THE WALL STREET JOURNAL.

You Can't Talk Politics Here, This Is a Polling Place

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February 27, 2018

Minnesotans may be nice, but their state government is awfully imperious when it comes to politics. Since 1912, the state has banned any "political badge, political button, or other political insignia" in or around polling places on Election Day. That's a problem, because the First Amendment extends far beyond verbal expression.

Some of the Supreme Court's most iconic cases have upheld the right to make a silent but powerful statement with one's apparel. Whether sporting a black armband to oppose a war *(Tinker v. Des Moines,* 1969) or an impolite jacket to protest the draft *(Cohen v. California,* 1971), what someone chooses to wear can be as expressive and meaningful as what he chooses to say.

Yet in the North Star State, a button with the peace symbol, a shirt reading "Black Lives Matter," or a hat with the word "Capitali$m" could each be grounds for being sent home by a poll worker. Further, the statute gives election officials broad discretion to ban any materials "promoting a group with recognizable political views." So voters can't even feel safe wearing shirts supporting the American Civil Liberties Union or the National Rifle Association.

In 2010 several Minnesotans attempted to vote while wearing clothes supporting the tea party. A poll worker told them they were breaking the law. They challenged the apparel ban, but the Eighth U.S. Circuit Court of Appeals twice upheld it. On Wednesday the Supreme Court will hear the case, *Minnesota Voters Alliance v. Mansky.*

The lower court mostly relied on *Burson v. Freeman* (1992), in which the high court upheld a prohibition against distribution of "campaign materials" and "solicitation of votes" in and around the polling area. But that ban was much more targeted than the one here. It was combating the historical practices of voter intimidation and election fraud that were especially prevalent before the era of standardized ballots. In *Burson,* the justices suggested that states could reasonably fear a return to the time when "approaching the polling place . . . was akin to entering an open auction place," and that a ban on outright electioneering was tailored to meet that concern.

Minnesota's ban, by contrast, finds no historical parallel. A generic pro-voting message like "Rock the Vote" is arguably a political statement forbidden by the law. But how could it possibly be construed as pressuring anyone to vote for a particular candidate? Whatever legitimate concerns the state may have about the electoral process, it can't justify a ban on voters' nondisruptive speech—let alone on unobtrusive paraphernalia that's unrelated to any issue or candidate on the ballot.

Minnesota's ban on political apparel is so sweeping that another Supreme Court precedent is far more relevant than *Burson*. In the 1987 case *Airport Commissioners v. Jews for Jesus,* the high

court unanimously struck down a ban on "First Amendment activity" at Los Angeles International Airport. The court explained that such a ban was overbroad because it necessarily extended far beyond speech "that might create problems such as congestion or the disruption of the activities of those who use LAX." Like Minnesota's law, the airport had banned all "symbolic clothing," leaving people unsure whether a Gandhi or Che shirt might get them thrown out. The court noted that "virtually every individual who enters LAX may be found to violate the resolution."

That's not to say that places with security or governmental-integrity concerns have to be free-for-alls. *Burson* was right to allow reasonable regulations that ensure orderly elections. Courtrooms and other sensitive areas—what lawyers call "nonpublic forums"—can impose certain restrictions. But "the wearing of a T-shirt or button that contains a political message," the court explained in *Jews for Jesus*, "is still protected speech even in a nonpublic forum."

Most fundamentally, Minnesota's law is unjustified because its fear of political expression is so disconnected from normal society. Without even wading into the social-media swamp, strangers pass each other on the street every day and make their deeply held views known without disruption or intimidation. This silent political signaling forms part of the tableau of public life, even as certain messages undoubtedly give angst or offense. As the Court found in *Tinker, which* upheld students' rights to wear black armbands to school in protest against the Vietnam War, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

It's vital that the Supreme Court defend voters' right to express themselves so long as they don't prevent other voters from going about their civic business. Anything else just wouldn't be nice.

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