247 S.E.2d 331 (1978).

This system has been declared unconstitutional in *Piggly-Wiggly v. City of Jacksonville*, 336 So. 2d 1078 (Ala. 1976); *Boyer v. Ferguson*, 192 Kan. 607, 389 P.2d 775 (1964); *Terry Carpenter, Inc. v. Wood*, 177 Neb. 515, 129 N.W.2d 475 (1964).

24. Typically, this brand of closing law prohibits grocery stores, hardware stores, lumber yards, butcher shops and barber shops from operating on Sundays, while permitting soda shops, service stations, ice houses and manufacturing plants to operate. These propos-

tion of the goods or commodities that may be sold on Sundays.<sup>25</sup>

Challenges to closing laws based on alleged infringements of religious freedoms are legion, and few have met with any success.<sup>26</sup> As early as 1885, the Supreme Court ruled that the purpose of treating Sunday as a day of rest was not to promulgate religious virtues, but instead to save persons from the "moral debasement" of working too long and too hard.<sup>27</sup>

Many courts have upheld blue laws as a proper exercise of the state's police power to promote the public welfare by enforcing a common day of rest.<sup>28</sup> The Supreme Court draws a distinction be-

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als have not met with approval in the courts. *E.g.*, *Elliott v. State*, 29 Ariz. 389, 242 P. 340 (1926); *Dunbar v. Hoffman*, 171 Colo. 481, 468 P.2d 742 (1970); *Caldor's Inc. v. Bedding Barn, Inc.*, 177 Conn. 304, 417 A.2d 343 (1979); *Rogers v. State*, 57 Del. 334, 199 A.2d 895 (1964); *Kelly v. Blackburn*, 95 So. 2d 260 (Fla. 1957); *Henderson v. Antonacci*, 62 So. 2d 5 (Fla. 1952); *Rutledge v. Gaylord's*, 233 Ga. 694, 213 S.E.2d 626 (1975); *Spartan's Indus., Inc. v. Oklahoma City*, 498 P.2d 399 (Okla. 1972).

25. This approach presents legislatures with a "damned if they do, damned if they don't" task: listing all items which are exempt from a sales prohibition is a job of Sisyphean proportions, and defining them generally leads to challenges alleging that the descriptions are overly vague. Predictably, state courts have split on this point, with the following courts upholding the commodity plan: *Whitney Stores, Inc. v. Summerford*, 280 F. Supp. 406 (D.S.C. 1968), *aff'd*, 393 U.S. 9 (1968); *State v. Karmil Merchandising Corp.*, 158 Me. 450, 186 A.2d 352 (1962); *Supermarkets Gen. Corp. v. State*, 286 Md. 611, 409 A.2d 250 (1979), *cert. denied*, 449 U.S. 801 (1980); *State v. Target Stores, Inc.*, 279 Minn. 447, 156 N.W.2d 908 (1968) (upholding the commodity classification scheme but striking law as unconstitutionally vague in defining exempt commodities); *Gibson Prods. Co. v. State*, 545 S.W.2d 128 (Tex. 1976); *Mandell v. Haddon*, 202 Va. 979, 121 S.E.2d 516 (1961); *State ex. rel. Heck's, Inc. v. Gates*, 149 W. Va. 421, 141 S.E.2d 369 (1965).

Several courts have stricken commodity-oriented blue laws: *Hughes v. Reynolds*, 223 Ga. 727, 157 S.E.2d 746 (1967); *State v. Abrahams*, 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976); *Treasure City v. Clark*, 261 N.C. 130, 134 S.E.2d 97 (1964); *Skaggs Drug Centers, Inc. v. Ashley*, 26 Utah 2d 38, 484 P.2d 723 (1971); *County of Spokane v. Valu-Mart, Inc.*, 69 Wash. 2d 712, 419 P.2d 993 (1966); *Nation v. Giant Drug Co.*, 396 P.2d 431 (Wyo. 1964).

