

interest is unrelated to the suppression of free speech; and if the incidental restriction on the alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

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

Whether the wearing and display of articles of clothing, badges or other devices which express political views is "pure speech" or is "symbolic speech," which is closely akin to "pure speech," see Tinker at 505-506, the restriction is permissible only if it furthers a substantial or compelling governmental interest. It is undoubtedly true that the State has such an interest in insuring the integrity, efficiency, and order of the electoral process. We do not doubt that forbidding electioneering, that is the active solicitation of votes in or near polling places, as in Sec. 24-23(a)(4), furthers this interest. See Piper v. Swan, 319 F.Supp. 908 (E.D. Tenn. 1970). However, as the passive wearing and display of communicative clothing and other items cannot ordinarily or reasonably be said to disrupt the integrity, efficiency or order of the electoral process, we conclude that this restriction does not further this interest. Accordingly, we conclude that this restriction on the expression of political views is an abridgement of the right of free speech.

We would also point out that to the extent that this bill, if enacted into law, might be used to exclude from the polls voters who are wearing the offending articles of clothing or badges, there would be a substantial question of whether such an exclusion violated the Equal Protection Clause of the 14th Amendment. This Clause forbids the States to deny any person within its jurisdiction of the equal protection of the law. While this Clause does not forbid all discrimination, distinctions relating to such fundamental interests as voting must generally serve a compelling state interest. Hill v. Stone, 421 U.S. 289, 298 (1975). It is extremely doubtful if excluding voters based on their attire, even if the attire has some political significance, could even be said to serve a compelling state interest.

Finally, aside from the substantive questions of constitutional law, we would point out that the title is defective. Although the bill was amended to forbid the wearing and display of certain political advertising, the title still refers to the wearing or display of such advertising. Moreover, while this prohibition applies in or near polling places, the title merely refers to prohibition "in" polling places. Accordingly, we think that the bill fails to fairly advise the reader of the subject of the bill as required by Art. III, Sec. 29 of the State Constitution.