

**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF HENNEPIN**

**FOURTH JUDICIAL DISTRICT**

---

**EDINA COMMUNITY LUTHERAN  
CHURCH and UNITY CHURCH  
OF ST. PAUL,**

**Plaintiffs,**

**Court File No. \_\_\_\_\_**

**v.**

**Case Type: Other Civil**

**STATE OF MINNESOTA,**

**Defendant.**

---

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
MOTION FOR TEMPORARY INJUNCTION**

On May 28, 2003, the Minnesota Citizens' Personal Protection Act ("the Act") became law. On June 6, 2003, and March 16, 2004, the District Court, Fourth Judicial District (Rosenbaum, J.), entered injunctive relief against provisions of the Act that infringed on the constitutional rights of religious institutions. On July 14, 2004, the District Court, Second Judicial District (Finley, J.), declared the entire Act unconstitutional. This decision was affirmed by the Court of Appeals.

Notwithstanding the injunction against provisions of the Act that infringed on religious freedom, the Legislature retroactively reenacted the Act ("Reenacted Act"). The Reenacted Act is equally offensive to religious freedom. A temporary injunction should issue.

## STATEMENT OF FACTS

### **I. THE REENACTED ACT AND RELIGIOUS REAL PROPERTY.**

Copies of the Act and the Reenacted Act are attached as Exhibits A and G to the Affidavit of David L. Lillehaug (“Lillehaug Aff.”).

The stated purpose of the Reenacted Act is set out at Minn. Stat. § 624.714, subd. 22. The Legislature declared that it was “necessary to accomplish compelling state interests in regulation of” what was described as “the fundamental, individual right to keep and bear arms” under the “second amendment of the United States Constitution.”

The Reenacted Act changes substantially the rights of “private establishments” to restrict persons carrying firearms from entering and remaining on private property. Under the Reenacted Act, a private establishment is defined as any “building, structure, or portion thereof, owned, leased, controlled or operated by a nongovernmental entity for a nongovernmental purpose.” Minn. Stat. § 624.714, subd. 17(b)(4). By this definition, Edina Community Lutheran Church and Unity Church of St. Paul are “private establishments.”

Accordingly, the Reenacted Act has a significant impact on the real property of religious institutions. Specifically:

1. The Reenacted Act commands that a private establishment, such as a religious institution, may prohibit firearms from its building only if it makes a “reasonable request” that firearms not be brought into the building, whether by persons carrying “under a permit or otherwise.” Minn. Stat. § 624.714, subd. 17(a).

A “reasonable request” consists of two alternative notices. Minn. Stat. § 624.714, subd. 17(b)(1)(i)&(ii). These notification requirements are “exclusive.” Minn. Stat. § 624.714, subd. 17(f).

First, a reasonable request may be accomplished by a “conspicuous” sign “prominently” posted at “every entrance.” The statute sets detailed location, size, typeface, and content requirements. For example, the sign lettering must be “black Arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.” The sign must contain the words “(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES.” Minn. Stat. § 624.714, subd. (b)(1)(i), (2)&(3).

Second, a reasonable request may be accomplished by personally informing the person of the posted request. The private establishment must “demand[] compliance.” Minn. Stat. § 624.714, subd. (b)(1)(ii).

If a gun-carrier enters the premises despite a “reasonable request,” the private establishment may order the person to leave. Minn. Stat. § 624.714, subd. 17(a). A person who fails to leave has committed a petty misdemeanor. (Under Minnesota law, a petty misdemeanor is not a crime. Minn. Stat. § 609.02, subd. 4a.) The fine for a first offense is not more than \$25. This penalty is “exclusive” and overrides Minn. Stat. § 609.605, the general trespass statute. Minn. Stat. § 624.714, subd. 17(f). The trespasser’s firearm is not forfeited. Minn. Stat. § 624.714, subd. 17(a); compare Minn. Stat. § 609.531 et seq. (forfeiture of weapon used in furtherance of a crime).

The Reenacted Act excludes from the notification requirements “private residences.” Residential owners may prohibit firearms and provide notice “in any lawful manner.” Minn. Stat. § 624.714, subd. 17(d).

2. The Reenacted Act commands that a private establishment, such as a religious institution, may not prohibit the lawful carrying of firearms in its parking facility or parking area. Minn. Stat. § 624.714, subd. 17(c).

