**MINNESOTA VOTERS ALLIANCE V. MANSKY**

United States of America, North America

**CLOSED**

**EXPANDS EXPRESSION**

MODE OF EXPRESSION

**Non-Verbal Expression**

DATE OF DECISION

**June 14, 2018**

OUTCOME

**Decision- Application granted, Violation of The Free Speech Clause of The First Amendment established, Judgement Of the Court Appeals Of The Eighth Circuit Reversed And Remanded.**

CASE NUMBER

**N0-16-1435**

JUDICIAL BODY

**Supreme Court (Final Appeal)**

TYPE OF LAW

**Constitutional law**

THEMES

**Political Expression**

TAGS

**Voter’s Expression**, **Free Speech, First Amendment, Political Expression, Non-Verbal Expression**

**CASE ANALYSIS**

**Case Summary and Outcome**

The Supreme Court of the United States of America held that the Minnesota political apparel ban law which prohibits individuals, including voters from wearing a “political badge, political button or other political insignia” inside a polling place on election day violates the free speech clause of the First Amendment. Minnesota Voters Alliance (MVA), Susan Jeffers, Andrew Cilek and other likeminded groups and individuals filed a lawsuit in the federal district court challenging the political apparel ban on first amendment grounds. The District Court denied the plaintiffs’ request for a temporary restraining order and preliminary injunction, granted the state’s motion and allowed the apparel ban to remain in effect for the upcoming election. On appeal, to the Court of Appeal, the Court of Appeal of the Eighth Circuit affirmed the dismissal. The Petitioners petitioned the Supreme Court for a review of their facial First Amendment claim only. The apex court, considering the application of the law, held that the law was not “capable of reasoned application”. The court came to this conclusion when it found that the type of political speech which the law sought to prevent could not be clearly ascertained and the word “political” used in the law could lead to inconsistent interpretations and absurdity.

**Facts**

The petitioners (plaintiffs at the time) are Minnesota Voters Alliance (MVA), a nonprofit organization that “seeks better government through election reforms”, Andrew Cilek, a registered voter in Hennepin County and the executive director of MVA and Susan Jeffers served in 2010 as a Ramsey County election judge. They filed for temporary restraining order and preliminary injunction in the Federal District Court five days to the November 2010 elections challenging the Minnesota political apparel ban law on first amendment grounds. The district court denied the plaintiff request for a temporary restraining order and preliminary injunction and allowed the apparel ban to remain in effect for the upcoming election.

In response to the lawsuit, County officials distributed to election judges an “Election Day Policy,” providing guidance on the enforcement of the political apparel ban. The Minnesota Secretary of State also distributed the Policy to election officials throughout the State. On Election Day, some voters ran into trouble with the ban, including one of the petitioners Andrew Cilek, who said he was turned away from the polls for wearing a “Please I. D. Me” button and a T-shirt bearing the words “Don’t Tread on Me” and a Tea Party Patriots logo. In the district court, MVA and the other plaintiffs argued that the ban was unconstitutional both on its face and as applied to their apparel. The District Court granted the State’s motions to dismiss, and the Court of Appeals for the Eighth Circuit affirmed in part and reversed in part affirming the dismissal of the facial challenge and remanded the case for further proceedings on the as-applied challenge.

On remand, the District Court granted a summary judgment in favour of the State on the petitioners’ challenge of how the law was applied. Said judgement was later affirmed by the court of appeal. The writ of certiorari for the review of the decision of the Court of Appeal of the Eighth Circuit was taken by the petitioners petitioning for review of their first amendment claim. The Writ of petition in this case was argued on February 2018 and decided June 14, 2018.

**Decision Overview**

The Supreme Court Chief Justice Roberts, delivered the opinion of the Court, in which Kennedy, Thomas, Ginsburg, Alito, Kagan, and Gorsuch, joined. Sotomayor J., filed a dissenting opinion, in which Breyver, J., joined. The main issue determined by the court was: whether Minnesota’s Law on political apparel ban is reasonable in light of the purpose served by the forum-voting.

The court recognised that the ban law was enacted during a period when voting was not what it is now. The law was enacted during an era when the physical arrangement confronting the voters at the polling unit was so different, during the said period, the actual act of voting was carried out in the open often in the view of onlookers and other voters. Crowds often gathered to harass and heckle voters who appeared to be supporting the other side. By the late nineteenth century, States began implementing reforms to address these vulnerabilities and improve the reliability of elections. Between 1888 and 1896, nearly every state adopted the secret ballot system. Because voters now needed to mark their state-printed ballots on-site and in secret, voting moved into a sequestered space where the voters could “deliberate and make a decision in privacy. Today, all 50 States and the District of Columbia have laws curbing various forms of speech in and around polling places on Election Day.

The Minnesota law contains three prohibitions which were listed as:

*(i)The first prohibits any person to “display campaign material, post signs, ask, solicit or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a pooling place is situated” to “vote for or refrain from voting a candidate or ballot question”.*

*(ii)The second sentence prohibits the distribution of “political badges, political buttons, or other political insignia to be worn at or about the polling place.”*

*(iii)The third sentence—the “political apparel ban”—states that a “political badge, political button, or other political insignia may not be worn at or about the polling place.” The Petition in this case the court observed is against the 3rd Prohibition*.

