1971

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 : Reply Brief of Plaintiff-Appell.Anti Gary Montgomery, Alan K. Jeppesen, Richard Harrington, Henry Skidmore And Gary L. Paxton

IN THE SUPREME COURT OF THE STATE OF UTAH

SKAGGS DRUG CENTERS, INC.,
a Delaware Corporation,
Plaintiff-Appellant,

vs.

RAEDEL E. ASHLEY, et al.,
Defendants-Appellees.

GARY MONTGOMERY, et al.,
Plaintiffs-Appellants,

vs.

JOHN DOE 1-5, et al.,
Defendants-Appellees,

and

GRAND CENTRAL, INC., a corporation,
Intervenor,

GARY MONTGOMERY,
Plaintiff-Appellant,

vs.

A. B. COOPER, dba KEARNS IGA FOOD-LINER, et al.,
Defendants-Appellees

Case No. 12123

REPLY BRIEF OF PLAINTIFF-APPELLANTS GARY MONTGOMERY, ALAN K. JEPPESEN, RICHARD HARRINGTON, HENRY SKIDMORE and GARY L. PAXTON.

Appeal From Order of the District Court of the Third Judicial District in and for Salt Lake County, State of Utah
Honorable Leonard W. Elton, Judge

STRONG, POELMAN & FOX
Bruce C. Hafen, Esq.
700 El Paso Natural Gas Building
315 East Second South
Salt Lake City, Utah 84111

Attorneys for Plaintiffs-Appellants
Gary Montgomery
Alan K. Jeppesen
Richard Harrington
Henry Skidmore
and Gary L. Paxton

H. R. WALDO, JR.
Jack Lunt
800 Walker Bank Building
Salt Lake City Utah 84111
Attorneys for Plaintiffs-Appellants
Skaggs Drug Centers, Inc.

RICARDO B. FERRARI, Esq.
Attorneys for Mountair Pharmacy
141 East 1st South
Salt Lake City, Utah 84111

Continued on next page

Continued from preceding page

KENT B. LINEBAUGH, Esq.
Attorneys for Key Rexall Drug
529 East South Temple
Salt Lake City, Utah

JAMES E. FAUST, Esq.
Attorney for Warren's
Holladay Pharmacy
922 Kearns Building
Salt Lake City, Utah 84101

MAX K. MANGUM, Esq.
Attorney for Success Pharmacy
315 East 2nd South
Salt Lake City, Utah 84111

PHIL L. HANSEN, Esq.
Attorney for Westside Drug Store,
The Broadway, Inc. and
Sixth Avenue Pharmacy
231 East 4th South
Salt Lake City, Utah

RICHARD H. MOFFAT, Esq.
Attorney for Harmon City, Inc.
1311 Walker Bank Building
Salt Lake City, Utah 84111

O. ROBERT MEREDITH, Esq.
Attorney for Kearns Drug Center, Inc.
425 South 4th East No. 200
Salt Lake City, Utah 84111

DOUGLAS E. ROTH, President
Hyland Pharmacy, Inc.
3291 Highland Drive
Salt Lake City, Utah

LYNN G. FOSTER, Esq.
Attorney for Plaza Pharmacy, Inc.
315 East 2nd South No. 406
Salt Lake City, Utah 84111

NED WARNOCK, Esq.
A.M. FERRO, Esq.
Attorneys for The Prescription
Pharmacy, Inc., and Lowe's
Pharmacy, Inc.
414 Walker Bank Building
Salt Lake City, Utah 84111

GERALD R. HANSEN, Esq.
Attorney for Allied War Surplus
and Beaver Grocery
455 East 4th South
Salt Lake City, Utah

DAVID K. WATKISS, Esq.
ROBERT S. CAMPBELL, JR. Esq.
Attorneys for Miniature Enterprises,
Inc. and Blae's Quality Foods
400 El Paso Natural Gas Building
315 East 2nd South
Salt Lake City, Utah 84111

MR. ROBERT W. INSCORE
J. and K. Market
1101 East 3300 South
Salt Lake City, Utah

BRYCE E. ROE, Esq.
RALPH L. JERMAN, Esq.
Attorneys for Kwikee Market and
The Southland Corp.
dba 7-Eleven Food Stores
340 East 4th South
Salt Lake City, Utah

JUSTIN C. STEWART, Esq.
Attorney for Ward Market, Inc.
Newhouse Building
Salt Lake City, Utah 84111