3. The Reenacted Act commands that an employer, such as a religious institution, may not prohibit its employees from carrying firearms in the employer's parking lots. Minn. Stat. § 624.714, subd. 18(c).

4. The Reenacted Act commands that a private establishment, such as a religious institution, may not prohibit the carrying of firearms by tenants and their guests. Minn. Stat. § 624.714, subd. 17(e). In other words, a lease provision banning firearms is illegal.

Edina Community Lutheran Church and Unity Church of St. Paul are affected by the Act as owners of religious real property. Edina Community Lutheran Church is the owner of a house of worship, a parking lot, and tenant space. Unity Church of St. Paul is the owner of a house of worship and a parking lot. Both are employers.

The facts concerning the impact of the Reenacted Act on the exercise of religion by Edina Community Lutheran Church are found in the Affidavits of Pastor Pamela Fickenscher and Bishop Craig Johnson, submitted herewith. The facts concerning the impact of the Act on Unity Church of St. Paul's exercise of religion are found in the Affidavit of Co-Ministers Rob and Janine Eller-Isaacs, submitted herewith.

## **II. PREVIOUS LITIGATION.**

Edina Community Lutheran Church's and Unity Church of St. Paul's motion is based on Article I, Section 16 of the Minnesota Constitution, which guarantees the free exercise of religion. Two previous cases have explored the relationship between the Act and religious freedom.

Shortly after the Act was passed in 2003, Edina Community Lutheran Church filed suit in Hennepin County. The Edina church was quickly joined by many other

religious institutions, including the Episcopal Bishop of Minnesota on behalf of all Episcopal churches. The case was captioned Edina Community Lutheran Church, et al. v. State of Minnesota, Court File No. MC 03-00815 (“Edina I”).

On June 6, 2003, the Hon. Marilyn Rosenbaum issued a temporary injunction against the signage and personal notification provisions of the Act. However, she denied the motion as to the parking area, employer, and tenant provisions of the Act on the ground that the religious institutions lacked standing. See Lillehaug Aff.. Ex. B.

The religious institutions appealed. The State did not cross-appeal.

On January 13, 2004, the Minnesota Court of Appeals reversed: “Because the act affects appellants’ property rights and their right to free religious exercise under the Minnesota Constitution, an actual controversy exists that involves adverse interests and is capable of specific relief. We therefore conclude that appellants have standing to challenge the act . . . .” Edina Community Lutheran Church v. State of Minnesota, 673 N.W.2d 517, 520 (Minn. Ct. App. 2004) (copy at Lillehaug Aff. Ex. C). The Court of Appeals remanded so that the District Court could make additional findings.

On March 16, 2004, the District Court made such findings and broadened the temporary injunction to include the parking area, employer, and tenant provisions of the Act. Judge Rosenbaum determined: “The Act threatens to impinge upon the use of Plaintiffs’ real property for their religious mission and worship practices. Also, by asking Plaintiffs to ‘tolerate’ actions that conflict with their religious beliefs, the State is infringing upon Plaintiffs’ right to free exercise of religion as guaranteed by the Minnesota Constitution.” She also held: “The challenged provisions of the Act impair Plaintiffs’ constitutional rights to worship and rights to conscience, and such loss of

religious freedom, even for minimal periods of time, constitutes irreparable harm . . . .”

See Lillehaug Aff. Ex. D.

The State did not appeal the additional injunctive relief.

On October 7, 2003, Unity Church of St. Paul filed suit in the Second Judicial District, Unity Church of St. Paul, et al. v. State of Minnesota, Case No. C9-03-9570 (Finley, J.) (“Unity Church”). Many other religious institutions, including the seven cathedral churches of the Roman Catholic Archdiocese of Minnesota, the Minnesota UCC and Methodist Conferences, and international denomination Eckankar, intervened.

On July 14, 2004, the Hon. John Finley determined that the law containing the Act was unconstitutional as embracing more than one subject in violation of Article IV, Section 17 of the Minnesota Constitution. In dictum, Judge Finley commented: “There is no question that the Act infringes upon those [religious] beliefs as it relates to the use of their properties, especially parking lots.” He stated further that the State of Minnesota had not identified any compelling interest for such infringement of religious rights. See Lillehaug Aff. Ex. E.

