

ENDORSED
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OCT 09 2008
Quantita M. Duran
CLERK DISTRICT COURT

CECILIA J. CARRILLO

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

JOHN DOE,

CV 2008 10657

Plaintiff,

COPY

v.

CITY OF ALBUQUERQUE,

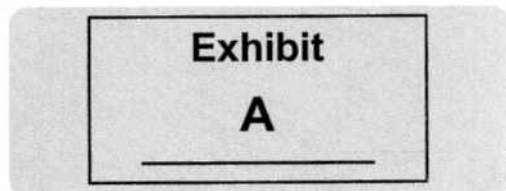
Defendant.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

COMES NOW PLAINTIFF, through the undersigned counsel, and brings this action pursuant to the United States Constitution, the New Mexico Constitution, 42 U.S.C. § 1983, and the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975). As alleged with greater particularity below, Plaintiff alleges that Defendant City of Albuquerque is violating his free speech rights, substantive due process rights, right to procedural due process, and right to equal protection under the United States and New Mexico Constitutions. Plaintiff is a registered sex-offender in New Mexico who has been denied all access to the City of Albuquerque's (hereinafter "City") public libraries by Defendant. Plaintiff seeks injunctive and declaratory relief prohibiting Defendant from denying Plaintiff access to the City's public libraries.

JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to the Declaratory Judgment



Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975), the New Mexico Constitution, the United States Constitution, and New Mexico common law. All acts complained of occurred in Bernalillo County, New Mexico. This action seeks injunctive relief pursuant to NMRA, Rules 1-057 and 1-066, and this Court's inherent power in equity.

2. Venue is proper pursuant to NMSA 1978, § 38-3-1 (1988).
3. Plaintiff John Doe is a resident of the County of Bernalillo in New Mexico whose rights are affected by the City's complete ban on allowing registered sex-offenders to use public libraries. John Doe brings this action under a pseudonym because he fears retaliation.
4. Defendant City is the proper party subject to suit regarding claims and as such is properly subject to suit in this Court. Defendant City is a political subdivision of the State of New Mexico and a person under 42 U.S.C. § 1983. The City is also a proper party as it is a person for purposes of the Declaratory Judgment Act, NMSA 1978, § 44-6-3 (1975).

ALLEGATIONS OF FACT

5. John Doe is registered with the State of New Mexico as a convicted sex offender.
6. On March 4, 2008, through an administrative instruction (See Exhibit 1), Defendant City officially banned all registered sex offenders from using and/or entering the City's seventeen public libraries. Said Administrative Instruction constitutes an official City policy, custom, and practice.

7. According to the City's public libraries building use rules, "City of Albuquerque policy prohibits registered sex offenders from using public library facilities."
8. Shortly after the Defendant City banned registered sex offenders from the public libraries, the City mailed to all registered sex offenders who possessed library cards a letter informing them that their library privileges had been revoked and that they were no longer allowed to enter City library facilities.
9. As a former holder and user of a City library card, John Doe received said letter informing him that he was banned from entering the City's public libraries.
10. Prior to the City's ban, John Doe frequently visited the City's public libraries, checked out books, CDs, used other reference material available to him, and attended meetings and lectures before being banned.
11. If John Doe visits any City public library he will be at risk of being arrested for criminal trespass, a misdemeanor. The administrative instruction states, "The Albuquerque Police Department, the Bernalillo County Sheriff's Office, the New Mexico State Police and other law enforcement agencies shall enforce this ban."
12. Without access to the City's public libraries, John Doe is not able to reasonably access certain types of information such as books, magazines, newspapers, movies, and music.
13. John Doe faces a credible threat of prosecution if he attempts to enter any of the City's seventeen public libraries.

COUNT I

VIOLATIONS OF RIGHTS SECURED BY THE FIRST AMENDMENT TO THE
UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

14. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

15. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of the United States, specifically the right to free speech, the right to receive information, and the right to peaceably assemble as guaranteed by the First Amendment to the United States Constitution, as applied to the states and municipalities through the Fourteenth Amendment.

COUNT II

VIOLATIONS OF RIGHTS SECURED BY THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
SUBSTANTIVE DUE PROCESS
(42 U.S.C. § 1983)

16. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

17. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of the United States, specifically the right to Substantive Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution as the Defendant's ban on registered sex offenders at its libraries is overbroad.

18. Defendant's prohibition on Plaintiffs' access to the City's public libraries is a burden and penalty on the exercise of fundamental rights, specifically free speech, in violation of the substantive components of the Due Process Clause of Fourteenth Amendment to the United States Constitution.

COUNT III

VIOLATIONS OF RIGHTS SECURED BY THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
PROCEDURAL DUE PROCESS
(42 U.S.C. § 1983)

19. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

20. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of the United States, specifically the right to Procedural Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution.

