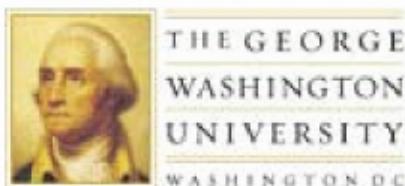


# The Burger Court Opinion Writing Database

*Vachon v. New Hampshire*

414 U.S. 478 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 3, 1974

Re: 73-573 - Vachon v. New Hampshire

Dear Bill:

Please join me in your dissent.

Regards,

WRF

Mr. Justice Rehnquist

Copies to the Conference

SLW  
J  
WJB  
haven't voted

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 13, 1973

Dear Bill:

I join your memo in 73-573, Vachon  
v. New Hampshire.

It needs of course an order vacating  
etc.

William O. Douglas

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 19, 1973

Dear Bill:

Please join me in your per curiam  
in 73-573, VACHON v. N.H.

William O. Douglas

Mr. Justice Brennan

cc: The Conference

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ON WAR, REVOLUTION AND PEACE  
Stanford California 94301 4500

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## 1st DRAFT

SUPREME COURT OF THE UNITED STATES

DENIS M. VACHON *v.* STATE OF  
NEW HAMPSHIRE

### Circulation:

### Recirculation:

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

No. 73-573. Decided January 10, 1973

PER CURIAM.

A 14-year-old girl bought a button inscribed "Copulation Not Masturbation" at the Head Shop in Manchester, New Hampshire. In consequence, appellant, operator of the Shop, was sentenced to 30 days in jail and fined \$100 after conviction upon a charge of "wilfully" contributing to the delinquency of a minor in violation of New Hampshire's R. S. A. 169:32.<sup>1</sup> In affirming the conviction, the New Hampshire Supreme Court held that the "wilfully" component of the offense required that the State prove that the accused acted "voluntarily and intentionally and not because of mistake or accident or other innocent reason." — N. H. —, 306 A. 2d 781, 784 (1973). Thus, the State was required to produce evidence that appellant, knowing the girl to be a minor,<sup>2</sup> personally sold her the button, or personally caused another to sell it to her. Appellant unsuccessfully sought dismissal of the charge at the close

<sup>1</sup> The statute provides in pertinent part:

“ . . . anyone . . . who . . . has knowingly or wilfully done any act to . . . contribute to the delinquency of . . . [a] . . . child, may be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year or both.”<sup>13</sup>

<sup>2</sup> The complaint charged that appellant "did wilfully contribute to the delinquency of a minor by selling or causing to be sold a button with obscene material with slogan on same, to wit, 'Copulation not Masturbation' to . . . a minor child of the age of 14 years, knowing said child was a minor . . . .<sup>52</sup>

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

DENIS M. VACHON v. STATE OF  
NEW HAMPSHIRE

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

No. 73-573. Decided January —, 1973

PER CURIAM.

A 14-year-old girl bought a button inscribed "Copulation Not Masturbation" at the Head Shop in Manchester, New Hampshire. In consequence, appellant, operator of the Shop, was sentenced to 30 days in jail and fined \$100 after conviction upon a charge of "wilfully" contributing to the delinquency of a minor in violation of New Hampshire's R. S. A. 169:32.<sup>1</sup> In affirming the conviction, the New Hampshire Supreme Court held that the "wilfully" component of the offense required that the State prove that the accused acted "voluntarily and intentionally and not because of mistake or accident or other innocent reason." — N. H. —, 306 A. 2d 781, 784 (1973). Thus, the State was required to produce evidence that appellant, knowing the girl to be a minor,<sup>2</sup> personally sold her the button, or personally caused another to sell it to her. Appellant unsuccessfully sought dismissal of the charge at the close

<sup>1</sup> The statute provides in pertinent part:

"... anyone ... who ... has knowingly or wilfully done any act to ... contribute to the delinquency of ... [a] ... child, may be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year or both."

<sup>2</sup> The complaint charged that appellant "did wilfully contribute to the delinquency of a minor by selling or causing to be sold a button with obscene material with slogan on same, to wit, 'Copulation not Masturbation' to ... a minor child of the age of 14 years, knowing said child was a minor . . . ."

