

IN THE IOWA DISTRICT COURT OF SIOUX COUNTY

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STATE OF IOWA,

State,

NO. SMSM026797

vs.

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION  
TO DISMISS**

PAUL ROBERT DORR,

Defendant.

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COMES NOW the Defendant Paul Dorr, and pursuant to Rule 2.11(6) of the Iowa Rules of Criminal Procedure, brings this Motion to Dismiss the charge against him on the following grounds:

**INTRODUCTION**

Defendant Paul Dorr, a well-known activist, has been charged with one count of criminal mischief in the fifth degree. Mr. Dorr checked four books out from the Orange City Library ("Library") and failed to return them as a protest and hence, burned them in public. His protest centered on his disagreement the books' messages including their immorality in light of his religious beliefs. Notably, the destroyed books have been paid for. Nonetheless, Mr. Dorr was charged with criminal mischief. Yet, no one else who has failed to return books to the library has been charged with a similar crime.

The facts reveal a disturbing underlying cause for the State of Iowa to criminally prosecute Mr. Dorr: he is being prosecuted because he exercised his First Amendment Rights of free speech and religious freedom. The targeted prosecution also has violated Mr. Dorr's Equal Protection Rights under the United States Constitution. Not one

other incident has been identified in which the City of Orange City initiated criminal charges against a person who checked books out from the Library, and failed to return them. Mr. Dorr has been singled out for prosecution; he exercised his right to free speech and religious beliefs in a public and published protest. His actions were less egregious than burning an American flag, which is a protected right. The state's prosecution is misplaced and misinformed: the charges against Mr. Dorr should be dismissed.

### **FACTUAL ALLEGATIONS:**

On October 6, 2018 Mr. Dorr checked out four books from the Library. Mr. Dorr found messages of the books to be offensive because he believed each of them<sup>1</sup> promoted a homosexual agenda and culture contradicting his religious beliefs. In protest, on October 19, 2018, Mr. Dorr burned those books at a public demonstration in Orange City, Iowa. The protest also occurred on the same day activists celebrated "OC Pride" day with a Drag Queen Festival in the Prairie Winds Event Center in Orange City. *Dorr Aff., Par. 2.*

Mr. Dorr read a public statement protesting against OC Pride and the Drag Queen Festival, with the Event Center hosting the Drag Queen Festival as a backdrop. His protest and statement were filmed, recorded, and subsequently published. Mr. Dorr's protest and actions drew significant adverse attention. His protest drew opposing, if not threatening, responses including demands that he be punished for his views and for broadcasting his views. *Dorr Aff. Par. 3.*

Because Mr. Dorr failed to return the library books, valued at \$50.00 (*Ex. 1, P. 3 of Orange City PD Incident Report*), the Library was repaid for them. *See, Ex. 3*, receipt showing repayment. Other supporters and opponents of Mr. Dorr also volunteered to re-purchase the

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<sup>1</sup> The books were: *Two Boys Kissing, This Day in June, Morris Micklewhite and the Tangerine Dress, and Families, Families, Families.*

books in *his name* and make other donations to the library as support of his protest, thus, overcompensating the Library for the non-returned four books. Library employee Sue Kroesche informed Mr. Dorr that as a result of his protest and actions“... the Library now has a go fund me page that has nearly \$1,000 in it, and that the money will be used to purchase” replacements of the four non-returned books, and to, ironically for Mr. Dorr, to purchase more books in the genre and messages of the lost books. *Ex. 4, 7.*

Meanwhile, 20 days after Mr. Dorr’s protest on November 6, 2018, a Library employee reported to the Orange City Police Department (“Police”) about Mr. Dorr’s October 19th protest that included the burning of four library books. No mention was made that restitution had already been given to the Library for not returning them. Two days later Mr. Dorr was charged with criminal mischief. *Ex. 1.*

