

STATE OF MINNESOTA

COUNTY OF RAMSEY

**DISTRICT COURT
SECOND JUDICIAL DISTRICT**

File No. C9-03-9570

Unity Church of St. Paul and White Bear
Unitarian Universalist Church,
Plaintiffs,

And

Adath Jeshurun Congregation, et al.,
Intervening
Plaintiffs,

ORDER

and

The City of Minneapolis,
Intervening
Plaintiff,

and

People Serving People, Inc., et al.,
Intervening
Plaintiffs,

vs.

State of Minnesota,
Defendant.

The above-entitled matter came on for hearing before the **Honorable John T. Finley** on the 9th day of August 2004, pursuant to Defendant State of Minnesota's motion to stay the judgment pursuant to Minnesota Rules of Civil Procedure 62.02.

Shawn L. Pearson, Esq., appeared by and behalf of Plaintiffs Unity Church of St Paul and White Bear Unitarian Universalist Church. Intervening Plaintiffs Adath Jeshurun Congregation, et al., (Religious Interveners) were represented by **David L. Lillehaug, Esq.** Intervening Plaintiff (City of Minneapolis) was represented by **Burt T. Osborne, Assistant City Attorney.** **Dianne C. Heins, Esq.**, appeared on behalf of the intervening Plaintiffs (charitable agencies, including People Serving People, et al.). Defendant State of Minnesota was represented by **William F. Klumpp, Jr.**, Assistant Attorney General.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That the Defendant's motion for a stay of the Court's order dated July 13, 2004 is hereby **DENIED.**
2. The attached memorandum is made a part of this order pursuant to Minnesota Rules of Civil Procedure 52.02.

BY THE COURT:



John T. Finley
Judge of District Court

Dated this 23 day of August, 2004.

MEMORANDUM

BACKGROUND

The Court's order of July 13, 2004 found that Article 2 of SF842, known as the Personal Protection Act or Conceal and Carry Law, which was passed by the Minnesota State Legislature and signed by the Governor in May 2003, was unconstitutional because it violated of Article 4, Section 17 of the Minnesota State Constitution, which states,

"No law shall embrace more than one subject, which shall be expressed in its title."

Prior to the Court's ruling, the Court reviewed the case law which was applicable to the issues raised, clearly understood that all legislative acts are presumed to be constitutional and a Court should not find them unconstitutional, unless it finds that the legislative act is unconstitutional beyond a reasonable doubt.

The leading case on point, which also is the most recent case in which the Supreme Court ruled upon whether or not a law embraced more than one subject matter, is Associated Builders v. Ventura, 610 N.W. 2d 293 (2000). Justice Stringer gave a historical review and found that the legislative act requiring that certain contracts for construction of school buildings must pay prevailing wage was unconstitutional because the manner in which the legislature passed the law when it attached it by amendment to an unrelated bill, was unconstitutional in violation of Article 4, Section 17 of the Minnesota Constitution.

In the historical review, Justice Stringer pointed out that as far back as 1857 the legislature and the judiciary believed that it was extremely important to make sure that there was proper notice to the citizens of the State so that the citizenry can participate in the legislative process by giving their input. The Constitution is unambiguous in that a legislative bill must have only one subject and that subject must be identified in the title.

A long line of cases stress that the purpose for this constitutional provision is to prevent fraud and "mischief" by legislative bodies, who attach unrelated amendments on bills without changing its title. The purpose is to avoid exactly what happened in this case where a very controversial amendment is attached to a noncontroversial Department of Natural Resources (DNR) bill, which had already passed the Senate unanimously. After its passage the House of Representatives added Article 2 (Conceal and Carry provision) without changing the title. Both houses then approved the new bill including the amendment without any legislative committee hearings in which there could be notice and citizen input before its passage. There was no change in the title to reflect the new amendment.

This Court believes it is important for the Appellate Courts to know that the issue of severance was not initially before the Court. The only Article, which the Plaintiffs believed was unconstitutional, was the amendment known as the Conceal and Carry or Personal Protection Act (PPA), which is Article 2 in the bill. Defendant raises the severance issue for the first time in their request for a stay.

LAW

The parties agree that the trial court may exercise its discretion in determining whether or not to grant a stay of its order of July 13, 2004, finding the Conceal and Carry Law unconstitutional.

