

Are these indecent exposure laws a fad or are they here to stay?

September 21 2007



"I always thought the fashion police were a myth, but they seem to be real," Richards says.

A growing number of cities have enacted laws that would make wearing saggy or low-slung pants indecent exposure. "It's an interesting question whether these laws would violate the First Amendment as currently understood," says Neil Richards, professor of law at Washington University in St. Louis. "Saggy pants laws form a hybrid case.

They are regulating in terms of indecent exposure but seem to be directed at the expression of identity through clothing." Richards is available to discuss the constitutional issues surrounding these laws. His current comments on the laws follow:

Does the intended purpose of these laws stand up to

First Amendment analysis?

"The harms that these laws seek to remedy are those of personal offense and outrage — something like 'I am offended by the dress of that young man over there,'" Richards says.

"Laws that try to protect hurt feelings or to protect people from being upset, particularly in public, tend to do very poorly when subjected to First Amendment analysis. Moreover, because saggy pants laws single out a particular fashion for regulation, I would think that they raise serious constitutional problems under the First Amendment. That said, given the murky government power to enact indecent exposure laws, I'd be hesitant to call all saggy pants laws categorically unconstitutional under current doctrine."

Is this what the government should be focusing on?

"Putting First Amendment doctrine to the side, I still think saggy pants laws would be a terrible idea," he says. "Our clothes can be a form of personal expression — they are one of the most important ways we project ourselves and our identities to the world. The government may decide to regulate the dress of children in school in pursuit of educational objectives generally, but outside that narrow context, it is up to children and their parents to decide how they should dress."

"Indecent fashion statements, like other forms of expression, are not the kinds of things that the government should be wasting its time, energy and scarce law enforcement resources on. I would imagine that the police probably have more pressing problems to deal with than young people showing too much thong."

Cultural questions:

"There's a significant racial component to this issue, as the fashions being scrutinized are inspired and associated with Black popular culture," Richards says. "This is an additional consideration of constitutional magnitude counseling a light regulatory hand here.

"I think that in the long run, we'll look back on this question with the same incredulity that we now regard the fuss over Elvis Presley's swiveling hips on Ed Sullivan or the long-haired men and short-haired women of the 1960s. I hope this fashion for these kinds of laws will soon go the way of New Wave hairdos and other regrettable fashion mistakes."

Source: WUSTL

Citation: Are these indecent exposure laws a fad or are they here to stay? (2007, September 21) retrieved 2 May 2024 from <https://phys.org/news/2007-09-indecent-exposure-laws-fad.html>

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