

CITY OF CHICAGO v. JESUS MORALES, et al.

97-1121

Argued December 9, 1998

Decided June 10, 1999

In 1992, after experiencing a sharp increase in gang-related violence, the Chicago City Council enacted the Gang Congregation Ordinance. The ordinance prohibited "criminal street gang members" from "loitering" with one another or with other persons in any public place. Before adopting the ordinance, the city council conducted hearings to explore the problems created by the city's street gangs and the consequences of public loitering by gang members. The council found that a continuing increase in criminal street gang activity was largely responsible for the city's rising murder rate, as well as for an escalation of violent and drug related crimes.

Four steps were necessary before one could be charged with the offense. First, a police officer had to reasonably believe that at least one of the two or more persons present in a "public place" was a "criminal street gang member." Second, the persons had to be "loitering," which the ordinance defined as "remain[ing] in any one place with no apparent purpose." Third, the officer had to then order "all" of the persons to disperse and remove themselves "from the area." Fourth, a person had to disobey the officer's order. If any person, whether a gang member or not, disobeyed the officer's order, that person was charged with violating the ordinance. Violation of the ordinance was a criminal offense punishable by a fine of up to \$500, imprisonment for not more than six months, and a requirement to perform up to 120 hours of community service.

Two months after the ordinance was adopted, the Chicago Police Department established guidelines to govern its enforcement that gave limitations on the enforcement discretion of police officers "to ensure that the anti-gang loitering ordinance is not enforced in an arbitrary or discriminatory way."

During the three years of its enforcement, the police arrested 42,967 people for violating the ordinance. Of those arrested, only about seventy people were prosecuted and six found guilty. Two trial judges upheld the constitutionality of the ordinance, but eleven others ruled that it was invalid.

Jesus Morales was a Hispanic teenager who was arrested under the anti-gang congregation law. He was approached by police while standing on a street corner talking with a group of teenagers in a Caucasian neighborhood. The police officer approached the group because he didn't recognize any of them and they were wearing blue and black clothing, allegedly gang colors. None of the group admitted to being gang members.

The American Civil Liberties Union appealed Morales' case (along with several others who had been charged with violating the ordinance). The Illinois Appellate Court reversed the convictions, stating that the ordinance impaired the freedom of assembly of non-gang members in violation of the First Amendment, that it was unconstitutionally vague, that it improperly criminalized status rather than conduct and that it jeopardized rights guaranteed under the Fourth Amendment. The Illinois Supreme Court unanimously agreed with the appellate court, holding "that the gang loitering

ordinance violates due process of law in that it is impermissibly vague on its face and an arbitrary restriction on personal liberties." Certiorari was granted by the United States Supreme Court.

- ISSUE: Does a city ordinance which prohibits gang members from "loitering" with one another or any other person violate the Due Process Clause of the Fourteenth Amendment? Does it violate First Amendment rights of Free Speech or Assembly?

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Decision

Justice Stevens wrote for the majority in the six-to-three ruling, which struck down the anti-gang congregation law. The Supreme Court said the law gave police too much discretion and did not give the public enough notice of what was illegal. First, Stevens addressed First Amendment questions of Free Speech and Assembly. He wrote:

... We agree with the city's submission that the law does not have a sufficiently substantial impact on conduct protected by the First Amendment to render it unconstitutional. The ordinance does not prohibit speech. Because the term "loiter" is defined as remaining in one place "with no apparent purpose," it is also clear that it does not prohibit any form of conduct that is apparently intended to convey a message. By its terms, the ordinance is inapplicable to assemblies that are designed to demonstrate a group's support of, or opposition to, a particular point of view....

Stevens continued:

On the other hand ... the freedom to loiter for innocent purposes is part of the "liberty" protected by the Due Process Clause of the Fourteenth Amendment. We have expressly identified this "right to remove from one place to another according to inclination" as "an attribute of personal liberty" protected by the Constitution. Indeed, it is apparent that an individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is "a part of our heritage," or the right to move "to whatsoever place one's own inclination may direct" identified in Blackstone's Commentaries.

Stevens then addressed the "vagueness" of the ordinance:

There is no need, however, to decide whether the impact of the Chicago ordinance on constitutionally protected liberty alone would suffice to support a facial challenge under the overbreadth doctrine.... For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not an ordinance that "simply regulates business behavior and contains a scienter requirement. It is a criminal law that ... infringes on constitutionally protected rights....

...

Since the city cannot conceivably have meant to criminalize each instance a citizen stands in public with a gang member, the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of "loitering," but rather about what loitering is covered by the ordinance and what is not....

...

...[T]he terms of the dispersal order compound the inadequacy of the notice afforded

by the ordinance. It provides that the officer "shall order all persons to disperse and remove themselves from the area." This vague phrasing raises a host of questions. After such an order issues, how long must the loiterers remain apart? How far must they move? If each loiterer walks around the block and they meet again at the same location, are they subject to arrest or merely to being ordered to disperse again? As we do here, we have found vagueness in a criminal statute exacerbated by the use of the standards of "neighborhood" and "locality."...

Under the law, Justice Stevens said, "It matters not whether the reason that a gang member and his father, for example, might loiter near Wrigley Field is to rob an unsuspecting fan or just to get a glimpse of Sammy Sosa leaving the ballpark...."

Justice O'Connor was joined by Justice Breyer in her concurring opinion, which appeared to give law enforcement officials some hope that a more narrowly drawn law might be upheld. She wrote:

...In my view, the gang loitering ordinance could have been construed more narrowly. The term "loiter" might possibly be construed in a more limited fashion to mean "to remain in any one place with no apparent purpose other than to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities." Such a definition would be consistent with the Chicago City Council's findings and would avoid the vagueness problems of the ordinance as construed by the Illinois Supreme Court. As noted above, so would limitations that restricted the ordinance's criminal penalties to gang members or that more carefully delineated the circumstances in which those penalties would apply to nongang members.

Justices Kennedy and Breyer also wrote concurring opinions.

Justice Scalia took the unusual action of reading his dissent from the bench. He criticized the Court for attacking a "perfectly reasonable measure" that was effective in breaking the domination of Chicago neighborhoods by gangs. Scalia wrote:

The citizens of Chicago were once free to drive about the city at whatever speed they wished. At some point Chicagoans ... decided this would not do, and imposed prophylactic speed limits designed to assure safe operations by the average (or perhaps even subaverage) driver with the average ... vehicle. This infringed upon the "freedom" of all citizens, but was not unconstitutional.

...
Until the ordinance that is before us today was adopted, the citizens of Chicago were free to stand about in public places with no apparent purpose--to engage, that is, in conduct that appeared to be loitering. In recent years, however, the city has been afflicted with criminal street gangs. As reflected in the record before us, these gangs congregated in public places to deal in drugs, and to terrorize the neighborhoods by