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# Holding on to Fundamental Rights is No Walk in the Park: Challenging the Constitutionality of the Park Ban Upheld in *Standley v. Town of Woodfin*

Emily E. Reardon

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## **Holding on to Fundamental Rights is No Walk in the Park: Challenging the Constitutionality of the Park Ban Upheld in *Standley v. Town of Woodfin*\***

### INTRODUCTION

Imagine the perfect day when the sun is shining, the air is cool and clear, and the only plans for the day involve walking through town to attend a cookout with friends in the middle of the public park. Or maybe picture the day of the town's long-awaited baseball tournament, when all town citizens are welcome to travel into the park and enjoy the open spaces and atmosphere with fellow residents. These experiences involve activities most people enjoy doing, yet nevertheless take for granted. But for some residents of the town of Woodfin, North Carolina, imagining the events described above is as close as they may come to the actual experiences.<sup>1</sup> For those residents, the "doors" to the parks have been closed, and the "Keep Out" signs have been duly posted.<sup>2</sup> And for those residents, this may only be the first step toward further exclusion from public gathering places and perhaps from society at large.

In 2005, the town of Woodfin, North Carolina, enacted an ordinance that banned a broad group of residents—anyone on a sex offender registry—from entering any of the town's public parks.<sup>3</sup> The professed purpose of the ordinance was to protect the children of Woodfin from sexual predators.<sup>4</sup> The ordinance was enacted very shortly after two incidents, both of which involved sexual offenses, occurred in close proximity to Woodfin parks.<sup>5</sup> The effects of this ordinance were of particular concern to Woodfin resident David Standley, who found himself among those banned from entering the

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1. WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005) (making it an offense for anyone on a sex offender registry, whether in North Carolina "or any other state or federal agency," to enter any one of the town's public parks).

2. *Id.* ("The Town Administrator shall be charged with posting this regulation at the main entrance of each park within thirty (30) days of the passage of this ordinance.").

3. *Id.*

4. Record of Appeal at 227–29, *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 650 S.E.2d 618 (2007) (No. 06-1449) (showing the transcript of the Town Minutes for April 19, 2005, in which town attorney Joseph Ferikes discussed with others that the ultimate purpose of the ordinance was "to protect children" in the town parks).

5. *Standley v. Town of Woodfin (Standley II)*, 362 N.C. 328, 330, 661 S.E.2d 728, 729 (2008) (summarizing the events that led to the town passing its ordinance).

town parks because his name was on a sex offender registry.<sup>6</sup> Mr. Standley, who suffers from the crippling effects of a stroke that left him wheelchair-bound and unable to “travel[] without being accompanied by his mother or some other adult who can assist him,”<sup>7</sup> frequented a particular town park with his mother prior to the enactment of the ordinance.<sup>8</sup> Considering his state of immobility, his constant supervision while in the parks,<sup>9</sup> and his lack of any history involving the commission of crimes against children,<sup>10</sup> Mr. Standley seems like an improbable candidate to commit the crimes that the town seeks to prevent.<sup>11</sup> Nevertheless, he and others like him fall within the reach of the ordinance’s ban.

Can a town constitutionally revoke residents’ rights to innocently<sup>12</sup> access and experience parts of the public community by excluding an entire group of people from public parks? The Supreme Court of North Carolina answered that question affirmatively when it decided *Standley v. Town of Woodfin*.<sup>13</sup> In *Standley*, a unanimous court upheld the constitutionality of a local ordinance that bans all registered sex offenders in the town of Woodfin, North Carolina,

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6. David Standley was twenty-three years old when, in 1987, he “was convicted in Florida of attempted sexual battery and aggravated assault against an adult woman.” Brief of Appellant-Petitioner at 3–4, *Standley I*, 186 N.C. App. 134, 650 S.E.2d 618 (No. 06-1449). Mr. Standley was granted an unconditional release from prison in 1999 and subsequently moved to North Carolina with his mother. *Id.* at 4. Due to his prior convictions, Mr. Standley was required by statute to promptly register with the North Carolina Sex Offender Registry when he moved to North Carolina, which he did in a timely manner. *Id.*; see also N.C. GEN. STAT. § 14-208.7 (2007) (“If the person [with a prior conviction for a sexual offense] moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first.”), amended by 2008 N.C. Sess. Laws 117 (to be codified at N.C. Gen. Stat. § 14-208.7) (narrowing the time period for registration from ten days to three business days).

7. Brief of Appellant-Petitioner, *supra* note 6, at 5.

8. See *id.* (explaining that the particular park chosen by Mr. Standley and his mother was close to their home and was “handicapped-friendly” to accommodate Mr. Standley’s disability).

9. *Id.* (“While visiting the Park prior to the passage of the Ordinance, [Mr. Standley] was always accompanied by his mother.”).

10. *Id.* at 4 (“[Mr. Standley] has never been charged nor convicted of any criminal act involving a child.”).

11. See *id.* at 6 (“There has never been any allegation that [Mr. Standley] ever engaged in any type of inappropriate conduct with anyone, including any child, while visiting the Park. Further, there has never been any allegation that [Mr. Standley] ever engaged in any type of inappropriate conduct with anyone, including any child, while living within the Town of Woodfin.”) (internal citations omitted).

12. See *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999) (“[A]s the United States recognizes, the freedom to loiter for innocent purposes is part of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment.”).

13. *Standley v. Town of Woodfin* (*Standley II*), 362 N.C. 328, 661 S.E.2d 728 (2008).

from entering any of the town's public parks.<sup>14</sup> In so holding, the court reasoned that the "asserted liberty interest to freely roam in parks owned, operated, or maintained by Woodfin" is not a fundamental right, and therefore, the ordinance only needs to, and does, pass constitutional muster under the rational basis test.<sup>15</sup> In opposition to the Supreme Court of North Carolina's holding, this Recent Development contends that the Woodfin ordinance implicates the fundamental right to intrastate travel, and therefore, the court should have applied a strict scrutiny analysis to determine the constitutionality of the ordinance. This Recent Development argues further that the continued enactment and judicial approval of legislation like the ordinance in Woodfin seriously threatens constitutional protections for everyone.

