

No. A07-0131

STATE OF MINNESOTA

IN COURT OF APPEALS

Edina Community Lutheran Church and Unity Church of St. Paul,

Respondents,

vs.

State of Minnesota,

Appellant.

APPELLANT'S BRIEF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

- I. Did Respondent religious institutions demonstrate beyond a reasonable doubt that the challenged portions of the Minnesota Citizens' Personal Protection Act,¹ Act of May 24, 2005, ch. 83, 2005 Minn. Laws 442 ("2005 Act"), as applied to Respondents, violate Respondents' right to freedom of conscience guaranteed by Article I, Section 16 of the Minnesota Constitution?

The district court ruled in the affirmative.

Most apposite authorities:

Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch., 487 N.W.2d 857 (Minn. 1992).

Minn. Const. Art. I, § 16.

- II. Did Respondents demonstrate beyond a reasonable doubt that the challenged portions of the 2005 Act as applied to Respondents violate the right to freedom of religious association under the First and Fourteenth Amendments to the United States Constitution?

The district court ruled in the affirmative.

¹ "Challenged portions" of the 2005 Act means:

- (1) the provision in Minn. Stat. § 624.714, subd. 17(b) for notifying a person carrying a firearm that a private establishment bans guns on its premises;
- (2) the provision in Minn. Stat. § 624.714, subd. 17(c) that the owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area;
- (3) the provision in Minn. Stat. § 624.714, subd. 17(e) that a landlord may not restrict the lawful carry or possession of firearms by tenants or their guests; and
- (4) the provision in Minn. Stat. § 624.714, subd. 18(c) that an employer may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

Most apposite authorities:

Rumsfeld v. Forum for Academic and Institutional Rights, Inc., ___ U.S. ___, 126 S. Ct. 1297 (2006).
U.S. Const. amends. I and XIV.

- III. Do the challenged portions of the 2005 Act as applied to Respondents violate the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, *et seq.*?

The district court ruled in the affirmative.

Most apposite authorities:

Mendota Golf, LLP, v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006).

The Lighthouse Inst. for Evangelism v. City of Long Branch, 406 F. Supp. 2d 507 (D. N.J. 2005).
42 U.S.C. § 2000cc *et seq.*

- IV. Did the district court err in declaring unconstitutional, as applied to religious organizations, the entire 2005 Act instead of only the particular statutory provisions that Respondents challenged?

The district court declared the entire 2005 Act unconstitutional, even though Respondents only challenged specific statutory provisions.

Most apposite authorities:

Associated Builders and Contractors v. Ventura, 610 N.W.2d 293 (Minn. 2000).

- V. Does the district court's injunction, based on Respondents' religious beliefs, unlawfully establish religion in violation of Article I, Section 16 of the Minnesota Constitution and the First and Fourteenth Amendments to the United States Constitution?

The district court's injunction creates a religious exception to the 2005 Act allowing Respondents to prohibit firearms on all their properties used for religious purposes and allowing them to give notice of the prohibition in any lawful manner.

Most apposite authorities:

Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989).

Olson v. First Church of Nazarene, 661 N.W.2d 254 (Minn. Ct. App. 2003).

U.S. Const. amends. I and XIV.
Minn. Const. Art. I, § 16.

STATEMENT OF THE CASE

This is an appeal of a decision of the Honorable William R. Howard, granting a permanent injunction with respect to certain portions of the Minnesota Citizens' Personal Protection Act, Act of May 24, 2005, ch. 83, 2005 Minn. Laws 441 ("2005 Act"). The 2005 Act reenacts and amends the Minnesota Citizens' Personal Protection Act of 2003, Act of April 28, 2003, ch. 28, 2003 Minn. Laws 265, 272 ("2003 Act"). The 2005 Act was enacted after a decision of this Court struck down the 2003 Act on the grounds that it violated the "single subject rule" of the Minnesota Constitution (*Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. Ct. App. 2005)).

In July 2005, Respondents Edina Community Lutheran Church ("Edina") and Unity Church of St. Paul ("Unity") commenced this action for declaratory and equitable relief. *See* Complaint, A-22 to A-31. Respondents challenged those portions of Minn. Stat. § 624.714, subds. 17 and 18, as amended by the 2005 Act, that: (1) prohibit owners of a private establishment from restricting the lawful carry or possession of firearms, including firearms of employees, in parking facilities or parking areas; (2) prohibit a landlord from restricting the lawful carry or possession of firearms by tenants or their guests; and (3) if the owner of a private establishment (or the agent thereof) bans firearms in the private establishment, prescribes the manner in which the owner or agent must inform people about the ban.

On September 9, 2005, the district court issued a temporary injunction. *See* A-37 to A-51. The Order enjoined the State of Minnesota from enforcing the provisions of the 2005 Act that would otherwise bar Respondents from prohibiting firearms on their

religious properties or require them to provide notice of the prohibition in the statutorily-prescribed manner.

The parties subsequently filed cross motions for summary disposition. Edina characterized its motion as a “motion for permanent injunction.” *See* A-54. Unity moved for summary judgment and for a permanent injunction. *See* A-59. The State moved for summary judgment in its favor. On November 14, 2006, Judge Howard issued his “Findings of Fact, Conclusions of Law and Order Granting Permanent Injunction.” *See* A-1 to A-21. In his Order, Judge Howard denied the summary judgment motions of Unity and the State and granted Respondents’ motions for a permanent injunction. *See* A-5. The district court determined that the 2005 Act is unconstitutional because it violates Respondents’ rights under Article I, Section 16 of the Minnesota Constitution, the First and Fourteenth Amendments to the United States Constitution, and Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”). This appeal followed.

STATEMENT OF FACTS

I. THE 2003 ACT

The 2003 Act² created statewide uniformity for handgun permitting by vesting the responsibility to issue or deny permits with 87 county sheriffs. It also established

² 2003 Minn. Laws ch. 28 is reproduced in the Addendum hereto at Add-1 to Add-37.

detailed standards for permit issuance.³ See Minn. Stat. § 624.714 (2006). Under section 624.714, persons who are at least 21 years of age, are citizens or permanent residents of the United States, have training in the safe use of a pistol, complete an application, and are not otherwise disqualified from possessing a firearm may apply for a permit. The 2003 Act also added some new provisions to Minn. Stat. § 624.714 applicable to “private establishments” and employers relating to prohibition of firearms on private property. See *id.*, subs. 17 and 18 (2006).

