The exemption itself does not have a principal effect of advancing religion, the Court concluded, but merely allows churches to advance religion.[201]

Sunday Closing Laws.—The history of Sunday Closing Laws goes back into United States colonial history and far back into English history.[202] Commonly, the laws require the observance of the Christian Sabbath as a day of rest, although in recent years they have tended to become honeycombed with exceptions. The Supreme Court rejected an Establishment Clause challenge to Sunday Closing Laws in *McGowan v. Maryland*.[203] The Court acknowledged that historically the laws had a religious motivation and were designed to effectuate concepts of Christian theology. However, "[i]n light of the evolution of our Sunday Closing Laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is not difficult to discern that as presently written and administered, most of them, at least, are of a secular rather than of a religious character, and that presently they bear no relationship to establishment of religion. . . ."[204] "[T]he fact that this [prescribed day of rest] is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals. 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."[205] The choice of Sunday as the day of rest, although originally religious, now reflected simple legislative inertia or recognition that Sunday was a traditional day for the choice.[206] Valid secular reasons existed for not simply requiring one day of rest and leaving to each individual to choose the day,

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[201] "For a law to have forbidden 'effects' . . . it must be fair to say that the *government itself* has advanced religion through its own activities and influence." 483 U.S. at 337. Justice O'Connor's concurring opinion suggests that practically any benefit to religion can be "recharacterized as simply 'allowing' a religion to better advance itself," and that a "necessary second step is to separate those benefits to religion that constitutionally accommodate the free exercise of religion from those that provide unjustifiable awards of assistance to religious organizations." Id. at 347, 348.

[202] The history is recited at length in the opinion of the Court in McGowan v. Maryland, 366 U.S. 420, 431–40 (1961), and in Justice Frankfurter's concurrence. Id. at 459, 470–551 and appendix.

[203] 366 U.S. 420 (1961). Decision on the establishment question in this case also controlled the similar decision on that question in Two Guys from Harrison-Allentown v. McGinley, 366 U.S. 582 (1961), Braunfeld v. Brown, 366 U.S. 599 (1961), and Gallagher v. Crown Kosher Super Market, 366 U.S. 617 (1961). On free exercise in Sunday Closing cases, *see* "Free Exercise Exemption From General Governmental Requirements," *infra*.

[204] McGowan v. Maryland, 366 U.S. 420, 444 (1961).

[205] 366 U.S. at 445.

[206] 366 U.S. at 449–52.