SUNDAY BLUES: HOW RECONTEXTUALIZING AND REVIVING BLUE LAWS PROMISES TO PROMOTE A NONSECTARIAN VISION OF THE PUBLIC GOOD

Wyatt English[*]

Abstract

Over the last several years, economic anxiety has reached a fever pitch. Pressed on all sides by inflation, an increasingly inaccessible job market, and a rapidly evolving economy, many Americans have been forced to work multiple jobs to make ends meet. Stretched thin in an attempt to survive and provide, low-skilled, low-wage workers are too often forced to forfeit rest, relaxation, recreation, and time with loved ones. While economic stress has always been a part of life, the prospect of a never-ending workweek is a relatively new phenomenon in the United States. At the nation's Founding, every state had a "blue law," prohibiting work on Sunday and guaranteeing workers a uniform day of rest. As recently as the 1980s, dozens of states maintained these protections, ensuring their laborers had time to spend as they pleased.

Blue laws were originally predicated on a widespread cultural and religious conviction that valued observing Sunday as a day of rest. Consequently, most blue laws served an explicitly religious purpose. In 1961, the Supreme Court held that blue laws that served a religious purpose violated the First Amendment's Establishment Clause and the Fourteenth Amendment's Equal Protection Clause. Because the vast majority of blue laws served religious ends, they largely vanished from public life. Additionally, the few surviving blue laws have been criticized as potentially subject to congressional preemption and poor economic policy.

Thus, this Note argues that states should revive and recontextualize blue laws as nonsectarian tools to promote the public good by protecting low-skilled, low-wage workers from a degrading labor market. By implementing explicitly areligious blue laws, states can realize the benefits of a uniform day of rest without inviting constitutional challenges. Toward that end, this Note proposes a model framework wherein states set a

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uniform day of rest and allow local municipalities the option of selecting an alternative uniform day of rest. The proposal is deeply rooted in this nation's history and tradition of blue laws but improves upon the past by alleviating issues with the Establishment Clause, the Equal Protection Clause, and preemption. Additionally, it argues that states should adopt secular blue laws because they are good public policy. In sum, this Note's proposed framework provides states with a secular model to protect their workers by drawing on this nation's history and tradition of blue laws to guarantee a uniform day of rest.

INTRODUCTION 881

I. THE UNITED STATES' HISTORY AND TRADITION OF BLUE LAWS 889
A. *Prohibitions on the Sale of Alcohol* 894
B. *Narrow Sunday Closing Laws* 896
C. *Broad Sunday Closing Laws* 897

II. THE FALL OF BLUE LAWS 898
A. *Challenges Based on the Establishment Clause* 899
B. *Challenges Based on the Equal Protection Clause* 902
C. *Challenges Based on Federal Preemption* 903
D. *Challenges Based on Policy Arguments* 904

III. REVIVING AND RECONTEXTUALIZING BLUE LAWS 905
A. *A Proposal from the United States' History and Tradition of Blue Laws* 906
B. *Blue Laws Satisfy Key Labor Interests* 907
1. Blue Laws Improve Workers' Quality of Life 908
2. Blue Laws Promote Solidarity 909
3. Blue Laws Promote Equity 910
C. *Responses to Criticisms of Blue Laws* 910
1. Nonsectarian Blue Laws Do Not Violate the Establishment Clause 911
2. Nonsectarian Blue Laws Do Not Violate the Equal Protection Clause 912
3. Preemption Does Not Threaten Nonsectarian Blue Laws 913

4. Nonsectarian Blue Laws Are Good Public Policy 914

CONCLUSION 916

INTRODUCTION

There exists in such a case a certain institution or law; let us say, for the sake of simplicity, a fence or gate erected across a road. The more modern type of reformer goes gaily up to it and says, "I don't see the use of this; let us clear it away." To which the more intelligent type of reformer will do well to answer: "If you don't see the use of it, I certainly won't let you clear it away. Go away and think. Then, when you can come back and tell me that you do see the use of it, I may allow you to destroy it."[1]

— G.K. Chesterton

Over the past several years, economic anxiety has reached record highs.[2] Boxed in by rising costs of living,[3] a labor market lacking accessible high-wage opportunities,[4] and a rapidly changing economy, many Americans are working two, three, or even four jobs.[5] Facing pressures on all sides, the United States' working poor are too often forced to sacrifice rest, recreation, and family time—the very things that make life worth living and, indeed, what work is supposed to support. Low-wage workers tend to have the least power to negotiate for a day off and face the most incentives to take subprime shifts at the

1. G.K. CHESTERTON, THE THING: WHY I AM A CATHOLIC 27 (1930).

2. *Stress in America 2022*, AM. PSYCH. ASS'N (Oct. 2022), https://www.apa.org/news/press/releases/stress/2022/concerned-future-inflation [https://perma.cc/QZ8Z-U33U] (finding that 83%, 69%, and 66% of American adults considered inflation, the economy, and money, respectively, to be "significant" sources of stress in 2022).

3. Juliana Kaplan & Madison Hoff, *It's Getting Really Hard to Find a Job That Pays Well*, BUS. INSIDER (May 3, 2024, at 14:13 ET), https://www.businessinsider.com/economy-adding-low-paying-healthcare-retail-jobs-high-wages-scarce-2024-5 [https://perma.cc/57D2-Y2TZ].

4. Joshua Rhett Miller, *More Than a Third of Americans Have Second Jobs: 'It's Been Tough for Sure,'* NEWSWEEK (Aug. 6, 2024, at 15:07 ET), https://www.newsweek.com/americans-side-hustles-survey-1930416 [https://perma.cc/ZH94-G8KC].

5. Daniel de Visé, *When Just One Job Isn't Enough: Why are a Growing Number of Americans Taking on Multiple Gigs?*, USA TODAY (Nov. 6, 2023, at 10:41 ET), https://www.usatoday.com/story/money/2023/11/03/more-americans-working-multiple-jobs-under-inflation/71441008007/ [https://perma.cc/5PPE-5Y3E].

expense of their other interests.[6] These workers have been forced into this perilous position because the guardrails that protected their right to a day of rest have disappeared. It seems that Chesterton's Fence has been too hastily removed.[7]

As recently as 1985,[8] twenty-two states had laws protecting a shared day off common to the community.[9] These laws, a subset of so-called "blue laws," were initially derived from religious respect for Sunday as a holy day of rest.[10] Blue laws tended to fall into three categories: laws restricting the sale of alcohol on Sunday,[11] laws targeting specific industries for closure on Sunday,[12] and laws broadly requiring businesses to cease operations on Sunday.[13] Because blue laws violated the Establishment Clause of the First Amendment,[14] the Supreme Court struck down most of them.[15] Consequently, the guardrails that protected a day of rest for the working poor have disappeared.[16] Now, an opportunity exists to recontextualize the history and tradition of blue laws in the United States.[17] By adopting a nonsectarian blue law,[18] states, counties, and towns may take advantage of the Court's precedent to protect low-wage workers by guaranteeing a day of rest and recreation, not

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6. Adewale Maye & Asha Banerjee, *The Struggles of Low-Wage Work*, CTR. FOR L. & SOC. POL'Y (June 16, 2021), https://www.clasp.org/publications/fact-sheet/struggles-low-wage-work-0/ [https://perma.cc/TD76-SKGF].

7. *See* CHESTERTON, *supra* note 1.

8. Tyler Giles, Daniel M. Hungerman & Tamar Oostrom, *Deaths of Despair and the Decline of American Religion*, 24 J. EUR. ECON. ASS'N 885, 904 (2025).

9. *See, e.g.*, ALA. CODE § 13A-12-2 (1982) (repealed 2015); KY. REV. STAT. ANN. § 436.160 (1985); LA. STAT. ANN. § 51:191 (1984); ME. STAT. tit. 16-17, § 17-3204 (1985); MASS. GEN. LAWS ch. 136, § 2 (1985); W. VA. CODE § 61-10-25 (1964) (repealed 2010); *see also* DAVID N. LABAND & DEBORAH HENDRY HEINBUCH, BLUE LAWS: THE HISTORY, ECONOMICS, AND POLITICS OF SUNDAY-CLOSING LAWS 49–53 (1987) (listing states with broad and specific blue laws in the 1980s).

10. *See infra* Part I.

11. *See infra* Section I.A. While a uniform day off might still effectively recognize a denominational preference, see *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238 (2025), after *Kennedy v. Bremerton School District*, which abrogated the *Lemon* test, courts generally look to historical practices when evaluating potential Establishment Clause violations. 597 U.S. 507, 535–36 (2022). Under that framework, a court is much more likely to uphold a modern blue law regime.

12. *See infra* Section I.B.

13. *See infra* Section I.C.

14. U.S. CONST. amend. I.

15. McGowan v. Maryland, 366 U.S. 420, 445 (1961).

16. *See* CHESTERTON, *supra* note 1.

17. *See infra* Section III.A.

18. *McGowan*, 366 U.S. at 445.

for religious ends but to promote a nonsectarian vision of the public good.[19]

For decades, the share of people in the United States who identify as "atheist, agnostic, or 'nothing in particular'" has grown.[20] But this is a fairly recent development. While the United States has always harbored a religious pluralism,[21] it was previously axiomatic that belief in a divine, transcendent, ultimate reality—whether the monotheistic God of Roger Williams or the diffuse deity of Thomas Jefferson[22]—informed the structure and assumptions of civil society.[23] As early as the fifteenth century, settlers in the colonies, which would become the United States, framed their struggle to build a life in the New World in religious parlance.[24] Even as they came to North America to build a new and better life, they tended to

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19. *Id.*

20. Gregory A. Smith & Alan Cooperman, *Has the Rise of the Religious 'Nones' Come to an End in the U.S.?*, PEW RSCH. CTR. (Jan. 24, 2024), https://www.pewresearch.org/short-reads/2024/01/24/has-the-rise-of-religious-nones-come-to-an-end-in-the-us/ [https://perma.cc/LG4L-UUSU].

21. *See generally* DEP'T OF THE INTERIOR, CENSUS OFF., REPORT ON STATISTICS OF CHURCHES IN THE UNITED STATES AT THE ELEVENTH CENSUS (1890) (finding that around 33% of Americans were members of a religious congregation and detailing the number of communicants per denomination); DEP'T OF COM. & LAB. BUREAU OF THE CENSUS, RELIGIOUS BODIES (1906) (surveying 186 religious denominations that represented nearly 33 million communicants); DEP'T OF COM. & LAB. BUREAU OF THE CENSUS, RELIGIOUS BODIES (1916) (demonstrating that religious Americans numbered nearly 42 million in 1916); DEP'T OF COM. & LAB. BUREAU OF THE CENSUS, CENSUS OF RELIGIOUS BODIES (1926) (reporting the presence of 212 denominations and nearly 55 million religious Americans); DEP'T OF COM., BUREAU OF THE CENSUS, RELIGIOUS BODIES (1936) (detailing 256 denominations and reporting nearly 56 million religious Americans); NAT'L COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A. BUREAU OF RSCH. AND SURV., CHURCHES AND CHURCH MEMBERSHIP IN THE UNITED STATES: AN ENUMERATION AND ANALYSIS BY COUNTIES, STATES, AND REGIONS (1956) (finding that over 74 million Americans were members of a religious faith).

22. *See generally* Cory D. Higdon, *Roger Williams, Natural Law, and Religious Liberty*, 63 J. CHURCH & STATE 85, 86 (2020) (arguing Williams's construction of natural law derived from his understanding of the *imago Dei*); J. Lesslie Hall, *The Religious Opinions of Thomas Jefferson*, 21 SEWANEE REV. 164 (1913) (describing Jefferson's belief in an impersonal, benevolent deity).

23. CHARLES TAYLOR, A SECULAR AGE 3 (2007) (arguing previous generations perceived the world as an enchanted place, full of spiritual energy, and that modern secularism has disenchanted the world, even for people of faith).

24. *See, e.g.*, EDWARD WINSLOW, GOOD NEWES FROM NEW ENGLAND: A TRUE RELATION OF THINGS VERY REMARKABLE AT THE PLANTATION OF PLIMOTH IN NEW ENGLAND 3 (Applewood Books 1996) (1624) (claiming God was providentially working in the colonies and calling the colonists to join in his work); WILLIAM BRADFORD, OF PLYMOUTH PLANTATION 25–26 (Harvey Wish ed., Paragon Books 1979) (1651) (describing how many colonists sought a life in the New World because of the chance it represented to worship freely).