Part I of this Recent Development argues that the Supreme Court of North Carolina's use of the rational basis test was improper in *Standley* because: (a) a fundamental right to intrastate travel exists in North Carolina, and ordinances barring access to public parks, such as the Woodfin ordinance, *do* infringe this right; and (b) the strict scrutiny analysis applies whenever such a fundamental right is infringed. After concluding that a strict scrutiny analysis was proper in this case, Part II of this Recent Development argues that the court should have found that the ordinance failed strict scrutiny for lack of a narrowly tailored application, both in terms of *who* and *what* may be banned. Finally, Part III of this Recent Development explores the implications of courts upholding legislation that violates fundamental rights,<sup>16</sup> arguably in the name of public safety, and how such holdings may gradually erode the constitutional rights of all citizens.

#### I. THE RATIONAL BASIS TEST IS IMPROPER FOR A FUNDAMENTAL RIGHT

In the United States, a distinction is drawn between fundamental and non-fundamental rights.<sup>17</sup> When state legislation implicates a

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14. *Id.* at 329, 661 S.E.2d at 729.

15. *Id.* at 331-33, 661 S.E.2d at 730-32 (finding that Woodfin's ordinance was rationally related to protecting park visitors from sexual attacks which was a legitimate government interest).

16. See, e.g., Bret R. Hobson, Note, *Banishing Acts: How Far May States Go to Keep Convicted Sex Offenders Away From Children?*, 40 GA. L. REV. 961, 966 (2006) (explaining that sex offenders are forced to rely on the courts "for protection from restrictions that go too far").

17. 16B C.J.S. *Constitutional Law* § 1118 (2005) (noting fundamental rights that are subject to strict scrutiny include, for example, voting, marriage, and travel, whereas non-fundamental rights include, for example, education, discharge of bankruptcy, and

fundamental right, courts must analyze such legislation using a higher degree of scrutiny<sup>18</sup> than would be used for a non-fundamental right.<sup>19</sup> This more exacting scrutiny is meant to provide “heightened protection against government interference”<sup>20</sup> for those rights that the Constitution expressly or implicitly protects.<sup>21</sup>

A. *The Fundamental Right to Intrastate Travel and the Infringing Nature of the Park Ban*

The United States Supreme Court has repeatedly held that there exists a fundamental right to interstate travel.<sup>22</sup> The Supreme Court of North Carolina, in turn, has recognized a fundamental right to *intrastate* travel, noting in *State v. Dobbins*<sup>23</sup> 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 and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina.”<sup>24</sup> Seemingly, this recognized right to intrastate travel would be a controlling factor in a case involving access to public parks, but the *Standley* court failed to adopt this rationale.

In the absence of North Carolina case law fully interpreting the bounds of the fundamental right to intrastate travel, the court in *Standley* turned to the Sixth Circuit Court of Appeals’ analysis in

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employment).

18. See *Johnson v. City of Cincinnati*, 2002 FED App. 0332P, ¶ 31, 310 F.3d 484, 504 (6th Cir.) (“We, of course, do not demand of legislatures scientifically certain criteria of legislation. But when constitutional rights are at issue, strict scrutiny requires legislative clarity and evidence demonstrating the ineffectiveness of proposed alternatives.”) (internal citations omitted).

19. *Standley II*, 362 N.C. at 332, 661 S.E.2d at 731 (“‘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.’” (quoting *In re R.L.C.*, 361 N.C. 287, 295, 643 S.E.2d 920, 924 (2007) (plurality))).

20. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

21. See 16B AM. JUR. 2D *Constitutional Law* § 816 (1998).

22. See, e.g., *United States v. Guest*, 383 U.S. 745, 757 (1966) (“The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.”); see also *Saenz v. Roe*, 526 U.S. 489, 498 (1999) (“[T]he right is so important that it is ‘assertable against private interference as well as governmental action . . . a virtually unconditional personal right, guaranteed by the Constitution to us all.’” (quoting *Shapiro v. Thompson*, 394 U.S. 618, 643 (1969) (Stewart, J., concurring))).

23. 277 N.C. 484, 178 S.E.2d 449 (1971).

24. *Id.* at 497, 178 S.E.2d at 456; see also *Standley II*, 362 N.C. at 331, 661 S.E.2d at 730 (describing the Supreme Court of North Carolina’s recognition of a fundamental right to intrastate travel as a “corollary” to the United States Supreme Court’s recognition of a fundamental right to interstate travel).

*Johnson v. City of Cincinnati*.<sup>25</sup> Drawing from *Johnson*, the *Standley* court characterized the right to intrastate travel as one of function, as opposed to one of access: it is “‘an everyday right, a right we depend on to carry out our daily life activities.’”<sup>26</sup> As such, the court found that Mr. Standley’s right to access and use the parks<sup>27</sup> was not part of those rights necessary to “carry out” a person’s daily life.<sup>28</sup> Using this characterization, the court concluded that Mr. Standley’s liberty interest involving access to and use of the parks was “not encapsulated by the right to intrastate travel.”<sup>29</sup> However, taking a closer look at the analysis in *Johnson* exposes a problem with the *Standley* court’s characterization of the right to intrastate travel, which, once resolved, reveals that Mr. Standley’s liberty interest in the parks does fall within the scope of the right to intrastate travel.

The *Standley* court’s decision hinges on its interpretation of *Johnson* to mean that the right to intrastate travel is only one of function.<sup>30</sup> However, the *Standley* court overlooked the fact that the court in *Johnson* specifically stated that the “right to intrastate travel[,] . . . the right to travel locally through public spaces and roadways—is fundamentally one of access.”<sup>31</sup> The *Johnson* court ultimately found that an ordinance banning an entire group of people who had criminal pasts involving drugs from accessing the public spaces in a certain area of town did in fact violate their rights to intrastate travel.<sup>32</sup> The parks in Woodfin, while perhaps not literally “public streets” as discussed in *Dobbins*,<sup>33</sup> “are . . . frequently the

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25. 2002 FED App. 0332P, 310 F.3d 484 (6th Cir.).