Nothing to date has been found in which a person’s failure to return books to the Library resulted in a criminal charge of any kind. After conducting his own investigation, including the review of records of Orange City police and the Library regarding non-returned books since 2010 — which both entities cooperated in disclosing —rarely do the police conduct their own investigation regarding the failure to return books. Notably, the police have never *charged* anyone with a crime for failing to return or destroying checked out Library books. *Ex. 5.*

Furthermore, in the few instances in which the police did investigate, the person who had failed to return books to the Library were given two options: return the books or pay for them. None were threatened with criminal prosecution as the records appear to reveal. *See, Ex. 5, Police Reports for Incident Nos. 16010427, 16015460 and 17010183.*

But, unlike other persons who had failed to return books to the Library—for whatever reason—Mr. Dorr was not given the option, yet had paid for the non-returned books. Instead,

because he published his protest of burning the books, he was criminally charged.

The other cases in which the Police investigated included the following:

Incident	Police Response/Library Response	Date
<p>Books valued at \$70.97 checked out September 9, 2015 and not returned as of August 24, 2016</p> <p>Incident No. 16010427</p>	<p>“O.C. Library <b>would like the materials returned</b> if at all possible. If not the[y] wanted \$70.97 for fine &amp; fees.” (emphasis added)</p> <p>“I [Officer Vanzee] told him [suspect who failed to return books] that he should pay the library [for the books]. ... I told him that <b>if he or ... paid the fine it would be good</b> to close the account and that this would close this situation.” (emphasis added)</p> <p>Following notification from the library that the patron <b>had paid the library</b> “fine and fees,” Officer Vanzee noted: “<b>there will be no charges or further investigation.</b>” (emphasis added).</p>	<p>Books checked out September 4, 2015, were due October 2, 2015, and police investigation August 24, 2016</p>
<p>Materials checked out and not returned</p> <p>Incident No. 17010183</p>	<p>“Both parties were contacted this evening and were <b>advised to pay</b> [for the non-returned books] on or before August 25, 2017.” (emphasis added) <i>August 17, 2017.</i></p> <p>Officer Vanzee was “advised ... that <b>both issues have been resolved.</b>” (emphasis added) <i>August 28, 2017.</i></p>	<p>August 2017</p>
<p>Checked out materials valued at \$224.22 and not</p>	<p>“... items are far overdue and several</p>	<p>January 2017</p>

returned  Incident No. 16015460	messages have been left with ... with regards to <b>returning or paying for the material</b> . As of this date, ... has done neither.” (emphasis added) <i>January 13, 2017</i> .	

*See, Ex. 5.*

Unlike the political activist Mr. Dorr, persons in similar circumstances who did not return books to the Library, but had paid for them in fees and fines—as Mr. Dorr had done—where not subject to criminal prosecution. It was only after Mr. Dorr’s protest when members of the public asserted political pressure on the Library to do something to punish Mr. Dorr, did the Library file a complaint and the police sought criminal charges. Some examples of the emails support this factual conclusion:

- “It is my hope that the library will be pursuing criminal charges against Paul Dorr.”
- “The library’s choices of action are inadequate.”
- “He needs to be arrested.”
- “Think of the message you are sending the community with your inaction.”
- “I just read the disturbing news brief about Paul Dorr and his group burning LGBTQ books from your library. This is unconscionable ...”.
- “if Dorr and his group destroyed the public property, they should be fined and forced pay for its replacement!”
- “Please don’t let Dorr and Rescue the Perishing win.”

*Ex. 7.*

Others were more explicit regarding Mr. Dorr's protest:

- "You should go to jail for destroying public property."
- "Homosexuality is normal. ... What is wrong is to use religious teaching and twist it around to be used to discriminate ..."
- "Shame on you for calling yourself a Christian."
- "I think we should start buying [sic] your wicked, horrible Bibles."
- "funny how you religious c \_ \_ \_ \_ overlook that, huh?"
- "You are nothing but a sick hate group. Jesus never knew you."
- "I hope you and your family die slow torturous deaths."
- "Paul Dorr is a f \_ \_ \_ ing piece of shit."
- "go "f \_ \_ \_ yourself."
- "You are a violent bigot."
- "F \_ \_ \_ everything you stand for. G \_ \_ d \_ \_ \_ you. I hope you die a terrible horrible death."
- "You're a despicable person."