"subordinate [their activities] to God's will, as served by hierarchy, order, and Christian communalism."[25] Consequently, it is unsurprising that the documents upon which the nation was founded, including the Mayflower Compact,[26] prerevolutionary colonial governing documents,[27] the Declaration of Independence,[28] the Articles of Confederation,[29] each of the original colonies' state

25. Mark McGarvie & Elizabeth B. Mensch, *Law and Religion in Colonial America*, *in* 1 EARLY AMERICA, CAMBRIDGE HISTORY OF AMERICAN LAW (1580–1815) 324, 326 (Michael Grossberg & Christopher Tomlins eds., 2008).

26. The Mayflower Compact, *reprinted in* COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION: A DOCUMENTARY HISTORY 49 (Donald S. Lutz ed., Liberty Fund 1998) ("*IN the Name of God, Amen.* We whose Names are under-written . . . . Having undertaken for the glory of God, and advancement of the Christian Faith, and the Honour of our K[i]ng and Country, a Voyage to plant the first Colony in the Northern parts of *Virginia*; Do by these Presents, solemnly and mutually, in the presence of God and one another, Covenant and Combine our selves together into a Civil Body Politick, for our better ordering and preservation, and furtherance of the ends aforesaid: and by virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general good of the Colony; unto which we promise all due submission and obedience.").

27. *See, e.g.*, 4 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 395 (Nathaniel B. Shurtleff ed., 1854) (prohibiting, generally, work not done out of "piety, of charity, or of necessity" in Massachusetts Bay in 1668); RECORDS OF THE COLONY AND PLANTATION OF NEW HAVEN FROM 1638 TO 1649 358 (Charles J. Hoadly ed., 1857) ("[W]hosoever shall, within his plantation, break the Sabbath by doing any of their ordinary outward occasions . . . works of mercy and necessity being excepted, he shall be counted an offender, and shall suffer such punishment as the particular court shall judge meet, according to the nature of his offense." (spelling modified)); 3 RECORDS OF THE COLONY OF RHODE ISLAND, AND PROVIDENCE PLANTATIONS, IN NEW ENGLAND 1678 TO 1706 30–31 (John Russell Bartlett ed., 1858) (prohibiting laboring or causing others to labor on Sunday); WILLIAM WALLER HENING, 1 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 144 (1823) ("[S]ee that the Sabbath day be not ordinarily profaned by working in any employments or by journeying from place to place." (spelling modified)); *see also* A.H. LEWIS, A CRITICAL HISTORY OF SUNDAY LEGISLATION FROM 321 TO 1888 A.D. 161–208 (1888) (detailing colonial and early state blue laws).

28. THE DECLARATION OF INDEPENDENCE paras. 1–2 (U.S. 1776) ("When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them . . . . We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights . . . .").

29. ARTICLES OF CONFEDERATION of 1777, art. III ("[B]inding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.").

constitutions,[30] and the United States Constitution,[31] are

30. CONN. CONST. of 1818, pmbl. ("The People of Connecticut, acknowledging with gratitude the good providence of God, in having permitted them to enjoy a free government . . . ."); DEL. CONST. of 1776, art. 22 ("Every person, who shall be chosen a Member of either House, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation if conscientiously scrupulous of taking an oath, *to wit*. . . . *I* A. B. *do profess faith in God the Father, and in Jesus Christ his only son, and in the Holy Ghost, one God blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration*."); GA. CONST. of 1777, art. VI ("The representatives shall be chosen out of the residents in each county, . . . [a]nd they shall be of the protestant religion . . . ."); MD. CONST. of 1776, art. 33 ("That as it is the duty of every man to worship GOD in such manner as he thinks most acceptable to him . . . ."); ME. CONST. of 1819, pmbl. ("WE the people of Maine . . . acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity so favorable to the design; and imploring his aid and direction . . . ."); ME. CONST. of 1819, art. I, § 3 ("All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences . . . ."); MASS. CONST. of 1780, pmbl. ("WE, therefore, the People of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the universe, in affording us, in the course of his providence . . . ."); N.C. CONST. of 1776, art. XIX ("That all men have a natural and unalienable right to worship almighty God according to the dictates of their own conscience."); N.H. CONST. of 1784, pt. I, art. V ("Every individual has a natural and unalienable right to worship GOD according to the dictates of his own conscience . . . ."); N.H. CONST. of 1784, pt. I, art. VI ("[M]orality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these, is most likely to be propagated through a society by the institution of the public worship of the DEITY . . . ."); N.J. CONST. of 1844, pmbl. ("WE, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy . . . ."); N.Y. CONST. of 1777, pmbl. ("[A]ppealing to the Supreme Judge of the world, for the rectitude of our intentions, do, . . . with a firm reliance on the protection of Divine Providence, . . . mutually pledge to each other, our lives, our fortunes, and our sacred honour."); PENN. CONST. of 1776, pmbl. ("[A]ll government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the author of existence has bestowed upon man . . . ."); R.I. CONST. of 1842, pmbl. ("WE, the people of the state of Rhode-Island and Providence Plantations, grateful to Almighty God . . . ."); S.C. CONST. of 1895, pmbl. ("We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same."); VT. CONST. of 1777, pmbl. ("WHEREAS, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man . . . ."); VA. CONST. of 1776, § 16 ("That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and

replete with references to God, faith, and religion. Even as the concept of a "wall of separation between church and state" began to shape the contours of civil society,[32] religion remained a constant force, mediating and supporting the peculiar nature of American democracy.[33] Within this framework, all thirteen of the original states maintained broad prohibitions against most activities, economic or otherwise, on Sundays.[34] Similarly, a large majority of states admitted to the Union adopted blue laws.[35]

While the First Amendment declares that "Congress shall make no law respecting an establishment of religion,"[36] a long history exists of the state partnering with religious institutions to promote public goods.[37] Indeed, philosophers and theologians

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that it is the mutual duty of all, to practice Christian forbearance, love and charity towards each other.").

31. U.S. CONST. art. VI, cl. 3; *id.* amend. I.

32. *See* John M. Barry, *God, Government and Roger Williams' Big Idea*, SMITHSONIAN MAG. (Jan. 2012), https://www.smithsonianmag.com/history/god-government-and-roger-williams-big-idea-6291280/ [https://perma.cc/573D-M62K]; Letter from Thomas Jefferson to the Danbury Baptists (Jan. 1, 1802), https://www.loc.gov/loc/lcib/9806/danpre.html [https://perma.cc/7Y8A-SFFR] (discussing the nature of American religious pluralism with the founder of Rhode Island). The meaning of this phrase is contested. *Contrast* Reynolds v. United States, 98 U.S. 145, 164 (1878) ("I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State."), *with* PHILIP HAMBURGER, SEPARATION OF CHURCH AND STATE 480 (2002) ("Separation became a substantial part of American conceptions of religious liberty only in the nineteenth and twentieth centuries, when Americans felt growing fears of churches, especially the Catholic Church.").

33. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 287–90 (J.P. Mayer ed., George Lawrence trans., HarperCollins ed. 2006) (1835).

34. *See* THE PUBLIC RECORDS OF CONNECTICUT FROM MAY, 1717, TO OCTOBER, 1725, at 248–49 (1872); 2 LAWS OF THE STATE OF DELAWARE 1209 (1797); GEORGIA COLONIAL LAWS 17TH. FEBRUARY 1755–10TH. MAY 1770, at 140–43 (1932); 16 BACON'S LAWS OF MARYLAND ch. 16 §10 (1765); 2 THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS 536–38 (1801); 1 LAWS OF NEW HAMPSHIRE 17–18 (1904); ACTS OF THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW-JERSEY 3 (1773); LAWS OF NEW YORK FROM 1691, TO 1751, at 22–23 (1851); THE LAWS OF THE PROVINCE OF PENNSYLVANIA 35–36 (1714); A COMPLETE REVISAL OF ALL THE ACTS OF ASSEMBLY OF THE PROVINCE OF NORTH-CAROLINA 68 (1773); ACTS AND LAWS OF HIS MAJESTY'S COLONY OF RHODE-ISLAND AND PROVIDENCE PLANTATIONS IN AMERICA 27 (1730); JOHN MERCER, AN EXACT ABRIDGEMENT OF ALL THE PUBLIC ACTS OF ASSEMBLY OF VIRGINIA, IN FORCE AND USE 320 (1759).

35. LABAND & HEINBUCH, *supra* note 9, at 49.

36. U.S. CONST. amend. I.

37. John Witte, Jr., *The Integration of Religious Liberty*, 90 MICH. L. REV. 1363,

of various stripes have long recognized that the spheres of religion and state may occasionally benefit from jointly coordinating in pursuit of common ends.[38] In this spirit of collaboration, states passed laws supporting and establishing churches,[39] collecting taxes to be spent on designated religious activities,[40] and prohibiting work on Sundays out of respect for the Sabbath.[41] As the nation became more pluralistic, the shared assumptions that buttressed these religious laws eroded, and in turn, establishment legislation,[42] fiduciary support for religious activity,[43] and Sabbath laws were repealed.[44]

Surely, the modern pluralistic United States should not maintain every law previously based on the religious convictions of the Founding generation. Blasphemy laws,[45] established state churches,[46] and systems of compulsory taxation to support religious work have rightly receded from public life.[47] At the same time, the state continues to coordinate closely with religious institutions to promote things such as

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1364 (1992); *see also* Bowen v. Kendrick, 487 U.S. 589, 609 (1988) (describing a "long history of cooperation and interdependency between governments and charitable or religious organizations").

38. *See, e.g.*, AUGUSTINE: CITY OF GOD, *reprinted in* 2 NICENE AND POST-NICENE FATHERS FIRST SERIES 19.21 (Philip Schaff ed., Marcus Dods trans., Hendrickson Publishers 1887) (426) (describing how religious and secular entities are uniformly interested in promoting justice).

39. AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 32–33 (1998).

40. THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE STATES, TERRITORIES, AND COLONIES NOW OR HERETOFORE FORMING THE UNITED STATES OF AMERICA 1689 (Francis Newton Thorpe ed., 1909).

41. *See infra* Part I.

42. *See, e.g.*, John Witte, Jr. & Justin Latterell, *The Last American Establishment: Massachusetts, 1780–1833*, *in* DISESTABLISHMENT AND RELIGIOUS DISSENT: CHURCH-STATE RELATIONS IN THE NEW AMERICAN STATES, 1776–1833, 399, 408 (Carl H. Esbeck & Jonathan J. Den Hartog eds., 2019) (discussing Massachusetts's establishment of a state church).

43. Sch. Dist. of Grand Rapids v. Ball, 473 U.S. 373, 385 (1985), *overruled by* Agostini v. Felton, 521 U.S. 203 (1997).

44. Lesley Lawrence-Hammer, *Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws Under the Establishment Clause*, 60 VAND. L. REV. 1273, 1275–76 (2007).

45. Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 529 (1952).

46. U.S. CONST. amend. I (prohibiting enactment of law to establish religion); *id.* amend. XIV (incorporating the Constitution against the states).

47. *Ball*, 473 U.S. at 385; *see also* Nicole Stelle Garnett & Patrick E. Reidy, *Religious Covenants*, 74 FLA. L. REV. 821, 828 (2022) (highlighting that while establishing a state religion is prohibited, using the state's power to enforce a religious covenant is usually permissible).

charity,[48] foster care, adoption,[49] and refugee resettlement[50]—prosocial programs that appear unproblematic even from the standpoint of a pluralistic society.

Between these extremes lie old traditions, such as blue laws. The reason for adhering to them may not be obvious because the assumptions that established them have long receded. Yet it may be the case, as with Chesterton's Fence, that blue laws were rashly removed.[51] Modern reformers who struck down blue laws failed to appreciate the cultural wisdom of providing workers with a uniform day off.[52] Within that context, we should reevaluate, recontextualize, and revive blue laws so that their areligious contributions to the public welfare may be reclaimed.[53]

Indeed, Supreme Court precedent has opened an opportunity to rebuild the protections blue laws offered workers without grounding them in their original religious justifications.[54] Blue laws are "statute[s] regulating or prohibiting commercial activit[ies] on Sundays."[55] In the early days of the Republic, blue laws were widespread and approved by the Supreme Court,[56] which later struck them down because of their basis in religion.[57] In striking down religious blue laws, the Supreme Court created a narrow exception that allows blue

48. Bowen v. Kendrick, 487 U.S. 589, 609 (1988) (describing a "long history of cooperation and interdependency between governments and charitable or religious organizations").

