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High Court Takes Case on Restraining Orders

By Hope Yen, The Associated Press

Washington, D.C. – The Supreme Court agreed Monday to consider whether local governments can be sued for failing to enforce restraining orders – a case that could spur thousands of suits.

At issue is whether the Constitution's 14th Amendment obligates police to protect residents from violence after a local government issues a restraining order and promises to enforce it.

The plaintiff is Jessica Gonzales of Castle Rock, Colo. She had an order to keep her estranged husband away from her daughters, ages 10, 9 and 7. She contends that police ignored phone calls for help one night in 1999, when Simon Gonzales took the daughters from the front yard of her home.

Eight hours later, Simon Gonzales showed up at the Castle Rock police station and started a gunfight. He was killed; the girls were found dead in his pickup.

Jessica Gonzales sued the city for \$30 million, alleging a due process violation because Castle Rock had failed to enforce the restraining order. The 10th U.S. Circuit Court of Appeals agreed, saying Castle Rock had a duty under state law to respond to her calls but instead had routinely ignored her.

That court said, "According to Ms. Gonzales' allegations, the police never engaged in a bona fide consideration of whether there was probable cause to enforce the restraining order. Their response, in other words, was a sham."

Castle Rock officials disagree. They argue in their appeal that the Supreme Court has never allowed suits against public officials when negligence permits a child to be harmed by a parent. The Constitution protects individuals only from abuses by the government, not third parties, they say.

Nationwide, about 20 states have laws providing for the enforcement of restraining orders. That makes those states vulnerable to suits if Gonzales prevails, says the National League of Cities, which has filed a friend-of-the-court brief in the case.

“The real danger here is that getting a court order somehow imposes upon law enforcement, whether it’s a sheriff’s office in a rural county or a police officer in a major city, an absolute duty to protect people from each other,” said Brad Bailey, a lawyer representing the league.

“The only way to do that efficiently is to provide someone with a bodyguard at public expense – and that’s impossible to do.”

As a result, police may be unduly distracted from their day-to-day jobs if they are constantly forced to second-guess their decisions for fear of a suit, the group argues.

At first, a federal district judge dismissed the suit against Castle Rock. But the Denver-based 10th Circuit sided with Gonzales on a 6-5 vote.

The mother’s lawyer, Brian Reichel of Broomfield, Colo., said police had ignored his client’s calls for help over a five-hour span and could have prevented the deaths if they enforced the restraining order.

Legal relief for police neglect is often available under state laws. But Colorado bars the negligence claim, leaving Gonzales without recourse to sue if the Supreme Court reverses the 10th Circuit’s decision.

If suits like Gonzales’ are allowed to proceed, officers may still claim that they made reasonable efforts to prevent harm.

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