26. U.S. CONST. amend. I prohibits "law(s) respecting an establishment of religion or prohibiting the free exercise thereof . . ." An exhaustive list of over fifty cases spanning more than a century, that upheld blue laws in the face of challenges on first amendment grounds, is found in *McGowan v. Maryland*, 366 U.S. 420, 509-11 (1961). Some cases overruling blue laws as violative of religious freedoms are: *Crown Kosher Super Mkt., Inc. v. Gallagher*, 176 F. Supp. 466, *rev'd*, 366 U.S. 617 (1961); *Ex Parte Newman*, 9 Cal. 502 (1858), *rev'd sub nom. Ex Parte Andrews*, 18 Cal. 678 (1861). Two Pennsylvania courts in cases of first impression relied on the lower court *Gallagher* decision and held the 1959 Pennsylvania retail sales act unconstitutional, in part, on religious grounds. *See McGowan v. Maryland*, 366 U.S. at 509 n.99.

27. *Soon Hing v. Crowley*, 113 U.S. 703, 710 (1885) (state has the authority to enforce regulation of work hours on Sunday).

28. *Lane v. McFayden*, 259 Ala. 205, 66 So. 2d 83 (1953) (state power provides for authority to legislate a common day of rest); *Frolickstein v. Mayor of Mobile*, 40 Ala. 725 (1867) (legislation regarding abstention from work on Sunday is within police power of legislation); *Vogelsong v. State*, 9 Ind. 112 (1857) (constitutionality of Sunday law is not open

tween modern closing laws and their religious-oriented ancestors. The former do not violate the first amendment.<sup>29</sup> Where the latter have been recognized by early state court decisions as being religious in nature, the Supreme Court has held these findings to be overruled by subsequent state court decisions, and the Supreme Court has also ruled that these old cases are no longer controlling.<sup>30</sup>

Finally, the Supreme Court, in *McGowan v. Maryland* and three companion cases,<sup>31</sup> ruled that the numerous exceptions to prohibited sales embodied in most Sunday laws serve to indicate the secular nature of the laws—Sunday is to be a common day of rest, relaxation, traditional family togetherness, and public well-being.<sup>32</sup> The success of the Supreme Court in terminating religious challenges to blue laws may be seen in the failure of the cases basing their objections to the laws on the first amendment grounds that

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to challenge); *State v. Hill*, 189 Kan. 403, 369 P.2d 365 (1962) (legislature has power to prohibit labor on one day a week); *State v. Deutch*, 245 La. 819, 161 So. 2d 730 (1964) (blue laws are a legitimate exercise of state police power); *Commonwealth v. Has*, 122 Mass. 40 (1877) (Sunday closing law is a civil regulation providing for a fixed period of rest); *McKaig v. Kansas City*, 363 Mo. 1033, 256 S.W.2d 815 (1963) (blue laws are now civil, not religious, and hence a legitimate use of police power); *Skag-Way Dep't Stores, Inc. v. City of Omaha*, 179 Neb. 707, 140 N.W.2d 28 (1966) (state legislature has authority to mandate closings on Sunday); *State v. Underwood*, 283 N.C. 154, 195 S.E.2d 489 (1973) (blue laws are permissible exercise of police power); *Bloom v. Richards*, 2 Ohio St. 387 (1853) (statute prohibiting labor on Sunday is a police regulation, but not so inclusive that it voids a contract entered into on Sunday).

29. In *Gallagher v. Crown Kosher Super Mkt., Inc.*, 366 U.S. 617, 624, 626-27 (1961) the Court held that although the Massachusetts Lord's Day statute is clearly of religious origin, it now exists for justifiable secular purposes. In *McGowan v. Maryland*, 366 U.S. 420, 446 (1961) the Court said "predecessors of . . . Maryland Sunday laws are undeniably religious in origin." The court upheld the Maryland Sunday law despite this religious origin. See also *Braunfeld v. Brown*, 366 U.S. 599 (1961) and *Two Guys v. McGinley*, 366 U.S. 582 (1961). These four cases were decided on the same day and have been recognized as the leading Supreme Court cases on the issue of Sunday closing laws.

30. *Gallagher v. Crown Kosher Super Mkt., Inc.*, 366 U.S. 617, 629-30 (1961). The Court discussed Massachusetts state cases dating from 1877 to 1923 that recognized the religious nature of blue laws. The Supreme Court, however, found them not controlling because they were not directly concerned with issues of religious freedom. In *Two Guys v. McGinley*, 366 U.S. 582, 597-98 (1961), the Court found previous Pennsylvania Supreme Court admissions of religious purposes of blue laws not to be controlling because the Pennsylvania cases "did not squarely decide a constitutional contention."

31. *McGowan v. Maryland*, 366 U.S. 420 (1961); *Two Guys v. McGinley*, 366 U.S. 582 (1961); *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Gallagher v. Crown Kosher Super Mkt., Inc.*, 366 U.S. 617 (1961).