49. Fulton v. City of Philadelphia, 593 U.S. 522, 553 (2021).

50. Bill Chappell, *Churches Have a Long History of Being Safe Havens—for Immigrants and Others*, NPR (Jan. 26, 2025, at 06:03 ET), https://www.npr.org/2025/01/26/nx-s1-5273652/church-safe-haven-history-immigrants [https://perma.cc/6575-ATZC].

51. *See* CHESTERTON, *supra* note 1.

52. *See* Edmund Burke, *Reflections on the Revolution in France*, *in* 8 THE FRENCH REVOLUTION 1790–1794, THE WRITINGS AND SPEECHES OF EDMUND BURKE 53, 54 (L.G. Mitchell ed., 1990) (warning against the dangers of rashly abandoning tradition in the pursuit of reform or revolution).

53. *See infra* Section III.A.

54. McGowan v. Maryland, 366 U.S. 420, 506–07 (1961) (Frankfurter, J., concurring) ("[A] legislature might reasonably believe [a Sunday closing law], is necessary to the welfare of those who for many generations have been accustomed to its recuperative effects."); *see also* Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. 449, 463 (2017) (noting that the church "is a member of the community too").

55. *Blue Law*, BLACK'S LAW DICTIONARY (12th ed. 2024).

56. Soon Hing v. Crowley, 113 U.S. 703, 710–11 (1885).

57. Note, *State Sunday Laws and the Religious Guarantees of the Federal Constitution*, 73 HARV. L. REV. 729, 729 (1960). In the wake of *Kennedy v. Bremerton School District*, a court might now conclude that the Establishment Clause supports blue laws. 597 U.S. 507, 543 (2022).

laws to survive if they promote an areligious public good.[58] This exception has, so far, remained largely underutilized.[59]

Part I of this Note explores the nation's history and tradition of blue laws. Section I.A catalogs the most limited type of blue laws, those that prohibit the sale of alcohol on Sunday. Section I.B describes narrow Sunday closing laws targeted at specific industries. Section I.C explores the broadest category of blue laws, statutory schemes prohibiting most economic activity on Sunday. Part II describes the legal and policy issues that precipitated the fall of blue laws. Section II.A evaluates judicial precedent relating to blue laws and the Establishment Clause. Section II.B considers challenges levied against blue laws under the Equal Protection Clause. Section II.C discusses federal preemption challenges to blue laws. Section II.D reviews policy arguments that have been used to attack blue laws. Finally, Part III argues that blue laws should be revived and recontextualized within the Court's exception and as a new front of the labor struggle. Section III.A proposes a model blue law statute for states and municipalities that is grounded in the nation's history and tradition of blue laws. Section III.B identifies how the model statute advances key labor interests. Section III.C responds directly to the legal and economic challenges that have historically been raised against blue laws. In so doing, this Note charts a path for subsequent scholarship and advocacy, identifying how an appeal to history and tradition might be used to reexamine, recontextualize, and revive former religious laws from a nonsectarian standpoint, thus allowing their traditional benefits to be recaptured.[60]

I. THE UNITED STATES' HISTORY AND TRADITION OF BLUE LAWS

Blue laws were originally developed as a way of enforcing a societal agreement to respect the Christian Sabbath by prohibiting certain kinds of economic activity on an agreed-upon day of the week, usually Sunday.[61] The concept of a

58. *McGowan*, 366 U.S. at 445.

59. *See Trinity Lutheran*, 582 U.S. at 460, 461 n.2; Espinoza v. Mont. Dep't of Revenue, 591 U.S. 464, 488–89 (2020); Braunfeld v. Brown, 366 U.S. 599, 608–09 (1961).

60. *See Nonsectarian*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Not affiliated with or limited to any particular religious group or its beliefs."); *Sectarian*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Of, relating to, or involving a particular religious sect . . . ."). Thus, the nonsectarian benefits of blue laws are those that come from protecting a uniform day of rest for workers.

61. *State Sunday Laws and the Religious Guarantees of the Federal Constitution*, *supra* note 57.

Sabbath, or day of rest, has deep roots in the Jewish and Christian faiths.[62] In those faiths, God ordained the Sabbath after completing the work of creation.[63] Having labored for six days to create the universe and everything in it, God rested on the seventh day, the Sabbath.[64] Critically, both faith traditions hold that God rested not because he needed rest but to demonstrate to humanity that they, as creatures made in His image,[65] were designed to follow that pattern of observing a day of rest at the end of a week of work.[66]

Sabbath observance was so important that it was codified as the Fourth Commandment in the Mosaic Decalogue.[67] The Fourth Commandment is the longest of the commandments, likely because of how difficult it would be to keep.[68] The contours of Sabbath observance were further defined in Leviticus, where Hebraic law prescribed keeping the Sabbath as a way of acknowledging God's holiness,[69] partaking in a feast of "solemn rest, a holy convocation,"[70] and relying on the Lord's provision.[71] This framework was reiterated in Deuteronomy, which commands God's people to rest and to cause no one else

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62. BREVARD S. CHILDS, THE BOOK OF EXODUS 415–17 (1974).

63. *Genesis* 2:2–3.

64. *Id.*

65. *Id.* at 1:26; Gordon J. Wenham, GENESIS 1–15, *in* 1 WORLD BIBLICAL COMMENTARY 39 (David A. Hubbard & Glenn W. Barker eds., 1987).

66. Wenham, *supra* note 65. Consequently, it is unsurprising that observing a weekly day of rest conveys significant, measurable benefits to people and societies that prioritize taking time away from work. *See infra* notes 247–50 and accompanying text. While Sabbath observance and blue laws have both waned in the United States over the past several decades, see *infra* Part II, the practice of some industry leaders indicates a recognition of the value of observing a uniform day of rest. *See, e.g.*, *infra* notes 287–89; Kenneth Chang, Katrina Miller & Thomas Fuller, *Artemis II Astronauts Head Home After Historic Journey Around the Moon*, N.Y. TIMES (Apr. 7, 2026), https://www.nytimes.com/2026/04/06/science/space/nasa-artemis-moon-flyby.html [https://perma.cc/2FDT-4KMN] ("On the seventh day, the astronauts will mostly rest."); *see also* Lauren E. Low, *NASA's Artemis II Moon Mission Daily Agenda*, NASA (Mar. 13, 2026), https://www.nasa.gov/missions/artemis/nasas-artemis-ii-moon-mission-daily-agenda/ [https://perma.cc/YD5R-CJL7] (describing how the astronauts were "largely off-duty" on the seventh day of their mission, with the exception of a few necessary course corrections, so that they had "a chance to rest before jumping back into their final tasks before their return to Earth.").

67. *Exodus* 20:8.

68. John I. Durham, EXODUS, *in* 3 WORLD BIBLICAL COMMENTARY 288 (Bruce M. Metzger, David A. Hubbard & Glenn W. Barker eds., 1987); *see also Amos* 8:4–8 (relating Israel's desire to engage in economic activity on the Sabbath).

69. *Leviticus* 19:3.

70. *Id.* at 23:3.

71. *Id.* at 25:1–8 (discussing a related concept, the Sabbath year).

in their sphere of influence to work.[72] Conversely, while the Sabbath is to be a day of rest, the Fourth Commandment encourages productivity during the working week.[73] In accordance with these laws, the Jewish faith prescribes observing the Sabbath from sundown on Friday until sundown on Saturday.[74] Throughout the Old Testament, the principle remained that the Sabbath was for the benefit of humanity, and indeed, it was to be a "delight" to observe it by abstaining from work.[75]

In the New Testament, Jesus was chastised by elements of the religious elite for healing a man who could not walk,[76] a man with a withered hand,[77] and a blind man on the Sabbath.[78] In response to these critiques, Jesus retorted, "The Sabbath was made for man, not man for the Sabbath."[79] Thus, Jesus established a limiting principle: "When considering specific questions concerning what God's people can and cannot do on the Sabbath, man (*anthrōpon*) whom God has created is more important than the Sabbath."[80] To that end, Jesus invited his followers to find the truest realization of Sabbath rest in communion with him.[81] After his death and resurrection,

72. For a reiteration of the Decalogue from *Exodus* 20, see *Deuteronomy* 5:12–15 ("On [the Sabbath] you shall not do any work, you or your son or your daughter or your male servant or your female servant, or your ox or your donkey or any of your livestock, or the sojourner who is within your gates, that your male servant and your female servant may rest as well as you. You shall remember that you were a slave in the land of Egypt, and the LORD your God brought you out from there with a mighty hand and an outstretched arm. Therefore the LORD your God commanded you to keep the Sabbath day.").

73. Duane L. Christensen, DEUTERONOMY 1:1–21:9, *in* 6A WORLD BIBLICAL COMMENTARY 119 (Bruce M. Metzger, David A. Hubbard & Glenn W. Barker eds., 2001).

74. *Leviticus* 23:32.

75. *Isaiah* 58:13. The Hebrew Bible also provides that the weekly Sabbath cycle would be observed in a meta-cycle every seven years, the Sabbath Year, and in a meta-meta cycle after seven sevens, the Jubilee Year, driving home the importance of rest and reset in the Jewish and Christian faiths. *See generally* Christopher D. Hampson, *The Spirit of Jubilee*, 51 BYU L. REV. 1251 (2026) (exploring the spirit of Jubilee as an inspiration for equality and justice).

76. *John* 5:1–18.

77. *Matthew* 12:9–13; *Mark* 3:1–6; *Luke* 6:6–11.

78. *John* 9:1–35.

79. *Mark* 2:27.

80. Eckhard J. Schnabel, MARK: AN INTRODUCTION AND COMMENTARY, *in* 2 TYNDALE NEW TESTAMENT COMMENTARIES 77 (2017).

81. *Matthew* 11:28–30 ("Come to me, all who labor and are heavy laden, and I will give you rest. Take my yoke upon you, and learn from me, for I am gentle and lowly in heart, and you will find rest for your souls. For my yoke is easy, and my burden is light.").

Jesus's followers began observing the Sabbath on Sunday,[82] the day he rose from the grave.[83] As Christianity spread across the Roman Empire, it expanded beyond the ethnically Jewish community from whence it sprung and quickly became a diverse, pluralistic, multiethnic faith.[84] Consequently, many of the early converts did not have a preexisting connection with or understanding of Jewish Sabbath traditions.[85] Writing to this pluralistic faith community, the Apostle Paul, an expert in Hebraic law who had personally kept the law before converting,[86] recommended a more flexible observation of the Sabbath than had traditionally been prescribed.[87] Still, the early church maintained a respect for the principle of Sabbath rest.[88] Eventually, Emperor Constantine, a convert to Christianity, issued the first Sabbath law in 321, which said the following: "Let all judges, the people of cities, and those employed in all trades, remain quiet on the Holy Day of Sunday."[89] While Sunday may have initially corresponded with a pagan day of rest,[90] subsequent proclamations explicitly linked the law to the Christian Sabbath.[91]

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82. *But see* G. Merlin Kretschmar, *Of the Principles of Seventh-Day Adventists*, N.Y. TIMES (Dec. 7, 1982), https://www.nytimes.com/1982/12/07/opinion/l-of-the-principles-of-seventh-day-adventists-081131.html [https://perma.cc/M7R4-SBGY] (describing how Seventh-Day Adventists observe the Sabbath on Saturday).

83. *Acts* 20:7 ("On the first day of the week, when we were gathered together to break bread, Paul talked with them, intending to depart on the next day, and he prolonged his speech until midnight."); *see also* THE COUNCIL OF LAODICEA (364) (recognizing Sunday as the Christian Sabbath because it corresponds to the day of Christ's resurrection).

84. *Romans* 1:16; *see also* F.F. BRUCE, NEW TESTAMENT HISTORY 205–09, 266–67 (Doubleday-Galilee ed., 1980) (1969) (documenting the growth of the church community in and beyond Jerusalem); JUSTO L. GONZALEZ, 1 THE STORY OF CHRISTIANITY: THE EARLY CHURCH TO THE REFORMATION 25, 28, 31–36 (2010) (describing the spread of Christianity in the Roman Empire).

