STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

File No. C9-03-9570

Unity Church of St. Paul and White Bear Unitarian Universalist Church,

Plaintiffs,

and

Adath Jeshurun Congregation, et al.,

ORDER

Intervening Plaintiffs,

and

The City of Minneapolis,

Intervening Plaintiff,

and

People Serving People, Inc., et al.,

Intervening Plaintiffs,

vs.

State of Minnesota,

Defendant.

The above-entitled matter came on for hearing before the **Honorable John T. Finley** on the 3rd day of June, 2004, pursuant to plaintiffs' motion to amend their complaint. The plaintiffs were represented by **Marshall H. Tanick, Esq.** Intervening plaintiffs Adath Jeshurun Congregation, et al., (Religious Interveners) were represented by **David L. Lillehaug, Esq.** Intervening plaintiff City of Minneapolis was represented by **Burt T. Osborne, Assistant City Attorney**. **John B. Gordon, Esq.**, appeared on behalf of the intervening

charitable agencies, including People Serving People, et al. Defendant was represented by **Richard L. Varco, Jr.**, Assistant Attorney General.

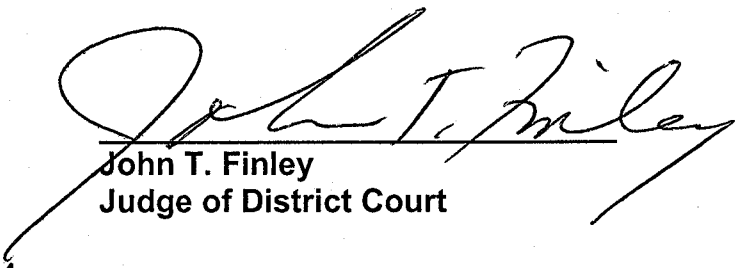
Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That the plaintiffs Unity Church of St. Paul and White Bear Unitarian Universalist Church may amend their complaint in the form that was attached to their motion as Exhibit #1.

2. The attached memorandum is made a part of this order pursuant to Minnesota Rules of Civil Procedure 52.01.

BY THE COURT:



John T. Finley
Judge of District Court

Dated this 12th day of July, 2004.

MEMORANDUM

The complaint that the plaintiffs propose to amend conforms to the original complaint of the intervening plaintiffs, except for some minor linguistic differences. The substance of the complaint is the same as the intervening plaintiffs in that the legal issues are identical to those raised by the interveners. The original complaint brought by the plaintiffs only alleged that the Conceal and Carry Law, known as Senate File 842, violated plaintiffs' religious freedom pursuant to violation of Minnesota State Constitution Article 1, Section 16. The

amended complaint re-alleges that alleged violation, but also alleges that the same law is an impermissible taking of private property without just compensation in violation of the Due Processes Clause of both the state and federal constitutions. There is an additional allegation that the law also violates the single subject requirement of Article 1, Section 17 of the Minnesota State Constitution. By allowing the amendment, all the issues will be parallel and all rulings by the Court will affect all parties equally.

It is clear that the Minnesota Rules of Civil Procedure and the case law of Minnesota hold that the Court should liberally allow amendment to the pleadings and amendments should be freely granted, unless it would result in prejudice to the other party. **(See Rules of Civil Procedure and Fabio v. Bellomo, 504 N.W. 2d 758 (1993))**. There has been no showing of prejudice by any of the other parties.

Therefore, plaintiffs' motion to amend the complaint should be granted.

7/12/04

J.T.F.

STATE OF MINNESOTA **DISTRICT COURT**

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Unity Church of St. Paul and White Bear Unitarian Universalist Church,

Plaintiffs,

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Adath Jeshurun Congregation, et al.,

Intervening Plaintiffs,

and

The City of Minneapolis,

Intervening Plaintiff,

and

People Serving People, Inc., et al.,

Intervening Plaintiffs,

vs.

State of Minnesota,

Defendant.