26. *Standley II*, 362 N.C. at 331, 661 S.E.2d at 730 (quoting *Johnson*, 2002 FED App ¶ 20, 310 F.3d at 498).

27. The court defined Mr. Standley’s liberty interest as one including the right “to enter into Woodfin Riverside Park to have barbecues and enjoy[] the leisure offered by nature along the riverbank.” *Id.* (alteration in original).

28. *Id.*

29. *Id.*

30. See *supra* note 26 and accompanying text.

31. *Johnson v. City of Cincinnati*, 2002 FED App. 0332P, ¶ 16, 310 F.3d 484, 495 (6th Cir.) (emphasis added).

32. *Id.* ¶ 29, 310 F.3d at 503. The facts of *Johnson* are analogous to the facts of *Standley*. The city of Cincinnati instituted an ordinance to “enhance the quality of life and protect the health, safety, and welfare of persons in neighborhoods . . . associated with drug abuse.” *Id.* ¶ 2, 310 F.3d at 487. The ordinance created “drug-exclusion zones,” which banned from public spaces anyone who had committed a drug-related offense within the zones. *Id.* ¶ 3, 310 F.3d at 487. Plaintiffs, who were in the group of those banned from the designated public spaces, argued that the ordinance “violate[d] their asserted right to freedom of movement and intrastate travel.” *Id.* ¶ 12, 310 F.3d at 493.

33. *State v. Dobbins*, 277 N.C. 484, 499, 178 S.E.2d 449, 457–58 (1971); see also *Standley II*, 362 N.C. at 331, 661 S.E.2d at 730 (citing *Dobbins* for the reference to “public streets”).

heart of our communities and cannot reasonably be separated from other walkways.”<sup>34</sup> Furthermore, such public parks *are* open spaces as contemplated by the *Johnson* court.<sup>35</sup> Therefore, a bar to the access of a public space, such as a park, regardless of whether the activity done during the course of that access is necessary to one’s daily life,<sup>36</sup> would infringe the fundamental right to intrastate travel.<sup>37</sup> If we view the right at issue as one of access, rather than one of pure function, then the activities in which Mr. Standley chooses to take part while at the park do not determine whether the right to intrastate travel is being invoked. Rather, the issue turns strictly on the fact that Mr. Standley has been denied all access to a public space.<sup>38</sup> Because the Woodfin ordinance does in fact bar *access* to the town’s public parks for anyone on a sex offender registry,<sup>39</sup> the ordinance infringes the fundamental right to intrastate travel.

*B. The Level of Scrutiny Required for Fundamental Rights*

Generally, “where a fundamental liberty interest protected by the substantive due process component of the Fourteenth Amendment is involved, the government cannot infringe on that right ‘unless the infringement is narrowly tailored to serve a compelling state interest.’ ”<sup>40</sup> Finding the “right to travel on the public streets . . . a fundamental segment of liberty,”<sup>41</sup> the Supreme Court of North Carolina, in both *Dobbins* and *Standley*, recognized that an “absolute

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34. *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 157, 650 S.E.2d 618, 633 (2007) (Geer, J., dissenting).

35. *Johnson*, 2002 FED App. ¶ 19, 310 F.3d at 497. “[I]t is apparent that an individual’s decision to remain in a *public place of his choice* is as much a part of his liberty as the freedom of movement inside frontiers that is ‘a part of our heritage.’ ” *Id.* (emphasis added) (quoting *Kent v. Dulles*, 357 U.S. 116, 126 (1958)).

36. *See Standley II*, 362 N.C. at 331, 661 S.E.2d at 730 (discussing the view that activities such as barbecues and other leisure events are outside the scope of those things functionally required for everyday life).

37. *See Johnson*, 2002 FED App. ¶ 16, 310 F.3d at 495 (“[T]he right to intrastate travel . . . is fundamentally one of access.”).

38. *Id.*

39. *See* WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005). The Woodfin ordinance “shall” make it a criminal offense for any person on the sex offender registry to “enter” any of the public parks, thus unconditionally barring *access* to a public space. *See id.* Therefore, at the moment someone who falls within the prohibition of the statute enters the park, even if only to pass through to get to another part of town, a crime has been committed, and the state can take the requisite action against that person. *See id.* The key element to examine in an analysis of the statute is *entrance* into the park. *See id.* No other action by the person in question need be taken. *See id.*

40. *Johnson*, 2002 FED App. ¶ 27, 310 F.3d at 502 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). This is known as the “strict scrutiny” test.

41. *State v. Dobbins*, 277 N.C. 484, 499, 178 S.E.2d 449, 457–58 (1971).

prohibition ‘requires substantially more justification’ than would otherwise be required for state action.”<sup>42</sup> The Woodfin ordinance at issue “is an ‘absolute prohibition’ against registered sex offenders traveling into town parks”<sup>43</sup> because it provides for no exceptions in any regard.<sup>44</sup> Therefore, since the court has specifically recognized the need for a heightened level of scrutiny when dealing with the infringement of such a fundamental right<sup>45</sup> and the Woodfin ordinance, as an absolute prohibition to accessing parks, violates the fundamental right to intrastate travel,<sup>46</sup> the court should have applied strict scrutiny to determine the constitutionality of the Woodfin ordinance.

## II. STRICT SCRUTINY ANALYSIS OF THE WOODFIN PARK BAN

As discussed above, the strict scrutiny analysis requires examining the state action to determine whether a compelling state interest exists and whether the state action has been narrowly tailored to meet that interest.<sup>47</sup> To analyze whether an ordinance has been

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42. *Standley v. Town of Woodfin (Standley II)*, 362 N.C. 328, 331, 661 S.E.2d 728, 730 (2008) (quoting *Dobbins*, 277 N.C. at 499, 178 S.E.2d at 458); *see also* *State v. Burnett*, 755 N.E.2d 857, 865–66 (Ohio 2001) (“Any deprivation of the right to travel . . . must be evaluated under a compelling-interest test.”).

