

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

UNITY CHURCH OF ST. PAUL and WHITE
BEAR UNITARIAN UNIVERSALIST CHURCH,

Plaintiffs,

and

ADATH JESHURUN CONGREGATION, et al.,

Intervening Plaintiffs,

Court File No. C9-03-9570

and

Judge John T. Finley

THE CITY OF MINNEAPOLIS,

Case Type: Other Civil

Intervening Plaintiff,

and

PEOPLE SERVING PEOPLE, INC., et al.

Intervening Plaintiffs,

v.

STATE OF MINNESOTA,

Defendant.

**MEMORANDUM OF GLORIA DEI LUTHERAN CHURCH AND ECKANKAR
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT
ON COUNT ONE**

On May 28, 2003, the so-called Minnesota Citizens' Personal Protection Act ("the Act") became law. The Act dramatically impacts the real property of religious institutions, including Intervening Plaintiffs Gloria Dei Lutheran Church ("Gloria Dei")

and Eckankar, an international religious denomination. In so doing, the Act violates the Minnesota Constitution's guarantee of the free exercise of religion.

Gloria Dei and Eckankar move for summary judgment on Count One of the Complaint in Intervention of Religious Intervenors Adath Jeshurn Congregation, et al.

STATEMENT OF FACTS

I. THE ACT AND RELIGIOUS REAL PROPERTY.

The purpose of the Act is set out at Minn. Stat. § 624.714, subd. 22. The Legislature declared that the Act 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.”

While much of the debate on, and public attention to, the Act centered on provisions requiring that sheriffs “shall issue” permits, the Act also changed substantially the rights of “private establishments” to restrict persons carrying firearms from entering and remaining on private property. Under the 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, Gloria Dei and Eckankar are “private establishments.”

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

1. The 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 at least two 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 “conspicuous sign” must be “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 includes 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 building despite the foregoing two-part “reasonable request,” the private establishment may order the person to leave. Minn. Stat. § 624.714, subd. 17(a). A person who fails to leave is guilty of 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 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 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 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).

4. The 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).

Gloria Dei and Eckankar are affected by the Act as owners of religious real property. Gloria Dei is the owner of a house of worship, a parking lot, and tenant space. Eckankar is the owner of a house of worship and a parking lot. The facts concerning the impact of the Act on the exercise of religion by Gloria Dei are found in the Affidavit of Sarah C. Madison and the Declaration of Bishop Peter Rogness, submitted herewith. The facts concerning the impact of the Act on Eckankar's exercise of religion are found in the Affidavit of Douglas S. Kunin, submitted herewith.

II. OTHER LITIGATION.

Gloria Dei's and Eckankar's motion is based on Article I, Section 16 of the Minnesota Constitution, which guarantees the free exercise of religion. As the Court is aware, there is another case on this subject, venued in Hennepin County, captioned Edina Community Lutheran Church, et al. v. State of Minnesota, Court File No. MC 03-00815.

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.

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

On June 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” The Court of Appeals remanded so that the District Court could make additional findings.

On March 16, 2004, the District Court broadened the temporary injunction to include the parking area, employer, and tenant provisions of the Act. She determined that “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 that “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”

The three Edina decisions are attached hereto.

LEGAL ARGUMENT

I. THE 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 Act clearly violates Article I, Section 16.

First, movants’ beliefs are sincerely held.

Acting pursuant to its religious beliefs, Gloria Dei has prohibited firearms on all of its real property, including its parking lot. This policy applies to its employees. Gloria Dei has decided to communicate the prohibition of firearms by a sign, not in the purely secular form dictated by the State, but by a banner that includes a religious message. Gloria Dei has declined to undertake the onerous personal notification requirement

because it would substantially infringe on the worship experience. Finally, Gloria Dei wishes to negotiate an amendment to its lease with a licensed child care center to prohibit firearms in its tenant space. The basis and sincerity of these beliefs is explained in the affidavits of Sarah Madison and Bishop Peter Rogness.

Also acting pursuant to its religious beliefs, Eckankar has prohibited firearms on all of its sacred property, including its parking lots. This policy applies to its employees. Eckankar has erected a sign with a religious message. It has foregone the specific signage and 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 Douglas Kunin.

