

## ROTHSTEIN, DONATELLI, HUGHES, DAHLSTROM, SCHOENBURG &amp; BIENVENU, LLP

ATTORNEYS AT LAW

BRENDAN K. EGAN

505.988.8004

FAX: 505.982.0307

bkegan@rothsteinlaw.com

February 7, 2011

Elisabeth A. Shumaker  
Clerk of the Court  
U.S. Court of Appeals for the Tenth Circuit  
The Byron White U.S. Courthouse  
1823 Stout Street  
Denver, CO 80257

Re: *Doe v. City of Albuquerque* (No. 10-2102)

Dear Ms. Shumaker:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff would like to call to the attention of the panel (Judges Briscoe, Ebel, & O'Brien) recently issued authority bearing on an issue discussed during oral argument on this case (January 19, 2011): *Doe v. Shurtleff*, --- F.3d ---, 2010 WL 4888036, No. 09-4162 (10th Cir. December 1, 2010).

During oral argument on January 19, 2011, counsel for Appellant City of Albuquerque argued that registered sex offenders, as a class, may be subjected to government exclusions that constitute wholesale denials of constitutional rights. Counsel for Appellant implied that the government's interest in protecting children, women, and the public at large from the dangers associated with registered sex offenders is sufficient in this case to negate meaningful application of the "narrowly tailored" prong from *Ward v. Rock Against Racism's* [491 U.S. 781 (1989)] First Amendment heightened scrutiny.

In *Doe v. Shurtleff*, a facial challenge to a statute limiting sex offenders' anonymous speech on the internet, this Court held that 1) restrictions on registered sex offenders' anonymous speech implicate protected First Amendment rights; 2) intermediate scrutiny was warranted; 3) the statute was narrowly drawn; and 4) because anonymous speech was not completely extinguished by the statute, it did not interfere with more First Amendment freedoms than necessary. As such, and under different circumstances than those at issue here, the *Shurtleff* Court ruled that the statute did not violate the First Amendment rights of registered sex offenders.

For purposes of *Doe v. City of Albuquerque*, *Shurtleff* supports the District Court's grant of summary judgment to Appellee by clarifying that government action may indeed implicate registered sex offenders' First Amendment rights in the same manner that other citizens'

rights are implicated. Moreover, *Shurtleff* contradicts Appellant's above-described arguments and demonstrates that the balancing test under intermediate or heightened scrutiny, not only the existence of a significant or compelling government interest, serves to address the government's public safety concerns regarding registered sex offenders.

Sincerely,

/s/ Brendan K. Egan

Brendan K. Egan

Attorney for Appellee

cc: Gregory Wheeler, Counsel for Appellant  
Peter H. Pierotti, Counsel for Appellant  
Laura Schauer Ives, Counsel for Appellee  
Maureen A. Sanders, Counsel for Appellee  
Richard W. Hughes, Counsel for Appellee  
John C. Bienvenu, Counsel for Appellee  
George L. Bach, Jr., Counsel for Appellee