

THE CENTER FOR LAW AND HUMAN RIGHTS EDUCATION,
represented by and through its Executive Director, COUNSELLOR BENEDICT F.
SANNOH, **THE ORGANIZATION OF LIBERIAN MUSLIM YOUTH**,
represented by and through its President, ABDUL WAHAB, et al., Petitioners, v.
THE MONROVIA CITY CORPORATION, represented by and through its
Mayor, HONOURABLE MAXWELL CARTER, Respondent.

DECLARATORY JUDGMENT PROCEEDINGS.

Heard: May 21, 1998. Decided: August 5, 1998.

1. City market is defined as a place open to the general public as purchasers and available to all who wish to offer their wares for sale, including their manufactured goods and agricultural products, making use of stalls, stands or places allotted on payment of fixed rents or fees.
2. Selling of a very limited amount of wares in diverse places, usually adjacent to one's residence, if permissible by the city zoning regulations is not selling in the city market.
3. The petty trading in the neighborhood adjacent to one's residence, where possible, is not the same as selling in city markets, as contemplated by city ordinance no. I, section 11.
4. One who may be prejudiced or threatened by the enforcement of an act of the Legislature may question its constitutionality.
5. A group or organization can also have standing as the representative of its members, provided that it has alleged facts sufficient to make out a case or controversy as if the members themselves had instituted the suit.
6. A mere interest in a problem, no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render an organization adversely affected or aggrieved for the purpose of giving it standing to obtain judicial review. The group seeking review must have suffered an injury.
7. Before the law can be assailed by a person on the ground that it is unconstitutional, he must show that he has an interest in the question, in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute to them and that they are thereby injuriously affected.

8. A statute or ordinance will not be struck down unless plaintiffs are actually aggrieved and prejudiced by its enforcement.

9. Only a real party in interest has the right to question the constitutionality of a statute or ordinance before the court.

10. One who is not prejudiced by the enforcement of an act of the Legislature or ordinance of a City Council cannot question its constitutionality. Absent a showing of injury, actual or threatened, there can be no constitutional argument.

11. The Supreme Court will not strictly adhere to the technical rules of representation, but the nature of the controversy involved and its impact on the citizens, may warrant the Court ruling that people should always assert the constitutional and fundamental rights of freedom, religion and the maintenance of a secular state on behalf of those who are of other religions who are organized on the basis of those religions.

12. The Court, in unique situations, will disregard its usual rule denying standing to raise other rights.

Petitioners herein filed a petition for a declaratory judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, presided over by His Honour Judge Timothy Z. Swope. In the petition, the petitioners sought a declaration from the court that City Ordinance No. 1, which prohibited marketing and trading on Sundays, was unconstitutional since it tended to give preference to the Christian religion over other religious sects, in that it banned marketing on the Christian day of worship. The petitioners substantially averred that the Monrovia City Corporation was motivated by calls from religious leaders of the Christian faith who believed that Sunday is a holy day.

The petitioners comprised three separate groups of persons and institutions: (1) petty marketers who asserted that they did only neighborhood petty trading for a livelihood and for the upkeep and schooling of their children, and that the ban would adversely affect their ability to meet those needs and obligations; (2) the Center for Law and Human Rights Education which asserted that it and its members had interest in the protection of the Liberian people and that any enforcement of the ban would adversely affect its protection of its members and the Liberian people, especially as regard equality in the society; and (3) several Muslim organizations which contended that the ban tended to give preference to Christianity over Islam, that the ban affected its membership, many of who were marketers, that it violated the

constitutional provision on the separation of state and religion, and that it violated the provision prohibiting the government from creating or promoting any state religion.

Subsequently, the petitioners filed a motion for preliminary injunction and a temporary restraining order, which was granted. In its returns, filed simultaneously with a motion to vacate the temporary restraining order, the respondent (a) challenged the right of the Center for Law and Human Rights Education to bring the suit, asserting that the organization was without standing; and (b) denied that the ordinance violated the provisions of the Constitution, noting that the ordinance was designed purely as a means of keeping the City clean by allocating days for cleaning up the City, as well as to protect the health of the residents.

The Civil Law Court, after hearing arguments on the motion to vacate, set aside the notice of injunction and temporary restraining order. As to the petition for declaratory judgment, the court ordered the clerk of court to forward the said petition to the Supreme Court because it contained constitutional issues cognizable only before the Supreme Court.

