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Injunction sought to halt lewd law

Los Angeles attorneys Al Gordon and Tom Coleman are trying a new tactic to get the California Court of Appeals to hear a case challenging the constitutionality of the state's lewd conduct statute.

In the past, attempts to reach the Court of Appeals for a ruling on the vague nature of Section 647(a) of the penal code have been stymied by the Superior Courts.

This time, Gordon and Coleman have filed in Superior Court a taxpayers' suit seeking an injunction to stop the Los Angeles police chief and sheriff from enforcing the lewd conduct statute used chiefly against gay people.

Since this action is a civil case, a refusal by the Superior Court judge to issue an injunction automatically gives Gordon and Coleman the right to bring the case to the Court of Appeals, where the first real test of the statute's constitutionality has to be made.

In previous challenges, the issue of the statute's validity was raised in individual criminal cases in Municipal Court, and on appeal to the Superior Court's own appellate division the law has been upheld. But from the Superior Court's appellate division on a criminal misdemeanor case, the only appeal left is directly to the U.S. Supreme Court.

Such a direct appeal to the highest court in the country is considered "unwise" by Gordon because it leaves out the State Court of Appeals and the California Supreme Court. And that could give the U.S.

Supreme Court reason to refuse to hear a test on the law's constitutionality.

Gordon and Coleman quote the following portion of Section 647(a) in the taxpayer's suit: "Every person who commits any of the following acts shall be guilty of disorderly conduct, a misdemeanor: (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view."

The two attorneys, named also as the aggrieved taxpayers, are claiming that the city and county of Los Angeles are spending public funds illegally by enforcing a statute they believe is unconstitutional.

Section 647(a) is vague and too broad, the attorneys charged. It fails to provide "objective standards for judging which conduct is prohibited and which conduct is not," thus encouraging discriminatory enforcement of the law and infringing on a person's First and 14th Amendment rights.

They also argue that the statute is unconstitutional "because it prohibits the solicitation of sexual acts which are going to occur in private," also violations of the same amendment rights.

Furthermore, the statute "exerts a chilling effect on speech because the use of vague words 'lewd and dissolute' fails to adequately distinguish between protected and unprotected speech . . ."