The State appealed. On April 12, 2005, without reaching the freedom of religion issue, the Court of Appeals affirmed Judge Finley’s ruling. See Lillehaug Aff. Ex. F.

The State petitioned the Supreme Court for review.

### **III. THE LEGISLATURE’S RESPONSE.**

Without waiting for the Supreme Court to decide the State’s petition for review, on May 13, 2005, the Minnesota Senate took up S.F. No. 2259, a retroactive reenactment of the Act. The Senate stripped from the bill provisions recommended by the Crime Prevention and Public Safety Committee that would have excluded religious institutions from the definition of “private establishments” and made it a crime to trespass with a

firearm in a religious establishment. Lillehaug Aff. Exs. H, I. Then, by a vote of 25-41, the Senate rejected an amendment that would have allowed religious institutions to give notice “by any lawful means” that firearms are prohibited on religious property.

Lillehaug Aff. Ex. I.

The Senate passed S.F. No. 2259 by a 44-21 vote.

On May 18, 2005, the Minnesota House of Representatives considered S.F. No. 2259. By a vote of 60-73, the House rejected an amendment that would have allowed religious institutions to “prohibit firearms, and give notice thereof, on any of their real properties, in any lawful manner.” See Lillehaug Aff. Ex. J. The House passed S.F. No. 2259 by an 86-47 vote.

S.F. 2259 was signed by the Governor on May 24, 2005, and the provisions challenged herein became effective immediately and retroactively to April 28, 2003. Thereafter, the State withdrew its petition for review and the Edina I and Unity Church cases were dismissed.

### **LEGAL ARGUMENT**

Plaintiffs’ Complaint alleges that the Reenacted Act violates plaintiffs’ religious rights in three ways:

Count One – Minnesota Constitution Article I, Section 16.

Count Two – Freedom of Religious Association, U.S. Constitution.

Count Three – Religious Land Use Act of 2000.

Plaintiffs’ Motion for a Temporary Injunction is based on Count One, the Minnesota Constitution’s guarantee of religious freedom.

Five factors are considered in determining whether a temporary injunction should be granted: (1) the nature and relationship of the parties; (2) the balance of relative harm

between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. Edina Community Lutheran Church v. State of Minnesota, 673 N.W.2d 517, 513 (Minn. Ct. App. 2004), citing Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (Minn. 1965). Each of these factors militates in favor of injunctive relief.

This brief analyzes the five factors as follows:

As this is a constitutional case, the first, third, and fourth factors are discussed together.

Then, the second factor, the relative harm, is discussed.

Finally, plaintiffs are not aware of, and so do not discuss, any administrative burden, the fifth factor.

**I. THE REENACTED ACT VIOLATES THE MINNESOTA CONSTITUTION, ARTICLE I, SECTION 16.**

**A. Religious Freedom is a Precious Right Accorded the Highest Constitutional Deference.**

Article I, Section 16 of the Minnesota Constitution guarantees that the right of every Minnesotan “to worship God according to the dictates of . . . conscience shall never be infringed.” It further prohibits “any control of or interference with the rights of conscience.” Section 16 is not to be construed to “excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.”

“Religious liberty is a precious right,” said the Minnesota Supreme Court in the leading case of State v. Hershberger, 462 N.W.2d 393, 398 (Minn. 1990). See id. at 399 (religious freedoms “traditionally revered” in Minnesota); State v. French, 460 N.W.2d 2, 8 (Minn. 1990), rehearing denied (Oct. 8, 1990) (“The people of the State of Minnesota

have always cherished religious liberty.”) Because the right to religious liberty is found in the Preamble of the Minnesota Constitution, religious liberty is even “more important than the formation of government.” Id. It is “coequal with civil liberty.” Hershberger, 462 N.W.2d at 398. Section 16 is “an enumeration of a primordial right and a limitation on the power of the state.” Id. at 400 (Simonett, J., concurring).

While religious liberty is part of the first amendment to the United States Constitution, the language of Section 16 “is of a distinctively stronger character than the federal counterpart.” Id. at 397. “Minnesotans are afforded greater protection for religious liberties against governmental action under the state constitution than under the first amendment of the federal constitution.” Id. at 397. Therefore, government actions less than an outright prohibition on religious practices that do not violate the first amendment can violate the Minnesota Constitution. Id. at 397.

