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The Minnesota Citizens' Personal Protection Act: Reform or Advocacy?

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THE MINNESOTA CITIZENS' PERSONAL PROTECTION ACT: REFORM OR ADVOCACY ?

Elizabeth H. Schmiesing[†]

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I. INTRODUCTION

In 2005, Minnesota became, in the parlance of the handgun permit debate, a “shall issue” state with the passage of Minnesota Session Laws 2005, chapter 83, reenacting the Minnesota Citizens’ Personal Protection Act of 2003,¹ commonly known as the concealed-carry law.² The permit procedures, as well as the rights

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1. Minnesota Citizens’ Personal Protection Act, ch. 28, art. 2, §§ 4–23, 2003 Minn. Laws 272, 274–87, *invalidated by* Unity Church of St. Paul v. State, 694 N.W.2d 585 (Minn. Ct. App. 2005). In 2003, the legislature passed the original concealed-carry law, which had almost identical provisions to the current law. The 2003 law was struck down by the court in *Unity Church* in 2005 as violating the Minnesota Constitution’s “single subject” provision. *Unity Church*, 694 N.W.2d at 585. The Minnesota Constitution provides that “[n]o law shall embrace more than one subject, which shall be expressed in its title.” MINN. CONST. art. IV, § 7. The enactment of the 2005 version did not suffer from the same defect.

2. Although the law has been referred to as “concealed-carry” in the press and by the public, its provisions do not refer solely to concealed weapons. Other states have distinguished between concealed and unconcealed weapons. *See, e.g.*,

associated with holding a permit, are found in Minnesota Statutes section 624.714. A state-by-state tally of “shall issue,” “may issue,” and “no issue” states shows that the “shall issue” states have a clear majority.³ Yet, this alone does not answer the question of whether the 2005 Act detracts from or enhances Minnesota’s reputation as a “progressive” state.

The term “progressive” does not mean the same thing to everyone. Indeed, the Oxford English Dictionary contains five different definitions for the adjectival form.⁴ One of the definitions provided is, “[o]f things, conditions, etc.: Characterized by progress or passing on to more advanced or higher stages; growing, increasing, developing; usually in good sense: advancing towards better conditions; marked by continuous improvement.”⁵ Another definition is “[f]avouring, advocating, or directing one’s efforts towards progress or reform, esp. in political, municipal or social matters.”⁶ These definitions raise the following questions: what is “progress,” and who defines it? Central to many definitions of “progressive” is the idea of moving forward to better societal conditions. This article also takes the view that “progressive” policies are those that improve the condition of society as a whole as opposed to the circumstances of one individual or group of individuals.

The centerpiece of the Act—the change from a “may issue” to a “shall issue” permitting regime—garnered the most discussion and debate in the legislature, as well as in the public and in the press. Yet, those provisions of the law defining the rights that accompany a permit may shed more light on assessing Minnesota’s current political climate. Proponents of the Act cited the difficulty of getting a permit to carry in urban counties—as compared to greater Minnesota counties—as the impetus for the legislative effort. But a review of the language of the Act itself, its legislative history, and a comparison to the laws of other states, shows that the Minnesota Act was more a statement of priorities and of the tenor of political debate than a simple reform measure. The Act elevates the rights of individual permit holders above the rights of those

Concealed Handgun Permit Act, 2006 Neb. Laws 454 (to be codified at NEB. REV. STAT. § 28-1202); S.C. CODE ANN. § 23-31-215 (Supp. 2005).

3. See *infra* note 7 and accompanying text.

4. 12 OXFORD ENGLISH DICTIONARY 594–95 (2d ed. 1989).

5. *Id.* at 595.

6. *Id.*

who wish to be free from the presence of firearms, and is therefore an individually oriented policy rather than a socially oriented policy. For that reason, the Act does not further Minnesota's reputation as a "progressive" state.

