

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Edina Community Lutheran Church,
Pastor Erik Strand, Pastor Pamela
Fickenscher, R. Daniel Rasmus, Mount
Zion Hebrew Congregation, The Right
Reverend James L. Jelinek, Holy
Trinity Lutheran Church, Spirit of Hope
United Methodist Church, University
Baptist Church, St. Luke's of
Minnetonka Presbyterian Church,
Dharma Field Zen Center, St. Martin's
By-the-Lake Episcopal Church,
Mayflower Community Congregational
Church of Minnesota (UCC), and
Macalester Plymouth United Church,

Plaintiffs,

Amy Blumenshine, Emily Duncan,
Terry Trautner, Bet Shalom
Congregation, and Mizpah United
Church of Christ,

Intervening Plaintiffs,

vs.

State of Minnesota,

Defendant.

The above-entitled matter came on before the Honorable Marilyn Brown
Rosenbaum for telephone hearing on February 9, 2004 after appeal and remand. With the
addition of Plaintiffs and Intervening Plaintiffs noted in the Amended Caption and after
submissions by the parties, the Court took the matter under advisement.

David L. Lillehaug, Esq. appeared on behalf of Plaintiffs.

Marshall H. Tanick, Esq. appeared on behalf of Interveners.

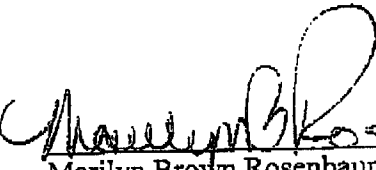
Richard L. Varco, Jr., Assistant Attorney General appeared on behalf of Defendant.

Based upon files, records and proceedings herein, and being fully informed in the premises, the Court makes the following:

ORDER

1. Plaintiffs' Motion for temporary injunctive relief is granted as to 2003 Minn. Laws Chapter 28, Article 2, Section 22, Subd. 17(c) and 17(e); Article 2, Section 23, Subd. 18(c); Article 2, Section 2, Subd. 1d(d)(4)(ii) and 1d(e)(2), (7), and (8).
2. The temporary injunctive relief granted by the Order dated June 6, 2003 remains in full force and effect.
3. Pending resolution of the action for declaratory judgment, Plaintiffs and Intervening Plaintiffs, if they intend to so prohibit the lawful carry and possession of firearms, shall comply with Minn. Stat. § 624.714, Subd. 17(d), the least restrictive notification provision under the Act. Plaintiffs may prohibit firearms, and provide notice thereof, in any lawful manner, in their parking areas (including for employees), tenant space (to the extent allowed by lease), and licensed child care centers.
4. The attached Memorandum is incorporated herein.

Dated: March 16 2004


 Marilyn Brown Rosenbaum
 Judge of District Court

MEMORANDUM

FACTS

On June 6, 2003, this Court issued its Order ("June 6 Order") granting Plaintiffs' motion for temporary injunctive relief as to Article 2, Section 22, Subd. 17(b) of the Minnesota Citizens' Personal Protection Act of 2003 ("the Act") [codified at Minn. Stat. § 624.714, Subd. 17(b)], and denying Plaintiffs' motion as to the other challenged provisions of the Act, Article 2, Section 22, Subd. 17(c) [codified at Minn. Stat. § 624.714, Subd. 17(c)] (parking facilities and parking areas); Article 2, Section 22, Subd. 17(e) [codified at Minn. Stat. § 624.714, Subd. 17(e)] (landlords, tenants and guests); Article 2, Section 23, Subd. 18(c) [codified at Minn. Stat. § 624.714, Subd. 18(c)] (employers, parking facilities and parking areas); and Article 2, Section 2, Subd. 1d(d)(4)(ii) and 1d(e)(2), (7) and (8) [codified at Minn. Stat. § 609.66, Subd. 1d(d)(4)(ii), (e)(2), (e)(7) and (e)(8)] (licensed child care centers). Relief was denied as to those provisions on grounds of lack of standing and justiciability.