The Minnesota Supreme Court in Hershberger further held that Section 16 “expressly limits the governmental interests that may outweigh religious liberty.” Id. at 397. As to the governmental interest in public safety referenced in Section 16, “only religious practices found to be inconsistent with public safety are denied an exemption.” Id. at 398 (emphasis in original). The burden is on the State. French, 460 N.W.2d at 9.

**B. A Four-Prong Test is Applied**

The interest in religious freedom is balanced against the state’s interest in peace and safety through a four-prong test. First, it must be determined whether the religious belief is sincerely held. Second, it must be determined whether the state law burdens the exercise of religious belief. Third, it must be determined whether the state interest in the law is overriding and compelling. Fourth, it must be determined whether the state law uses the least restrictive means. Hill-Murray Fed’n of Teachers v. Hill-Murray High

Sch., 487 N.W.2d 857, 865 (Minn. 1992); Geraci v. Eckankar, 526 N.W.2d 391, 398 (Minn. Ct. App. 1995), review denied (Mar. 14, 1995), cert. denied, 516 U.S. 818 (1995).

Applying the four-prong test, the Reenacted Act clearly violates Article I, Section 16.

**First**, plaintiffs' beliefs are sincerely held.

Acting pursuant to its religious beliefs, Edina Community Lutheran Church has prohibited firearms on all of its real property, including its parking lot and tenant space. Edina Community Lutheran Church has decided to communicate the prohibition of firearms by signage, not in the purely secular form dictated by the State, but by a religious message. Edina Community Lutheran Church has declined to undertake the onerous personal notification requirements because they would substantially infringe on the worship experience. The basis and sincerity of these beliefs is explained in the affidavits of Pastor Erik Strand and Bishop Craig Johnson.

Also acting pursuant to its religious beliefs, Unity Church of St. Paul has prohibited firearms on all of its sacred property, including its parking lot. Unity Church of St. Paul has erected a sign with a religious message that does not comply with the Reenacted Act. It has foregone the specific personal notification requirements of the Act because they would substantially infringe on the spiritual experience of its members. The basis and sincerity of these beliefs is explained in the affidavit of Co-Ministers Rob and Janine Eller-Isaacs.

In the Edina I case, the State did not question the sincerity of the religious institutions' beliefs. See Edina Community Lutheran Church v. State of Minnesota, 673 N.W.2d 517, 521 (Minn. Ct. App. 2004). Nor should it do so here. In Edina I, the Court quoted Geraci v. Eckankar to the effect that: "If courts begin to question a church's basis

for doctrinal decisions, a church may be compelled to confirm its religious beliefs with the government's or the majority culture's beliefs." Geraci v. Eckankar, 526 N.W.2d at 399. See Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952) (religious organizations should have the power to decide matters of faith and doctrine "free from state interference").

**Second**, the Reenacted Act infringes, controls, and interferes with the exercise of plaintiffs' religious beliefs. The Reenacted Act is an extraordinary intrusion on the plaintiffs' right to use their real properties for worship and religious mission. As Minnesota law recognizes, religious institutions have the right to "erect, acquire, and operate churches . . . and other buildings or facilities for . . . religious, moral, and charitable activities." Minn. Stat. § 315.05. Minnesota criminal law protects the access of worshipers to their houses of worship. See Minn. Stat. § 609.28 (prohibits interference with religious observance). Also, as the Court of Appeals recognized in Edina I, 673 N.W.2d at 522, all owners of real property, whether secular or religious, have always enjoyed the essential right to exclude others. See, e.g., State v. Wicklund, 589 N.W.2d 793 (Minn. 1999) (mall may exclude those claiming to exercise First Amendment rights), affirming 576 N.W.2d 753 (Minn. Ct. App. 1998).

The Reenacted Act completely upsets plaintiffs' pre-existing constitutional and statutory right to control their religious real property. As the Court of Appeals determined in the Edina I case, 673 N.W.2d at 522, by asking religious institutions to tolerate firearms on their property, "the state arguably is infringing on appellants' right to free exercise of religion, guaranteed by Minn. Const. art. I, § 16." On remand, the District Court went further, finding that the Act's provisions "impair" the right to worship and are a "loss of religious freedom."

