



City of Albuquerque

Legal Department

P.O. Box 2248 Albuquerque, NM 87103

Robert J. Perry, *City Attorney*

Telephone: (505) 768-4500/ Fax: (505) 768-4440

February 15, 2011

Elisabeth Shumaker, Clerk of the Court
United States Court of Appeals
1823 Stout Street
Denver, CO 80257

RE: 10-2102, *Doe v City of Albuquerque*
Dist/Ag docket:1:08-CV-01041-MCA-LFG

Dear Ms. Shumaker:

Please accept this letter as Appellant City of Albuquerque's response to the February 3, 2011 letter submitted by Appellee to the panel in the referenced matter (Judges Briscoe, Ebel, & O'Brien). Appellee argues that *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010) holds that the state cannot ban the rights of sex offenders in a "wholesale" manner as argued by the City at oral argument. Appellee mischaracterizes the City's argument.

The City argued that a sex offender does not have a right to enter a public library because (1) there is no fundamental right to receive information in a particular public forum such as a library, and (2) there are alternative sources of the information available in City libraries, such as other libraries or the internet. *Shurtleff* holds that registered sex offenders who refuse to log on with registered identifiers can be banned from the internet, an almost infinite source of information. To the extent *Shurtleff* has a bearing on the issues discussed at oral argument; *Shurtleff* is at odds with the lower Court's rulings and supports the City's position as follows:

1. *Shurtleff* follows the rule that, in a facial challenge, the law is upheld if capable of being interpreted in a constitutional manner. 628 F.3d at 1223.
2. *Shurtleff* reasons that a law aimed at protecting the victims of sex offenders need not be the least restrictive means of furthering the state interest. *Id.* at 1224, f.n.5.

3. *Shurtleff* adheres to the rule that all factual issues are resolved in favor of the law in a facial challenge.

At oral argument, the City cited *United States v. Reese*, 627 F.3d 792 (2010), for the proposition that a statute is by its nature narrowly tailored if it applies to “classes of persons who, based on their past behavior, are more likely to engage in [the proscribed behavior].” *Reese*, 627 F.3d at 802. *Shurtleff* also did not grapple with the issue of narrow tailoring precisely because the Plaintiff in that case was a member of a recidivist dangerous class, registered sex offenders.

Sincerely yours,

/s/ Gregory S. Wheeler
Gregory S. Wheeler
Attorney for Appellant City of Albuquerque

cc: Peter H. Pierotti, Counsel for Appellant
Brendan K. Eagan, Counsel for Appellee
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