ORDER

The above-entitled matter came on for hearing before the **Honorable John T. Finley** on the 3rd day of June, 2004, pursuant to plaintiffs' motion to amend their complaint. The plaintiffs were represented by **Marshall H. Tanick, Esq**. Intervening plaintiffs Adath Jeshurun Congregation, et al. (Religious Interveners), were represented by **David L. Lillehaug, Esq**. Intervening plaintiff

City of Minneapolis was represented by **Burt T. Osborne, Assistant City Attorney**. **John B. Gordon, Esq.**, appeared on behalf of the intervening charitable agencies, including People Serving People, et al. Defendant was represented by **Richard L. Varco, Jr.**, Assistant Attorney General.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED:

1. That the plaintiffs' (Unity Church of St. Paul et al) motion for summary judgment on the grounds that the Minnesota Citizens Personal Protection Act 2002, known as Senate File 842, violates Article 4, Section 17 of the Minnesota Constitution because it embraces more than one subject matter is hereby **GRANTED** and is therefore declared unconstitutional.

2. Intervening plaintiffs Adath Jeshurun Congregation's (Religious intervenors) motion for summary judgment on the grounds that the Minnesota Citizens Personal Protection Act 2002, known of Senate File 842, violates Article 4, Section 17 of the Minnesota Constitution because it embraces more than one subject matter is hereby **GRANTED** and is therefore declared unconstitutional.

3. Intervening plaintiff The City of Minneapolis's motion for summary judgment on the grounds that the Minnesota Citizens Personal Protection Act 2002, known of Senate File 842, violates Article 4, Section 17 of the Minnesota Constitution because it embraces more than one subject matter is hereby **GRANTED** and is therefore declared unconstitutional.

4. The intervening plaintiff's, People Serving People, Incorporated, et al., (Charitable agencies) motion for summary judgment on the grounds that the

Minnesota Citizens Personal Protection Act 2002, known of Senate File 842, violates Article 4, Section 17 of the Minnesota Constitution because it embraces more than one subject matter is hereby **GRANTED** and is therefore declared unconstitutional.

5. The defendant State of Minnesota's motion for partial summary judgment is hereby **DENIED** in all respects.

6. Judgment is **GRANTED** plaintiffs and intervening plaintiffs against defendant finding that the part of SF842 (2003) that amends M.S.A. 624.714 was enacted in violation of Minnesota Constitution Article 45, Section 17 and the defendants, their employees, and agents are permanently enjoined and prohibited from taking any action to enforce the unconstitutional provisions of the Act which is hereby severed from the other part of SF842.

7. That all parties shall pay their own attorney's fees.

8. The attached Memorandum is made a part of this Order pursuant to Minnesota Rules of Civil Procedure 52.02.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

John T. Finley
Judge of District Court

Dated this 13 day of July, 2004.

MEMORANDUM

Senate File 842 was introduced as a Department of Natural Resource's technical bill and amended Minnesota Statute 84.01. This law sets forth the duties, powers and responsibilities of the Commissioner of the Department of Natural Resources (DNR) and authorizes the Department to regulate and enforce its rules. The bill was entitled "A Bill For an Act Relating to Natural Resources". It had nothing to do with the concealment or the carrying of weapons. This bill passed the Minnesota State Senate 65-0, with no controversy on March 24, 2003.

When SF842 was sent to the House of Representatives for approval, House File No. 261 (Boudreau Amendment), which is the Conceal and Carry Amendment, was attached to the Department of Natural Resource's SF842. The Boudreau Amendment amended M.S.A. 624.714, which dealt with the carrying of weapons and not the Department of Natural Resources. On April 23, 2003, the House of Representatives approved Senate File 842 the "Bill for an Act Relating to Natural Resources", with the Conceal and Carry /Boudreau Amendment attached as one piece of legislation without any legislative committee hearings. The vote was 88 yeas and 46 nays to approve the title and the bill with the Boudreau amendment.

The matter then returned to the Senate where it was approved on April 28, 2000 by a 37-30 vote without any committee hearings. The title was not changed and it passed both houses with the title as a "Bill for an Act Relating to Natural Resources" and became law after it was signed by Governor Pawlenty.

Originally, House File #261's purpose was to regulate the supposed individual's right to bear arms pursuant to the Second Amendment of the United States Constitution and the entire bill became the Boudreau amendment attached to the totally unrelated bill relating to the Department of Natural Resources.

Following the passage of the law, the reviser of statutes changed the title from an "Act relating to natural resources" to an "Act relating to state government regulation". This change in the title did not have any hearings and was not approved by either body of the legislature.