Here, the affidavits show that the Reenacted Act burdens the free exercise of religion, in at least four ways.

A. The Reenacted Act burdens plaintiffs' rights to communicate and worship as they see fit. For religious institutions that wish to ban firearms, the Act creates an onerous "exclusive" notification regime. If they wish to provide notification by signage, religious institutions must post – not once, but at every entrance – conspicuous, non-religious signs bearing words dictated by the State. If they wish to provide notification by spoken word, they must personally notify every worshiper and visitor and "demand compliance." Under either alternative, if a firearm is seen, they must give the armed person an order to leave.

The burdensome signage requirements of the Act are a radical departure from traditional trespass law. For example, it is a misdemeanor to enter a building and construction site if the exterior of the building is conspicuously posted with a sign at least 11 inches square with an "appropriate notice." See Minn. Stat. § 609.605, subd. 1(a)(v) and 1(b)(9). Simply posting the hours a cemetery is closed is enough to notify an after-hours trespasser. See Minn. Stat. § 609.605, subd. 1(b)(6). By contrast, the Reenacted Act requires a larger sign, more specific wording, a specific Arial typeface, sizable print, a contrasting background, and posting at all entrances. Most importantly, the Reenacted Act precludes a religious message. This is unconstitutional. See Hershberger, 462 N.W.2d at 396 (requiring Amish to use particular sign infringed religious beliefs).

Alternatively, religious institutions must undertake personal notification and "demand compliance." This is a significant departure from traditional trespass law, where a simple demand to depart has been deemed sufficient. See Minn. Stat. § 609.605, subd. 1(b)(3). As the affidavits demonstrate, such individual notification and demand

seriously interferes with the free exercise of religion. To comply with the statute, religious institutions must modify substantially their traditional process of welcome and blessing to worshippers and visitors.

B. The Reenacted Act prohibits Edina Community Lutheran Church and Unity Church of St. Paul from banning guns from their parking lots. This type of restriction is, to plaintiffs' knowledge, unprecedented, in Minnesota and elsewhere. As the affidavits show, such parking lots are an integral part of plaintiffs' religious property and are used for activities in furtherance of their missions. The Act unconstitutionally forces religious institutions and their worshipers to associate with gun-carriers in a religious setting. Cf. Roberts v. United States Jaycees, 468 U.S. 609, 622-23 (1984) (right to associate with others for religious ends "plainly presupposes a right not to associate").

C. The Reenacted Act burdens Edina Community Lutheran Church's and Unity Church of St. Paul's religious rights as employers. Both churches have exercised their religious beliefs by banning firearms from all of their real property. However, the Reenacted Act prevents such a ban on employees' possession of firearms in parking areas.

Under the Minnesota Constitution, a religious institution "retains the power to hire employees who meet their religious expectations, to require compliance with religious doctrine, and to remove any person who fails to follow the religious standards set forth." Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch., 487 N.W.2d 857, 866 (Minn. 1992). For example, while matters of compensation are negotiable under the Minnesota Labor Relations Act, a religious institution need not negotiate "matters of religious doctrine and practice." Id. Similarly, even though eradication of gender

discrimination in employment is a compelling state interest, it is outweighed by the free exercise of religion. See Geraci v. Eckankar, 526 N.W.2d 391, 399 (Minn. Ct. App. 1995).

D. The Reenacted Act further burdens Edina Community Lutheran Church's right to use its real property in a manner consistent with its mission by prohibiting it as a landlord from restricting the possession of firearms by tenants. The Act unconstitutionally burdens religious institution landlords from entering into or enforcing leases to prohibit all guns in tenant space. Compare State v. French, 460 N.W.2d 2, 9-10 (Minn. 1990) (exemption from discrimination statute allowed for landlord with sincerely held religious belief).

Plainly, the Reenacted Act infringes substantially on sincere religious beliefs.

**Third**, the State interest in the offending provisions of the Reenacted Act is not overriding and compelling.

Under Article I, Section 16, "[o]nly the government's interest in peace or safety or against acts of licentiousness will excuse an imposition on religious freedom under the Minnesota Constitution." State v. Hershberger, 462 N.W.2d 393, 397 (Minn. 1990). To prove a compelling state interest, the State must show that the religious institution's practices are "inconsistent with public safety," id. at 398 (emphasis in original).

