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**1) The issue is whether SC is likely to succeed in obtaining a temporary restraining order (TRO) against Clear City.**

A temporary restraining order (TRO) is a form of equitable remedy. A party can file for a TRO without providing the other party notice and the court may issue one without notice. A TRO usually lasts 10-14 days and requires the following elements: (1) Irreparable harm/injury; (2) Likelihood of success; (3) Inadequate legal remedy; (4) Balancing hardships (including the states interest, any willful conduct, and the benefits to the Plaintiff), and (5) no defenses available to the Defendant. Once the 10-14 days has ended, the party may file for an extension for another 14 days.

**(1) Irreparable Harm/Injury**

When filing a TRO, the plaintiff must prove that while waiting for a preliminary injunction hearing, he/she would be harmed.

Here, SC would argue that it would be harmed by Clear City while waiting for a preliminary injunction hearing because of the ordinance that Clear City enacted. The ordinance "prohibits burning candles in any church and authorities fire marshal to close down any church in which candle burning occurs." The mayor has expressed that Clear City would vigorously enforce the ordinance and that fire marshals would randomly visit churches during their Sunday Services to close down Violators. SC members burns candles during Sunday Services to signify the light in the world. SC would argue that if a TRO was filed, this could prevent Clear City officials from shutting down their church and performing the random visits. SC gave notice to Clear City's attorney (which it is not required to for a TRO). SC would also likely have to extend its TRO if granted because the fire marshal has announced that the random visits would not resume for at least eight weeks. SC has a strong likelihood of proving that they would be injured because their church could be shut down if the fire marshal performs one of its visits and shuts them down.

Therefore, SC has irreparable harm/injury.

**(2) Likelihood of success**

Courts determine what the likelihood of success is on the merits for the plaintiff.

Here, if SC succeeds on the merits, the court can issue an injunction against Clear City from shutting down churches under the ordinance. The court could also examine whether the

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statute is constitutional as well (see discussion below under Freedom of Religion).

Therefore, there is a strong likelihood that SC will succeed on the merits if a TRO is filed.

### **(3) Inadequate legal remedy**

A TRO will more likely be granted if there is an inadequate legal remedy available for the parties. Factor to determine whether there are inadequate legal remedies include whether: the Defendant is insolvent, money damages are inadequate, money damages are too speculative, the Defendant's actions cause continuous harm, the plaintiff cannot seek replevin or ejectment against the defendant, and the property is unique.

Here, there are no facts to show that SC is insolvent, however, money damages appear to be too speculative and inadequate. Shutting down a church and simply providing money damages does not allow the church to continue its practices and inhibits its members from practicing their religions. Clear City's actions would also cause continuous harm. Although the fire marshal has announced that due to a lack of personnel, the random visits would not resume for "at least eight weeks" there is nothing to prevent them from sending any staff member on any given day before the eight weeks is up and shut down a church. Further, the mayor has expressed that the ordinance would be "vigorously enforced." Money damages (legal remedies) would not redress any harm that SC faces. A church is a piece of property on land and thus constitutes a unique property that money damages/legal remedies would not be helpful for. Additionally, replevin (seeking the return of personal property) and ejectment (ejecting a party from a real property) are not remedies that SC against this ordinance.

Therefore, there is an inadequate legal remedy for SC.

### **(4) Balancing hardships**

When balancing hardships, courts examine the states interest, any willful conduct by either party, and examines the facts in the light most favorable to the Plaintiff (benefits to the plaintiff).

Here, Clear City's interest in enacting the ordinance is to prevent fires from burning down churches. However, there has only been one church that has burned down earlier this year out of the 50 churches in Clear City. The fire investigators only suspect that the cause was a burning candle. There are no further facts to confirm this finding and there could be many more reasons as to why the church burned down last year, such as mechanical wiring, an individual performing arson, and someone could have been smoking outside of the church and left the cigarette lit. There does not appear to be any willful conduct by either SC or Clear City by

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enacting the ordinance, nor does there appear to be any willful conduct by the fire marshals. Examining the facts most favor to SC, the Plaintiff, there is a benefit that can be conferred against SC if Cleary City fire marshals temporarily cease its random visits. As mentioned, there is nothing stopping the fire marshals from performing the random visits before the eight weeks is up.