32. *Gallagher v. Crown Kosher Super Mkt., Inc.*, 366 U.S. 617, 627 (1961) (relaxation and recreation are obvious goals of the Massachusetts Lord's Day, as illustrated by the numerous exceptions to the statute's general prohibitions); *McGowan v. Maryland*, 366 U.S. 420, 448-50 (1961) (excepted items designed to promote public relaxation and health).



have been argued since *McGowan*.<sup>33</sup>

The most successful attacks on closing laws have rested on assertions that they violate the equal protection clauses of the federal and state constitutions.<sup>34</sup> State courts have split upon the constitutionality of blue laws in the face of equal protection challenges. Blue laws have been found to be constitutional, bearing a rational relationship to the asserted legislative goal of a common day of rest in accordance with public health and well-being in numerous jurisdictions.<sup>35</sup> Other state courts have held their blue laws to be discriminatory in their classifications of either goods that could be sold on Sunday or stores that could operate on Sunday.<sup>36</sup>

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33. See *Piggly-Wiggly v. City of Jacksonville*, 336 So. 2d 1078 (Ala. 1976) (blue law did not violate religious freedom, but was unconstitutional on equal protection grounds); *Commonwealth v. Arlans Dep't Store*, 357 S.W.2d 708, 710 (Ky. App. 1962), *appeal dismissed*, 371 U.S. 218 (1962) (blue law does not establish or violate a religion); *Raleigh Mobile Homes Sales, Inc. v. Tomlinson*, 276 N.C. 661, 666, 174 S.E.2d 542, 546 (1970) (declaring Sunday to be a common day of rest does not violate establishment of religion clause.)

34. The fourteenth amendment is applicable only to the states. See generally J. NOWAK, R. ROTUNDA, & J. YOUNG, *CONSTITUTIONAL LAW*, 392-93 (1978). The fifth amendment, providing in pertinent part that "no person shall be . . . deprived of life, liberty, or property, without due process of law . . .," does not contain an equal protection clause to limit the federal government. Yet "discrimination may be so unjustifiable as to be violative of due process." *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). See generally Gunther, *Foreword: In Search of Evolving Doctrine in a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972).

35. *Caiola v. City of Birmingham*, 288 Ala. 486, 262 So. 2d 602 (1972); *Brown Enterprises, Inc. v. Fulton*, 192 N.W.2d 773 (Iowa 1971); *State v. S.S. Kresge, Inc.*, 364 A.2d 868 (Me. 1976); *Supermarket's General Corp. v. Maryland*, 286 Md. 611, 409 A.2d 250 (1979), *cert. denied*, 449 U.S. 801 (1980); *Zayre Corp. v. Attorney Gen.*, 372 Mass. 423, 362 N.E.2d 878 (1977); *Genesco, Inc. v. J.C. Penney Co.*, 313 So. 2d 20 (Miss. 1975); *Opinion of the Justices*, 108 N.H. 103, 229 A.2d 188 (1967); *Voranado, Inc. v. Hyland*, 77 N.J. 347, 390 A.2d 606 (1978), *appeal dismissed sub nom. Vornado v. Degnan*, 439 U.S. 1123 (1979); *State v. Monteleone*, 36 N.J. 93, 175 A.2d 207 (1961); *City of Bismark v. Materi*, 177 N.W.2d 530 (N.D. 1970); *City of Warwick v. Alamac's Inc.*, 442 A.2d 1265 (R.I. 1982); *Whitney Trading Corp. v. McNair*, 255 S.C. 8, 176 S.E.2d 572 (1970); *Gibson Distrib. Co. v. Downtown Dev. Ass'n of El Paso, Inc.*, 572 S.W.2d 334 (Tex. 1978), *appeal dismissed*, 439 U.S. 1000 (1978); *Malibu Auto Parts, Inc. v. Commonwealth*, 218 Va. 467, 237 S.E.2d 782 (1977).

