**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, 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 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. Five days before the November 2010 election, 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 and allowed the apparel ban to remain in effect for the upcoming election. In response to the lawsuit the state distributed an Election Day Policy to election officials providing guidance on enforcement of the ban. On election day some voters ran into trouble with the ban, including petitioner Andrew Cilek. MVA and other plaintiffs argued in court that the ban was unconstitutional both on its face and as applied to their particular items of apparel. The District Court granted the State’s motion to dismiss and the Court of Appeals of the Eighth Circuit affirmed the dismissal of the facial challenge and remanded the case for further proceedings on the as -applied challenge. Upon the hearing of the as-applied challenge, District Court granted summary judgement to the state and the Eighth Circuit affirmed this decision. MVA, Cilek and Susan Jeffers (collectively MVA) petitioned the Supreme Court for a review of their facial First Amendment claim only. The court holding that the law is not “capable of reasoned application” of deciding what type of political speech they can prevent, as the term "political" used in the statute may be up for inconsistent interpretation, as demonstrated from past applications of the law and in this case's arguments, declared the Minnesota Apparel ban law a violation of the Free Speech provision of the First Amendment to the United States Constitution (Pp- 7-19).

**Facts**

The petitioners (plaintiffs at the time) who 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 filed a lawsuit in the Federal District Court five days to the November 2010 elections challenging the Minnesota political apparel ban law on first amendment grounds. The plaintiffs calling themselves “Election Integrity Watch”(EIW) planned to have supporters wear buttons to the polls printed with the words “please I. D Me,” a picture of an eye, and a telephone number and web address for EIW in support of their campaign that individuals should be required to show identification before voting. 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, officials for Hennepin and Ramsey Counties 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. The Policy specified that examples of apparel falling within the ban “include but are not limited to”: “Any item including the name of a political party in Minnesota, such as the Republican, [Democratic Farmer-Labor], Independence, Green or Libertarian parties.

Any item including the name of a candidate at any election.

Any item in support of or opposition to a ballot question at any election.

Issue oriented material designed to influence or impact voting (including specifically the ‘Please I. D. Me’ buttons).

Material promoting a group with recognizable political views (such as the Tea Party, MoveOn.org, and so on).” App. to Pet. for Cert. I–1 to I–2.

On Election Day, some voters ran into trouble with the ban, including petitioner 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. One individual was asked to cover up his Tea Party shirt. Another voter refused to conceal his “Please I. D. Me” button, and an election judge recorded his name and address for possible referral.

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.

In evaluating MVA’s facial challenge, the Court of Appeals observed that the Supreme Court had previously upheld a state law restricting speech “related to a political campaign” in a 100-foot zone outside a polling place; the Court of Appeals determined that Minnesota’s law likewise passed constitutional muster. The Court of Appeals reversed the dismissal of the plaintiffs’ as-applied challenge, however, finding that the District Court had improperly considered matters outside the pleadings.

On remand, the District Court granted summary judgment for the State on the as-applied challenge, and this time the Court of Appeals affirmed.

The writ of certiorari for the review of the decision of the Court of Appeal of the Eighth Circuit was taken by the petitioners- Minnesota Voters Alliance (MVA), a non-profit organisation that seeks better government through election reforms, Andrew Cilek a registered voter in Hennephin county and the executive director of MVA; Susan Jeffers who served in 2010 as a Ramsey county judge but all collectively MVA. The petitioners dissatisfied with decision of the Court of appeals petitioned for review of their facial first amendment claim only.

The Writ of petition in this case was argued on February 2018 and decided June 14, 2018.