ROBERT M. YEATES, Esq.
Attorney for Grand Central, Inc.
206 El Paso Natural Gas Building
315 East 2nd South
Salt Lake City, Utah 84111

PARKER M. NIELSON, Esq.
Attorney for A. B. Cooper, dba
Kearns I.G.A. Foodliner and
Grainger, dba Grainger's I.G.A.
Foodliner
Kearns Building
Salt Lake City, Utah

RICHARD GIAUGUE, Esq.
Attorney for Albertson's Inc.
141 East 1st South
Salt Lake City, Utah

ROBERT D. CROFTS, Esq.
County Attorney's Office
220 Hall of Justice Building
Salt Lake City, Utah

CURTIS K. OBERHANSLEY, Esq.
Attorney for John Carlson
Stereo Living Rooms, Inc.
320 South 3rd East
Salt Lake City, Utah

Attorneys for Defendants-Appellees

TABLE OF CONTENTS

AUTHORITIES CITED

CASES

STATUTES

ARTICLES AND ANNOTATIONS

IN THE SUPREME COURT OF THE STATE OF UTAH

SKAGGS DRUG CENTERS, INC.,
a Delaware Corporation,
Plaintiff-Appellant,
vs.
RAEDEL E. ASHLEY, et al.,
Defendants-Appellees.
GARY MONTGOMERY, et al.,
Plaintiffs-Appellants,
vs.
JOHN DOE 1-5, et al.,
Defendants-Appellees,
and
GRAND CENTRAL, INC., a corporation,
Intervenor,
GARY MONTGOMERY,
Plaintiff-Appellant,
vs.
A. B. COOPER, dba KEARNS IGA FOOD-LINER, et al.,
Defendants-Appellees

Case No. 12123

REPLY BRIEF OF APPELLANTS GARY MONTGOMERY, ET AL.

STATEMENT OF FACTS

Although the material facts in this case are not generally in dispute, Appellants point out to the Court that the concern of the parties to this action has been with the basic constitutionality of the Common Day of Rest Act without regard to extensive investigation of its factual applications. Therefore, certain implications and assertations in Respondents' brief should not be considered supported by accepted factual bases. Thus, the statements in Re-

spondents' brief on pages 9 and 10 that "almost every item could be purchased on Sunday which could have been purchased on that day prior to the effective date of the Act," says nothing about the enforceability or application of the Act, since many persons in the State were aware through wide publicity that the constitutionality of the statue was being challenged and believed that adherence to the law was unnecessary until the constitutional issue had been determined. Moreover, the inference in Respondents' brief that only retail selling is affected by the Act (Respondents' brief p. 25) is wholly without factual basis.

The facts and circumstances surrounding this appeal (absence of testimony or even significant attention to the factual context of the cases; absence of any written opinion or even verbal statement of a rationale for the decision of the lower Court) make this in effect a declaratory judgment action in which the presumptions favoring the constitutionality of the Act and its factual application should receive strong weight.

ARGUMENT

I

ACCURATE CONSTRUCTION OF PRIOR CASE LAW SHOWS THAT THE ACT DOES NOT VIOLATE THE DUE PROCESS, EQUAL PROTECTION AND UNIFORM OPERATION OF LAW PROVISIONS OF THE UTAH AND UNITED STATES CONSTITUTIONS.

The contention recurring throughout Respondents' Argument I that Sunday closing laws are outside the scope of the State's police power is irrelevant in view of the finding in *Broadbent v. Gibson,* 140 P.2d 939 (Utah 1943)

that "the constitutionality of general Sunday closing laws, which have been enacted in nearly every State, is no longer to be doubted. Such statutes have been uniformly upheld." Whether a statute is an arbitrary or unreasonable exercise of the police power raises no question substantially different from the question of unreasonable discrimination. The test for determining the existence of discrimination has been set forth in various ways throughout the briefs of the parties; however, this test remains whether the classifications contained in the statute are so obviously arbitrary and without reason that no conceivable situation of fact could be found to justify them. In this connection, the extreme complexity of needs in Sunday closing legislation must be kept in mind, since the "degree of uniformity [which] reason demands of a statute is, of course, a function of the complexity of the needs which the statute seeks to accomodate." *McGowan v. Maryland,* 366 U.S. 420, 524 (1961). The application of this test to the subject statute cannot and must not be affected by vague claims that it is no different from any other Sunday closing legislation or that the existence of exemptions destroys the general purpose of the Act.

