Case in Context: *Smith v. Goguen*

Facts of the Case

On January 30, 1970, two Massachusetts police officers witnessed Valerie Goguen wearing a small American flag patch on the rear of his jeans. The first officer encountered Goguen standing, talking, and laughing with a group of people on a public street. The group was not engaged in any demonstration or other protest associated with Goguen's apparel. No disruption of traffic or peace occurred. Some time later, the second officer observed Goguen in the same attire walking in the downtown business district of Leominster, Massachusetts. The police arrested Goguen and charged him with "treating the flag contemptuously" in violation of a state flag law.



Friend posts $1000 bail for flag-wearing youth

By Parker Donham Globe Staff

LEOMINSTER—Valerie Goguen, who was sentenced to a year in jail Monday for wearing an American flag on the seat of his pants, was free on bail yesterday.

The 19-year-old youth had been held in Worcester County Jail since Monday, unable to post the $1000 appeal bond set by Leominster District Court Judge Richard Comerford.

Leominster District Court

On February 23rd 1970, Goguen testified that he was using the flag to patch a hole in his jeans and "did not put it on to laugh at the American flag." Judge Comerford noted that Mr. Goguen's clothing showed "vile contempt for the symbol of the republic." Goguen replied, "If I knew there was a law against it, I wouldn't have done it".

The jury convicted Mr. Goguen for "treating the flag contemptuously." He was found guilty, made to pay a $1000 fine, and sentenced to one year in jail. The American Civil Liberties Union of Massachusetts felt the charge was "outrageous," and Mr. Goguen and his attorney appealed the decision to the Worcester Superior Court.

The Massachusetts Statute

"Whoever publicly burns or otherwise mutilates, tramples upon, defaces or treats contemptuously the flag of the United States or of Massachusetts, whether such flag is public or private property, or whoever displays such flag or any representation thereof upon which are words, figures, advertisements or designs."

Mass. Gen. Laws c. 264, § 5, cl. 1.

Worcester Superior Court

On April 14th and 15th, 1971, the jury trial in the Worcester Superior Court took place, challenging Judge Comerford's ruling. Goguen's attorney, Evan T. Lawson, argued a Motion to Dismiss the Complaint on the ground that the Massachusetts flag statute is unconstitutional under the First and Fourteenth Amendments. Lawson also argued that the statute violated the right to constitutional due process "in that it is overly broad, impermissibly vague, and incapable of fair and reasonable interpretation by public officials." Due process means government actors must follow certain procedures before they deprive a person of their life, liberty, or property.

In the end, the Motion to Dismiss was denied by Judge Garbose; however, he reduced Mr. Goguen's sentence to six months in the Massachusetts House of Corrections. After a week in jail, Mr. Goguen was released on bail by Massachusetts Justice Jacob Spiegel pending an appeal of the case to the Massachusetts Supreme Judicial Court.

Massachusetts Supreme Judicial Court

Appellant Valerie Goguen appealed to the Massachusetts Supreme Judicial Court, arguing two issues:

1. The Massachusetts flag code was overbroad regarding the First Amendment
2. The phrase "treats contemptuously" within said code was too vague by the standards of the due process clause in the Fourteenth Amendment.

The court granted petition, and both attorneys submitted briefs to the judges. The Supreme Judicial Court unanimoulsy affirmed the lower courts' decision on vagueness, but did not hold he correctness of overbreadth. Thus, Mr. Goguen's sentence was upheld.

"***His communication, if any, was so thoroughly inarticulate as to lack the slightest redeeming social importance...He was not prosecuted for being "intellectually . . . diverse" or for "speech" as in Street v. New York, or for a "vulgar allusion," as in Cohen v. California. Whatever the uncertainties in other circumstances, we see no vagueness in the statute as applied here.***"



Digital representation of Valerie Goguen's trousers

CREATED BY THE 2025 "SUPREME COURT AND MY HOMETOWN" STUDENTS

Jessica Baez, Mei-Elisabeth Berbine, Nathan DiPiano, Abrielle Huang, and Lola Keeney

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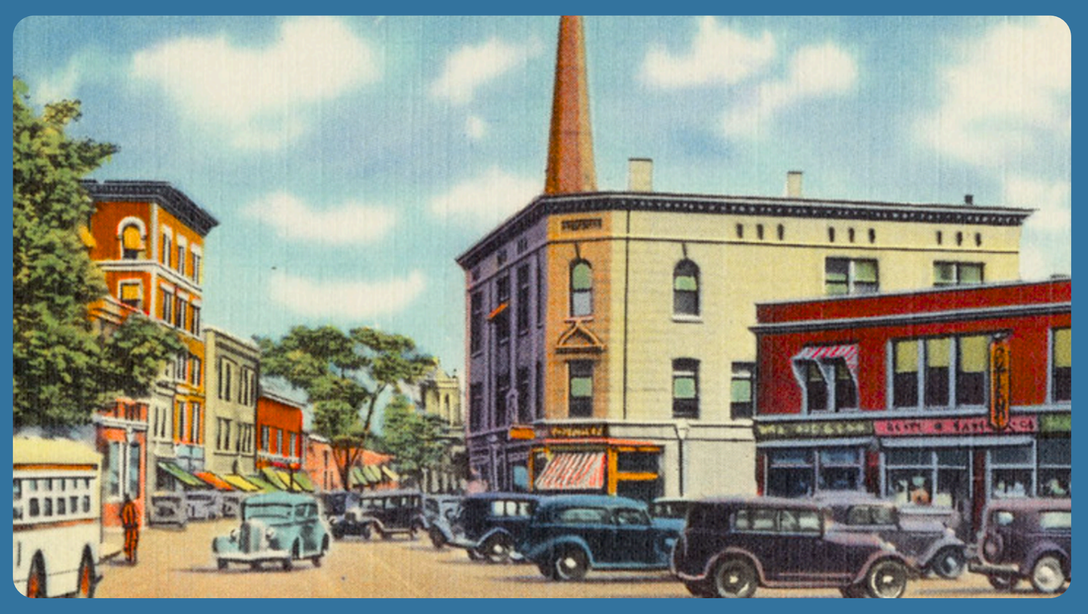
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