The 2003 Act received a bipartisan majority of both the Minnesota Senate and House of Representatives. Upon passage of the 2003 Act, Minnesota joined over 35 other states in adopting what is sometimes referred to as a “shall issue” system for issuing permits to carry handguns in public places.⁴

II. LITIGATION CONCERNING THE 2003 ACT

In May 2003, Edina and other parties filed suit in Hennepin County District Court challenging portions of the 2003 Act. *Edina Community Lutheran Church, et al. v. State*, Hennepin County Court File No. MC 03-008185 (“*Edina I*”). In June 2003, the district court granted temporary injunctive relief as to the “reasonable request” aspect of the 2003 Act. In March 2004, on remand from an interlocutory appeal, the district court

³ Under prior law, Minnesota had a “may issue” system for issuing handgun carry permits which gave chiefs of police and sheriffs substantial discretion to decide whether to issue permits. See Minn. Stat. § 624.714 (2002). Critics argued that the prior permitting process was arbitrary and fragmented.

⁴ See, e.g., Joseph E. Olson, *The Minnesota Citizens’ Personal Protection Act of 2003: History and Commentary*, 25 Hamline J. Pub. L. Pol’y 1, 21 (2003). Currently, 40 states, including Minnesota, have adopted a “shall issue” system. See A-62 to A-68.

broadened its grant of temporary relief. See Order, Ex. H to Affidavit of David L. Lillehaug on Record for Motion for Permanent Injunction (“2006 Lillehaug Aff.”). The plaintiffs later dismissed *Edina I*.

In October 2003, Unity and other parties filed a similar suit in Ramsey County District Court. *Unity Church of St. Paul, et al. v. State*, Ramsey County Court File No. C9-03-9570 (“*Unity I*”). In July 2004, the district court granted plaintiffs’ motion for summary judgment and declared that the 2003 Act was unconstitutional because the law embraced more than one subject. In *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (Minn. Ct. App. 2005), this Court affirmed the district court’s decision based on the “single-subject” rule; it did not decide the religious freedom issue raised in that case.⁵

III. THE 2005 ACT

After the decision in *Unity I*, the Legislature enacted (again on a bipartisan basis) and the Governor signed into law the 2005 Act.⁶ The 2005 Act reenacts Articles 2 and 3 of chapter 28 of the 2003 Minnesota Session Laws, effective retroactively and without interruption from April 28, 2003.

⁵ The district courts’ and Court of Appeals’ rulings in both *Edina I* and *Unity I* are not precedential. The district court’s grant of temporary injunctive relief in *Edina I* was not an adjudication of the issues on the merits. See *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. Ct. App. 2002), *rev. denied* (Minn. Feb. 4, 2002). The district court’s comments on Respondents’ religious freedom claim in its July 2004 ruling in *Unity I* were dicta. Similarly, the Court of Appeals’ ruling in *Edina I* adjudicated only the justiciability of the freedom of conscience issue and not the merits of that controversy.

⁶ The 2005 Act is reproduced in the Addendum hereto as Add-1 to Add-8.

The 2005 Act also amended the 2003 Act concerning the manner in which establishments may communicate notice that guns are banned on their premises.⁷ In the 2005 Act, the Legislature defined a “reasonable request” for the purposes of banning guns in an establishment as follows:

As used in this subdivision, the terms in this paragraph have the meanings given:

(1) “Reasonable request” means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language “(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES.”; and or

(ii) the requester or ~~it’s~~ the requester’s agent personally informs the person of ~~the posted request~~ that guns are prohibited in the premises and demands compliance.

Minn. Stat. § 624.714, subd. 17(b)(1).

STANDARD OF REVIEW

Summary judgment is proper when the evidence in the record shows there is no genuine issue of material fact and “either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03; *see DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). In the instant case, the parties agreed that no question of material fact existed. Despite the district court’s order purportedly denying the parties’ motions for summary judgment,

⁷ By providing private establishments with choices as to how to communicate a firearms ban, the Legislature effectively eliminated the “defect” of the posting requirement identified by Judge Rosenbaum in her June 2003 Order granting a temporary injunction. *See Order, Ex. H to 2006 Lillehaug Aff.* at 11.

the court ruled on the merits of all of Respondents' constitutional and statutory challenges to the 2005 Act, effectively granting summary judgment to Respondents. The applicable standard of review of such a grant of summary judgment is de novo. See *Minn. Voyageur Houseboats, Inc. v. Las Vegas Marine Supply, Inc.*, 708 N.W.2d 521, 524 (Minn. 2006). The de novo standard of review applies to questions of law, including: statutory interpretation (see *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002)); the constitutionality of a statute (see *State v. Grossman*, 636 N.W.2d 545, 548 (Minn. 2001)); and the issue of "whether the district court erred in its application of the law" (*Art Goebel, Inc. v. North Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997)).

Minnesota statutes are presumed constitutional, and the power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary. *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 298-99 (Minn. 2000); *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989); *State v. Merrill*, 450 N.W.2d 318, 321 (Minn.), cert. denied, 496 U.S. 931 (1990). Because the constitutionality of a statute is a legal question, lower courts' decisions are given no deference. *Estate of Jones by Blume v. Kvamme*, 529 N.W.2d 335, 337 (Minn. 1995). The party challenging the constitutionality of a statute bears the burden of demonstrating constitutional infirmity beyond a reasonable doubt. *Id.*; *Merrill*, 450 N.W.2d at 321.

This Court should interpret a statute to preserve its constitutionality where possible. *Hutchinson Technology, Inc. v. Comm'r of Revenue*, 698 N.W.2d 1, 18 (Minn. 2005). The Minnesota Supreme Court has stated that "[i]f the language of a law can be

given two constructions, one constitutional and the other unconstitutional, the constitutional one must be adopted, although the unconstitutional construction may be more natural.” *Id.*, quoting *Head v. Special Sch. Dist. No. 1*, 182 N.W.2d 887, 893 (Minn. 1970), *overruled on other grounds by Nyhus v. Civil Serv. Bd.*, 232 N.W.2d 779, 780 n.1 (Minn. 1975).