LAW

SUMMARY JUDGMENT

Article 4, Section 17 of the Minnesota Constitution:

LAWS TO EMBRACE ONLY ONE SUBJECT. No law shall embrace more than one subject, which shall be expressed in its title.

There is a long history of enforcement of the constitutional mandate requiring the legislature to approve only single subject legislation. The controlling case on the issue of single subject and the Court's right to sever statutes with more than a single subject is Associated Builders vs. Ventura, 610 N.W. 2d 293 (2000), where Justice Stringer wrote a very historical review and stated:

> "Early in Minnesota history the potential for mischief in bundling together into one bill disparate legislative provisions was well known. In the Minnesota Democratic Constitutional Convention in 1857, a proposal that addressed only the requirement that a title give some indication of the contents of the bill was amended following the comments of Mr. Meeker.
>
> The *Associated Builders'* Court continued its historical review as follows at page 299:

The first case to test this constitutional requirement was decided by this court in 1858, only a year after its adoption. In *Board of Supervisors of Ramsey County v. Heenan*, 2 Minn. 330, 339 (Gil.281, 291) (1858), we upheld the constitutionality of a law reorganizing county and township governments but also requiring the register of deeds to deliver tax documents to the county board of supervisors. We concluded that the single subject requirement was not offended because there was "no attempt at fraud, or the interpolation of matter foreign to the subject expressed in the title." *Id.* Thirty-three years later we further developed our analysis in *Johnson v. Harrison*, 47 Minn. 575, 578, 50 N.W. 923, 924 (1891), when we held that "[a]n act to establish a Probate Code" providing for procedures in probate courts and for property rights in deceased's estates did not violate either the subject or the title provision of Section 17. In doing so we clarified the purpose of the Single Subject and Title Clause-to prevent "log-rolling legislation" or "omnibus bills."

> We defined logrolling as the "combination of different measures, dissimilar in character, * * * united together * * * compelling the requisite support to secure their passage." *State v. Cassidy*, 22 Minn. 312, 322 (1875) (subject provision's purpose is to "secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits, by prohibiting the fraudulent insertion therein of matters wholly foreign").

That despite these constitutional restrictions, the single subject provision should be interpreted liberally and the restriction would be met if the bill were germane to one general subject:

"[W]hile this provision is mandatory, yet it is to be given a liberal, and not a strict, construction. It is not intended, nor should it be so construed as, to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, or by multiplying their number, or by preventing the legislature from embracing in one act all matters properly connected with one general subject. The term 'subject,' as used in ***300*** the constitution, is to be given a broad and extended meaning * * *. All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."*Johnson*, 47 Minn. at 577, 50 N.W. at 924.

The Court stated, "[W]e explained that the clause is intended to prevent fraud or surprise upon the legislature and the public by prohibiting the inclusion of "provisions in a bill whose title gives no intimation of the nature

of the proposed legislation," *id.*, 50 N.W. at 924, but we accord it the same liberal construction as the single subject provision. *See* *State ex rel. Olsen v. Board of Control of State Insts.*, 85 Minn. 165, 172, 88 N.W. 533, 536 (1902). In *Olsen* we held "[e]very reasonable presumption should be in favor of the title." *Id.* at 175, 88 N.W. at 537. Again in *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 552, 287 N.W. 297, 301 (1939), we noted that the generality of the title of an act is not grounds for invalidation as long as the title gives notice of the general subject because "the title was never intended to be an index of the law." We held that the title "An Act relating to persons having a psychopathic personality" and providing for the commitment of sexual offenders did not violate the title clause because it gave notice that the act concerned 'sexually irresponsible persons.' *See* *id.* at 552- 53, 287 N.W. at 301."

Justice Stringer continued at page 301:

"In the three most recent cases to come before this court however, while we have held that the challenged law did not violate Section 17, we have taken quite a different approach. In each instance we took the occasion to sound an alarm that we would not hesitate to strike down oversweeping legislation that violates the Single Subject and Title Clause, regardless of the consequences. In *State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 778, 783 (Minn.1986), an act permitting the legislature to transfer responsibilities of the State Treasurer to the Commissioner of Finance was challenged on the ground that the act violated the separation of powers doctrine as well as the single subject and title constitutional restrictions. We held the act unconstitutional as a violation of the separation of powers doctrine and therefore we did not reach the single subject issue, but in a concurring opinion by Justice Yetka, joined by Justice Simonett, the disparate provisions of the act were cited prompting Justice Yetka to declare that "now all bounds of reason and restraint seem to have been abandoned." *Id.* at 784 (Yetka, J., concurring specially). He referenced, for example, provisions relating to agricultural land, a council of Asian-Pacific Minnesotans and the establishment of a recycling program. *See id.* Justice Yetka questioned whether this court has been too lax in permitting such legislation and observed "[t]he worm that was merely vexatious in the 19th century has become a monster eating the constitution in the 20th." *Id.* He concluded with an alert to the legislature as to what was to come if an act violated the single subject and title provisions in the future:

> [W]e should send a clear signal to the legislature that this type of act will not be condoned in the future. Garbage or Christmas tree bills appear to be a direct, cynical violation of our constitution * * *. It is clear to me that the more deference shown by the courts to the legislature and the more timid the courts are in acting against

> constitutional infringements, the bolder become those who would violate them.
>
> * * * [W]e should publicly warn the legislature that it if does hereafter enact legislation similar to Chapter 13, which clearly violates ***302** Minn. Const. art IV, § 17, we will not hesitate to strike it down regardless of the consequences to the legislature, the public, or the courts generally.
> *Id.* at 785.

We took the occasion to sound an alarm that we would not hesitate to strike down oversweeping legislation that violates the Single Subject and Title Clause, regardless of the consequences.

The Court's analysis continued at page 303:

"Appellants next argue that there was no evidence of impermissible logrolling and therefore the mischief the constitutional restriction was intended to address is not present. Appellants' contention is misdirected. The Single Subject and Title Clause, as Minnesota's first "sunshine law," requires that the legislature not fold into larger, more popular bills, wholly unrelated and potentially unpopular provisions that may not pass as a stand-alone bill. The purpose of preventing logrolling is to preclude unrelated subjects from appearing in a popular bill, not to eliminate unpopular provisions in a bill that genuinely encompasses one general subject. We fully recognize that it is the legislature's prerogative to establish our state's public policy in the area of prevailing wages and that the legislative process is not bound by rigid textbook rules. Nonetheless, lawmaking must occur within the framework of the constitution. So while we do not conclude that there was suspicious conduct on the part of the legislature nor impugn its motive in including the prevailing wage amendment in a bill that was predominately tax reform and relief, we are concerned about the lack of a single subject and the characteristics of logrolling. First, prevailing wages have been historically discussed in the labor committees, not tax committees. [FN25] Amendments to Minn.Stat. § 123B.71, subd. 2, where the prevailing wage amendment now appears, have historically come about through education bills. [FN26] That most discussions on ***304** prevailing wages took place in the tax committee suggests, if not logrolling, an unexplained deviation from the history of labor committee discussions on the prevailing wage act.

"Second, the issue of prevailing wages had no companion bill in the senate, received little consideration in the house committee hearings and was inserted into a much broader and popular bill with an entirely different legislative theme.

"Third, while we acknowledge that the legislative process is complicated and the rationale for pursuing one particular process or another is not always clear, obviously a more direct route to adopting the amendment would have been to redefine "project" in Minn.Stat. § 177.42, which includes the original definition of "project" for prevailing wage purposes. These factors raise concerns about the legislative process, and with the lack of germaneness to the general subject of taxes and tax reform, we conclude that the prevailing wage amendment violates the single subject provision of our constitution.

"Finally, appellants argue that chapter 231 does not violate the title provision of Section 17 because its title gave sufficient notice of the amendment to the prevailing wage law. The single subject and title provisions of Section 17 are often discussed together, but the title provision serves a different purpose and requires a somewhat different analysis. The purpose of the title provision is to prevent fraud or surprise on the legislature and the public-in essence to provide notice of the nature of the bill's contents. *See* *Johnson*, 47 Minn. at 577, 50 N.W. at 924.".

The Court then addressed the issue of severability and stated at page 304:

"We consider next whether the entirety of chapter 231 must be held unconstitutional because it contains more than a single subject and its title does not give reasonable notice of its contents, or whether there can be a severance of the offending amendment permitting to stand the other statutory provisions of chapter 231. For several reasons we conclude that the constitutional construal of Article IV, Section ***305** 17, does not require the entire law to be declared unconstitutional."

