

San Francisco Allows for Appeals to State Prostitution Law



Summary: *Advocates of prostitution will be allowed another chance to argue why the current state law banning prostitution should be thrown out.*

California's current law banning prostitution is 145 years old, something that advocates of legalized prostitution argue needs to be addressed. A federal appeals court in San Francisco is going to give them a chance to show why prostitution should be legalized.

Three former prostitutes, a would-be client, and the Erotic Service Providers Legal, Educational, and Research Project brought the case before the court. Their argument focuses on the side of prostitution where adults are engaging in consensual sex. They contend that the current law violates their right as adults to have consensual sex, related to the U.S. Supreme Court ruling in 2003 that overturned the criminal laws against gay sexual activity.

When the group brought their case last year, U.S. District Judge Jeffrey White of Oakland rejected their argument. He ruled that the supreme court ruling was for intimate personal relationships and not referring to commercial sex. He believed the state made a valid argument to support the current law so violence against women, human trafficking, and sexually transmitted diseases are continually discouraged.

The Ninth U.S. Circuit Court Appeals in San Francisco through differently. The three-judge panel thoughts the law may need some revisions. They noted the less restrictive standards of today's society for sex between consenting adults. Judge Carlos Bea said, "Why should it be illegal to sell something that it's legal to give away?"

Judge Consuelo Callahan added that prostitution and gay sex were historically "subject to moral disapproval" but the Supreme Court ruling changes that. The 2003 case was about "individual rights" so, as Callahan noted, why would prostitution be treated differently?

Deputy Attorney General Sharon O'Grady argued that the difference is "the commercial aspect ... the commodification of sex. The state is not telling anyone who they can sleep with." The state only wants to prevent a harmful category of business transactions.

The California law was enacted in 1872 to define "every common prostitute" as a "vagrant" subject to six months behind bars and a \$500 fine. In 1961, California updated the law to a misdemeanor charge of disorderly conduct and a \$1,000 fine with six months in jail for those prostituting or soliciting prostitution.

Judge Bea feels that the case should go back to White for another review and may need a full trial. The issue came up in 1988 but the Ninth Circuit did not feel the law needed to be changed because the relationship between a client and paid escort is not an "intimate association."

Bea did question whether the Supreme Court's ruling applied to "totally anonymous sex" for hire. The third judge on the panel, Jane Restani of the U.S. Court of International Trade, pointed out that Justice Anthony Kennedy specifically said the 2003 ruling did not apply to prostitution.

Do you think prostitution should be legalized? Or is the industry too difficult to monitor to prevent human trafficking and violence against women? Share your thoughts in the comments below.

To learn more about prostitution in California, read these articles:

- [New California Law Decriminalizes Underage Prostitution](#)
- [Don't Try Paying Prostitute with McDonalds Meal](#)
- [New Case Seeks to Legalize Prostitution in California](#)

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