Finally, in analyzing the purpose of statutory classifications, this Court is not restricted to those purposes expressly stated by the Legislature. Rather, *any* legitimate purpose can support the classifications. *See Council of Indep. Tobacco Mfrs. of America v. State*, 713 N.W.2d 300, 310 (Minn. 2006); *In re McCannel*, 301 N.W.2d 910, 917 (Minn. 1980).

SUMMARY OF ARGUMENT

The district court committed reversible error in several respects. First, because Respondents failed to demonstrate beyond a reasonable doubt that the challenged portions of the 2005 Act violate their right to freedom of conscience under Article I, Section 16, the district court erred as a matter of law when it declared the challenged portions of the law unconstitutional as applied to Respondents. Respondents failed to meet an essential element of their initial burden under the “compelling state interest balancing test” of *Hill-Murray Fed’n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857 (Minn. 1992), which is to show that the law forces them to change their religious

conduct or philosophy.⁸ The challenged portions of the 2005 Act are content-neutral and do not require Respondents to make any such changes. Because Respondents did not meet their initial burden, it is not necessary to reach the “compelling state interest” and “least restrictive alternative” prongs of the *Hill-Murray* test. But even if the Court reaches those issues, it should uphold the challenged portions of the Act because they are supported by compelling state interests in public safety and uniformity, and they use the least restrictive means available to accomplish those goals.

Second, because Respondents failed to demonstrate beyond a reasonable doubt that the challenged portions of the 2005 Act violate their right to freedom of association under the First and Fourteenth Amendments to the United States Constitution, the district court erred as a matter of law when it declared the challenged portions of the law unconstitutional as applied to Respondents because they allegedly force them to associate with people who wish to carry firearms. Under the principles announced in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, ___ U.S. ___, 126 S. Ct. 1297 (2006), Respondents have no constitutional protection against being in the presence of people who hold ideas with which they disagree. The mere presence of such individuals does not affect the composition of their religious organizations or prevent them from voicing their disapproval of firearms possession in any manner they choose. Further, the district court erred when it stated that the “reasonable notice” provisions compel speech on the

⁸ See *Rooney v. Rooney*, 669 N.W.2d 362 (Minn. Ct. App. 2003), *rev. denied* (Minn. Nov. 25, 2003), *cert. denied*, 541 U.S. 1011 (2004), *sub nom Christ’s Household of Faith v. Rooney*.

basis of viewpoint. There is no ideological, political or literary message required to be expressed in the sign or the personal notification.

Third, the district court erred in holding that the challenged portions of the Act violate RLUIPA. RLUIPA only applies to this case if the challenged portions of the 2005 Act are part of a zoning law. The district court erred in ruling that they are zoning laws and that they discriminate against Respondents on the basis of religion. The challenged portions of the 2005 Act are clearly not part of a zoning law. Moreover, they do not treat religious assemblies less favorably than nonsecular assembly; they are religiously neutral and do not in any way limit the existence of Respondent religious organizations.

Fourth, the district court erred in declaring unconstitutional the entire 2005 Act unconstitutional, as applied to Respondents, instead of limiting its ruling to only the challenged portions of the 2005 Act. Although the district court recognized that the 2005 Act has a severability clause, the court neither gave effect to the severability clause nor explained why the challenged portions of the law were not severable.

Finally, the district court's granting of injunctive relief based solely on Respondents' religious beliefs has the effect of creating a "religious exemption" that confers a particular benefit on religious institutions, in violation of the Establishment Clause of the First Amendment and in violation of Article I, Section 16 of the Minnesota Constitution. By allowing Respondents to give notice of its gun ban "in any lawful manner," the injunction puts a law-abiding carry permit-holder in the untenable position of not knowing whether a particular religious institution bans guns and thus subjects the permit holder to adverse consequences of violating the religious institution's ban.

ARGUMENT

I. THE CHALLENGED PORTIONS OF THE 2005 ACT AS APPLIED TO RESPONDENTS DO NOT VIOLATE ARTICLE I, SECTION 16 OF THE MINNESOTA CONSTITUTION.

Respondents contend that the challenged portions of the 2005 Act as applied to them violate Article 1, Section 16 of the Minnesota Constitution. Article I, Section 16 provides, in relevant part:

The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; . . . nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

This provision requires the Court to weigh “the competing interests at stake whenever rights of conscience are burdened.” *State by Cooper v. French*, 460 N.W.2d 2, 9 (Minn. 1990). The Minnesota Supreme Court analyzes freedom of conscience claims under the “compelling state interest balancing test.” *Hill-Murray*, 487 N.W.2d at 865. The test has four parts: (1) Is the objector’s belief sincerely held? (2) Does the 2005 Act burden the exercise of religious beliefs? (3) Does the 2005 Act advance interests of the state which are overriding or compelling? and (4) Does the 2005 Act use the least restrictive means to accomplish its purpose? The application of these factors to the facts of this case makes clear that the 2005 Act does not violate Article 1, Section 16.

A. The Religious Beliefs Of Respondents.

The first prong of the *Hill-Murray* test is whether Respondents' beliefs are sincerely held. *Id.* The State does not contest Respondents' allegation that they have sincerely held religious beliefs. As discussed in the next section, however, the challenged provisions of the 2005 Act are not incompatible with those beliefs and impose no burden⁹ on the Respondents' free exercise of those beliefs.

B. Respondents Have Not Demonstrated An Undue Or Excessive Burden On Their Free Exercise Of Religion By Operation Of The 2005 Act.

