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SUPREME COURT UPHOLDS KANSAS SEXUAL PREDATOR LAW *(Kansas v. Crane, No. 00-957)*

The U.S. Supreme Court this week upheld the power of States to impose preventive detention sentences on dangerous sex offenders after they complete their original prison sentences. Preventative detention is designed to prevent recidivist sex offenders from committing additional offenses.

The decision is a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Kansas v. Crane*, in support of a Kansas preventive detention law. The Court agreed with WLF's argument that society has a compelling interest in locking up individuals with personality disorders whose history of committing violent sex crimes makes it highly likely they will commit additional crimes if they are permitted to roam the streets.

States are free, of course, to impose prison sentences on those who commit sex crimes. The issue of preventive detention arises after those sentences have been served. Experience has shown that if sex offenders are released at the conclusion of their sentences, they are likely to repeat their offenses soon after release. A number of states have adopted legislation permitting public safety officials to detain convicted sex criminals, and to provide them with medical treatment, following completion of their prison sentences. The question arises whether such "preventive detention" violates constitutionally-protected rights to liberty.

The case before the Supreme Court involved an attempt by Kansas to impose preventive detention on a man who has been convicted of sex crimes, including an incident in which he kidnaped and attempted to rape a video store employee. The man, Michael Crane, served four years in jail for the video store incident. Following a lengthy hearing, a jury found "beyond a reasonable doubt" that Crane was highly likely to commit other sex crimes if released from custody; it thus determined that Crane should be detained and provided with medical treatment.

The Kansas Supreme Court overturned the preventive detention sentence. It held that such detention is unconstitutional unless the State can show not only that the defendant suffers from a mental abnormality that makes it likely that he will commit new crimes, but also that the defendant is totally incapable of controlling his own behavior. In the absence of evidence that Mr. Crane was totally incapable of controlling his own behavior, the Kansas Supreme Court overturned the detention. The U.S. Supreme Court vacated the Kansas court's decision; the U.S. Supreme Court held that while the Due Process Clause prohibits preventive detention in the absence of *some* evidence that the defendant is unable to control his own behavior, it does not require the State to show that the defendant has *no* control over his behavior.

In its brief, WLF had argued that when evidence that an individual is likely to commit additional crimes is overwhelming, the Due Process Clause of the 14th Amendment does not prevent society from taking all necessary steps to prevent such crime. WLF stated that it does not support giving government the right to round up law-abiding individuals based solely on a fear that they may break the law at some future time. However, WLF argued, the Kansas law passes constitutional muster because it is carefully targeted: it only applies to a small segment of society that has demonstrated through past criminal conduct that it cannot or will not conform its conduct to societal norms.

WLF noted that the Supreme Court in 1997 rejected a prior challenge to the Kansas preventive detention law. The Court rejected that challenge in a case known as *Kansas v. Hendricks*. Although the Court in *Crane* did not interpret its *Hendricks* decision as broadly as WLF had sought, the Court agreed with WLF that the Kansas Supreme Court had misinterpreted *Hendricks* when it held that preventive detention is limited to those who have *no* control over their behavior.

WLF filed its brief on behalf of itself, U.S. Representatives Todd Tiahrt and Jim Ryun of Kansas, the Allied Educational Foundation, the Stephanie Roper Foundation, and the Maryland Coalition Against Crime.

The Washington Legal Foundation is a pro-free enterprise law and policy center with supporters in all 50 states, including many in Kansas. WLF devotes a substantial portion of its resources working to achieve criminal justice reform and to increase the rights of crime victims.

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