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Election Apparel and the Fashion Police

Posted By [Timothy Zick](#) On October 15, 2008 @ 2:20 pm In [Uncategorized](#) | [No Comments](#)

In a previous [post](#) ^[1], I discussed some recent controversies regarding electioneering near or at polling places. The Commonwealth of Virginia is the latest state to [impose restrictions](#) ^[2] on what voters may wear when they go to the polls in early November. According to the AP report:

The State Board of Elections yesterday voted to ban clothing and hats as well as buttons and other paraphernalia that directly advocate the election or defeat of a specific candidate or issue.

The American Civil Liberties Union argued that the ban violates the First Amendment's right to free speech. The board, however, said it has to weigh that against the right to vote free of undue influence or the tension that candidate advocacy might create.

The controversy over election apparel reminds me of the problems that are [constantly arising](#) ^[3] in public schools regarding t-shirts and other apparel students are permitted — or not permitted — to wear during school hours and on school grounds. But there administrators and courts are at least generally guided by principles like the [Tinker](#) ^[4] "disruption" standard. By contrast, the states that have imposed apparel limitations appear to take the position that simply wearing a button may "unduly influence" voters and interfere with the franchise. Considering that those at the polls are adults, and further considering that there is nothing intrusive or disruptive about merely wearing one's support on one's sleeve, or head, or jacket, this strikes me as overbroad. I understand the concern that polling places may become sites of political unrest if voters are allowed to actively campaign or demonstrate there. But wearing a button or sticker? In a political climate as bare-knuckled and tumultuous as ours, putative concerns regarding "undue influence" and "tension" from voter apparel seem overblown (to say the least).

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[1] post: http://www.concurringopinions.com/archives/2008/10/the_sanctity_of.html

[2] impose restrictions: <http://www.firstamendmentcenter.org/news.aspx?id=20706>

[3] constantly arising: http://www.firstamendmentcenter.org/news.aspx?id=20646&SearchString=school_t-shirt

[4] Tinker:

http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0393_0503_ZS.html

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