In its judgment, the Supreme Court held that the co-petitioners petty marketers had standing to challenge the City Ordinance since they had a legal basis to conclude that enforcement of the Ordinance would affect them. The Court opined, however, that its interpretation of the Ordinance was that the ban applied only to general marketers and not to petty neighborhood traders, and that the selling of a limited amount of wares, usually adjacent to one's residence, if permissible by the city zoning regulations, did not constitute selling in the city market. Therefore, it said, those petitioners were not prohibited by the ordinance from selling in their neighborhoods on Sundays.

Regarding the challenge by the Center for Law and Human Rights Education, the Court held that the organization was without standing as it had failed to show how it or its members were adversely affected by the Ordinance. The Court noted that in order for a party to challenge the constitutionality of a statute or ordinance, the party must show that it is affected by or will be affected by the enforcement of the law. This co-petitioner organization or its unnamed members had failed to do. Hence, as to this co-petitioner, the petition was denied.

With regards to the Muslim organizations, the Court opined that while they had no standing to challenge the constitutionality of the ordinance, the intent and spirit

clearly evidenced that the ordinance was designed to promote the health of the residents of the City of Monrovia and to keep the City clean. It noted that while remarks made by the Acting Mayor of the City tended to give the impression that the ordinance was designed to give preference to Christianity over other religions, and was therefore irresponsible, the true intent of the ordinance, promulgated by the City Council many years before the Mayor took office, indicated that such was not the basis for the ordinance. It noted that the ordinance showed that the day was set aside to enable the sanitary workers to clean up the City and that it had no particular reference to keeping Sunday as a Sabbath day for Christians. Accordingly, the Court denied the petition.

Benedict F. Sannoh appeared for petitioners. Charles W. Brumskine appeared for respondents.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

Petitioners filed a petition for declaratory judgment on the 17th day of September, A. D. 1997, in the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia. On September 19, 1997, petitioners also filed a motion for preliminary injunction in the said court. The assigned Circuit Judge, His Honour Timothy Z. Swope, ordered the clerk of court, Irene Ross Railey, to issue the notice of injunction and temporary restraining order. The orders of the judge were carried out and the notice of injunction and temporary restraining order were issued and served on September 19, 1997.

The respondents, on September 27, 1997, filed returns to the petition for declaratory judgment and preliminary injunction, and simultaneously filed a motion to vacate the temporary restraining order. The court heard respondents' motion to vacate and set aside the notice of injunction and temporary restraining order. Subsequently, on October 1, 1997, heard the petition for declaratory judgment. On October 3, 1997, the court ruled ordering the clerk of court to forward the petition to the Honourable Supreme Court on the ground that the petition contained constitutional issues cognizable before the Supreme Court.

The petition for declaratory judgment forwarded to this Court substantially averred that the respondent, Monrovia City Corporation, motivated by calls from religions leaders of the Christian faith who believe that Sunday was holy, on Wednesday, September 10, 1997, began to make public pronouncements both in the print and electronic media that effective as of Sunday, September 14, 1997, all selling on

Sundays would be banned and prohibited in the City of Monrovia and its environs, pursuant to City Ordinance # 1.

Further, petitioners averred that Section 11 of City Ordinance #1 was unconstitutional in that its true motive and intent was to preserve the holiness and sanctity of Sunday, the Sabbath of the Christian faith, which was completely repugnant to the Constitution which prohibits the supremacy of one faith over another or the establishment of a state religion. In addition, Copetitioners J. Bioma Johnson, Mrs. Jacob Smith, and Mrs. Jayah Gray, who are neighborhood petty traders, asserted that they would be prevented from earning a livelihood, also as a result of the ban on selling on Sunday imposed by the respondent.

In its returns, the respondent prayed the denial and dismissal of petitioners' petition, substantially on the following grounds:

1. That as to Co-petitioner the Center For Law and Human Rights Education, said petitioner has no standing to sue in that it has alleged no personal injury traceable to the alleged unlawful act of the respondent.
2. Respondent denied that Section 11 of City Ordinance #1 , which banned and prohibited Sunday selling, was without a compelling city interest or did not concern public health of the community which was to further enhance the cleanliness of the city market.