Appellants strongly disagree with Respondents' interpretation of the cases cited in their Argument I. For example, even though Respondents concede that the ordinance involved in *Gronlund v. Salt Lake City,* 194 P.2d 464 (Utah, 1948) was not a general Sunday closing law, they fail to recognize the importance of that fact in evaluating the holding of the *Gronlund court,* as explained on pages 15 and 16 of the brief of Appellants Gary Montgomery et al. The quotation from *Gronlund* on page 16-17 of Respondents' brief is misleading in its implication that any commodity exemptions would be unreasonably discriminatory because large stores may not find it eco-

nomically feasible to sell the exempted items. That interpretation would require a complete repudiation of the analysis so carefully set forth in *Broadbent v. Gibson, supra.* The *Gronlund* court in this portion of its opinion was speaking to the discriminatory effect of not providing for general closing. Thus, its language went to the question whether certain businesses were forced to close by being prohibited under the subject ordinance from selling "any commodities" but the exempted ones. The court thereby concluded that the effect of the ordinance was to prohibit retail selling generally and its concern was with the failure of the ordinance not *also* to prohibit the general performance of labor. Obviously, the constitutional prohibition of both retail selling and labor would be subject to certain exemptions, a fact recognized by the court elsewhere in its opinion.

Respondents' interpretation of the Nebraska Supreme Court's opinion in *Skag-way Department Stores, Inc. v. City of Omaha,* 140 N.W. 2.d 28 (Nebr., 1966) is similarly faulty, even to the extent of being seriously misleading. First, the court was not, as stated by Respondents, considering a general Sunday closing law. The two ordinances involved in that case prohibited the sale on Sunday of clothing, hardware and food. Both ordinances provided for the closing of stores who sell these items as their "primary business." The Nebraska Court found that the classification of stores in relation to their names or their "primary business" is not practical in the day of the department store and the supermarket. The Court was concerned that a clothing store may be forced to close under the ordinances but a competitor may be open to sell clothing, so long as the sale of clothing was not his main business. Furthermore, the "economic changes" argument derived from Respondents' quotation from this case has

no bearing on the statute at issue in this appeal. The Nebraska ordinances in that case clearly had the effect of closing some stores that sold clothing, hardware and food while permitting other stores to stay open and sell the same items, with no attempt to relate this disinction to recreational or other purposes of the Nebraska ordinances. These ordinances were therefore of a similar character to those found unconstitutional in *Broadbent v. Gibson,* which dealt with business exemptions rather than commodity exemptions. The chief concern of the Nebraska Court was that so few stores were affected by the closing ordinances while persons involved in manufacturing, services, professions, and agricultural pursuits were all excluded. That problem simply does not exist with the statute before this Court.

Respondents have been unable to refute Appellants' contention that no recent State Sunday closing case has found the statute or ordinance involved unconstitutionally discriminatory except in cases dealing with non-general closing provisions. Respondents have attempted to overcome that deficiency in their case by arguing that the Common Day of Rest Act affects "almost entirely" retail selling only. Certain large employers are exempt from the operation of the Act because, in the language of Mr. Justice Frankfurter, "the cost of stopping and restarting them is simply too great, or because to be without their services would be more disruptive of peace than to have them continue." *McGowan v. Maryland, supra,* at 524. However, most manufacturers, the professions, services, wholesale businesses, agricultural pursuits and other forms of labor are all within the proscription of the Act. The ordinances and statutes in the cases cited by Respondents did not even approach the breadth of this coverage, either in their language or in their effect.

Respondents would infer unreasonable discrimination from the existence of some exemptions that are not expressly commodity exemptions. Those exemptions are included in the statute expressly because they relate to non- mercantile activities. If the statute is to be a general closing law and if it is to provide exemptions for "works of charity and necessity," as required by the *Broadbent* and *Gronlund* cases, there will necessarily be exemptions that cannot be defined as "commodities," such as services and institutions that must continue. The only question in observing the existence of such exemptions is whether they discriminate between persons or businesses similarly situated. No such discrimination exists, in that all transportation facilities, for example, are exempted.

