

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

JOHN DOE
Appellee,

vs.

CITY OF ALBUQUERQUE
Appellant.

Case No 10-2102

DOCKETING STATEMENT

Case Name: *John Doe v. City of Albuquerque.*

Appeal No.: 10-2102

Court/Agency Appeal From: United States District Court for the District of New Mexico.

Court/Agency Docket No.: CIV. No. 08-1041 MCA/LFG .

District Judge: The Honorable M. Christina Armijo.

Party or Parties filing Notice of Appeal: The City of Albuquerque (Defendant).

I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW.

A. APPEAL FROM DISTRICT COURT

1. Date notice of appeal filed: April 28, 2010.

a. Was a motion filed for an extension of time to file the notice of appeal?
If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: Not applicable.

b. Is the United States or an officer or an agency of the United States a party to this appeal? No.

2. Authority fixing time limit for filing notice of appeal:

Fed.R.App. 4(a)(1)(A) Yes

3. Date final judgment or order to be reviewed was filed and **entered** on the district court docket:

a. Final Judgment disposing of all claims of all parties was filed and entered on March 31, 2010.

b. Memorandum Opinion and Order (on John Doe's Motion for Summary Judgment) filed and entered on March 31, 2010.

c. Memorandum Opinion and Order (denying City's Motion to Dismiss) filed and entered on September 30, 2009.

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? See Fed.R.Civ.P. 54(b). Yes.

5. Tolling Motions: Not applicable.

6. Bankruptcy Appeals: Not applicable.

B. REVIEW OF AGENCY ORDER. Not applicable.

C. APPEAL OF TAX COURT DECISION. Not applicable.

II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S). There are none.

III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.

John Does is a convicted sex offender registered with the State of New Mexico. The Mayor of the City of Albuquerque banned all registered sex offenders from public libraries. John Doe filed a complaint seeking injunctive and declaratory relief in New Mexico District court and the City removed the action to the United States District Court for the District of New Mexico. The City filed a motion to dismiss which was denied. John Doe filed a motion for summary judgment which was granted. The lower court enjoined the ban and ruled that the ban is facially unconstitutional and violates John Doe's civil rights.

IV. ISSUES RAISED ON APPEAL.

A. The Court erred in denying the City's Motion to Dismiss.

1. Did the lower Court err by ruling that the complaint alleged a violation of the right to receive information without containing an allegation that there are no alternative sources of the information that may be obtained in a library in Albuquerque?

2. Did the lower Court err by failing to rule on the City's argument that the complaint did not allege standing?

3. Did the lower Court err by not ruling that John Doe lacked standing to invalidate the ban as it pertained to all other registered sex offenders in the City?

4. Did the lower Court err by allowing John Doe to maintain a cause of action against the constitutionality of a law for the benefit of all registered sex offenders who might want access to a library without alleging that there is no conceivable construction of the law that would allow the law to be constitutionally applied to any given sex offender?

5. Did the lower court err by allowing the complaint to survive the motion to dismiss based on authorities that address the right of the general public to receive information in their homes rather than the right of a convicted sex offender to receive information in a public library?

6. Did the lower Court err by allowing the complaint to survive the motion to dismiss based on reasoning that the allegations of the complaint demonstrate that it is “plausible” that the ban could violate constitutional rights? Was John Doe not required to allege that the ban cannot be constitutionally applied under any circumstance?

7. Can a member of a non-suspect class maintain a cause of action against the constitutionality of a law on its face on equal protection grounds? How can a law unconstitutionally treat two classes differently on its face without applying to any particular suspect class on its face?

B. The Court erred in granting the Plaintiff’s Motion for Summary Judgment.

1. Did the lower court err by addressing the case under summary judgment standards without allowing the City to conduct further discovery after John Doe dismissed his procedural due process claim during his deposition and refused to allow discovery of facts pertaining to his individual situation?

2. After John Doe dismissed his procedural due process claim, did the lower Court err by ruling on facts pertaining to how the law applied to John Doe specifically?

3. By ruling that the City had the burden to show a factual issue for trial, did the lower court err by shifting John Doe’s burden to the City and denying the City the presumptions favoring the constitutionality of laws?

4. Is the lower Court’s ruling that the law does not leave open alternative channels of communication tantamount to a factual finding that Albuquerque public libraries contain information not otherwise available?

5. Should the lower Court have considered John Doe’s income?

6. Did the lower Court err by considering neither the limited rights of a person convicted of a felony nor the nature of the forum to which the ban applies?

7. Did the lower Court err by ruling that banning a particular class of felon from a limited public forum violates United States Supreme Court cases pertaining to state suppression of ideas that could be formed by the general public?

8. Does the First Amendment protect the right of a sex offender to receive information in all public fora where information is available to the public?

9. Did the lower Court err by not distinguishing or even addressing precedent allowing local governments to ban sex offenders from parks?

10. Did the lower Court err by finding a link between learning and free expression such that any state constraint on learning triggers strict scrutiny?

11. In the context of a facial challenge, did the lower Court err by extending the right to receive literature in one's home to the right of a sex offender to receive information in a public library?

12. Do state laws banning sex offenders from school libraries or not allowing felons on schools grounds have to be narrowly tailored?

13. Can a party ground a facial challenge on a request for an extension of existing law?

14. Did the lower Court err by defining the contours of the right at stake as equivalent to the right of a patient to hear medical advice from their doctor?

V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS. Not applicable.

VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL. Oral argument is requested because the case presents significant public safety issues and matters of first impression.

VII. ATTORNEY FILING DOCKETING STATEMENT:

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PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:

A.

Appellant/Defendant City of Albuquerque

Petitioner

Cross-Appellant

B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS

Retained Attorney

Court-Appointed

Employed by a government entity (City of Albuquerque)

Employed by the Office of the Federal Public Defender.

/s/ Gregory S. Wheeler
Signature

May 12, 2010
Date

CERTIFICATE OF SERVICE

I, Gregory S. Wheeler, attorney for appellant, hereby certify that on May 12, 2010, I served via the Court's ECF system a copy of the foregoing **Docketing Statement** to:

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Signature

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Date signed

May 12, 2010