**Decision Overview**

The judgement of the Supreme Court was in plurality of 7-2. Chief Justice Roberts delivered the Judgement of the Court, holding that the Minnesota political apparel ban violates the provision of the Free Speech in the First Amendment while Justice Sotomayor filed the dissenting opinion. The main question considered 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 recognising the reason for the law in the first place noted that “*Today, Americans going to their polling places on Election Day expect to wait in a line, briefly interact with an election official, enter a private voting booth, and cast an anonymous ballot. Little about this ritual would have been familiar to a voter in the mid-to-late nineteenth century. For one thing, voters typically deposited privately prepared ballots at the polls instead of completing official ballots on-site. These pre-made ballots often took the form of “party tickets”—printed slates of candidate selections, often distinctive in appearance, that political parties distributed to their supporters and pressed upon others around the polls. See E. Evans, A History of the Opinion of the Court Australian Ballot System in the United States 6–11 (1917) (Evans); R. Bensel, The American Ballot Box in the MidNineteenth Century 14–15 (2004) (Bensel). The physical arrangement confronting the voter was also different. The polling place often consisted simply of a “voting window” through which the voter would hand his ballot to an election official situated in a separate room with the ballot box. Bensel 11, 13; see, e.g., C. Rowell, Digest of Contested-Election Cases in the Fifty-First Congress 224 (1891) (report of Rep. Lacey) (considering whether “the ability to reach the window and actually tender the ticket to the [election] judges” is “essential in all cases to constitute a good offer to vote”); Holzer, Election Day 1860, Smithsonian Magazine (Nov. 2008), pp. 46, 52 (describing the interior voting window on the third floor of the Springfield, Illinois courthouse where Abraham Lincoln voted). As a result of this arrangement, “the actual act of voting was usually performed in the open,” frequently within view of interested onlookers. Rusk, The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876–1908, Am. Pol. Sci. Rev. 1220, 1221 (1970) (Rusk); see Evans 11–13. As documented in* ***Burson v. Freeman, 504 U. S. 191 (1992)****, “[a]pproaching the polling place under this system was akin to entering an open auction place.” Id., at 202 (plurality opinion). The room containing the ballot boxes was “usually quiet and orderly,” but “[t]he public space outside the window . . . was chaotic.” Bensel 13. Electioneering of all kinds was permitted. See id., at 13, 16–17; R. Dinkin, Election Day: A Documentary History 19 (2002). Crowds would gather to heckle and harass voters who appeared to be supporting the other side. Indeed, “[u]nder the informal conventions of the period, election etiquette required only that a ‘man of ordinary courage’ be able to make his way to the voting window.” Bensel 20–21. “In short, these early elections were not a very pleasant spec 3 Cite as: 585 U. S. \_\_\_\_ (2018) tacle for those who believed in democratic government.” Burson, 504 U. S., at 202 (plurality opinion) (internal quotation marks omitted). 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. See id., at 203–205. 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.” Rusk 1221; see Evans 35; 1889 Minn. Stat. ch. 3, §§27–28, p. 21 (regulating, as part of Minnesota’s secret ballot law, the arrangement of voting compartments inside the polling place). In addition, States enacted “viewpoint-neutral restrictions on election-day speech” in the immediate vicinity of the polls. Burson, 504 U. S., at 214–215 (Scalia, J., concurring in judgment) (by 1900, 34 of 45 States had such restrictions). 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 Court stated that 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 court explaining the intricacies of the law recognised that the parties were not in dispute on the fact that the political apparel ban applies only within the polling place and covers articles of clothing and accessories with “political insignia” upon them. The court further explained that Minnesota election judges who are temporary government employees working at the polls on Election Day have the authority to decide whether a particular item falls within the ban. So, where a voter shows up wearing a prohibited item, the election judge is to ask the individual to conceal or remove it. If the individual refuses, the election judge must allow him to vote, while making clear that the incident “will be recorded and referred to appropriate authorities.” Violators, Justice Roberts noted, are subject to an administrative process before the Minnesota Office of Administrative Hearings, which, upon finding a violation, may issue a reprimand or impose a civil penalty. Minn. Stat. §§211B.32, 211B.35(2) (2014). That administrative body may also refer the complaint to the county attorney for prosecution as a petty misdemeanour; the maximum penalty is a $300 fine. §§211B.11(4) (Supp. 2017), 211B.35(2) (2014), 609.02(4a) (2016). The court started by first considering whether Minnesota is pursuing a permissible objective in prohibiting voters from wearing particular kinds of expressive apparel or accessories while inside the polling place.

The court considering the provision of the First Amendment on free speech stated that the First Amendment prohibits laws “abridging the freedom of speech.” Minnesota’s ban on wearing any “political badge, political button, or other political insignia” plainly restricts a form of expression within the protection of the First Amendment. The court noting that the ban applies only in a specific location- the interior of a polling place. The court held that a polling place in Minnesota qualifies as a non-public forum especially on the election day when the place is controlled by the government and set aside for the sole purpose of voting. The court therefore evaluated the petitioners’ First amendment challenge under the non-public forum standard.

The court considering its own judgement in evaluating a First Amendment challenge to such a restriction evaluated in its decision in *Burson*, which upheld a Tennessee law imposing a 100-foot campaign-free zone around polling place. The court noted that “Under the Tennessee law—much like Minnesota’s buffer-zone provision where no person could solicit votes for or against a candidate, party, or ballot measure, distribute campaign materials, or “display campaign posters, signs or other campaign materials” within the restricted zone. 504 U. S., at 193–194 (plurality opinion). The plurality found that the law withstood even the strict scrutiny applicable to speech restrictions in traditional public forums. In his opinion concurring in the judgment, Justice Scalia argued that the less rigorous “reasonableness” standard of review should apply and found the law “at least reasonable” in light of the plurality’s analysis. That analysis emphasized the problems of fraud, voter intimidation, confusion, and general disorder that had plagued polling places in the past. See id., at 200–204 (plurality opinion). Against that historical backdrop, the plurality, Justice Scalia upheld Tennessee’s determination, supported by overwhelming consensus among the States and “common sense,” that a campaign-free zone outside the polls was “necessary” to secure the advantages of the secret ballot and protect the right to vote. Id., at 200, 206–208, 211. As the plurality explained, “the State of Tennessee has decided that the last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible.” Id., at 210. That was not “an unconstitutional choice.”

