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CALIFORNIA / State loses appeal of false-complaint law / U.S. top court agrees that statute violates freedom of speech

May 16, 2006 | By Bob Egelko, Chronicle Staff Writer

The U.S. Supreme Court denied California's appeal Monday of a ruling that declared unconstitutional a state law allowing criminal prosecution of someone who knowingly files a false complaint against a law enforcement officer.

The justices, without comment, left intact a decision that the Ninth U.S. Circuit Court of Appeals in San Francisco issued in November saying the law violated freedom of speech. The appeals court said the law discriminates on the basis of a speaker's viewpoint because those who falsely criticize the police can be prosecuted, but those who falsely support the police are immune.

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The 1995 law, backed by police groups, is the only one on the books in California that makes it a crime to file a false complaint against a public official. Violations are punishable by up to six months in jail. The law also requires each police complaint form to include a notice that fabricated complaints can lead to prosecution.

The state Supreme Court unanimously upheld the law in a separate case in 2002, saying it was a valid safeguard against frivolous accusations and did not violate free speech.

That ruling allowed prosecutors to continue to file charges. But the federal appeals court ruling allows defendants in any such prosecution to go to federal court and get the charges dismissed.

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Some district attorneys and law enforcement agencies are taking a rational approach not to prosecute, said Joshua Rosencranz, the lawyer for the man who challenged the law in federal court.

Rosencranz said the message of the federal ruling was that "the state of California has to be evenhanded in how it punishes speech."

Lawyers for the state, and for police groups that also asked the Supreme Court to review the case, were unavailable for comment.

Rosencranz's client, Darren Chaker, was arrested in 1996 in the San Diego suburb of El Cajon on a theft charge, and accused the arresting officer of excessive force. Though the theft charge was dropped, he was convicted in 1999 of making up the police complaint and was sentenced to two days in jail -- a conviction that the federal courts ultimately erased.

The Supreme Court case is *Crogan vs. Chaker*, 05-1118.

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