43. *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 159, 650 S.E.2d 618, 634 (2007) (Geer, J., dissenting).

44. *See Dobbins*, 277 N.C. at 497, 178 S.E.2d at 456 (finding a distinction between absolute prohibition and “regulat[ion], as to the time and manner of its exercise”); *see also infra* Part II.B (discussing the types of exceptions that may be more conducive to narrow tailoring).

45. *See supra* note 42 and accompanying text.

46. *Dobbins*, 277 N.C. at 497, 178 S.E.2d at 456 (“[T]he 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 and by the Law of the Land Clause, Article I, § 17, of the Constitution of North Carolina.”).

47. *See supra* note 40 and accompanying text. The argument in this Recent Development is not focused on whether a compelling state interest exists, for “[t]he ‘legitimate and compelling state interest’ in protecting the community from crime cannot be doubted.” *Schall v. Martin*, 467 U.S. 253, 264 (1984) (quoting *De Veau v. Braisted*, 363 U.S. 144, 155 (1960)). Rather, the argument is that even if a compelling state interest were to exist, thereby satisfying the first prong of the strict scrutiny analysis, the Woodfin ordinance would still fail the second prong of the analysis because the language and application of the ordinance are not narrowly tailored. Mr. Standley conceded that the interest promoted by Woodfin of protecting children in the town’s parks is a compelling interest, but he argued that the ordinance was “not narrowly tailored to serve that interest.” Brief of Appellant-Petitioner, *supra* note 6, at 10; *see also Standley I*, 186 N.C. App. at 159, 650 S.E.2d at 635 (Geer, J., dissenting) (“Mr. Standley does not dispute that the Town has a compelling interest . . . . The question . . . is whether the record establishes that the ordinance is narrowly tailored to serve that interest. The record . . . contains no evidence at all supporting this second prong.”).



narrowly tailored, a court must identify what the stated government interest or purpose is in enacting the ordinance (the “ends”), and the court must identify the methods (the “means”) by which the government seeks to achieve its purpose.<sup>48</sup> For instance, the stated government interest in enacting the Woodfin ordinance was to protect children from being victimized by sexual predators.<sup>49</sup> The means chosen to achieve this government interest were to exclude registered sex offenders from town parks.<sup>50</sup>

Once a court has identified the government’s ends and its means, the court must evaluate the effectiveness and the efficiency of the means in addressing the ends.<sup>51</sup> Realistically, no law can be completely effective in addressing its stated ends, and a failure to do so does not automatically render it unconstitutional. Under a strict scrutiny analysis, however, a court may still consider whether the law actually does what it purports to do.<sup>52</sup> Lack of effectiveness indicates a weak connection between the ends sought and the means used<sup>53</sup> and, accordingly, is indicative of a failure to narrowly tailor.<sup>54</sup>

Even if the means are effective in addressing the ends, strict scrutiny analysis also requires a court to analyze how efficiently the law addresses the ends.<sup>55</sup> If a law unnecessarily “encroaches on a

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48. See, e.g., *Nunez v. City of San Diego*, 114 F.3d 935, 946 (9th Cir. 1997) (“[T]here must be a sufficient nexus between the stated government interest and the classification created by the ordinance.” (citing *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982))).

49. See *supra* note 4 and accompanying text.

50. WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005) (“It shall constitute a general offense . . . for any person . . . 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.”).

51. The overall level of effectiveness and efficiency is frequently referred to by courts as the “nexus.” See, e.g., *Nunez*, 114 F.3d at 946 (“[T]here must be a sufficient nexus between the stated government interest and the classification created by the ordinance.” (citing *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982))). While courts vary in their usage of the phrases “sufficient nexus” and “narrowly tailored,” both terms represent the same methodology under a strict scrutiny analysis.

52. See, e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (“It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.”) (internal citations omitted).

53. A law with such an effect is said to be “underinclusive.” See, e.g., *id.* at 543 (“Respondent claims that [the] Ordinances . . . advance two interests: protecting the public health and preventing cruelty to animals. The ordinances are underinclusive for those ends.”).

54. See *supra* note 48 and accompanying text.

55. A law that collaterally prohibits, or otherwise affects, certain conduct because its means are too broad is said to be “overinclusive.” See, e.g., *Church of the Lukumi Babalu Aye*, 508 U.S. at 578 (Blackmun, J., concurring) (“A State may no more create an underinclusive statute, one that fails truly to promote its purported compelling interest,

substantial amount of innocent conduct’ ”<sup>56</sup> and the conduct being encroached upon is connected with a fundamental right, strict scrutiny analysis requires a court to strike the law down as unconstitutional.<sup>57</sup> To demonstrate the law’s constitutionality, then, the government entity enacting it must assure the court that “there are no less restrictive means available to effectuate the desired end.”<sup>58</sup> Thus, while a court frequently looks at a particular law’s underinclusive nature (its ineffectiveness) in the court’s strict scrutiny analysis, that law’s overinclusive nature (its inefficiency) is substantially more critical when a fundamental right is at stake.

By analyzing the overinclusive and underinclusive nature of a law’s means and ends relationship, a court can determine whether the law has, in fact, been narrowly tailored. The Woodfin ordinance’s lack of narrow tailoring is evident in both respects. It extends beyond those people associated with a prior conviction for a crime against a child, and at the same time, it fails to include other members of society who may pose an equal risk of committing a crime against a child.<sup>59</sup> Furthermore, the ordinance lacks any exceptions to its implementation, thereby “ ‘encroach[ing] upon a substantial amount of innocent conduct.’ ”<sup>60</sup> Ultimately, by failing to sufficiently direct the ban at the appropriate group of people and by banning an overly broad group of activities, the means employed by the ordinance are insufficiently connected to the ends sought.

#### A. Failure to Narrowly Tailor Who is Banned

While not critical to its unconstitutionality, the Woodfin park ban’s underinclusiveness illustrates the town’s complete lack of an

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than it may create an overinclusive statute, one that encompasses more protected conduct than necessary to achieve its goal.”).

