

# Opinion Analysis: *In re Taylor*

On March 2, 2015, the California Supreme Court decided *In re Taylor*, striking down residency restrictions for registered sex offenders in San Diego County. The opinion is notable both for its unanimity and for its author: Justice Baxter.

## ***Facts***

On November 7, 2006, California voters enacted Proposition 83, the Sexual Predator Punishment and Control Act, otherwise known as “Jessica’s Law.” The goal of this initiative was to “help Californians better protect themselves, their children, and their communities” from sex offenders by carving out 2000-foot “predator-free zones around schools and parks” to prevent sex offenders from living near where children learn and play. Significantly, the California Department of Corrections and Rehabilitation (“CDCR”) began enforcing the residency restrictions as a mandatory parole condition for all registered sex offenders in San Diego County, regardless of the circumstances of their crime, the danger they pose to the community, or whether their crime was committed against a child.

The plaintiffs, a group of registered sex offenders on parole in San Diego County, brought a habeas corpus petition, arguing that blanket enforcement of the parole condition violated their right to intrastate travel, their fundamental right to establish a home, and their right to privacy under the California Constitution. They also argued that the statutes violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.

The San Diego County Superior Court conducted an eight-day evidentiary hearing, after which it ruled that, as to parolees in San Diego County, the residency restriction was unconstitutional (earlier facial and ex post challenges had failed). The court heard evidence that the residency restriction severely restricted affected parolees’ ability to find housing; greatly increased the incidence of homelessness among them; and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling, and other rehabilitative social services. Plaintiffs presented further proof that the restriction hampered the efforts of parole authorities and law enforcement officials to monitor, supervise, and

rehabilitate parolees, thereby endangering public safety and defeating the stated goals of the legislation. The court found that the statutes infringed parolees' right to travel, establish a home, and choose with whom they live. Using heightened scrutiny, the court found that the statutes were not narrowly drawn or specifically tailored to the individual.

A unanimous panel of the court of appeal affirmed the trial court's decision.

### ***Opinion***

After a detailed recitation of the evidence presented to the trial court and its factual and legal findings, the supreme court addressed the proper standard of review for the plaintiffs' claims. CDCR argued that any liberty interest that parolees possess is necessarily curtailed by their parole status, and therefore, the restrictions warranted rational basis review. Plaintiffs argued for heightened scrutiny, maintaining that despite their status, parolees maintain certain liberty interests such as those found by the superior court. SCOCA demurred on the appropriate standard of review, but held that even under rational basis it was "persuaded that blanket enforcement of the mandatory residency restrictions of Jessica's Law cannot survive" as applied to parolees in San Diego County.

Although the plaintiffs had argued that the statutes infringed a number of constitutional rights—including the rights to establish a home, intrastate travel, and privacy—the supreme court's decision was based on only one: the "basic, albeit limited, constitutional right" of parolees to be free of unreasonable, arbitrary, and oppressive official action that bears "no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators."

The court based its decision on the evidence that not only did Proposition 83 effectively render hundreds of parolees homeless in San Diego County, but also that such a result hampered efforts to "monitor, supervise and rehabilitate" the parolees. It found that such result is contrary not only to the legislative intent behind the parole laws (working toward rehabilitation and reintegration), but also "thwarting the legitimate governmental objective behind the registration statute to which the residency restrictions attach: that of protecting the public from sex offenders."

The court maintained that CDCR retained the statutory authority to impose special restrictions on registered sex offenders in the form of discretionary parole conditions, including residency restrictions more or less restrictive than those found in Jessica's Law, as long as they are based on and supported by the particularized circumstances of each individual parolee.

### ***Importance***

Although this decision declares Jessica's Law unconstitutional only as it pertains to parolees in San Diego County, one can see the wide-ranging implications of the decision resonating throughout the state. The effects in urban areas are apparent: areas with high population density (and a large number of schools and parks) will be less likely to be offer realistic housing opportunities to parolees. In San Diego, the court found that the statutes effectively barred parolees' access to approximately ninety-seven percent of the available housing, and that the small percentage of remaining compliant housing was not necessarily available to paroled sex offenders due to a variety of factors, including low vacancy rates, high prices, and the unwillingness of some landlords to rent to them. One can imagine that a San Francisco-based case will not be far behind this decision.

Plaintiffs might also be able to make a persuasive case in rural areas. Plaintiffs who can prove that a county has a low rental vacancy rate for apartments in parolees' income range, coupled with many landlords' unwillingness to rent to parolees with sex offense criminal histories, might be able to make a case regardless of population density. In San Diego, the relevant fact was that "significantly less than three percent of the county's multifamily residences are realistically available to registered sex offender parolees in the county." It remains to be seen what percentage would be required for other plaintiffs to meet this bar in future cases.

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After graduating from the University of Michigan Law School, she clerked for Judge Boyce F. Martin, Jr. on the Sixth Circuit Court of Appeals in Louisville, KY. Before coming to Berkeley, Anne's practice included criminal appellate work, habeas corpus, and constitutional law. She has worked as a Staff Attorney at the Habeas Corpus Resource Center in San Francisco representing clients on California's death row, represented criminal defendants on appeal through the First and Sixth District Appellate Projects, and worked as a Staff Attorney at the Ninth Circuit Court of Appeals.



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