High Court, 5-4, Voids Ban On Loiterers Who 'Annoy'

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WASHINGTON, June 1—The Supreme Court ruled 5 to 4 today that cities cannot make it a crime for small groups of citizens to loiter in an "annoying" manner in public places.

The Court struck down a Cincinnati ordinance similar to laws that a number of cities have passed in recent years in efforts to control boisterous or disruptive sidewalk gatherings.

Cincinnati's law had been criticized by Negroes, who said the police had used it to harass them. They were supported in this by the 1968 report of the National Advisory Commission on Civil Disorders, which said that the series of racial disturbances there in 1967 could be attributed in part to resentment over discriminatory enforcement of the law.

Justice Potter Stewart, a former Vice Mayor of Cincinnati, wrote the majority opinion as the Supreme Court agreed that the law was open to discriminatory enforcement. Justice Stewart said the law was unconstitutionally vague because a violation "may entirely depend upon whether or not a policeman is annoyed."

This, he said, was an "invitation to discriminatory enforcement" because the gathering of certain individuals might be considered annoying "because their ideas, their life-style or their physical appearance is resented by the majority of their fellow citizens.

The ordinance was declared unconstitutional on two grounds. The first was that its vagueness denied citizens due

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process of law because they could not know in advance if their conduct was unlawful. The second was that it infringed on the First Amendment's guarantee of free assembly and association because the police might use it to break up gatherings of people whose ideas were considered annoying.

The law that was struck down declared it unlawful for three or more people to assemble except at a public meeting of citizens, on sidewalks, street corners, the mouths of alleys and parks "and there conduct themselves in a manner annoying to persons passing by."

Justice Stewart said that if cities wished to prevent people from blocking sidewalks, obstructing traffic, and otherwise disrupting communities, they must pass laws that specifically outlaw this conduct. His opinion was joined by Justices William J. Brennan Jr., John M. Harlan, William O. Douglas and Thurgood Marshall.

Distinction in Acts Seen

Justice Byron R. White wrote a dissent joined by Chief Justice Warren E. Burger and Justice Harry A. Blackmun. They contended that even though constitutionally protected conduct could be punished under the statute, the law should not be struck down on its face because any person of average intelligence should know that it also covers such punishable acts as assaults or blocking the street.

The law was challenged by Dennis Coates, a student who was arrested during an anti-war demonstration, and James Hastings, Wendell Saylor, Arnold Adams and Clifford Wyner labor pickets who allegedly blocked the path of a moving truck. Their court papers did not disclose exactly what they did to be arrested.

Justice Hugo L. Black said in a separate opinion that the case should be sent for further hearings to determine whether they had been arrested for constitutionally protected expression.

In another 5-to-4 ruling the Court declared that if a motorist erases a traffic accident judgment by going bankr
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