That as to whether or not petitioners have standing to sue, this Court says yes, with reference to Co-petitioners J. Bioma Johnson, Mrs. Jayah Gray, and Mrs. Jacob Smith. The aforementioned co-petitioners, in count 3 of the petition, complained that they are "engaged in petty trade in and around their neighborhoods, and not in the general markets, and that their livelihood and means to pay their and children school fees depended on selling everyday including Sundays. Hence, they were directly effected by City Ordinance #1".

The Court examined section 11 of City Ordinance #1 to determine whether the aforementioned co-petitioners, neighborhood petty traders, are within the contemplation of the said City Ordinance. We quote section 11 of City Ordinance #1:

"To further enhance the cleanness of the city markets, marketeers shall be allowed to operate from 6 a.m.-6 p.m., Mondays through Saturdays. Selling on Sundays in

various markets in the City is strictly prohibited. Violators of this provision shall be subject to a fine of not less than US\$10.00 and not more than US\$20.00 for each offence."

To determine this issue, the Court must determine whether selling in and around one's neighborhood is synonymous with selling in the various markets in the city. This Court determines that within the context of City Ordinance # 1, section 11, city market is defined as a place opened to the general public as purchasers and available to all who wish to offer their wares, including manufactured goods and agricultural products for sale, making use of stalls, stands or places allotted on payment of fixed rents or fees.

Clearly, from the foregoing definition, selling of very limited amount of wares in diverse places, if permissible by the city zoning regulations, usually adjacent to one's residence, is not selling in the city markets. The topic of City Ordinance #1 is city market and not petty neighborhood selling. Hence, this city ordinance does not apply to co-petitioners J. Boima Johnson, Mrs. Jayah Gray and Mrs. Jacob Smith. A review of their petition reveal that the said co-petitioners do not sell in the city markets. This Court finds the petty trading in the neighborhood adjacent to one's residence, where permissible, is not the same as selling in city markets as contemplated by City Ordinance #1, Section

One may wonder why the co-petitioners mentioned supra filed this petition? Was the ban enforced against the said copetitioners and did they suffer any personal injury? This Court believes that the said co-petitioners are similarly situated and have good reasons to feel that their rights are threatened and, hence, are seeking pre-emptive redress. We find this permissible and the said co-petitioners therefore have standing to sue. One who is prejudiced or threatened by the enforcement of an act of the Legislature ordinance of the city council may question its constitutionality.

The petitioners complained that the respondent is proceeding beyond the scope of section 11 of City Ordinance #1 by a blanket ban on Sunday selling, whether or not such selling is carried on from markets, in neighborhood stores, tailor shops, petty traders, waiter market, cook shops, photo studios, garages, etc. This contention of petitioners was not specifically addressed by respondents. We conclude that this is an admission by respondent, and therefore the said co-petitioners have standing to feel threatened and that their interest will be prejudiced.

This Court shall now determine whether or not co-petitioner Center for Law and Human Rights Education has a standing to assail the constitutionality of City Ordinance #1, Section 11. We shall quote count one (1) of the petition hereunder:

"That petitioner is a non-profit, non-governmental and nonpolitical human rights organization created and existing pursuant to the Not-For-Profit Corporation Act of the Republic of Liberia. The Center has an interest in ensuring that the rights and fundamental liberties of all Liberians are respected, and in this regard, it engages in and implements programs geared towards conscientizing and creating an awareness of the rights and fundamental liberties of the people of Liberia, and the means to identify, assert and demand the protection of these rights. Some of the avenues used by the Center include public interest litigation, not only as an instrument for social change, but also to ensure compliance with the constitution and laws of Liberia for its interest and that of the general public. City Ordinance #1 is in contravention of the interests of the Center, its members and the general public.

A thorough review of the entire petition has failed to reveal the interests of the "Center and its members" injured by City Ordinance #1, section 11. This failure to state the facts of the personal injury suffered by the said co-petitioner and its members deprives the said co-petitioner and its members of standing to seek judicial review of City Ordinance # 1, section 11. Legal authorities, speaking on the issue, have said the following:

"A group or organization can also have standing as the representative of its members, provided that it has alleged facts sufficient to make out a case for controversy had the members themselves brought suit... A mere 'interest' in a problem, no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render an organization adversely affected or aggrieved for the purpose of giving it standing to obtain judicial review. The group seeking review must have suffered an injury..." 16 AM. JUR. 2d., Constitutional Law, § 192.

