

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

Filed July 25, 2006

SUPERIOR COURT

**PATRICK C. LYNCH, in his capacity
as Attorney General of the
STATE OF RHODE ISLAND,**
Plaintiff

v.

**NORWOOD AUTOPLEX, a.k.a
NORWOOD MOTOR GROUP or
NORWOOD MOTOR AUCTION;
COLONIAL MOTOR SALES, INC.
a.k.a COLONIAL TOYOTA; METRO
HONDA; FOX TOYOTA and KING
RICHARD SUZUKI, INC.,**
Defendants.

C.A. No. PC 05-4125

consolidated with

**COLONIAL MOTOR SALES, INC.,
FOX ENTERPRISES, INC.,
NORWOOD MOTOR GROUP, and
KING RICHARD SUZUKI, INC.**
Plaintiffs

v.

**STATE OF RHODE ISLAND through
PATRICK C. LYNCH in his capacity as
ATTORNEY GENERAL FOR THE
STATE OF RHODE ISLAND, and THE
DEPARTMENT OF ADMINISTRATION
through its DIRECTOR, BEVERLY E.
NAJARAIAAN**
Defendants.

C.A. No. PC 05-1304

DECISION

MCGUIRL, J. The Attorney General and certain car dealerships – Colonial Motor Sales, Inc., Fox Enterprises, Inc., Norwood Motor Group, and King Richard Suzuki (“Dealers,” collectively)

– have each filed a separate action, now consolidated, seeking a declaratory judgment as to the validity and constitutionality of G.L. 1956 § 31-5-19 (hereinafter, the “Sunday Motor Vehicle Law”). The Attorney General now moves for summary judgment and asks this court to declare that the Sunday Motor Vehicle Law is valid and constitutional and thus effectively precludes the Dealers from conducting business on Sundays. The Dealers have filed cross-motions for summary judgment, seeking a judicial declaration that said statute is unconstitutional and is no longer valid in light of the most recent amendment to G.L. 1956 § 5-23-2, the Holiday Business Law, formerly the Sunday Business Law. The Attorney General has filed a reply brief and objection to those cross-motions. Additionally, the Rhode Island Automobile Dealers Association (“Association”) has filed an amicus curiae brief in support of the Attorney General’s motion. Jurisdiction in this Court is pursuant to G.L. 1956 § 9-30-1 and Super. R. Civ. P. 56.

Facts and Travel

The United States Supreme Court has commented on Sunday Closing Laws as early as 1896 when it said:

Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. Hennington v. Georgia, 163 U.S. 299, 305 (1896) (quoting Bloom v. Richards, 2 Ohio St. 387, 391 (1853)).

Rhode Island’s modern day Sunday Closing Laws began in 1930 when the General Assembly allowed town councils to grant various retailers licenses to sell twenty-five enumerated items on Sunday. Failure to obtain a license and the sale of a non-enumerated item were strictly prohibited. Various amendments to the law were made until 1950. In that year, the Sunday Business Law was codified and amended to add five additional items that could be sold with a license. In addition, the legislature, on the same day, enacted separate legislation that expressly

prohibited motor vehicle dealers from operating on Sundays. The Sunday Motor Vehicle Law, § 31-5-19(a), read, and reads to this day: “No dealer shall have open for the conduct of business any display room or outdoor display lot where motor vehicles are exhibited on the first day of the week, commonly called Sunday.”

The next major amendment to the Sunday Business Law occurred in 1976. In that year, the General Assembly eliminated the product by product distinction and instead chose to determine which businesses could remain open based on the retail establishment’s size as measured by average employment hours per day. In 1982, the law was changed again, and required town councils to issue licenses to sell all retail products on Sundays, save for alcoholic beverages. Finally, in 2005, the General Assembly again amended the Sunday Business Law, changing the name to the Holiday Business Law. That law currently states, in relevant part, “[a] retail establishment may be open on any day of the year except as specifically prohibited herein.” Sec. 5-23-2. This law was passed on June 16, 2005 and became effective without the Governor’s signature on July 1, 2005.

During that same Legislative Session, four separate bills were introduced which would have had the effect of repealing or drastically diminishing the reach of the Sunday Motor Vehicle Law. None of those four proposals was acted upon despite the fact the Sunday Business Law was amended during the same Legislative Session.

The Attorney General alleges that the Dealers have been conducting business on Sunday in violation of the Sunday Motor Vehicle Law. Thus, this Court has been called upon to determine two issues: (1) whether the Dealers are still prohibited from selling motor vehicles on Sundays, and (2) if so, whether such a prohibition is constitutional.

Does the Sunday Motor Vehicle Law or the Holiday Business Law Control?

The first issue with which this Court has been presented is which statute, the Sunday Motor Vehicle Law or the Holiday Business Law, controls. When a court is called upon to construe the provisions of coexisting statutes, “[it] attempt[s] to follow the rule of statutory construction that provides that statutes relating to the same or similar subject matter should be construed such that they will harmonize with each other and be consistent with their general objective scope.” Blanchette v. Stone, 591 A.2d 785, 786-787 (R.I. 1991) (citing State v. Ahmadjian, 438 A.2d 1070, 1081 (R.I. 1981)). “In accomplishing this objective, the underlying purpose of this court should be to determine the intention of the Legislature.” Id. (citing Landers v. Reynolds, 92 R.I. 403, 407, 169 A.2d 367, 369 (1961)). However,

[w]hen the language of a statute is clear and unambiguous, [the court] must enforce the statute as written by giving the words of the statute their plain and ordinary meaning. But when the statute is ambiguous, we must apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature. Harvard Pilgrim Health Care of New Eng., Inc. v. Gelati, 865 A.2d 1028, 1037 (R.I. 2004).