85. *Acts* 13:42–44.

86. *Acts* 22:3.

87. *Romans* 14:4–6 ("Who are you to pass judgment on the servant of another? It is before his own master that he stands or falls. And he will be upheld, for the Lord is able to make him stand. One person esteems one day as better than another, while another esteems all days alike. Each one should be fully convinced in his own mind. The one who observes the day, observes it in honor of the Lord."); *Colossians* 2:16 ("Therefore let no one pass judgment on you in questions of food and drink, or with regard to a festival or a new moon or a Sabbath.").

88. DIDACHE 14.

89. CODE OF JUST. 3.12.3 (Constantine I).

90. LABAND & HEINBUCH, *supra* note 9, at 9.

91. CODEX THEOD. 8.8.3.

Throughout the Diaspora, Jewish enclaves continued to observe the Sabbath as they always had on Saturday.[92] As time progressed, Christians developed a range of perspectives. Some communities strictly prohibited any work on Sunday, closely approximating the Jewish roots of the tradition.[93] Other denominations honored Sunday as a day of worship but did not strictly prohibit work.[94] Even the strictest denominations tend to recognize an exception to the prohibition on labor for "works of necessity and mercy."[95] Downstream from this context, Europe broadly and England specifically constructed Sabbath laws to protect a day of rest.[96]

Starting in 1625, the English Parliament began restricting activities permitted on Sundays.[97] While the initial restrictions were relatively circumspect, prohibiting "[b]earebaiting, [b]ullbaiting, [e]nterludes, com[m]on [p]layes, and other unlawfull exercises and pastimes upon the Lord[']s day,"[98]—taking for granted that people were not working on Sunday—subsequent legislation expanded the list of unlawful activities. In 1627, Parliament restricted butchers, common carriers, and commerce that required travel from operating on Sundays.[99] In 1677, the legislation was further extended to cover all tradesmen, workers, laborers, and the sale of goods.[100]

The term blue laws comes from either the blue paper that Sunday prohibitions were allegedly printed on[101] or, alternatively, from an idiom about Puritanism which said, "[t]rue [b]lue will never stain."[102] In the United States, blue laws predate the Revolutionary era.[103] For instance,

92. Tova Ganzel & Jan Safford, *The Sabbath in Judean Communities During the Mid-Fifth Century BCE*, 16 J. ANCIENT JUDAISM 29, 31, 39 (2025).

93. *E.g.*, THE WESTMINSTER SHORTER CATECHISM 60 ("The sabbath is to be sanctified by a holy resting all that day, even from such worldly employments and recreations as are lawful on other days; and spending the whole time in the public and private exercises of God's worship, except so much as is to be taken up in the works of necessity and mercy.").

94. *E.g.*, CATECHISM OF THE CATHOLIC CHURCH (2d ed.) 2176 (speaking to "God's worship" on Sundays without prohibiting work).

95. WESTMINSTER LARGER CATECHISM 117.

96. Act of Parliament in 1781 Act for Preventing Certain Abuses and Profanations on the Lord's Day, Called Sunday 21 Geo. 3 c. 49 (UK).

97. Sunday Observance Act 1625, 1 Cha. 1 c. 1 (UK).

98. *Id.*

99. Sunday Observance Act 1627, 3 Cha. 1 c. 2 (UK).

100. Sunday Observance Act 1677, 29 Cha. 2 c. 7 (UK).

101. LABAND & HEINBUCH, *supra* note 9, at 8.

102. *Id.*

103. *State Sunday Laws and the Religious Guarantees of the Federal Constitution*, *supra* note 57.

prerevolutionary Pennsylvania required that on the "Lord's Day, people shall abstain from their usual and common toil and labor, that whether masters, parents, children or servants."[104] Often, the colonies imported blue laws directly from England, which meant that they mirrored the pervasive regulation of Sunday economic activity that had developed in Great Britain.[105] As time went on and new states joined the Union, those pervasive regulations bifurcated into a tripartite formula of prohibitions on the sale of alcohol, restrictions targeted at discrete industries, and traditional broad prohibitions against working on Sunday.

A. *Prohibitions on the Sale of Alcohol*

Previously, alcohol-related blue laws were ubiquitous.[106] The restrictions employed by the states were as numerous and diverse as the states themselves. Various statutes prohibited the sale of hard liquor, limited sales within a certain proximity of religious buildings, banned delivery of alcohol within set hours, or drew a distinction between wine and beer, permitting each to be sold only in specific contexts.[107] These laws were initially justified by religious convictions surrounding alcohol.[108] Later, they were broadened to promote public morality.[109] In the twenty-first century, blue laws targeting the sale of alcohol have become increasingly unpopular.[110] Consequently, a multitude of states have amended their laws to allow for Sunday alcohol sales over the last quarter century.[111]

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104. The Law Concerning Liberty of Conscience, 1700, 2 PA. STATS. AT LARGE 3–4.

105. LABAND & HEINBUCH, *supra* note 9, at 29–30.

106. Lawrence-Hammer, *supra* note 44, at 1279.

107. *Id.* at 1279–80.

108. *Id.* at 1277.

109. McGowan v. Maryland, 366 U.S. 420, 435, 445 (1961) (claiming blue laws have "evolved" to promote the public welfare).

110. Ira P. Robbins, *The Obsolescence of Blue Laws in the 21st Century*, 33 STAN. L. & POL'Y REV. 289, 327–28 (2022).

111. *See id.* at 328 n.266 ("ARK. CODE ANN. § 3-3-210 (2022); CONN. GEN. STAT. § 30-91 (2022); GA. CODE ANN. § 3-3-7 (2019); IND. CODE § 7.1-3-1-14 (2022); MINN. STAT. § 340A.504 (2022). For the bills amending these statutes, see S.B. 923, 87th Gen. Assemb., Reg. Sess. (Ark. 2009); H.B. 5021, Gen. Assemb., Reg. Sess. (Conn. 2012); S.B. 10, 151st Gen. Assemb., Reg. Sess. (Ga. 2011); S.B. 1, 120th Gen. Assemb., 2d Reg. Sess. (Ind. 2018); H.B. 30, 2017 Leg., 90th Sess. (Minn. 2017).").

As of January 2024, at least thirteen states have more than a *de minimis* restriction on the sale of alcohol on Sundays.[112] The most common form of alcohol-related blue laws in effect today is that of a patchwork, where the default for the state is that alcohol may not be sold on Sunday unless a county or municipality grants an exception.[113] Arkansas has a patchwork blue law allowing counties to decide whether to be "dry" (prohibiting the sale of alcohol entirely), "damp" (prohibiting the sale of alcohol on Sundays), or "wet" (allowing the sale of alcohol at any time).[114] As of 2023, Arkansas has twenty-nine dry counties and forty-six wet or damp counties.[115]

While alcohol-related blue laws have been and remain the most prevalent form of blue laws on the books today, they represent the narrowest form of Sunday closing law rather than the high-water mark of the legislation.[116] Divorced from the broader context of a comprehensive blue law scheme, Sunday liquor laws have been rightly criticized as arbitrary.[117] They have also been challenged as an inappropriately coercive state

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112. ALA. CODE § 45-2-21.01 (2026) (allowing municipalities to restrict the sale of alcohol on Sundays); ARK. CODE ANN. § 3-3-210(b) (2025) (prohibiting the sale of alcohol on Sundays but allowing cities and counties to vote to allow the sale of alcohol); GA. CODE ANN. § 3-3-7(b)(2) (2025) (prohibiting the sale of alcohol before 12:30 p.m. on Sundays); IDAHO CODE § 23-927 (2025) (permitting counties to restrict the sale of alcohol on Sunday mornings); KY. REV. STAT. ANN. §§ 244.290(3), 244.480(2) (2025) (prohibiting the sale of alcohol on Sundays unless an exemption is granted by a local government under KY. REV. STAT. ANN. §§ 244.290(4), 244.480(4) (2025)); MISS. CODE ANN. § 67-1-83(3) (2026) (prohibiting the sale of alcohol on Sundays but allowing cities and counties to vote to allow the sale of alcohol); NEB. REV. STAT. § 53-179 (2025) (disallowing the sale of alcohol before noon on Sundays); N.J. STAT. ANN. § 33:1-2, 1-32, 1-40 (2025) (allowing for local control of Sunday alcohol sales); N.C. GEN. STAT. § 18B-1004 (2025) (prohibiting the sale of liquor from state dispensaries on Sundays); OKLA. CONST. art. XXVIII-A, § 6 (2024) (allowing for legislative control of Sunday alcohol sales); S.C. CODE ANN. § 61-6-4160 (2026) (making it unlawful to sell alcohol on Sundays without a local exemption); UTAH CODE ANN. § 32B-2-503(5)(a) (2025) (restricting the sale of liquor on Sundays); WASH. REV. CODE § 66.08.030(13) (2025) (describing the State's discretion in whether to grant a Sunday liquor license).

113. ALA. CODE § 45-2-21.02 (2026); ARK. CODE ANN. § 3-3-210(b) (2025); IDAHO CODE § 23-927 (2025); KY. REV. STAT. ANN. §§ 244.290(3) (2025), 244.480(2) (2025); MISS. CODE ANN. § 67-1-83(3) (2026); N.J. STAT. ANN. § 33:1-2, 1-32, 1-40 (2025); OKLA. CONST. art. XXVIII-A, § 6 (2024); S.C. CODE ANN. § 61-6-4160 (2026); WASH. REV. CODE § 66.08.030(13) (2025).

114. ARK. CODE ANN. § 3-3-210 (2025).

115. Becky Gillette, *Wet? Dry? Sunday Sales? A Look at Arkansas' Disparate Alcohol Laws*, ARK. MONEY & POL. (July 13, 2024), https://armoneyandpolitics.com/arkansas-disparate-alcohol-laws/ [https://perma.cc/SDU7-MDAM].

116. *See infra* Section I.C.

117. Robbins, *supra* note 110, at 330.

endorsement of certain religious convictions about the morality of alcohol.[118]

B. *Narrow Sunday Closing Laws*

Like laws targeting the sale of alcohol, states have maintained a myriad hodgepodge of narrow Sunday closing blue laws that reflect the previously dominant nature of broad closing laws.[119] Today, narrow, nonalcoholic Sunday closing laws have largely receded from public life. The most prominent remnants of the previous blue law scheme are restrictions on the sale of vehicles, currently in effect in ten states,[120] and bans on Sunday hunting, in force in five states.[121] Laws that target vehicle sales generally prohibit "directly or through an agent, salesperson, or employee, engag[ing] in this state, or represent[ing] or advertis[ing] that the person is engaged or intends to engage in this state, in the business of buying or selling at retail new or used motor vehicles, other than mobile homes . . . on . . . Sunday."[122] Similarly, laws that ban hunting typically prohibit "[h]unt[ing] wild animals or wild birds on Sunday."[123] A few decades ago, restrictions were more robust. Under narrow Sunday closing laws, states restricted banking,[124] barbering,[125] operating beauty shops,[126] dancing,[127] operating a movie theater,[128] and playing sports,[129] among other things.[130]

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118. Lawrence-Hammer, *supra* note 44, at 1302.

119. *See infra* Section I.C.

120. ILL. COMP. STAT. ANN. 625/5/5-106 (2025); IND. CODE § 24-4-6-1 (2025); IOWA CODE § 322.3.9 (2025); ME. STAT. tit. 17 § 3023(1) (2025); MICH. COMP. LAWS § 435.251 (2026); MINN. STAT. § 168.275 (2025); N.J. REV. STAT. § 2C:33-26 (2025); N.D. CENT. CODE § 39-22-07.1 (2025); OKLA. STAT. tit. 21 § 918 (2026); 18 PENN. CONS. STAT. § 7365(a) (2026).

121. CONN. GEN. STAT. § 26-73 (2025); ME. STAT. tit. 12 § 11205 (2025); N.C. GEN. STAT. § 103-2 (2025); 34 PENN. CONS. STAT. § 2126(a)(8.1) (2026); W. VA. CODE § 20-2-5(b) (2026).