The court noted that MVA disputes the relevance of *Burson* to Minnesota’s apparel ban. In the Brief for Petitioners (Pp.36-37), MVA argued that *Burson* considered only “active campaigning” outside the polling place by campaign workers and others trying to engage voters approaching the polls. Minnesota’s law, by contrast, prohibits what MVA characterizes as “passive, silent” self-expression by voters themselves when voting. In the Reply Brief, MVA also points out that the plurality focused on the extent to which the restricted zone combated “voter intimidation and election fraud” *Burson* concerns that, in MVA’s view, has 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 plurality nor Justice Scalia who wrote a concurring judgment expressly addressed such applications of the law. Nor did either opinion specifically consider the interior of the polling place as opposed to its environs, and it is true that the plurality’s reasoning focused on campaign activities of a sort not likely to occur in an area where, for the most part, only voters are permitted while voting. At the same time, Tennessee’s law swept broadly to ban even the plain “display” of a campaign-related message, and the Court upheld the law in full. The plurality’s conclusion that the State was warranted in designating an area for the voters as “their own” as they enter the polling place suggests an interest more significant, not less, within that place. Id., at 210.

The court agreed with the state that some forms 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*.” The court held that casting a vote is a weighty civic act, akin to a jury’s return of a verdict, or a representative’s vote on a piece of legislation. The court therefore noted that a voter’s time at the polls is a time for choosing, not campaigning. The State may reasonably decide that the interior of the polling place should reflect that distinction. However, decisions of the Supreme Court have noted the “nondisruptive” nature of expressive apparel in more mundane settings like in **Board of Airport Comm’rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569, 576 (1987)** so characterizing “the wearing of a T-shirt or button that contains a political message” in an airport; in **Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503, 508 (1969)** (students wearing black armbands to protest the Vietnam War engaged in “silent, passive expression of opinion, unaccompanied by any disorder or disturbance”). The court nonethele held that those observations do not speak to the unique context of a polling place on Election Day. Members of the public are brought together at that place, at the end of what may have been a divisive election season, to reach considered decisions about their government and laws.

The court although agreed that the State may reasonably take steps to ensure that partisan discord does not follow the voter up to the voting booth and distract from a sense of shared civic obligation at the moment it counts the most. The court therefore agreed with Minnesota that at least some kinds of campaign-related clothing and accessories should stay outside. Thus, in light of the special purpose of the polling place itself, Minnesota may choose to prohibit certain apparel there because of the message it conveys, so that voters may focus on the important decisions immediately at hand. 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 went further to state that the use of the term “political” in the Minnesota Law combined with the haphazard interpretations the state provided and its arguments is the reason why the restriction that the Minnesota law fails. The court states that although the statute prohibits wearing a “political badge”, Political button, or other Political Insignia it does not define the term “political” the court stated that the word can be expansive, it can encompass 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. Further stating that under a literal reading of those definitions, a button or T-shirt merely imploring others to vote could qualify as being “political”.

In response to this, the State argues that the apparel ban should not be read so broadly interpreted. According to the State, the statute does not prohibit “any conceivably ‘political’ message” or cover “all ‘political’ speech, broadly construed” instead, the State interprets the ban to proscribe “only words and symbols that an objectively reasonable observer would perceive as conveying a message about the electoral choices at issue in [the] polling place.” Id., at 13; see id., at 19 (the ban “applies not to any message regarding government or its affairs, but to messages relating to questions of governmental affairs facing voters on a given election day”). At the same time, the State 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.

The court stated that it often considers a state’s “authoritative constructions” in interpreting a state law as was held in *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123, 131 (1992). For specific examples of what is banned under its standard, the State in this case points to the 2010 Election Day Policy—which it continues to hold out as authoritative guid­ance regarding implementation of the statute. The court therefore went ahead to consider 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, 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.

Justice Roberts also considering the interpretation of the next broad category in the Election day policy: any item “promoting a group with recognizable political views,” 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 State also maintains that the “Please I. D. Me” buttons were properly banned because the buttons were designed to confuse other voters about whether they needed photo identification to vote (Brief for Respondents 46–47). 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 stated that though the election judges have the authority to decide what is “political” when screening individuals at the entrance of the polls, and the court does not doubt that majority of the election judges strive to enforce the statute in an even-handed manner discretion, they must nonetheless be guided by objective, workable standards without which an 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 here. 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 State’s “electoral choices” standard, considered together with the nonexclusive examples in the Election Day Policy, poses riddles that even the State’s top lawyers struggle to solve.

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”).*

Finally the Supreme Court held that the case of Minnesota Apparel Ban Law here “*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*”

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. §211B.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.

He 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 and application 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. 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 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