



'Yeah, this makes no sense.' Supreme Court hears arguments in polling apparel, free speech case

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The U.S. Supreme Court heard oral arguments Wednesday in the closely watched free speech and political apparel case *Minnesota Voters Alliance v. Mansky*.

Arguments centered on a challenge to Minnesota's law, which broadly restricts what voters can wear to a polling place, and forbids any "political badge, political button, or other political insignia," and even extends to logos for organizations such as the Chamber of Commerce or AFL-CIO.

Wen Fa, an attorney at the Pacific Legal Foundation who filed the petition to get the case to the Supreme Court, said he thought the Supreme Court justices were engaged, asked good questions and said that most seemed to understand the broad spectrum of the law.

"I think that a lot of the justices kind of saw how broad this law is and the potential that it would lead to viewpoint discrimination on the part of individual poll workers kind of picking and choosing which shirts they liked and which shirts they did not like," Fa said.

Attention has been drawn to an exchange between Justice Samuel Alito and Daniel Rogan, who argued the case on behalf of Joe Mansky, the Ramsey County, Minn., elections manager and the other respondents in the case. In the exchange,

Alito asked if a rainbow flag (pertaining to gay rights) would be allowed, along with a "Parkland Strong" shirt (in relation to the February mass shooting at a high school in Parkland, Fla.). Rogan said those shirts would be allowed.

Rogan, however, then said when asked by Alito that a National Rifle Association shirt would not be allowed. When asked about further examples, Rogan said a shirt with text of the Second Amendment would be viewed as political, but a shirt with the First Amendment would be allowed.

Fa said this exchange highlighted the ways in which the Minnesota law was unconstitutional.

“I think that just highlighted sort of the unconstitutionality of the law in two ways,” Fa said. “One, we have voters who can’t even wear a shirt that says part of the constitution on there and second, the government is picking and choosing which provisions of the Bill of Rights they want to let into the polling place.”

Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute (which filed a brief in the case), attended the arguments and said this exchange seemed to have an effect on Alito’s fellow justices.

“At that point, you could sort of, in the courtroom where I was ... you could see the expressions on a lot of his colleagues were kind of just, 'yeah, this makes no sense,'” Shapiro said.

In his argument, Rogan said in the more than 100 years of this statute, this was the first time it has been challenged by someone believing their speech was not political. Rogan also said the political messaging can impact the integrity of the election by impacting the “decorum and solemnity” of the polling place. Further, he added that there is no evidence of viewpoint discrimination in the state.

David Breemer, a lawyer for the Pacific Legal Foundation who argued for the Minnesota Voters Alliance, challenged the statute as being too broad in its scope. Justices attempted to get Breemer to help them define a line for speech that could be used to help determine their opinion.

Shapiro said Breemer did not do a good enough job explaining the distinction between simple speech and something that deceives or disrupts the voting process or intimidates voters.

“I think the justices toward the end had a real concern that there is no way to distinguish ‘political speech’ from other things,” Shapiro said. “So, I think the challengers should win pretty easily, but it did not turn out to be as easy an argument as I thought it would be.”

Shapiro said it seemed as if justices Sonia Sotomayor and Stephen Breyer were the only ones who supported the state on the issue.

Minnesota is one of 10 states to have similar bans. Other states with such bans are Delaware, Kansas, Montana, New Jersey, New York, South Carolina, Tennessee, Texas and Vermont.

Andrew Cilek, executive director of the Minnesota Voters Alliance, who filed a challenge after being told by an election judge to take off or cover a Tea Party themed shirt and a button that said “Please I.D. Me” in Minnesota in the 2010 election, said his organization hopes people from all ideologies can vote wearing what they want.

“We think people from all parties and all political persuasions should be able to vote wearing whatever they want to wear on their apparel when they go vote.

“What the Supreme Court is going to be struggling with, and they talked about this in the oral arguments, is where that line is drawn.” Cilek said.

Fa said because the case was an issue involving the free speech rights of many groups, he did not expect the voting breakdown of the justices to fall along traditional ideological lines.

“This is an issue that really is not susceptible to the vote breakdown that is traditionally what people say is the conservative/liberal line on the Supreme Court and that is why we have organizations ranging from the Cato Institute to the ACLU that have filed briefs in support of our clients and the First Amendment,” Fa said.

The Supreme Court is expected to rule on the issue this summer. When reached via email, Mansky said attorneys would prefer he did not comment on the matter until the court reached its decision.