

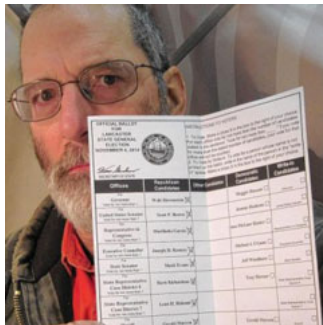


## 27 [BALLOT SELFIES ARE CONSTITUTIONALLY PROTECTED. NOW WHAT?](#)

By **Ethan Wilson**

Want to take a picture of your voted ballot and post it on social media? Go right ahead!

A [recent federal district court decision](#) may potentially spur sweeping changes to many states' voting laws.



At the heart of the issue in New Hampshire is the relatively new phenomenon (and more specifically, the ballot selfie). The court decision, handed down by United District Judge Paul Barbadoro, held a New Hampshire law banning all disclosure of a voter's ballot unconstitutional as a violation of the First Amendment right to free speech.

The court ruled the ballot selfie is constitutionally protected political speech that is restricted only by meeting the highest standard of constitutional scrutiny—triggering strict scrutiny, which is generally known as sounding the death knell for the government act challenged.

Barbadoro concluded that because New Hampshire could not prove any specific instances of vote buying, coercion, or other frauds linked to ballot selfies, the state did not have a compelling government interest in banning them. Since the ballot selfie was held to be political speech, it commands the same constitutional protection as other First Amendment rights.

Elections scholars disagree as to whether legalizing ballot selfies will actually promote vote-buying and other fraudulent behaviors. Despite the potential for fraudulent behaviors, however, the courts must determine whether a compelling government interest such that restricting political speech (ballot selfies) is constitutionally acceptable. In this case, it was not.

Before the court decision, photography in voting booths was generally prohibited with few exceptions for the media. Every state has rules and regulations governing conduct and behavior in and immediately around voting booths. For the most part, these laws strictly prohibit photography. The New Hampshire decision may lead to significant changes in other states.

Some states are already making changes to existing law allowing for voters to legally take and distribute ballot photos.

For example, [Utah](#) and [Arizona](#) recently passed legislation expressly allowing voters to take photographs of their ballots and distribute them via social media. In Utah, [HB 72](#) amends the election code to permit an individual to transmit an electronic image of the individual's ballot in a manner that allows the image to be viewed by the individual. In Arizona, [S 1287](#) allows a voter to retransmit an image of his or her personal ballot over social media as an exception to the general prohibition against photography in the voting booth.

Moreover, because the New Hampshire decision was handed down after most states' legislative sessions ended for the year, expect much more legislation on this topic during the next legislative session.

Now, what's the best Instagram filter to use on my ballot?

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