122. IOWA CODE § 322.3.9 (2025) (providing an example).

123. ME. STAT. tit. 12 § 11205 (2025) (providing an example).

124. GA. CODE ANN. § 7-1-110 (2006).

125. LA. STAT. ANN. § 51:193 (1987).

126. N.J. STAT. ANN. § 40:48-2.1 (1989).

127. S.C. CODE ANN. § 52-13-10 (2026).

128. ME. STAT. tit. 17 § 3207 (1988).

129. LABAND & HEINBUCH, *supra* note 9, at 110 (citing N.Y. CODE OF LEGAL STATS. art. 2 § 7 (1987)).

130. *Id.* at 50.

C. *Broad Sunday Closing Laws*

When the Constitution was ratified, every one of the original thirteen states had some form of broad Sunday closing blue law.[131] Starting in 1676, Connecticut banned work, sports, and recreational activities.[132] Delaware prohibited "worldly employment, labor or business whatsoever, upon the Lord's Day."[133] In 1762, Georgia imported England's broad Sunday closure scheme.[134] Massachusetts banned working on Sunday in 1650; prohibited unnecessary travel, sports, and recreation in 1671; and reaffirmed and expanded both bans in 1797.[135] Maryland criminalized working or causing others to work in 1723.[136] New Hampshire outlawed "labor, business, or work of . . . ordinary calling" performed on Sunday.[137] New Jersey referenced England's law in adopting its own blue laws in 1693.[138] New York sought to respect the Lord's Day by prohibiting "travelling, servile laboring and working, shooting, . . . playing, horse-racing, hunting, or frequenting of tippling-houses, or the use of any other unlawful exercises or pastimes."[139] North Carolina promulgated an extensive Sunday closing law but maintained an exception for works of charity or necessity.[140] Rhode Island disallowed its citizens from working or causing others to work except in cases of charity or necessity.[141] Virginia initially required church attendance on penalty of death.[142] However, by 1623, the penalty for absence was reduced to a fine payable in tobacco.[143] Given this austere

131. *See supra* note 34 and accompanying text; Jaynie Randall, *Sundays Excepted*, 59 ALA. L. REV. 507, 510 (2008).

132. ROYAL RALPH HINMAN, THE BLUE LAWS OF NEW HAVEN COLONY, USUALLY CALLED BLUE LAWS OF CONNECTICUT; QUAKER LAWS OF PLYMOUTH AND MASSACHUSETTS; BLUE LAWS OF NEW YORK, MARYLAND, VIRGINIA, AND SOUTH CAROLINA 113 (1838).

133. LABAND & HEINBUCH, *supra* note 9, at 36–37 (citing WILLIAM ADDISON BLAKELY, AMERICAN STATE PAPERS BEARING ON SUNDAY LEGISLATION 278 (1891)).

134. WILLIAM ADDISON BLAKELY, AMERICAN STATE PAPERS BEARING ON SUNDAY LEGISLATION 51–53 (rev. enlarged ed. 1911) (1890).

135. *Id.* at 36–42.

136. *Id.* at 45–46.

137. *Id.* at 51.

138. *Id.* at 54–55.

139. *Id.* at 50.

140. *Id.* at 53–54.

141. *Id.* at 57.

142. LABAND & HEINBUCH, *supra* note 9, at 30.

143. *Id.*

measure, it is perhaps unsurprising that Virginia prohibited working or causing anyone else to work in 1786.[144]

As recently as the mid-1980s, twenty-two states maintained broadly constructed general blue laws,[145] and seventeen states had narrower Sunday closing laws.[146] The states that employed general blue laws usually granted exemptions for works of "necessity" and "charity,"[147] mirroring the exemption that Christian Sabbath observers permit for their flocks.[148]

Thus, full-scale blue laws are "deeply rooted in this Nation's history and tradition" and may, when properly framed, survive constitutional scrutiny on a nonsectarian basis.[149] Still, blue laws have largely receded from public life in the last several decades. The next Part considers challenges that have been levied against blue laws and serves to inform what a modern blue law framework that remains rooted in this nation's history and tradition would need to do to pass constitutional muster.

II. THE FALL OF BLUE LAWS

At the federal level, blue laws have been challenged on "substantive, procedural, and preemptive" grounds.[150] Substantively, blue laws have been criticized for violating the First Amendment's Establishment Clause and,[151] by prohibiting hunting on the Sabbath, the Second Amendment.[152]

144. BLAKELY, *supra* note 133, at 33–35.

145. LABAND & HEINBUCH, *supra* note 9, at 49.

146. *Id.*

147. *See, e.g.*, *id.* at 50.

148. *See, e.g.*, WESTMINSTER SHORTER CATECHISM 60 ("The sabbath is to be sanctified by a holy resting all that day, even from such worldly employments and recreations as are lawful on other days; and spending the whole time in the public and private exercises of God's worship, except so much as is to be taken up in the works of necessity and mercy.").

149. Washington v. Glucksberg, 521 U.S. 702, 721 (1997) (quoting Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977)); *see also* Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 535–36 (2022) (evaluating Establishment Clause challenges "by 'reference to historical practices and understandings'" because the Court has "focused on original meaning and history" (citing McGowan v. Maryland, 366 U.S. 420, 437–40 (1961))); *infra* Section III.C.1.

150. LABAND & HEINBUCH, *supra* note 9, at 39.

151. *See, e.g.*, *McGowan*, 366 U.S. at 430.

152. Robbins, *supra* note 110, at 298–99 (concluding that these challenges have been ineffective); *see, e.g.*, Hunters United for Sunday Hunting v. Pa. Game Comm'n, 28 F. Supp. 3d 340, 346 (M.D. Pa. 2014) (finding that the Second Amendment does not provide standing to challenge a blue law prohibiting hunting because the Second Amendment does not extend to recreational hunting). *But see* District of Columbia v. Heller, 554 U.S. 570, 599, 604 (2008) (offering dicta about the central importance of

Procedurally, blue laws have been challenged under the Fourteenth Amendment's Equal Protection Clause.[153] Similarly, religious Sunday closing laws have been successfully challenged for violating the equal protection and due process guarantees of several state constitutions.[154] Initially, preemption challenges were primarily concerned with the Sherman Act of 1890.[155] Later, preemption challenges were broadened to contemplate federal regulation more generally.[156]

After the Supreme Court opened the door to prohibiting blue laws based solely on religious observance in 1961, blue laws were largely repealed by the late 1980s.[157] The relatively few blue laws that have survived have faced extensive criticism for selectively granting exemptions to special interest groups,[158] being impermissibly arbitrary,[159] and being out of step with societal preferences.[160]

This Part proceeds in four Sections. Section II.A traces the history of challenges brought under the First Amendment's Establishment Clause. Section II.B highlights challenges brought against Sunday closing laws under the Fourteenth Amendment's Equal Protection Clause. Section II.C discusses preemption issues that blue laws face. Finally, Section II.D considers the policy arguments advanced against blue laws.

A. *Challenges Based on the Establishment Clause*

The First Amendment's Establishment Clause says, "Congress shall make no law respecting an establishment of religion."[161] Blue laws have, since their inception, been explicitly predicated on promoting conformity with a religious conviction about the importance of observing a Sabbath. State courts initially recognized the blatant religious basis that

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hunting to the Second Amendment). Because these challenges have been relatively rare and unsuccessful, and because they do not go to the heart of the broader blue law framework, further discussion of challenges predicated on the Second Amendment is beyond the scope of this Note.

153. Robbins, *supra* note 110, at 300.

154. *Id.* at 301–02. The state courts' decisions are beyond the scope of this Note.

155. LABAND & HEINBUCH, *supra* note 9, at 39.

156. Robbins, *supra* note 110, at 305–07.

157. McGowan v. Maryland, 366 U.S. 420, 453 (1961) (holding that blue laws could be found unconstitutional if their purpose was to "use the State's coercive power to aid religion"); Giles, Hungerman & Oostrom, *supra* note 8, at 897–98.

158. Robbins, *supra* note 110, at 309.

159. *Id.* at 330–31.

160. *Id.* at 310–11.

161. U.S. CONST. amend. I.

undergirded blue laws.[162] Consequently, as religious and secular pluralism grew, critics argued that blue laws were set on a collision course with the First Amendment.[163] However, when state and federal courts considered whether Sunday closing laws violated the Establishment Clause, they "uniformly rejected the argument that Sunday laws are designed to aid a particular religious group,"[164] finding instead that they served to "protect citizens from the 'moral debasement' that may result from continuous labor."[165] When a law regulating economic activity does not violate the Establishment Clause, it may be upheld under the notoriously permissive "rational basis" standard.[166]

In 1961, in *Two Guys from Harrison-Allentown, Inc. v. McGinley*,[167] the Supreme Court acknowledged that state courts had recognized religion as the basis of blue laws but dismissed those holdings as unpersuasive dicta.[168] In a parallel case, *McGowan v. Maryland*,[169] the Court asserted that many blue laws became distinct from their religious predecessors[170] and, consequently, did not violate the Establishment Clause.[171] In so doing, the Court declared, "To say that the States cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and State."[172] This had the effect of permitting nonsectarian blue laws while prohibiting the majority of blue laws, which were historically derivative of a religious conviction.

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162. *See, e.g.*, Johnston v. Commonwealth, 22 Pa. 102, 111 (Pa. 1853); Commonwealth v. Nesbit, 34 Pa. 398, 405–07 (Pa. 1859); Soc'y for the Visitation of the Sick v. Commonwealth, 52 Pa. 125, 135 (Pa. 1866); Sparhawk v. Union Passenger Ry. Co., 54 Pa. 401, 406–07, 423 (Pa. 1867); Commonwealth v. Am. Baseball Club of Phila., 138 A. 497, 499 (Pa. 1927).

163. Robbins, *supra* note 110, at 297.

164. Kenneth A. Sommer, Note, *Sunday Closing Laws in the United States: An Unconstitutional Anachronism*, 11 SUFFOLK U. L. REV. 1089, 1100 (1997).

165. *Id.* (quoting Soon Hing v. Crowley, 113 U.S. 703, 710 (1885)).

166. James A. Kushner, *Toward the Central Meaning of Religious Liberty: Non-Sunday Sabbatarians and the Sunday Closing Cases Revisited*, 35 SW. L.J. 557, 566 (1981).

167. 366 U.S. 582 (1961).

168. *Id.* at 597–98.

169. 366 U.S. 420 (1961).

170. *Id.* at 433–34.

171. *Id.* at 453.

172. *Id.* at 445.

To conclude that the Constitution permits areligious Sunday closing laws, the Court employed a "purpose and effect test for determining whether a statute violates the establishment clause."[173] The purpose and effect test, first pioneered in *Everson v. Board of Education*,[174] found no violation of the Establishment Clause "[s]o long as the primary purpose of a state law or regulation and its effects were secular."[175] In *McGowan*, the Court determined that nonsectarian blue laws satisfy this test because their primary purposes and effects are secular.[176] Similarly, in *Two Guys from Harrison-Allentown, Inc. v. McGinley*,[177] *Braunfeld v. Brown*,[178] and *Gallagher v. Crown Kosher Super Market*,[179] the Supreme Court rejected claims that blue laws violated the Establishment Clause and upheld the states' laws under rational basis review.[180]

Critics of blue laws remain unimpressed.[181] They argue that even seemingly secular Sunday closing laws leverage the power of the State to coerce compliance with a set of religious convictions.[182] Moreover, because Sunday closing laws are historically grounded in religion, blue laws that prohibit activity on Sunday are inherently religious, no matter what their official justification is.[183] In the face of sharp criticism, declining popularity,[184] and a narrow exception under which they could be constitutionally justified,[185] blue laws receded from public life.[186] While a pervasive scheme of truly nonsectarian blue laws would likely have survived under this framework, the Court's Establishment Clause has evolved since

173. Kushner, *supra* note 166, at 561.

174. 330 U.S. 1 (1947).

175. Kushner, *supra* note 166, at 561.

176. *McGowan*, 366 U.S. at 449–52.

177. 366 U.S. 582, 585–88, 592–98 (1961) (holding that a Pennsylvania law prohibiting "worldly employment" on Sunday did not violate the Establishment Clause because the law had evolved beyond its initial religious purpose).

178. 366 U.S. 599, 601–02, 608–09 (1961) (holding that Orthodox Jews had not suffered an injury under the Establishment Clause when they voluntarily closed their businesses on an additional day besides Sunday).