The partial denial of injunctive relief was appealed and the Court of Appeals reversed, holding that Plaintiffs, as owners, landlords or lessors, have standing to challenge the Act as to Plaintiffs' parking facilities and parking areas, as to their leasees, tenants and guests, as to their employees and as to their licensed child care centers. The Court held that the Act affects Plaintiffs' property rights and their right to free religious exercise under the Minnesota Constitution and that the case is justiciable. *See, Edina Community Lutheran Church, et al. v. State of Minnesota*, A03-723 (Minn. App. Jan. 13, 2004).

By incorporating standing and justiciability with the facts as found in this Court's earlier Order, the facts found by the Court of Appeals and the facts as set forth in Defendant's proposed findings of fact paragraphs 1-18, the Court concludes that the statutory provisions now before the Court interfere with Plaintiffs' religious beliefs. These statutory provisions deprive Plaintiffs of the right to act in conformance with their sincerely held beliefs and limit Plaintiffs' control of their religious real estate. This burden is direct and however minimal cannot be allowed under Article I, Section 16 of the Minnesota Constitution. Plaintiffs are entitled to injunctive relief as to these remaining statutory provisions.

Upon remand, the Court has considered the five factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (Minn. 1965) to determine if the remedy of injunctive relief should be granted:

1. The nature of the relationship between the parties preexisting enactment.

There is a special relationship between the parties governed by Article I, Section 16 of the Minnesota Constitution. The challenged provisions of the Act require Plaintiffs to take and/or tolerate actions which affect Plaintiffs' religious beliefs and rights of conscience. The inability of the religious entity property owners to prohibit a permit holder from entering onto their real property when carrying a firearm affects an essential part of general property rights. See, *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 100 S.Ct. 2035 (1980).

2. The harm to be suffered by Plaintiffs if the temporary injunctive relief is denied as compared to that inflicted on Defendant if the injunction issues.

The balance of relative harm between the parties weighs in favor of Plaintiffs. The challenged provisions of the Act impair Plaintiffs' constitutional rights to worship and rights of conscience, and such loss of religious freedom, even for minimal periods of time, constitutes irreparable harm, which outweighs any harm to be suffered by the State. See, *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673 (1976). Weighing the competing harms, the Court concludes that freedom of conscience must be protected by enjoining these provisions of the Act as they apply to religious entities and allowing notification in the least restrictive manner.

The State's generalized interest in requiring Plaintiffs, as owners of parking areas, as landlords, employers, and operators of licensed child care centers, to allow firearms on their properties is not overriding or compelling when weighed against Plaintiffs' sincerely held beliefs and their rights under the Minnesota Constitution.

3. The likelihood that one party or another will prevail on the merits.

It is likely that Plaintiffs will prevail as to these challenged provisions of the Act. The Court will not restate the facts found in its prior Order or in the Court of Appeals decision. Plaintiffs' beliefs are sincerely held and Plaintiffs have property rights which

include the right to exclude others. *PruneYard*, 447 U.S. at 82, 100 S. Ct. at 2041. This right is an essential part of general property rights. *Id.* Plaintiffs' parking areas, leased areas and licensed day care areas are used as part of their religious mission or worship practices. 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.

The State has failed to show a compelling interest, as to the control and use of religious real property, upon which the State is likely to prevail. *See, State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990). The interest of the State to protect public safety can be achieved through less restrictive measures to avoid a burden on freedom of conscience. Although the State has an interest in public safety, that aim can be achieved without infringement. An exemption from this public safety law would provide a balance and it is likely that Plaintiffs will prevail.

4. The facts, if any, which permit or require consideration of public policy.

When balancing the rights preserved in the Minnesota Constitution against the legitimate concerns embodied in an Act of the Minnesota Legislature, the constitutional guarantees must be given more weight, as set forth in paragraph 2 above.

5. The administrative burden involved in judicial supervision and enforcement of the temporary decree.

There is no administrative burden to the Court if an injunction issues.

Pursuant to remand, the Motion of Plaintiffs for Injunctive Relief should be granted. Plaintiffs may prohibit or regulate the lawful carry or possession of firearms on their real property, specifically including parking lots, leased areas, and licensed child care centers, and as to their leasees and employees in those areas of Plaintiffs' real estate.


MBR