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### **State action**

The constitution binds the government, not private persons. In order to find a violation of a constitutional right, there must be a state action. Here, the City has placed an ordinance in effect. The city is the local government, and thus their actions constitute government action.

The ordinance is government action, there is a state action.

### **Standing**

In order for a person to bring an action, they must have standing. In order to have standing the plaintiff must show (1) injury in fact (2) the injury in fact is caused by matter at issue, and (3) redressability.

#### Injury in fact

Here, the injury, is the parties being unable to light candles in their church in accordance with their religious ideals.

#### Causation

This injury was caused by the enactment of an ordinance prohibiting the burning of candles in any church and the authorization of the fire marshal to close down any church in which candle burning occurs.

#### Redressability

The issue is easily redressable, (fixable) as the repealing of the ordinance would mean, there is no longer an injury to the parties.

All of the elements are met and the individual members of Clear City Spiritual Church, (SC) **would have standing in this matter.**

### **Organizational standing**

In order for an organization to have standing, (1) individual members must have standing, (2) the matter must be germane to the purpose of the organization and (3) individual members would not be required to participate in the suit.

Here, as shown above, the individual members SC would have standing, the matter is

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germane to the purpose of the organization, as they regularly light candles at Sunday service to signify light in the world, a part of their spiritual belief, and as a church, that is germane to their purpose, of spirituality. Lastly, individual members would have to participate in the suit.

**SC has organizational standing.**

**Ripeness**

Clear City argues that since they have not taken any action, there is no controversy. In order for the court to hear the case, there must be a case or controversy. Courts can not make advisory opinions.

A case is ripe when it is too early for the case to be heard, as there is no injury, yet. Here, while no churches have been shutdown by the ordinance, they have already been required to stop burning candle to comply with the ordinance , and avoid being shutdown. so in essence, the city has taken action.

The case is not ripe. Clear city's "defense" is not valid.

**1. Whether the temporary restraining order should be granted?**

A temporary retaining order is intended to maintain the status quo pending further litigation on a preliminary injunction. In order to be granted, the moving party must show, (1) irreparable harm if normal procedures are followed, (2) likelihood of success on the merits, (3) inadequacy of legal remedies (4) balancing of hardships. TROs can be granted ex parte in some instances.

irreparable harm if normal procedures are followed

If the TRO is not granted, Sc will be unable to practice their religious beliefs without inhibition, as they would not be able to light candles in their church. While this is a harm, it is not likely a sever enough harm to where it would be irreparable, as they could find alternatives to lighting the candle, including moving their procession outdoors. But City would also argue that their religeous freedoms are harmed by the ordinance and the court would likely find that to be a irreparable harm.

likelihood of success on the merits

However, they will likely have success on the merits of their case, as there are clear violations of the 1st amendment by the enactment of the ordinance.

inadequacy of legal remedies

Inadequacy of legal remedies is determined whether money damages would be sufficient,

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whether the defendant is insolvent, if the amount in damages would be hard to determine, and the like. In this situation the damages would be hard to determine because how much is religious freedom worth to someone, that would depend how important the religion is someone. Which would be hard to just throw a dollar amount at.

balancing of hardships.

The churches hardship of having to withhold an act sacred to them would be outweighed by the City's "hardships" of worrying about whether a fire will occur in another church, especially because there are ways to help prevent the fire without the ordinance.

The temporary restraining order will likely be granted.

## **2. Whether the preliminary injunction should be granted?**

A preliminary injunction is intended to maintain the status quo, for usually 14 days, and may be extended, but in any event can last longer than 30 days. A preliminary injunction requires the same elements as a temporary restraining order, but adds that there must also be no defenses.

same elements as temporary restraining order

As shown above, there is irreparable harm, likelihood of success on the merits, inadequacy of legal remedies and the balancing test weighs in favor of SC.

no defenses

Laches (having taken too much time to make the claim) and unclean hands would not apply, and there are thus no defenses

SC would likely be successful in obtaining a preliminary injunction.

## **3. Likelihood of success in obtaining declaratory relief?**

### **1st amendment**

The first amendment provides protections to speech, religion and association, as well as press. The 1st amendment is applicable to the states via the 14th amendment's doctrine of incorporation.

Freedom of religion

The first amendment protects the freedom of religion.

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Free Exercise

Under the free exercise clause, the government can substantially burden a religion. The religion must take the place in one's life equivalent to that of an orthodox religion. In order to be upheld, the government must show that the law meets strict scrutiny (the law must be narrowly tailored to achieve a compelling government interest, and be the least restrictive means necessary to achieving that interest). If the law is one of general applicability, the burden is on the plaintiff to show that the law does not meet a rational basis test (the law is rationally related to a government interest)

Here, SC will argue that the government is burdening their religion by not allowing them to burn candles, that the law is one of general applicability. No specific religion is being burdened. While the City would argue that the ordinance does burden their religion as the ordinance is only being applied to churches. Because the law is only applied to churches, the court would likely find that it is not a law of general applicability and would require the government to show that the ordinance meets strict scrutiny.

Narrowly tailor to achieve a compelling government interest, no less restrictive means

The government would likely argue that it has an interest in preventing fires in the city. They would argue that fire prevention is a compelling government interest. However, SC will counter the argument with the fact that a candle could have burned down any building, the fact that the ordinance was enacted after a church burned was merely coincidence. And the court would likely agree with SC.

Further SC would argue that instead of shutting down the churches, a less restrictive means of achieving fire safety, would be informing the churches about the hazards presented by the burning of candles and requiring safeguards, such as fire extinguishers be present in the churches.

The court would not likely uphold the ordinance, as it does not meet strict scrutiny, failing to comply with the free exercise clause.

Establishment clause

The establishment clause prohibits the government from establishing a religion. In order to be upheld when a law favors a religion, it must meet the "Lemon test."

Lemon test

Under the Lemon test the law must (1) have a secular purpose, (2) neither advance or inhibit

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religion and (3) no excessive government entanglement.

Here the law does have a secular purpose because it is intended to prevent the burning down of churches. It does not advance religion, however SC would argue it inhibits their religion, but the court would likely find that there is no inhibition because there are alternatives to burning the candles inside. There is no excessive government entanglement, as there is only the enforcement of the ordinance.

The ordinance would likely withstand the lemon test and not be found to violate the establishment clause.

### **Equal protection**

The government cannot treat similarly situated persons differently. Here they are treated churches different than other buildings which a clear violation of the equal protection clause.

### **Procedural Due Process**

The government cannot take life, liberty or property without due process of law. Typically this means notice and a hearing.

SC will argue that no further warnings, when they were not given a warning, and closing down with no hearing is a violation of their procedural due process. In order to determine whether their procedural due process rights were in fact violated the court would look at (1) the harm done to without a hearing, (2) the city's burden if a hearing occurs and (3)

### **11th amendment**

The government cannot be sued. Doesn't apply to local government. no violation. Injunctive relief, also allowed-- 11th amendment not an issue.

SC will likely obtain declaratory relief, based on the idea of their 1st amendment rights to freedom of religion being violated.

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**END OF EXAM**