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### **State Action**

The Constitution only protects against government conduct. It does not protect against individual conduct. In order for a party to bring a claim under the Constitution, they must show that the government or an agent of the government has acted in some way.

Here, Clear City enacted an ordinance that prohibits burning candles in any church. Furthermore, the Mayor of the City told the press that Clear City would vigorously enforce the ordinance. The City is a government and the Mayor is considered an agent of the government. Therefore, State Action is satisfied.

### **Standing**

In order for a person to bring a claim, he must have standing. For an individual to have standing, he must show a particular injury to himself; that he was injured in fact, causation, and redressability. For an organization to have standing he must show that a member would have standing, interest in suit is germane to orgs purpose, and no one member participation needed. Here, a member of the orgs will be hurt if the fire marshal were to visit the church, the interest for the church to have candles is germane to the suit, and no one member is needed. However, there will be an issue on Ripeness.

### **Ripeness**

Here SC will have trouble satisfying the requirement for cases to be ripe in order for the court to hear. Fire Marshal did not visit Clear City Spiritual. Additionally, the fire marshal also announced that, due to lack of personnel, these random visits would not resume for "at least eight weeks."

It is unlikely that the court will rule that SC's claim is ripe to hear.

### **Injunctions**

There are three types of Injunctions: (1) Temporary Restraining Order; (2) Preliminary Injunction; and (3) Mandatory Injunction. Injunctions serve as a decree to a party to refrain from or act in a certain way.

#### **1. Likelihood of SC's Success in Obtaining a TRO**

##### **Temporary Restraining Order**

A TRO is a short-term decree that is issued prior to a hearing for a preliminary injunction. A

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TRO typically is valid for about 10-14 days. Generally, notice is required for an injunction but because a TRO is so limited, a party can be issued one without giving notice if he can show that he reasonably tried to give notice; the court may ask the moving party to post a bond. A TRO will be issued to maintain the current state of affairs (status quo) and if irreparable harm will occur if TRO not issued.

Here, it is unlikely that SC will be successful in obtaining a TRO because there has been no irreparable harm to SC. In fact, there will not be a harm for another "at least eight weeks." Since TRP are valid for, at the most 10 days, the court will not grant a TRO based on these facts.

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

### **Preliminary Injunction**

A Preliminary Injunction is an order that is issued prior to trial and a final judgement on the merits. It last longer than a TRO. A preliminary injunction will be issued to maintain the status quo. A party must show that there will be irreparable harm if one is not issues; the court will then balance the hardships of the parties if one is issued or not; and finally, the court will look at the likelihood of success on the merits.

### **Irreparable Harm**

As stated above, there is no irreparable harm that SC can show in order for the court to issue a Preliminary Injunction.

### **Permanent Injunction**

In order for a Permanent Injunction to be issued the party must show (1) inadequate remedies at law; (2) a property right; (3) Feasibility; (4) Balancing of Hardships; (4) No Defenses

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(2) a property right;

(3) Feasibility;

(4) Balancing of Hardships;

(4) No Defenses

## **3. Likelihood of SC's Success in Obtaining Declaratory Relief in its Favor**

A Declaratory injunction is less restrictive than an injunction. It is a decree that will allow the

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courts to settle a constitutional issue that is in controversy. The controversy requirement is less strict. Here, SC will most likely be able to show that Clear City has violated the First Amendment by infringing on SC's First Amendment Right to Free Speech.

### **The First Amendment**

The First Amendment prohibits the government from Infringing on Free Speech. This is applicable to the states by the 14th Amendment.

SC can argue that the ordinance is over-broad and vague. over-broad because it is prohibiting speech that is protected. Vague means that no ordinary person would be able to tell what the law is prohibiting. SC will have a better argument with over-broad, but not vague.

### **Symbolic Speech**

Symbolic Speech is speech that is intended to relay a message and that message is understood by other. In order for a government to regulate symbolic speech, it must have an important government interest and it is narrowly tailored to achieve that interest. It also must show that the law is unrelated to the suppression of speech.

On these grounds, the government will not be able to satisfy this requirement. Clear City has 50 churches, one which burned down earlier that year. Fire investigators suspected that the cause was a burning candle. If it was shown that there was about 10-20 fires because of burning candles, then the government would have a better argument that this interest of keeping churches from burning down was important.

### **Content Based**

SC can argue that the law is a subject matter restriction or a viewpoint restriction and therefore must meet the high strict scrutiny test in order for it to be valid. SC will argue that the law is regulating on the implied speech that the candle represents. If the Court were to hold that the ordinance is a content based restriction, then it must show that it has a compelling government interest and the law was necessary to achieve that interest.

Here,

### **Defenses to Injunctions**

#### **Lashes**

A court will not issue an injunction if the party has delayed in bring suit and because of the delay, the other party was prejudiced. Here, there is nothing in the facts to show that SC has

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delayed in filing. In fact, SC gave notice to Clear City's Attorney that it would immediately sue for injunction relief. Therefore, Lashes will not apply.

### **Unclean Hands**

Court of equity will not grant injunctions to a party that comes in with dirty hands. If a party's conduct was wrongful during the acts between the parties, an injunction will not be issued. Here, there is nothing in the facts that state that SC has acted improperly or with misconduct. Therefore, this will not be a valid defense.

### **Estoppel**

If a party acts or states a claim that the other party relies on and then that party later changes the claim, he will be estopped. Here, Estoppel also doesn't apply because nothing in the facts state that SC relied on a statement from Clear City.

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**END OF EXAM**