

Ordinance Banning Sex Offenders From Library Held Unconstitutional

Earlier this year, the U.S. Court of Appeals for the Tenth Circuit held that a City of Albuquerque (the “City”) ordinance that prohibited registered sex offenders from entering public libraries implicated the First Amendment right to receive information. *Doe v. City of Albuquerque*, 2012 WL 164442 (10th Cir. Jan. 20, 2012) Additionally, the Court held that public libraries constituted a “designated public fora,” triggering the application of the time, place and manner test set forth in *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (the “Ward test”). John Doe was a registered offender in New Mexico who had a library card issued by the City library and frequented the library. Pursuant to this ordinance, Doe received a letter informing him that he was banned from entering the City’s public libraries. Consequently, Doe sued the City under Section 1983. The district court concluded that the ban burdened Doe’s fundamental right to receive information under the First Amendment, and the City failed to sufficiently controvert Doe’s contention that the ban did not satisfy the time, place and manner test applicable to restrictions in the designated forum. The City appealed to the Tenth Circuit.

In its appeal, the City contended that the district court erred by not considering the nature of the problem and the restricted rights of the unique class of offenders to which the ban applied. Specifically, the City argued that the rights of sex offenders are more limited than of other convicted felons because of their tendency to reoffend and commit offenses against children. Although



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the City failed to offer any reasons or justification for the ban, it asserted the following hypothetical situation:

The court could assume, hypothetically, that the following occurred: The City entered into an agreement with schools near libraries so children can go to libraries after school and study. Shortly after the City entered this agreement with the schools, the attendance of young teens increased substantially between approximately 3:00 p.m. and 5:00 p.m. on weekdays in City libraries. The City noticed an increase in adult male presence in libraries in the same time frame. The police began an undercover operation regarding a notorious sex offender who preys on young teens and found that this sex offender and other 'preferential' sex offenders, who also prey on young teens, were frequenting the libraries at a dramatically increased rate on weekdays between 3:00 p.m. and 5:00 p.m. On January 31, 2008, newspapers reported that registered sex offender Corey Saunders raped a six year old in a New Bedford, Connecticut public library. On March 4, 2008, the Mayor of Albuquerque banned all registered sex offenders from City libraries.

The Tenth Circuit determined that the City's public libraries were designated public fora, public properties the State has opened for use by the public as a place for expressive activity. As a result of this designation, the government is limited to imposing only content-neutral time, place and manner restrictions that: (a) serve a significant government interest; (b) are narrowly tailored to advance that interest; and (c) leave open ample alternative channels of communication. Though both parties agreed the ban was content neutral, the City did not submit any evidence to prove the other factors. The Tenth Circuit acknowledged that the City's interest in protecting children from danger, including crimes containing a sexual element, was significant; however, it determined that the City failed to demonstrate that the ban was narrowly tailored and left open ample alternative channels of communication.

Although the Tenth Circuit affirmed the district court's decision in *Doe*, it reinforced the fact that the City's ordinance failed because of the evidence, or lack thereof, presented to the Court. In its opinion, this Court noted that its decision "does not sig-

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nal the death knell of the City's efforts" to restrict access of registered sex offenders to public libraries. Accordingly, the Tenth Circuit emphasized that it was not recognizing an independent fundamental right of access to a public library; rather, it concluded that the ban "as currently written and in its present form" was unconstitutional as a matter of law. While the case was pending, the City revised its ban to permit sex offenders to access the library during certain hours on Thursdays and Sundays. This restriction was put into place as a result of the district court's order enjoining enforcement of the total ban during the pendency of the case.

In recent years, regulations concerning sex offenders have greatly increased. Based on the decision in *Doe*, a library seeking to ban all registered sex offenders would have to make very specific findings in order to support such a ban and to enforce it against a challenge. At this time, it is very difficult to predict how an Illinois court would rule on such a ban.

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