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**Skaggs Drug Centers, Inc. v. Raedel E. Ashley, Et Al. v. Gary Montgomery, Et Al. v. John Doe 1-5, Et Al., Grand Central, Inc., And Gary Montgomery v. A. U. Cooper, Dba Kearns I.G.A. Foodliner, Et Al : Brief of Albertson's, Inc. As Amicus Curiae**

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# IN THE SUPREME COURT OF THE STATE OF UTAH

SKAGGS DRUG CENTERS, INC., a  
Delaware corporation,

*Plaintiff-Appellant,*

v.

RAEDEL E. ASHLEY, et al.,  
*Defendants-Respondents.*

GARY MONTGOMERY, et al.,  
*Plaintiffs-Appellants,*

v.

JOHN DOE 1-5, et al.,  
*Defendants-Respondents,*

GRAND CENTRAL, INC., a  
corporation, *Intervenor,*

GARY MONTGOMERY,  
*Plaintiff-Appellant,*

v.

A. B. COOPER, dba KEARNS  
I.G.A. FOODLINER, et al.,  
*Defendants-Respondents.*

Case No.  
12123

FILED

DEC 30 1970

Clerk, Supreme Court, Utah

## BRIEF OF ALBERTSON'S, INC. AS AMICUS CURIAE

Appeal from a Judgment of the Third District Court  
in and for Salt Lake County, Utah  
The Honorable Leonard W. Elton, Presiding

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## TABLE OF CONTENTS

POINT I	Page
THE UTAH COMMON DAY OF REST ACT IS UNCONSTITUTIONAL UNDER ARTICLE VI § 26 AND ARTICLE VII § 20 IN ITS APPLICATION TO RETAIL GROCERY CHAIN STORES COMPETING DIRECTLY WITH PRIVILEGED "CONVENIENCE" STORES .....	2
CONCLUSION .....	5

### CASES

<i>Saville v. Corless</i> 46 Utah 495, 151 Pac. 51 .....	3
<i>Backman v. Salt Lake County</i> 13 Utah 2d 412, 375 P2d 756 .....	3
<i>Openshaw v. Halfin</i> 24 Utah 426, 68 Pac. 138 .....	3
<i>Brubaker v. Bennett</i> 19 Utah 401, 57 Pac. 170 .....	3

### STATUTES AND CONSTITUTIONAL PROVISIONS

Article XII § 20, Utah Constitution .....	3
Title 50, Utah Code Annotated .....	3
Utah Unfair Practices Act, 13-5-1, et seq. Utah Code Annotated .....	3

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Case No.  
12123

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## BRIEF OF ALBERTSON'S, INC. AS AMICUS CURIAE

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ALBERTSON'S, INC., a Delaware corporation  
doing business in the State of Utah, and having been

granted leave to appear in these proceedings as amicus curiae, hereby respectfully submits its views on the constitutionality of the Utah "Common Day of Rest Act," (Chapter 25, Laws of Utah 1970).

Albertson's, Inc., adopts the points and authorities submitted on behalf of the Respondents in this matter. In addition thereto, Albertson's, Inc. submits that there is an additional constitutional issue appropriate for the Court's consideration, which has not been presented by the other parties to this action, and it is to that particular issue that Albertson's will address itself in this Brief.

## POINT I

### THE UTAH COMMON DAY OF REST ACT IS UNCONSTITUTIONAL UNDER ARTICLE VI § 26 AND ARTICLE XII § 20 IN ITS APPLICATION TO RETAIL GROCERY CHAIN STORES COMPETING DIRECTLY WITH PRIVILEGED "CONVENIENCE" STORES.

Article VI § 26 of the Utah Constitution prohibits any law which grants to any "individual, association or corporation any privilege, immunity or franchise." It goes on to add: "In all cases where a general law can be applicable, no special law shall be enacted." From this it is clear that a statute conferring a special privilege upon a particular class of persons or businesses, without a constitutionally valid reason for such a preference, is in violation of this constitutional prohibition against

special legislation. *Saville v. Corless*, 46 Utah 495, 151 Pac. 51 and see *Backman v. Salt Lake County*, 13 Utah 2d 412, 375 2d 756; *Openshaw v. Halfin*, 24 Utah 426, 68 Pac. 138; and *Brubaker v. Bennett*, 19 Utah 401, 57 Pac. 170.

Article XII § 20 of the Utah Constitution, which prohibits monopolistic business practices in the State, provides, by an enabling clause, for the passage of appropriate laws to preserve and protect competition in the sale of commodities in Utah. Pursuant to Article XII § 20, the Utah Legislature has passed the Utah Unfair Practices Act (13-5-1 et seq., Utah Code Annotated), and a series of anti-monopoly laws contained in Title 50, Utah Code Annotated (1953).

The declared policy of the Unfair Practices Act, is "to safeguard the public against the creation or perpetuation of monopoly and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented." (13-5-17, Utah Code Annotated). Furthermore, the anti-monopoly provisions of Title 50, Utah Code Annotated, prohibit attempts to eliminate competition and "limit the amount or quantity of any article, commodity or merchandise . . . sold in this state."

The Utah Common Day of Rest Act now before this Court will effect the very result prohibited by Article XII § 20 and the above-cited implementing acts thereto, by causing an elimination of competition in the retail sale of grocery items on Sunday, and a limitation

on the "amount or quantity of any article, commodity or merchandise . . . sold in this state" on that day.

The *pot pourri* of exemptions contained in the Act provides in practical effect, a legislative "privilege, immunity or franchise" to the "convenience" stores who normally sell in competition with Albertson's and other retail grocery chain stores, in violation of Article VI § 26 of the Utah Constitution.

Under Sections 5 (1), (3) and (4) of the Utah Act, these "convenience" stores are expressly allowed to sell on the declared "Common Day of Rest" most of the large volume items from their regular fare, i.e. beer, pop, fruit juices and other non-alcoholic drinks, newspapers, magazines and other periodicals, health aids, tobacco products, candy, confections, sandwiches, ice cream, processed meat, milk and a myriad of picnic and recreational items. While Albertson's may, on all other days of the week, sell the same such items in direct competition with these "convenience" stores, it is prohibited by the Act's effect, from continuing this competition on Sunday.

Thus, the exemptive threads of the Act can be woven, without much ingenuity, into a fabric of Sunday immunity for the convenience stores from the competitive forces of the larger chain stores. Furthermore, it is arguable that these long-hour or "round the clock" convenience stores are totally exempt from the Act as businesses whose sale of goods is "customarily continuous" within § 5 (2) of the Act. If so construed, the Act would,



on its face as well as in practical effect, immunize such "convenience" stores from competition and grant them a complete monopoly on the sale of retail grocery items in Utah on Sunday.

Since the Act is certain to increase the sales volume and profits of these privileged stores, it may well be, as the legislature indicated, "that Sunday has come to have special significance in the State of Utah." But only for some classes of business.

### CONCLUSION

Albertson's, Inc. respectfully submits that the present Utah Common Day of Rest Act is inherently discriminatory on its face, and in application allows one class of business competitors to sell goods on Sunday and prohibits another class from doing the same. Such a discriminatory and anti-competitive effect is contrary to the letter and spirit of the Utah Constitution, Article I § 24, Article VI § 26, and Article XII § 20 and the anti-monopoly laws passed pursuant thereto. For this reason, the decision of the lower court should be affirmed in all respects.

Respectfully submitted

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