The Dealers contend the two laws conflict; after applying the general rules of statutory construction it becomes clear the Holiday Business Law controls. The Attorney General maintains that the two statutes can be harmonized so that effect may be given to both. The Attorney General also argues that to the extent the two laws conflict, the Sunday Motor Vehicle Law prevails over the Holiday Business Law.

The threshold issue is whether the two provisions at issue unambiguously conflict and if so, whether they may be harmonized and read together so that effect may be given to both. The Sunday Motor Vehicle Law states: “No dealer shall have open for the conduct of business any display room or outdoor display lot where motor vehicles are exhibited on the first day of the

week, commonly called Sunday.” Sec. 31-5-19. The Holiday Business Law states in relevant part: “A retail establishment may be open on any day of the year except as specifically prohibited herein.” Sec. 5-23-2(a). Giving these words their plain and ordinary meaning, this Court determines that the only way these two provisions may be read together is if the language “except as specifically prohibited herein” refers to the Sunday Motor Vehicle Law. If this Court should find no such reference, there is no doubt that the two statutes would unambiguously conflict with one another, necessitating reliance on the rules of construction.

The Dealers argue that “[i]t is well established with respect to provisos that in the absence of a clearly disclosed legislative intent to the contrary, the operation thereof is usually confined to that section or portion of the statute which immediately precedes it or to which the proviso pertains, and does not extend to or qualify other sections or portions of the statute.” Bruzzi v. Board of Appeals, 84 R.I. 220, 224, 122 A.2d 877, 879 (1956) (citing 82 C.J.S., Statutes, § 381 b (2) at 887; Richard T. Green Co. v. City of Chelsea, 149 F.2d 927). However, it is not entirely clear that this rule of law applies.¹ Second, to the extent it does, “[t]his rule is seldom followed today” Singer, Sutherland Statutory Construction, § 47:09 at 239 (2000). More informative is a discussion of the word “herein.”

Courts have recognized that “[h]erein as used in legal phraseology is a locative adverb and its meaning is to be determined by the context. It may refer to the section, the chapter or the entire enactment in which it is used.” International Union United Furniture Workers v. Colonial Hardwood Flooring Co., 168 F.2d 33, 38 (4th Cir. 1948); see also Saulsberry v. Maddix, 125

¹ A proviso is defined by Black’s Law Dictionary as “1. [a] limitation, condition, or stipulation upon whose compliance a legal or formal document’s validity or application may depend. 2. In drafting, a provision that begins with the words *provided that* and supplies a condition, exception, or addition.” (Emphasis in original). In this case, the phrase being interpreted is “except as specifically prohibited herein,” which does not meet either definition. Rather, the language is introducing exceptions as opposed to operating as a condition. The cited rule of law explains which sections a proviso *limits*. In this case, it is clear the so-called proviso undoubtedly limits the Holiday Business Law only.

F.2d 430, 434 (6th Cir. 1942); Sharp v. Tulsa County Election Bd., 890 P.2d 836, 841 (Okla. 1994). Our own Supreme Court has similarly noted that words of a statute must be considered in context. Deignan v. Cowan Plastic Prods. Corp., 99 R.I. 193, 196, 206 A.2d 534, 536 (1965).

In this case, when the Holiday Business Law is examined in its entirety, it becomes clear that the word “herein” refers to that law only, and does not establish the Sunday Motor Vehicle Law as an exception to the Holiday Business Law. The Holiday Business Law provides:

A retail establishment may be open on any day of the year except as specifically prohibited herein. A retail establishment shall not be open on a holiday unless licensed by the appropriate town council pursuant to this section. The city or town council of any city or town shall grant holiday licenses for the sale by retail establishments. No license shall be issued on December 25 of any year or on Thanksgiving Day, except G.L. § 5-23-2.

The statute goes on to list several establishments which may lawfully operate on Christmas and Thanksgiving. Sections which follow provide for several other exceptions to the general authorization to open on any day of the year. Thus, the legislature expressed a general ability to remain open — followed by a condition, “except as specifically prohibited herein” — followed by several prohibitive sections. As such, given the context of the word, this Court determines that “herein” was used to refer to the Holiday Business Law only.

This result is further supported by the manner in which the legislature chose to handle the closing laws regarding the sale of liquor. Although the sale of liquor on Sundays is controlled by a statute wholly separate from the Holiday Business Law, the General Assembly included liquor store sales as an explicit exception to a retailer’s general ability to remain open under the Holiday Business Law. Thus, it is reasonable to assume that had the legislature truly intended the word herein to refer to the Sunday Motor Vehicle Law, it would have either added language similar to the Sunday Motor Vehicle Law or simply referred to it.