Before a law can be assailed by person on the grounds that it is unconstitutional, he must show that he has an interest in the question, in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute to them and that they are thereby injuriously affected, and that a statute or ordinance will not be struck down unless plaintiffs are actually aggrieved and prejudiced by its enforcement. Thus it is said only a real party in interest has the right to question the constitutionality of a statute or ordinance before the court. These rules are applicable to all cases, both at law and in equity, to attacks

on ordinances and to criminal proceedings. 16 AM. JUR. 2d., Constitutional Law, § 188. Further, "...one who is not prejudiced by the enforcement of an act of the legislature (city council) cannot question its constitutionality. Absent a showing of injury, actual or threatened, there can be no constitutional argument..." 16 AM. JUR. 2d., Constitutional Law, § 189.

Co-petitioners, Organization of Liberian Muslim Youth, National Reformation Council, and the National Muslim Council have stated to this Court that they are grass root Muslim organizations whose members are marketeers and are directly affected by Section 11 of City Ordinance #1, which prohibits Sunday selling. Further, that by this ban on Sunday selling, membership of co-petitioners say that this is an effective domination or preference for Christianity over Islam in violation of the Constitution, which prohibits the state religion or the domination of one religion over the other.

This Court has determined not to strictly adhere to the technical rules of representation. The nature of this controversy and its impact on the citizens has prompted this Court to allow the aforementioned co-petitioners to assert the constitutional and fundamental rights of freedom of religion and the maintenance of a secular state or Republic on behalf of its membership who are of another religion (Islam) and have organized on the basis of that religion. It has been said that "...the court in 'unique situations' will disregard its usual rule denying standing to rise another's rights. Unique circumstances will most readily be found where fundamental rights would otherwise be denied."

This Court believes that Co-petitioners Organization of Muslim Youths, National Reformation Council, and National Muslim Council have standing in this controversy to ensure religious freedom.

The Court shall now determine the crux of this matter, i.e., whether or not section 11 of City Ordinance #1 is constitutional? For the purpose of this determination, we shall quote counts seven (7), eight (8) and nine (9) of petitioners' petition:

(7) "Petitioners say that section 11 of City Ordinance # 1 and the public announcements emanating therefrom banning Sunday selling is motivated neither by a compelling city interest nor by any concerns for public safety, order, health, morals or the fundamental rights and freedom of others. Petitioners say that the ban is motivated solely by pressure from the Christian community who believes that Sundays are traditionally set aside for Christians to go to their respective churches for

worship and hence there should be no selling on Sundays. This is supported by remarks made by the Acting Mayor of the City of Monrovia, Honorable Maxwell D. Carter...

(8) Petitioners say that even though these aforementioned motives and intent, as stated in count seven (7) above, are not expressly stated on the face of the ordinance, the natural and inevitable effect of the ordinance and its scope and operations, when put into effect, abridges constitutional guarantees of petitioners herein. Petitioners say it is not the form of the ordinance that should control the determination of the constitutionality, but rather its substance, and what is done under the provisions. The substance of this ordinance is to ensure that Sunday remains a day set aside for Christians to go to their respective churches for worship and hence there should be no selling on Sundays; which is unconstitutional.

(9) That section 11 of the ordinance offends constitutional guarantees of a larger sector of the Liberian population of which petitioners are a part and is not reasonably designed to carry out any proper legislative purpose. Petitioners say that while it is believed that Liberia was founded on Christian principles, Liberia is not a Christian state. Under the constitution and laws of Liberia, there shall be a separation between religion and state, and that the Republic shall establish no state religion. The constitution further provides that no religious denomination or sect shall have any exclusive privilege or preference over any other, but shall be treated alike. Hence, the ban on Sunday selling simply because it is a day reserved for Christians to go church constitutes a violation of the constitutional rights of the Christians who may want to sell on Sundays to make a living for themselves and their families. Whereas the City Corporation to insist on enforcing City Ordinance # 1, it might give effect to the constitutional provision for equal treatment of all religions, by prohibiting selling on Fridays, the day reserved for Muslims to go to their places of worship, and on Saturdays, the day reserved for SDA's to go to their places of worship."