21. Plaintiff was deprived of a liberty interest in access to the library without notice and without being afforded a meaningful hearing as to whether he presented a danger to other City library patrons or City library staff.

COUNT IV

VIOLATIONS OF RIGHTS SECURED BY THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
EQUAL PROTECTION
(42 U.S.C. § 1983)

22. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

23. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of the United States, specifically the right to equal protection under the law.

24. Defendant has discriminated against Plaintiff on the basis of his status as a registered sex offender without a rational basis.

COUNT V

VIOLATIONS OF RIGHTS SECURED BY ARTICLE II, SECTION SEVENTEEN OF THE NEW MEXICO CONSTITUTION NEW MEXICO DECLARATORY JUDGMENT ACT

25. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

26. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of New Mexico, specifically the right to free speech, the right to receive information, and the right to peaceably assemble as guaranteed by Article II, Section 17 of the New Mexico Constitution.

COUNT VI

VIOLATIONS OF RIGHTS SECURED BY ARTICLE II, SECTION EIGHTEEN OF THE NEW MEXICO CONSTITUTION SUBSTANTIVE DUE PROCESS NEW MEXICO DECLARATORY JUDGMENT ACT

27. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

28. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the New Mexico Constitution,

specifically the right to Substantive Due Process as guaranteed by Article II, Section 18, as the Defendant's ban on registered sex offenders at its public libraries is overbroad.

29. Defendant's prohibition on Plaintiff's access to the City's public libraries is a burden and penalty on the exercise of fundamental rights, specifically free speech, in violation of the substantive components of the Due Process Clause of Article II, Section 18 to the New Mexico Constitution.

COUNT VII

VIOLATIONS OF RIGHTS SECURED BY ARTICLE II, SECTION EIGHTEEN
OF THE NEW MEXICO CONSTITUTION
PROCEDURAL DUE PROCESS
NEW MEXICO DECLARATORY JUDGMENT ACT

30. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

31. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the New Mexico Constitution, specifically the right to Procedural Due Process as guaranteed by Article II, Section 18 of the New Mexico Constitution.

COUNT VIII

VIOLATIONS OF RIGHTS SECURED BY ARTICLE II, SECTION EIGHTEEN
OF THE NEW MEXICO CONSTITUTION
EQUAL PROTECTION
NEW MEXICO DECLARATORY JUDGMENT ACT

32. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

33. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by the Constitution and laws of New Mexico, specifically the right to equal protection under the law.

34. Defendant has discriminated against Plaintiff on the basis of his status as a registered sex offender without a rational basis.

COUNT IX

VIOLATIONS OF RIGHTS SECURED BY ARTICLE II, SECTION FOUR OF THE NEW MEXICO CONSTITUTION INHERENT RIGHTS NEW MEXICO DECLARATORY JUDGMENT ACT

35. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

36. All of the actions taken by Defendant and referred to herein have deprived and continue to deprive Plaintiff of rights secured by Article II, Section 4 of the New Mexico Constitution, specifically the right to enjoy life and liberty, to acquire, possess and protect property, to seek and obtain safety and happiness.

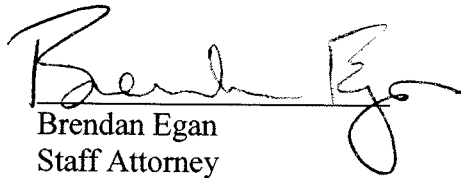
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Issue a judgment declaring that the actions of Defendant described herein are unlawful and violate Plaintiff's rights under the Constitution and laws of the State of New Mexico and the United States of America;

2. Permanently enjoin Defendant, its subordinates, agents, employees and all others acting in concert with them, from prohibiting Plaintiff from accessing or using the Defendant's public library facilities;
3. Permanently enjoin Defendant, its subordinates, agents, employees and all others acting in concert with them, from denying Plaintiff the right to notice and a hearing before denying him a fundamental right in violation of Plaintiff's procedural due process rights;
4. Grant Plaintiff his reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988, the private attorneys general doctrine and substantial benefit doctrine, and other applicable law; and
5. Grant such other relief as the Court considers just and proper.

Respectfully submitted,



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OF COUNSEL

Attorneys for Plaintiff

ADMINISTRATIVE INSTRUCTION NO. _____

Subject: Registered Sex Offenders in Public Libraries

Registered sex offenders are not allowed in public libraries in the City of Albuquerque. This ban includes any person currently registered under the Megan's law of any state, the New Mexico Sex Offender Registration and Notification Act or the Albuquerque Sex Offender Registration and Notification Act. Library staff shall send a letter to every sex offender who has a library card and inform them they are no longer allowed in our libraries. The Albuquerque Police Department, the Bernalillo County Sheriff's Office, the New Mexico State Police and other law enforcement agencies shall enforce this ban.

Bruce J. Perlman, Ph.D.
Chief Administrative Officer