Considering that the Holiday Business Law does not refer to the Sunday Motor Vehicle Law, this Court further determines that the two laws unambiguously conflict. The Holiday Business Law allows retailers to open on any day of the year, subject to certain exceptions, none of which concerns car dealers. The Sunday Motor Vehicle Law prohibits car dealers from opening on Sundays. It is undisputed that car dealers are retailers. Therefore, due to this unambiguous inconsistency, it is necessary to rely on principles of statutory construction to properly interpret the relationship between the two laws.

“[T]he general rule of statutory construction clearly provides that when a statute of general application conflicts with a statute that specifically deals with a special subject matter, and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application.” Whitehouse v. Moran, 808 A.2d 626, 629-630 (R.I. 2002). This principle is embodied in G.L. 1956 § 43-3-26. That section states:

Wherever a general provision shall be in conflict with a special provision relating to the same or to a similar subject, the two (2) provisions shall be construed, if possible, so that effect may be given to both; and in those cases, if effect cannot be given to both, the special provision shall prevail and shall be construed as an exception to the general provision.

In this case, there can be no question that the Sunday Motor Vehicle Law is the more specific statute. Both laws address the mandatory closing of businesses. The Sunday Motor Vehicle Law, however, deals with the special problems associated with car dealerships. As such, it should be interpreted as an exception to the Holiday Business Law. Such an interpretation best represents the intention of the legislature as evidenced by the history of the laws, the words spoken during the committee hearing, and the contemporaneous happenings (or non-happenings). Although “[l]egislative history is properly used as an aid to construction only when the statute is itself ambiguous” First Republic Corp. v. Norberg, 116 R.I. 414, 418 (R.I. 1976), in

this case, it is helpful as an “additional tool of analysis.” Garcia v. United States, 469 U.S. 70, 75 (U.S. 1984).

The Attorney General has presented evidence indicating that four separate bills were introduced in 2005 which would have had the effect of repealing or drastically diminishing the reach of the Sunday Motor Vehicle Law. None of those four proposals was acted upon despite the fact the Sunday Business Law was amended during the same Legislative Session. The Attorney General has also provided transcripts from a House Floor discussion which took place moments before the amendment to the Sunday Business Law was voted upon. Representative Kilmartin, sponsor of the Holiday Business Law and two of the four Sunday Motor Vehicle Law proposals, noted that the Holiday Business Law would “make it a level playing field throughout the State where any business with the exception of I believe it is liquor and auto sales, which are addressed in other statutes . . . can open their normal business hours.” Representative Moffitt replied “[s]o basically it just changes that any retail, excluding the auto dealers, which we know about their situation, they don’t want to open on Sundays, so this does not address them in any way?” Kilmartin responded, “[w]e’ll deal with that one in the future.”

Mindful that “statements by individual legislators or framers are not to be given talismanic significance,” Bandoni v. State, 715 A.2d 580, 592 (R.I. 1998), this Court still recognizes that “courts give consideration to statements made by a bill’s sponsor.” Singer, Sutherland Statutory Construction, § 48:15 at 475 (2000). Such consideration is given because “legislators look to the sponsor . . . to be particularly well informed about its purpose, meaning, and intended effect.” Id. These statements, although not authoritative by any means, are, as one court put it, “pregnant with significance.” Newell v. Federal Energy Administration, 445 F. Supp. 80, 86 (D.D.C. 1977) (quoting National Woodwork Mfrs. Ass’n. v. NLRB, 386 U.S. 612,

640 (1967)). The United State Supreme Court has similarly noted that it “is the sponsors that we look to when the meaning of the statutory words is in doubt.” National Woodwork Mfrs. Ass’n, 386 U.S. at 640.

Relying on Rhode Island Chapter of Nat’l Women's Political Caucus, Inc. v. Rhode Island Lottery Com., 609 F. Supp. 1403, 1416 (D.R.I. 1985), the Dealers claim that such opinions “do not amount [to] ‘legislative history’ . . . [and] we must look exclusively to the language of the statute” in support. The Dealers’ reliance on that case is misplaced. In Rhode Island Chapter of Nat’l Women’s Political Caucus, Inc., Judge Selya simply noted that an “unsworn, self-serving letter from a legislative sponsor of [the] initiative, written after suit had been instituted and appended to the state's brief,” would not be considered evidence of the legislature’s intent. Id. It is well established in Rhode Island that such post-enactment statements are to be given no weight. See Laplante v. Honda N. Am., 697 A.2d 625 (R.I. 1997); McGee v. Stone, 522 A.2d 211 (R.I. 1987). Thus, it is unclear how Rhode Island Chapter of Nat’l Women’s Political Caucus, Inc. supports the above-stated proposition. Rather, as discussed, reference to the statements made, and the history and circumstances surrounding passage of a law can prove useful indeed. However, this Court need not rely on the legislative history presented by the Attorney General. Here, said legislative history simply further supports this Court’s conclusion that the Sunday Motor Vehicle Law operates as a special exception to the Holiday Business Law.

Did the Holiday Business Law Repeal the Sunday Motor Vehicle Law by Implication?

