Fighting Back Against Laws and Regulations that Harm State Library Associations

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State library association leaders are grappling with unusual bills, rules, and executive orders that would restrict a state's spending of any funds on the association's goods, products, services, and events. In some states, the prohibitions concern state spending. In others, the prohibitions would extend prohibitions to municipalities, libraries, and schools. In both situations, our colleagues in state library associations are seeing unreasonable, politically motivated attacks on how they can conduct business. Every state library association is a non-profit corporation. These legislative or regulatory attacks on purchasing and contracting may constitute an “Injury in Fact” to the state association as a business. The boards of state library associations may need to consider business-focused remedies in the courts to protect their marketplace and trade.

The board of directors for a state library association has a fiduciary responsibility and duty of care to exercise about the association as a business. As non-profit corporations doing business in a state, library associations should consider ways to protect their businesses from harm. “Injury in Fact” specifically refers to actual harm or a substantially likely threat of harm to the business that has occurred or will occur as a direct result of the actions of the state. Whether it is for a non-profit or for-profit business, an “Injury in Fact” can originate from various state actions, such as regulatory actions, laws, or other government activities that negatively impact a business's ability to operate, compete, or generate revenue.

An “Injury in Fact” is generally defined as “an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual or imminent, not ‘conjectural or hypothetical.’” (see: Lujan v. Defs. of Wildlife, 112 S. Ct. 2130, 2136 (1992), citing Allen v. Wright, 104 S.Ct. 3315, 3324, (1984)). To prove an injury in fact, there must be a causal connection between the injury and the state's action. The injury has to be traceable to the state’s challenged action and not the result of the independent action of some third party not before the court. Finally, it must be “likely,” as opposed to merely “speculative,” that the “injury will be redressed by a favorable decision”. This requirement ensures that courts adjudicate only actual disputes where the plaintiffs have a genuine stake in the outcome, rather than hypothetical or academic questions. It's a way to ensure the judicial system is used appropriately and that resources are allocated to cases with real, tangible issues.
Considering Restraint of Trade

A state library association that is impacted by a regulation or law that limits, proscribes, or prohibits state funds being spent on the association’s regular business should consider pathways for relief in the courts. One possible pathway is to allege that the law constitutes a Restraint of Trade, Ant-Trust, or a similar business-focused framework. If the law unfairly restricts competition or the ability of organizations to engage in their lawful business practices, a claim might be made under antitrust laws, arguing that the law constitutes an unlawful restraint of trade. They might also consider state law claims, such as violations of the state constitution or statutes that protect the rights of businesses and non-profit organizations.

A lawsuit over this injury could be brought in federal court or state court, depending on the circumstances. An impacted business may argue that they have been injured when challenging regulations or actions they believe unlawfully impede their operations, whether it is through unfair competitive practices, restrictive laws, burdensome regulations, or other government interventions. The injury must be legally and judicially recognizable, meaning it must be a type of injury that the court can address and provide relief for. This could include loss of revenue, increased operational costs, or other negative impacts directly attributable to the state’s action or regulation.

Federal Considerations

A state library association may wish to explore Constitutional claims for relief in federal court around the principles of Equal Protection, Due Process, or Free Association instead of a claim of harm or restraint against the business. This legal strategy for challenging onerous state law requires that the law infringe on the rights of individuals and organizations. These Constitutional provisions can provide additional avenues for judicial relief.

The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying any person within their jurisdiction the equal protection of the laws. This clause is a crucial tool for challenging discriminatory laws or practices that unfairly target specific groups or individuals. A challenge based on equal protection would argue that the state law discriminates against state library associations without a legitimate governmental reason. The lawsuit would need to demonstrate that the law treats similarly situated entities differently, and this differential treatment lacks a rational basis or serves no legitimate governmental objective.

The Due Process Clauses of the Fifth and Fourteenth Amendments protect against arbitrary denial of “life, liberty, or property” by the government outside the sanction of law. There are two main types of due process claims: procedural due process, which requires the government to follow fair procedures before depriving a person of life, liberty, or property, and substantive due process, which protects certain fundamental rights from government interference. If a law or its enforcement mechanism lacks clear standards, provides no mechanism for challenge or appeal, or otherwise operates in an arbitrary manner, a state library association could claim a violation of procedural due process. Likewise, if the law infringes on fundamental rights or liberties in an unjustifiable or overly broad manner, a substantive due process claim could be asserted.
Likewise, a lawsuit challenging a state law that restricts or prohibits the use of state funds could potentially be brought under the First Amendment principles of free association. This would focus on an argument that the law unjustifiably infringes on the right of individuals and organizations to come together within the state library association’s membership for its chartered business purposes. This right is fundamental, and any law infringing on it should be subject to a high level of scrutiny.

Strategic Considerations
Determining the most prudent legal strategy for a state library association to challenge a restrictive state law involves considering several factors, including the specific nature of the law, the organization’s goals, the likelihood of success, and the broader implications of the challenge. Both a Restraint of Trade lawsuit under the Injury in Fact doctrine and a claim focusing on Free Association, Due Process, or Equal Protection could offer viable paths for legal challenge, but they address different aspects of the law and its impact.

If a state library association were to pursue relief through a Restraint of Trade lawsuit, it would directly address the financial and contractual aspects of the harm caused by the law, which may be quantifiable and concrete, making the injury easier to demonstrate. If the association chooses to pursue a lawsuit using Free Association, Due Process, and Equal Protection doctrines, it could appeal to broader principles of justice and constitutional governance, potentially rallying public support and achieving more significant legal precedents. However, these claims may require a nuanced argument and a substantial evidentiary basis to demonstrate the law’s impact on fundamental rights. The outcome could be more unpredictable, as they depend on judicial interpretations of constitutional protections. Depending on the severity of the prohibitions against state, municipal, school district, and public library spending, a Restraint of Trade argument may be the most likely to succeed.

If the primary concern of the state library association is the immediate economic and operational impact of the law, a Restraint of Trade lawsuit might be the most direct approach. However, if the association aims to address broader issues of fairness, equality, and constitutional rights, or if the law’s implications extend beyond just economic harm, then pursuing claims related to Free Association, Due Process, and Equal Protection could offer a more comprehensive challenge. This approach not only seeks redress for the association but also broadly defends the principles of freedom and equality.

Ultimately, the decision should be informed by a detailed legal analysis, considering both the specifics of the law and its impacts, as well as the strategic goals of the state library association as a business. Consulting with legal experts who specialize in constitutional law, antitrust law, and nonprofit litigation is essential to formulate the most effective and prudent legal strategy.