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Court will review challenge to Prop. 83's sex offender restrictions

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The state Supreme Court took up the incendiary issue of sex criminals' residency requirements Wednesday, agreeing to decide the constitutionality of a voter-approved law prohibiting paroled rapists and other sex offenders from living within 2,000 feet of a school or park.

The justices voted unanimously to review legal claims by four registered sex offenders, two of them from the Bay Area, who could be returned to prison for parole violations because of where they lived after being released. The court blocked the state from acting against the four men when it first intervened in their case two months ago, but parole officials have started to arrest others in similar circumstances.

The ballot measure, Proposition 83, was approved by 70 percent of California voters in November 2006. One of its provisions barred all registered sex offenders - whose crimes range from forcible rape to indecent exposure - from living within 2,000 feet of a public or private school or a park where children regularly gather.

State law previously prohibited only convicted child molesters from living within a quarter-mile of a school. The new law makes most densely populated areas of California off limits to many recent parolees.

The state initially sought to apply the residency restrictions to all 90,000 registered sex offenders in California, but federal judges ruled that it did not cover anyone paroled before the Nov. 7, 2006, passage of Prop. 83. Parole officials have begun enforcing the rules against those who were paroled after that.

Out of more than 5,700 sex offenders now on parole, nearly 1,000 were found to be living in prohibited areas, said Bill Sessa, spokesman for the state Department of Corrections and Rehabilitation. He said only about a dozen have been arrested so far.

Of the remainder, Sessa said, about half have declared themselves transients, which means either that they are homeless or that they change residences frequently. They are required to report to their parole officers daily and remain subject to arrest and imprisonment if they are staying within a 2,000-foot zone and disregard their officer's warning, he said. Others with homes inside buffer zones could face prison for parole violations.

The suit by four parolees - one from San Francisco, one from Santa Clara County and two from San Diego County, all identified in court papers by their initials - argues that it is irrational and illegal to apply residency restrictions to ex-convicts like themselves, whose sex crimes did not involve children. Three were convicted of rape and the fourth man was convicted of indecent exposure.

Because all available housing in San Francisco, and virtually all housing in the other counties, is within 2,000 feet of a park or a school, Prop. 83 "will force (the men) to choose between prison or homelessness," Ernest Galvan, a lawyer for the men, said in court papers. "It will force them to leave their families and abandon homes that they own and rent.

"It defies common sense to argue that public safety is somehow served by forcing sex offender registrants into homelessness - to sleep in cars, in parks, near schools and on the streets - disconnected from their support networks," Galvan said.

He argued that application of the residency restrictions is an unreasonable parole condition as well as an unconstitutional punishment for crimes committed before Prop. 83 passed.

A lawyer for Gov. Arnold Schwarzenegger countered that residency restrictions are designed to protect the public, not to punish ex-convicts. They can be applied to all paroled sex offenders, just like other protective measures such as registration and public disclosure, he said.

"The residency restriction affects only where an offender may live," the attorney, Kenneth Mennemeier, wrote in court papers. "It does not expel offenders from their communities."

He also said the voters were entitled to conclude that barring all sex offenders from living near parks or schools would protect children, "the most vulnerable targets of sex crimes."

The court has not yet scheduled a hearing in the case, which is titled E.J. on Habeas Corpus, S156933.

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