Under the second prong of the *Hill-Murray* test, Respondents have the burden to show that the 2005 Act burdens the exercise of their religious beliefs. *See Shagalow v. Minnesota Dep't of Human Servs.*, 725 N.W.2d 380, 390 (Minn. Ct. App. 2006). To be recognized as a constitutional infringement, the burden on the exercise of religious beliefs must be more than *de minimis*; it must be "undue" or "excessive." *See Odenthal v. Minnesota Conference of Seventh-Day Adventists*, 657 N.W.2d 569, 576 (Minn. Ct. App. 2003)¹⁰ (resolution of negligent counseling claim will not unduly burden exercise of

⁹ The district court's opinion incorrectly suggests that the State *agreed* that the 2005 Act burdens Respondents' free exercise of religion and only argued about whether the burden was "sufficient" to render the Act unconstitutional. *See* A-7. To clarify, the State does not challenge the sincerity of Respondents' beliefs in peacemaking and nonviolence or their belief that their churches are places of sanctuary. However, the State *never* conceded that Respondents' have a sincere religious belief that the specific words "[Respondent] bans guns in these premises" are prohibited by their religion. Further, the State does not agree that Respondents met their burden to show *any* burden on their religious beliefs or practices, much less an undue or excessive burden.

¹⁰ *Odenthal II (on remand from Odenthal v. Minnesota Conference of Seventh-Day Adventists*, 649 N.W.2d 426 (Minn. 2002)).

religious beliefs); *Hill-Murray*, 487 N.W.2d at 866 (“While Hill-Murray may have demonstrated that the application of the MLRA interferes with their authority as an employer, they have not established that this minimal interference excessively burdens their religious beliefs.”). To determine the burden on Respondents, this Court must ascertain whether Respondents “are forced to change [their] religious conduct or philosophy due to imposition of the statute.” *Rooney*, 669 N.W.2d 362 at 369.

The religious beliefs Respondents assert in their affidavits include a commitment to peacemaking and nonviolence in all relationships and the belief that the church is a place of sanctuary.¹¹ *See* (“2006 Lillehaug Aff.”), Exs. C, D, and E. Respondents allege that the 2005 Act imposes four “burdens” on these religious beliefs: (1) a burden on their right to communicate and worship as they see fit, from the existence of the two alternative “reasonable request” provisions;¹² (2) a burden on their right to use their real property for worship and religious mission, from the 2005 Act’s prohibition on banning firearms in parking areas;¹³ (3) a burden on their rights as employers, from the 2005 Act’s

¹¹ Edina first passed an actual prohibition on firearms on May 15, 2003 (*see* Lillehaug Aff., Ex. C: Fickensher Aff., ¶ 8), *after* the Governor signed the 2003 Act into law on April 28, 2003, and just prior to its May 25, 2003 effective date. Similarly, Unity first adopted a prohibition on firearms on church property on May 28, 2003. *See* Lillehaug Aff., Ex. 3: Eller-Isaacs Aff., ¶ 15. This undisputed factual chronology contradicts Respondents’ argument regarding the alleged burden imposed by the 2005 Act and suggests that Respondents themselves previously regarded the possibility that people would carry guns in their churches as no more than a minimal burden on the exercise of their religion.

¹² *See* Minn. Stat. § 624.714, subd 17(b) (2006).

¹³ *See* Minn. Stat. § 624.714, subd. 17(c) (2006).

provision prohibiting them from banning employees from possession of firearms in Respondents' parking areas;¹⁴ and (4) a burden on their right to use their property for worship and religious mission, from the 2005 Act's provision prohibiting them, as landlords, from restricting the possession of firearms by their tenants.¹⁵ None of the challenged provisions forces Respondents to change their religious conduct or philosophy and thus these alleged "burdens" do not warrant an exemption from the 2005 Act.

1. The "reasonable request" options in the 2005 Act do not force Respondents to change their religious conduct or philosophy.

The 2005 Act provides that a person who carries a firearm into a private establishment knowing that the operator has made a "reasonable request" not to do so may be "ordered to leave the premises." Failure to comply is a petty misdemeanor subjecting the violator to a fine in an amount up to \$25. *See* Minn. Stat. § 624.714, subd. 17(a) (2006). There are two alternative options for making the request: (1) posting signs, with specified verbiage and format requirements, at building entrances; or (2) personally notifying persons that guns are prohibited on the premises and demanding compliance. These provisions do not require Respondents to change their religious conduct or philosophy.

First, the "reasonable request" provisions are religiously neutral and are analogous to the religiously-neutral requirement to allow disabled individuals to bring their seeing-

¹⁴ *See* Minn. Stat. § 624.714, subd. 18(c) (2006).

¹⁵ *See* Minn. Stat. § 624.714, subd. 17(e) (2006).

eye dogs into public places.¹⁶ They are designed to convey in a clear and unambiguous way that firearms may not be carried into the establishment's premises. Given that Respondents have adopted firearms bans relative to their properties, this is a message that they presumably need to effectively communicate to individuals who would seek to carry firearms onto their premises.

The text required in the sign-posting option conveys a message that is religiously neutral and similar to the minimal secular mandates in requirements for exit signs¹⁷ and designated parking spaces for disabled individuals -- both of which Respondents admittedly display.¹⁸ The non-religious, secular nature of the text is not, as stated by the district court, a constitutional defect requiring a religious exemption (*see* A-9, stating that there is a "religious infringement presented by requiring a secular message at the front door of a church"). Under the district court's analysis, all secular signs in a religious setting" could offend the constitution, including "exit" and "No Smoking" signs. Posting

¹⁶ *See* Minn. Stat. § 256.02 (2006) ("Every totally or partially blind . . . person . . . shall have the right to be accompanied by a service dog in any of the places in section 363A.10 [hotel, restaurant, public conveyance or other public place].").

¹⁷ *See* Minn. R. ch. 7510, State Fire Code, adopting by reference the International Fire Code; Minn. R. 7510.3580 (requiring sign stating "THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS").

¹⁸ *See* Minn. Stat. § 169.346, subd. 2 (2006) (parking signs for the disabled must be identified by posting signs "incorporating the international symbol of access in white on blue and indicating that violators are subject to a fine up to \$200"). Additional examples of religiously-neutral sign requirements are found in Minn. Stat. § 609.681 (2006) ("no smoking" and "smoking permitted" signs) and Minn. R. 4620.0500; Minn. Stat. § 97B.002 (signs prohibiting hunting, fishing, trapping, boating, hiking, camping, etc.); and State Building Code Minn. R. 1341.0401 and 1341.0476 (specifications for signs concerning, e.g., building accessibility).

a secular sign does not, *per se*, require religious organizations to change their religious conduct or philosophy.