The Dealers additionally argue that with passage of the Holiday Business Law, the General Assembly has impliedly repealed the Sunday Motor Vehicle Law. Our Supreme Court has recognized the existence of extraordinary obstacles in the way of those who argue that a later enacted general provision has impliedly repealed a special provision. The court has stated, a

“general statute shall not repeal a special statute unless the purpose so to do is clearly manifest.” Olsen v. Gee, 94 R.I. 433, 436, 181 A.2d 442, 444 (1962); see also Tessier v. Ann & Hope Factory Outlet, 114 R.I. 315, 319, 332 A.2d 781, 783 (1975) (noting that R.I.G.L. § 43-3-26 directs a court to resolve conflicts between a general and special provision in favor of the latter in holding that the legislature did not impliedly repeal the special statute at issue); Langdeau v. Narragansett Ins. Co., 94 R.I. 128, 133, 179 A.2d 110, 113 (1962) (stating that prior special legislation is not affected by a later general enactment unless it clearly appears therefrom that the legislature intended to modify the pre-existing special statute). Furthermore, this Court must presume that “the legislature in enacting [a statute] knew of the existence of its prior special legislation on the same subject matter . . . and did not intend to disturb it.” Id. (citing Loretta Realty Corp. v. Massachusetts Bonding and Ins. Co., 83 R.I. 221, 114 A.2d 846 (1955)). Generally, repeals by implication are “disfavored and will not be pursued unless the statutory provisions are irreconcilably repugnant.” Blanchette v. Stone, 591 A.2d 785, 786-787 (R.I. 1991) (citing State v. Souza, 456 A.2d 775, 781 (R.I. 1983)). It is not enough that the two provisions are merely inconsistent. Id.

In this case, the Dealers attempt to show that the statutes at issue are repugnant in that the Holiday Business Law demonstrates that the concept of Sunday as a day of common rest has been “universally abandoned.” Maintaining that Sunday as a common day of rest was the “clear objective of Rhode Island’s closing law,” the Dealers argue that our legislature has demonstrated an intent that the general provision, namely the Holiday Business Law, prevails over the Sunday Motor Vehicle Law.

Although the clear objective of the Sunday Business Law, now called the Holiday Business Law, was “to promote a common day of rest and recreation.” Warwick v. Almac's, 442

A.2d 1265, 1270 (R.I. 1982), this Court does not embrace the notion that the same motive led to enactment of the Sunday Motor Vehicle Law. In amending the Sunday Business Law, the legislature may have recognized the diminished importance of having Sundays free from business. However, the car line of business was singled out for special consideration by the General Assembly in passing the Sunday Motor Vehicle Law. An examination of the “language, nature and object of the statute in light of circumstances motivating its passage” Pullen v. State, 707 A.2d 686, 689 (R.I. 1998) (quoting In re Kyle S., 692 A.2d 329, 331 (R.I. 1997)) indicates that identical objectives did not motivate the legislature to pass each law.

Had identical motives been present, the General Assembly would not have passed parallel legislation controlling car dealerships alone on the same day in 1950 that the Sunday Business Law was amended to *increase* the number of retailers allowed to operate on Sundays. If identical motives were present, the proposed repeals of the Sunday Motor Vehicle Laws would not have stalled when the Holiday Business Law was enacted. The committee heard testimony from various car dealerships concerning the special issues raised by allowing car dealerships to open on Sundays. None of these issues involved Sunday as a common day of rest. For these reasons, it is evident that even if the legislature’s passage of the Holiday Business Law constitutes a universal abandonment of the common day of rest, such abandonment does not affect the continued validity of the Sunday Motor Vehicle Law.

Assuming *arguendo* that in passing and subsequently refusing to repeal the Sunday Motor Vehicle Law the General Assembly was motivated by the idea of having Sunday as a common day of rest; the Attorney General’s presentation of various laws indicating that this alleged universal abandonment has not taken place is persuasive. The following statutes — R.I.G.L. §§ 19-26-16 (prohibiting business on Sundays for pawnbrokers); 42-14.2-16

(prohibiting the operation of auto wrecking and auto salvage yards on Sundays); 9-5-24 (providing that service of process effectuated on a Sunday is void); 5-2-9, 5-22-6, 5-22-7, 5-22-8, 5-22-9, 5-22-10, 5-22-11, 31-6-2 (limiting the hours of operation on Sundays for various businesses in various municipalities) — along with U.S. Const. Art. I, § 7 and R.I. Const. Art. IX, evidence that the Legislature did not intend to universally abandon Sunday as a day of rest. Accordingly, the Dealers have not persuaded this Court that the General Assembly intended the Holiday Business Law to repeal the Sunday Motor Vehicle Law.

Does the Sunday Motor Vehicle Law Violate the United States or Rhode Island Constitution?

The Dealers have also attacked the Sunday Motor Vehicle Law on constitutional grounds. They face an uphill battle. Our Supreme Court has noted that “legislative enactments of the General Assembly are presumed to be valid and constitutional and ‘the party challenging the constitutional validity of an act carries the burden of persuading the court beyond a reasonable doubt that the act violates an identifiable aspect of the . . . constitution.’” City of Pawtucket v. Sundlun, 662 A.2d 40, 60 (R.I. 1995). “In passing on the constitutionality of a statute, the Court exercises its power to do so ‘with the greatest possible caution.’” Cherenzia v. Lynch, 847 A.2d 818, 822-823 (R.I. 2004) (quoting Gorham v. Robinson, 57 R.I. 1, 7, 186 A. 832, 837 (1936)). “To be deemed unconstitutional, a statute must ‘palpably and unmistakably be characterized as an excess of legislative power.’” Id. (quoting Sundlun, 662 A.2d at 44-45).