The petition is against the 3rd ban "Political apparel ban". The court reiterated that the First Amendment prohibits laws abridging the freedom of speech, it recognised that the Minnesota political apparel law restricts a form of expression within the protection of the first amendment.

The first amendment states:

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”.*

The court in determining extent or type of space within which the law seeks to restrict, the court recognised that there are three types of government-controlled spaces as traditional public forum; designated public forum and non-public forum. The court found the polling place brings a government reserved forum for an intended purpose is a non-public forum. Citing the case of *Greer v. Spock, 424 U. S. 828, 831–833, 838–839 (1976)* the court recognized that the government may impose some content-based restrictions on speech in non-public forums, including restrictions that exclude political advocates and forms of political advocacy. The court therefore evaluated the petitioners’ First Amendment challenge under the non-public forum standard.

In considering whether Minnesota is pursuing a permissible objective the court started by considering its judgement in the case of *Burson* which upheld a Tennessee law imposing a 100-foot campaign free zone around the polling place. The court found in *Burson*’s case that the law withstood even the strict scrutiny applicable to speech restrictions in traditional public forums, they held the law as reasonable stating that campaign-free zone outside the polls was “necessary” to secure the advantages of the secret ballot and protect the right to vote

The petitioners in the instant case disputed the relevance of *Burson* to their case. Distinguishing the cases, the petitioners argued that while *Burson* considered only “active campaigning” outside the polling place by campaign workers and others trying to engage voters approaching the polls they argued that the Minnesota’s law, by contrast, prohibits “passive, silent” self-expression by voters themselves when voting. The petitioners also pointed out that the judgement focused on the extent to which the restricted zone combated “voter intimidation and election fraud” had little to do with a prohibition on certain types of voter’s apparel. Campaign buttons and apparel did come up in the *Burson*’s briefs and arguments, but neither the judgment expressly addressed such applications of the law.

The court agreed with the state that some form of advocacy should be excluded from the polling place, to set it aside as “*an island of calm in which voters can peacefully contemplate their choices*.” It stated that casting a vote is a weighty civic act a voter’s time at the polls is a time for choosing, not campaigning as such the State may reasonably decide that the interior of the polling place should reflect that distinction. The court however noted that the State must draw a reasonable line between what is allowed and what is not allowed at the polls. It explained that the use of the term “political” in the Minnesota Law combined with the various interpretations the state provided and its arguments is makes the restriction imposed by Minnesota law fail.

The court noted that although the statute prohibits wearing a “political badge”, Political button, or other Political Insignia it does not define the term “political” noting that the word can be needlessly expansive as it it could be interpreted to include anything related to the government, or the conduct of governmental affairs or anything related or dealing with the structure of the government, politics or a state. The court considering the state’s “authoritative constructions” found that the instrument rather than clarify the scope of the apparel provision, only introduced more confusions.

In response to this, the State argues that the apparel ban should not be so broadly interpreted. At the same time, the State also argues that the category of “political” apparel is not limited to campaign apparel. After all, the reference to “campaign material” in the first sentence of the statute describing what one may not “display” in the buffer zone as well as inside the polling place implies that the distinct term “political” should be understood to cover a broader class of items. The state counsel explained that the Minnesota law expands the scope of what is prohibited from the campaign speech to additional political speech.

Considering the interpretations given for the categories in the 2010 election day policy. The court held that the first three examples in the policy were clear enough: items displaying the name of a political party, items displaying name of a candidate, and items demonstrating “*support of or opposition to a ballot question*” The next example under the election day policy on “*issue oriented material designed to influence or impact voting*,” The court remarkably noted that this raises more questions than giving answers. What will in this light qualify as “issue”? The answer, it noted as far was gleaned from the state’s position in its Brief and argument is “any subject on which a political candidate or party has taken a stance” The Supreme Court therefore brilliantly asked “Would a “Support Our Troops” shirt be banned, if one of the candidates or parties had expressed a view on military funding or aid for veterans? “What about a “#MeToo” shirt, referencing the movement to increase awareness of sexual harassment and assault? The wording indeed is indeed confusing.

The court also considered the interpretation of the next broad category in the Election day policy of “*promoting a group with recognizable political views*” and stated that this category indeed makes the matters worse. The court observed that the State in the brief for respondent construes the category as limited to groups with “views” about “the issues confronting voters in a given election.” The court observed that a shirt declaring “All Lives Matter,” could be “perceived” as political and a shirt displaying a rainbow flag if worn could be taken to be political if a candidate in the election campaigned on gay rights as “rainbow” is related to gay rights. The court observed that the election judges had the authority to determine what is “political” when screening at the polls, the court emphasized that the judges ought to be guided by objective, a workable standard without which the court believes the election judge’s own politics may shape his views on what counts as political.