56. *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 163, 650 S.E.2d 618, 637 (2007) (Geer, J., dissenting) (quoting *State v. Burnett*, 755 N.E.2d 857, 867 (Ohio 2001)).

57. See *Johnson v. Cincinnati*, 2002 FED App. 0332P, ¶ 29, 310 F.3d 484, 503 (6th Cir.) (“[I]f there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference.” (quoting *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (alteration in original)).

58. *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993) (citing *Pugh v. Rainwater*, 557 F.2d 1189, 1195 (5th Cir. 1977), *vacated on other grounds*, 572 F.2d 1053 (5th Cir. 1978)).

59. WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005) (“It shall constitute a general offense . . . for any person . . . 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.”) (emphasis added).

60. *Standley I*, 186 N.C. App. at 163, 650 S.E.2d at 637 (Geer, J., dissenting) (quoting *State v. Burnett*, 755 N.E.2d 857, 867 (Ohio 2001)).

attempt to narrowly tailor its ordinance. First, the evidence does not support the notion that children would be substantially protected by an ordinance banning registered sex offenders from public parks.<sup>61</sup> The two sexual offenses that prompted the enactment of this legislation<sup>62</sup> were committed by people not registered as sex offenders,<sup>63</sup> accordingly, the Woodfin ordinance would not have helped to prevent those crimes.<sup>64</sup> Furthermore, sexual crimes committed against children more often result from a violation by a family member or friend, rather than by a stranger.<sup>65</sup> Therefore, by not targeting other groups of people who are more likely to pose a threat to children, the ordinance fails to provide any real protection for those citizens it intends to protect. Citizens in towns that *have* instituted park bans have raised concerns that these types of bans may actually lull parents into a “false sense of security”<sup>66</sup> about what is necessary for the protection of their children within these banned areas.<sup>67</sup> Having disregarded substantial countervailing factors, the

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61. See *Standley I*, 186 N.C. App. at 160, 650 S.E.2d at 635 (Geer, J., dissenting) (discussing the rates at which reported sexual assaults occur in various areas and showing that more victimizations occur in the home rather than outside it).

62. *Standley v. Town of Woodfin (Standley II)*, 362 N.C. 328, 330, 661 S.E.2d 728, 729 (2008) (discussing the action taken by Woodfin town officials to research and recommend the park ban ordinance following two offenses that “occurred in or near . . . public parks”).

63. Brief of Appellant-Petitioner, *supra* note 6, at 6.

64. See *Standley I*, 186 N.C. App. at 160 n.7, 650 S.E.2d at 635 n.7 (Geer, J., dissenting).

65. See Sarah Lindenfeld Hall, *Town Bans Man from Parks, Libraries*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 29, 2008, at 4B (quoting the executive director of the North Carolina Coalition Against Sexual Assault, Monika Johnson-Hostler, who advised parents that “80 percent of sex offenders know their victims”); Susan Weich, *Sex Offender Proposal Isn’t What Will Keep Our Kids Safe*, ST. LOUIS POST-DISPATCH, Feb. 24, 2008, at C1 (“Child advocates say that children not only are more likely to be sexually abused by someone they know, but that the abuse usually happens in their homes.”); Hobson, *supra* note 16, at 965 (“Although many people believe that incurable, creepy strangers stalking children around town commit all child abuse, only a small fraction of child molestation actually comes at the hands of strangers.”).

66. Max Jack, *Sex Offender Ban Passes in Landslide*, WINDSOR LOCKS J. (Conn.), Aug. 8, 2008, available at [http://www.zwire.com/site/index.cfm?newsid=19900529&BRD=1651&PAG=461&dept\\_id=12343&rft=8](http://www.zwire.com/site/index.cfm?newsid=19900529&BRD=1651&PAG=461&dept_id=12343&rft=8); see also Hall, *supra* note 65 (discussing a conversation with the executive director of the North Carolina Coalition Against Sexual Assault who noted that “bans don’t mean people can let down their guard”).

67. See Jack, *supra* note 66 (discussing the opinion of one resident who thought that citizens’ focus should be on those people *not* on the sex offender registry, rather than banning all those on the list); see also April Bethea, *Mecklenburg Bans Sex Offenders from Parks*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 6, 2008, available at <http://www.newsobserver.com/news/story/1166852.html> (referencing concerns expressed by the American Civil Liberties Union that “offenses in parks often are committed by people who aren’t on the offender registry”).

town of Woodfin's park ban lacks any sort of meaningful relationship between its means taken and ends being sought, thereby illustrating the ordinance's lack of narrow tailoring under the strict scrutiny analysis.<sup>68</sup>

While the ordinance's underinclusiveness certainly detracts from its ability to pass the strict scrutiny test, its overinclusiveness is the reason it ultimately fails this analysis. The town's ordinance bans an overly broad categorization of people from the town parks, such that the ordinance does not efficiently protect the Woodfin citizens. One primary reason the town of Woodfin excluded sex offenders as a broad category, rather than narrowing the scope, is the belief that "sex offenders have a higher rate of recidivism and are more likely to commit another sex offense than non-sex offenders."<sup>69</sup> There is, however, conflicting evidence regarding recidivism rates of sex offenders, with some sources stating that "'sex offenders are relatively unlikely to commit future sexual offenses.'"<sup>70</sup> The Woodfin ordinance does not consider any evidence regarding whether or not a *specific* offender is likely to commit a future crime,<sup>71</sup> thereby casting a wide net over people who may never again commit a sexually based crime.<sup>72</sup> For example, Mr. Standley never committed a sexual offense against a child,<sup>73</sup> and due to his incapacitating injury, he is incapable of taking any such action in the future. However, Mr. Standley falls under the large umbrella of banned citizens. This all-encompassing ban on sex offenders, regardless of whether their past crimes involved children, infringes the constitutional rights of those people who, like

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68. See *Nunez v. City of San Diego*, 114 F.3d 935, 946 (9th Cir. 1997) ("[T]here must be a sufficient nexus between the stated government interest and the classification created by the ordinance." (citing *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982))).

69. *Standley I*, 186 N.C. App. at 159, 650 S.E.2d at 635 (Geer, J., dissenting).