Equal Protection and Due Process

Although the Dealers have raised the equal protection and due process clauses, because of the similarities between the two arguments, only one analysis is necessary. See Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 470 (1981) (remarking that if statute does not violate equal protection, “it follows a fortiori that [it] does not violate the Fourteenth Amendment's Due

Process Clause”); Kittery Motorcycle, Inc. v. Rowe, 320 F.3d 42, 46 (1st Cir. 2003); Montalvo-Huertas v. Rivera-Cruz, 885 F.2d 971, 976 n.7 (1st Cir. 1989) (noting that “the type and kind of scrutiny applied, and the result, would be no different on either theory). The Dealers have also implicated both the State and Federal Constitutions. Again, because of the similarity of the two provisions, separate analyses are not required. See Rhode Island Depositors Econ. Protection Corp. v. Brown, 659 A.2d 95, 100 (R.I. 1995).

The Fourteenth Amendment to the United States Constitution guarantees to all persons “the equal protection of the laws.” U.S. Const. Amend. XIV, § 1; R.I. Const. Article 1, section 2. However, “[n]ot all legislative classifications . . . are impermissible. Indeed, the Legislature enjoys ‘a wide scope of discretion in enacting laws that affect some classes of citizens differently from others.’” Rhode Island Depositors Econ. Protection Corp., 659 A.2d at 100 (quoting Boucher v. Sayeed, 459 A.2d 87, 91 (R.I. 1983)).

“It is well settled that any equal-protection analysis begins with an examination of the nature of classification created by the Legislature. When the classification does not involve a fundamental right and is not related to a suspect classification, the test for constitutionality is more relaxed. In these circumstances the legislation need only be ‘rationally related to a legitimate state interest’ in order to survive constitutional scrutiny.” Rhode Island Insurer’s Insolvency Fund v. Leviton Mfg. Co., 716 A.2d 730, 734 (R.I. 1998) (quoting Sundlun, 662 A.2d at 60 (R.I. 1995)). “Social and economic legislation” are primary examples of statutes to which rational basis scrutiny is applied. Hodel v. Indiana, 452 U.S. 314, 331, 69 L. Ed. 2d 40, 101 S. Ct. 2376 (1981). Considering the nature of the statute at issue, rational basis scrutiny is applicable to the case at hand.

Our Supreme Court has previously upheld the validity of the Sunday Business Law in the face of constitutional attack. Warwick v. Almac's, 442 A.2d 1265 (R.I. 1982). However, in Almac's, the court was considering the legislative classification of retailers based on size rather than the statutory framework before the court today, a framework which effectively exempts almost all retailers save for car dealerships. Thus, for that reason, Almac's is inapplicable.

The Dealers are essentially advancing two arguments under the equal protection clause. First, they believe that none of the possible rationales for the Sunday Motor Vehicle Law is furthered by that law. Second, the Dealers take issue with the legislature's decision to treat car dealerships differently from other, similarly situated industries, namely, real estate, insurance, stocks and telephone sales. These businesses, the Dealers maintain are, like car dealerships, highly competitive, employ salespeople on commission, and sell goods subject to inelastic demands. The Court will take the former argument first.

The Dealers have raised several possible rationales for the Sunday Motor Vehicle Law and have systematically attempted to convince this Court that not one is furthered by the existing state of the law. These rationales include (1) a common day of rest; (2) moral code; (3) promotion of family life; (4) a day of rest for commissioned salespersons; and (5) protection of the smaller car dealer. Of course, this Court is not required to examine only those rationales proffered by the defendants. In fact, "[a] statutory discrimination will not be set aside if *any state of facts* reasonably may be conceived to justify it." Kennedy v. State, 654 A.2d 708, 712-713 (R.I. 1995) (emphasis added).

The Dealers argue that there is no longer a common day of rest in Rhode Island considering the Holiday Business Law. Although citizens may no longer buy or sell motor vehicles on Sunday, the Holiday Business Law allows them to participate in just about any other

activity they wish. Nor does the Sunday Motor Vehicle Law, in light of the Holiday Business Law, further Rhode Island's moral code as citizens are free to gamble or purchase liquor on Sundays. The Dealers also argue that the coexistence of the two statutes at issue precludes advancement of any possible interest in furthering family life as Sunday has become a major day for family shopping. Even were this not so, disallowing citizens to purchase a car on Sunday ignores the possibility that citizens may purchase any other commodity they wish with or without their family. Next, the Dealers claim that the Sunday Motor Vehicle Law does not seem to ban test drives or other activities requiring the presence of an employee, preventing Sunday from being a day of rest for salesmen. Finally, the Dealers maintain that the Sunday Motor Vehicle Law does not protect smaller dealerships as those are the entities adversely affected by the law. Many of the larger dealerships own facilities in neighboring states, allowing them to build customer relations in Massachusetts on a Sunday and have the consumer wait to purchase the vehicle in Rhode Island at another commonly owned dealership.

