Supreme Court Strikes Down Law Barring Political Apparel at Polling Places

By Adam Liptak

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WASHINGTON — The Supreme Court on Thursday struck down a Minnesota law that prohibits voters from wearing T-shirts, hats and buttons expressing political views at polling places.

In a cautious 7-to-2 decision, the court acknowledged the value of decorum and solemn deliberation as voters prepare to cast their ballots. But Chief Justice John G. Roberts Jr. wrote that Minnesota's law was not "capable of reasoned application."

Minnesota's law, similar to ones in about nine other states, is quite broad. It says that "a political badge, political button or other political insignia may not be worn at or about a polling place on primary or Election Day."

As enforced by election officials, the law bans even general political messages on apparel, like support for gun rights or labor unions.

The goal, state officials have said, is "an orderly and controlled environment without confusion, interference or distraction."

The case started when members of the Minnesota Voters Alliance, which says it works to ensure "election integrity," turned up at Minnesota polling places wearing T-shirts bearing Tea Party logos and buttons saying "Please I.D. Me."

They were told to cover the messages and were allowed to vote even if they refused. But they risked prosecution for disobeying poll workers' orders.

The group and two individuals challenged the law on free speech grounds, and they lost in the United States Court of Appeals for the Eighth Circuit, in St. Louis.

"Even if Tea Party apparel is not election-related, it is not unreasonable to prohibit it in a polling place," Judge Duane Benton wrote. "In order to ensure a neutral, influence-free polling place, all political material is banned."

Chief Justice Roberts said that went too far. States remain free to decide that "some forms of advocacy should be excluded from the polling place," he wrote. He cited with seeming approval more focused laws in California and Texas aimed at classic electioneering.

"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 chief justice wrote. "It is a time for choosing, not campaigning. The state may reasonably decide that the interior of the polling place should reflect that distinction."

But Minnesota, Chief Justice Roberts wrote, had failed to "articulate some sensible basis for distinguishing what may come in from what must stay out."

There is no problem with banning items supporting or opposing candidates or ballot measures, he indicated. But Minnesota also barred materials "designed to influence or impact voting," which officials interpreted to cover messages touching on any subject that had been addressed by candidates and their parties.

"A rule whose fair 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," Chief Justice Roberts wrote.

The state also barred apparel and insignia that promoted groups with political views. Chief Justice Roberts said that could cover the American Civil Liberties Union, AARP, the World Wildlife Fund, Ben & Jerry's and the Boy Scouts.

When the case was argued in February, a lawyer for the state was peppered with questions about what was and was not allowed. His answers, Chief Justice Roberts suggested, betrayed no consistent theme.

The law would bar T-shirts saying "All Lives Matter," promoting the National Rifle Association or displaying the text of the Second Amendment, said the lawyer, Daniel Rogan. A T-shirt bearing a rainbow flag "would be permitted," he said, "unless there was an issue on the ballot that related somehow to gay rights." And a T-shirt saying "Parkland Strong," referring to the Florida school shooting, or displaying the text of the First Amendment would be allowed, Mr. Rogan said.

All of this, Chief Justice Roberts wrote, meant that Minnesota's approach "poses riddles that even the state's top lawyers struggle to solve."

States can give "the voter the opportunity to exercise his civic duty in a setting removed from the clamor and din of electioneering," Chief Justice Roberts concluded. "While that choice is generally worthy of our respect, Minnesota has not supported its good intentions with a law capable of reasoned application."

In a dissent, Justice Sonia Sotomayor, joined by Justice Stephen G. Breyer, said the court should have asked the Minnesota Supreme Court for a definitive interpretation of the state law.

In a 1992 decision, Burson v. Freeman, the Supreme Court upheld a Tennessee law that created a 100-foot buffer zone around polling places barring electioneering. But that law was aimed at traditional campaign signs and posters, not apparel bearing more general messages.

Thursday's decision in Minnesota Voters Alliance v. Mansky, No. 16-1435, said nothing that would undermine such buffer zones.