In the Edina case, the State has not questioned the sincerity of the religious institutions' beliefs. Nor should it do so here. In Edina Community Lutheran Church v. State of Minnesota, A03-723 (Jan. 16, 2004), the Minnesota Court of Appeals 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 Act infringes, controls, and interferes with the exercise of movants' religious beliefs. The Act is an extraordinary intrusion on movants' right to use their real properties for worship and religious mission. As Minnesota law recognizes, religious institutions have the right to "erect, acquire, and operates 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, all owners of real property, whether secular or religious, have always enjoyed the 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 Act completely upsets movants’ pre-existing constitutional and statutory right to control their religious real property. As the Court of Appeals determined in the Edina case, 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, Section 16.” Edina Community Lutheran Church v. State of Minnesota, A03-723 (Minn. Ct. App. Jan. 13, 2004). 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 Act burdens the free exercise of religion, in at least four ways.

A. The Act burdens movants’ rights to communicate and worship as they see fit. For any religious organization that wishes to ban firearms, the Act creates an onerous “exclusive” three-step regime. Religious institutions must post – not once, but at every entrance – conspicuous, non-religious signs bearing words dictated by the State. Then, they must personally notify every worshiper and visitor and “demand compliance.” Then, if a firearm is seen, they must give an order to leave to the armed person.

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 Act requires a larger sign, more specific wording, a specific Arial typeface, sizable print, a contrasting background, and posting at all entrances.

In other words, the State has presented religious institutions with a Hobson’s choice: either they must allow the carrying of firearms in their buildings (even if contrary to their religious beliefs), or they must erect non-religious signs at every entrance. This is unconstitutional. See Hershberger, 462 N.W.2d at 396 (requiring Amish to use particular sign infringed religious beliefs).

As if that were not enough, then religious institutions must undertake personal notification and “demand compliance.” 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.

Importantly, the Act requires not just signage, or not just personal notification; it requires both. The combination is unprecedented. Under traditional trespass law, a simple demand to depart has been deemed sufficient. See Minn. Stat. § 609.605, subd. 1(b)(3).

B. The Act prohibits Gloria Dei and Eckankar from banning guns from their parking lots. Such parking lots are an integral part of movants' religious property and are used for activities in furtherance of their missions. The Act unconstitutionally forces movants 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 Act further burdens Gloria Dei's right to use its real property in a manner consistent with its mission by prohibiting it as a landlord from restricting the possession or firearms by tenants. The Act unconstitutionally burdens religious institution landlords from negotiating amendments to their 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).

D. The Act burdens movants' religious rights as employers. The movants have exercised their religious beliefs by banning firearms from all of their property. The Act cannot constitutionally prevent them from imposing these restrictions on their employees, including when employees are 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).

Plainly, the Act infringes substantially on sincere religious beliefs.

Third, the State interest in the offending provisions of the 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 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 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 Act has nothing to do with the militia.

Not only is the Legislature’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 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 by permit.

The Act itself, by the exemptions it contains, shows there is no compelling state interest. For example, under the 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 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 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 forced to allow firearms.

Indeed, many other “shall-issue” 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 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”).

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 Act) the criminal penalties for trespassing with a firearm on religious property.¹

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

¹ The Act reduces to a petty misdemeanor the penalty for trespassers who carry firearms without a permit! See Minn. Stat. § 624.714, subd. 17(a) (applies to persons carrying “under a permit or otherwise”).

religious institutions. As Judge Rosenbaum stated in the Edina case, “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. JUDGMENT SHOULD BE ENTERED NOW.

This is not a case of a private wrong that can be fully compensated by money damages. Movants have alleged and proved violation of a precious, fundamental right secured by the Minnesota Constitution. Movants have already suffered, and will continue to suffer, irreparable injury through the unconstitutional provisions of the Act. According to the United States Supreme Court, and as the District Court in the Edina case 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 (8th Cir. 1995) (overturning district court’s refusal to enjoin enforcement of city ordinance restricting residential picketing); Jolly v. Coughlin, 76 F.3d 468, 482 (2nd Cir. 1996) (denial of right to free exercise of religious beliefs is harm that cannot be adequately compensated monetarily).

Judgment, including declaratory relief and a permanent injunction, should be entered immediately.

CONCLUSION

For all of these reasons, Gloria Dei and Eckankar request that the Court grant summary judgment on Count One. A proposed order is submitted herewith.

Dated: May 5, 2004

Respectfully submitted,

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