Speech, Statues, and the Supreme Court
Smith v. Goguen (1974)



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Supreme Court Overview: *Smith v. Goguen*

The Supreme Court ruled the Massachusetts flag statute unconstitutional under the Fourteenth Amendment's Due Process Clause. The Court declined to address the claim that the statute violated the First Amendment.

Effect

The case demonstrated that, under the Fourteenth Amendment, a statute is void if it is so vague that people of "ordinary intelligence" must guess at its meaning. This is to set clear standards for courts and ensure police consistently enforce the law.

Decision 6:3

MAJORITY

Justice Powell delivered the 6-3 majority opinion in favor of Goguen. The Court declared the Massachusetts flag statute unconstitutionally vague under the 14th Amendment's Due Process Clause. The majority found that the term "contemptuously" lacked a clear definition, making it impossible for law enforcement and juries to consistently determine what conduct was criminal. Their decision focused on the absence of a precise legal standard, not on First Amendment protections, making this a Due Process case rather than a free speech one.

CONCURRING

Justice White agreed that Goguen's conviction should be reversed. His reasoning was that the Massachusetts law penalized people for expressing ideas about the flag, which infringed on the First Amendment's guarantee of free speech. He highlighted the problem of overbreadth, noting that the statute directly curtailed symbolic expression.

Lower Court Judges (earlier concurrences) also stressed the issue of vagueness, pointing out that the law lacked clear standards for determining what behavior was considered "contemptuous."

DISSENT

The dissenting justices argued that the term "contemptuously" was sufficiently clear and that Goguen's punishment was appropriate. They emphasized that the statute, as interpreted by the lower court, aimed to protect the physical integrity of the flag. While they acknowledged the law might be vague in other contexts, they believed it was constitutional when applied to Goguen's specific conduct.

"The flag of the United States is not just another 'thing,' and it is not just another 'idea.'" -Justice Rehnquist, Dissenting



Official Supreme Court Portrait of Associate Justice Lewis F. Powell
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"What is contemptuous to one man may be a work of art to another."
-Supreme Court Justice Powell

Impact of *Goguen*

Smith v. Goguen shaped *Kolender v. Lawson* (1983) by establishing that vague and subjective criminal laws violate the Due Process Clause. The Supreme Court applied this same vagueness doctrine to a California law requiring people to show "*credible and reliable identification*" during police stops. The Court found that this phrase was too unclear and gave officers excessive discretion. As a result, it ruled that statutes must set objective, precise standards and cannot allow arrests based on personal judgment or suspicion.

The Court's opinion also laid foundational precedent for its landmark First Amendment decision in *Texas v. Johnson* (1989), a flag-burning case. The Court's majority, dissenting, and concurring opinions were cited in the *Johnson* opinion. While *Johnson* is a First Amendment case, the Court viewed *Goguen* as a "*pertinent…decision recognizing the communicative nature of conduct relating to flags*." Texas relied on Justice Rehnquist's dissent in the case, emphasizing the "*special place*" reserved for the flag in our Nation. The Court, however, reiterated "*nothing in our precedents suggests that a State may foster its own view of the flag by prohibiting expressive conduct relating to it*." Overturning Johnson's conviction, the 5-4 majority held that burning the flag is "expressive conduct" or "symbolic speech" protected by the First Amendment.

U.S. v. Salisbury (1993) was a case of an individual being accused of casting more than one vote. One reason for appealing was that the law in question was too vague regarding vote tampering. The concurring opinion of Justice White, as well as the majority opinion, in *Smith v. Goguen* (1974) clarified the possibility that a law may be too vague under the Due Process Clause of the Constitution. The final ruling of *U.S. v. Salisbury* drew on similar concepts to those in *Smith v. Goguen*; this reference, called analyzing 'case precedent', helped the Court determine that while some sections of a statute may be wholly vague and should be stricken, it is valid for other clear sections to remain in place.

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