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NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

*MJT*

JOHN DOE,

No.

Plaintiff,

**C 06 6968 JSW**

v.

ARNOLD SCHWARZENEGGER,  
Governor of California,  
in his official capacity,

~~Proposed~~ ORDER

BILL LOCKYER,  
Attorney General of California,  
in his official capacity,

**GRANTING TEMPORARY  
RESTRAINING ORDER ORDER  
TO SHOW CAUSE WHY RELIEF  
SHOULD NOT BE GRANTED**

TOM ORLOFF,  
District Attorney of Alameda County,  
in his official capacity,

EDWARD S. BERBERIAN, JR.,  
District Attorney of Marin County,  
in his official capacity,

STEPHAN R. PASSALACQUA,  
District Attorney of Sonoma County,  
in his official capacity,

KAMALA D. HARRIS  
District Attorney of San Francisco County,  
in her official capacity,

Defendants.

1 On November 7, 2006, California voters enacted by ballot measure Proposition 83, the  
2 Sexual Predator Punishment and Control Act: Jessica's Law (hereafter "SPPCA"), amending  
3 portions of California's Penal Code. Plaintiff JOHN DOE immediately filed an action seeking  
4 to restrain Defendants from enforcing Cal. Penal Code § 3003.5(b) and (c), as amended by the  
5 SPPCA. These provisions prohibit any person required to register as a sex offender, pursuant to  
6 Cal. Penal Code § 290, including Plaintiff, from living within 2,000 feet of a school or park  
7 where children regularly gather. Plaintiff contends that Cal. Penal Code § 3003.5, as amended by  
8 the SPPCA, violates his constitutional rights under the Ex Post Facto and Due Process Clauses of  
9 the United States Constitution.

10 After careful consideration, Plaintiff's motion for a temporary restraining order is

11 **GRANTED.**

12 Plaintiff has demonstrated that he has a substantial likelihood of success on the merits of  
13 his claims. In particular, he has a substantial likelihood of establishing that (new) Cal. Penal  
14 Code § 3003.5(b) and (c), as amended by the SPPCA, is punitive by design and in effect. As a  
15 result, he has a substantial likelihood of establishing that enforcement of these provisions would  
16 violate the Ex Post Facto Clause of the United States Constitution. In addition, Plaintiff has a  
17 substantial likelihood of establishing that (new) Cal. Penal Code § 3003.5(b) and (c) deprive him  
18 of constitutionally protected liberty and property rights without due process of law, in violation  
19 of the Fourteenth Amendment to the United States Constitution.

20 If forced to comply with (new) Cal. Penal Code § 3003.5(b) and (c) during the pendency  
21 of this litigation Plaintiff will be forced to move from his home and will therefore be irreparably  
22 harmed.

23 Furthermore, because evidence indicates that Plaintiff has been a law-abiding and  
24 productive member of his community in the years since his conviction, the public interest in  
25 immediate enforcement of potentially unconstitutional provisions of the SPPCA is outweighed  
26 by the substantial irreparable harm Plaintiff will suffer if he is forced to comply with Cal. Penal  
27


1 Code § 3003.5(b) and (c) during the pendency of this litigation.

2 Therefore, for the foregoing reasons, it is **ORDERED** that Defendants are temporarily  
3 restrained from enforcing Cal. Penal Code § 3003.5(b) and (c), as amended by the SPPCA, until  
4 November 27, 2006, or further notice from this Court.

5 Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 65-1, this Court will conduct a hearing  
6 considering Plaintiff's Motion for a Preliminary Injunction at 11 AM ~~PM~~ on  
7 November 27, 2006. Defendants may file an opposition to Plaintiff's motion on or  
8 before November 15, 2006. Plaintiff may file a response to Defendants' opposition  
9 on or before November 20, 2006.

10 Furthermore, pursuant to Local Rule 65-1, it is **ORDERED** that Plaintiff shall serve this  
11 Order and all supporting pleadings and papers on Defendants by  
12 November 8, 2006.

13  
14  
15 DATED: November 8, 2006

  
Honorable Judge Jeffrey S. White  
United States District Judge  
Northern District of California  
by Honorable Judge Susan Illston