179. 366 U.S. 617, 624–27 (1961) (holding that a Massachusetts blue law did not violate the Establishment Clause because while the law was originally promulgated for religious purposes, it served to "provide an atmosphere of recreation").

180. Lawrence-Hammer, *supra* note 44, at 1282–87.

181. Sommer, *supra* note 164, at 1101–03.

182. *Id.* at 1102.

183. *Id.* at 1103.

184. Robbins, *supra* note 110, at 327–28.

185. McGowan v. Maryland, 366 U.S. 420, 445 (1961).

186. *See, e.g.*, Braunfeld v. Brown, 366 U.S. 599, 601–02 (1961).

1961 to broaden the grounds on which a blue law could be sustained under the Establishment Clause.[187]

B. *Challenges Based on the Equal Protection Clause*

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution declares that "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[188] The Supreme Court has held that purposeful discrimination against a discrete class of people violates the Equal Protection Clause.[189] Disparate impact, however, absent proof of a racist purpose,[190] does not violate the Equal Protection Clause.[191] When a discrete class is disparately impacted in a way that does not implicate a protected characteristic that triggers strict scrutiny or a fundamental right,[192] that impact is evaluated for Equal Protection purposes according to the permissive scheme of rational basis review.[193]

As they have been applied traditionally, blue laws tend to disparately affect religious communities that observe a day of rest other than Sunday.[194] However, because blue laws target commercial activity rather than religious conviction, they have been judicially reviewed under the rational basis framework.[195] While rational basis review is permissive, it does require a logical connection between the statutory restriction and the government's stated interest.[196] The Supreme Court has concluded that a logical connection exists between blue laws and the government's interest in providing a uniform day of

187. *See infra* Section III.C.1.

188. U.S. CONST. amend. XIV.

189. Yick Wo v. Hopkins, 118 U.S. 356, 374 (1886).

190. *Id.* at 374; *see also* Loving v. Virginia, 388 U.S. 1, 11 (1967) (holding that there is no legitimate state objective that justifies classifications based on race).

191. *Brown*, 366 U.S. at 601–02 (finding no violation of the Equal Protection Clause when Orthodox Jews were disparately impacted by a Sunday closing law).

192. Sommer, *supra* note 164, at 1108 n.108; *see also* Graham v. Richardson, 403 U.S. 365, 382–83 (1971) (holding that the state law that restricted benefits to resident aliens was a violation of the Equal Protection Clause).

193. Ry. Express Agency v. New York, 336 U.S. 106, 110 (1949).

194. *Brown*, 366 U.S. at 601–02.

195. *See, e.g.*, Gallagher v. Crown Kosher Super Market, 366 U.S. 617, 622 (1961) (evaluating an equal protection challenge to a Sunday closing law under rational basis review); McGowan v. Maryland, 366 U.S. 420, 428 (1961) (holding Maryland's blue laws did not violate the Equal Protection Clause).

196. N.Y. City Transit Auth. v. Beazer, 440 U.S. 568, 578 (1979).

rest.[197] Even when faced with myriad exceptions to a general Sunday closing scheme, the Supreme Court has upheld blue laws under rational basis review.[198] State courts have been more critical of laws that provide excessive exceptions to blue laws, overruling Sunday closing laws because their arbitrary enforcement eviscerates any purported logical connection between the restrictions and the government's interest in a uniform day of rest.[199] Consequently, many state courts have overturned state blue laws.[200] Thus, the more arbitrary exceptions states grant to general blue law provisions, the less likely those laws are to survive.

C. *Challenges Based on Federal Preemption*

Opponents of blue laws have also raised the issue of federal preemption as a barrier to the constitutionality of Sunday closing statutes.[201] Federal preemption means "federal law preempts contrary state law."[202] Because exercises of constitutional power are supreme over the power reserved by the states,[203] the federal government may preemptively prohibit states from regulating a particular activity by using its legitimate grant of legislative power under Article I of the Constitution,[204] especially power granted under the Commerce Clause and Necessary and Proper Clause.[205] Congress may either expressly preempt an area of law by declaring its intention to forbid states from regulating a certain realm of activity,[206] or it may implicitly preempt state action by pervasively regulating a type of activity, or by regulating an activity so that following a state's prescribed laws would result in a conflict with federal law.[207] Similarly, when an

197. *McGowan*, 366 U.S. at 426.

198. Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582, 591 (1961).

199. Sommer, *supra* note 164, at 1111 n.121. The precise holdings of the various state courts are beyond the scope of this Note.

200. *Id.*

201. Robbins, *supra* note 110, at 305–06.

202. Hughes v. Talen Energy Mktg., LLC, 578 U.S. 150, 162 (2016).

203. U.S. CONST. art. VI, cl. 2.

204. U.S. CONST. art. I; *see also* Printz v. United States, 521 U.S. 898, 924–25 (1997) (clarifying that only valid, constitutional laws may preempt state laws under the Supremacy Clause).

205. U.S. CONST. art. I, § 8, cl. 3; *id.* cl. 18.

206. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 383–84 (1992) (explaining the prevalence of express preemption clauses).

207. *See* Wyeth v. Levine, 555 U.S. 555, 565 (2009) (indicating congressional

administrative agency uses authority delegated by Congress, it may preempt state action through regulation.[208]

Specifically, critics of blue laws have argued that federal labor and employment regulations largely preempt states' blue laws.[209] While at least one state court has ruled against blue laws on this ground,[210] federal courts have not yet addressed this issue. Additionally, opponents of blue laws argue that traditional Sunday closing laws violate Title VII of the Civil Rights Act,[211] which requires employers to respect their employees' exercise of religion unless doing so would result in undue hardship.[212] While these challenges have been largely unsuccessful,[213] a modern recontextualized blue law proposal would benefit from considering how these potential harms may be mitigated.

D. *Challenges Based on Policy Arguments*

In the face of an onslaught of criticism, blue laws have largely declined in popularity over the last several decades.[214] Critics of blue laws argue that they are obsolete because they threaten the modern, highly integrated economy.[215] Economic concerns directly contributed to the move to repeal blue laws in the eighties and nineties.[216] Toward that end, large corporations advocated for Sunday closing laws to be abolished,[217] over the protest of mom-and-pop shops that struggled to staff an additional business day.[218] Finally,

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intent is the "ultimate touchstone" for assessing whether an area of law is implicitly preempted) (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)).

208. Fid. Fed. Sav. and Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982); *see also* New York v. Fed. Energy Regul. Comm'n, 535 U.S. 1, 18 (2002) (holding that only a constitutional delegation of power will permit an agency to preempt state law through regulation) (citing La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986)).

209. Robbins, *supra* note 110, at 306.

210. Brindle v. R.I. Dep't of Lab. & Training, 211 A.3d 930, 938 (R.I. 2019) (holding a Rhode Island blue law requiring overtime pay of one and one-half times the usual rate of compensation was invalid because of the Airline Deregulation Act of 1978).

211. 42 U.S.C.A. § 2000e-2.

212. 29 C.F.R. § 1605.2 (2019).

213. *See* Hennington v. Georgia, 163 U.S. 299, 318 (1896) (holding railroad regulations did not preempt Georgia's blue law).

214. Robbins, *supra* note 110, at 327–28.

215. *Id.* at 325.

216. Giles, Hungerman & Oostrom, *supra* note 8, at 886.

217. Robbins, *supra* note 110, at 303.

218. J.B. MacKinnon, *America's Last Ban on Sunday Shopping*, NEW YORKER

opponents of blue laws have argued that people should be able to make whatever choices they want regarding their economic activity.[219] While policy arguments may not have the same force as constitutional challenges, they have contributed to a climate of hostility toward blue laws that must be addressed.

III. REVIVING AND RECONTEXTUALIZING BLUE LAWS

All told, at least thirteen states currently restrict the sale of alcohol on Sundays,[220] at least seventeen states recently had limited Sunday closing laws,[221] and at least twenty-two states recently had broad Sunday closing laws.[222] Additionally, pervasive blue law schemes were ubiquitous when the nation was founded.[223] While most of these laws were repealed around 1985[224] and the last broadly enforced statewide Sunday closing law was repealed in 1991,[225] there still exists a history and tradition of blue laws going back to the nation's Founding, which justifies adopting a nonsectarian version of what was previously widespread.

This Part proceeds in three Sections. Section III.A proposes a framework for a nonsectarian blue law that draws on the nation's history and tradition to promote a constitutionally permissible vision of the public good. Section III.B aims to expand the coalition of support for the model proposal beyond the religious base that has traditionally supported the old religious blue laws and to incentivize states that otherwise might not favor blue laws to consider the model proposal. Blue laws have typically drawn support from conservative, religious electorates. Organized labor has customarily been disproportionately likely to represent liberal, secular workers. While Section III.B seeks to bridge this gap by directly addressing labor, the arguments advanced are unambiguous

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(Feb. 7, 2015), https://www.newyorker.com/business/currency/americas-last-ban-sunday-shopping [https://perma.cc/4UYN-YGGF] (finding 10% of mom-and-pops had closed on a county's main street after adopting a blue law, prompting fear from the small business owners in a neighboring county).

219. Kyle G. Volk, *Fighting for the Right to Party on Sundays*, HUMANITIES (Aug. 2015), https://www.neh.gov/humanities/2015/julyaugust/feature/fighting-the-right-party-sundays [https://perma.cc/C72Z-4AMF].

220. *See supra* Section I.A.

221. *See supra* Section I.C.

222. *See supra* Section I.C.

223. *Supra* note 131 and accompanying text.

224. Giles, Hungerman & Oostrom, *supra* note 8, at 904.

225. N.D. CENT. CODE § 12.1-30-04 (1991) (allowing most businesses to open on Sundays for the first time since North Dakota became a state).

goods that should incentivize states to adopt this Note's proposal, regardless of whether they have large contingents of organized labor. Section III.C responds to criticisms traditionally levied against religious blue laws and argues that a modern, nonsectarian blue law is constitutional.

A. *A Proposal from the United States' History and Tradition of Blue Laws*

Religious blue laws have gone out of vogue. Beset on all sides by challenges to their constitutionality and increasingly unpopular because of their vague, selectively enforced, exemption-riddled statutory schemes, it is perhaps unsurprising that blue laws have receded. And yet, their disappearance from public life has not been the unalloyed good that the opponents of blue laws envisioned. Economic anxiety has risen precipitously in the absence of a fence protecting a shared time of rest and recreation.[226] Millions of Americans have been driven to seek multiple jobs,[227] threatening their ability to protect a personal day of rest. Naturally, it is low-skilled, low-wage employees who are least able to negotiate for a guaranteed day of rest.[228] Therefore, the disappearance of blue laws has resulted in worse outcomes and decreased equity.[229]

Consequently, to realize the benefits of blue laws while disarming the challenges that they have traditionally faced, states and municipalities should adopt a new, nonsectarian blue law that conforms with the following framework.

First, the law should state explicitly in its text that it seeks to provide a uniform day of rest to promote the public welfare without respect to any particular religious faith. By declaring an areligious purpose, states would access the exemption contemplated by the *McGowan* Court.[230] At the same time, by protecting a uniform day off for all workers, states will enjoy blue laws' traditional nonsectarian benefits. [231]

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226. *Stress in America*, *supra* note 2; *see also* CHESTERTON, *supra* note 1 (describing how departing from tradition often invites unexpected consequences).

227. Miller, *supra* note 4.

228. *See generally* Ryan Finnigan & Jo Mhairi Hale, *Working 9 to 5? Union Membership and Work Hours and Schedules*, 96 SOC. FORCES 1541 (2018) (arguing that unions significantly improve members' ability to secure fixed shifts during the standard workweek).

229. *See infra* Section III.B.3.

230. McGowan v. Maryland, 366 U.S. 420, 426 (1961).

231. *See supra* note 60.

Second, states should generally prohibit commercial activity, maintaining only the traditional exceptions for works of necessity and mercy that go back to the Founding.[232] States should not create arbitrary exceptions to their general blue law schemes, which would result in unnecessary additional criticism. States should, however, continue the tradition of granting exceptions for sincerely held religious beliefs that require an individual to observe a different day of rest. [233]

Third, states should follow the patchwork example of southern states' liquor laws, proscribing a statewide uniform day of rest while allowing local municipalities to choose an alternative uniform day of rest. For example, state X could choose Sunday as its statewide day of rest. County Y and city Z within state X could adopt Saturday as a uniform day of rest to accommodate the distinct needs of their communities. If states or communities felt compelled to grant some limited exceptions beyond works of necessity or mercy, they could follow the example of Rhode Island and require exempted businesses to pay employees overtime for shifts on the uniform day of rest.[234]

This proposal seeks to realize the benefits of blue laws that states previously enjoyed. Even though the religious assumptions that originally justified blue laws may not be widely shared, requiring a uniform day of rest on a nonsectarian basis is a worthwhile use of a state's police power.