At page 306, the Court stressed its authority to sever legislation without specific legislative authority and referenced to "*Petition for Integration of Bar of Minnesota*, 216 Minn. 195, 199, 12 N.W.2d 515, 518 (1943):

("The supreme court is thereby made the final authority and last resort in [interpreting] * * * the constitution."). Since the legislature cannot authorize the court to do what the constitution prohibits, we reiterate that our authority to sever the offending provision comes not from the legislature, ***307** but from the constitution itself and precedent interpreting Section 17."

ANALYSIS

The issues before the Court includes several matters that must be specifically analyzed by this Court, including whether a bill that amends M.S.A. 84.01 technical provisions of the Department of Natural Resources' regulatory provisions is constitutionally consistent with a 22-page amendment that amended M.S.A. 624.714, the substance of which is the right to conceal and carry a weapon. M.S.A. 624.714 regulates the carrying and concealment of weapons and the process, to be used by local authorities for granting permits to all person to carry and conceal in some places but not in other places within the state of Minnesota.

HF261, which became the Boudreau Amendment to SF842, provides as follows:

> **624.714 Carrying of weapons without permit; penalties.**
>
> Subd.1 (b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.
>
> Subd. 2 (b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:
>
> (1) has training in the safe use of a pistol;
>
> (2) is at least 21 years old and a citizen or a permanent resident of the United States;
>
> (3) completes an application for a permit;
>
> (4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2; or

(viii) 629.72, subdivision 2; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

Subd. 6. **Granting and denial of permits.** (a) The sheriff must, within 30 days after the date of receipt of the application packet described in subdivision 3:

(1) issue the permit to carry;

(2) deny the application for a permit to carry solely on the grounds that the applicant failed to qualify under the criteria described in subdivision 2, paragraph (b); or

(3) deny the application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

(b) Failure of the sheriff to notify the applicant of the denial of the application within 30 days after the date of receipt of the application packet constitutes issuance of the permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c). To deny the application, the sheriff must provide the applicant with written notification and the specific factual basis justifying the denial under paragraph (a), clause (2) or (3), including the source of the factual basis. The sheriff must inform the applicant of the applicant's right to submit, within 20 business days, any additional documentation relating to the propriety of the denial. Upon receiving any additional documentation, the sheriff must

reconsider the denial and inform the applicant within 15 business days of the result of the reconsideration. Any denial after reconsideration must be in the same form and substance as the original denial and must specifically address any continued deficiencies in light of the additional documentation submitted by the applicant. The applicant must be informed of the right to seek de novo review of the denial as provided in subdivision 12.

Subd. 11. **No limit on number of pistols.** A person shall not be restricted as to the number of pistols the person may carry.

Subd. 12. **Hearing upon denial or revocation.** (a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented, and incidents for which the applicant was charged and acquitted, may not be considered.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

Subd. 14. **Records.** (a) A sheriff must not maintain records or data collected, made, or held under this section concerning any applicant or permit holder that are not necessary under this section to support a permit that is outstanding or eligible for renewal under subdivision 7, paragraph (b). Notwithstanding section 138.163, sheriffs must completely purge all files and databases by March 1 of each year to delete all information collected under this section concerning all persons who are no longer current permit holders or currently eligible to renew their permit.

Subd. 16. **Recognition of permits from other states.** (a) The commissioner must annually establish and publish a list of other states that have laws governing the issuance of permits to carry weapons that are not substantially similar to this section. The list must be available on the Internet. A person holding a carry permit from a state not on the list may use the license or permit in this state subject to the rights, privileges, and requirements of this section.

Subd. 17. **Posting; trespass.** (a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

Subd. 18. **Employers; public colleges and universities.** (a) An employer, whether public or private, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment related civil sanctions may be invoked for a violation.

(b) A public postsecondary institution regulated under chapter 136F or 137 may establish policies that restrict the carry or possession of firearms by its students while on the institution's property. Academic sanctions may be invoked for a violation.

(c) Notwithstanding paragraphs (a) and (b), an employer or a postsecondary institution may not prohibit the lawful carry or

possession of firearms in a parking facility or parking area **(emphasis added).**

Subd. 22. **Short title; construction; severability.** This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States 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. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision **(emphasis added).**

Subd. 23. Exclusivity. This section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry (**emphasis added**).

