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### **State action requirement**

For a plaintiff to bring a claim in federal court under the First Amendment or to enjoin a state actor from doing something through a temporary restraining order or a preliminary injunction, the first prong is that there must be an unlawful action by the government. Here, Clear City ("City"), a municipality, thus a subdivision of a state, is the governmental actor. SC will be suing city under the allegation that it has violated the First Amendment and to prevent it from enforcing an ordinance. Thus, this requirement has been met.

### **Standing**

SC is suing in federal court. Federal courts are courts of limited jurisdiction. For a federal court to hear a case, among other reasons, the case or controversy presented by the plaintiff (P) must be based on a federal statute or the Constitution. Here, the plaintiff (P), SC, will be suing in Clear City ("City") in federal court for seeking a declaration that the ordinance in question violates the First Amendment and to enjoin the City from enforcing such ordinance.

In order for a P like this to have standing, it must demonstrate that its members have suffered an injury that is immediate or has occurred (injury-in-fact), that the violation was caused by the D (causation), and that the remedy sought will be beneficial to the P (redressability). Here, the plaintiff is a Church, which most likely is constituted as an association, organization, or corporation. Thus, as such, it must also show that it has organizational standing - the members have suffered an injury on their own right, that the interest asserted is related to the organization's purpose, and that the lawsuit does not require individual participation.

Here, the members of the church are in the imminence of suffering an injury to their right to have candles being burned

### **Likelihood of SC's success in obtaining a temporary restraining order**

A temporary restraining order is an order issued by the court ordering the defendant (D) to do something or not to do something. It is issued basically to maintain the status quo until a preliminary hearing occurs where the the court will decided whether or not P would benefit from a preliminary injunction. A TRO is normally issued for a short period (14 days for example) and can be issued ex-parte at the commencement of the action.

Here, SC wants city to stop conducting visits, randomly, at churches, to ensure that they are

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not burning candles. If SC would like City to cease it for a short period of time only, the court should grant the TRO, if SC is able to place a bong. Courts normally do not favor TROs since there is too little information on the D's side at this stage of the proceedings. As explained below, the court will thus most likely not grant the TRO.

Here, City enacted an ordinance that prohibits burning candles in any church and authorizes the fire marshal to close down any church in which candle burning occurs. The Mayor told the press that City would vigorously enforce the ordinance and that the fire marshal would randomly visit churches during Sunday services to close down violators.

Prima facie, these facts indicate that a TRO would be a good measure: churches need to have their rituals fully expressed during their meetings so that they fulfill their mission and purpose. However, for a TRO to be granted, the plaintiff must satisfy some requirements.

For a TRO to be issued, the court will assess whether there is a likelihood that the P will succeed on the merits, that irreparable harm will occur in case the TRO is not granted, that public policy favors granting, and that the balancing of the hardships favors the plaintiff. The plaintiff must also post a bond.

Likelihood to succeed on the merits - last Sunday, the marshal visited six churches but not SC. In order for P likely succeed, it must show that it suffered a direct, actual injury. Here, SC was not visited thus injury did not occur to it directly.

Irreparable harm - Out of the 50 churches located in City, the marshal decided to visit 6 and these were issued warnings, not shut down. After visiting the last church, the marshal announced that it would no further warnings would be issued to churches caught violating the ordinance. Warnings by itself do not mean that the other similar situated plaintiffs were injured and that irreparable harm could be suffered by SC or any of the other churches.

Balancing of the hardships - burden on the D vs. benefit to the P if granted - also favors the D. There will be no hardship to P since the marshal also announced that due to a lack of personnel these random visits would not resume for at least eight weeks.

Public policy -the government providing for the citizens welfare (and life), favors not granting.

As said before, Courts generally disfavor the issuance of TROs and P has a high burden to clear when filing one.

Thus, SC will most likely not obtain a TRO.

**Likelihood of SC's success in obtaining a preliminary injunction**

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A preliminary injunction (PI) is an order issued by the court ordering the defendant (D) to do something or not to do something. It is normally issued at a preliminary hearing and will be in effect until a full merits hearing on the case.

The same requirements. For a PI to be issued, the court will assess whether there is a likelihood that the P will succeed on the merits, that irreparable harm will occur in case the PI is not granted, that public policy favors granting, and that the balancing of the hardships favors the plaintiff. The main differences between a TRO and a PI is that, in the second, notice must be given to the D and the second remains in force until a full hearing on the merits is held.

The prongs for the TRO and the PI are the same. Since the P was not able to satisfy them in relation to the TRO, he won't be able to satisfy them in relation to a PI.

Thus, SC will most likely obtain not obtain a PI.

### **Likelihood of SC's success in obtaining declaratory relief**

Declaratory relief is granted by a federal court is an order declaring that the law in question is unconstitutional. Here, SC seeks declaratory relief (DR) in federal court under the First Amendment to seek to declare the law violates the First Amendment, thus, the remedy is adequate.

Here, City enacted an ordinance that prohibits burning candles in any church and authorizes the fire marshal to close down any church in which candle burning occurs. The Mayor told the press that City would vigorously enforce the ordinance and that the fire marshal would randomly visit churches during Sunday services to close down violators.

The First Amendment prohibits governmental entanglement with religion and the Free Exercise of any honestly held religious belief. The test that should be applied by the court is the Strict Scrutiny test. Here, the P would most likely argue that the government is unduly interfering with its member's right to free exercise their beliefs by burning candles on Sundays. The P will argue that the fact that only 2 out of 6 churches were issued warnings, no shut downs, and this demonstrates that there is no great likelihood that more churches will burn down. It will further argue that the ordinance is not reasonable to advance a compelling governmental interest. P will lastly argue that investigators only "suspected" that the cause was a burning candle, and that this is not probable cause to be closing down churches.

City will counter that the ordinance seeks to advance a compelling interest - to prevent churches from burning down and people from being injured or even dying. City will argue that

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electric candles or other similar artifacts that express the burning could be used. City will further argue that every single church has burned down and that 50 is a large number not to take any serious measures.

Given the reasons above, the court will most likely decided on the side of the D, since a compelling interest will most likely be found (keep churches intact and people safe) and that the measure is necessary to advance it (since every single church in the city has burned down)

Thus, SC will most likely obtain NOT obtain a DR.

Question #2 Final Word Count = 1413

**END OF EXAM**