

DE 89-05 - July 25, 1989

**Displaying party insignia at voter registration locations
Section 98.271(4), F.S.**

To: Honorable Helen B. Gienau, Supervisor of Elections, Polk County, Post Office Box 1460, Bartow, Florida 33830

Prepared by: Division of Elections

This is in reference to your request for a legal opinion on the following:

Is it permissible for a supervisor of elections to prohibit the wearing or display of party insignia by volunteer deputy registrars when registering voters to insure that the registration of voters is impartial and nonpolitical?

The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Elections Code to certain categories of persons, including supervisors of elections.

The answer to your question is yes, a supervisor of elections may prohibit the wearing or display of party insignia by volunteer deputy registrars when registering voters.

The Supreme Court has held that the wearing of an armband for the purpose of expressing certain views is within the Free Speech Clause of the First Amendment, the right to freedom of speech, is not absolute. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1968).

In U.S. v. O'Brien, the Supreme Court held that governmental regulation of speech is sufficiently justified if:

[I]t is within the constitutional power of the government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and, if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of the interest.

U.S. v. O'Brien, 391 U.S. 367, 377 (1968).

The Supreme Court has also held that activities protected by the First and Fourteenth Amendments are subject to reasonable time, place and manner restrictions. Grayned v. City of Rockford, 408 U.S. 104, 121 (1971). The constitutionality of this type restriction depends upon whether:

1. The regulation is justified without reference to the content of the regulated speech;

2. The regulation serves a significant governmental interest; and

3. In regulating the time, place and manner of speech, ample alternative channels are left open for communication of the information.

Heffron v. International Society for Krishna Consciousness, 452 U.S. 640 (1981).

Section 98.271(4), Florida Statutes, mandates:

No supervisor of elections, deputy supervisor of elections, or volunteer deputy voter registrar shall influence or deceive an applicant in, or deter an applicant from, exercising his right to register or to select his party affiliation.

Although wearing a party insignia may be considered a form of speech which is protected under the First Amendment, it is subject to reasonable time, place and manner restrictions. In light of the express language contained in Section 98.271(4), Florida Statutes, which prohibits a registrar from influencing an applicant's party selection, prohibiting the wearing of the party insignia when registering applicants is sufficiently justified by the governmental interest of insuring that all election procedures remain impartial and apolitical. Restricting the wearing of the party insignia during registration is unrelated to the suppression of free expression. Furthermore, it does not significantly affect the alternative channels left open for the communication of political ideas.

SUMMARY

In light of the significant governmental interest in insuring impartial and nonpolitical election procedures, prohibiting volunteer deputy registrars from wearing or displaying party insignia at the registration location is sufficiently justified.