This Court is well aware that all Minnesota statutes carry with it the presumption of constitutionality and that the challenger of constitutional validity of a statute must meet the burden or proving the unconstitutionality of the statute beyond a reasonable doubt. See State v. Behl, 264 N.W. 2d 560.

This Court has considered all of the issues that have been brought by plaintiffs, intervening plaintiffs, and defendants, including the allegations that the bill is unconstitutional under the Freedom of Religion Clause of the state and federal constitutions; is a violation of the Due Process Clause of both the state and federal constitutions; that the law is an illegal taking without just compensation; and lastly, that the law is unconstitutional because it violates the single issue clause of the Minnesota State Constitution.

It is clear that the amendment to Minnesota Statute 624.714, which regulates firearms, contains a totally different subject matter from the regulatory provision and from the Department of Natural Resources found in Minnesota Statute 84.01, et al. This law is unconstitutional because it clearly violates not only the intent, but also the clear meaning of Article 4, Section 17 of the Minnesota Constitution.

Our State has prided itself in its openness in all areas of government. We require notice at the local level for any zoning or regulatory changes so that people can be heard and exercise their right of free speech and give their input, whether in support or dissent, of all issues.

We have an open meeting law, which requires all state agencies, local units of government, and the state legislature itself to have hearings which are open to the public so there may be public debate for all public issues.

This openness in the legislative and regulatory processes is what Minnesota citizens are so proud of and are the envy of citizens throughout the country because of our "clean government".

This basic Minnesota value is totally frustrated when the legislature itself clearly violates the underpinnings of such a basic conscience-guided law and constitutional provision. By attaching this very important and divisive amendment to a totally unrelated, noncontroversial bill without providing notice to the general public is a direct violation of the state constitution and the holdings of our highest court.

Attaching this amendment to an unrelated issue, which had already unanimously passed the Senate, prevented the public from having any input. There were no legislative hearings in either the House or Senate in which the attached provision (Boudreau Conceal and Carry amendment) could be debated.

A debate with committee hearings on the single issue of conceal and carry would have very possibly resulted in a properly drafted bill that would prevent the inherent problems that have been raised by the plaintiffs and intervening plaintiffs in this case.

For an example, all public bodies, including intervening plaintiff The City of Minneapolis, could have expressed its interest and participated in framing a law which met the special needs of a public body, such as the local units of government. How the public conducts its business on its property, as well as private property, are important issues that should have been discussed in relation to the conceal and carry legislation if proper legislative hearings had taken place in a stand-alone piece of legislation as envisioned by the Minnesota Constitution.

How private citizens act on public property and private property could have been debated if there had been proper notice of a single issue as the legislative process envisioned by Article 4, Section 17 of the Minnesota Constitution. This aspect of notice, which is lacking here, was deemed to be so important that it was placed within our State Constitution. Resolution of important issues should not occur when legislative process is circumvented by placing the amendment onto an unrelated bill that had already passed the Senate without dissent.

The original Senate File 842 dealt with duties and responsibilities of the Commissioner of the Department of Natural Resources amending M.S.A. 84.01, et al., and had little substantive changes. The DNR Commissioner Statutes provide statewide jurisdiction and usually a local unit can make regulations more restrictive, but they are prohibited by Subd. 23 in the conceal and carry amendment from making portions of the law more restrictive than the legislation.

Because the entire provision regarding the Conceal and Carry Law is unconstitutional, in violation of Article 4, Section 17 of the Minnesota State Constitution, this Court does not have to decide on the issues of whether or not it is in violation of the state and federal constitutions because it infringes upon religious freedom or that it is a "taking" in violation of the state and federal constitutions Due Process Clauses. However, this Court will make comment regarding both issues to provide guidance to the Appellate Courts.

Article 1, Section 16 of the Minnesota Constitution states:

> **FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP.** 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 man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; 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, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

The test that has been adopted by the Court in determining whether or not the party alleging that the law violates its religious freedom are:

1) that the institutions beliefs are sincere;

2) that the act infringes upon those beliefs;

3) that the state has not identified and provided a compelling reason that the state's interests override the sincere religious beliefs of the institution;

4) and lastly, that the state must show that there are no less restrictive alternatives that could be imposed.