The Dealers' arguments ignore the fact that under such a low level of scrutiny, "[t]he equal-protection safeguard is offended only if an act rests on grounds *wholly irrelevant* to the achievement of the State's objective." Kennedy, 654 A.2d at 712-713 (emphasis added). It is evident from the Dealers' argument that they do not believe the Sunday Motor Vehicle Law to be wise. However, "equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." FCC v. Beach Communications, 508 U.S. 307, 313 (U.S. 1993). Rather "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." Id. at 315. Surely our legislature

could have rationally believed that keeping dealerships closed, even in the face of the Holiday Business Law, would promote various legitimate state interests.

Prior to refusing to repeal the Sunday Motor Vehicle Law, the General Assembly heard testimony from various dealerships throughout Rhode Island. The legislature was presented with evidence indicating that the demand for vehicles is inelastic – meaning it does not respond to changes in supply. As such, keeping doors open for seven as opposed to six days a week would only increase costs, not sales. These costs would disproportionately affect smaller dealerships. Furthermore, these increased costs would be passed on to the consumer, driving the price of motor vehicles upward. Testimony was also presented regarding the usefulness of allowing customers to view dealership lots without employees present. At least one dealership owner explained that he believes his customers appreciate being afforded the opportunity to inspect the selection without being approached by a salesman. The testimony also showed that some dealerships felt that the Sunday Motor Vehicle Law enabled them to hire better salesmen. Dealerships looking for help could advertise about the benefits of not having to work on Sundays. Finally, employees testified that the day off was needed to spend more time with their families. According to one witness, dealerships are already open 68 hours a week on average over only six days. The brunt of these long hours falls on the employees. Extra help or more employees are difficult to obtain as manufacturers often require certification of salespeople.

The General Assembly may or may not have relied on any of this testimony in refusing to act on four separate bills introduced that would have allowed dealerships to operate on Sundays for various amounts of time. More importantly, the General Assembly may or may not have relied on similar rationales in first passing the Sunday Motor Vehicle Law fifty-six years ago. Whether these were motivating factors is unimportant. As the United States Supreme Court has

stated, “it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. Beach Communications, 508 U.S. at 313. For these reasons, this Court holds that the Sunday Motor Vehicle Law furthers several legitimate state interests.

The Dealers have also argued that even if the Sunday Motor Vehicle Law furthered a legitimate state interest, the decision to differentiate between car dealerships and similar businesses is arbitrary and without a rational basis. The United States Supreme Court has offered guidance on this issue as well:

These restraints on judicial review have added force where the legislature must necessarily engage in a process of line-drawing. Defining the class of persons subject to a regulatory requirement -- much like classifying governmental beneficiaries -- inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration. * * * Such scope-of-coverage provisions are unavoidable components of most economic or social legislation. * * * This necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable, since the legislature must be allowed leeway to approach a perceived problem incrementally. Beach Communications, 508 U.S. at 315-316.

On that point, the Court has further explained:

The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 489 (1955).

The alleged discrimination complained of concerns the General Assembly's failure to enact similar laws similarly regulating similar industries. However, the Dealers have failed to recognize the support the Sunday Motor Vehicle Law received from competitor car dealerships. An amicus brief was presented by the Rhode Island Automobile Dealers Association in support of the Attorney General's motion. Most dealerships testifying in front of the General Assembly supported the law. Although popularity does not amount to constitutionality, nor is it a prerequisite to the passage of law, the General Assembly may have inferred from its existence that the problems presented by the dealerships were not shared by the other businesses. Whether this is true or not has not been established, but in attacking the Sunday Motor Vehicle Law as a violation of their equal protection of the laws, the burden to so prove fell upon the Dealers. It cannot be said that the Sunday Motor Vehicle Law violates equal protection or due process beyond a reasonable doubt.

An examination of the cases on point further strengthens this conclusion. As the Attorney General recognizes, the precise issue presented is far from novel; extensive case law on the topic exists to aid this Court in its inquiry as to the constitutionality of the law at hand. One of the more recently decided cases, and the most heavily cited case in this matter, involved an almost identical statutory framework. In Kittery Motorcycle, Inc., 320 F.3d 42, the plaintiff motor vehicle dealer attacked a statutory framework which, in its opinion, "in effect, single[d] out motor vehicle sales for prohibition." Kittery contended that this distinction was "utterly irrational" and could not withstand equal protection scrutiny especially in light of the fact that based on the presented justifications for the law, the real estate industry, including those who sell motor homes, should have also been subjected to the regulation. Id. The First Circuit did not

agree. Id. Rather, in upholding the Sunday closing law, the court found several problems with Kittery's argument:

First, it assumes that there must be a precise, mathematical fit between the classification and the legitimate government purpose the classification serves -- an altogether insupportable assumption given the unexacting nature of rational basis review. Second, as the state argues, the legislature could have reasonably concluded that the people of Maine are more fundamentally in need of shelter and housing than simple transportation, thereby justifying an exemption for the sale of homes, including motor homes. Or the legislature could have reasonably determined that it would be impractical to enforce a Sunday prohibition on home sales because much of a real estate broker's work takes place in the properties being shown (thus making the policing of such a prohibition overly burdensome). Or the legislature could have reasonably concluded that motor homes are used almost exclusively for recreational purposes (i.e., no one drives a motor home to work), and that the Sunday sale of motor homes therefore actually promotes Sunday as a day of rest, relaxation, and recreation. Regardless of the underlying justifications and rationales, this court is not the forum in which to weigh their respective merits. Suffice it to say that they are not so spurious as to render the statute "palpably arbitrary." Id. at 49 (quoting Nordlinger v. Hahn, 505 U.S. 1, 18, 120 L. Ed. 2d 1, 112 S. Ct. 2326 (1992)).

