

PARKS CLOSED TO REGISTERED SEX OFFENDERS

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In the case of *Standley v. Town of Woodfin*, 362 N.C. 328; 661 S.E.2d 728 (6/12/2008), plaintiff David Standley claimed an ordinance prohibiting registered sex offenders from entering any Woodfin public park was unconstitutional. In 1987, Standley had pleaded no contest to attempted sexual battery and aggravated assault in Florida. After serving his sentence, Standley was convicted and incarcerated in 1995 for solicitation of an undercover policewoman posing as a prostitute. In 1999, Standley was released from prison in Florida. In 2004, Standley moved to North Carolina where he resided with his mother in Woodfin. As required by state law due to his prior sex offenses, Standley had registered with the North Carolina Sex Offender Registry.

In 1998, Standley suffered a stroke, and as a result, he is disabled and never travels without being accompanied by his mother or another adult who can assist him. Standley would frequently visit Woodfin Riverside Park with his mother before enactment of the town ordinance prohibiting registered sex offenders from entering Woodfin public parks.

On April 19, 2005, the Woodfin board of alderman had enacted the following ordinance to "best protect the children and other residents of Woodfin":

It shall constitute a general offense against the regulations of the Town of Woodfin for any person or persons registered as a sex offender with the state of North Carolina and or any other state or federal agency to knowingly enter into or on any public park owned, operated, or maintained by the Town of Woodfin.
Woodfin, N.C., Ordinance § 130.03(2)(A)

The ordinance was prompted by "two incidents involving sexual offenses occurred in or near two of the three public parks owned, operated, or maintained by Woodfin."

In his complaint, Standley alleged the ordinance "violated the due process right to travel under the Fourteenth Amendment of the United States Constitution" and analogous sections of the North Carolina Constitution. The trial court granted summary judgment in favor of Woodfin. The state court of appeals affirmed, finding the ordinance to be constitutional. Standley appealed to the state supreme court.

INTRASTATE TRAVEL

As noted by the state supreme court, "[t]he Constitution of the United States preserves a right to interstate travel, which the Supreme Court of the United States has found to be a fundamental right":

The constitutional right to travel from one State to another occupies a position fundamental to the concept of our Federal Union. As a corollary, this Court has recognized a right to intrastate travel, stating that "the right to travel upon the

public streets of a city is a part of every individual's liberty, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. . . "

The right to travel on the public streets is a fundamental segment of liberty, and as such its absolute prohibition requires substantially more justification than would otherwise be required for state action.

In reviewing "an alleged violation of substantive due process rights," the state supreme court found its "first duty" was to "carefully describe the liberty interest the complainant seeks to have protected." In this particular instance, Standley had asserted that the town ordinance effected an unconstitutional violation of the Fourteenth Amendment Due Process Clause because it interfered with his fundamental right to intrastate travel. Specifically, Standley claimed the Constitution protected his "alleged liberty interest to enter into Woodfin Riverside Park to have barbecues and enjoy the leisure offered by nature along the riverbank."

As described by the court, the "right to intrastate travel" is "an everyday right, a right we depend on to carry out our daily life activities. It is, at its core, a right of function." In the opinion of the state supreme court, Standley's access to the Woodfin's public parks was "not a right of function which one would depend on to carry out his daily life activities." Accordingly, the state supreme court concluded that Standley's "asserted liberty interest is not encapsulated by the right to intrastate travel."

If not included within the constitutional right to intrastate travel, the state supreme court considered whether Standley's "asserted liberty interest to freely roam in parks owned, operated, or maintained by Woodfin is otherwise a fundamental right." In so doing, the court would apply the following test to determine whether Standley's "asserted liberty interest is fundamental":

[W]e must assess whether it is objectively, deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if the liberty interest at issue were sacrificed. In undertaking such an analysis, we must tread carefully before recognizing a fundamental liberty interest, which would to a great extent, place the matter outside the arena of public debate and legislative action and run the very real risk of transforming the Due Process Clause into nothing more than the policy preferences of the Members of this Court.

As cited by the state supreme court, liberty rights considered fundamental in nature and subject to strict constitutional protection are precious and few and have been limited by the Supreme Court of the United States to such rights as "the right to marry, the right to have children, and the right to marital privacy." In contrast to such "rights deemed fundamental" by the Supreme Court of the United States, the state supreme court found Standley's "asserted liberty interest to enter and freely roam in the park" was "simply not comparable."

RATIONAL BASIS TEST

Since Standley's asserted liberty interest to enter and freely roam in the park was not a fundamental right subject to strict judicial scrutiny, the constitutionality of the challenged ordinance would, therefore, depend on a less demanding standard of judicial review, i.e., "whether the ordinance meets the rational basis test."

When determining whether a rational basis exists for application of a law, we must determine whether the law in question is rationally related to a legitimate government purpose. In assessing whether there is a legitimate government interest, it is not necessary for courts to determine the actual goal or purpose of the government action at issue; instead, any conceivable legitimate purpose is sufficient.

In the opinion of the court, "[p]rotecting children and other visitors to parks owned and operated by Woodfin from sexual attacks is certainly a legitimate government interest." Accordingly, under the rational basis test, the specific issue before the court was "whether the means by which Woodfin sought to achieve this protection are rationally related to this legitimate interest."

In determining a legitimate government interest, as a general rule, the state supreme court noted that "the police power of the State may be exercised to enact laws, within constitutional limits, to protect or promote the health, morals, order, safety, and general welfare of society." In this particular instance, the court found that "the State of North Carolina has delegated to municipalities such as Woodfin the authority to, "by ordinance define, prohibit, regulate, or abate acts detrimental to the health, safety, or welfare of its citizens." N.C.G.S. § 160A-174 (2007).

On appeal, Standley had argued there was no rational relationship between the ordinance and public safety because "Woodfin's prohibition of all registered sex offenders from entering the parks is brought about by 'vague, undifferentiated fears' regarding a particular group." The state supreme court rejected this argument. In the opinion of the court, Woodfin had a "legitimate government interest in desiring to decrease and eliminate sexual crimes in its parks." Moreover, the court found "prohibiting those most likely to commit criminal sexual acts--persons previously convicted of such conduct--from entering the town's parks is a rational method of furthering that goal." Further, the court found Woodfin's concerns about sex offenders were not "vague, undifferentiated fears," but "founded on fact":

Our General Assembly has recognized "that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest." N.C.G.S. § 14-208.5 (2007).

In fact, released sex offenders are four times more likely to be rearrested for subsequent sex crimes than other released offenders. See Patrick A. Langan, et al., U.S. Dep't of Justice, *Recidivism of Sex Offenders Released from Prison in 1994*, at 1 (2003).

In light of such evidence, the state supreme court concluded that "Woodfin's ordinance prohibiting registered sex offenders from entering its parks is rationally related to the legitimate

government interest of protecting park visitors from becoming victims of sexual crimes." The state supreme court, therefore, affirmed the decision of the lower courts which had held the town ordinance constitutional.