

Chapter 5 – Saggy Pants Ordinance Problem

The citizens of Collegetown, USA have recently begun to complain to the city council about a recent fashion trend. The students at the State University, located in Collegetown, so love their basketball team that they often style their own clothes and fashion after the uniforms worn by the players. Some students, mostly young men, have adopted this trend by wearing their shorts with the bottoms of the shorts almost touching their knees and the waistline of the shorts sitting well below their hips, which often reveals their underwear. This “fashion statement” has bothered the more traditional members of the Collegetown community who believe that such clothing is indecent and immoral and portends the breakdown of society. They successfully lobbied the Collegetown City Council to pass an ordinance punishing those persons caught wearing their pants or shorts in such a manner.

The ordinance states:

“Wearing of Pants Below the Waist in Public”

1. It shall be unlawful for any person to appear in public or in view of the public, wearing pants below the waist which expose the skin or undergarments.
2. Any person convicted of violating the provisions of this section shall be punished by a fine of \$200.00 or shall be given community service to perform.
3. Any person convicted of a second or subsequent offense of violating this provision shall be punished by a fine of \$500.00.
4. Any person who fails to pay a fine or complete community service as set forth in this herein may be imprisoned for a term not exceeding sixty (60) days.

You are an attorney for the ACLU who was recently contacted by a Collegetown student, Roy, who was issued a summons for violating the “saggy pants” ordinance. Roy wants to challenge the ordinance which he believes interferes with his right to express his support for the State U basketball team. Does Roy have a valid challenge? Does the way in which a person wears their clothes constitute “expressive conduct” under *O’Brien*? How likely is it that any challenge will be successful?