Similarly, in this case, there exist several possible explanations for the General Assembly's decision to distinguish car dealerships from similar businesses. The Dealerships have not alleged that the distinction was based on improper motives, or that other industries have lobbied for similar Sunday protection. Significantly, in the Kittery case, the Maine Auto Dealers Association, like its Rhode Island counterpart in this case, filed an amicus brief in support of the state and continuously opposed attempts to repeal or weaken the Maine closing law.

A similar fact patten was involved in Lakeside Imports v. State, 639 So. 2d 253 (La. 1994). In that case, the Louisiana statute forbade licensed car dealers from opening their doors on Sunday. Id. at 257. The court found "three legitimate state objectives in requiring auto dealers to close on Sundays: 1) to protect small rural dealerships from unfair competition by

large metropolitan dealerships, 2) to protect consumers from higher prices for automobiles brought on by higher overhead from Sunday sales, and 3) to protect the welfare of commissioned auto salesmen.” Id. Similar to the case at hand, testimony was presented tending to show the necessity of the law in question. Also similar to the case at hand and Kittery, the Louisiana Auto Dealers Association intervened in the suit siding with the state in defense of the statute.

The cases presented by the Dealers in support of their equal protection argument are not persuasive. Both Caldor’s, Inc. v. Bedding Barn, Inc., 177 Conn. 304 (1979) and Ashland v. Heck’s, Inc., 407 S.W.2d 421 (Ct. App. Kent. 1966) concerned statutes which made classifications based on the type of store rather than the product the store was selling. This distinction in Heck’s led to department stores being restricted on Sundays while drug stores, grocery stores, supermarkets, and car washes selling identical items were permitted to do business as usual. The statutory scheme in Caldor’s, which the Dealerships contend is “directly analogous,” similarly had the effect of allowing various types of stores to remain open on Sundays even though others selling identical products would be forced to close for the day.

In Rhode Island, all car dealerships are restricted under the Sunday Motor Vehicle Law. Under Rhode Island law, anyone selling four or more motor vehicles per year is classified as a “dealer.” See R.I.G.L. § 31-5-5. Thus, those infirmaries which caused the Supreme Court of Connecticut and the Court of Appeals of Kentucky to invalidate their states’ Sunday closing laws are simply not present here.

Each of the Dealers’ other supporting cases is similarly distinguishable. In People v. Abrahams, 40 N.Y.2d 277, 285-286 (1976), the challenged section “contain[ed] a polyglot of exceptions to the general closing mandate which [was] essentially devoid of rhyme or reason.” The court called the scheme “absurd” and a “helter-skelter collection of exceptions . . . ranging

from thoroughbreds to soda water.” Id. The “irrationality of [the statute] [was] confirmed by the conspicuous evidence of prosecutorial indifference, of popular disdain for the prohibitions of the statute and of community inappetence for its enforcement.” Id. In Ex parte Jentzsch, 112 Cal. 468 (1896), the court overturned a criminal conviction based on a law which required barbershops to close on Sundays but failed to similarly force others to close their doors. Distinguishing barbershops from all other businesses was deemed an arbitrary classification. Rutledge v. Gaylord’s, Inc., 233 Ga. 694 (1975) concerned an act which distinguished motor vehicle dealerships from garages and service stations which also sold cars. In Skag-Way Dept. Stores, Inc. v. Omaha, 179 Neb. 707 (1966), the court was careful to note that the record had failed “to disclose a reasonable classification of persons for legislation concerning them. No real differences in situation and circumstances surrounding the members of the class are shown which reasonably differentiate it from others in the same class which are not included” The court in State v. Greenwood, 280 N.C. 651 (1972) was examining a statute that restricted billiard halls from operating on Sundays. Other similar entertainment businesses went unregulated.

In citing each of the above cases for support, the Dealers fail to recognize that the primary factor in every equal protection inquiry is the classification itself. Cases concerning supermarkets, drug stores, barbershops, and pool halls are of little help in examining the decision to treat car dealerships differently from others. The rationale for the classification varies greatly among the cases and classifications. The three cases that do involve car dealerships — Rutledge, Kelly v. Blackburn, 95 So.2d 260 (Fl. 1957), and Henderson v. Antonacci, 62 So.2d 5 (Fl. 1952) — prohibited certain types of dealers from selling motor vehicles on Sundays while other dealers were allowed to conduct business. A similar factual situation is not before this Court.

