NOTES

THE CONSTITUTIONALITY OF SABBATARIAN EXEMPTIONS[1]

I. Introduction and Scope

On May 29, 1961, the Supreme Court in *Gallagher v. Crown Kosher Super Market*,[2] and three companion cases,[3] sustained the constitutionality of the Massachusetts Sunday Closing Laws.[4] In so doing, it rejected the claim that the laws unreasonably prohibited the free exercise of religion by not containing a blanket Sabbatarian exemption.[5] Subsequent to *Gallagher*, several bills have been introduced in the Massachusetts Senate and House of Representatives[6] which would exempt Sabbatarians from all of the Sunday prohibitions embodied in Mass. Gen. Laws Ann. ch. 136, § 5.[7] It is the purpose of this note to consider the constitutionality of such an exemption.

At first glance, there would not appear to be any doubt as to the validity of Sabbatarian exemptions, since Mr. Chief Justice Warren, in

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[1] A Sabbatarian exemption is an exemption from a Sunday closing law, applicable to those who conscientiously observe Saturday as the Sabbath.

[2] 366 U.S. 617 (1961).

[3] Braunfeld v. Brown, 366 U.S. 599 (1961); Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961); McGowan v. Maryland, 366 U.S. 420 (1961). In Braunfeld and Two Guys, the Pennsylvania Sunday Closing Law was sustained. In McGowan, the Maryland law was sustained.

[4] See Comment, 41 B.U.L. Rev. 557 (1961).

[5] The law did contain a partial Sabbatarian exemption; however, it was limited to labor and did not permit a Sabbatarian to keep his shop open. Commonwealth v. Has, 122 Mass. 40 (1877), see Note, 39 B.U.L. Rev. 543, 556 (1959).

[6] Illustrative of these is Senate Bill No. 351 (1963) which provides in part: "The opening and operation of any secular place of business not otherwise prohibited by law between twelve o'clock Saturday night and twelve o'clock the following Sunday night if the natural person managing or in control of the management of the place of business, conscientiously believes that the seventh day of the week, or the period which begins at sundown on Friday night and ends at sundown on Saturday night should be observed as the Sabbath, and causes all places of business in Massachusetts which he manages, or over which he has control to remain closed for secular business during the entire period of twenty-four consecutive hours which he believes should be observed as the Sabbath."

[7] "Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and charity, shall be punished by a fine of not more than fifty dollars."

Braunfeld v. Brown,[8] said in regard to them: "A number of States provide such an exemption, and this may well be the wiser solution to the problem. But our concern is not with the wisdom of legislation but with its constitutional limitation."[9]

Can legislation, seemingly sanctioned by the Court one day, be declared unconstitutional the next? This would not be impossible, for in *Braunfeld*, the validity of a Sabbatarian clause was not in issue. Hence, the Chief Justice's statement was obiter dictum, rather than an evaluation of constitutional considerations for or against Sabbatarian clauses. At least one writer has suggested that a Sabbatarian clause might transcend the Constitution.[10] Possible constitutional objections to a Sabbatarian clause include arguments that it constitutes an "establishment" of religion; and that it unreasonably prohibits the "free exercise" of religion, and denies equal protection.

II. Establishment

Professor Kurland has suggested that a Sabbatarian exemption might constitute a violation of the establishment clause.[11] The basis of his argument is that the exemption is classified in terms of religion; *i.e.*, one who is a Sabbatarian is being isolated from the rest of society, and being given preferential treatment because of a religious belief. Kurland's theory is that a religious classification should never be constitutionally permissible. However, the Court has held that such classification is not per se constitutionally impermissible,[12] and, in fact, is sometimes required.[13]

An example of a permissive classification is provided by the Selective Draft Law Cases,[14] wherein the appellants were convicted of violating the conscription law of 1917.[15] Appellants challenged the constitutionality of the law, because, *inter alia*, it exempted members of certain religious sects.[16] They contended that this was a violation of the "establishment" and/or "free exercise" clauses of the Constitution. The

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[8] 366 U.S. 599 (1961).
[9] Id. at 608.
[10] Kurland, Of Church and State and the Supreme Court, 29 U. Chi. L. Rev. 1 (1961).
[11] Ibid.
[12] See Selective Draft Law Cases, 245 U.S. 366 (1918).
[13] Follett v. Town of McCormick, 321 U.S. 573 (1944); Douglas v. City of Jeannette, 319 U.S. 157 (1943); Murdock v. Pennsylvania, 319 U.S. 105 (1943).
[14] 245 U.S. 366 (1918).
[15] Selective Draft Law of May 18, 1917, ch. 15, § 4, 40 Stat. 76.
[16] "Nothing in this act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-organized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed of principles of said organizations. . . ."