Respondents have misinterpreted the Act on pages 19 and 20 of their brief by claiming that only service stations and recreational facilities may sell the goods or provide the services that are customarily provided by or incidental to the operation of such facilities. The language of the Act may easily be interpreted to provide that anyone may sell such commodities or render such services. Appellants do not contend that the exemptions "incidental to the operation of" certain facilities would permit a clothing store or a machine shop to operate in a railroad yard or golf course, since such operations are obviously not incidental or necessary to the operation of the exempted facility, whose exemption is clearly tied to the purposes of the legislation. If certain retail outlets were to find it economically impractical to remain open in order to sell the commodities provided by such exempted facilities as service stations and resorts, that merely demonstrates that such stores are not similarly situated. The fact remains

that the law permits them to open and sell the exempted commodities if they wish.

Appellants have cited in their prior briefs cases representing the majority view that a Saturday option does not affect the constitutionality of a Sunday closing law. The purpose of the Saturday option is to avoid discrimination against "Sabbatarians." For this reason, the statute requires that any person making the Saturday election must be consistent in that election. This avoids the possibility that some business owners would take advantage of the Saturday option by closing some outlets on Saturday in order to open them on Sunday. This limitation in the Act is designed simply to restrict the Saturday option to its intended purpose.

Respondents express concern that the enforcement provisions of the Act may not result in uniform or fair enforcement because any person or any County Attorney *may* bring an action to enjoin an alleged violation of the Act. In reality, this aspect of the Act promotes greater fairness and consistency in enforcement. Any party who feels that he is discriminated against by the selective enforcement of a County Attorney, which is the kind of enforcement customarily experienced even if a statute made enforcement mandatory, has an opportunity under this Act to bring an action for enforcement himself. Were enforcement left solely in the hands of the County Attorney, the discrimination in enforcement argument would have more impact because such enforcement would likely be selective regardless of statutory language. With respect to enforcement, Appellants further point out that nothing in the statute authorizes a party to bring an action for damages. That Appellant Skaggs Drug Centers sought damages in its action is irrelevant, since the propriety of that claim has not been ruled on in these cases.

Now with respect to the Sunday closing cases decided by the United States Supreme Court, Appellants cannot recommend too strongly that the Court read carefully the exhaustive analysis in these cases. Respondents would have the Court believe that the subject of Sunday closing was treated only lightly by the Supreme Court, when in fact the opinions and appendix in the *McGowan* case show that no stone was left unturned in evaluating the entire history, purpose, and application of Sunday closing legislation, not only in this country but in Europe as well. In spite of Respondents' vague assertions that the equal protection tests of the Federal and State constitutions could conceivably achieve differing results, absolutely no authority is given to support the application of a different test. In view of the almost routine consideration given to claims of discrimination in constitutional arguments, it would seem that some difference would have been expressed between these tests if one had ever had any meaning. The United States Supreme Court has clearly turned its full attention and resources to its examination of the exact kinds of constitutional arguments involved in this action. The unequivocal authority of those cases cannot easily be circumvented.

Appellants respectfully and earnestly submit that the available legal authorities overwhelmingly support their claim that this Act is not unreasonably discriminatory in any material respect.

II

THE MEANING OF THE ACT IS ASCERTAINABLE, BY REFERENCE TO ITS PURPOSE AND ITS STANDARDS.

Respondents concede on the one hand that criminal statutes are subject to a more stringent test than civil

statutes. On the other hand, they claim (Brief, page 28) that there is no difference in the test to be applied. Of course the test is different, the reasons for this difference relating to the difference in impact upon an individual between a violation of a criminal statute and a violation of a civil statute. In the case of a civil statute, the test is whether the legislative intent is unascertainable. See these Appellants' Brief, p. 25. The first section of the Act is unusually helpful in providing an explanation of the legislature's intent. Based upon this statement of intent and upon the examples given to define the terms of the exemptions in the statute, reasonable standards exist by which the legislative meaning may be determined. In order to ascertain that meaning, it is not necessary for the Court to find that each word is self-explanatory. Any student of the law knows that the imprecision of human language is one of the unavoidable facts of life. However, that statutes may need interpretation, whether by an Attorney General, a Court opinion or otherwise, does not establish per se vagueness.

