

California Supreme Court upholds key part of sex offender law

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A split California Supreme Court on Monday rejected some challenges to residency restrictions for sex offenders and sent others back to lower courts.

Four paroled sex offenders argued a 2006 statute known as Jessica's Law, which requires them and thousands like them to live at least 2,000 feet away from local parks and schools, has been applied retroactively in violation of the state Penal Code and U.S. Constitution.

In a 5-2 opinion, the state high court turned back those challenges. But claims that the law "is an unreasonable, vague and overbroad parole condition that infringes on a number of ... constitutional rights" raise fact-intensive issues and any decision must be based on how the statute was applied to an individual, the majority said.

The court ordered those parts of the four cases sent back to their respective trial courts to flesh out the factual scenarios. The justices suggested several discrete areas of inquiry for the lower courts.

"We thought they could decide as a matter of law and common sense that forced homelessness is unconstitutional," said Ernest Galvan, the attorney representing the parolees. "So, we will work our way back up (to the Supreme Court) and give them more facts."

Gov. Arnold Schwarzenegger said Monday in a prepared statement he is "pleased the court ruled today to uphold the will of the people."

On behalf of the four paroled offenders, identified in court papers only by initials, Galvan argued that the law's provisions are "not rationally related to the harm voters were trying to prevent." He said it covers, at most, those who committed sex crimes after Proposition 83 was passed – and made little sense even for that group of offenders in view of their freedom to visit parks and schools.

Kenneth Mennemeier, lawyer for the Schwarzenegger administration, countered that the 2006 initiative reflects voters' "desire to protect children from the threat of recidivism that sex offenders pose" and it should be interpreted broadly to apply to anyone who has ever been convicted of a sex crime requiring registration.

The four offenders before the Supreme Court were convicted of crimes requiring lifetime registration well before the proposition's passage. They were paroled after its effective date.

Writing for the majority, Justice Marvin R. Baxter said that because each parolee was already subject to the lifetime registration requirement of the Penal Code and each secured housing after the effective date of the statute, its application is not retroactive.

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Justice Carlos R. Moreno disagreed, and authored a dissent, joined by Justice Joyce L. Kennard. The statute cannot be applied to those convicted before it was enacted, Moreno wrote.

Justice Kathryn A. Werdegar authored a short concurrence with the majority, emphasizing that Monday's ruling addresses the residency restrictions only as parole conditions, not as separate crimes.

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