II. SHALL ISSUE VS. MAY ISSUE

There are currently thirty-six "shall issue" states, ten "may issue" states, two "no issue" states, and two states that do not restrict the carrying of firearms.⁷ "Shall issue" permit laws, true to their

7. The "shall issue" states include Arizona (ARIZ. REV. STAT. ANN. § 13-3112(A) (Supp. 2006)), Arkansas (ARK. CODE ANN. § 5-73-309(a) (2005)), Colorado (COLO. REV. STAT. ANN. § 18-12-203(1) (West 2004)), Florida (FLA. STAT. ANN. § 790.06(2) (West 2000)), Georgia (GA. CODE ANN. § 16-11-129 (Supp. 2006)), Idaho (IDAHO CODE ANN. § 18-3302(1) (Supp. 2006)) (for individuals over the age of 21), Indiana (IND. CODE ANN. § 35-47-2-3(e) (West 2004)), Kansas (S.B. 418(3), 2006 Leg., 81st Leg. (Kan. 2006)), Kentucky (KY. REV. STAT. ANN. § 237.110(2) (LexisNexis 2002)), Louisiana (LA. REV. STAT. ANN. § 40:1379(A)(1) (2003)), Maine (ME. REV. STAT. ANN. tit. 25, § 2003 (Supp. 2005)), Maryland (MD. CODE ANN., PUB. SAFETY § 5-306(a) (LexisNexis 2003)), Michigan (MICH. COMP. LAWS ANN. § 28.422(2)(3) (West 2004)), Minnesota (MINN. STAT. § 624.714, subdiv. 2(b) (Supp. 2005)), Mississippi (MISS. CODE ANN. § 45-9-101(2) (2006)), Missouri (MO. ANN. STAT. § 571.090(1) (West 2003)), Montana (MONT. CODE ANN. § 45-8-321(1) (2006)), Nebraska (Concealed Handgun Permit Act, 2006 Neb. Laws 454 (to be codified at NEB. REV. STAT. § 28-1202)), Nevada (NEV. REV. STAT. ANN. § 202.3657(2) (LexisNexis 2006)), New Hampshire (N.H. REV. STAT. ANN. § 159.6 (LexisNexis Supp. 2006)), New Mexico (N.M. STAT. ANN. § 29-19-4 (West Supp. 2006)), North Carolina (N.C. GEN. STAT. § 14-415.11(b) (2005)), North Dakota (N.D. CENT. CODE § 62.1-04-03 (Supp. 2005)), Ohio (OHIO REV. CODE ANN. § 2923.125(D)(1) (West Supp. 2006)), Oklahoma (OKLA. STAT. ANN. tit. 21, § 1290.12(12) (West 2002)), Oregon (OR. REV. STAT. ANN. § 166.291 (West Supp. 2006)), Pennsylvania (18 PA. CONS. STAT. ANN. § 6109(e) (West Supp. 2006)), South Carolina (S.C. CODE ANN. § 23-31-215(A) (Supp. 2005)), South Dakota (S.D. CODIFIED LAWS § 23-7-7 (2004)), Tennessee (TENN. CODE ANN. § 39-17-1351(b) (Supp. 2005)), Texas (TEX. GOV'T CODE ANN. § 411.177(a) (Vernon 2005)), Utah (UTAH CODE ANN. § 53-5-704(1)(a) (Supp. 2006)), Virginia (VA. CODE ANN. § 18.2-308(D) (Supp. 2006) (effective July 1, 2007)), Washington (WASH. REV. CODE ANN. § 9.41.070(1) (West 2003)), West Virginia (W. VA. CODE ANN. § 61-7-4(f) (LexisNexis 2005)) and Wyoming (WYO. STAT. ANN. § 6-8-104(b) (2005)). The "may issue" states are Alabama (ALA. CODE § 13A-11-75 (LexisNexis 2005)), California (CAL. PENAL CODE § 12050(a) (West 2000)), Connecticut (CONN. GEN. STAT. ANN. § 29-28(b) (West 2003)), Delaware (DEL. CODE ANN. tit. 11 § 1441 (2001)), Hawaii (HAW. REV. STAT. ANN. § 134-9(a) (LexisNexis Supp. 2005)), Iowa (IOWA CODE ANN. § 724.11 (West 2003)), Massachusetts (MASS. GEN. LAWS ANN. ch. 140, § 131 (West Supp. 2006)), New Jersey (N.J. STAT. ANN. § 2C:58-4(d) (West 2005)), New York (N.Y. PENAL LAW § 400.00(2) (McKinney 1999)), and Rhode Island, (R.I. GEN. LAWS § 11-47-11(a) (2002)) (although the language of the Rhode Island statute uses the term "shall," the language is qualified by the requirement that the applicant demonstrate that he or she has a "good reason" to