The phrases of the subject Act selected for discussion by Respondents may require this Court to interpret the statute. But the phrases are susceptible of interpretation and the legislative intent can in fact be ascertained. For example, section 5(1) of the Act referring to goods or services necessary to the maintenance of health, safety or life is much more specific than the exemption for "works of necessity" which the Court in *Broadbent v. Gibson* was even willing to imply since it viewed such an exemption as constitutionally necessary. The examples given in this section help to define the class exempted because each example is of a category which, were it not available in an emergency, could result in a loss of life or serious in-

jury to health. While "food" may be generally necessary for the maintenance of health, it would not typically spell the difference between life and death if unavailable on one day only. In that sense, food differs from medical services and prescription medicine. The Utah Supreme Court apparently had no difficulty with that distinction in the *Broadbent* case in categorizing "items necessary to the maintenance of life and health" as "works of necessity" which must be exempted from any valid Sunday closing statute. 140 P.2d 939, 945-46.

The phrases challenged by Respondents on pages 32 through 34 of their brief are likewise susceptible of interpretation in light of the purpose of the Act and the examples given in the exemption provisions of the statute. The Court is not only free to interpret but even has a duty to interpret these phrases in a manner that would render the statute constitutional. Phrases such as "customarily provided by" and "incidental to the operation of," which seem especially troublesome to Respondents, have been expressly recognized as not violating constitutional due process vagueness standards by the United States Supreme Court. See the brief of Appellants Gary Montgomery et al at pages 26-27. The phrase "confections" was contained in the statute at issue in *Broadbent v. Gibson.* That phrase not only failed to trouble the *Broadbent* Court, but was in fact used by the Court freely in its opinion without the Court's feeling any need to define the term.

Point II of Respondents' brief alleges in its title that the Act does not contain adequate standards for interpretation, and yet no evidence or argument is given to refute Appellants' contention that the standards are contained in the legislative intent and the examples so clearly set forth throughout the statute.

The Court is reminded that the injunctive remedy contained in the subject Act removes the constitutional objection of ambiguous criminal statutes because the injunction will provide a clear warning to any violator before contempt penalties may be invoked.

Sunday closing statutes have traditionally contained exemptions for "works of charity and necessity," which have never rendered those statutes unworkable over periods of many decades. To define classes by legislative intent and specific examples is in fact a desirable alternative to using only the general category of necessity and charity. The only other alternative, as recognized by Respondents, would be that of setting forth infinite lists of commodities and services, all of which would still require interpretation and which may be inherently unfair if other commodities or services of the same class were not expressly included. If the Court truly accepts the proposition that general Sunday closing laws whose exemptions relate to the accepted purposes of such legislation may be constitutional, the statutory scheme adopted by the Utah legislature must be recognized as containing an optimum balance between discrimination and definitional classification.

III

THE ACT CONSTITUTIONALLY AVOIDS RESTRICTIONS AGAINST THE FREE EXERCISE OF RELIGION BUT DOES NOT ESTABLISH ANY RELIGION.

Respondents seem to claim that the Saturday option provision of the Act suggests some hidden religious motive behind the passage of the statute. The reason for the Saturday option is set forth in the Appellants' brief on page 11. The adoption of Respondents' reasoning, if applied to

the case of *Sherbert v. Verner,* 374 U. S. 398, (1963), would yield the conclusion that State unemployment laws have a religious motivation if they permit the payment of unemployment compensation to persons who cannot obtain a job because they refuse to work on Saturday out of religious convictions. The absurdity of such a conclusion is obvious.

This Court has already recognized that although Sunday closing statutes "had their origin in religious observance of the Sabbath, they are not now to be so regarded." *Broadbent v. Gibson, supra,* at 943.

IV

BY CONTAINING REASONABLE CLASSIFICATIONS RELATED TO ITS PURPOSE, THE ACT ACCOMPLISHES ITS PURPOSE AS A VALID EXERCISE OF THE POLICE POWER AND WITHOUT CONSTITUTING SPECIAL LEGISLATION.

Respondents infer in their Point IV that some mysterious additional discrimination tests beyond the basic theory of reasonable classification and reasonable discrimination should be applied to the subject statute. However, the test remains whether the legislature had any rational basis for its classifications and discriminations which relate to the purpose of the Act. This inference imposes no requirement upon this Court beyond an application of the tests for reasonableness of classification established by prior case law in this State, other states and the United States Supreme Court with respect to Sunday closing legislation.