In addition, the sign-posting option does not prohibit Respondents from posting other *additional* language, signs or placards containing a religious message at the entrance to their property.¹⁹ The 2005 Act requires only that the sign “contain” the following words “[Name of establishment] BANS GUNS IN THESE PREMISES”; nowhere does it limit sign content to “only” these words.

Despite the absence of the word “only” in the statute, the district court refused to interpret the statute to allow Respondents to add additional words to their signs, reasoning that such an interpretation “defeats the stated purpose of uniformity for public understanding.” A-10. However, so long as the specified text remains in the language of the sign, substantial uniformity is achieved, not defeated. Moreover, the district court’s refusal to entertain alternative interpretations of the 2005 Act is one of several examples in which the district court ignored the principle of constitutional law stated in *Hutchinson Technology*, 698 N.W.2d at 18, under which courts must interpret a law to preserve its constitutionality, where possible. In this case, the district court rejected the interpretation

¹⁹ For example, Edina states that it has posted a sign that reads: “Blessed are the peacemakers. Firearms are prohibited in this place of sanctuary.” See 2006 Lillehaug Aff., Ex. C; Fickenscher Aff., ¶ 10. With only a very minor change in the wording, the sign could comply with the statute and read: “Blessed are the peacemakers. Edina Community Lutheran Church bans guns in these premises. This Church is a place of sanctuary.”

of the statute offered by the State without considering whether that interpretation would cure the constitutional defect that the court (incorrectly) perceived.

The alternative “personal request” option also does not require Respondents to change their religious conduct or philosophy. Under this option, a “reasonable request” is made by personally informing the person of the ban on guns and demanding compliance.²⁰ Minn. Stat. § 624.714, subd 17(b)(2) (2006). This alternative form of personal notice does not have to be “oral” or face-to-face,²¹ as Respondents allege. Rather, Respondents could provide this personal notice in any one or all of several ways, including, but not limited to: (1) by sending a letter to their members advising them of their firearms ban; (2) by telephoning or e-mailing persons advising them of the ban; or (3) by orally communicating the ban to the church attendees prior to, or at the start of, the church service.²² Indeed, Respondents, in fact, admitted in their written discovery

²⁰ Respondents want to ban firearms on their property but complain that the 2005 Act requires them to order someone to leave their churches if they see someone with a firearm. However, Respondents would be required to do exactly the same thing to enforce their gun bans if the 2005 Act did not exist. *Cf.* Minn. Stat. § 609.605, subd. 1(b)(3) (2006) (unlawful to refuse to depart premises on demand of lawful possessor).

²¹ If the Legislature had intended to require individual face-to-face or oral notice, it clearly knew how to do so and presumably would have done so. *See, e.g.*, Minn. Stat. § 325G.50 (2006) (requires oral notice to buyer of right to cancel membership travel contract).

²² The district court erroneously found that a “secular announcement during a religious service impermissibly interferes with the churches’ right to practice their religion as they fit.” A-10. The district court failed to explain how a “secular” announcement, particularly an announcement that reflects a firearms ban adopted by the churches’ governing bodies, could have such an adverse effect on religious practice. Making secular announcements, e.g., announcing members’ birthdays or reminding the
(Footnote Continued on Next Page)

responses that they already communicate information about their churches in these various ways.²³ Moreover, the 2005 Act does not require Respondents to use any particular language if they opt to provide personal notice in this manner.²⁴ Although the language of any such notice needs to be adequate, it can, like the language of the sign, be religiously neutral.

Compliance with the statute's notice provisions would also *encourage* compliance with Respondents' policies to ban guns and ensure that the permit holders can comply. A firearms prohibition must be communicated if it is to be fair and effective. For establishments that prefer the sign-posting alternative, the 2005 Act establishes a uniform scheme, so that signs are easy to understand and easy to locate. In the alternative, personal notice may be given. Persons carrying firearms who receive such communications are then able to lawfully comply with the policy by storing their firearms in their vehicles in the parking lot by leaving them at home, or otherwise.

Because there is no reason why Respondents cannot give such reasonable secular notice of their respective firearms bans, they failed to show beyond a reasonable doubt

(Footnote Continued From Previous Page)

congregation of upcoming community events, is not out of the ordinary in the course of a religious service.

²³ See 2006 Lillehaug Aff., Ex. at 2 (Unity admissions) and Ex. Z at 1 (Edina admissions).

²⁴ For example, Edina could use one or more of these methods to communicate the precise words it has placed on the sign it created and prefers.

that the statutory notification requirement substantially burdens their right to freedom of conscience.

2. The prohibition on banning firearms in parking areas does not force Respondents to change their religious conduct or philosophy.

Respondents contended, and the district court agreed, that the prohibition on banning firearms in their parking areas (including firearms in possession of Respondents' employees) burdens Respondents' right to use their real property for worship and religious freedom. Respondents, however, only offered conclusory statements in support of this claim. Neither Respondents nor the district court²⁵ articulated how the mere possession of firearms in Respondents' parking lots has in the past or will in the future force Respondents to change their religious conduct or philosophy. Because there is no evidence that Respondents affirmatively banned guns in their parking areas prior to enactment of the 2003 Act, it is reasonable to assume that some people (e.g., hunters, target shooters, persons who had gun permits under prior law) parked in Respondents' parking areas on many occasions when firearms were present in their vehicles.