name, require the issuing authority to issue the permit to carry to the applicant provided the applicant meets certain baseline qualifications and is not otherwise prohibited from carrying a firearm. In Minnesota,⁸ an applicant must be at least twenty-one years of age, be a citizen or a permanent resident of the United States, have received appropriate firearms training, not be otherwise prohibited from possessing a firearm under a number of state statutes⁹ or under federal law, and not be listed in the Minnesota Bureau of Criminal Apprehension's criminal gang investigative data system.¹⁰ The applicant need not be a resident of Minnesota to apply for a Minnesota permit.¹¹

Prior to 2003, Minnesota was a "may issue" state, meaning that the police chief, the issuing authority under prior Minnesota law, had substantial discretion to issue or deny permit requests.¹² This discretion meant that it was much harder to get a permit in certain jurisdictions, primarily Minneapolis and St. Paul, than it was in the rest of the state. This disparity spawned what proponents referred to as a "reform" movement, with the stated aim of eliminating this disparity between metro areas and more rural areas and moving

fear for his or her safety or that of his or her property, or any other "proper reason" for requiring the permit). Illinois and Wisconsin are "no issue" states. 720 ILL. COMP. STAT. ANN. 5/24-1(a) (West 2003); WIS. STAT. ANN. § 941.23 (West 2005). No permit is required to carry a firearm in Alaska or Vermont.

8. MINN. STAT. § 624.714, subdiv. 2(b) (Supp. 2005).

9. MINN. STAT. §§ 518B.01, subdiv. 14 (2004) (upon conviction for violation of an order for protection); 609.224, subdiv. 3 (upon certain convictions for assault in the fifth degree); 609.2242, subdiv. 3 (upon certain convictions for domestic assault); 609.749, subdiv. 8 (upon certain convictions for the crime of harassment or stalking); 624.713 (including a variety of persons: those under 18; those convicted of violent crimes as juveniles; certain mentally ill persons; certain mentally retarded persons; certain persons with chemical dependency or controlled substance issues; persons convicted of certain types of assault in other states; certain fugitives from justice; persons convicted of a crime punishable by imprisonment for more than a year; illegal aliens; persons receiving a dishonorable discharge from the armed forces; persons who renounced their citizenship; and persons convicted of certain crimes); 624.719 (nonresident alien, except to take game under game and fish laws); 629.715, subdiv. 2 (as a condition of a release of a person arrested for a crime against the person pending trial); or 629.72, subdiv. 2 (as a condition of a release of a person arrested for certain domestic assault and similar crimes).

10. This system consists of data on individuals who law enforcement agencies determine are or may be engaged in criminal gang activity. *Id.* § 299C.091, subdiv. 1.

11. *See* MINN. STAT. § 624.714, subdiv. 2(a) (Supp. 2005) (providing that nonresidents of Minnesota may apply to any county sheriff for a permit).

12. *Id.* § 624.714, subdiv. 5 (repealed 2003).

Minnesota from the “may issue” to the “shall issue” column. The concealed-carry reform movement introduced bills in 2001, and during that year a “shall issue” bill passed the House of Representatives.¹³ House File 1360, like the 2005 law, would have transferred the authority to issue from police departments to county sheriffs, and would have made the issuance of a permit mandatory if the applicant was not otherwise ineligible.¹⁴ The 2001 bill also included provisions for the revocation of permits, issuance of emergency permits, handgun training requirements, and reporting requirements.¹⁵ This bill was limited to modifying the permit process by significantly limiting the issuing authority’s discretion; it did not include any provisions tending to change underlying law applicable to property owners or places where firearms are prohibited.¹⁶

The effort to make Minnesota a “shall issue” state was successful in 2003, and despite the electoral defeat of one of the main sponsors of the legislation on the House side,¹⁷ it was successful again in 2005. The 2003 and 2005 legislation went well beyond simply eliminating issuing discretion. The 2003 and 2005 Acts placed significant restrictions on public and private property owners’ ability to limit the carrying of firearms on their property, and included a declaration as to the scope of Second Amendment rights as the basis of the legislation.¹⁸ It is these features of the Act that set it apart from other states’ “shall issue” schemes, and that provide insight into Minnesota’s “progressive” status.