The State must show not only that it has a general interest, but that it has a compelling and overriding state interest in not granting the religious objector an exemption from the general requirement. See State v. French, 460 N.W.2d 2, 9 (Minn. 1990). In other words, if the Reenacted Act interferes with a religious institution's beliefs, the State must show that, as to that particular institution, there is a compelling reason to interfere.

In this case, by the express terms of the Reenacted Act, the State's compelling state interest is not public peace or safety. The entire premise of the Act is that the second amendment to the United States Constitution "guarantees the fundamental, individual right to keep and bear arms." Minn. Stat. § 624.714, subd. 22. This premise is wrong, as a matter of law. The full text of the second amendment reads: "A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed." It is settled law that the second amendment "protects not an individual right but a collective right, in the people as the group, to serve as militia." Application of Atkinson, 291 N.W.2d 396, 398 (Minn. 1980), citing United States v. Miller, 307 U.S. 174, 178-79 (1939). Here, the Reenacted Act has nothing to do with the militia.

Not only is the Reenacted Act's declaration of a purported "fundamental, individual right to keep and bear arms" faulty as a matter of law, it is contrary to the long-standing public policy of this State as recognized by Minnesota courts. As the Minnesota Supreme Court said in Atkinson, there is a "well founded" public policy to restrict pistol permits to those who make a "showing of particularized need and responsibility" for carrying a loaded weapon. 291 N.W.2d at 399, quoting State v. Paige, 256 N.W.2d 298, 303 (Minn. 1977).

The Reenacted Act goes on to declare that there is a compelling state interest in the "regulation" of that purported individual second amendment right. Regulation, not public safety, is identified as the compelling interest.

Even if public safety were the State's identified compelling interest, the State cannot show that public safety is harmed when religious institutions exclude persons carrying guns.

The Reenacted Act itself, by the exemptions it contains, shows there is no compelling state interest. For example, under the Reenacted Act, guns may not be carried in schools. Minn. Stat. § 609.66, subd. 1d(c). If they are not allowed in schools, then why must they be allowed in Sunday schools? Under the Reenacted Act, private residents may prohibit firearms and provide notice thereof “in any lawful manner.” Minn. Stat. § 624.714, subd. 17(d). If guns can be banned from houses without uniform signage and personal notification, then why not from houses of worship? Further, the Reenacted Act does not amend the statute limiting the carrying of firearms in the State Capitol, other state buildings, and courthouse complexes. See Minn. Stat. § 609.66, subd. 1g. Given all of these exemptions, the State cannot show why religious institutions should be compelled to allow firearms.

Indeed, many other states have recognized that there is no good reason, much less a compelling one, to force religious institutions to accept firearms on their properties. In fact, twelve states with “shall-issue” conceal-carry laws actually prohibit the carrying of any firearm into a place of worship! See ARK. CODE § 5-73-306(a)(17)(“church or other place of worship”); GA. CODE § 16-11-127(a)-(b)(“public gathering,” including “churches or church functions”); LA. REV. STAT. ANN. § 1379.3(N)(8)(“any church, synagogue, mosque, or other similar place of worship”); MICH. COMP. LAWS § 28.425o, Section 5o(1)(e)(“any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials of the church, synagogue, mosque, temple, or other place of worship permit the carrying of concealed pistol on that property or facility”); MISS. CODE § 45-9-101(13)(“any church or other place of worship”); MO. ANN. STAT. § 571.030.1(8)(“any church or place where people have assembled for worship”); N.D. CENT. CODE § 62.1-02-05(1)(“public

gathering” includes “churches or church functions”); S.C. CODE § 23-31-215(M)(9)(“church or other established religious sanctuary unless express permission is given by the appropriate church official or governing body”); TEX. PENAL CODE § 46.035(b)(6)(“the premises of a church, synagogue, or other established place of religious worship”); UTAH CODE §§ 53-5-710(3)(“any house of worship”) and 76-10-530(1)(a)(i)(“a house of worship”); VA. CODE ANN. § 81.2-283 (“in a place of worship while a meeting for religious purposes is being held at such place”); WYO. STAT. § 6-8-104(t)(viii)(“any place where persons are assembled for public worship, without the written consent of the chief administrator of that place”).