Although Respondents contend that they *sometimes* use their parking lots for church-related services, for the vast majority of the time, those areas are used only for

²⁵ In the portion of its opinion addressing the parking lot issue, the district court quoted extensively from *Edina I* (*Edina Community Lutheran Church v. State*, 673 N.W.2d 517 (Minn. Ct. App. 2004)). See A-11 to A-12. This Court's ruling in *Edina I* adjudicated only the justiciability of the freedom of conscience issue and not the merits of that controversy. Thus the language quoted by the district court is dictum and not precedential.

parking. A church parking lot that is being used simply as a parking lot is no different than parking lots at other secular establishments, such as restaurants, discount stores, and businesses of many other kinds. Further, the Legislature did not define the term “parking facility” or “parking area.” Thus, those terms must be given their plain meaning; i.e., when the parking facilities or areas are not used to park cars, but instead are occupied with people because they are *in use* as places for, e.g., worship services, prayer vigils, then they are not being used as a “parking facility or parking areas,” and Respondents may prohibit firearms in those areas with reasonable notice.²⁶

The statute provides a basic functional test²⁷ that can easily be understood and applied. For example, an exterior church asphalt surface parking lot that is merely used to park vehicles during church services is a “parking area.” When that same lot is instead used by church members to hold outdoor Easter Sunrise services, it is not a parking area.

²⁶ The district court’s order granting a temporary injunction mischaracterized the Act as requiring Respondents to “ascertain the motives of each person using the parking lot to determine whether a religious activity is occurring.” A-10. The district court erroneously stated that: “Under the states [sic] rational [sic] a church employee who stops to pray in his car would be subject to a gun ban while the employee who reads a newspaper in his car can carry a gun into the parking lot.” *Id.* This is incorrect. Under the 2005 Act, if the parking lot is being used for parking cars, anyone may carry a firearm onto the parking lot. If, however, Respondents put their parking lots into use as a space for church-sponsored religious activity for their parishioners, a prohibition on guns is allowed.

²⁷ This “functional test” approach is no different than that proposed by the district court to distinguish between a church’s “commercial property” that is not entitled to protection versus “property *used* for charitable, educational or other non-profit purposes.” A-12 (emphasis added). Moreover, some churches conduct their services in buildings, such as community centers, that are used for other purposes during the rest of the week; a “functional test” must apply in such a situation.

The presence of parked vehicles is an indication of the use at any given time.²⁸ Where space is used for parking vehicles, that use controls and is presumed to continue *unless* adequate notice is given of the conversion to another use. *Cf.* Minn. Stat. § 609.66, subd. 1d(d)(4)(iv) (2006) (provision relating to temporary location for schools). That is to say, the use of a given space may vary over time. Accordingly, Respondents failed to show beyond a reasonable doubt that this provision of the 2005 Act unduly burdens their religious beliefs or practices.

3. The provision prohibiting landlords from restricting the possession of firearms by their tenants does not force Respondents to change their religious conduct or philosophy.

Respondents contended, and the district court agreed, that an impermissible burden on Respondents' free exercise of conscience results from the provision of the 2005 Act disallowing landlords from prohibiting possession of firearms by their tenants. When examined closely, however, this aspect of Respondents' claim has nothing to do with the exercise of their religious beliefs. Rather, it concerns their alleged rights as private property owners to include in leases whatever conditions they want, just like other property owners. There is no evidence that Respondents have prohibited firearms in their leased spaces or that the lack of such lease provisions has in any way burdened

²⁸ The district court also erroneously rejected as "unworkable" the State's interpretation of the 2005 Act which would allow Respondents to ban guns in their parking lots when they are used for religious services. As previously discussed *supra* at 9-10, if a law is subject to more than one interpretation, one of which is unconstitutional, then an interpretation that preserves the constitutionality of the statute must be chosen.

Respondents' religious freedom. Edina has only one tenant,²⁹ Creekside Children's Palace ("Creekside"), a licensed child care center. In addition, Edina's tenant operates a child care center and is already lawfully entitled to exclude guns from the center while children are present and participating in a child care program; *see* Minn. Stat. § 609.66, subd. 1d(d)(4)(ii) (2006); thus, Edina is not burdened by the 2005 Act's prohibition with respect to that tenant.³⁰

Likewise, Unity produced no evidence of any past practice prohibiting firearms on their leased property. Although Unity claimed to have multiple tenants (*see* 2006 Lillehaug Aff., Ex. V at 5), the unsigned "leases" that Unity produced in response to the State's Request for Production of Documents did not cover the current year and were silent on the issue of firearms. *See* 2006 Lillehaug Aff., Ex. X at 3 and attached responsive documents. Thus, Unity failed to demonstrate beyond a reasonable doubt that the 2005 Act's prohibition with respect to tenants burdens the free exercise of its religion.

²⁹ Prior to the 2003 Act, Edina's leases with Creekside Children's Palace did not mention guns but rather merely stated: "Lessee shall not permit any dangerous or noxious practices to occur during its educational program or practices which may increase lessor's rate of fire insurance." 2006 Lillehaug Aff., Ex. AA, 2001, 1999, 1997, 1988 leases.

³⁰ The provisions of the 2005 Act relating to landlords and tenants strikes a balance between those two groups. As Professor Joseph Olson stated in a 2003 law review article concerning the 2003 Act: "In multi-tenant properties, landlords do not have the power to negate exercise by a tenant or guest of their right to carry or possess firearms by posting any area to which the tenant or guest otherwise has access. The legislature has avoided any conflict by establishing a priority of rights concerning this particular subject matter -- the lawful carry or possession of firearms." Olson, 25 Hamline J. Pub. L. Pol'y 1 at 73 (citation omitted).

4. **This case is distinguishable from cases in which a religious exemption was granted.**

Where the courts have found a constitutional violation of religious freedoms, the remedy has been to, in effect, grant a “religious exception.” The “religious exception” cases have involved laws that force persons to make an unacceptable choice between violating their religious beliefs and suffering civil or criminal penalties, or even suffering financial hardship. *See, e.g., Sherbert v. Verner*, 374 U.S. 398, 403-07 (1963) (refusing to make plaintiff choose between not observing her Sabbath day and risking unemployment without state benefits); *State v. Hershberger*, 462 N.W.2d 393, 399 (Minn. 1990) (granting exemption from statute that would require plaintiff to post a slow-moving vehicle sign in violation of deeply held religious beliefs or accept criminal penalties, including fines and jail time).³¹

The 2005 Act is distinguishable from the laws challenged in those cases because it does not single out and impose a burden upon any religious practices. Rather, it is a law of general applicability that has the same impact upon all private establishments. As the Supreme Court stated in *Braunfield v. Brown*, 366 U.S. 599, 606 (1961):

To strike down, without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, i.e., legislation which does not make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature.