36. *Piggly-Wiggly of Jacksonville, Inc. v. Jacksonville*, 336 So. 2d 1078 (Ala. 1976); *Caldor's, Inc. v. Bedding Barn, Inc.*, 177 Conn. 304, 417 A.2d 343 (1979); *Henderson v. Antonacci*, 62 So. 2d 5 (Fla. 1952); *Rutlege v. Gaylord's Inc.*, 233 Ga. 694, 213 S.E.2d 626 (1975); *Courtesy Motor Sales v. Ward*, 24 Ill. 2d 82, 179 N.E.2d 692 (1962); *Boyer v. Ferguson*, 192 Kan. 607, 389 P.2d 775 (1964); *City of Ashland v. Heck's, Inc.*, 407 S.W.2d 421 (Ky. 1966); *West v. Winnsboro*, 252 La. 605, 211 So. 2d 665 (1968); *Skag-Way Dep't Stores, Inc. v. City of Omaha*, 179 Neb. 707, 140 N.W.2d 28 (1966); *People v. Abrahams*, 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976); *State v. Greenwood*, 280 N.C. 651, 187 S.E.2d 8 (1972); *Spartan's Indus., Inc. v. Oklahoma City*, 498 P.2d 399 (Okla. 1972); *Kroger Co. v. O'Hara Township*, 481 Pa. 101, 392 A.2d 266 (1978); *State v. Shop and Save Food Markets, Inc.*, 138 Vt. 332, 415 A.2d 235 (1980); *City of Spokane v. Valu-Mart, Inc.*, 69 Wash. 2d 712, 419 P.2d 993 (1966); *Nation v. Giant Drug Co.*, 396 P.2d 431 (Wyo. 1964).

An alternative to challenging blue laws on equal protection grounds has been to argue that the language of the statute itself is vague and therefore violative of "procedural" due process. A succinct statement of the "void for vagueness" doctrine was made in *Grayned v. City of Rockford*.<sup>37</sup> In that case the Supreme Court suggested two approaches to be utilized in a constitutional "vagueness" attack on any law, including blue laws, that imposes penal sanctions threatening a person with loss of life, liberty, or property. First, when the classifications of commodities that may be sold, or businesses that may operate, are so vague and imprecise that a person of reasonable intelligence does not receive notice of what is necessary to conform his conduct to the law, the classification may be so vague as to violate due process.<sup>38</sup> Second, the evils of arbitrary and capricious enforcement of the laws must be avoided by enacting statutes explicit enough for those who enforce them to understand what is and is not forbidden.<sup>39</sup>

The concept that due process requires notice of the type of conduct that is expected of a citizen subject to a state's law is an old one, central to constitutional analysis of the validity of statutes.<sup>40</sup>

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37. 408 U.S. 104 (1972). In summary, it is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

38. *E.g.*, *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Cramp v. Board of Public Instruction*, 368 U.S. 278, 287 (1961); *United States v. Harriss*, 347 U.S. 612, 617 (1954); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939); *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926); *International Harvester Co. v. Kentucky*, 234 U.S. 216, 223-24 (1914).

39. *E.g.*, *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (sidewalk assembly ordinance void for vagueness where violations predicated on "annoying passersby"); *Gregory v. Chicago*, 394 U.S. 111, 120 (1969) (laws are to be made by elected representatives, not by police officers whose duty it is to enforce already existing laws); *Giaccio v. Pennsylvania*, 382 U.S. 399 (1966) (striking a statute that fails to set standards for a jury to apply when assessing costs against defendants); *Kunz v. New York*, 340 U.S. 290 (1951) (striking an ordinance vesting restraining control over right to speak on religious subjects in an administrative official without providing appropriate standards to guide his actions); *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940) (loitering and picketing statute is void because its sweep includes activities protected by the Constitution); *Herndon v. Lowry*, 301 U.S. 242, 261-64 (1937) (statute attempting to define offense of "inciting insurrection" did not sufficiently state the standard of guilt and hence violated guarantees of freedom of speech and assembly).

40. For a statute to give a person fair notice of what kind of conduct will conform to the

Vague statutes are certainly not a new phenomenon in jurisprudence, and the doctrine that penal laws are to be construed strictly,<sup>41</sup> with the intent of the legislature governing in the statutory construction, is the standard by which challenged laws are assessed. The standard expressed in *Grayned* has been unchanged for a century:

Penal statutes ought not to be expressed in language so uncertain. If the Legislature undertakes to define by statute a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime.<sup>42</sup>

Twentieth-century state courts have stricken blue laws for being overly vague in their classifications, but it is a less often litigated challenge than those alleging violation of equal protection.<sup>43</sup> Claims of unconstitutional vagueness are often argued together in one challenge with claims of equal protection violation, and when one fails the other may also.<sup>44</sup>

The first Arkansas blue law dates from the earliest days of statehood.<sup>45</sup> The law was frequently amended during the nine-

law, it must set forth reasonably clear guidelines, thus the void for vagueness doctrine "incorporates notions of fair notice or warning." *Smith v. Goguen*, 415 U.S. 566, 572 (1974). *See also* *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Jordan v. De George*, 341 U.S. 223, 230-32 (1951); *American Communications Ass'n v. Douds*, 339 U.S. 382 (1950); *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1864).

