TwinCities.com
PIONEER PRESS

Editorial: The Minnesota case before the Supreme Court

April 4, 2018

Does a Minnesota law go too far in banning us from wearing clothing with political messages when we go to the polls?

That question is before the Supreme Court of the United States this spring in a free-speech case that resonates in these partisan times: Minnesota Voters Alliance v. Mansky.

The alliance is a government-watchdog group that focuses on voter advocacy and election integrity issues; Mansky is Ramsey County Elections Manager Joe Mansky. Each side assessed the case in recent conversations with us:

For Mansky, the matter "really comes down to a fairly simple proposition that there is both the right to speak and the right to vote emanating from the First Amendment."

He sums up the question before the court this way: "If there is a conflict between the right to speak and the right to vote, which has the greater standing?"

For Andy Cilek, the alliance's executive director, the case involves a question of "being targeted" under a law that "puts election judges in a precarious position."

They become "the arbiters of free speech" as they determine what attire or messages are appropriate in a polling place, and what are not.

The measure's path to the nation's highest court began in 2010. Memories of the bitter Al Franken-Norm Coleman Senate recount were fresh, and activism for a later-defeated voter ID amendment to the state Constitution was underway.

At a training session, an election judge asked Mansky a question about political attire in the polling place, and he followed up with a memo outlining state law, which he explains "precipitated the dispute."

On Election Day, Cilek was stopped at his polling place in Hennepin County for wearing a "Tea Party Patriots" T-shirt and a button saying "Please I.D. Me." He eventually was allowed to vote, but his name was recorded for possible prosecution, according to a report in the Pioneer Press.

Hennepin County Elections Manager Virginia Gelms is among the defendants named along with Mansky and other officials.

The case also brings together an interesting mix of organizations submitting briefs. On Cilek's side are both the libertarian Cato Institute and the liberal American Civil Liberties Union.

Among its contentions, the ACLU notes that Minnesota's statute forces voters into a choice: "They must sacrifice their First Amendment right to free expression in order to secure their constitutional right to vote. Voters who know or fear their expressive apparel will be swept up in Minnesota's ban may opt not to wear it to ensure they are able to vote on Election Day — leaving their freedom of speech at the door."

This aspect of Minnesota's election laws has been on the books since 1912. It was adopted by the Legislature in a special session addressing "corrupt practices," which Mansky describes as a "failrly common feature" of Minnesota elections until that time.

The idea of either deceiving, intimidating or coercing voters was a commonplace activity, he said, "that was brought to an end definitively when the Legislature enacted this law."

A report in the Pioneer Press explained that all states have some restrictions on electioneering and distributing campaign materials near polling places. But it noted that Minnesota and nine other states go further, and that Minnesota's ban "has been interpreted to include the names of political parties, candidates, support or opposition to a ballot question, materials designed to influence or impact voting and promoting groups with recognizable political views."

When the high court heard oral arguments on Feb. 28, questions surfaced about whether it might apply today to a "Make America Great Again" hat, a #MeToo button or an NRA T-shirt.

The justices' answer is considered likely around the time they conclude their term in late June.

A Minnesota law — and Minnesotans on both sides who are committed to the integrity of our elections — will make the case one to watch.