*Ex. 6.*

And found on the "Rescue the Perishing" Facebook page, posts were equally opposed to

Mr. Dorr's protest:

- "Crystal Bisset · 0:22 I hope you die of a stroke tonight. I will continue to crucify the baby Jesus in my heart daily. F \_ \_ \_ you and your fake god, you fascist piece of shit!"
- "Isaac Fast · 0:25 Oh look...another Christ-o-fascist...who supports criminal behavior. Is that common amongst Mormons?"
- "Eddie Cabot · 1:41 Nazi scum."
- "Loren Schneider · 0:00 You are a retarded f \_ \_ \_ tard. I cant wait to see your s \_ \_ t covered face on the street."

*Ex. 6.* These are only samples of the numerous published reactions against Mr. Dorr’s protest.

As the October 28, 2018 Sioux City Journal (third largest newspaper in the region) reported: “in the aftermath of the book burning, people across the country expressed outrage at Dorr’s actions.” *Ex. 8.* The week before, OC Pride (a LGBTQ support group) published a press release encouraging others to reach out to Orange City officials to condemn Mr. Dorr’s protest as “the destruction of city property.” The October 22, 2018 Press Release of the homosexual group OC Pride stated in its press release:

“Our comments regarding the actions of Paul Dorr: OC Pride is aware of what happened, however, our goal is to remain focused on creating a healthy, loving environment for the LGBTQ+ of the community. It is disappointing to see folks break the law in a community where we believe abiding by the law keeps everyone safe. We are thankful for the LGBTQ+ community here in NW Iowa for setting a positive example of building community in light of those who do violent, illegal things to prove a point. OC Pride is committed to creating safe, supportive, and encouraging spaces & events for the local, rural LGBTQ+ community of NW Iowa. *We would encourage you to reach out to the Orange City city council and the Orange City Police Department concerning the destruction of city property....* Thank you, Allie Macedo OC Pride, Communications Director”

*Ex. 9,* (Oct. 22, 2018) (Emphasis added).

If Mr. Dorr protested in silence yet, and as has been done here the non-returned books were paid for, would he still have been prosecuted? Instead, he published his protest and after 20 days, with the publication of protests from the other side of the issue and demands for prosecution, Orange City did what had never been done before—sought criminal prosecution for non-returned books. And the charge is contrary to a specific procedural Library policy:

### **Overdue Materials**

... Overdue notices will be sent by email, text or phone call, per patron preference, after items have been overdue for one week or more. For those patrons who have provided no

email address, a letter will be sent itemizing the overdue items after the items are overdue by two weeks or more.

The patron will not be allowed to "renew" the items to avoid the fine or incurring replacement charges. After total fines reach \$2.01, Library privileges (including computer use) will be blocked.

The following schedule will be followed for all overdue materials not returned after initial emails, texts and phone calls:

- At least 7 days overdue, a first notice will be sent- phone, email, or text
- At least 14 days overdue, a second notification will be sent. -letter, email, or text
- At least 28 days overdue, a letter with itemized bill of materials and costs will be sent along with a warning of impending legal action if the account is not cleared.
- **60 days overdue a certified letter will be sent with an itemized bill** and a "notification of criminal action" as described in Iowa Code section 714.5. The cost of postage, certified mail, and return receipt will be assessed to the cardholder.
- If the certified letter gets no result, the Library Director may contact law enforcement or the County Attorney.
- **Keeping library materials after library personnel have followed these steps to get public property back constitutes the crime of theft.** The replacement charge includes the value of the item and a processing fee. **When the item is paid for, the overdue fine will be waived.**

*Ex. 10, Library Circulation Policy* (emphasis added).