70. Michael Vitiello, *Punishing Sex Offenders: When Good Intentions Go Bad*, 40 ARIZ. ST. L.J. 651, 677 (2008) (quoting John F. Stinneford, *Incapacitation Through Maiming: Chemical Castration, the Eighth Amendment, and the Denial of Human Dignity*, 3 U. ST. THOMAS L.J. 559, 570 (2006)); see also *Standley I*, 186 N.C. App. at 161, 650 S.E.2d at 636 (Geer, J., dissenting) (discussing an analysis of recidivism rates for sex offenders and non-sex offenders in the commission of future sexual offenses).

71. The ordinance's definition of "sex offender" is so broad that it leaves no room for specific exceptions based on the individual. See WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005) (declaring it a crime for "any person . . . registered as a sex offender" to enter Woodfin's town parks).

72. See *Standley I*, 186 N.C. App. at 161–62, 650 S.E.2d at 635–36 (Geer, J., dissenting) (discussing the lack of evidentiary support for the Town's assertions about recidivism rates regarding sex offenders and the ordinance's lack of effectiveness in protecting children).

73. See *supra* notes 10–11 and accompanying text.

Mr. Standley, have never committed a sex crime against a child and who show no tendency to commit such crimes in the future.<sup>74</sup>

*B. Failure to Narrowly Tailor What is Banned*

Another issue with regard to the Woodfin ordinance's overinclusiveness stems from the fact that, by instituting an absolute bar to accessing the parks, it prohibits legitimate activities that deserve protection, thus failing to consider alternatives that would be less restrictive on the people affected.<sup>75</sup> For example, the Woodfin ordinance does not include an exception to the ban that would allow a sex offender to enter the park to vote<sup>76</sup> should a town election or town meeting be held within the borders of the park.<sup>77</sup> Furthermore, the ordinance prohibits protected actions "such as First Amendment activities or assembling with the public in a park for the Town's Labor Day festivities."<sup>78</sup> While it is true that even fundamental rights, like

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74. See *supra* notes 5–10 and accompanying text. To examine an instance in which individual characteristics of the offender involved were taken into account when a ban was implemented, see generally *Doe v. City of Lafayette*, 377 F.3d 757 (7th Cir. 2004) (holding a park ban constitutional when implemented against only one particular citizen who (1) was a repeat sexual offender committing acts against children; (2) was found to have a high rate of potential recidivism; and (3) admittedly went to the parks for the purpose of watching children in the hopes of engaging in sexual acts with them); see also ST. CHARLES COUNTY, MO., COUNTY CHARTER § 250.445 (2009), available at <http://www.sccmo.org/Departments/> (delineating several specific child-related sexual offenses that would prohibit a person convicted of such an offense from entering or loitering in a county park).

75. See *supra* notes 55–58 and accompanying text.

76. North Carolina law provides that "[a]ny person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored" upon unconditional release from prison. N.C. GEN. STAT. § 13-1 (2007); see also Mosi Secret, *Denied the Vote: Thousands of North Carolina Ex-Felons Can Vote. But Nobody's Told Them*, INDY (N.C.), Nov. 1, 2006, available at <http://www.indyweek.com/gyrobase/Content?oid=oid%3A39558> (reporting that many ex-felons were unaware of their right to vote once released from incarceration).

77. See WOODFIN, N.C., CODE OF ORDINANCE § 130.03 (2005) ("Each and every entry into the park, regardless of the time period involved shall constitute a separate offense under this ordinance.") (emphasis added). Some towns that have similar ordinances to that of Woodfin provide exceptions to allow for potential issues dealing with voting or other permitted activities in public places encompassed by the ban. See, e.g., ST. CHARLES COUNTY, MO., COUNTY CHARTER § 250.445 (stating that a sex offender banned from a town park may request and be granted permission by the Director of Parks and Recreation to enter the park for specific events).

78. *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 163, 650 S.E.2d 618, 637 (2007) (Geer, J., dissenting). The Town of Woodfin formerly maintained an official town Website, on which it boasted of the events hosted by the Parks and Recreation Department in the parks and recreation facilities, including the Labor Day Picnic and the Woodfin Christmas Festival. These public events hosted within park limits would be out of bounds for people like Mr. Standley due to the Woodfin ordinance. The Town of

the right to intrastate travel, are not absolute and can be subject to regulation such as “time and manner” restrictions,<sup>79</sup> the Woodfin ban is an “absolute prohibition” providing for no exceptions.<sup>80</sup> Rather than simply prohibiting sex offenders with *child*-related convictions from coming within a predetermined distance (500 feet, for example) of playgrounds within the parks, the ordinance instead bans *all* sex offenders from *all* areas of the parks. Thus, it does not meet its burden of employing the least restrictive means possible.<sup>81</sup> Therefore, based on the expressed goals of the town of Woodfin,<sup>82</sup> the ordinance, due to its overly broad nature, falls short of meeting the standards required under the strict scrutiny analysis by both failing to target an appropriately narrow body of banned persons and by failing to constrain the reach of the ordinance’s prohibited actions to the least restrictive means available.<sup>83</sup>

### III. IMPLICATIONS OF UPHOLDING INFRINGING LEGISLATION

The Woodfin ordinance was enacted on the heels of two prior sexual offenses committed “in or near” Woodfin town parks.<sup>84</sup> Pieces of legislation, such as the ordinance in Woodfin and the residency restrictions for sex offenders that are springing up across the country,<sup>85</sup> are often “hastily drafted with little debate following a high-profile crime committed against a minor by a convicted sex offender.”<sup>86</sup> Further, sex offenders do not tend to garner much sympathy from the public at large,<sup>87</sup> and as can be seen in North

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Woodfin, *Parks & Recreation*, formerly available at <http://www.woodfin-nc.gov/pages/parks.html> (on file with the North Carolina Law Review).