³¹ *See also French*, 460 N.W.2d at 11 (excusing noncompliance with statute by a landlord who would violate his religious beliefs by renting to unmarried couple in accordance with human rights act); *Rasmussen v. Glass*, 498 N.W.2d 508, 515-16 (Minn. Ct. App. 1993) (noting that vendor was forced to make a choice between associating with an entity he found morally offensive, and being found guilty of discrimination and being fined).

There is nothing in the 2005 Act which makes any religious practice unlawful, and it should not be struck down based on any alleged minimal and indirect burden on Respondents. In fact, the 2005 Act does not require Respondents to admit persons with guns into their religious services.

Because the 2005 Act does not force Respondents to alter or to violate their religious beliefs, it is similar to the laws upheld in *Bowen v. Roy*, 476 U.S. 693 (1986) (denying challenge to requirement for use of child's social security number to qualify for welfare benefits because requirement only indirectly and incidentally burdened claimant's free exercise); *Braunfield*, 366 U.S. at 605 (denying religious exemption and noting that Sunday closing law did not make unlawful any religious practices of Sabbatarian Respondents, but simply made practicing their religious beliefs more expensive); and *State v. Bontrager*, 683 N.E.2d 126, 128-29 (Ohio Ct. App. 1996) (refusing religious exemption from requirement to wear blaze orange while deer hunting because hunting is recreational activity and not a central tenet of Amish religion).

The district court's injunction creates a religious exception that, among other things, allows Respondents to avoid the "reasonable notice" provisions of the 2005 Act and instead give notice "in any lawful manner." The district court's rationale for this exception is not logical. Specifically, after stating it would infringe upon Respondents' freedom of religion to require them to post a sign or to give individual verbal notice of their ban on firearms, the district court stated that other possible ways of notifying people of the ban suggested by the State (e.g., notice in a bulletin or mailing) would be "insufficient to reach all who may enter the sanctuary" and thus would be "untenable, as

it could place a member of the public in violation of the law without notice.” A-10. The district court ignored the fact that a violation of the law occurs only when a person carrying a firearm fails to leave a private establishment “when so requested.” See Minn. Stat. § 624.714, subd. 17(a) (2006). Even under the religious exception granted by the district court, Respondents must find a way to successfully communicate their ban on firearms to individuals if they intend to effectuate it. Because the options for “reasonable notice” provided in the 2005 Act are religiously neutral, the district court’s grant of a religious exception was in error and should be reversed.

C. The 2005 Act Is Supported By Compelling State Interests In Public Safety And Uniformity.

Under *Hill-Murray*, if Respondents satisfy their initial burden to show that the 2005 Act unduly burdens sincerely held religious beliefs, the next inquiry is to determine whether a compelling state interest supports the 2005 Act. See *Shagalow*, 725 N.W.2d at 390. If the initial burden is not met, the Court need not reach the issue of whether the government has a compelling interest sufficient to defeat Respondents’ claim. See *State v. Pederson*, 679 N.W.2d 368, 376-77 (Minn. Ct. App. 2004), *rev. denied* (Minn. May 18, 2004); see also *In re Rothenberg*, 676 N.W.2d 283 (Minn.) (court’s inquiry ended after conclusion that statute did not burden free exercise of religion), *cert. denied* 543 U.S. 820 (2004). Because Respondents did not meet their initial burden to show that the 2005 Act would force them to change their religious conduct or philosophy, this Court need not reach the issue of compelling-state-interest. Even if the Court reaches the compelling-

state-interest prong of *Hill-Murray*, however, it is clear that the 2005 Act serves multiple compelling interests.³²

Under *Hershberger*, governmental interests in safety will excuse an imposition on religious freedom under the Minnesota Constitution.³³ 462 N.W.2d at 397. One of the State's compelling interests, as ascertainable from the 2005 Act itself and also from its

³² The Minnesota Supreme Court has employed judicial notice to acknowledge a compelling state interest at issue in "*Hershberger I*," i.e., *State v. Hershberger*, 444 N.W.2d 282 (Minn. 1989), *vacated and remanded on other grounds*, *Minnesota v. Hershberger*, 110 U.S. 901 (1990), *on remand*, *State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990). The court stated:

Although we have reservations as to whether the evidence actually presented in the trial court was qualitatively or quantitatively sufficient to establish a compelling state interest, highway safety, for the purpose of addressing appellants' challenge to the statute in this case we judicially notice that the state's concern for safety of the public using the highways, including these appellants, is a legitimate compelling interest.

444 N.W.2d at 288 (emphasis added). *Accord*, *State v. Patzer*, 382 N.W.2d 631, 638 n.4 (N.D.) (although state did not formally introduce evidence on "compelling state interest" and "least restrictive means" issues, court may take judicial notice of legislative facts in reviewing legislative schemes), *cert. denied*, 479 U.S. 825 (1986).

³³ Compelling state interests other than public safety and preventing licentiousness have been held to overcome an individual's freedom of conscience claim. *See, e.g., Hill-Murray*, 487 N.W.2d at 866 (state's interest in safeguarding the rights of labor organizations was compelling and overrode private school's religious interest in conducting labor negotiations free from oversight); *Matter of Welfare of T.K.*, 475 N.W.2d 88 (Minn. Ct. App. 1991) (state has compelling state interest in educating its citizenry for purposes of evaluating testing requirement of home education law violates parents' freedom of conscience); *State by McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 853 (Minn. 1985) (compelling state interest in prohibiting discrimination in employment and public accommodations overcame employer's religious-based objections to human rights act); *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. Ct. App. 1998) (state has compelling interest in assuring parents provide primary support for their children); *Rooney*, 669 N.W.2d at 370.

legislative history,³⁴ is the safety of its citizens and allowing private citizens to carry firearms in order to protect themselves against violent crimes. The 2005 Act itself declares that the state has a compelling interest as follows:

The legislature of the State of Minnesota recognizes and declares that the Second Amendment to the United State Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish compelling state interests in regulation of those rights.