Court dismissed this argument with a mere reference to it, stating "its unsoundness is too apparent to require us to do more."[17]

Similarly, in regard to required classifications, the Court has held statutes unconstitutional because they did not provide religious exemptions.[18] Illustrative of this is *Follett v. Town of McCormick*,[19] wherein a license tax for the sale of books was held unconstitutional when applied to a Jehovah's Witness. It must be noted, however, that *Follett* and similar cases[20] did not require or even permit discrimination among religions. Rather, they required only that all religions be exempted from paying a tax on certain activities classified as religious by the Court.[21]

Notwithstanding *Follett*, several cases have held that any form of direct aid to religion is unconstitutional.[22] For instance, in *Illinois ex rel. McCollum v. Board of Educ.*,[23] the Court invalidated an Illinois practice which permitted religion to be taught in the public schools by qualified religious instructors. Relying on *McCollum*, the Court has recently prohibited the recitation of a prayer composed by the New York Board of Regents in the public schools.[24]

Thus, an anomolous situation exists in which failure to give certain exemptions to religious groups transcends the Constitution, whereas the actual giving of aid in other situations violates that document.[25]

A Sabbatarian clause exempts Sabbatarians from a prohibition, viz: work on Sunday; hence, the clause could arguably be said to fall within the class of cases in which a religious exemption is required. However, this argument was rejected in *Braunfeld v. Brown*,[26] because the prohibition did not constitute a direct burden on religion.[27] Since the prohibition is indirect, an exemption might not only not be required, but might even be impermissible.

Who could challenge? Under *McGowan v. Maryland*,[28] anyone

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17 245 U.S. at 390.

18 Follett v. Town of McCormick, 321 U.S. 573 (1944); Douglas v. City of Jeannette, 319 U.S. 157 (1943); Murdock v. Pennsylvania, 319 U.S. 105 (1943).

19 321 U.S. 573 (1944).

20 Supra note 13.

21 If the law did discriminate among religions, it would be unconstitutional. See Fowler v. Rhode Island, 345 U.S. 67 (1953), wherein a statute forbidding speech in a public park, but exempting certain religions, was held unconstitutional when applied to a non-exempt religion.

22 Engel v. Vitale, 370 U.S. 421 (1962); Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203 (1948); Everson v. Board of Educ., 330 U.S. 1 (1947).

23 333 U.S. 203 (1948).

24 Engel v. Vitale, 370 U.S. 421 (1962).

25 See Saia v. New York, 334 U.S. 558, 569 (1948). (Jackson, J., dissent.)

26 366 U.S. 599 (1961).

27 The prohibition (Sunday Closing) did not directly conflict with religious beliefs, i.e., no religion requires its members to work on Sunday. Hence, the Court characterized the Sunday Closing Law as an indirect prohibition.

28 366 U.S. 420, 430 (1961).

suffering direct economic injury may do so.[29] This might include: (1) a non-Sabbatarian who wishes to do business seven days a week; (2) an individual who, for non-religious reasons, chooses to stay closed on Saturday; (3) a Moslem who, for religious reasons, stays closed on Friday; (4) and even a Sabbatarian who has taken advantage of the exemption and wishes to set aside a transaction.[30] We will now consider the merits of the first two challenges. The latter two will be considered *infra*, under "free exercise" and "equal protection."