Mr. Dorr was never provided the certified letter 60 days after being overdue, and in fact he was charged with a crime just 33 days after checking out the books. *Ex. 1.* Nor was the "overdue fine" waived once "the item is paid for." Instead, although the non-returned books were paid for, Mr. Dorr was criminally charged.

The criminal charge against Mr. Dorr for protesting appears also to be contrary to Iowa law. Iowa Code § 714.5 (5) encourages a monetary settlement of lost library materials and provides: "In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement." *Ex. 5.* Before Mr. Dorr's public protest, Orange City police had followed the statutory encouragement with other Library patrons since 2010 as Mr. Dorr's

investigation had revealed as noted above; that is, to “make a monetary settlement.” The only factual difference in this case was Mr. Dorr’s public protest.

## **LEGAL ARGUMENT**

Orange City has never criminally charged a person for failing to return checked out library books, or for damaging them. Instead, Library patrons were encouraged to either return the library material or pay for them. Yet, even though the non-returned books used for a public protest had been repaid, Mr. Dorr was criminally charged. Simply put, Mr. Dorr’s constitutional rights were violated. Because of this specific targeting for the exercise of free speech and religious freedom, Mr. Dorr was treated unequally as to all other persons similarly situated. Hence, the criminal charge is ill-imposed and should be dismissed.

### **I. The Prosecution of Mr. Dorr Constitutes Selective Prosecution in Violation of Mr. Dorr’s First Amendment Free Speech and Religious Liberty Rights.**

#### **A. The Prosecution Violates Mr. Dorr’s Religious Liberty Rights.**

The Eighth Circuit Court of Appeals has held that “[a] selective prosecution claim requires a defendant to show that: ‘(1) people similarly situated to [him] were not prosecuted; and (2) the decision to prosecute was motivated by a discriminatory purpose.’ ” *United States v. Peterson*, 652 F.3d 979, 981 (8th Cir. 2011) (quoting *United States v. Hirsch*, 360 F.3d 860, 864 (8th Cir. 2004)). See also, *United States v. Perry*, 152 F.3d 900, 903 (8th Cir.1998); *Ingram v. United States*, 296 F. Supp. 3d 1076, 1084 (N.D. Iowa 2017).

It is fundamental that “(s)electivity in the enforcement of criminal laws is ... subject to constitutional constraints.” *United States v. Amon*, 669 F.2d 1351, 1355 (10th Cir. 1981), citing *United States v. Batchelder*, 442 U.S. 114, 125 (1979). The decision to prosecute “may not be based on ‘an unjustifiable standard such as race, religion, or other arbitrary classification.’ ”

*United States v. Jeanpierre*, 636 F.3d 416, 424–25 (8th Cir. 2011) (internal quotation marks and citations omitted); *Ingram*, 296 F. Supp. 3d at 1082–83 (other citations omitted).

Some credible evidence must be adduced showing that the government intentionally and purposefully discriminated against the defendant. *Id.* at 570. *United States v. Marcello*, 508 F. Supp. 586, 595 (E.D. La. 1981), *aff'd sub nom. United States v. Roemer*, 703 F.2d 805 (5th Cir. 1983). The evidence must not be “frivolous” and must “raise a reasonable doubt” as to the prosecutor’s purpose. *U.S. v. Catlett*, 584 F.2d 864, 866 (8<sup>th</sup> Cir. 1978).

If such showing is made, the burden shifts to the government to disprove defendant's case at an evidentiary hearing. *United States v. Wilson*, 806 F.2d 171, 176 (8th Cir. 1986), *on reh'g in part*, 815 F.2d 52 (8th Cir. 1987); citing *United States v. Larson*, 612 F.2d 1301, 1304–05 (8th Cir.), *cert. denied*, 446 U.S. 936 (1980). Selective prosecution claims are judged “according to ordinary equal protection standards.” *Wayte v. United States*, 470 U.S. 598, 608 (1985).