B. *Blue Laws Satisfy Key Labor Interests*

A new scheme for blue laws supports the interests of labor in the United States. Organized labor has a long history of fighting to promote "community well-being."[235] Toward that end, labor has successfully advocated for the eight-hour

232. *See supra* note 27.

233. *See, e.g.*, KY. REV. STAT. ANN. § 436.160 (1978) ("Persons who are members of a religious society which observes as a Sabbath any other day in the week than Sunday shall not be liable to the penalty . . . ."); N.Y. CODE OF LEGAL STATS. art. 2, § 10 (1987) ("Notwithstanding any other provision of law, it shall be a sufficient defense to a prosecution pursuant to this [blue law] article, for conducting any trade or business or public selling or offering for sale of any property on Sunday, that the defendant . . . uniformly keeps another day of the week . . . his place of business closed . . . ."); R.I. GEN. LAWS § 11-40-4 (1985) (repealed 2000) ("Faiths observing other days as Sabbath . . . shall be permitted to labor in their respective professions or vocations on the first day of the week . . . .").

234. *See, e.g.*, R.I. GEN. LAWS § 28-12-4.1(b) (2023) (requiring businesses to pay one and one-half times the ordinary hourly rate when employees work on Sundays).

235. Jenn Hagedorn, Claudia Alexandra Paras, Howard Greenwich, & Amy Hagopian, *The Role of Labor Unions in Creating Working Conditions That Promote Public Health*, 106 AM. J. PUB. HEALTH 989, 989 (2016).

workday,[236] a federal minimum wage,[237] various higher state minimum wages,[238] workplace safety legislation,[239] employer-sponsored retirement programs,[240] and the forty-hour workweek,[241] which is increasingly inaccessible for many low-skilled, low-wage workers.[242] In fact, labor has a history of supporting some blue law legislation,[243] recognizing that protecting a day of rest is good for the laborer. By advocating for revived and recontextualized blue laws, labor can increase the quality of life of workers,[244] promote the sense of solidarity it needs to develop strength and influence,[245] and promote equity for all workers.[246] Therefore, labor should join the fight to revive and recontextualize blue laws.

At the same time, states share labor's interest in improving workers' quality of life, guaranteeing workers an opportunity to rest and recreate, and promoting equity. Therefore, states should adopt this Note's proposal and revive blue laws.

1. Blue Laws Improve Workers' Quality of Life

Nonsectarian blue laws would guarantee a day of rest and recreation for low-wage workers. Low-skilled workers tend to have the least ability to bargain for desired hours, so they would stand to benefit most from reviving blue laws. Because blue laws were previously widespread, there is data tracking the effect that removing a guaranteed day of rest has had on

236. Robert Whaples, *Winning the Eight-Hour Day, 1909-1919*, 50 J. ECON. HIST. 393, 393–94 (1990).

237. Brett Meyer, *Learning to Love the Government: Trade Unions and Late Adoption of the Minimum Wage*, 68 WORLD POL. 538, 540–41 (2016).

238. Santul Nerkar, *Restaurants and Unions Agree to Raise Pay to $20 an Hour in California*, N.Y. TIMES (Sep. 11, 2023), https://www.nytimes.com/2023/09/11/business/economy/california-restaurant-union-deal.html [https://perma.cc/RKN2-TNFN].

239. David Rosner & Gerald Markowitz, *A Short History of Occupational Safety and Health in the United States*, 110 AM. J. PUB. HEALTH 622, 622 (2020).

240. Asha Banerjee, Margaret Poydock, Celine McNicholas, Ihna Mangundayao & Ali Sait, *Unions Are Not Only Good for Workers, They're Good for Communities and for Democracy*, ECON. POL'Y INST. (Dec. 15, 2021), https://www.epi.org/publication/unions-and-well-being/ [https://perma.cc/H8DQ-6PBK].

241. Hagedorn, Paras, Greenwich & Hagopian, *supra* note 235.

242. *Id.*

243. *See* Jorge Cabrita, *What's Happening with Sunday Work in Europe?*, EUROFOUND (Sep. 22, 2016), https://www.eurofound.europa.eu/en/publications/2016/whats-happening-sunday-work-europe-0 [https://perma.cc/G4YE-ZWGN] (describing the international efforts of organized labor to support blue laws).

244. *Infra* Section III.B.1.

245. *Infra* Section III.B.2.

246. *Infra* Section III.B.3.

workers.[247] Because widespread blue laws have disappeared, the quality of life enjoyed by workers has declined,[248] and there has been a correlated rise in "deaths of despair" and a decrease in life expectancy.[249] Moreover, educational attainment has suffered because blue laws have vanished.[250] By fighting to revive a guaranteed day of rest for workers, organized labor can promote a superior quality of life, longer life expectancy, and better educational attainment for workers. Likewise, states should adopt this Note's proposal because they want to improve their workers' quality of life.

2. Blue Laws Promote Solidarity

By guaranteeing an opportunity to rest and recreate, nonsectarian blue laws would furnish low-wage workers with more time to spend as they please. Labor is quintessentially interested in promoting worker solidarity, without which it cannot effectively advocate.[251] Additionally, when workers are not ground into dust by an unceasing onslaught of vocational obligations, they have more time to network, plan, and advocate for themselves. Moreover, because even nonsectarian blue laws will likely earn support from the religious interests that supported the original laws, labor has an opportunity to build connections with faith communities, something it has historically struggled to do.[252] Blue laws are thus likely to beget more and better outcomes for workers because they will empower workers to demand better conditions from their employers. States, likewise, should adopt this Note's proposal to equip their workers to secure better working conditions through solidarity.

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247. Giles, Hungerman & Oostrom, *supra* note 8, at 886; Dara N. Lee, *The Impact of Repealing Sunday Closing Laws on Educational Attainment*, 48 J. HUM. RES. 286, 287 (2013).

248. Giles, Hungerman & Oostrom, *supra* note 8, at 887.

249. *Id.*

250. Lee, *supra* note 247, at 287, 307–08.

251. Jerzy Eisenberg-Guyot, Stephen J. Mooney, Amy Hagopian, Wendy E. Barrington & Anjun Hajat, *Solidarity and Disparity: Declining Labor Union Density and Changing Racial and Educational Mortality Inequities in the United States*, 63 AM. J. INDUS. & MED. 218, 220 (2019).

252. Lyman Stone, *Why We Still Need "Blue Laws," the Religious Tradition That Sanctifies Life Outside of Work*, VOX (Oct. 2, 2018, at 08:40 ET), https://www.vox.com/the-big-idea/2018/10/2/17925828/what-were-blue-laws-labor-unions [https://perma.cc/V5DF-Q5FB] (describing how labor is often at odds with Christianity but finds common ground advocating for the worker).

3. Blue Laws Promote Equity

Blue laws also promote equity, which has always been a goal of labor.[253] *Black's Law Dictionary* defines equity as "[f]airness; impartiality; evenhanded dealing."[254] High-wage or high-skill workers are in a disproportionately strong position to advocate for favorable working conditions, including better schedules and days off.[255] Without a guaranteed uniform day of rest, low-skilled, low-wage workers have little power to secure time to rest and engage in recreation with their families. Nonsectarian blue laws would level the playing field by recognizing a right to rest and to recreation that does not discriminate based on skill, wage, educational attainment, or any of the other factors correlated to traits associated with vocational achievement. Thus, blue laws serve to recognize and protect every person's inherent dignity. For this reason, both organized labor and states should support this Note's proposed blue law framework as a means of promoting equity.

C. *Responses to Criticisms of Blue Laws*

Despite the current need to revive blue laws, they have faced a litany of criticism. This Section acknowledges and responds to these concerns to show why blue laws should be reimplemented into the United States' labor market. Part II described how blue laws receded from public life in the face of challenges brought under the Establishment Clause, the Equal Protection Clause, preemption, and because of various policy concerns. Section III.C responds to these concerns, arguing this Note's proposal is not only permissible but also promotes the public good. In sum, a revived and recontextualized blue law is constitutional and otherwise legal and promotes public welfare. Consequently, states should adopt a law that follows the recommendations in Section III.A.

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253. Lawrence Mishel, *Unions, Inequality, and Faltering Middle-Class Wages*, ECON. POL'Y INST. (Aug. 29, 2012), https://www.epi.org/publication/ib342-unions-inequality-faltering-middle-class/ [https://perma.cc/3TXW-VMCG].

254. *Equity*, BLACK'S LAW DICTIONARY (12th ed. 2024); *see also Equitable*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Just; consistent with the principles of justice and right.").

255. Hagedorn, Paras, Greenwich & Hagopian, *supra* note 235.

1. Nonsectarian Blue Laws Do Not Violate the Establishment Clause

Sectarian blue laws risk running afoul of the Establishment Clause.[256] However, the Supreme Court declared that blue laws would be upheld on nonsectarian grounds.[257] The framework proposed in Section III.A is justified on nonsectarian grounds, so it would survive challenges brought under the Establishment Clause.[258]

Ten years after deciding a quartet of blue law cases in 1961,[259] the Court further clarified its Establishment Clause doctrine in *Lemon v. Kurtzman*.[260] Under the "*Lemon* test," a statute complied with the Establishment Clause when it (1) had a "secular legislative purpose;" (2) did not have a "primary effect" that benefited or hindered religion; and (3) did not "foster 'an excessive government entanglement with religion.'"[261] The *Lemon* test was long criticized as unworkable,[262] especially because of the inherent difficulty in deciphering the "purpose" of a law.[263] Indeed, in 2022, the Supreme Court overturned the *Lemon* test for that very reason.[264]

In *Kennedy v. Bremerton School District*,[265] a high school football coach was prohibited from praying after games.[266] After being warned against doing anything that could be interpreted as prayer, the coach proceeded to pray at midfield following the conclusion of a game, as was his practice.[267] In response to the coach's persistent practice of praying on the field, bus, and in the locker room, the school district placed the coach on paid administrative leave.[268] Because of his violation of the district's policy regarding prayer, the district advised against rehiring

256. U.S. CONST. amend. I.

257. McGowan v. Maryland, 366 U.S. 420, 445 (1961).

258. *Id.*

259. *Id.* at 422; Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582, 583–84 (1961); Braunfeld v. Brown, 366 U.S. 599, 600–01 (1961); Gallagher v. Crown Kosher Super Market, 366 U.S. 617, 618 (1961); *see also supra* Section II.A.

260. 403 U.S. 602 (1971).

261. *Id.* at 612–13 (quoting Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970)).

262. Lawrence-Hammer, *supra* note 44, at 1288–89.

263. *Id.* at 1289 n.124; *see also* Edwards v. Aguillard, 482 U.S. 578, 636 (1987) (Scalia, J., dissenting); ANTONIN SCALIA & BRYAN A. GARNER, READING THE LAW: THE INTERPRETATION OF LEGAL TEXTS § 2, at 243–45 (2012) (critiquing the use of legislative intent and deriding the subjectivity of divining legislative purpose).

264. *See* Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 535–36 (2022).

265. 597 U.S. 507 (2022).

266. *Id.* at 515–18.

267. *Id.* at 518.

268. *Id.* at 519.

the coach for the next season, and indeed, the coach did not return the following season.[269] In holding that the coach had not violated the Establishment Clause, the Court declared that it had "long ago abandoned *Lemon* and its endorsement test."[270] In place of the *Lemon* test, the Court evaluates potential Establishment Clause violations "by 'reference to historical practices and understandings'"[271] because the Court has long "focused on original meaning and history."[272]

The nonsectarian blue law framework proposed in Section III.A does not violate the Establishment Clause. First, under the Court's initial test for assessing whether blue laws violate the Establishment Clause, the proposal would be constitutional because its primary purpose and effects are secular. Second, while the question is closer, the proposal would likely have survived scrutiny under the *Lemon* test because it (1) has a secular legislative purpose; (2) does not have a primary effect of benefiting or prohibiting religion; and (3) will not foster excessive entanglement between the government and religion. Third and finally, the proposal satisfies the requirements of the Court's current Establishment Clause test as outlined in *Bremerton*. Religious blue laws have been ubiquitous throughout the history of the United States.[273] Nonsectarian blue laws, therefore, should easily fit within what the Court would consider "by 'reference to historical practices and understandings'"[274] and "original meaning and history."[275] Thus, while the proposed framework would likely have been permissible under any of the tests employed by the Court since 1961, it is certainly permissible under its current doctrine.