Finally, the State must confront the fact that the very injunction requested here was in effect in Edina I from March, 2004, to May, 2005. Plaintiffs are not aware of any harmful effects from that injunction. If the State asserts that it has a compelling interest in forcing religious institutions to abide by the challenged provisions of the Reenacted Act, it must be able to show that it was damaged in some way by Judge Rosenbaum’s injunction that it chose not to appeal.

**Fourth**, the Act does not use the least restrictive means.

Even if the State could assert and prove a compelling public safety interest, then it “must demonstrate that public safety cannot be achieved through reasonable alternative means.” State v. Hershberger, 462 N.W.2d 393, 399 (Minn. 1990).

In Hershberger, the Minnesota Supreme Court held that it was a violation of the Minnesota Constitution to require Amish persons to apply a particular form of sign to their buggies. The Court found a less restrictive alternative acceptable to the Amish: silver reflective tape along with a lighted red lantern.

In this case, it is difficult to hypothesize less restrictive alternatives because the State has not demonstrated any danger on the real property of religious institutions that must be remedied. However, there are many less restrictive alternatives to increase security. For example, if there was really a compelling state interest to reduce crime in the buildings, parking lots, and tenant spaces of religious institutions, the State could encourage local police departments to patrol more frequently. Or, the State could strengthen (rather than weaken, as does the Reenacted Act) the criminal penalties for trespassing with a firearm on religious property.

Clearly, if it is necessary to increase safety and security on religious real property, there are many ways to do so, short of granting rights to gun-carriers at the expense of religious institutions. As Judge Rosenbaum stated in Edina I, “The interest of the State to protect public safety can be achieved through less restrictive measures to avoid a burden on freedom of conscience.”

## **II. THE RELIGIOUS INSTITUTIONS ARE SUFFERING IRREPARABLE INJURY.**

This is not a case of a private wrong that can be fully compensated by money damages. Plaintiffs have alleged and proved violation of a precious, fundamental right secured by the Minnesota Constitution. Plaintiffs have already suffered, and will continue to suffer, irreparable injury through the unconstitutional provisions of the Reenacted Act. According to the United States Supreme Court, and as the District Court in Edina I recognized, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” Elrod v. Burns, 427 U.S. 347, 373 (1976). See Kirkeby v. Furness, 52 F.3d 772, 775 (8<sup>th</sup> Cir. 1995) (overturning district court’s refusal to enjoin enforcement of city ordinance restricting residential

picketing); Jolly v. Coughlin, 76 F.3d 468, 482 (2<sup>nd</sup> Cir. 1996) (denial of right to free exercise of religious beliefs is harm that cannot be adequately compensated monetarily).

The State has no comparable injury.

### **CONCLUSION**

In passing the Reenacted Act, and rejecting a religious exemption, the Legislature ran roughshod over the freedom of religious institutions, which had been recognized by two District Court decisions and by the Court of Appeals. So, once again, the religious institutions must resort to the judicial branch to enforce the guarantee of the Minnesota Constitution.

For all of these reasons, Edina Community Lutheran Church and Unity Church of St. Paul request that the Court enter a temporary injunction in the form of proposed Order submitted herewith.

Dated: July 29, 2004

Respectfully submitted,

---

David L. Lillehaug (#63186)  
Fredrikson & Byron, P.A.  
Suite 4000  
200 South Sixth Street  
Minneapolis, MN 55402  
Telephone: 612-492-7000  
Facsimile: 612-492-7077  
E-mail: dlillehaug@fredlaw.com

**ATTORNEYS FOR PLAINTIFF  
EDINA COMMUNITY LUTHERAN  
CHURCH**

---

Marshall H. Tanick (#108303)  
MANSFIELD TANICK & COHEN, P.A.  
220 South Sixth Street  
Minneapolis, MN 55402-4511  
Telephone: 612-339-4295  
Facsimile: 612-339-3161  
Email: mtanick@mansfieldtanick.com

**ATTORNEYS FOR PLAINTIFF  
UNITY CHURCH OF ST. PAUL**

#3144960\2