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Thursday, 07 February 2008

Bill takes issue with gang loitering



Joe Pyrah -DAILY HERALD

Despite voicing serious concerns, and fully expecting lawsuits, a majority of senators passed legislation that has implications for the constitutional right to assemble.

Senate Bill 75 would allow law enforcement to break up congregating gang members. It would then make it a misdemeanor for the gang members to return within eight hours.

"If this law had been in effect in 1776, would we still be singing as our national anthem 'God Save the Queen?' " said Sen. Howard Stephenson, R-Draper, who voted against the bill. "Those rebels were considered a gang, and that's my concern. This freedom of assembly seems to be challenged."

Sen. Jon Greiner, R-Ogden, is sponsoring the bill and is also Ogden's police chief.

"You know what I'm talking about," he said. "You've been to the malls. You've been to the parks. You've seen the intimidation practices of this group."

He gave an example of an incident last fall in which loitering laws could not be used to disperse gang members on a street corner in his city. A 15-year-old ended up shooting and killing another gang member, he said.

That argument was enough for Sen. John Valentine, R-Orem, who said he grew up in Los Angeles and spent time in nearby Compton.

"This one is a tough call for me," he said. "I'm going to take a chance on this bill and vote 'aye.' "

He said later that he expects lawsuits and told Greiner the same.

"We call that the Brian Barnard full employment act," said Barnard, a prominent First Amendment attorney.

Loitering laws are already tenuous, he said, and a law like the one proposed in Greiner's bill goes right over the edge.

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"This formalizes giving police officers the power to write laws," he said. "It's indicative of the kinds of powers police officers would like to have."

Take for example a gang on the corner talking to LDS missionaries, Barnard said. No officer would break that up. Take out the white shirts and ties, and an officer would more likely break it up even if the group was simply talking.

Those were the same sentiments expressed by objectors on the Senate floor Wednesday.

Sen. Greg Bell, R-Fruit Heights, said crimes are supposed to be about punishing an action, not about punishing who you are or how you think.

"Do we simply say because of your status you can't exercise rights that are otherwise available to other people?" he asked. "I don't know that I'm ready to go there yet."

The bill passed in the Senate's closest vote of the session so far, 16-10. It moves on to the House for debate.

Another related gang bill, Senate Bill 65, was delayed because lawmakers are waiting for information on its fiscal impact. That bill would make it a misdemeanor to solicit a minor to join a gang or prohibit a minor from leaving a gang.

SB 75

Sponsored by: Sen. Jon Greiner, R-Ogden

Prohibiting Gang Activity -- This bill would amend the Criminal Code regarding loitering by groups that include gang members.

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#350758

Just another "if you don't look Mormon we can kick you out or arrest you" law, here in the Mississippi of the west!

On June 10, 1999 in a 6-to-3 decision, the U.S. Supreme Court struck down a Chicago anti-loitering law that allowed police to arrest persons who look like gang members and loiter on city streets (Chicago v. Morales, No. 97-1121 (1999))

<http://supct.law.cornell.edu/supct/html/97-1121.ZS.html>

On February 16, 2000, the City of Chicago passed a revised version of the 1992 gang loitering ordinance. The revisions aimed to eliminate the unconstitutional elements found in the original ordinance. Therefore, the new gang loitering ordinance changed its definition of loitering to: â€œ remaining in any one place under circumstances that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable a criminal street gang to establish control over identifiable areas, to intimidate others from entering these areas, or to conceal illegal

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