To determine this issue, we examined City Ordinance #1 in its entirety, and for better understanding, we quote same as follow:

Monrovia City Corporation
City Hall, Tubman Boulevard
Monrovia, Liberia
262281/261022

ORDINANCE NO. 1

Whereas, the sanitary condition and appearance of Monrovia, the nation's Capital, have deteriorated; and

Whereas, residents of Monrovia have called from time to time for improvement in the collection of garbage and the general appearance of the City;

NOW THEREFORE, it is ordained that effective November 15, 1997

1. Garbage shall be disposed of ONLY at sites designated by the Monrovia City Corporation. The Public shall be permitted to dispose of garbage at the said designated sites between the hours of 5p.m. and 8a.m. Anyone who violates this provision shall be subject to a fine of US\$10.00 for each offence.

2. No selling of foodstuff on the street, sidewalk or through Government offices within the City shall be permitted. Items affected by this Ordinance include such edibles as oranges, bananas, corn cassava, peanuts, sugarcane, avocados (butter pear), coconuts, candy, cigarettes, chicklet, fish, and other sea food, etc, Anyone found guilty of violating this provision shall be subject to a fine of not less than US\$5.00 for each offence.

3. Littering (the dropping of trash) by pedestrians or motorists within the City limits is strictly prohibited. Anyone found guilty of littering shall pay a fine of not less than US\$10.00 and not more than US\$25.00.

4. Occupants (whether owners or lessee) or residence, commercial houses and factories of all types, religious and all civic buildings are required to clean around and in front of their premises up to the sidewalk and to keep them clean at all times. Cleaning shall include the trimming of all hedges and trees and outing of grass on their property. No dump sites on these properties shall be permitted.

5. The City Government shall bear the responsibility of cleaning sidewalks and streets ONLY. Any owner, lessee, or occupants found violating this provision shall be subject to a fine of not less than US\$10.00 and not more than US\$50.00.

6. The owner of a vacant lot or other undeveloped parcel of land within the city limits is required to keep the property clean at all times. Grass on vacant lots must be kept at lawn level, and no dumping of refuse on undeveloped property shall be permitted except where it is authorized by the City Government. Where an owner of undeveloped real estate fails to keep his or her property clean the City Government

shall perform the task and a bill or a receipt will be issued of the delinquent owner. Legal proceedings shall be taken against the owner who fails to pay after thirty (30) days.

7. Owners or lessees of residences, commercial houses and factories of all types and description are required to paint the exterior of their property by December 15, 1975 and ever twelve months thereafter.

8. The use of dump sites and undeveloped property as toilets is strictly prohibited. Anyone found violating this Ordinance shall be subject to a fine of not less than US\$5.00 and not more than US\$10.00.

9. The City Government shall give notice to owners of old dilapidated and abandoned vehicles to have them removed from the streets of the city by marking the windshields. Owners of such vehicles shall be required to move them within thirty (30) days of the notice.

10. Upon failure of the owner to comply, the City Government shall remove said vehicles and dispose of them without any responsibility to the City Government.

11. Owners of dogs shall retain them within the confines of their property. Any dog found at large on the streets and sidewalks of the City shall be impounded or disused if possessed with a contagious disease. Dogs impounded shall be released upon payment of a fine of \$5.00.

12. Auto repair on sidewalks and in the streets of the City is, strictly prohibited. Anyone found using streets, sidewalks, vacant lots, and other public places within the City as a makeshift garage shall be subject to a fine of not less than US\$25.00 and not more than US\$50.00 and ordered to vacate such premises at once.

13. To further enhance the cleanliness of the City markets, marketeers shall be allowed to operate from 6: a.m. - 6 p.m. Mondays through Saturdays. Selling on Sundays in various markets in the city is strictly prohibited. A fine of not less than US\$10.00 and not more than US\$20.00 shall be imposed for each offence. Done at the Monrovia City Hall this 27th day of October, A. D. 1975.

Sgd. Edward A. David

MAYOR, MONROVIA CITY CORPORATION

Attested: Sgd. E. Jonathan Goodrich

MINISTER OF LOCAL GOVERNMENT & RURAL
DEVELOPMENT & URBAN RECONSTRUCTION

APPROVED: Sgd. William R. Tolbert, Jr.