Therefore, in balancing the hardships against the State and SC, it would be beneficial for the court to grant SC a TRO.

### **(5) Defenses available to the Defendant.**

Defendant usually have defenses against the Plaintiff for Unclean Hands and Laches. A defendant can argue that the plaintiff's unclean hands related to this case caused part of the injury. Laches are another defense the defendant can argue - that the plaintiff waited too long to file suit.

Here, Clear City would argue that SC has unclean hands because it burns candles during its Sunday service that can cause a fire and burn down the church. This is a fair argument, however, the court would not likely find SC has acted with unclean hands. Clear City would also attempt to argue that SC filed suit too late, however, SC gave filed suit the day after the fire marshal made its announcements and gave notice to the attorney.

Therefore, there are no available defenses to Clear City.

The court should grant the TRO and SC is likely to succeed in obtaining a TRO.

### **2) The issue is whether SC is likely to succeed in obtaining a preliminary injunction against Clear City.**

A preliminary Injunction requires the same factors as a TRO but the party filing the TRO *must* provide notice to the opposing party. The purpose of a preliminary injunction is to allow the court to prevent the opposing party from continuing its harmful acts until there is a full trial on the merits.

Here, the same analysis applies while SC is waiting for a full suit against Clear City to enjoin them from enforcing the ordinance during the pendency of the lawsuit. SC properly gave notice to Clear City's attorney as required for preliminary injunctions.

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Therefore, the court grant a preliminary injunction and SC is likely to succeed in obtaining one.

**3) The issue is whether SC is likely to succeed in obtaining declaratory relief in its favor.**

A declaratory relief is a summary judgment. Summary judgment will be granted if the courts find that there are no material issues left in the case and if parties failed to respond properly and address the allegations made towards them. If a party raises a standing issue as a defense, the party must prove that the opposing lacks standing and the opposing party must prove that he/she has an injury in fact, causation, and redressability.

Here, if there are no issues of material fact for the court or jury to determine, then the court would grant SC declaratory relief. Clear City has responded with a defense that it has not taken any action and that there is no controversy. Clear City is alleging that the case is not justiciable because SC lacks standing to sue. SC must prove that it has been injured or about to be injured, that but for the ordinance, they would not have been harmed, and having a suit would redress the issue. SC would likely be able to prove it has standing because even though Clear City has not actually shut down any churches, it has already visited six churches and two were given warnings. If they find more churches are burning candles, what would be stopping them from shutting down the church? The mayor has also expressly stated that the ordinance would be vigorously enforced. SC likely has an injury that could occur at any moment, but for the ordinance being acted, they would not be in this situation, and having a suit could redress the injury. Lastly, Clear City has failed to address whether the ordinance it enacted violates the First Amendment.

Therefore, SC is likely to obtain declaratory relief in its favor.

**Freedom of Religion**

The issue is whether the court could find that Clear City violated the Free Exercise Clause and the Establishment Clause.

The free exercise clause under the First Amendment states that state governments are prohibited from punishing a person based on his/her religious beliefs. The genuineness of the belief may be question but not the religion itself. The Establishment clause states that any law is unconstitutional if it: (1) has a secular purpose, (2) directly inhibits or advances religion; and (3)

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the law does allow the government to have excessive entanglement with religion.

Here, SC would argue that Clear City is preventing them from exercising their religious beliefs of burning a candle to signify the spiritual light in the world. However, this is not a very strong argument because Clear City would counter that it is trying to prevent any more churches from burning down. SC has a stronger argument under the Establishment Clause.

Under the establishment clause, SC would prove that the ordinance violates the First Amendment and is unconstitutional because it has a secular purpose of preventing burning candles in any church, it directly inhibits religions by prohibiting churches from lighting candles and allowing the fire marshal to close down any church that is burning candles, and there is excessive entanglement with religion because the government is attempting to step in and prevent churches from burning a candle to signify spiritual light in the world.

Therefore, Clear City likely violated the Establishment Clause under the Freedom of Religion.

Question #2 Final Word Count = 1750

**END OF EXAM**