The parties also agree that the four criteria, which the Court must consider in deciding whether or not a stay should be granted, are as follows:

1. The likelihood of the person seeking the stay to prevail on the merits on appeal;
2. The likelihood that the person seeking the stay will suffer irreparable injury if the stay is denied;
3. That the other party involved in the litigation will not be substantially harmed by granting the stay; and
4. The granting of the stay will serve the public interest.

See Drummond v. Fulton County Department of Family and Children Services, 532 F. 2d 1001 (5th Circuit 1976), Hilton v. Braunskill, 481 U.S. 778 (1987), Robinson Rubber Products Company v. Hennepin County, 927 F. Supp. 343, 346 (Minn. 1976).

In evaluating these factors this Court must follow the plain meaning of the Constitution, which States, in Article 4, Section 17:

"No law shall embrace more than one subject which shall be expressed in the title."

This Court must also follow the case law as determined by the Minnesota Supreme Court for over 150 years.

1. LIKELIHOOD OF SUCCESS

This Court believes that if the Defendant State of Minnesota was to prevail on the merits that it would be necessary for the Appellate Court not only to reverse this Court's decision, but also overrule Associated Builders v. Ventura, 610 N.W.2d 293 (2000) case and the long line of cases upon which Justice

Stringer relied upon when the prevailing wage law was struck down by the Minnesota Supreme Court just four years ago

Although the legislature oftentimes uses the word "germane" and some courts have used the word "filament," the constitution is clear that one subject means one subject and that subject shall be in its title. There is no question that the DNR regulatory provisions (SF 842), which were passed unanimously by the Minnesota Senate, were identified in the title. This title was never changed, even after the Conceal and Carry provision or the Personal Protection Act of 2003, was attached as Article 2, as an amendment by the House of Representatives and passed by both the House and the Senate.

Some critics have said "that's the way it's always done" but that does not mean that this legislative action was passed in accordance with the Constitutional mandates. This Court is aware that Governor Pawlenty, legislative leader (and lawyer in his past life), warned the members of the legislature more than once that they cannot attach unrelated amendments to bills.

Based on the above, this Court does not believe that Defendant State of Minnesota could possibly prevail on the merits on appeal unless the Supreme Court reversed Associated Builders and its precedents.

2. IRREPARABLE HARM

The party seeking the stay must show that it will suffer irreparable harm if the stay is not granted. This means that the harm to be suffered cannot be repaired. It also means that the harm is real and is not speculative. The State

has submitted three affidavits to the Court in an attempt to show that the State will suffer irreparable harm.

(A) Campion Affidavit

Mr. Michael Campion, the recently appointed Public Safety Commissioner is well respected by this Court and states that he is "unsure" what to provide to local law enforcement who ask about permit applications. He is "uncertain" whether the Court's order "invalidated" a \$1,071,000 appropriation to be used for a new database of permit holders and is also "uncertain" whether contracts awarded to perform the work must be invalidated. Legal advice from the Attorney General's Office would clear these uncertainties, which do not rise to the level of irreparable harm.

Assistant Attorney General, Mr. Klumpp, stated that the State would no longer collect the data on permit holders. This data was intended to make a record of who has a right to carry firearms and these records would then be available to all of the law enforcement agencies throughout the State. This Court believes that the Governor, the legislature and all the law enforcement agencies would welcome a central data source, which could be accessed by them. The Court further believes that it is pure speculation to think these important funds would be reallocated elsewhere by the elected officials. Providing the funds, as allocated, would alleviate any perceived problems that exist regarding the collection and inputting of the new database and therefore any perceived harm is not irreparable.

Whether or not the sheriffs will continue to provide names and addresses of those that receive firearm permits, one can only speculate. However, it is this Court's experience that law enforcement agencies would welcome a central database, which lists those that have permits to carry firearms and they would be happy to voluntarily provide the State with the names and addresses of those in their county so that they could access all others.

(B) Moe Affidavit

Hennepin County Sheriff Deputy, Captain Patrick Moe says over 4,000 applications were processed in 2003, of which 3,933 were granted. Another 1291 applications were filed in 2004 through July 12, 2004. He is concerned that the two to three employees that have been trained to process these applications will be reassigned if the old law (pre-2003) goes into effect because those applications were formerly processed through police chiefs. If this Court is overruled, their "implementation would take significant time and cause some of the same problems as were caused when the switchover to the PPA (Personal Protection of 2003) took place" last year. This is certainly not an irreparable harm. At best, it is a personnel management problem that can be easily repaired as it evidentially was last year when the PPA was enacted.

