

02-1609 LITTLETON, CO v. GIFTS D-4, LLC

Ruling below: CA 10, 311 F.3d 1220.

QUESTIONS PRESENTED:

This Petition involves a challenge by Respondent to the judicial review provisions of The City of Littleton's City Code, Title 3, Chapter 14, Section 8 ("the Ordinance"). The Ordinance governs the licensing of adult entertainment establishments within the City of Littleton. When a license is denied pursuant to this Ordinance, its provisions provide for "prompt access to judicial review" through Colorado's mandatory certiorari review procedure under Colo.R.Civ.P. 106(a)(4) (review in the nature of certiorari). This procedure was recently invalidated by the Tenth Circuit in *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, 311 F.3d 1220 (10th Cir. 2002). The Tenth Circuit Court of Appeals instead required that cities in Colorado guarantee that judges will render a "prompt judicial decision on the merits" when an adult business challenges an adverse licensing scheme.

This Petition seeks the resolution of a near complete division in the Circuits regarding the sufficiency of prompt access to an independent judicial officer when an adult business license is denied for violations of content-neutral time, place, and manner regulations. This question requires the Court to revisit the plurality decision in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990). The present case asks this Court to resolve the conflict so municipal governments, seeking to regulate the negative secondary effects of sexually oriented businesses, may meet the correct standard for providing judicial review of licensing decisions.

The Questions Presented are:

~~For the purposes of reviewing content neutral sexually oriented business licensing decisions, is prompt judicial access sufficient or must a city somehow provide a prompt judicial decision?~~

~~If prompt access to a court of law is insufficient, then what must a city do to provide sufficient safeguards under the First Amendment?~~

CERT. GRANTED: 10/14/03

Limited to the following question:

Whether the requirement of prompt judicial review imposed by *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990) entails a prompt judicial determination or a prompt commencement of judicial proceedings.