PRESIDENT OF LIBERIA

TRUE COPY OF THE ORIGINAL"

We note that there are two (2) sections 9 and two sections 6. We consider them typographical errors and shall deal with the sections chronologically.

To determine the intent and motive of section 11 or 13 of City Ordinance #1 violate the we must examine the four corners of the said document to determine the intent of the City Council and the evil sought to be remedied.

A careful scrutiny of the Ordinance reveal that the objective of the preambular clauses of City Ordinance # 1 is improvement in the sanitary conditions and the general appearance of the City of Monrovia.

Section one (1) of the ordinance informs the public of designated dump sites and the hours during which garbage may be collected and the fines that may be levied against violators.

Section two (2) prohibits selling of food stuffs, cigarettes and candy and sea food stuffs in Government offices, the streets, and on sidewalks and sets a fine for violators.

Section three (3) prohibits littering and sets a fine for violators.

Section four (4) requires occupants of all buildings to maintain the cleanliness and attractiveness of their building and premises.

Section five (5) reaffirms the responsibility of government for the cleanliness of sidewalks and streets.

Sections six (6) and eight (8) require owners of vacant parcels of land to keep their property clean.

Sections nine (9) and eleven (11) mandate the removal of old and abandoned vehicles and prohibit auto-repair on the streets, sidewalks and vacant lots.

Section eleven (11) or correct numbering is thirteen (13) states that to further enhance cleanliness, selling on Sunday shall be prohibited in the various markets in the City of Monrovia.

Clearly the intent of the promulgators or the City Council was to enhance the cleanliness and promote the attractiveness of the City of Monrovia. The intent and objectives of cleanliness and attractiveness are clear and unambiguous and flow from the preambular clauses and permeate each and every section of City Ordinance #1.

The purpose of construction of an ordinance is to discover the intention and meaning of the ordinance and the same rules that must be observed in construing statutes apply in construing ordinances. Where the language is clear and explicit and free from ambiguity, there is no room for construction and the rules of construction are inapplicable. In such a case, the ordinance must be interpreted according to its terms without resort to other means of interpretation. The intention of the municipal legislative body is ascertained primarily from the language used in the ordinance. The courts will not impute to the legislators an intention inconsistent with the language used in an ordinance which is clear and concise and which is of only one interpretation. If such intention may be determined from the ordinance itself no other construction is necessary, and the court is not permitted to add to, or subtract from, the words used in the ordinance. 62 C. J. S, Municipal Corporations, § 442.

We shall now proceed to determine whether section 11 or 13 of the said ordinance is constitutional.

We shall quote the relevant portion of the Constitution relied upon by co-petitioners. Chapter III, Article 14 provides:

"...no religious denomination or sect shall have any exclusive privilege or preference over any other, but all shall be treated alike.... Consistent with the principle of separation of religion and state, the Republic shall establish no state religion."

Co-petitioners complain that the ban on selling on Sundays is truly intended to keep holy the Sabbath of the Christian and that this is manifested by the blanket enforcement of Ordinance #1, and statements made by the Mayor of the City of Monrovia. All of this, they said, was motivated by calls made by Christian leaders for a ban on Sunday selling.

To understand statements made by the respondent, by its Acting Mayor of the City of Monrovia, Maxwell D. Carter, we examined petitioners exhibit "P/2", same being the September 13, 1997 issue of the "National" newspaper, which quoted the said statement:

"Acting City Mayor Maxwell Carter said customarily Sundays are set aside for Christians to go to their respective churches to worship."

To this allegation respondent contended that no amount of utterance(s) allegedly made by the Mayor of the City can affect the constitutionality of the City Ordinance. Respondents did not deny the statement in their returns, hence this Court deems the failure to deny as an admission that the statement was indeed made by the said co-respondent.

The question this Court must answer, however, is whether illegal statements made by one with authority to implement and enforce a law, and which statements are contrary to the intent and spirit of the law, is sufficient to render the law unconstitutional?

It is unfortunate that the highest authority of the Monrovia City Corporation, who is under a legal duty to serve diverse groups of people who have the constitutional guarantee to fundamental freedoms, including freedom of worship, and the constitutional protection that the Republic of Liberia is a secular state, chose to make such statements.