A person wishing to do business seven days a week would probably allege that he has suffered economic injury as a result of being required to close on Sunday, while the Sabbatarian, competing with him, is permitted to remain open. This would appear to give him sufficient standing to challenge the statute as being in contravention of the "establishment" clause.[31] However, since a state has the power to compel one day of work stoppage in seven,[32] a person alleging that he closes his shop on Saturday for non-religious reasons[33] would seem to have additional bases to challenge the validity of the statute as contrasted to one who stays open seven days a week.[34]

A more reasonable and less vulnerable classification than an exemption based on conscientious observance of Saturday would be one based on the fact of being closed Saturday.[35] This type of exemption would include those who close their business on Saturday for non-religious purposes. Since a statute with a Sabbatarian clause is not so permissive, one who chooses for secular reasons to close on Saturday could contend that the statute constitutes aid to religion which is forbidden by the Constitution.[36]

In evaluating the merits of this contention the difficulty comes in determining the nature of the aid. If it is direct aid, it would clearly be invalid.[37] It could be argued that this is the case, since only those who "conscientiously" observe the Sabbath are permitted to work Sun-

[29] For an argument that direct economic injury is unnecessary, see Sutherland, Establishment According to Engel, 76 Harv. L. Rev. 25 (1962).

[30] Quaere as to the directness of the Sabbatarian's injury. It could be said that the direct cause of his injury was his signing the contract. The statute which permitted the signing is arguably only indirect since it could not cause economic injury without affirmative action on the part of the Sabbatarian.

[31] See McGowan v. Maryland, 366 U.S. 420, 430 (1961).

[32] Id. at 450.

[33] Such as a person who plays golf or tennis on Saturday.

[34] He should also be able to challenge on equal protection grounds since he is not given the same exemption as the Sabbatarian, though both stay closed on Sunday. See Marks Furs, Inc. v. City of Detroit, 365 Mich. 108, 112 N.W. 2d 66 (1961); discussion, infra p. 394.

[35] Such an exemption might read: "This act shall not apply to those who keep their shops closed on Saturday," But see City of Shreveport v. Levy, 26 La. Ann. 671 (1874); discussion, infra p. 393.

[36] See Engel v. Vitale, 370 U.S. 421 (1962); Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203 (1948); Everson v. Board of Educ., 330 U.S. 1 (1947).

[37] Supra note 36.

day. However, in *Zorach v. Clauson*,[38] a state law permitting only those children who went to religious schools to be excused from secular classes was held to be a mere example of constitutionally permissive cooperation between church and state. It could be argued that even if a Sabbatarian exemption is deemed indirect, it could nevertheless constitute an establishment of religion, since groups who, for non-religious reasons, close their shops on Saturday are not given similar aid.[39] However, this argument would seem to have been answered negatively by *Zorach*. Factually, *Zorach* might be distinguishable on the ground that all religions were therein aided, whereas here, only Sabbatarians are aided. Although this distinction has been declared irrelevant,[40] one can not help but suspect that *Zorach* would have been decided differently if only members of one religious sect were permitted to be excused from classes.[41]

Of course, the problem could be solved by the state's permitting everyone to choose Saturday or Sunday as a day of rest. However, this might contravene the state's policy of relative quiet on Sunday.[42]

Thus, the question posed is whether a state can balance its conflicting policies of relative quiet on Sunday, and its desire to ease the Sabbatarian's economic disadvantage, by classifying an exemption in terms of religion.

III. Free Exercise and Equal Protection

A challenge of the "free exercise" clause can only be raised by one who alleges his personal religious freedom is denied.[43] Thus, the person who desires to close his business on Saturday for non-religious reasons, or the person who chooses to do business seven days a week, could not challenge on free exercise grounds.

A Moslem who closes his business on Friday might argue that the Sabbatarian exemption denies him his religious freedom because he is required by statute to remain closed on Sunday, in addition to Friday, his religious day of rest, whereas the Sabbatarian is not so limited. This argument bears a marked similarity to that made by Sabbatarians

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[38] 343 U.S. 306 (1952).

[39] See Everson v. Board of Educ., 330 U.S. I, 18 (1947) (dissenting opinion), wherein it was suggested that aid given to Catholic school students and not to students of other private schools was unconstitutional. The majority did not consider the issue.

[40] Engel v. Vitale, 370 U.S. 421 (1962); Illinois ex rel. McCollum v. Board of Educ., 333 U.S. 203 (1948); Everson v. Board of Educ., 330 U.S. 1 (1947).

[41] Fowler v. Rhode Island, 345 U.S. 67 (1953).