The court therefore held that if a state wishes to set its polling places apart as areas free of partisan discord, it must employ a more discernible approach than the one Minnesota has offered in this case. The crux of the apex court’s holding therefore is that while a state is allowed to legislate against messages that may mislead or unduly influence a voter at the polls, the standards of construction of such legislation must be precise, not vague or overbroad and not what is exclusive to respective judge’s interpretation. The court noted that state’s “electoral choices” standard, considered together with the nonexclusive examples in the Election Day Policy, indeed puzzled even the state’s top lawyers who often struggle to understand it. This is the reason the Supreme Court declared that a law whose enforcement requires “*an election judge to maintain a mental index of the platforms and positions of every candidate and party on the ballot is not reasonable*”. In emphatically clarifying this position and giving a suggestion on how clear or precise such a legislation is required to be worded, the court noted that “*other States have laws proscribing displays (including apparel) in more lucid terms. See, e.g., Cal. Elec. Code Ann. §319.5 (West Cum. Supp. 2018) (prohibiting “the visible display . . . of information that advocates for or against any candidate or measure,” including the “display of a candidate’s name, likeness, or logo,” the “display of a ballot measure’s number, title, subject, or logo,” and “[b]uttons, hats,” or “shirts” containing such information); Tex. Elec. Code Ann. §61.010(a) (West 2010) (prohibiting the wearing of “a badge, insignia, emblem, or other similar communicative device relating to a candidate, measure, or political party appearing on the ballot, or to the conduct of the election”).* (P.22)

Finally the Supreme Court held that the case of Minnesota Apparel Ban Law violates freedom of expression as provided under the First Amendment for being vague and overbroad and clearly incapable of reasoned application. The court, emphasizing its reasoning, clearly stated of the law that it “*presents us with a particularly difficult reconciliation: the accommodation of the right to engage in a political discourse with the right to vote. Burson 504 US at 198 (Plurality Opinion). Minnesota, like other States, has sought to strike the balance in a way that affords the voter the opportunity to exercise his civic duty in a setting removed from the clamour and din of electioneering. While that choice is generally worthy of our respect, Minnesota has not supported its good intentions with a law capable of reasoned application*” (P.23)

The judgment of the Court of Appeals was therefore reversed, and the case was remanded for further proceedings consistent with the Supreme Court’s opinion

Justice Sotomayor in his dissenting opinion agreed with the Court that casting a vote is a weighty civic act and that States may reasonably take steps to ensure that partisan discord not follow the voter up to the voting booth, including by prohibiting certain apparel in polling places because of the message it conveys. He however disagreed, with the Court’s decision to declare Minnesota’s political apparel ban unconstitutional on its face because, in its view, the ban is not “capable of reasoned application,” when the Court has not first afforded the Minnesota state courts a reasonable opportunity to pass upon and construe the statute. See *Babbitt v. Farm Workers, 442 U. S. 289, 308 (1979)*.

He stated that he would have certified the case to the Minnesota Supreme Court for a definitive interpretation of the political apparel ban under Minn. Stat. s211B.11(1) (Supp. 2017), which he opinion would likely obviate the hypothetical line-drawing problems that form the basis of the Court’s decision above.

The learned judge further stated that the court should be wary of invalidating a law without giving the state’s highest court an opportunity to pass upon it.

**DECISION DIRECTION**

The decision expands Freedom of Expression by holding that the instant provision of the Minnesota Apparel Ban law on its face is capable of expansive and subjective interpretation by respective judges to include “political” matters and items that are ordinarily not concerns of the law, but as each judge may deem fit. The Supreme Court’s majority holding rests on the principle of reasonableness of an expression-restricting legislation. More importantly, the principle of “void for vagueness” which prescribes that a statutory provision that attracts a penal measure will be void if it is found vague readily came handy here. The court in essence found that the inability of the law to adopt a more intrinsically discernible construction of what is prohibited under the term “political” and what is not by being precise and ascertainable, renders the law unreasonable and clearly violates the right of Freedom of Expression under the First Amendment.

**GLOBAL PERSPECTIVE**

**Related International and/or Regional Laws**

The American Convention on Human Rights (ACHR)

The International Covenant on Civil and Political Rights (ICCPR)

Universal Declaration of Human Rights (UDHR)

**National Standards, Laws or Jurisprudence**

The United States Constitution, First Amendment

Minn. Stat. §211B.11(1) (Supp. 2017)

Tennessee Code Annotated

US, Burson v. Freeman, 504 U. S. 191 (1992)

US, Board of Airport Comm’rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569, 576 (1987)

US, Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503, 508 (1969)

US, Minnesota Majority v. Mansky, 708 F. 3d 1051 (2013)

US, International Soc. for Krishna Consciousness, Inc. v. Lee, 505 U. S. 672, 678

US, Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.,473 U. S. 788, 806–811

US, Adderley v. Florida, 385 U. S. 39, 47 (1966)

US, Greer v. Spock, 424 U. S. 828, 831–833, 838–839 (1976)

US, Lehman v. Shaker Heights, 418 U. S. 298, 303–304 (1974)

US, Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U. S. 788, 799–800 (1985)

US, Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503, 508 (1969)

US, Forsyth County v. Nationalist Movement, 505 U. S. 123, 131 (1992)

**Case Significance**

The case establishes a binding or persuasive precedent within its jurisdiction

**Official Case Documents**

The judgement