Minn. Stat. § 624.714, subd. 22 (2006) (as reenacted in the 2005 Act). A court “cannot lightly dispute a determination by the political branches . . . that the interests at stake are compelling. *Finzer v. Barry*, 798 F.2d 1450, 1459-60 (D.C. Cir. 1986), *aff’d sub nom. Boos v. Barry*, 485 U.S. 312 (1988). The Minnesota Supreme Court has expressly recognized the compelling nature of the state’s interest in public safety:

The interest in public safety is also fundamental, and serves as a rationale for the very formation of our state government. Article I, section 1 of the Minnesota Bill of Rights establishes, “Government is instituted for the security, benefit and protection of the people”

Hershberger, 462 N.W.2d at 398. The State’s overriding interest in allowing its citizens to deter and defend against violent behavior underlies Minn. Stat. § 624.714, subds. 17(c) (relating to parking areas), 17(e) (relating to landlords and their guests), and 18(c) (relating to employees in parking areas).

The State also has a compelling interest in protecting the fundamental right to travel. An individual with a permitted firearm may wish to travel to or between private

³⁴ See Minnesota Legislature Senate Floor Session, April 28, 2003, 2006 Lillehaug Aff., Ex. N at 9, 11; and Minnesota Legislature House Floor Session, April 23, 2003, 2006 Lillehaug Aff., Ex. L at 11.

establishments that ban firearms. The right to possess a firearm in a parking lot is, therefore, crucial to allowing such travel. Under the 2005 Act, an individual need not make a choice between carrying a permitted firearm and traveling to an establishment that bans firearms. If a person with a firearm travels by vehicle to an establishment that lawfully bans firearms on their premises, the person can place the firearm in the trunk of the person's vehicle in the establishment's parking lot. Edina acknowledges that it is aware that persons attending their church services sometimes travel in vehicles from other locations where they are permitted to carry guns. 2006 Lillehaug Aff., Ex. Z at 3.

The State also has a compelling interest in adequacy, clarity and uniformity in providing notice of a ban on guns, and this interest is served by the notification provisions of Minn. Stat. § 624.714, subd. 17(b). In order to make sure that individuals carrying guns are aware that an establishment bans guns, the Legislature established precise and uniform criteria for notifying people who intend to enter the establishment that guns are banned on the premises.

D. The 2005 Act Uses The Least Restrictive Available Means To Accomplish The Legislative Purpose.

The final question in the *Hill-Murray* test is whether the 2005 Act uses the least restrictive means to accomplish overriding interests. 487 N.W.2d at 865. Respondents contended, and the district court agreed, that the State's objective could be accomplished through less restrictive means by exempting religious organizations from coverage of the statute. The district court erred. Permitting organizations to self-exempt would undermine the important legislative policy behind the 2005 Act. *Cf. EEOC v. Mississippi*

College, 626 F.2d 477, 489 (5th Cir. 1980) (“[C]reation of a [free exercise] exemption greater than that provided by [Title VII] would seriously undermine the means chosen by Congress to combat discrimination.”), *cert. denied*, 453 U.S. 912 (1981). The 2005 Act employs the least restrictive means available to accomplish the Legislature’s objectives.

The Legislature determined that when an establishment wishes to ban firearms, it should deliver that message in a clear and understandable manner.³⁵ This is so that the permit holder is given a fair opportunity to comply with the establishment’s policy. Thus, the Legislature specified *six words* to be used in the sign-posting option in the “reasonable request” provision: (1) [Name of establishment]; (2) BANS; (3) GUNS; (4) IN; (5) THESE; and (6) PREMISES. Indeed, it is difficult to think of a way to effectively convey the message in *fewer* words. The Legislature did not, however, prohibit the inclusion of additional text on the sign, so long as the statute’s language is used.³⁶ Further, the amendments to the “reasonable request” provision in Section 2 of the

³⁵ Although the more detailed “reasonable request” provisions apply only to “private establishments” and not to private residences (under subdivision 17(d) the lawful possessor of a private residence may prohibit firearms and give notice in any lawful manner), the reason for the distinction is readily apparent. Many private establishments, including churches, are generally open to the public, such that people have a reasonable expectation of being able to enter without express permission of the occupants. A person who wishes to carry a firearm into a public place needs clear and obvious notice if the occupant prohibits firearms and does not want that person to carry a firearm into the building. On the other hand, people entering private residences usually have permission of the occupants.

³⁶ The district court criticized the State’s proffered interpretations of the 2005 Act as “patchwork interpretations” to “get around” constitutional concerns. A-15. As discussed *supra*, however, the district court was required to consider alternative interpretation of the (Footnote Continued on Next Page)

2005 Act provide additional leeway for a private establishment that prefers to personally inform the individual of the establishment's prohibition on firearms.

Likewise, no "less restrictive means" are available as it relates to parking areas and leased property. If parking lots are not available as a place where individuals can store firearms before entering establishments banning them, such individuals would face an improper choice: forgoing either personal protection or the establishment's goods and services.³⁷ Similarly, the Legislature concluded that creating an exemption for property leased from a religious organization leaves the lessees with the same unpalatable choice: forgoing renting desirable space or forgoing the ability to protect the business. Therefore, Minn. Stat. § 624.714, subds. 17(c) and (e) and 18(c) also satisfy the last prong of the *Hill-Murray* test.

II. THE CHALLENGED PORTIONS OF THE 2005 ACT AS APPLIED TO RESPONDENTS DO NOT VIOLATE THE RIGHT TO FREEDOM OF RELIGIOUS ASSOCIATION UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

Respondents also contend that the challenged portions of the 2005 Act violate their right to freedom of religious association protected by the First and Fourteenth

(Footnote Continued From Previous Page)

law in an effort to uphold the constitutionality of the law wherever possible. The district court failed to do so.

³⁷ Such an improper choice would, in fact, infringe upon the free exercise rights of a person who would be banned from parking in the parking lot of his own church simply because there is a gun in his vehicle.