[42] The author does not mean to suggest that relative quiet is necessarily the purpose of a Sunday Closing Law. However, that is, at least in part, the purpose of many Sunday Closing Laws and it is constitutionally permissible; see, e.g., McGowan v. Maryland, 366 U.S. 420 (1961).

[43] McGowan v. Maryland, 366 U.S. 420, 429 (1961).

and rejected by the Court in *Braunfeld v. Brown*[44] and *Gallagher v. Crown Kosher Super Market.*[45] There is one significant difference, however. In *Braunfeld* and *Gallagher,* the respective statutes had no exemptions of a religious nature. Hence, Mr. Braunfeld and Mr. Chernock (owner of the Crown Kosher Super Market) could only complain that the statute limited their free exercise of religion to the same degree as everyone else in the community, except those whose religious day of rest coincidentally coincided[46] with the state's secular day of rest.

The question raised, therefore, is whether a law which exempts one religious group that does not observe the Sabbath on Sunday from a Sunday closing law, denies a member of another group, which also does not observe the Sabbath on Sunday, the free exercise of his religion. It would seem that it would not, since the limitations on the Moslem's free exercise of religion engendered by a Sunday closing law are substantially the same, with or without a Sabbatarian clause.[47]

A Moslem may well have a stronger equal protection argument. He could contend that the Sunday Closing Law, albeit constitutional, creates a disproportionate hardship on all those who observe the Sabbath on a day other than Sunday. He could then argue that the state, by relieving Sabbatarians from this burden and not according equal treatment to Moslems, has denied to the latter the equal protection of the law. The defense of the statute would likely be predicated on the theory that the legislature need not choose between eradicating all evils of the same genus or none at all.[48] It could be argued that the state might have considered the Sabbatarian's plight to be more serious than that of the Moslem because of the number of Sabbatarians in society as contrasted to the number of Moslems.

A counter-argument that might prevail is that the plight of the individual Sabbatarian and individual Moslem are identical, and, in fact, an exemption for Moslems as a group would tend to disrupt the peace and quietude of Sunday to a lesser degree than would a similar exemption for Sabbatarians. Thus, to exempt Sabbatarians without exempting Moslems could arguably be said to be "invidious discrimination."[49] If a Moslem should successfully challenge the Sabbatarian

[44] 366 U.S. 599 (1961).
[45] 366 U.S. 617 (1961).
[46] Perhaps the phrase "coincidentally coincided" borders on cynicism. Yet, that was the effect of the holding in the Sunday Closing Law cases. Supra notes 2 & 3.
[47] The Moslem could conceivably argue that a Sabbatarian exemption puts him at a competitive disadvantage with both the Saturday Sabbatarian and Sunday Sabbatarian, whereas he was previously only at a disadvantage with the latter.
[48] Railway Express Agency v. New York, 336 U.S. 106 (1949).
[49] See Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1953).

exemption, neither the statute nor the exemption would fall. Rather, it (the statute) simply could not be applied to the Moslem for "when an exemption results in forbidden discrimination, then those discriminated against become relieved of the burdens imposed by the discrimination."[50]

One final possible challenge worthy of consideration is that which the Sabbatarian might make himself. This might arise by a Sabbatarian's being dissatisfied with a contract made by him on Sunday which he desired to repudiate.[51] The Sabbatarian could contend that the only way in which his contract could be held valid would be by the other party proving the Sabbatarian's religion. He might contend that he should not be subjected to an inquiry into his religious beliefs against his will.[52]

The strongest argument against this position would be in the nature of an estoppel; *i.e.*, since he took advantage of the Sabbatarian exemption by signing a contract, the Sabbatarian should not be permitted to challenge its constitutionality.[53] Should the estoppel argument fail, it might be contended that the Sabbatarian is aided rather than prohibited in the free exercise of his religion by the Sabbatarian clause, since it permits him to observe his Sabbath without an economic disadvantage. If the Sabbatarian has suffered at all, it could be argued he has suffered monetarily, rather than religiously. However, this argument ignores the aforementioned fact that the Sabbatarian is subjected to an inquiry in regard to his religious belief.

IV. Case Law Prior to 1961

Prior to 1961, the federal courts had no occasion to consider the validity of a Sabbatarian exemption. The state law was divided on the

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[50] Burrow v. Kapfhammer, 284 Ky. 753, 762, 145 S.W. 2d 1067, 1072 (1940).

