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At issue is a city ordinance prohibiting burning candles in any church. As a preliminary matter, it must first be discussed whether Spiritual Church ("SC") can bring the suit.

GOVERNMENT ACTION

For a suit to be brought under the First Amendment, there must be government action.

Here, because it is a city government enacting an ordinance, there is state action.

STANDING

For Clear City Spiritual Church to bring a claim against Clear City, it must have standing. Standing requires an injury-in-fact, causation, and redressability. Organizational standing requires that the organization suffered an injury, the injury relates to the organization's purpose, and the claim does not require participation from all members of the organization.

Here, SC burns candles during Sunday services to signify spiritual light in the world, thus infringing on the free exercise of religion. The city ordinance itself is the cause of SC's injury, and it can be redressed by a TRO, an injunction, or by declaratory relief. Additionally, the injury, not being able to burn candles, relates to the purpose of the organization, which is for religious expression and worship. Finally, the claim does not require all congregants to participate in the suit.

Thus, there is standing and SC may bring the suit against Clear City.

RIPENESS

A claim can be brought once an injury has been suffered. Here, because the Clear City's ordinance has been enacted and SC's right to worship in the manner they choose may be infringed upon, the suit is ripe.

Clear City will argue the suit is not ripe because SC has not yet been shut down or inspected. However, because the ordinance has been enacted and harm is imminent because the ordinance has been enforced against other churches, the court will likely find the suit is ripe.

MOOTNESS

A cause of action requires a live injury at all stages of litigation. If an injury is redressed or the harm ceased, the case is moot and may not be heard. There is an exception for causes of action that are capable of repetition but evading review, such as this case. The case is not

moot, but could evade review if the fire marshal resumes inspections or closes down the church in the future once more personnel are hired.

Here, though the City's defense is that it has not taken action and there is no controversy, it should be litigated because it is capable of being enforced and may evade review if the TRO, injunction, or declaratory relief are not granted. It is on this theory that this analysis proceeds.

1. Likelihood of SC's Success in Obtaining a Temporary Restraining Order (TRO)

A temporary restraining order is an equitable remedy that serves to preserve the status quo for a short period of time until a hearing for a preliminary injunction is had. In federal court, a TRO is typically for 14 days but can be extended to 28 days. Any further extension converts the TRO to a preliminary injunction. A TRO may be obtained *ex parte* if the party seeking the TRO can show a reasonable attempt at providing notice or on a showing of good cause for not providing notice. To obtain a TRO, a party must show: (1) irreparable harm; (2) likelihood of success on the merits; (3) balance of hardships favors SC; (4) inadequate legal remedy; and (5) no defenses. At common law, only the first two elements were required, but modern case law recognizes all of the elements enumerated above.

A. Irreparable Harm

SC must show that absent the TRO, it will suffer irreparable harm.

Here, SC would suffer irreparable harm if it was shut down due to their religious practice of burning candles. Shutting the church down would mean their congregants would not be able to worship at SC and their free exercise of religion would thus be hampered.

In sum, if a fire marshal were to visit SC and find that they were burning candles, SC would be shut down, thus causing irreparable harm and meeting the first element of obtaining a TRO.

B. Likelihood of Success on the Merits

SC must also show that it is likely to succeed on the merits.

At issue here is a violation of the Establishment Clause and the Free Exercise Clause of the First Amendment, as well as a violation of the Equal Protection Clause. Each violation is discussed in turn.

1. *Free Exercise Clause*

The Free Exercise Clause of the First Amendment applies to the states through the 14th

Amendment and protects the free exercise of religion.

Laws seeking to regulate the free exercise of religion must meet the *Lemon* test.

The *Lemon* test states that a regulation seeking to burden the free exercise of religion must have: (1) a secular purpose; (2) must neither advance nor inhibit the practice of religion; and (3) must not excessively entangle the government with religion.

Secular Purpose

To pass the *Lemon* test, the ordinance must have a secular purpose.

Here, Clear City will argue that the purpose is to prevent arson in the future. However, SC will argue that though this purpose is secular on its face, it is not secular in its application, as the ordinance only applies to churches and not other types of structures or dwellings where candles are burned.

The court will likely find that because the ordinance applies only to churches, it does not have a secular purpose.

Neither Advance nor Inhibit Religion

To pass the *Lemon* test, the regulation must neither advance nor inhibit religion.

Here, the regulation does not advance religion, rather it seeks to inhibit religious practice by imposing restriction that would effectively close SC down if it burns candles for its religious practice.

Because the law inhibits religion, it violates this element as well.

Excessive Entanglement

Finally, the ordinance must not excessively entangle the government and religion.