2. Nonsectarian Blue Laws Do Not Violate the Equal Protection Clause

Sectarian blue laws risk violating the Equal Protection Clause by depriving religious minorities who observe a day of rest different from that prescribed by the law of equal protection of their life, liberty, or property.[276] The model framework proposed does not violate the Equal Protection

269. *Id.* at 520.
270. *Id.* at 534.
271. *Id.* at 535 (quoting Town of Greece v. Galloway, 572 U.S. 565 (2014)).
272. *Id.* at 536 (citing McGowan v. Maryland, 366 U.S. 420 (1961)).
273. *See supra* notes 97–149 and accompanying text.
274. *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece*, 572 U.S. at 575–77).
275. *Id.* at 536 (citing *McGowan*, 366 U.S. at 437–40).
276. U.S. CONST. amend. XIV, § 1.

Clause because it allows for reasonable accommodation of alternative religiously based arrangements.[277] The *McGowan* Court held that even religious blue laws did not violate the Equal Protection Clause when a logical connection existed between the restrictions and the government's interest in providing a uniform day of rest.[278] The Court arrived at this conclusion even in the face of religious blue laws that were riddled with arbitrary exceptions that unfairly benefited some industries and communities at the expense of others.[279]

The model framework for a nonsectarian blue law does not violate the Equal Protection Clause for four reasons. First, its explicitly areligious purpose means the blue law would not exist to benefit a particular religious group at the expense of another. Second, by permitting each county or municipality to set an alternative uniform day of rest, no discrete community would be uniquely disadvantaged. Third, the model proposal disfavors granting arbitrary exceptions, which means that the revived and recontextualized nonsectarian blue law would be more equitable to all industries, communities, and discrete classes than its predecessors. Fourth, this Note's proposal explicitly grants an exception for sincerely held religious beliefs. Consequently, courts would conclude that nonsectarian blue laws do not violate the Equal Protection Clause.

3. Preemption Does Not Threaten Nonsectarian Blue Laws

States are not preempted from providing a uniform day of rest on a nonsectarian basis. In *Gibbons v. Ogden*,[280] the Supreme Court "recognized the possession by each State of a general power of legislation, that 'embraces everything within the territory of a State, not surrendered to the General Government; all which can be most advantageously exercised by the States themselves.'"[281] While it is true that federal regulations may also preempt state legislation,[282] federal courts have not considered whether blue laws are preempted by any regulations. Additionally, while critics of religious blue laws have argued that they are preempted by Title VII of the Civil

277. *See supra* Section III.A.

278. *McGowan*, 366 U.S. at 426.

279. *See* Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582, 591 (1961).

280. 22 U.S. (9 Wheat.) 1 (1824).

281. Hennington v. Georgia, 163 U.S. 299, 308 (1896) (quoting *Gibbons*, 22 U.S. (9 Wheat.) at 210).

282. *See supra* notes 201–13 and accompanying text.

Rights Act,[283] the nonsectarian nature of the model proposal, coupled with the additional flexibility it allows municipalities to accommodate discrete communities and classes, suggests that these challenges would be even less likely to succeed. Thus, were a preemption challenge to be raised, courts would conclude that blue laws are, as they always have been, within the general legislative power reserved by the states.

4. Nonsectarian Blue Laws Are Good Public Policy

Opponents of blue laws argue that blue laws are obsolete in part because they needlessly stifle the economy.[284] This argument fails for two reasons. First, restricting business to six days of the week would not necessarily dampen economic activity. Second, tertiary benefits to the health and well-being of laborers will likely improve the ability of workers to stay in the workforce, therefore allowing workers to contribute more to the economy in the long term. Additionally, the model blue law proposal improves on our nation's history and tradition of blue laws by reducing arbitrary exceptions that have historically contributed to perceived unfairness.

Regarding the first argument, restricting business to six days of the week would not necessarily hinder the economy. Other nations limit economic activity on Sunday without suffering.[285] Labor has been pushing for a four-day workweek, arguing that a shorter workweek allows for more efficient use of labor and greater productivity.[286] Some American businesses,

283. Robbins, *supra* note 110, at 307.

284. *Id.* at 325–27.

285. *See, e.g.*, SCHWEIZERISCHES ZIVGESTBUCH, Aug. 1, 2000, ArGV 822,111 (Switz.) (setting a uniform day of rest on Sundays, granting limited exceptions, and requiring employees be paid overtime when they are excepted from the day of rest).

286. *See, e.g.*, Guðmundur D. Haraldsson & Jack Kellam, *Going Public: Iceland's Journey to a Shorter Working Week*, AUTONOMY (June 2021), https://autonomy.work/wp-content/uploads/2021/06/ICELAND_4DW.pdf [https://perma.cc/9DCR-JUMG] (finding improved outcomes under a pilot four-day workweek program); Kyle Lewis, Will Stronge, Jack Kellam & Lukas Kikuchi, *The Results are In: The UK's Four-Day Week Pilot*, AUTONOMY (Feb. 2023), https://autonomy.work/wp-content/uploads/2023/02/The-results-are-in-The-UKs-four-day-week-pilot.pdf [https://perma.cc/VW82-S5RS] (finding improved outcomes under a pilot four-day workweek program); Juliet B. Schor, Wen Fan, Orla Kelley, Guolin Gu, Tatina Bezdenezhnykh & Niamh Bridson-Hubbard, *The Four Day Week: Assessing Global Trials of Reduced Work Time with No Reduction in Pay*, 4 DAY WEEK GLOB. FOUND. (2022), https://static1.squarespace.com/static/60b956cbe7bf6f2efd86b04e/t/6387a0e53881be1284cb046e/1669832945858/The+Four+Day+Week-+Assessing+Global+Trials+of+Reduced+Work+Time+with+No+Reduction+in+Pay+%E2%80%93+A+%E2%80%93

such as Chick-fil-A, voluntarily close on Sunday under the status quo.[287] Chick-fil-A is among the most successful fast-food restaurants in the United States, despite being closed on Sundays.[288] Chick-fil-A is so confident in its decision to observe a day of rest that it actively resists local ordinances that attempt to force it to operate on Sunday.[289]

The second argument is that blue laws promote positive outcomes for laborers. Blue laws extend lifespans,[290] promote educational attainment,[291] and reduce deaths of despair.[292] Increasing lifespans means increasing the number of productive years a laborer may work, which in turn contributes positively to the economy.[293] Increased educational attainment is strongly correlated to increased economic activity,[294] suggesting that implementing blue laws would bolster the economy by promoting educational attainment. Similarly, deaths of despair deplete the workforce, so reducing deaths of despair by implementing blue laws would ensure that a robust workforce is positioned to power economic growth.[295] Repealing blue laws has also led to an increase in the use of drugs and alcohol,[296] which negatively impacts the economy.[297]

+30112022.pdf [https://perma.cc/QN4R-WKVV] (finding improved outcomes under a pilot four-day workweek program).

287. *Why Is Chick-fil-A Closed on Sunday?*, CHICK-FIL-A, https://www.chick-fil-a.com/customer-support/who-we-are/our-culture-and-values/why-is-chick-fil-a-closed-on-sunday [https://perma.cc/H7FZ-SMEE].

288. Pamela N. Danziger, *How Chick-Fil-A Will Claw Its Way Back to No.1 in Fast Food*, FORBES (Aug. 23, 2024, at 12:23 ET), https://www.forbes.com/sites/pamdanziger/2024/08/22/how-chick-fil-a-will-claw-its-way-back-to-number-one-in-fast-food/ [https://perma.cc/2VTN-3YP9].

289. *Some NY Chick-fil-A Locations Could be Forced to Stay Open on Sundays Under New Bill*, NBC N.Y. (Dec. 21, 2023, at 19:32 ET), https://www.nbcnewyork.com/entertainment/the-scene/new-york-live/food/some-ny-chick-fil-a-locations-could-be-forced-to-stay-open-on-sundays-under-new-bill/4972418/ [https://perma.cc/Q854-SPMT].

290. Giles, Hungerman & Oostrom, *supra* note 8, at 887.

291. Lee, *supra* note 247.

292. Giles, Hungerman & Oostrom, *supra* note 8, at 887.

293. Andrew J. Scott, *The Longevity Economy*, 2 HEALTH POL'Y e828, e828 (2021).

294. Dale W. Jorgenson, Mun S. Ho & Jon D. Samuels, *Education, Participation, and the Revival of U.S. Economic Growth* 3–8 (Nat'l Bureau of Econ. Rsch., Working Paper No. 22453, 2016).

295. Giles, Hungerman & Oostrom, *supra* note 8, at 887.

296. *See generally* Jonathan Gruber & Daniel M. Hungerman, *The Church Versus the Mall: What Happens When Religion Faces Increased Secular Competition?*, 123 Q.J. ECON. 831 (2008) (finding that rates of heavy drinking increased after blue laws were repealed).

297. *How Illicit Drug Use Affects Business and the Economy*, OFF. OF NAT'L DRUG

Additionally, the model proposal improves upon the perceived arbitrariness inherent in the old blue law scheme, which is the result of vagueness, selective enforcement, and exemptions granted to special interest groups.[298] By explicitly disfavoring exceptions that go beyond works of necessity and mercy, the model blue law proposal nullifies another powerful criticism levied against uniform closing laws.

Finally, critics of blue laws argue that they impermissibly infringe on the freedom individuals have to chart their course in commerce and recreation.[299] But, as discussed, courts have upheld even broad, arbitrarily enforced religious blue laws.[300] Moreover, society and the law have already accepted similar, widespread restrictions on labor and commerce, such as minimum wages, mandatory additional pay for overtime, prohibitions on child labor, and workplace health and safety regulations. Where there is a legitimate state interest in promoting the public welfare, the law permits reasonable regulation. In this case, the Supreme Court has said that states may have a legitimate interest in promoting the public welfare through securing a uniform day off.[301]

Therefore, states should implement this Note's model blue law framework to promote a nonsectarian vision of the public welfare.

CONCLUSION

The United States has experienced dramatic change over the course of its 250 years. It has modernized, grown less religious, and become more pluralistic.[302] In so doing, it has shed many old laws that are predicated on religious assumptions no longer common to its citizenry.[303] Many of those bygone laws belong in the dustbin of history. But, as blue laws demonstrate, not every law originally based on a shared religious belief should be cast aside. By drawing on the nation's history and tradition of blue laws in a nonsectarian fashion, states and municipalities have an opportunity to act and protect their most vulnerable citizens.

CONTROL POL'Y, https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/how-illicit-drug-use-affects-business-and-the-economy [https://perma.cc/FV6M-7ZKW].

298. *Cf.* Robbins, *supra* note 110, at 309 (explaining how the exemptions to blue laws granted to special interest groups could allow for an Equal Protection challenge).

299. *Id.* at 328–30.

300. McGowan v. Maryland, 366 U.S. 420, 426 (1961).

301. *Id.* at 450.

302. *Supra* note 21.

303. *Supra* notes 151–60 and accompanying text.

The model blue law framework proposed here represents a continuation of and an improvement on this nation's history and tradition of protecting a uniform day of rest. Straying from that tradition was an error for which correction is now long overdue.

The framework proposed in this Note considered the history and tradition of a law based on religion before advocating for a nonsectarian recontextualized version of that law. This framework is broadly applicable to other similarly situated laws. In the same way that the shared religious convictions of the Founding generation represented a kernel of wisdom about how labor markets should be balanced to promote rest, recreation, and human flourishing, other laws based on religion, which were repealed over the past century, may have benefits that were not fully considered. By evaluating those laws from an areligious standpoint, future scholarship stands to unveil additional unforeseen advantages to reviving and recontextualizing now-defunct laws based on religion. However, considering the plight of the American worker today, the first step in recontextualizing a religious past is to implement nonsectarian blue laws.