79. *State v. Dobbins*, 277 N.C. 484, 497, 178 S.E.2d 449, 456 (1971). “The familiar traffic light is . . . an ever present reminder that this segment of liberty is not absolute. It may be regulated, as to the time and manner of its exercise . . .” *Id.*

80. *Standley I*, 186 N.C. App. at 159, 650 S.E.2d at 634 (Geer, J., dissenting).

81. *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993) (citing *Pugh v. Rainwater*, 557 F.2d 1189, 1195 (5th Cir. 1977), *vacated on other grounds*, 572 F.2d 1053 (5th Cir. 1978)).

82. See *supra* note 4 and accompanying text.

83. *Qutb*, 11 F.3d at 492 (citing *Pugh v. Rainwater*, 557 F.2d 1189, 1195 (5th Cir. 1977), *vacated on other grounds*, 572 F.2d 1053 (5th Cir. 1978)).

84. *Standley v. Town of Woodfin (Standley II)*, 362 N.C. 328, 330, 661 S.E.2d 728, 729 (2008).

85. See generally Marjorie A. Shields, Annotation, *Validity of Statutes Imposing Residency Restrictions on Registered Sex Offenders*, 25 A.L.R.6th 227, 335 (2007) (discussing states’ legislation that restricts where sex offenders can live “within specified distances of schools, parks, day-care centers, and other areas”).

86. Corey Rayburn Yung, *Banishment by a Thousand Laws: Residency Restrictions on Sex Offenders*, 85 WASH. U. L. REV. 101, 122 (2007) (discussing the rush to implement exclusion zones, within which registered sex offenders are barred from obtaining and maintaining a residence).

87. See, e.g., Hobson, *supra* note 16, at 966 (explaining that people tend not to

Carolina,<sup>88</sup> courts seem to be hesitant to second-guess legislative efforts that enhance restrictions against sex offenders. Consequently, the rights of sex offenders are more readily cast aside<sup>89</sup> with undue speed and without recognizing the potentially dangerous costs of such action in the name of protecting one set of citizens.<sup>90</sup> Judge Geer, dissenting from the North Carolina Court of Appeals' majority opinion in *Standley*, noted:

Not infrequently, the genesis of widely-held beliefs is fear not grounded in reality or science, but rather propagated [sic] by collective terror fueled by television or the internet. We cannot strip a whole group of people of a fundamental right based not on their individual behavior, but rather based simply on a desire to be seen as taking action to respond to the public's fear—especially when there is only the “belief” that such action might possibly make the community a little bit safer.<sup>91</sup>

The enactment of Woodfin's broad ordinance banning all registered sex offenders from the town parks was only the beginning

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sympathize with sex offenders who must live within the guidelines of increasingly harsh restrictions, especially when the public is faced with the influx of media portraying the horrible crimes committed against children); see also Jack, *supra* note 66 (“Residents celebrated enthusiastically, cheering and hugging each other at the end of the Town Meeting . . . as a ban on sex offenders in various public places was passed in a landslide vote.”).

88. See *Standley II*, 362 N.C. at 332, 661 S.E.2d at 730.

89. See, e.g., Yung, *supra* note 86, at 126 (“In 2005, some localities banned sex offenders from public hurricane shelters, forcing the offenders to seek refuge in local prisons.”); Vitiello, *supra* note 70, at 681 (“[T]he media recently reported the case of three offenders forced to live under a highway bridge because they could not find housing that complied with various legal requirements.”); Dan Kane, *Hotels Could House Sex Offenders: Public Would Pay for Temporary Stays*, NEWS & OBSERVER (Raleigh, N.C.), June 3, 2008, available at [http://www.newsobserver.com/news/crime\\_safety/story/1094282.html](http://www.newsobserver.com/news/crime_safety/story/1094282.html) (“Prison officials say some sex offenders are finding it so hard to find a place to stay once they are paroled that they eventually give up and serve the remainder of their sentence behind bars.”).

90. See Editorial, *Upholding Our Rights*, LAS VEGAS REV.-J., Sept. 13, 2008, available at <http://www.lvrj.com/opinion/28344524.html> (“[I]f the government is allowed to trample and shred the constitutional rights of even the tiniest, most shunned segment of the population, how long before authorities decide to take away yours?”); C. Alexander Evans, Opinion, *Protecting Our Kids—Or Assaulting Freedom?*, THE RECORD (Bergen County, N.J.), Aug. 19, 2008, at A8, available at <http://www.csmonitor.com/2008/0814/p09s01-coop.html> (“When government betrays the Constitution, no matter the reason, we jeopardize everyone's freedom.”).

91. *Standley v. Town of Woodfin (Standley I)*, 186 N.C. App. 134, 164–65, 650 S.E.2d 618, 638 (2007) (Geer, J., dissenting); see also Yung, *supra* note 86, at 105 (“By casting out sex offenders in response to a political environment charged with hysteria and fear, we are in danger of undermining the basic principles of our democratic government.”).

of this type of legislation in North Carolina.<sup>92</sup> While a few other localities followed suit before the *Standley* decision was finalized,<sup>93</sup> there has been a marked increase in the number of North Carolina towns that have passed similar legislation since the Supreme Court of North Carolina upheld the constitutionality of such legislation in June 2008.<sup>94</sup> Unfortunately, some communities have not merely instituted bans limiting access to parks, but have enacted ordinances that expand the reach of the bans to include golf courses, nature centers, and community centers.<sup>95</sup> Further, while North Carolina may claim some of the first enactments of park bans and the like, it no longer stands alone in the United States.<sup>96</sup> For example, the town of Windsor Locks, Connecticut, recently passed an ordinance banning a broadly defined group of registered sex offenders<sup>97</sup> from an extensive number of public spaces by creating "Child Safety Zones."<sup>98</sup> Like in Woodfin, the Windsor Locks ordinance makes it "unlawful for a sex offender to be *present* in any Child Safety Zone"<sup>99</sup> while including no

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92. The town of Woodfin touted the park ban ordinance as the first of its kind in the United States, having devoted an entire section of the town's former Website to its importance. Town of Woodfin, *Keeping You Safe: Registered Sex Offenders Are Prohibited from Entering Any Park or Recreational Facility of the Town of Woodfin*, formerly available at <http://www.woodfin-nc.gov/pages/parks.html> (on file with the North Carolina Law Review).