III. CONSTITUTIONAL RIGHTS

The Minnesota Act is unusual in that it includes a statement of the legislature’s interpretation of the United States Constitution in the body of the Act:

The legislature of the State of Minnesota recognizes

13. H.F. 1360, 2001 Leg. 5th *Engrossment*, 82d Sess. (Minn. 2001).

14. *Id.*

15. *Id.*

16. *Id.*

17. Lynda Boudreau, the primary author of H.F. 261, which included the language that eventually became the Minnesota Personal Protection Act, was defeated in her reelection bid in 2004. See Minnesota Secretary of State, Unofficial Election Results for State Representative 26B, <http://electionresults.sos.state.mn.us/20041102/ElecRslts.asp?M=LG&PN=&LD=26b> (last visited Nov. 13, 2006).

18. Act of May 24, 2005, ch. 83, 2005 Minn. Laws 441; Minnesota Citizens’ Personal Protection Act, ch. 28, art. 2, 2003 Minn. Laws 272.

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 the compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test.¹⁹

This language simultaneously elevates firearm carrying and possession to the level of a right and serves to downplay the significance of the Act by suggesting that the Act merely regulates rights that Minnesotans (and nonresidents) already possessed.

The interpretation of the Second Amendment set forth in the Act is far from black-letter law. The Second Amendment to the United States Constitution provides: “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”²⁰ The issue of whether the Second Amendment guarantees individuals the right to bear arms has generated countless pages of analysis, and is well beyond the scope of this article. Suffice it to say that there are indisputably two sides to this issue, and the interpretation set forth in the Act²¹ aligns Minnesota’s position with advocates of the Second Amendment as an individual right to bear arms, as opposed to a right associated solely with a militia.

Although some “shall issue” laws in other states refer to a right to bear arms or a right to self-defense,²² the Minnesota Act’s explicit

19. MINN. STAT. § 624.714, subd. 22 (2004).

20. U.S. CONST. amend. II.

21. MINN. STAT. § 624.714, subd. 22 (2004).

22. Although some other acts have referenced the right to bear arms or the right to self defense, and some reference a “constitutional” right, they contain no reference to the United States Constitution’s Second Amendment. *See, e.g.*, COLO. REV. STAT. ANN. § 18-12-201(1)(e) (West 2004) (Colorado statute references the “constitutional right to self-protection”); FLA. STAT. ANN. § 790.06(15) (West 2000) (Florida statute provides that “this section shall be liberally construed to carry out the constitutional right to bear arms for self-defense. This section is supplemental and additional to existing rights to bear arms, and nothing in this section shall impair or diminish such rights.”); Personal and Family Protection Act, ch. 32, § 17(c), 2006 Kan. Sess. Laws (the Kansas law, passed in 2006, provides that “[t]his act is supplemental and additional to existing rights to bear arms and nothing in this act shall impair or diminish such rights”); KY. REV. STAT. ANN. § 237.110(16) (LexisNexis 2002) (Kentucky statute provides that “this section shall be liberally construed to carry out the constitutional right to bear arms for self-defense”). All of these states have some form of a right to bear arms in their constitution. *See*

reference to, and interpretation of, the Second Amendment to the United States Constitution is unique. Minnesota does not have a state constitutional provision addressing the right to bear arms or the right to self-defense, unlike many “shall issue” states.²³ This absence of a constitutional right may have been part of the rationale for including this language in the Act—to elevate carrying of firearms to the same level as engaging in free speech²⁴ or exercising one’s religion.²⁵ Through its use of the language of “rights” and its mandate that the Act be “construed according to the compelling state interest test,”²⁶ the proponents of the Act may have sought to make it more difficult to repeal or amend the Act, or to prevent a court from finding the Act unconstitutional.²⁷