[51] Contracts made on Sunday have been held void as being in contravention of law. Pattee v. Greely, 54 Mass. (13 Met.) 284 (1847). See Note, 39 B.U.L. Rev. 543, 557 (1959). Presumably, the Sabbatarian exemption would make a contract signed by a Sabbatarian valid since it would no longer contravene the law.

[52] Cf. Torcaso v. Watkins, 367 U.S. 488 (1961), wherein a provision of the Maryland constitution, requiring an oath as to a belief in God as a prerequisite to holding public office, was declared unconstitutional. Compare Selective Draft Law Cases, 245 U.S. 366 (1918), wherein the Court upheld a statute which necessarily permitted judicial inquiry into the bona fideness of a person's religious beliefs, when that person asserted those beliefs as a defense to a violation of the conscription act. See discussion, supra p. —. But cf. Davis v. Beason, 133 U.S. 333 (1890), wherein the requirement of an oath of non-membership in an organization that advocated polygamous marriage, as a prerequisite to voting, was upheld.

[53] Cf. Shepard v. Baron, 194 U.S. 553 (1904); Electric Co. v. Dow, 166 U.S. 489 (1897).

subject. An exemption was upheld in *Johns v. State*,[54] on the theory that the exemption tended to produce equality rather than inequality. In *City of Cincinnati v. Rice*,[55] the court, in upholding the validity of a Sunday closing law with a Sabbatarian clause, indicated that it might not do so in the absence of such a clause.

In *In re Caldwell*,[56] a Sunday law with a Sabbatarian clause was challenged on the ground that, *inter alia*, it discriminated against Moslems. The challenge was rejected, both for want of standing, and on the merits. The defendant was not a Moslem and the court questioned whether, in fact, there were any in the state. It concluded that even if there were, they, like anybody else, would be required to rest on either Saturday or Sunday.

One case, frequently cited for the proposition that a Sabbatarian clause is invalid was not really concerned with that problem. *City of Shreveport v. Levy*[57] presented the Louisiana court with a Sunday closing law which provided an exemption for all those who remained closed on Saturday. The state contained no religious test, but merely permitted an individual to choose either Saturday or Sunday as a day of rest. Notwithstanding this, Levy, who apparently stayed open on both Saturday and Sunday, challenged the statute. The court, after recognizing the fact that many Jews close on Saturday said:

> Before the constitution Jews and Gentiles are equal; by the law they must be treated alike, and the ordinance of a City Council which gives to one sect a privilege which it denies to another, violates both the constitution and the law, and is therefore, null and void.[58]

It is submitted that the court misanalyzed the problem, for both Jews and Gentiles were permitted to choose between closing on Saturday or Sunday. Therefore, neither Jews nor Christians were denied equal protection.

Research has disclosed only one other case purporting to invalidate a Sabbatarian exemption. That case is *Kislingbury v. Treasurer of Plainfield*,[59] where a conviction for violating the Sunday laws was reversed. The basis of the reversal was twofold. First, the statute was held to be not applicable to the defendant's activity. Alternatively, the statute was held to be void because of the Sabbatarian clause. *Kislingbury* was not decided by the state's supreme court and that court has not followed it.[60]

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[54] 78 Ind. 332 (1881).
[55] 15 Ohio 225 (1846).
[56] In re Caldwell, 82 Neb. 544, 118 N.W. 133 (1908).
[57] 26 La. Ann. 671 (1874).
[58] Id. at 672.
[59] 10 N.J. Misc. 798, 160 Atl. 654 (1932).
[60] See, e.g., State v. Fass, 36 N.J. 102, 175 A.2d 193 (1961), wherein the court

V. Case Law Since 1961

This note would be incomplete without an analysis of two recent cases in the area of religious exemptions from Sunday laws; *viz: Marks Furs, Inc. v. City of Detroit,*[61] and *Commonwealth v. Arlan's Dep't Store.*[62]

In *Marks,* the Supreme Court of Michigan upheld the constitutionality of a Sunday closing law. The plaintiff claimed he remained open on Sunday because most of his business was done on that day. He further contended that, since Sabbatarians were permitted to remain open on Sunday, the prohibition was unconstitutional when applied to him. In rejecting this claim, the court, perhaps inadvertently, raised the more interesting question of the validity of the act when applied to a person who closes on Saturday for non-religious reasons:

> Plaintiffs justify the operation of their business on Sunday because it is their most profitable business day, but nowhere do plaintiffs claim that their store is closed on Saturday.[63]

If, as a result of this language, Marks Furs, Inc. had closed on Saturday and stayed open on Sunday for economic reasons, the difficult question would have been before the court.

