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The Sanctity of Polling Places

Posted By [Timothy Zick](#) On October 2, 2008 @ 2:24 pm In [Civil Rights, Constitutional Law, First Amendment](#) | [1 Comment](#)

This election season, like others, will involve a variety of contests relating to political and other activity at or near polling places. Already officials in Kentucky, Pennsylvania, and Nebraska have encountered (or in some instances engendered) some [confusion](#)^[1] regarding whether voters may wear campaign paraphernalia to the polls. Various exit pollers, campaigners, and petitioners have also filed [lawsuits](#)^[1] alleging that restrictions on activity near polling places violate the First Amendment. Although much of the focus leading up to election day has been on *registering* voters, we should also be aware that polling places themselves are hotly contested democratic venues. Voting is not the only action at the polls.

Of course, activists and lawyers are acutely aware that confusion regarding and limitations upon the exercise of the franchise can substantially interfere with the fundamental right to vote. Indeed, particularly in close elections, allegations of voter interference, fraud, and disfranchisement are now rather routine. But these same concerns have contributed to the transformation of many polling places into politics- and speech-free zones. The substantial limits on political and press activity within these zones raise serious First Amendment concerns. There are, of course, sound reasons (i.e., ensuring access and providing for the orderly administration of elections) for imposing some limits on political campaigning near polling places. Indeed, the Supreme Court, in [Burson v. Freeman](#)^[2] (1992), upheld Tennessee's ban on political activity within 100 feet of polling places under a strict scrutiny standard. But as Justice Stevens observed in dissent:

Campaign free zones are noteworthy for their broad, antiseptic sweep. The Tennessee zone encompasses at least 30,000 square feet around each polling place; in some States, such as Kentucky and Wisconsin, the radius of the restricted zone is 500 feet—silencing an area of over 750,000 square feet. Even under the most sanguine scenario of participatory democracy, it is difficult to imagine voter turnout so complete as to require the clearing of hundreds of thousands of square feet simply to ensure that the path to the polling place door remains open and that the curtain that protects the secrecy of the ballot box remains closed.

We must be careful, as Justice Stevens said, not to “confuse sanctity with silence.” Despite the First Amendment concerns associated with polling place limits, many states have imposed bans similar to Tennessee's. Many have also sought to restrict press activity such as exit polling near polling venues. The media have generally been [successful](#)^[3] in challenging these restrictions. Officials seem to have over-reacted to the perceived dangers of this form of information-gathering. Although exit polling has a somewhat checkered history, including in the 2000 presidential election, there is no evidence that it generally interferes with the franchise or disrupts elections. A district judge found in one case that of the 5,090 complaints registered by Florida voters in the 2006 congressional elections, not a single one related to exit polling.

So as we go to the polls in a few weeks, let us hope that the various limits on campaigning and other “political” activity near polling places will not be used to deny anyone access to the ballot. We should also hope that petitioners and exit pollsters will have reasonable access to the voting public.

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- [1] confusion: **http://www.firstamendmentcenter.org/news.aspx?id=20599&SearchString=obama_campaigning_t-shirts_polling_places**
- [2] Burson v. Freeman: **<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?friend=nytimes&navby=case&court=US&vol=504&invol=191>**
- [3] successful: **<http://www.firstamendmentcenter.org/news.aspx?id=17603>**

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