IV. RESTRICTIONS ON CARRYING BASED ON USE AND OWNERSHIP OF PROPERTY

The Minnesota Act is also unique among the “shall issue” states in the way it proscribes and conditions the ability of property owners to prohibit the carrying of firearms on their property. The Minnesota Act delineates properties, and by extension, property owners, into three different categories. First, there are places where a permit holder may not bring his or her firearm.²⁸ Second, some property owners may exclude permit holders from their property, provided the property owner provides one of two forms of notice.²⁹ Finally, there are some property owners that cannot

COLO. CONST. art. II, § 13; FLA. CONST. art. I, § 8; KAN. CONST. amend. IV; KY. CONST. amend. I.

23. Minnesota’s constitution does, however, provide that hunting and fishing shall be “forever preserved for the people.” MINN. CONST. art. XIII, § 12.

24. MINN. CONST. art. I, § 3.

25. MINN. CONST. art. I, § 16.

26. MINN. STAT. § 624.714, subdiv. 22 (2004).

27. In *Unity Church of St. Paul v. State*, 694 N.W.2d 585 (2005), the Minnesota Court of Appeals held that the Act was unconstitutional because the manner of its passage violated the single subject clause of the Minnesota Constitution. *Id.* at 597. *See also* MINN. CONST. art. IV, § 17 (stating “no law shall embrace more than one subject”). The court did not address the constitutionality of the substantive provisions of the Act. *See Unity Church*, 694 N.W.2d at 600.

28. *See infra* Part IV.A.

29. *See* MINN. STAT. § 624.714, subdiv. 17(b)(1) (Supp. 2005). The 2003 Act required that notice be provided both by posting and orally. The 2005 Act modified that requirement so that a property owner need only provide one form of notice. *Compare* Minnesota Citizens’ Personal Protection Act, ch. 28, art. 2, § 22, 2003 Minn. Laws 272, 284–85, *with* Act of May 24, 2005, ch. 83, § 9, 2005 Minn. Laws 441, 448–49.

lawfully restrict the carrying of firearms on their properties.³⁰

A. *Places Where Firearms Are Prohibited*

Permit holders are not allowed to carry firearms “on a location the person knows is school property.”³¹ “School property” includes public or private elementary, middle, or secondary school buildings and their improved grounds; licensed child care centers during the period when children are present and participating in a child care program; school buses when in use for school-related transportation; and any portion of a building or facility under the temporarily exclusive use of a school where signs notifying the public of the use are posted.³² That said, a permit holder under the Act may still carry his or her firearm in his or her car and may store his or her firearm in the car on school property without violating the law.³³

Firearms are also prohibited in courthouses,³⁴ and in any state building within the Capitol Area.³⁵ The Capitol Area is defined as an area in St. Paul bounded by a number of different streets.³⁶ However, the law also provides that the subdivision does not apply to permit holders “who so notify the sheriff or the commissioner of public safety, as appropriate.”³⁷ Although this provision seems to be related to the provision exempting persons who carry with the express permission of the county sheriff (courthouses) or the Commissioner of the Department of Public Safety (state buildings),³⁸ it is not clear whether notification alone is sufficient, or whether permission must be granted in order for a permit holder to carry in these areas.

The Minnesota Act makes only limited changes to the existing law prohibiting firearms in certain places, and most of the changes made were intended to narrow the category of properties where firearms are prohibited. For example, the Act makes it a misdemeanor for a permit holder to carry his or her weapon onto

30. See *infra* Parts IV.B–C.

31. MINN. STAT. § 609.66, subdiv. 1d(c) (Supp. 2005).

32. *Id.* § 609.66, subdiv. 1d(d)(4).

33. *Id.* § 609.66, subdiv. 1d(e)(4).

34. MINN. STAT. § 609.66, subdiv. 1g(a)(1) (2004).

35. *Id.* § 609.66, subdiv. 1g(a)(2).

