

2002

American Bush v. South Salt Lake : Unknown

Utah Supreme Court

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January 15, 2003

Ms. Pat H. Bartholomew
Utah Supreme Court Clerk
P.O. Box 140210
Salt Lake City, Utah 84114

**Re: American Bush, et al.v. South Salt Lake,
Case No. 20020117-SC**

Dear Pat:

This is a letter of supplemental authority pursuant to Rule 24(i) of the Utah Rules of Appellate Procedure. Plaintiffs argued, in Point III of their Brief, that there is no valid relationship between the ordinance and negative secondary effects allegedly associated with the businesses where Plaintiffs work.

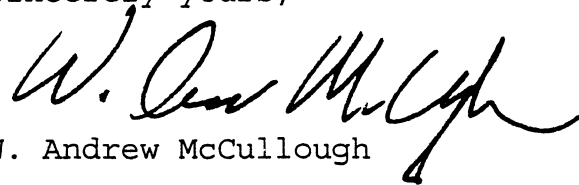
On April 29, 2003, the Fifth Circuit Court of Appeals issued a superceding opinion in its previously decided case of Encore Videos, Inc. v. City of San Antonio, Case No. 00-51119. The Court there reaffirmed the Fifth Circuit position that "the government must produce some evidence of adverse secondary effects that the ordinance seeks to eliminate" (Slip op. 6). The Court also reaffirmed that the government must make "a demonstration that the challenged statute, at least to some degree, is effective in serving that interest." Id. This case supports the arguments made by Plaintiffs that there must be some relationship between the addition of anti-nudity provisions to an existing SOB ordinance, and the problem of secondary effects. Plaintiff's urge this court to accept the position of the Fifth

Circuit Court of Appeals regarding both the evidence of secondary effects and the demonstration that the remedy is effective.

Defendant has notably failed to show any such relationship. Because there is no (and there cannot be) demonstrated relationship to the requirement of pasties and a reduction in alleged secondary effects, the instant ordinance is invalid as prior restraint.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. Andrew McCullough". The signature is fluid and cursive, with a large initial "W" and a long, sweeping tail.

W. Andrew McCullough

WAM: av

cc: Dave Carlson, Esq.

Scott Bergthold, Esq.

Clients