

2)

1. What is the likelihood of SC's success in obtaining a temporary restraining order ("TRO")?

TRO are temporary injunctions that last for 10-14 days. To request a TRO, the party seeking the order must show (1) there is irreparable harm if an order is not issued; (2) inadequate legal remedies; (3) balance of hardships between the two parties involved in the order; and (4) there is likelihood of success on the merits of the order; and (5) no defenses of laches or unclean hands.

SC will need to show that there will be irreparable harm, it will not be able to burn candles signifying spiritual light in the world during its service. Money from legal remedies cannot cure SC's problem of signifying the spiritual light. The hardship for Clear city to suspend the ordinance vs the hardship on SC not being able to burn its candle to signify an important part of its practice is in favor of SC, no hardship present for Clear city, except maybe a threat of another church burning, but for the amount of churches in the area (50) only one has burned down verses many. SC has a likelihood of success on the merits as the TRO is only temporary 10-14 days max.

No defenses apply as SC did not delay as soon as the ordinance was given, and fire marshalls were out, the next day SC's attorney gave notice to Clear city and no unclean hands as SC has not done anything wrong.

There is a strong likelihood of the TRO being granted.

2. What is the likelihood of SC's success in obtaining a preliminary injunction ("PI")?

PI are injunctions that last longer than a TRO (10-14 days), but are not indefinite like a permanent injunction. To request a PI, the party seeking the order must show (1) there is irreparable harm if an order is not issued; (2) inadequate legal remedies; (3) balance of hardships between the two parties involved in the order; (4) Status quo is required until a hearing on the merits can be heard; and (5) there is likelihood of success on the merits of the order; and (6) no defenses of laches or unclean hands.

See above for points 1-3, and 5-6.

A full trial on the merits would be required to truly see if Clear City violated SC's freedom of religion, requiring an injunction until a case can be heard should not be any additional hardships or detriment to Clear city.

3. What is the likelihood of SC's success in obtaining declaratory relief in its favor?

Standing

To raise a constitutional suit, an organization must have standing. It must show that there was an injury, caused by a state actor, that would be redressed with a favorable outcome. Organizational standing requires that all of its members need not be in the suit as they all share the same interest with the relief sought.

SC is a church in Clear City, who burns candles during Sunday service to signify spiritual light in the world, and Clear city's ordinance does not allow the burning of candles in any church. Clear city is the government body that issues rules and regulations for the citizens of Clear City and is the government body. If the ordinance was overturned, then SC could burn candles again as part of its Sunday service its problem would be redressed. All members of SC are seeking the same interest be able to burn candles during their Sunday Service.

SC has standing.

State Action

For there be a constitutional claim, there must be state action.

Clear city is not a private entity. Clear city is the government body that issues rules and regulations for the citizens of Clear City and is the government body.

There is a state action.

Free Exercise Clause

Bars any law that limits the free exercise of religion, unless there is a compelling state interest.

Clear city enacted an ordinance that prohibits the burning of candles in any church. Clear city has a compelling state interest as it is home to 50 churches and one of the churches was

burned down earlier in the year, likely due to a burning candle, to minimize the risk of another church burning down and keep its citizens safe, Clear city has enacted this ordinance to protect the churches from another fire. Further, Clear city applied the ordinance to burning candles in all churches not just some (law of general applicability) therefore cementing its compelling interest to reduce fires in churches due to burning candles.

SC will argue the ordinance though has a compelling state interest, the ordinance substantially impairs SC freedom or religion. The ordinance came about due to a church burning down earlier in the year due to the suspected cause of burning a candle. However, it was only suspected by the fire marshal that the cause was burning a candle and further if that candle was burned during service or whether it was burned outside of service hours or days by someone other than congregation members burning a candle for service.

Also, churches are not the only ones to burn candles, many homeowners burn candles in their home, as well as real estate brokers who burn candles during open houses, and even offices burning candles during office hours. Why would the ordinance not apply to anyone who burned a candle, if truly the compelling intent was avoid burning buildings as in the examples above, the house or office would also be subject to burning if a candle was left on.

Although the law of general applicability is applied to all churches who burn candles, it substantially burdens SC's freedom of religion and under the Restoration of Religious Freedom Act, when there is substantial impairment on a religion from the law of general applicability, the government must prove through strict scrutiny that the regulation is narrowly tailored to achieve a compelling state interest.

SC can show that Clear city has not met that scrutiny as the regulation is not narrowly tailored to all burning candles, but only to those burned by churches. Further the burning of candles investigated by the Fire marshal is on Sundays during worship hours verses random checks on churches during any day of the week to ensure no burning candles are present.

Clear city likely has violated SC's violation of their free exercise of religion.

Establishment Clause

The government shall not give preference to any religious group by enforcing any law that gives preferential treatment to some and not others. If the law is facially discriminatory, strict scrutiny shall be applied. If the law is not facially discriminatory, then the Lemon test will apply.

Clear City's ordinance prohibits the burning of candles in any church, facially it is not

discriminatory as the ordinance does not specify which church may or may not burn, but rather all churches. Therefore, the Lemon test shall apply, which provides that the law/ordinance must be (1) secular; (2) neither advances or prohibits any group; (3) no excessive government entanglement.

Secular

The ordinance is likely secular in that is regulating candle burning due to a fire not and applied evenly to all churches that do burn candles.

Advance or prohibit

The ordinance does not appear to advance or prohibit any group, however its application has advanced some groups over others. When the fire Marshall visited 6 churches last Sunday, he only issued 2 of the churches with a warning. This was different than the what the Mayor had conveyed that the ordinance would be vigorously enforced and violators would be closed down. The fire marshall made it clear that there would be no more warnings, meaning anyone caught burning candles after resuming the searches in 8 weeks. Therefore, two churches were advanced over the others.

No excessive government entanglement

Having the fire Marshall visit every Sunday during service is fairly excessive and requires a lot of resources from the government. Even the fire marshall stated he could not resume for another 8 weeks due ot lack of personnel. The application of the ordinance requires a lot of government employees and therefore, puts an excessive entanglement from the government.

The government likely violated the establishment clause.

Therefore, SC has a great likelihood of obtaining declaratory relief in its favor.

Question #2 Final Word Count = 1381

END OF EXAM