This Court is quite familiar with the power brokers of Hennepin County and can take judicial notice of the fact that if funds are needed to assure the public safety of its citizens, funds will be allocated by the Hennepin County Board of Commissioners to the sheriff to make sure that there are sufficient funds for retraining of personnel if necessary.

(C) Laux Affidavit

The affidavit of Bloomington Chief of Police, John Laux, was interesting as well. Fourteen (14) months ago, the Bloomington Police Department issued permits and now they do not, under the Personal Protection Law of 2003. Chief Laux says that personnel have to be "reallocated" again and then would have to be reallocated again if the law was reinstated. "A stay would be 'greatly beneficial.'" Again, this is not irreparable harm because funds allocated by City Council to the Bloomington Police Department can alleviate any cost of retraining or reallocation of personnel. This is purely a management problem, not a harm that is irreparable.

Chief Laux also states that citizens are confused as to whether to apply at Sheriff or City and the age difference "may" cause further confusion. Again, this is speculation, but if real, it can be solved with public education and is not a harm that is irreparable.

The City of Minneapolis, the largest city in the State was Chief Laux's long-time employer. In fact he was Police Chief in Minneapolis for several years. It is interesting that Minneapolis is an intervening Plaintiff in this case, supports this Court's ruling and opposes any stay of the Court's Order finding the 2003 law unconstitutional.

The State has failed in its' burden to show it will suffer irreparable harm.

HARM TO THE OTHER PARTY

No person who obtained a firearm permit under the 2003 law, which this Court found to be unconstitutional, is prohibited from concealing and carrying a firearm as a result of this Court's ruling.

No person who has a firearm permit under the old law (pre-2003) is prohibited from continuing to conceal and carry the firearm because of this "decision."

No person who is qualified because they need to carry a gun for their job or for security purposes is prohibited from applying for and obtaining a firearm permit as a result of this Court's ruling of July 13, 2004.

If the Court grants a stay of its Order of July 13, 2004, the most important harm to the Plaintiffs, the intervening Plaintiffs and all the citizens of the State is that this Court will be endorsing a law that was passed in violation of the Minnesota State Constitution, and contrary to a long line of cases including Associated Builders which was the latest opinion of the Supreme Court issued just four years ago. The harm to the judicial system by endorsing an unconstitutional act far outweighs the speculative and alleged irreparable harm that Defendant State claims may affect the governmental administration in the processing or data collection of firearm permits.

Additionally the harm to Plaintiffs, intervening Plaintiffs and citizens of the State of Minnesota include:

1. Parking lot owners would again be prohibited from enforcing trespass laws against those that conceal and carry firearms in their parking lots.

2. Employers would be prohibited from restricting their employees' activities in their parking lots.
3. Owners of parking areas, whether public or private, would not be able to prohibit people from concealing and carrying firearms on their property.
4. Landlords would not be able to prohibit certain activities of its tenants regarding the concealing and carrying of firearms.

Even the harm of prohibiting public and private property owners in the State of Minnesota from being able to enforce criminal trespass laws on their property far outweighs the alleged irreparable harm that may affect the "machinery of government". Reallocation of personnel and having sufficient funds provided by the elected officials easily repairs any uncertainty or confusion that the government may encounter.

PUBLIC POLICY

Simply stated, the best public policy in the State of Minnesota is to follow the Minnesota State Constitution. By following the constitution, the legislative priorities will be able to be enacted and carried out without fear that the judiciary will overrule it, which is an integral part of the democratic process. The founders of the constitution provided for a system of checks and balances between legislative, executive, and judicial units of government that has worked well.

It only took five (5) days between April 23-28th, 2003 to pass this unconstitutional amendment through the State House of Representatives and the Senate. There is no reason to believe that if the legislature believes it is a priority of the people of this State to conceal and carry firearms that the legislature

cannot pass a law that will comply with the Constitution just as quickly. This can be done in a special session called by the governor or in January 2005 just four and one-half months from now when the legislature convenes again.

8/23/04

A handwritten signature, possibly "J.T.F.", is enclosed within a hand-drawn oval. The initials "J.T.F." are clearly visible in the upper right portion of the oval.