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 13, 1973

Re: No. 73-573, Vachon v. New Hampshire

Dear Bill,

I agree with your memorandum in this  
case.

Sincerely yours,

P.S.

Mr. Justice Brennan

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 18, 1973

Re: No. 73-573, Vachon v. New Hampshire

Dear Bill,

I agree with the per curiam you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 3, 1974

Re: No. 73-573 - Vachon v. New Hampshire

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1973

Re: No. 73-573 -- Vachon v. New Hampshire

Dear Bill:

I agree with your Per Curiam.

Sincerely,

*JM*

T. M.

Mr. Justice Brennan

cc: The Conference

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File made -  
CJ B never  
voted  
WDB GRW agrees w/ WDB  
HAB a "publicist"  
"classical"

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 14, 1973

Dear Bill:

Re: No. 73-573 - Vachon v. New Hampshire

Subject to what the forthcoming dissent may have to say,  
I agree with the memorandum you have proposed.

Sincerely,

*H. A. B.*

Mr. Justice Brennan

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*WZ*  
CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

Supreme Court of the United States  
Washington, D. C. 20543

December 18, 1973

No. 73-573 Vachon v. New Hampshire

Dear Bill:

Please join me in your Per Curiam.

Sincerely,

*Lewis*

Mr. Justice Brennan

cc: The Conference

lfp/ss

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Stanford, California 94305-6000



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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

DENIS M. VACHON v. STATE OF  
NEW HAMPSHIRE

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

No. 73-573. Decided January —, 1974

MR. JUSTICE REHNQUIST, dissenting.

Appellant Denis M. Vachon operates the "Head Shop" in Manchester, New Hampshire, where he sells various beads, dresses, posters, and the like. In July 1969, a 14-year-old girl, accompanied by her girl friend, went to the shop seeking to purchase a button or pin like the one purchased by her friend the previous week. She found the button, inscribed "Copulation Not Masturbation," and purchased it from a sales person in the store. It was conceded in the New Hampshire courts that appellant was the owner and was in control of the premises where the sale was made. At a jury waived trial, appellant was convicted of contributing to the delinquency of a minor, a statutory offense proscribed in these words:

"[A]nyone . . . who shall knowingly or wilfully encourage, aid, cause or abet or connive at, or who has knowingly or wilfully done any act to produce, promote or contribute to the delinquency of [a] child may be punished . . ." N. H. Rev. Stat. Ann. § 169:32.

The Supreme Court of New Hampshire affirmed appellant's conviction. *State v. Vachon*, 306 A. 2d 781 (1973).

The Court decides that appellant's conviction under this statute violates rights secured to him by the Due Process Clause of the Fourteenth Amendment, concluding on the basis of its "independent examination of the trial record" that "evidence is completely lacking that appellant personally sold the girl the button or even that

33  
pp. 1, 3, 4, 6, 7, 8

**3rd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

DENIS M. VACHON v. STATE OF  
NEW HAMPSHIRE

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

No. 73-573. Decided January —, 1974

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and MR. JUSTICE WHITE join, dissenting.

Appellant Denis M. Vachon operates the "Head Shop" in Manchester, New Hampshire, where he sells various beads, dresses, posters, and the like. In July 1969, a 14-year-old girl, accompanied by her girl friend, went to the shop seeking to purchase a button or pin like the one purchased by her friend the previous week. She found the button, inscribed "Copulation Not Masturbation," and purchased it from a sales person in the store. It was conceded in the New Hampshire courts that appellant was in control of the premises where the sale was made. At a jury waived trial, appellant was convicted of contribution to the delinquency of a minor, a statutory offense proscribed in these words:

"[A]nyone . . . who shall knowingly or wilfully encourage, aid, cause or abet or connive at, or who has knowingly or wilfully done any act to produce, promote or contribute to the delinquency of [a] child may be punished . . ." N. H. Rev. Stat. Ann. § 169:32.

The Supreme Court of New Hampshire affirmed appellant's conviction. *State v. Vachon*, 306 A. 2d 781 (1973).

The Court decides that appellant's conviction under this statute violates rights secured to him by the Due Process Clause of the Fourteenth Amendment, concluding on the basis of its "independent examination of the trial record" that "evidence is completely lacking that