A “claim of selective investigation” by the police draws on ““ordinary equal protection standards.”” *Flowers v. City of Minneapolis*, 558 F.3d 794, 798 (8th Cir.2009) (quoting *Wayte*, 470 U.S. at 608. As with other equal-protection claims, we ask whether the City intentionally discriminates against a reasonably identifiable group and whether that intentional discrimination is nonetheless legally justified. *Hassan v. City of New York*, 804 F.3d 277, 294 (3d Cir. 2015), *as amended* (Feb. 2, 2016) (selective enforcement based on religious affiliation).

Plaintiffs' religious affiliation must have been a substantial factor in that different treatment. *Washington v. Davis*, 426 U.S. 229, 235 (1976); *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 276 (1979); *Hassan*, 804 F.3d at 294. Thus, intentional discrimination based on religious affiliation must survive heightened equal-protection review,

and “heightened scrutiny” encompasses both “intermediate scrutiny” and “strict scrutiny.” The City bears the burden of production and proof with respect to both. *Hassan*, 804 F.3d at 301.

Mr. Dorr’s protest in which he destroyed books that were contrary to his religious beliefs was an act in support of his exercise of his First Amendment Religious beliefs. Mr. Dorr disagreed with the content of the four books he burned and he believed that it was his obligation to oppose public promotion of the ideas expressed in them. Mr. Dorr was prosecuted because he holds religious beliefs that are objectionable to many people.

**B. The Prosecution of Mr. Dorr was Improperly Based on His Exercise of His First Amendment Rights.**

“It is settled at a high level of generality that the First Amendment prohibits government officials from retaliating against a citizen for exercising his right of free speech.” *Scott v. Tempelmeyer*, 867 F.3d 1067, 1070 (8th Cir. 2017), citing *Hartman v. Moore*, 547 U.S. 250, 256, (2006). This prohibition on government officials includes the prohibition of the government from commencing criminal prosecutions ... on the basis of his constitutionally protected speech.” *Osborne v. Grussing*, 477 F.3d 1002, 1005 (8th Cir. 2007), citing *Hartman*, 547 U.S. 250.

Again, if the Defendant offers credible evidence that the government discriminated against the Defendant, the burden shifts to the government to disprove defendant's case. *Larson*, 612 F.2d at 1304–05; *Wilson*, 806 F.2d at 176.

Mr. Dorr was charged with criminal mischief in the fifth degree because of his protest and because he published the protest. He filmed himself burning the books, and then posted the video to the internet and Facebook to publish his message, to encourage public discourse in the marketplace of ideas. . In his effort to raise awareness on his side of an issue, the Library ignored its procedural policies and the police responded to the public outcry for prosecution by criminally charging Mr. Dorr. Likewise, Orange City ignored Iowa Code § 714.5, which allows

for “arrangements [to] be made to make a monetary settlement.” Instead, Mr. Dorr was treated unlike other library patrons who had not returned books, and but for his public protest, Mr. Dorr literally had “the book thrown at him” to teach him a lesson. But, what lesson? That the Library can avoid its procedural policy in lieu of protected First Amendment rights? That people can be treated unequally for non-returned books?

As noted before, if Mr. Dorr had protested in silence and destroyed the books yet the books had been paid for, would he have been prosecuted? He still would be exercising his First Amendment rights. Regardless, the answer would be “no.” The only interceding fact in this case was his published protest. The Library ignored its policies and the police charge was selectively based upon nothing more than an act of protected First Amendment activities.

### CONCLUSION

The charge against Defendant Paul Door for simple misdemeanor, criminal mischief, should be dismissed because to prosecute Mr. Dorr constitutes selective prosecution, an illegal violation of his First Amendment Right of Free Speech and Religious Liberty rights.

DATED: June 6, 2019

  
Paul Robert Dorr, Defendant  
(Pro se)