In *Arlans,* the problem raised was identical to *Marks,* except that the statute provided an exemption for all those who are members of a religious society which celebrates its Sabbath on a day other than Sunday and which, in fact, does observe one day in seven as a day of rest. The Kentucky court affirmed the statute:

> Our own view is that the exemption does not affirmatively prefer any religion nor amount to an establishment of a religion. Rather, it simply avoids penalizing economically the person who conscientiously observes a Sabbath other than Sunday.[64]

No opinion as to the validity of a Sabbatarian exemption, as opposed to a blanket religious exemption, appears to have been expressed.

Though the Supreme Court did dismiss the case for want of a substantial federal question, the matter should not be considered closed, for the Supreme Court has heard cases on the merits after dismissing others for want of a substantial federal question in the area of Sunday

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considered the applicability of a Sabbatarian exemption without questioning its constitutionality.

[61] 365 Mich. 108, 112 N.W. 2d 66 (1961).

[62] 357 S.W.2d 708 (Ky. 1962), aff'd, Arlan's Dept. Store v. Kentucky, 83 S. Ct. 277 (1962).

[63] 365 Mich. 108, 112, 112 N.W.2d 66, 68 (1961).

[64] 357 S.W.2d 708, 710 (Ky. 1962), aff'd, Arlan's Dept. Store v. Kentucky 83 S. Ct. 277 (1962).

Closing Laws,[65] compulsory flag salute,[66] and compulsory military training in college.[67]

VI. Conclusion

The purpose of this note has been to consider and evaluate some of the constitutional problems inherent in a Sabbatarian exemption.

In a nutshell, the primary constitutional problems are: (1) the statute classifies according to religion, *i.e.*, it does not permit one to work Sunday who has closed on Saturday for secular reasons; and (2) the exemption does not include all religions that celebrate their Sabbath on a day other than Sunday.

The apparently conflicting precedents in this area, discussed herein, make one feel as though he is being tossed between extremes of judicial thought, rather than led through an orderly system of precedent. Perhaps the reason for this inconsistency is, as Professor Kurland suggests, that advocates are doing a better job of destroying their opponents' cases than they are in building their own.[68] But, whatever the reason, it is clear that the answers to the perplexing problems discussed in this note do not lie in a consistent pattern of Supreme Court decisions.

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[65] Dismissed: Kidd v. Ohio, 358 U.S. 132 (1958); Ullner v. Ohio, 358 U.S. 131 (1958); Grochowiak v. Pennsylvania, 358 U.S. 47 (1958); Gundaker Central Motors, Inc. v. Gassert, 354 U.S. 933 (1957); McGee v. North Carolina, 346 U.S. 802 (1953); Friedman v. New York, 341 U.S. 907 (1951). Heard on the merits: Gallagher v. Crown Kosher Super Market, Inc., 366 U.S. 617 (1961); Braunfeld v. Brown, 366 U.S. 599 (1961); Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961); McGowan v. Maryland, 366 U.S. 420 (1961). See Kurland, supra note 10 at 83.

[66] Dismissed: Hering v. Board of Educ. 303 U.S. 624 (1938); Leoles v. Landers, 302 U.S. 656 (1937). Affirmed without opinion: Johnson v. Deerfield, 306 U.S. 621 (1939). Cert. denied: Gabrielli v. Knickerbocker, 306 U.S. 621 (1939). Heard on the merits: Board of Educ. v. Barnette, 319 U.S. 624 (1943); Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940). See Kurland, supra note 10 at 27.

[67] Dismissed: Coale v. Pearson, 290 U.S. 597 (1933). Heard on the merits: Hamilton v. Regents of the Univ. of Cal., 293 U.S. 245 (1934). See Kurland, supra note 10 at 24.

[68] Kurland, supra note 10 at 2.