The plaintiffs and intervening plaintiffs are unquestionably sincere in their beliefs based upon the affidavits submitted. They are well-known religious institutions and one would be fool hearty to believe that their institutional beliefs are not sincere. There is no question that the Act infringes upon those beliefs as it relates to the use of their properties, especially parking lots.

This Court could make no such finding of insincerity nor could it find more compelling reasons that have been provided by the State as compelling alternatives. See Garcia Geraci v. Ekankar, 527 N.W. 2d 391, and Thomas v. Review Board of Indiana, 450 U.S. 707 (1981), which states:

> "This Court does not believe that it should or could speculate as to all the reasons why a religious exemption should be granted as it relates to the religious institutions because the Court can envision all sorts of other possible exemptions, including possibly all public property, public property used for private purposes, and private property used for public or religious purposes, to name a few. The issues of establishment of a religion or violation of religious freedom do not have to be determined as the unconstitutionality of the law itself because of its clear violation of Minnesota Constitution Single Subject. **See State v. French, 460 N.W. 2d 2 (1990) and State v. Sports Health Club, 370 N.W. 2d 894 (1985). FREEDOM OF CONSCIENCE; NO PREFERENCE TO BE GIVEN TO ANY RELIGIOUS ESTABLISHMENT OR MODE OF WORSHIP.** 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 man be compelled to attend, erect or support any

> place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; 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, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries."

This Court cannot find any plausible reason why an employer (whether public or private) may not restrict one from carrying a weapon on their own parking areas. The State, on the other hand, has not identified a compelling interest, which necessitates the infringement upon plaintiffs' and intervening plaintiffs' sincere beliefs. Nor has the State identified that there are no other less restrictive alternatives than that which the Conceal and Carry Law provides.

The last issue is whether or not there has been an illegal taking in violation of the Minnesota State and Federal Constitution because they are prohibiting plaintiffs and intervening plaintiffs from excluding persons on property, which would otherwise be excluded. This right to exclude is well founded and long established. See Kaiser Aetna v. U.S., 444 U.S. 164 (1979) that states:

> "As was recently pointed out in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), ***175** this Court has generally "been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Id.*, at 124, 98 S.Ct., at 2659. Rather, it has examined the "taking" question by engaging in essentially ad hoc, factual inquiries that have identified several factors--such as the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action-- that have particular significance." *Ibid*
> If sufficiently important, the Government must condemn and pay for before it takes over the management of the landowner's property. In this case, we hold that the "right to exclude," so universally held to be a fundamental element of ***180** the property right, [FN11] falls within this category of

interests that the Government cannot take without compensation. This is not a case in which the Government is exercising its regulatory power in a manner that will cause an insubstantial devaluation of petitioners' private property; rather, the imposition of the navigational servitude in this context will result in an actual physical invasion of the privately owned marina. Compare *Andrus v. Allard*, 444 U.S. 51 at 65-66, 100 S.Ct. 318, at 326-327, 62 L.Ed.2d 210, with the traditional taking of fee interests in *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 63 S.Ct. 1047, 87 L.Ed. 1390 (1943), and in *United States v. Miller*, 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336 (1943). And even if the Government physically invades only an easement in property, it must nonetheless pay just compensation. See United States v. Causby, 328 U.S. 256, 265, 66 S.Ct. 1062, 1067, 90 L.Ed. 1206 (1946); *Portsmouth Co. v. United States*, 260 U.S. 327, 43 S.Ct. 135, 67 L.Ed. 287 (1922)."

This Court does not have to determine whether or not the Act violates the Due Processes Clause of the state and federal constitutions by taking property without just compensation or any compensation because it has already determined that it is unconstitutional for other reasons. If the plaintiffs believe they are entitled to monetary damages by the taking, they also have the right to bring a separate action for inverse condemnation and prove damages that have resulted from the State's action.

For all these reasons, Defendant's motion for summary judgement is **DENIED** and the plaintiffs' and intervening plaintiffs' motions for summary judgment requesting the Court to declare the Minnesota Protective Act, "Conceal and Carry Law," is **GRANTED** and the provision is unconstitutional. It is a violation of Article IV Section 17 of the Minnesota State Constitution requiring a single subject matter. The defendants, their agents and employees are permanently enjoined and prohibited from enforcing provisions of the law, which were a part of House File 261, which was attached to Senate File 842.

7/13/04

J.T.F.