

7th Circuit ruling will force registered sex offenders from homes

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By Larry . . . NARSOL is disappointed to report that the United States Court of Appeals for the Seventh Circuit issued a decision affirming a lower court's decision that will permit the Chicago Police to retroactively evict registered citizens from their homes to comply with the state's residency restrictions. In *Vasquez v. Foxx*, 17-1061 (7th Cir. 2018) two registered citizens will now be required to comply with the state's residency restriction because Illinois law provides that "a child sex offender may not knowingly live within 500 feet of a school, playground, or child-care center." See 720 ILCS 5/11-9.3(b)(5) (b)(10).

The issue underlying the challenge was a 2008 amendment that prohibits child sex offenders from knowingly residing within 500 feet of a "day care home" or "group day care home." (Act of Aug. 14, 2008, Pub. Act No. 95-821, 2008 Ill. Laws 1383) The lawsuit alleged that: (1) the 2008 amendment to the

residency statute imposes retroactive punishment in violation of the Ex Post Facto Clause; (2) application of the amended statute to them amounted to an unconstitutional taking of their property in violation of the Fifth Amendment's Takings Clause; and (3) they asserted two due-process claims, one procedural and one substantive: they complained that the statute is enforced without a hearing for an individualized risk assessment and is not rationally related to a legitimate state interest.

The Seventh Circuit affirmed the trial court's rejection of the lawsuit on the pleadings. The amended statute is neither impermissibly retroactive nor punitive. The Takings Clause claim was unexhausted in the state courts and the amendment was adopted before they acquired their homes, so it did not alter their property-rights expectations. The procedural found that the due process claim fails because there is no right to a hearing to establish a fact irrelevant to the statute. And the Appeals Court concluded by finding that the law "easily satisfies rational-basis review."

Keep in mind that the "rational basis test" does not require that the government prove that the law achieves the stated purpose. Rather, to pass rational basis review, the challenged law must be rationally related to a legitimate government interest. Rational basis is the most lenient form of judicial review, as both [strict scrutiny](#) and [intermediate scrutiny](#) are considered more stringent. Rational basis review is generally used in cases where no [fundamental rights](#) or [suspect classifications](#) are at issue. The phrase "rational basis" was first described in [U.S. v. Carolene Products](#) (1938). In order for a statute or ordinance to pass [rational basis](#) review: (1) the statute or ordinance must have a legitimate state interest; and (2) there must be a rational connection between the statute's/ordinance's means and goals.

The attorneys have not yet decided if they will seek review of the Seventh Circuit's decision by the United States Supreme

Court.