Here, enforcement of the ordinance involves the fire marshal visiting Sunday services for the purpose of determining whether candles are being burned and subsequently shutting the churches down. This means a fire marshal has to spend his Sundays attending various church services. This could mean that the fire marshal is effectively getting paid to go to church, which a court would see as excessive entanglement of religion and government. Though the fire marshal has made clear that the ordinance would not be enforced with the rigor promised by the mayor, it could still theoretically be enforced at any time, and thus would then excessively entangle the government. Thus, this prong is not met as well.

Conclusion

Because the ordinance fails all three elements of the *Lemon* test, the ordinance violates the First Amendment's Free Exercise Clause.

2. *Establishment Clause*

The Establishment Clause of the First Amendment applies to the states through the 14th Amendment and states that no law shall be made respecting the establishment of religion.

Laws seeking to regulate the establishment of religion must meet strict scrutiny, meaning they must be necessary to achieve a compelling state interest. Laws of general applicability are acceptable.

Here, the Clear City's ordinance seeks to regulate the burning of candles in churches as a result of one church burning down earlier this year. While Clear City clearly has a compelling interest in ensuring the safety of its residents, it must also protect its citizens right to worship.

Additionally, the law is not necessary to achieve its purpose of protecting its residents and structures from arson because it only applies to churches and not to other places where candles are regularly burned, such as a candle store, or individuals' residences.

Overbreadth

In addition to violating the Free Exercise Clause and the Establishment Clause of the First Amendment, the ordinance is overbroad.

A law is overbroad when it prohibits both protected and unprotected actions.

Here, the law is overbroad because it prohibits burning candles (a lawful activity) in churches.

Vagueness

A law is void for vagueness if reasonable people have to guess at its meaning and the law fails to put people on notice of the conduct prohibited.

Here, though the Mayor of Clear City told the press that it would vigorously enforce the ordinance and the fire marshal would be conducting random visits to churches to close them down, it gave no intelligible standards nor guidelines for the enforcement of the ordinance. This resulted in the fire marshal only visiting six of the 50 churches in Clear City and giving out warnings. Without set guidelines for how the ordinance is going to be enforced, the ordinance fails to put churches on notice of how to comply with the ordinance. Churches in Clear City are receiving competing messages from the Mayor and from the Fire Marshal, leading to confusion and fear that their houses of worship will be shut down without any notice.

Thus, the ordinance fails because it is unconstitutionally vague.

Conclusion

Because the ordinance violates the Free Exercise Clause and the Establishment Clause of the 1st Amendment and because the ordinance is unconstitutionally vague and overbroad, SC is likely to succeed on the merits.

C. Balance of Hardships Favors Plaintiff

P must prove that the balance of hardships in the ordinance being enforced weighs more in its favor than in the government's favor.

Because SC could suffer closure for burning candles, its hardship is greater than Clear City's ban on candles in churches to prevent future arson.

D. Inadequate Legal Remedy

Here, money damages would not prevent SC's harm because putting a price on closing down a church would be too speculative. It's harm can only be prevented through equitable relief.

E. No Defenses

The equitable defenses of laches and unclean hands do not apply in this case.

Conclusion

Because SC has suffered irreparable harm, it is likely to succeed on the merits, the balance of hardships favors SC and there is an inadequate legal remedy, SC is likely to succeed in obtaining a TRO.

2. Likelihood of SC's Success in Obtaining a Preliminary Injunction

A preliminary injunction is an equitable remedy used to preserve the status quo until a trial on the merits can be had. Preliminary injunctions cannot be obtained *ex parte* and are more difficult to obtain than a TRO but less difficult to obtain than a permanent injunction. The elements for a preliminary injunction are the same as for a TRO.

A. Irreparable Harm

See rules and analysis *supra*.

B. Likelihood of Success on the Merits

See analysis supra.

C. Balance of Hardships Favors P

See analysis supra.

D. Inadequate Legal Remedy

See analysis supra.

E. No defenses

See analysis supra.

Because the elements of a preliminary injunction are met, as detailed in my analysis for the TRO, it is highly likely SC will prevail in receiving a preliminary injunction.

3. Likelihood of Obtaining Declaratory Relief

A plaintiff may file a motion for declaratory relief in federal court. The court then reviews the case on the merits and issues an order either stating the law at issue is valid or unconstitutional.

Here, as noted above, because the ordinance violates the Free Exercise Clause and Establishment Clause of the First Amendment under their respective tests, SC is likely to obtain declaratory relief in its favor. Based on these grounds, a court will likely declare the ordinance preventing candle burning in Clear City Churches to be unconstitutional.

Question #2 Final Word Count = 1880

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