41. *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76 (1820). The words of an acceptably precise statute need only be of rational "flexibility and reasonable breadth, rather than meticulous specificity." *Esteban v. Central Missouri State College*, 415 F.2d 1077, 1088 (8th Cir. 1969), *cert. denied*, 398 U.S. 965 (1970). "Condemned to the use of words, we can never expect mathematical certainty from our language." *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972).

42. *United States v. Reese*, 92 U.S. (23 Wall.) 214, 220 (1876).

43. *Simonetti v. City of Birmingham*, 55 Ala. App. 163, 314 So. 2d 83 (1975); *State v. Hill*, 189 Kan. 403, 369 P.2d 365 (1962); *State v. Target Stores, Inc.*, 279 Minn. 447, 156 N.W.2d 908 (1968); *People v. Abrahams*, 40 N.Y.2d 277, 386 N.Y.S.2d 661, 353 N.E.2d 574 (1976); *Skaggs Drugs Centers, Inc. v. Ashley*, 26 Utah 2d 38, 484 P.2d 723 (1971).

44. The following cases state blue laws which, in the face of various constitutional challenges, were not held void for vagueness: *Fass v. Roos*, 221 F. Supp. 448 (D. N.J. 1963); *State v. S.S. Kresge, Inc.*, 364 A.2d 868 (Me. 1976); *Hechinger Co. v. State's Attorney*, 272 Md. 706, 326 A.2d 742 (1974); *Genesco, Inc. v. J.C. Penney Co.*, 313 So. 2d 20 (Miss. 1975); *State v. McQueen*, 378 S.W.2d 449 (Mo. 1964); *Clark's Charlotte, Inc. v. Hunter*, 261 N.C. 222, 134 S.E.2d 364 (1964); *Bertera's Hopewell Foodland, Inc. v. Masters*, 428 Pa. 20, 236 A.2d 197 (1967), *appeal dismissed*, 390 U.S. 597 (1968); *Whitney Trading Corp. v. McNair*, 255 S.C. 8, 176 S.E.2d 572 (1970); *Bookout v. Chattanooga*, 59 Tenn. App. 576, 442 S.W.2d 658 (1969); *State ex. rel. Heck's, Inc. v. Gates*, 149 W. Va. 421, 141 S.E.2d 369 (1965).

45. The 1837 statutes (REV. STAT., ch. 44, div. 7, Art. II) contained comprehensive "Sabbath breaking" laws that remained the basic framework of Arkansas' blue laws until the middle of this century. The 1837 law banned all sales and labor on Sunday, with excep-

teenth century, primarily with the goal of making it more comprehensive.<sup>46</sup> It paralleled the 1676 act of Charles II until early in this century.<sup>47</sup> In the 1950s the Arkansas blue laws were effectively repealed, and Arkansas was without a comprehensive closing scheme until 1965.<sup>48</sup>

The statutory scheme that the Arkansas Supreme Court struck down in *Handy Dan* was Act 135 of 1965. The heart of Act 135 was section 2,<sup>49</sup> which listed the commodities that could not be sold on Sunday. It was this section that the court declared unconstitutionally vague.<sup>50</sup> The court noted that any constitutional challenge to a statutory scheme must carry a high burden of proof, because of the presumption of constitutionality afforded legislative acts.<sup>51</sup>

The court recognized the precedential value of *McGowan* and its companion cases, and commented that the appellants here did

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tions for "acts of daily necessity, comfort, or charity." The statute made it a misdemeanor for a person, or his apprentice, servant, or slave to labor, with the fine to be one dollar for each offense. Section three allowed non-Christians who observed and rested on another Sabbath to conduct business on Sunday. Retail sales of goods, merchandise and alcohol, or opening a grocery or store, on Sunday were also punishable by fines.