The cases upon which Respondents so heavily rely for their arguments regarding arbitrariness or unreasonable classification did not deal with general Sunday clos-

ing laws. These cases, as well as this Court's recent decision of *Dodge Town, Inc. v. Romney et al.* .....P. 2d ..... (Utah, 1971), all dealt with statutes or ordinances that affected retail selling only. The discrimination in all of these statutes against retailers as compared with other businesses and professions is obvious. The same kind of obvious discrimination exists in all of the other State cases upon which Respondents rely. The Common Day of Rest Act, by contrast, provides for a general cessation of all work and labor throughout the State. Some exemptions to this general cessation are necessary in order to achieve the purposes of the law set forth in section I. Whether those exemptions relate in any rational way to the purpose of the Act is the only question before the Court on the subject of discrimination, classification, or arbitrariness. It is submitted that the legislature is acting clearly within its constitutional rights and duties in determining that certain commodities or services must be available to promote diversion, recreation or relaxation, and that certain functions of the community must go on, either because they are necessary for stability and good order or because the cost of stopping and restarting them is too great. It is precisely these kinds of legislative determinations which this Court had in mind in stating "the Legislature has a wide discretion in determining what should come within the class of permitted activities and what shall be excluded." *Broadbent v. Gibson, supra,* at 944.

Legislative determinations for the purpose of classification within the framework of a truly general Sunday closing law are matters entirely different from the legislative determination to close only a certain narrow segment of community business, such as was the case in *Dodge Town, Inc. v. Romney, supra.* It may be argued that the

classifications within the framework of a general closing law and the classification of a certain class such as car dealers are different only as a matter of degree. However, the extent of that difference in degree is extremely significant and, as pointed out by Justice Holmes, "questions of degree are the only ones worth arguing about in the law."

Discrimination and classification necessarily exist in all legislation. Thus, to show distinctions and exemptions is not to show unconstitutionality. Appellants submit that the legislature took unusual care in setting forth its purposes and in tying its classifications to those purposes in the Common Day of Rest Act.

V

SO LONG AS IT ACTS REASONABLY, THE LEGISLATURE HAS AUTHORITY TO DECLARE WHAT SHALL BE DEEMED NUISANCES.

Respondents have again inferred in their Point V that there is some additional mysterious test to be applied in determining whether the legislature has acted arbitrarily. However, "in general, the legislature may declare anything to be a nuisance which is detrimental to the health, morals, peace or welfare of the citizens of the State. It may also enlarge the category of nuisances by declaring acts or things to be nuisances which were not such at common law," 39 *Am. Jur., Nuisances* §12, so long as the legislature does not act capriciously or arbitrarily. In determining such arbitrariness, no new tests are applicable beyond those already discussed with respect to reasonable classification. The legislature's basic authority under the police power with respect to Sunday closing has been unquestionably established. See the brief of these Appellants at page 13. Furthermore, Respondents have already conceded elsewhere in their brief that "the sale of goods on Sunday

constituted an offense under the common law." *State v. Hill,* 369 P.2d 365 (Kansas, 1962), quoted in Respondents' brief at page 27. That the legislature used the word "nuisance" in this Act adds or detracts in no material way from the intent, scope, penalties, or reasonableness of the Common Day of Rest Act.

VI

THE COMMON DAY OF REST ACT HAS ONLY ONE SUBJECT, CLEARLY EXPRESSED IN ITS TITLE.

The title of the subject statute clearly provides "for exemptions from such prohibition," and cannot be expected to contain all of the exceptions in the title. As has been stated earlier by this Court, "the title does not have to be an index to the Act. All that is required is that the subject matter of the Act be reasonably related to the title and that all parts of the Act be reasonably related to each other." *State v. Twitchell,* 333 P.2d 1075, 1078 (Utah, 1959). The one-subject rule was designed to allow legislators to rely on the titles of acts and to inform the public of the general nature of legislation, since, at the time the Utah constitution was adopted in 1896, bills were not published in written form nor were they generally available to the public. The exemptions and content of the Common Day of Rest Act were not only printed, they were also the subjects of vigorous discussion in local newspapers prior to adoption of the Act and were even the subject of a public hearing. Appellants must agree in response to this contention by Respondents that "even when the [one-subject] rule is invoked by counsel, its allegation is ordinarily considered little more than evidence of a weak case."

Note, *Utah's Legislative Branch,* 1966 *Utah Law Review,* 416, 450.

CONCLUSION

Respondents' brief has submitted no legal authority to justify a finding that the Common Day of Rest Act is unconstitutional either in its entirety or in any respect. The judgment should be reversed.

Respectfully submitted,

BRUCE C. HAFEN
STRONG, POLEMAN & FOX
315 East 2nd South, Suite 700
Salt Lake City, Utah 84111

Attorneys for Gary Montgomery, et al.