

# MINNESOTA WATCHDOG

## U.S. Supreme Court to hear Minnesota polling place apparel act

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A Minnesota law that broadly restricts what voters can wear to the polling place will have its day in court, the nation's highest court, later this month.

The U.S. Supreme Court will hear oral arguments Feb. 28 in *Minnesota Voters Alliance v. Mansky*.

Minnesota is one of at least 10 states that has broad bans on items deemed to be political in nature worn at polling sites. Minnesota Voters Alliance, a nonpartisan organization dedicated to preventing voter fraud, is challenging the law's constitutionality in court.

The Minnesota law forbids voters from wearing any "political badge, political button, or other political insignia," the Pacific Legal Foundation, which is representing the alliance, said in a news release

A pamphlet containing background information on the case said the ban does not just prohibit campaign-related apparel. Elections officials have interpreted the broad language of the bill to cover messages that merely express a general philosophical or social outlook, which can include logos of organizations such as the Chamber of Commerce, the American Federation of Labor and Congress of Industrial Organizations.

David Breemer, Pacific Legal Foundation senior attorney who will argue the case before the Supreme Court, said there was no evidence that polling places have been disturbed by these messages on apparel.

"There is no evidence that anyone, that any polling places have ever been disrupted by this material, or caused a fight or anything of that," Breemer said in a conference call Tuesday. "It is purely a suppressive measure that inhibits free political association and expression, which is the entire purpose of the First Amendment and that is going to be the essence of our case before the Supreme Court and our argument for the Supreme Court in a couple weeks."

The political apparel ban threatens the First Amendment rights of Americans in each of the 10 states affected by a similar ban, plaintiffs argue. Other states with such bans are Delaware, Kansas, Montana, New Jersey, New York, South Carolina, Tennessee, Texas and Vermont.

Wen Fa, a Pacific Legal Foundation attorney who wrote the petition to the Supreme Court, said other states with similar laws also could see legal challenges.

"To the extent that other states have similar laws, I think that those laws would also be susceptible to an over-broad challenge," Fa said.

Bremer said it was hard to say how many states were going to be affected, because the polling place restrictions are worded differently in each of the states. He said many states do have a broad interpretation, which would have an impact.

The challenge was filed after Minnesota Voters Alliance Executive Director Andy Cilek was told by an election judge that he would have to take off or cover a Tea Party shirt with the message “Don’t Tread on Me” and a button that said “Please I.D. Me” when he tried to vote in November 2010 in Hennepin County, Minn. Cilek was prevented from voting for five hours until he finally was allowed to. But he was warned that he faced prosecution because of what he wore to the voting booth.

Cilek said he wants the ability to wear what he pleases when he goes to the polls.

“The thing I want from this lawsuit is the same thing I wanted on election day in 2010, and that is simply to wear what I want when I vote and to vote peacefully, Cilek said. “How can it be right that any election judge can decide to disrupt the polling place and hassle a voter for what they are wearing. There was no problem going on. No one cared what I was wearing. The election judge was the one causing the problem. She did not solve one.”

Cilek additionally said one election judge might not see any problem with a shirt, while another might, which he called subtle voter suppression.

The Cato Institute, which filed a brief in the case, said Minnesota contends a polling place is a speech-free zone and a “non-public forum,” where a state may broadly prohibit anything if a particular viewpoint is not discriminated against.

Federal courts in Minnesota ruled against Cilek and the Minnesota Voters Alliance before their appeal to the U.S. Supreme Court, which is expected to rule this summer.