At oral argument, the Dealers heavily relied on Fair Cadillac-Oldsmobile Isuzu Partnership v. Bailey, 229 Conn. 312 (Conn. 1994) as an analogous fact pattern to strongly support their position. The Court has examined Fair Cadillac extensively and concludes that, much like the other cases cited by the Dealers, it is easily distinguishable. In Fair Cadillac, the Connecticut Supreme Court struck down a car dealership Sunday closing law under the due process clause of the Connecticut Constitution. In reaching this result, the court analyzed the law as having as its sole objective a common day of rest. This interpretation was in accordance with their highest court's continued observation that such a purpose motivated their legislature in enacting the closing law. Naturally, the defending parties urged the court to consider other objectives, some of which mirror those put forth by the Attorney General in this case. In the face of such a request the court refused to "speculate as to other conceivable grounds." Id. at 321. As previously discussed, our Supreme Court in Kennedy has already expressly rejected such a narrow analysis under the rationale basis test. 654 A.2d at 712-713. Accordingly, this Court, as opposed to the Connecticut Supreme Court, has looked to other conceivable objectives in upholding the Sunday Motor Vehicle Law.

For all of these reasons, this Court holds that the Dealerships have failed to show beyond a reasonable doubt that the Sunday Motor Vehicle Law violates the equal protection clause of the United States or Rhode Island Constitution.

Void for Vagueness

The Dealers have also advanced a void for vagueness argument as the Sunday Motor Vehicle Law provides for criminal sanctions. They claim that the activity prohibited is the "sale of or the attempt to sell" motor vehicles on Sunday. The Dealers find such a prohibition ambiguous, questioning whether it would include allowing test drives; the signing of a contract;

or the financing or registration of a vehicle. The Dealers also ask whether a customer can be convicted for conspiring with a salesman, or if an employee who is showing cars on Sunday but possesses no intent to sell a car that day may be subject to penalties.

“The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Posters 'N' Things v. United States, 511 U.S. 513, 525 (1994) (quoting Kolender v. Lawson, 461 U.S. 352, 357 (1983)). In determining whether a statute is void for vagueness, a court must be mindful that “[c]ondemned to the use of words, we can never expect mathematical certainty from our language.” Grayned v. City of Rockford, 408 U.S. 104, 110 (U.S. 1972).

“Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine ‘is not actual notice, but the other principal element of the doctrine -- the requirement that a legislature establish minimal guidelines to govern law enforcement.’” Kolender, 461 U.S. at 357-358 (quoting Smith v. Goguen, 415 U.S. 566 (1974)). “Where the legislature fails to provide such minimal guidelines, a criminal statute may permit ‘a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.’” Id. (quoting Smith, 415 U.S. at 575).

In this case, the Dealers have misread the statute at issue. The Sunday Motor Vehicle Law provides that “[n]o dealer shall have *open* for the conduct of business any display room or outdoor display lot where motor vehicles are exhibited on the first day of the week, commonly called Sunday. § 31-5-19 (emphasis added). Business is defined as “the sale or attempt to sell motor vehicles.” Id. Thus, as the statute makes clear, the prohibited activity is *having the*

business open in order to sell or attempt to sell a motor vehicle. This Court finds that allowing a potential customer to drive an automobile, sign a contract, or register a vehicle are all clearly within the parameters of the statutory prohibition so long as the dealership is open. This Court also finds that a customer could not be prosecuted under the plain language of the statute as the customer has no authority to open the business. The unambiguousness of the law, coupled with the limited legal analysis advanced by the Dealers, compels this Court to conclude that the Sunday Motor Vehicle Law is not void for vagueness. Such a decision makes any discussion of the standing issue raised by the Attorney General unnecessary.

Establishment and Free Exercise of Religion

The Dealers' final argument, concerning the establishment of religion, does not require extensive discussion as this precise issue has been decided time and time again by the United States Supreme Court. "[T]he Establishment Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." McGowan v. Maryland, 366 U.S. 420, 442 (U.S. 1961). In that case, the court noted that:

[i]n light of the evolution of our Sunday Closing Laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is not difficult to discern that as presently written and administered, most of them, at least, are of a secular rather than of a religious character, and that presently they bear no relationship to establishment of religion as those words are used in the Constitution of the United States. Id. at 444.

As such, the Supreme Court held that the Sunday closing law was not an establishment of religion. Again, considering the Supreme Court's words and the cursory analysis provided by the Dealers, this Court concludes the Sunday Motor Vehicle Law does not violate the Establishment Clause.

Although not explicitly articulated, an argument regarding the free exercise of religion has also been obliquely raised by the Dealers. They claim to have owners or employees who observe a Saturday Sabbath. As such, they could be forced to close all weekend. The Dealers also seem concerned about those who will not be able to purchase a vehicle all weekend due to their Saturday Sabbath. However, identical arguments were advanced and subsequently rejected in both Gallagher v. Crown Koshier Super Market, Inc., 366 U.S. 617, 630-631 (U.S. 1961) and Braunfeld v. Brown, 366 U.S. 599 (U.S. 1961). The Dealers have failed to prove beyond a reasonable doubt that the Sunday Motor Vehicle Law violates the First Amendment of the United States or Rhode Island Constitution.

Conclusion

For the above mentioned reasons, this Court declares the Sunday Motor Vehicle Law to be valid and constitutional. Accordingly, the Attorney General's motion for summary judgment is hereby granted and the Dealers' cross-motions for summary judgment are hereby denied.