36. *Id.* § 15B.02(b).

37. *Id.* § 609.66, subdiv. 1g(b)(2).

38. *Id.* § 609.66, subdiv. 1g(b)(4).

school property only if the permit holder *knew* he or she was on school property.³⁹ The Act also restricted the area where firearms are prohibited to “improved” areas owned by schools.⁴⁰ The Act did add one restriction—the provision restricting firearms from an area temporarily under the control of a school—but this restriction applies only if there are prominent signs notifying the public of the school-related use.⁴¹

Thus, the drafters of the Act specifically examined the existing provisions restricting the carrying of firearms in the course of crafting the Act, and decided that where changes should be made, those changes should limit, rather than expand, the circumstances and locations where firearms are prohibited. This considered decision to limit the number of places where firearms are prohibited is another way in which the Minnesota Act is consistent with the promotion of an individual right to carry firearms.

B. Restrictions on the Rights of Private Property Owners to Exclude Firearms

Under the Act, the operator of a “private establishment” may order a permit holder to leave the premises if the permit holder fails to comply with the operator’s “reasonable request” that firearms not be brought into the establishment.⁴² A “private establishment” is “a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.”⁴³ The specific reference to “nongovernmental” entities and purposes makes it clear that the lack of a provision allowing public entities to restrict access by carrying permit holders was not an oversight. The Act mandates how a reasonable request must be made: either by posting a conspicuous sign at every entrance to the establishment stating “[] BANS GUNS IN THESE PREMISES” or by personally informing

39. MINN. STAT. § 609.66, subdiv. 1d(c) (Supp. 2005).

40. Minnesota Citizens' Personal Protection Act, ch. 28, art. 2, § 2, 2003 Minn. Laws 272, 272–74 (amending MINN. STAT. § 609.66 (2002)).

41. MINN. STAT. § 609.66, subdiv. 1d(d)(iv) (Supp. 2005).

42. *Id.* § 624.714, subdiv. 17(a).

43. *Id.* § 624.714, subdiv. 17(b)(4). The “reasonable request” requirement does not apply to private residences. The lawful possessor of a private residence may prohibit firearms and provide notice of that prohibition in any lawful manner. *Id.* § 624.714, subdiv. 17(d).

the person that guns are prohibited and demanding compliance.⁴⁴ The Act also specifies what constitutes a “conspicuous” sign, down to the font and size of the sign.⁴⁵ This represents one of the very few changes from the 2003 Act, which required both use of the sign and personal notification.⁴⁶ The Act provides that a permit holder can store a firearm in his or her locked car, and that the private property owner cannot restrict the possession or carrying of firearms in a parking facility.⁴⁷

Notably, a landlord cannot prohibit its tenant or guests from carrying or possessing firearms.⁴⁸ The terms “landlord,” “tenant,” and “guest” are undefined, and therefore would seem to be given their broadest possible reading. As a result, it is questionable whether the owner of a mall could prohibit its retail tenants from allowing firearms. A landlord of supportive housing for persons with chemical dependency or domestic violence issues could not prohibit firearms in its housing.⁴⁹

As introduced in 2003, House File 261⁵⁰ did not contain any provisions addressing the ability of private property owners to restrict access to their property by people with firearms.⁵¹ After the bill was considered by the House Ways and Means Committee, however, it was amended to allow private property owners to exclude people carrying firearms upon providing notice, provided the property owner met numerous conditions. Under that version of House File 261, a private property owner could only restrict firearms on its premises if it: (1) provided “personalized, secure storage” on the premises for the person’s firearms; (2) assumed strict liability for the firearm stored in the storage and for the personal safety and protection of the person while in the establishment; and (3) personally informed the person of the requirement and of the location of the secure storage.⁵² “Secure storage” was defined as storage located in proximity to the main

44. *Id.* § 624.714, subdiv. 17(b)(1).

45. *Id.* § 624.714, subdiv. 17(b)(3).

46. Minnesota Citizens’ Personal Protection Act, ch. 28, art. 2, § 22, 2003 Minn. Laws 272, 284 (amending Minnesota Statutes § 624.714 (2002)).

