

Election Day PSA: It's illegal to share photos of your ballot online in many states. Here's why.

By **Caitlin Dewey** November 4, 2014

This Election Day, feel free to tell Facebook you voted. Get that jaunty little voting hat on Tumblr. Tweet it on the #election2014 hashtag.

But unless you live in Wyoming, North Dakota or a small handful of other states, do *not*, for the love of democracy, share a photo of your ballot on social media. “Ballot selfies,” as they’ve been dubbed, are still illegal in most of the country — and punishable by ballot invalidation, if not significant fines or jail time.

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So, in an age where ceaseless self-documentation has become the cultural norm, why do those laws exist in the first place?

“It’s a very unusual case,” says Jeffrey Hermes, the deputy director of the Media Law Resource Center in New York. “Usually

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intersection of two fundamental aspects of democracy: freedom of speech and the integrity of the voting process.”

Hermes breaks it down this way: Suppose you were a nefarious character who wanted to skew the voting process in some way. You could buy votes, but you’d want proof that people actually voted like you told them to. You could mislead people who don’t understand the voting process or don’t speak English well. You could intimidate other voters into voting like you do.

In these cases, photos from inside the voting booth would really help you, the nefarious character, perpetrate election fraud. And so, many states have just banned those photos categorically. In this narrow circumstance, they’ve indicated, there’s something more essential to democracy than free speech.

That is not, needless to say, a universal opinion. On Friday, the New Hampshire ACLU [filed a lawsuit](#) challenging the state’s ballot selfie law on First Amendment grounds. That came after the state attorney general investigated at least two New Hampshire voters, Andrew Langlois and state Rep. Leon Rideout, for taking and sharing photos of their primary ballots in September. Rideout’s ballot can still be seen [online](#).

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“Political speech is essential to a functioning democracy,” NHCLU staff attorney Gilles Bissonnette said [in a statement](#). “The First Amendment does not allow the State to, as it is doing here, broadly ban innocent political speech with the hope that such a sweeping ban will address underlying criminal conduct.”

Hermes agrees. Election fraud and vote-buying are serious, legitimate concerns, he says, and states have every right to address them. But he points out that states have other ways to target election fraud, like vigorously investigating and prosecuting it. And he can envision hypothetical situations where ballot selfies would actually prove crucial to avoiding problems at the polls: If you’re in a small district of 100 or 150 voters, for instance, and enough of those voters snap pictures of their ballots, the compiled results could be used to determine if voting irregularities had taken place.

The NHCLU sees some other benefits for voting selfies, too: as forms of protest, as in the case of the New Hampshire man who “wrote in” the name of his dog; or as a powerful, organic measure to get out the vote, as selfie-takers share their ballots across their social networks.

Whatever the benefits, however, voters in most states won’t see them this election year. And that concerns Hermes, who says any laws that “restrict participation in the political process” are worth watching — and warily.

“Discussion is also important to the security of the vote,” he said. “Far from undermining the democratic process, [this type of information] actually strengthens it.”