

Sterne Kessler Helps Score *Pro Bono* Win in Case Challenging Constitutionality of Orange County “Spit and Acquit” DNA Collection Program

Sterne, Kessler, Goldstein & Fox recently helped secure a win in an important appeal challenging the constitutionality of Orange County, CA’s so-called “Spit and Acquit” DNA collection program. Under the program, Orange County prosecutors dismiss or reduce misdemeanor charges against individuals in exchange for the individuals’ agreement to have their DNA collected and permanently imported into an unregulated database maintained by prosecutors for investigative purposes. As a result of collecting DNA from individuals accused of low-level misdemeanors, Orange County’s database is massive; by one estimate, one in every sixteen Orange County residents now have their DNA in the database. Although Orange County’s database is unprecedented in scope, other counties and law enforcement agencies across the country have demonstrated a willingness to similarly broaden the scope of their DNA databases.

Last fall, a Sterne Kessler team filed an amicus brief in the California Court of Appeal on behalf of various law professors in a case involving a taxpayer challenge to the constitutionality of the program. The appellant taxpayers challenged the program on various privacy-related constitutional grounds. Yesterday, the court ruled in the taxpayers’ favor, holding that the trial court erred in dismissing certain of the constitutional claims, and remanding for the case to proceed to discovery. The ruling could serve as the first step in curtailing counties and law enforcement agencies from using under-regulated, non-statutory programs to unconstitutionally collect DNA for investigative purposes.

The Sterne Kessler *pro bono* team representing the law professor amici was Director Will Milliken, Counsel Richard Crudo and Christina Dashe, and former Associate Junru Yu. Crudo presented oral argument on behalf of the law professor amici.

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