

Why Dallas has the right to block the Exxxotica expo from the convention center

By Rob Walters and James Ho

When Mayor Mike Rawlings and the Dallas City Council first began debating whether to allow the Exxxotica convention to be held only on private property, rather than on city property at the Dallas Convention Center, they were repeatedly warned that doing so would inevitably violate the First Amendment.

As lawyers who have litigated constitutional issues involving government regulations throughout our careers, we found these warnings peculiar, for two distinct reasons.

First, the Dallas Convention Center is public property, and it is not designed for artistic or political expression, but to further the economic development interests of the city. As the U.S. Supreme Court has repeatedly recognized, a government may use public property as a commercial enterprise rather than as a public forum for public expression. Accordingly, the city is fully within its rights to make decisions on how best to use that property to further its economic interests. And of course, Exxxotica can hold its convention in plenty of other, private locations throughout Dallas.

Second, courts have upheld far more restrictive regulations than what the city of Dallas is doing here. Even when it comes to private property, courts have repeatedly upheld regulations of adult businesses — and rejected challenges based on the First Amendment.

That is for one simple reason: When it comes to regulating adult businesses, the government has substantial interests as well in protecting citizens from public displays of nudity and lewdness, and combating sexual assault and sex trafficking. That is why the U.S. Supreme Court has upheld ordinances forbidding nude and nearly nude dancing in public places.

For example, as Justice Sandra Day O'Connor wrote in *City of Erie v. Pap's A.M.*, joined by Justice Stephen Breyer and others, cities may ban nude dancing establishments in order "to deter crime and the other deleterious effects caused by the presence of such an establishment in the neighborhood,"

under a longstanding doctrine of first amendment law known as secondary effects.

As the court has explained, a ban on nude or nearly nude dancing is not a ban on erotic expression. A municipal ordinance that attempted to ban the sale of *Fifty Shades of Grey* would of course be swiftly thrown out by the courts. But a ban on nude dancing establishments only "has the effect of limiting one particular means of expressing . . . erotic message[s]" — and it does so, not to suppress that expression, but to further "[t]he State's interest in preventing harmful secondary effects" to the neighborhood.

The proposed Dallas action is very modest by comparison. The city is not attempting to forbid erotic expression, or even nude dancing. In fact, the proposed action does not regulate the use of private property at all. It is simply attempting to further the city's interests in economic development by preventing public displays of nudity and lewdness at its flagship public venue for commerce.

So we were pleased to see city leaders base their final decision about the Exxxotica convention not on distortions and misconceptions of the Constitution, but on their own personal judgment and desire to serve the city's best interests.

We supported the city's decision by filing an amicus brief on behalf of the Dallas Citizens Council, joined by the state of Texas and Attorney General Ken Paxton, and U.S. District Judge Sidney Fitzwater invited us to present our arguments in court. His ruling is a victory for the Constitution and the people of Dallas.

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