93. See, e.g., Bethea, *supra* note 67 (indicating that Morganton, North Carolina, passed a park ban for sex offenders in January of 2008).

94. See *id.* (reporting that, following Morganton and Woodfin, Mecklenburg County finalized efforts to ban sex offenders from parks and recreational facilities); Vicky Eckenrode, *New Hanover Commissioners Vote to Ban Sex Offenders from Parks*, STAR-NEWS (Wilmington, N.C.), Sept. 3, 2008, available at <http://www.starnewsonline.com/article/20080903/ARTICLES/809030326> (describing the enactment of a local park ban against registered sex offenders as "similar" to the bans already in place in Wilmington and Pender County).

95. See Bethea, *supra* note 67 ("The ordinance would apply not only to community parks, but facilities such as golf courses, nature centers and the Mecklenburg County Aquatic Center.").

96. See *Doe v. Town of Plainfield*, 893 N.E.2d 1124, 1132 n.8 (Ind. Ct. App. 2008). The Court of Appeals of Indiana, citing the Supreme Court of North Carolina's decision in *Standley II*, found constitutional a town ordinance that broadly banned sex offenders from parks. *Id.*

97. See WINDSOR LOCKS, CONN., TOWN ORDINANCES § 2(a)(ii)(a) (2008), available at <http://www.windsorlocksct.org/page.php?pid=355> (defining the banned group to include those people who have committed sexual offenses against either children or adults, even though the express purpose of the ordinance is to protect children specifically).

98. See *id.* § 2(a)(i)(a) (banning sex offenders from any number of town-owned public places including "[a] park, school, library, playground, recreation center, bathing beach, swimming pool . . . , gymnasium, sports field, or sports facility").

99. *Id.* § 2(b) (emphasis added).



reference to specifically prohibited activities, thus infringing on the right of access implicit in the fundamental right to intrastate travel.<sup>100</sup>

Unless and until the courts, both in North Carolina and elsewhere, decide to reexamine the constitutional issues surrounding these and other similar bans, the prevalence and level of intrusiveness of such bans are likely to increase. In the meantime, there exists a potential danger that towns may use the motive of protecting children as a way to legislate certain groups of “undesirable” people, be they sex offenders or others, out of their communities completely.<sup>101</sup> Judge Geer articulated this concern in her court of appeals dissent: “Will municipalities next be allowed to bar other groups feared at times by the public—such as the mentally ill or handicapped, the homeless, gays, or people of middle eastern descent—because of the possibility that some individual members . . . might in the future engage in unlawful conduct?”<sup>102</sup> Rather than creating broad, sweeping legislation meant to protect members of the public from future acts of prior sex offenders, “[a]ny long-term solution to sexual violence needs to include a variety of policies tailored to *individual* offenders.”<sup>103</sup>

### CONCLUSION

While the threat of sexually based offenses against fellow citizens, especially children, resonates as a concern to be taken seriously across the country, efforts to minimize these threats should not compromise constitutional rights. The burden falls on both legislatures *and* courts to design and uphold laws that consider the restrictions necessary to protect local citizens in light of the fundamental constitutional protections granted to all citizens.<sup>104</sup> In North Carolina, the right to intrastate travel is one fundamental right requiring such consideration. Pursuant to the findings of the *Johnson*

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100. See *supra* Part I.A.

101. See, e.g., Yung, *supra* note 86, at 105 (discussing the potential long-term implications of residency “exclusion zones” and noting that the continuation of the current trend of exclusion legislation could make legally possible “the ability to zone out any group of undesirables in America”).

102. *Standley v. Town of Woodfin (Standley I)* 186 N.C. App. 134, 165, 650 S.E.2d 618, 638 (2007) (Geer, J., dissenting).

103. Yung, *supra* note 86, at 159 (emphasis added) (discussing the need for government actions toward sex offenders, both in the punishment stages and in the post-release stages, that focus on finding solutions based more on individual tendencies as well as implementation of stronger efforts to rehabilitate, rather than isolate, the offenders).

104. See, e.g., *Johnson v. City of Cincinnati*, 2002 FED App. 0332P, ¶ 33, 310 F.3d 484, 505 (6th Cir.) (striking down as unconstitutional a law which prohibited certain groups of people from accessing a certain area of the city).

court, the right to intrastate travel encompasses the right to access public spaces like parks,<sup>105</sup> and the infringement of such a right requires a strict scrutiny analysis to determine whether the infringing legislation is narrowly tailored to meet the desired end.<sup>106</sup>

Unfortunately, the Supreme Court of North Carolina failed to use such an analysis. By misinterpreting the *Johnson* decision—its only source of constitutional precedent—the *Standley* court permitted Woodfin's ordinance, overbroad in every respect, to thwart the fundamental right to intrastate travel of an entire group of citizens. While intending to protect children from sexual offenses, the Woodfin ordinance imposes an outright prohibition on *all* registered sex offenders from entering public parks, regardless of whether their past offenses involved children, regardless of their recidivist tendencies, and regardless of their basic capacity to commit such an act in the future.<sup>107</sup>

Mr. Standley, a man who could not care for himself due to a debilitating injury, a man who needed constant assistance and supervision when away from home,<sup>108</sup> was lumped into a broad category of individuals perceived to be a threat and was thus denied, along with others like him, his constitutional right to intrastate travel within his community. If courts continue to allow legislation like that in Woodfin to infringe on constitutional rights without narrowly tailoring the application to meet a compelling governmental interest, Mr. Standley's situation may become all too familiar to more and more citizens, and the constitutional rights of all citizens will continue to diminish.

EMILY E. REARDON

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105. See *id.*, ¶ 16, 310 F.3d at 495 (holding that the right to intrastate travel includes "the right to travel locally through public spaces").

106. See cases cited *supra* notes 40–44.

107. See *Standley I*, 186 N.C. App. at 166, 650 S.E.2d at 639 (Geer, J., dissenting).

108. See *supra* notes 6–8 and accompanying text.

