US Constitution and the Right to Access a Library

A Constitutional right to access a public library is emerging in the Federal Courts. What does this mean for library operations in a time of "alternative facts," concealed gun carry laws and cultural upheaval; and, how does it impact programming, materials and a library board’s behavior and banning policies?

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I. Challenges to library rules, regulations and restrictions have gradually changed from Freedom to Speak and Freedom to Assemble to the right to access information.

A. Challenges to rules, regulations and restrictions on use have historically been brought in one of two ways.

1. The First Amendment right to Free Speech.

2. The First Amendment right to Free Assembly.

These matters have essentially been addressed as censorship issues.

B. The corollary to the First Amendment Right to Freedom of Speech is the right to receive speech and the information being spoken. These Constitutional rights are being subtly redefined as the right to access a public library.

1. Increasingly, challenges are brought to vindicate violations of the First Amendment right to receive information.

   a. The 10th Circuit Federal Court upheld a District court ruling striking down a ban of all registered sex offenders from Albuquerque public library stating:

   ... although the court emphasized that it was not recognizing an independent fundamental right of access to a public library, it concluded that the ban, “as currently written and in its present form,” was unconstitutional as a matter of law...

   because it violated the “fundamental right to receive information under the First Amendment.”

   Doe v. City of Albuquerque, 667 F.3d 1111, 1117 (10th Cir. 2012).
Despite stating that it was not recognizing an independent fundamental right to access to a public library, the court quoted other cases stating:

 ii. “...the First Amendment right to receive information includes the right to some level of access to a public library.”

 *Kreimer v. Bureau of Police, 958 F.2d 1255 (3rd Cir. 1992)*

 iii. The library is the “*quintessential locus of the receipt of information.*”

 *Willis v. Town of Marshall, 426 F.3d 251, 260 (4th Cir. 2005).*

 iv. This court recognized the “*long standing precedent supporting plaintiff’s First Amendment right to receive information and ideas, and this right’s nexus with access to public libraries.*”

 *Sund v. City of Wichita Falls, 121 F. Supp. 2d 530 (N.D. Tex. 2000).*

**QUESTIONS FOR DISCUSSION**

  1. Is there any difference between a “*fundamental right to access a library*” and “*the First Amendment right to receive information*” in a library?

  2. What do you think the consequences are if a court finds a fundamental right of access to the library?

  3. The Supreme Court has stated that the “… right to receive information and ideas, regardless of their social worth, is fundamental to our free society.” If this is true, should there be an independent fundamental right to access to a public library? Why?

**II. The extent to which a library board can control access to the library depends on an analysis called “*forum analysis.*”**

**A. Public fora include:**

  1. “Traditional Public *Fora*” like public streets, sidewalks that have always been used for public gathering and dissemination of information;

  2. “Designated Public *Fora*” are areas designated for expressive activity;
3. “Limited Public Fora” which are set aside for use by designated groups or for discussion of designated topics; and,

4. “Non-Public Fora” which are not open for expressive activity.

5. The type of Forum is determined by examining:
   i. the purpose of the forum;
   ii. the extent of use of the forum; and,
   iii. the intent in creating the forum.

B. Under current law, a library is deemed to be a “designated public forum.”

1. All of the relevant cases state that the library is “designated” for:

   ... particular forms of expressive activity, including receiving information and “reading, writing or quiet contemplation.”

2. As a designated public forum the library board may impose:
   i. content neutral;
   ii. time, place and manner restrictions that:
      - Serve a significant government interest,
      - Are narrowly tailored to advance the interest; and,
      - Leave open ample alternative channels of communication.

3. The government has significantly less control over a Traditional Public Forum and more control over a Limited and Non-Public Forum.

QUESTIONS FOR DISCUSSION

Libraries are reshaping themselves as that “third place” or community gathering centers. What will be the consequences for:

a. the libraries’ fundamental function in a free society; and,

b. the libraries’ control over its own spaces under the forum analysis?

c. How should library policies and procedures respond to these changes?
III. There are procedural requirements for suspension of privileges/rights due to policy violations which are a form of limited banning.

A. §18-9-117 (1), C.R.S. gives the library authority to adopt rules and regulations for “the administration, protection and maintenance of public buildings and property,” including rules which “prohibit …activities or conduct within public buildings or on public property which may be reasonably expected to substantially interfere with the use and enjoyment of [the library] or which may constitute a general nuisance.”

B. Rules, regulations and policies must provide substantive reasons for potential suspensions.

C. Rules, regulations and policies must provide procedural steps for enforcement.
   1. Provide proof of the process with paper!
   2. Fair warning should be provided in writing whenever possible.
   3. Limited suspensions to address health, safety and other concerns are allowed.
   4. Consider whether remote access should or is being provided.
   5. An appeal process must be provided to any person subjected to suspension of privileges/rights.
   6. Provide a process for reinstatement of privileges/rights.

D. Ensure rules, regulations and policies comply with other laws (i.e. concealed carry laws).