MINNPOST

The legal fight over Minnesota's sex offender program could have ramifications throughout the country

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A battle started by a handful of sex offenders in Minnesota has mounted into a constitutional debate that could set a new precedent for civil commitment programs across the United States.

The U.S. Supreme Court could decide early next week if it plans to dive in and hear a case arguing that the Minnesota Sex Offender Program (MSOP) is unconstitutional. Whether or not they decide to take on the case, the justices' decision will have ramifications for the 19 states that have similar programs, some of which are dealing with the same legal questions as Minnesota.

This moment has been in making for at least two years, when federal Judge Donovan Frank first decided Minnesota's program was unconstitutional. Frank ruled that Minnesota's law had set up a system that made it easy to lock up offenders after they served their prison sentences — but one that also made it almost impossible for offenders to ever get out. The 8th Circuit Court of Appeals overturned that ruling in January, which meant the main option left for the plaintiffs — a group of offenders in the program — was to appeal the case to the U.S. Supreme Court.

In previous rulings, the U.S. Supreme Court has upheld the existence of civil commitment laws as long as they were therapeutic, not punitive. But Minnesota's program is uniquely positioned to be a test case: The state's more than 20-year-old sex offender laws have committed the most offenders to treatment per capita in the country and released the fewest number of offenders back into society. There are currently 724 offenders in the program, but only one person has been released unconditionally in the entire history of the program.

On Thursday, the Supreme Court issued an order of cases it plans to take up that did not include MSOP, but official word could come Monday on whether their petition was granted or denied, attorneys say.

"I think the [Minnesota] case really does tee up the question in a uniquely clear way," said Eric Janus, a professor at the Mitchell Hamline College of Law and an expert on sex offender laws. "If we don't get a clear ruling from the Supreme Court, then it could be a long while before another ruling, if ever, and that means that the status quo will continue. Some of these programs will grow."

A ‘climate of despair’

MSOP opened its campus in Moose Lake in the mid-1990s as a high-security treatment program for sex offenders who were finishing up their prison sentence yet were still considered dangerous to the public. The concept was simple: Offenders were civilly committed to the program for treatment indefinitely, or until experts decided it was safe to release them.

Over the years, the number of commitments to MSOP steadily climbed, spiking dramatically after the 2003 rape and murder of North Dakota college student Dru Sjodin. She was abducted by a sex offender from Minnesota who had been released from prison but not committed to the program.

But even as more people were being sent to the program, no one ever got out. By 2011, hundreds of offenders had been committed to the program with zero successful releases. That year, attorney Dan Gustafson filed a class-action lawsuit on behalf of a group of offenders in the program, alleging MSOP had become a warehouse for sex offenders instead of a treatment program and violated the constitutional rights of those sent there. After years of legal wrangling and a six-week trial, Frank released his long-awaited decision in June of 2015: He ruled the program was violating the constitutional rights of offenders by creating an “emotional climate of despair among the facilities' residents.”

Instead of shutting down the program or immediately ordering the release of offenders, however, Frank called on the state to evaluate the treatment of every offender in the program over the following two years. He also ordered the state’s top politicians to quickly come up with some suitable “remedies” to the problem.

Lawmakers, who have a lot to risk and little to gain in releasing sex offenders, pushed back, and the state of Minnesota immediately appealed the decision to the U.S. 8th Circuit Court of Appeals. In January, a three-judge panel issued a ruling from a St. Louis, Missouri courtroom overturning Frank’s decision.

In their ruling, the 8th Circuit justices said the program serves a “legitimate interest” in protecting citizens from dangerous sexual predators. What’s more, the panel argued the plaintiffs “failed to demonstrate that any of the … arguable shortcomings in the MSOP were egregious, malicious, or sadistic as is necessary to meet the conscience-shocking standard.”

Constitutional questions across the country

The main legal option left was to appeal the ruling the U.S. Supreme Court, even if, statistically, it’s unlikely the court will take on the case. Every year justices receive thousands of petitions for writ of certiorari, a legal term for asking the court to review a lower court’s decision, and they only agree to hear about 100 of those cases every year.

Even so, numerous criminologists, law professors and civil liberty groups have filed supportive briefs urging the court to review the Minnesota case, in particular, because of MSOP’s standing as one of the most punitive programs in the nation.

“Sex-offender laws have bored a hole in the nation’s constitutional fabric. As state and federal governments expand that hole — threatening to swallow other rights and others’ rights — this Court should intervene,” notes an amicus brief from the Cato Institute and Reason Foundation.

“This case presents an important opportunity to repair the damage done by the unfettered civil commitment of sex offenders.”

In total, 19 other states have civil commitment programs to treat sex offenders, with varying degrees of success. Wisconsin’s civil commitment program, for example, has about half the number of committed offenders as Minnesota's and has successfully released more than 100 offenders back into the community.

But other states have run into situations like Minnesota, where the courts have argued the programs are too restrictive. Washington’s program went to court in the 1990s and was overseen for more than a decade by a special master to make it run more like a treatment program and less like a prison. In Texas, legislators and the governor were forced by the courts to make changes to their sex offender treatment program, which locked up hundreds of men and often sent them back to prison for minor rule violations.

If the U.S. Supreme Court finds the program unconstitutional, it would mean other state programs will be vulnerable to court challenges, Janus said. “While it’s true that Minnesota in some ways is a program that is more extreme than other states, it's also true that other states have some of the same shortcomings as the Minnesota program,” Janus said. “There are a number of other states where the number of people released is very low.”

If the court doesn’t take up the case, the 8th Circuit decision will stand.

“That decision really expressed the idea that federal courts were not going to get involved in supervising the sex offender commitment programs, even when they really depart very materially from the standards that a civil commitment program should entail,” Janus said.

“The Minnesota Sex Offender Program is constitutional, as the 8th Circuit has already ruled,” Department of Human Services Commissioner Emily Piper said in a statement. “The program is an essential tool for public safety in our state — providing treatment to sex offenders to reduce their risk to re-offend. I will continue to defend it against any challenges.”

A standstill in St. Paul

A ruling that the program is unconstitutional would also have consequences at the Capitol, where legislators have abandoned making any changes to MSOP until the court case has played out.

Republican Sen. Warren Limmer, who chairs the chamber's Judiciary and Public Safety Committee, has advocated for changes to the program in the past but said politicians have “fled the issue” since the appeal.

If the Supreme Court doesn’t take on the case, “then I would suspect that the Legislature in Minnesota would consider it business as usual and no real reform will advance,” he said. “If it’s considered unconstitutional, we have an obligation to work on it. It is kind of a hot potato issue. Whatever happens, politicians think that they’ll be blamed for it, so if you have a court forcing them to do it, that’s a little bit of a reason they could justify.”

Even without legislative action, some things did start to change at MSOP while the court case was ongoing. Before the lawsuit was filed, only one person had been provisionally discharged and sent back to the program for a technical violation. But a year after the lawsuit was filed, the state successfully released convicted rapist Clarence Opheim into a halfway house. Since then, seven other clients were released and are currently living in the community under close supervision.

One offender, Eric Terhaar, became the first person ever released unconditionally from the program, though Terhaar only gained his freedom after the state appealed his release. Seven other offenders have been granted provisional discharge and are awaiting placement in a community, but it's grown difficult with so many cities and counties placing residency restrictions on sex offenders — another battle that could wind up in court instead of the Legislature.