47. MINN. STAT. § 624.714, subdiv. 17(c) (Supp. 2005).

48. *Id.* § 624.714, subdiv. 17(e).

49. *Id.*

50. The provisions of House File 261 were incorporated into Senate File 842 prior to passage of the 2003 Act. S.F. 842, 2003 Leg., 83d Sess. (Minn. 2003).

51. H.F. 261 2003 Leg. *as introduced*, 83d Sess. (Minn. 2003).

52. H.F. 261, 2003 Leg. *2d engrossment*, 83d Sess. (Minn. 2003).

entrance, capable of being accessed by the permit holder for securing or retrieving the firearm, and “locked, personalized” storage space, provided at no charge.⁵³ The secure storage requirement was dropped in the next engrossment, but its inclusion at any stage shows that some proponents were intent on assuring the broadest possible access to private spaces by permit holders and their guns.

To date, opponents of the Act have brought three lawsuits challenging the restrictions on private property owners' ability to exclude guns from their property, whether leased property or parking lots on property.⁵⁴ None of the decisions in those cases have addressed the property rights issues.

C. Restrictions on the Rights of Public Property Owners to Exclude Firearms

One of the most unique aspects of the Minnesota Act is that it severely limits the ability of public entities to restrict the carrying of firearms beyond the preexisting school property, courthouse, and state building restrictions.⁵⁵ There is some ability to restrict carrying—public entities may restrict their employees from carrying or possessing firearms “while acting in the course and scope of employment,”⁵⁶ and public post-secondary institutions can restrict the carrying or possession of firearms by its students while on the institution's property.⁵⁷ However, no public entity can restrict the ability to carry or possess firearms in a parking facility or parking

53. *Id.*

54. *See* Edina Cmty. Lutheran Church v. State, 2004 WL 632766 at *1 (Dist. Ct. Minn. Mar. 16, 2004); Unity Church of St. Paul v. State, 2004 WL 1630505 at *1 (Dist. Ct. Minn. July 14, 2004); Edina Cmty. Lutheran Church II v. State, No. MC-03-011659 (Dist. Ct. Minn. Sept. 9, 2005). *Unity Church* resulted in the invalidation of the 2003 Act because it was enacted in violation of the Minnesota Constitution. 2004 WL 1630505 at *10. The court in that case did not reach the claims related to infringement on property rights. *Id.* *See also* Unity Church of St. Paul v. State, 694 N.W.2d 585 (Minn. Ct. App. 2005). In both *Edina Community Lutheran Church* cases, the court granted an injunction against enforcement of the notification requirements as applied to houses of worship on religious freedom grounds. The injunction against the 2003 Act was issued on March 16, 2004 and the injunction against the 2005 Act was issued on September 9, 2005. *Edina Cmty. Lutheran Church*, 2004 WL 632766 at *1; *Edina Cmty. Lutheran Church II*, No. MC-03-011659.

55. MINN. STAT. § 609.66, subd. 1d, 1g (2004 & Supp. 2005).

56. MINN. STAT. § 624.714, subd. 18(a) (Supp. 2005).

57. *Id.* § 624.714, subd. 18(b).

area.⁵⁸ Most notably, the Act provides no way for public entities to restrict permit holders from carrying firearms in a public facility. Therefore, a patron of a Department of Motor Vehicles facility is entitled, as a permit holder, to bring his or her weapon into the facility. If the same permit holder wants to visit a coffee shop next door, however, he or she may be required to leave his or her firearm in the car.

V. CONCLUSION

The Minnesota Citizens' Personal Protection Act cannot be properly characterized as "progressive" legislation. Because the Act is premised on a declaration that the Second Amendment to the United States Constitution grants to individuals the right to bear arms, Minnesota can be viewed as taking a stance on a controversial and ongoing policy debate. The Act's restrictions on the rights of private property owners and omission of public entities to restrict access to their facilities further the impression that in Minnesota, at least for now, gun rights, whatever the source of those rights might be, trump property rights.

58. *Id.* § 624.714, subdiv. 18(c).