46. Amendments prohibited card games "whether played for fun or profit" (Act Jan. 12, 1853, § 1, p. 205); forbade hunting for sport or amusement by an adult or minor (Act Jan. 19, 1855, §§ 1, 2, p. 180); established a more explicit rule against horse racing "on the day known as the Christian Sabbath" for sport or fun (Act Nov. 5, 1875, No. 2, § 4, p. 3); and proscribed the playing of baseball on Sunday (Act March 15, 1885, S. & H. Digest §§ 1898-1899). See *Shover v. State*, 10 Ark. 259 (1849) (selling spirits in a grocery on Sunday violated the blue law). The *Shover* court held that "Sunday . . . is amongst the first and most sacred institutions of the christian religion. . . . [I]t is entitled to the most profound respect, and can rightfully claim the protection of the law-making power of the State." *Id.* at 263. See also *Stockden v. State*, 18 Ark. 186 (1856) (in an indictment for card playing on Sunday it was unnecessary to allege that the game was for amusement or for wagers).

47. *Rosenbaum v. State*, 131 Ark. 251, 199 S.W. 388 (1917). However, the twentieth-century's faster pace of life slowly eroded the comprehensive prohibitions that had been regarded by the *Shover* court as necessary to instill a suitable regard for the Sabbath. By 1939 the playing of baseball on Sunday was no longer illegal (C. & M. §§ 3418-3427), and another statute allowed the showing of motion pictures for profit on Sunday, at the option of the county. C. & M. §§ 4908-09, Act 315 of 1931, § 2.

48. The labor proscription was repealed by Act 554, § 1, of 1953. This enactment also repealed the law against hunting on Sunday. Acts 1957, No. 367, § 2, repealed the prohibition against keeping stores open on Sunday. Yet two blue laws provisions, the partial exception for non-Christians and the prohibition against horse racing and cock fighting, remained on the books. Both were direct carryovers from the old 1837 statutes. By a separate statute, any city or incorporated town in Arkansas may enact its own local blue law by ordinance, but it may not forbid the showing of movies. ARK. STAT. ANN. §§ 19-2335 to 2336 (1980).

49. ARK. STAT. ANN. § 41-3853 (1977). See *supra* note 1.

50. *Handy Dan Home Improvement Center, Inc. v. Adams*, 276 Ark. 268, 276, 633 S.W.2d 699, 703 (1982).

51. *Id.* at 270, 633 S.W.2d at 700. (citing *Davis Warehouse Co. v. Bowles*, 321 U.S. 144 (1943) and *Baratti v. Koser Gin Co.*, 206 Ark. 813, 177 S.W.2d 750 (1944)).

not pursue a challenge of Arkansas blue laws on religious establishment grounds.<sup>52</sup> With that noted, the court, however, also noted that each state's statutory scheme is similar in scope, but differing in detail, which both explains the differing outcomes of court challenges to their validity and limits the precedential value of decisions from other jurisdictions.<sup>53</sup>

The appellant's contentions were examined in the order they were presented. First, the court discussed the claim that Act 135 was unconstitutionally vague. The court noted that it would utilize traditional tests to determine whether the Arkansas list of prohibited articles was sufficiently specific.<sup>54</sup> The court observed that trial testimony indicated that neither those employed in the defendant stores nor those charged with enforcing the law in Pulaski County could say with certainty what articles could and could not legally be sold on Sunday.<sup>55</sup> The court then ruled that Act 135 did not provide "clear notice and fair warning of prohibited conduct;" therefore an individual could not fairly and reasonably be subjected to loss of liberty by its application.<sup>56</sup> Because neither those subject to its sanctions nor those sworn to enforce it could tell what was prohibited by the statute, the court concluded that the appellants demonstrated that Act 135 was void for vagueness in violation of the due process requirements of the Arkansas and U.S. Constitutions.<sup>57</sup>

Several earlier Arkansas cases challenging the blue law were

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52. 276 Ark. at 270, 633 S.W.2d at 700.

53. *Id.* at 271, 633 S.W.2d at 701.

54. The court cited *Connally v. General Construction Co.*, 269 U.S. 385 (1926) and *Grayned v. City of Rockford*, 408 U.S. 104 (1972). See *supra* note 38, for the *Grayned* statement of the test. See generally J. NOWAK, R. ROTUNDA & N. YOUNG, CONSTITUTIONAL LAW 499 (1979). The most recent Arkansas case that discusses whether criminal statutes violate due process because they are void for vagueness is *Davis v. Smith*, 266 Ark. 112, 583 S.W.2d 37 (1979). In *Davis*, the court struck a statute which authorized adoption of a child without the parents consent if "the parents . . . are unable to provide a proper home for the children . . ." The court found this language to be too vague. 266 Ark. at 123, 583 S.W.2d at 43-44.