The said utterances and almost simultaneous issuance of the release placing a ban on Sunday selling does indeed give the impression that the motivation of the respondent is a religious preference for Christianity in violation of the constitution, thereby offending citizens of other faith.

The utterances of Mr. Maxwell Carter in 1997 is reprehensible, irresponsible, illegal, and unconstitutional; notwithstanding, we find that the spirit and intent of the City Council who promulgated City Ordinance #1 in 1975 was the protection of the public interest - public health and sanitation. Mr. Maxwell Carter has violated the duties and responsibilities of the office of Mayor of the City of Monrovia, but his acts are not sufficient to subvert the spirit and intent of the framers of the City Ordinance in 1975 or to render City Ordinance #1 unconstitutional. Hence, this Court is unable to find that the utterances by Corespondent Maxwell Carter in 1997 renders City Ordinance # 1 enacted in 1975 unconstitutional. For this Court to declare the said

ordinance unconstitutional, the utterances and acts of Mr. Carter, complained of herein, must have been constant and sustained by succeeding mayors since 1975, the date of enactment of the said City Ordinance #1 .

Petitioners contend that the true intent of the framers of City Ordinance #1 was to keep the Christian Sabbath, Sunday, holy. We looked to the Christian faith to determine what is considered a holy Sabbath. The Christian Bible requires that on the Sabbath no activity or work shall be done.

Petitioners' contention that Respondent Monrovia City Corporation's action is discriminatory in the enforcement of the ban in that certain businesses are allowed to open while the various markets are closed is inconsistent with the contention of the interest and effect of section 11 of City Ordinance # 1, which they said was to keep Sunday holy. Indeed, this contention supports the respondent's argument that the objective of placing a ban on selling in the various markets on Sunday is public health and sanitation, for, even though it is Sunday, other business activities continue except that the various markets are closed to allow respondents to carry out cleaning and sanitation. Properly functioning, respondent is at work on Sunday, contrary to the Christian principles of keeping the Sabbath holy.

We find that the exercise of municipal powers to promulgate regulations and/or exercise police power to regulate a class is not a violation of the equal protection clause of the Constitution. The test here is that the regulation must be operated with fairness, equality and amity on all persons and classes similarly situated.

We uphold the argument of the respondent that the Constitution does not ban city regulations of conduct whose reason or effect coincide with or harmonize with the tenets of various religions. The prohibition on commercial and other activities originally had the intent of upholding the Judea-Christian principle of keeping the Sabbath, but the Court sees that this has been secularized and the current interpretation is that the day is observed as recreational respite from a week of hard work.

Petitioners have remedies under the law for their contention that respondent is discriminatory and at the same time heavy handed and oppressive and ultra vires in the enforcement and implementation of the City Ordinance # 1 and they can avail themselves of any improper and illegal enforcement of a statute or ordinance at a point in time, which is contrary to the spirit and intent of the statute or ordinance and

of the framers thereof. This contention is not, however, sufficient for this Court to declare the statute/ordinance unconstitutional.

In petitioners' written argument or amended brief, petitioners brought to the attention of this Court that City Ordinance #1 was promulgated contrary to the Charter of the City of Monrovia, Revised Statutes of Liberia, Vol. 11 and that the then Mayor of the City of Monrovia who signed the said City Ordinance on October 27, 1975 was appointed by the President of Liberia, Dr. William R. Tolbert, instead of being elected to office as required by the said Charter.

This issue was raised for the first time before the Supreme Court in the amended brief filed on the same day arguments were heard by this Court. It is the considered opinion of this Court that this issue is one of law and fact not cognizable before the Supreme Court, and hence we are unable to pass on this issue at this time.

Wherefore and in view of this foregoing it is the opinion of this Court that City Ordinance #1 is constitutional, and the intent of the City Council in section 11 of the said City Ordinance #1 is the cleanliness and attractiveness of the city of Monrovia, i.e., the public health interest of the City and its residents. The ban or prohibition on Sunday selling in the various markets in Monrovia, while permitting other commercial activities, does not promote the holiness of Sunday or create a state religion, and neither is it violative of the equal protection clause of the Constitution. Therefore, the petition for declaratory judgment to declare City Ordinance #1 unconstitutional is denied. Costs are disallowed. And it is hereby so ordered.

Petition denied.