55. 276 Ark. at 274, 633 S.W.2d at 702. At first blush, the prohibited articles might seem straightforward the court stated, but with closer examination and creative thinking one could imagine myriad examples of questionable goods. The court suggested some examples: Does paint, which is prohibited, include fingernail polish? Is a slide projector within the category of "cameras, projectors, and parts and equipment therefore?" Managers for the defendants testified that their stores stock tens of thousands of different articles, and cataloging each one according to its legality on Sunday would be a monumental task.

56. *Id.* at 275, 633 S.W.2d at 703, citing to *Grayned*, 408 U.S. 104 (1972).

57. The court found particularly significant the trial testimony of the Little Rock Police Chief who stated that enforcement of the blue laws in Little Rock had a low priority, and who told of instances when policemen were themselves unable to determine whether or not an article could be sold on Sunday. This testimony was compelling, the court noted, because

cited,<sup>58</sup> but were distinguished because they dealt primarily with local ordinances and earlier Arkansas closing laws that were more explicit and more comprehensive than section 2 of Act 135.<sup>59</sup> The creation of two classes of exempt articles, those not included in Act 135's prohibition and those included in its specific exemptions, distinguished the earlier cases and *McGowan*.<sup>60</sup>

The second issue raised by the appellants, the denial of equal protection by virtue of the classifications imposed on goods under Act 135, was dismissed by the court.<sup>61</sup> The court held that the appellants in this instance did not overcome the burden of presumed constitutionality that every statute enjoys in the face of attacks on equal protection grounds.<sup>62</sup>

The third and fourth contentions, whether enforcement of the Act amounted to discriminatory enforcement, and whether the trial court erred in enjoining all the defendant's stores in Pulaski County, were not addressed by the court because of the preemptive conclusion that Arkansas' closing law was unconstitutionally vague.<sup>63</sup> Despite the severability clause of Act 135, the whole Act failed because section 2 (the sales prohibition) was so interwoven with the other sections that without section 2 there would be no logical purpose remaining to the Act.<sup>64</sup>

Arkansas has now joined the ranks of those states without Sun-

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one of the primary requisites of a criminal statute is that those charged with its enforcement be able to determine what is violative. 276 Ark. at 275, 633 S.W.2d at 703.

58. *Id.* The court cited *Bill Dyer Supply Co. v. State*, 255 Ark. 613, 502 S.W.2d 496 (1973); *Lockwood v. State*, 249 Ark. 941, 462 S.W.2d 465 (1971); *Green Star Supermarkets, Inc. v. Stacy*, 242 Ark. 54, 411 S.W.2d 871 (1967); *Hickenbotham v. Williams*, 227 Ark. 126, 296 S.W. 2d 897 (1956). *Bill Dyer* was the only case in which Act 135 as a comprehensive statute was examined by the court, and the vagueness issue was not raised.

59. 276 Ark. at 276, 633 S.W.2d at 703. The court found the fatal defect in Act 135 to be its statutory creation of fourteen broad categories of prohibited articles and a series of exemptions. In support of its reasoning that such exemptions to prohibitions resulted in an overly vague statute, the court referred to other jurisdictions where similar laws had been stricken on due process grounds. *See State v. Target Stores, Inc.*, 279 Minn. 447, 156 N.W.2d 908 (1968); *Skaggs Drug Centers, Inc. v. Ashley*, 26 Utah 2d 38, 484 P.2d 723 (1971).

60. 276 Ark. at 276, 633 S.W.2d at 703. The vagueness issue was discussed in *McGowan* but ultimately not considered because it was not properly raised in the Maryland Court of Appeals. 366 U.S. at 428-29.

61. 276 Ark. at 276-77, 633 S.W.2d at 704. The equal protection argument was considered briefly in *Bill Dyer*, 255 Ark. at 614, 502 S.W.2d at 497, and in *Handy Dan* the court held that the classifications did not violate the "rational basis" test as laid out in *McGowan*. 366 U.S. at 425-26.

62. 276 Ark. at 277, 633 S.W.2d at 704.

63. *Id.*

64. *Id.*

day closing laws.<sup>65</sup> Since the Arkansas blue law was stricken as being void for vagueness, the Arkansas legislature is free to write another closing statute. The Arkansas Supreme Court in *Handy Dan* gave no indication that a new Arkansas blue law, more comprehensive or restrictive in its prohibitions than was Act 135, would be unconstitutional. If rewritten more closely, such a statute might not suffer from the defect of being overly vague.

The possibility that future laws might be upheld is further bolstered by the court's treatment of the equal protection issue in *Handy Dan*. Had the court declared the blue law unconstitutional on equal protection grounds, one could more confidently assert that the Arkansas court intended to serve notice that blue laws per se were no longer welcome on the statute books. The court's decision in *Handy Dan* to strike Act 135 rests solely upon the specific wording of the statute, and because of the presumption of validity that clothes economic regulations such as blue laws, those who would legislate commercial activities for a hypothetical "common good" do not face any apparent constitutional roadblocks in Arkansas.

Any attacks on future blue law enactments still face the same hurdles of presumed constitutionality that plagued previous challenges to the blue law. The *Handy Dan* decision did not engage in a high level scrutiny of blue laws, or any economic legislation. The court in *Handy Dan* merely recited the faults of Act 135 without a mention of any possible ills stemming from the general concept of regulation of business or labor on Sunday. There are no direct guidelines in this decision concerning the possible form that a new Arkansas blue law should take to pass constitutional challenges, but the implicit message is that a statute containing a simplified classification that is less vague than Act 135 may be acceptable.

Local communities are still free to pass their own Sunday clos-

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65. The following states still have blue laws: See ALA. CODE §§ 13A-12-1 to -2 (1982); KY. REV. STAT. §§ 436.160, 165 (Baldwin Supp. 1981); LA. REV. STAT. ANN. §§ 51-191 to -195 (West 1965 & Supp. 1983); ME. REV. STAT. ANN. tit. 17, §§ 3201-3209 (1982); MD. ANN. CODE art. 27, § 492-534w-2 (1982 & Supp. 1982); MASS. ANN. LAWS ch. 136, §§ 1-11 (Michie/Law. Co-op 1974 & Supp. 1982-83); MINN. STAT. ANN. §§ 624.01-.04 (West 1964 & Supp. 1983); MISS. CODE ANN. §§ 97-23-63 to -82 (1972 & Supp. 1982); MO. ANN. STAT. § 578.100 (Vernon 1979 & Supp. 1983); N.H. REV. STAT. ANN. §§ 332.D:1-7 (Supp. 1981); N.J. STAT. ANN. § 2A:171-5.8 (West 1971 & Supp. 1983-84); N.C. GEN. STAT. § 14-346.2 (1981); N.D. CENT. CODE § 12.1-30-01 to 03 (1976 & Supp. 1981); OKLA. STAT. ANN. tit. 21, §§ 907-911 (West 1983); PA. CONS. STAT. ANN. tit. 18, §§ 7361, 7363-65 (Purdon 1973 & Supp. 1983-1984); R.I. GEN. LAWS §§ 11-40-1 to -4 (1981 & Supp. 1982); S.C. CODE ANN. §§ 53-1-10 to -140 (Law Co-op. 1976 & Supp. 1982); VA. CODE § 18.2-341 to -343 (1982); W. VA. CODE § 61-10-25 to -29 (1977 & Supp. 1983).

ing ordinances,<sup>66</sup> and a challenge to any such laws would quite possibly fail, in light of the court's discussion of previous attacks on local blue laws.<sup>67</sup> The court noted that these local ordinances contained more stringent prohibitions of Sunday sales with well-defined exceptions, and this avoided any vagueness problems.<sup>68</sup> Logic indicates that a new, more restrictive state-wide blue law could pass the vagueness test, then pass equal protection challenges in light of the strong presumption of validity afforded such legislative regulations, and so be found constitutional.

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66. ARK. STAT. ANN. §§ 19-2335 to -2336 (1980). Several Arkansas communities recently considered the enactment of their own local blue laws under this statute in the general election of November 2, 1982. Voters in Fort Smith, Paragould, and Blytheville defeated proposed ordinances to establish municipal blue laws. Ark. Gazette, Nov. 5, 1982, at 13A, col. 4.

67. *Handy Dan*, 276 Ark. at 275-76, 633 S.W.2d at 703.

68. *Id.*



