

**ALASKA STATE LEGISLATURE**  
**SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

March 13, 2018

3:30 p.m.

**MEMBERS PRESENT**

Senator Click Bishop, Chair  
Senator Anna MacKinnon  
Senator Berta Gardner

**MEMBERS ABSENT**

Senator Lyman Hoffman  
Senator Bert Stedman

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 7(CRA)

"An Act relating to the exhibition of marked ballots and the prohibition on political persuasion near election polls."

- MOVED CSHB 7(CRA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 7

SHORT TITLE: MARKED BALLOT PHOTOS; PERSUASION AT POLLS

SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	STA, CRA
01/31/17	(H)	STA AT 3:00 PM GRUENBERG 120
01/31/17	(H)	Heard & Held
01/31/17	(H)	MINUTE(STA)
02/02/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/02/17	(H)	Moved CSHB 7(STA) Out of Committee
02/02/17	(H)	MINUTE(STA)
02/06/17	(H)	STA RPT CS(STA) NT 7DP
02/06/17	(H)	DP: JOHNSON, WOOL, LEDOUX, KNOPP, BIRCH, TUCK, KREISS-TOMKINS
02/18/17	(H)	CRA AT 10:00 AM BARNES 124
02/18/17	(H)	Moved CSHB 7(CRA) Out of Committee
02/18/17	(H)	MINUTE(CRA)

02/22/17	(H)	CRA RPT CS(CRA) NT 3DP 2NR
02/22/17	(H)	DP: WESTLAKE, DRUMMOND, PARISH
02/22/17	(H)	NR: TALERICO, FANSLER
03/01/17	(H)	TRANSMITTED TO (S)
03/01/17	(H)	VERSION: CSHB 7(CRA)
03/03/17	(S)	READ THE FIRST TIME - REFERRALS
03/03/17	(S)	CRA, STA
03/21/17	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/21/17	(S)	Heard & Held
03/21/17	(S)	MINUTE(CRA)
03/13/18	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

REPRESENTATIVE KREISS-TOMKINS  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 7.

NOAH STARS, staff to Representative Kreiss-Tomkins  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Commented on HB 7 for the sponsor.

ALPHEUS BULLARD, Attorney  
 Division of Legislative Legal  
 Legislative Affairs Agency  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Commented on HB 7.

JOSIE BEHNKE, Director  
 Division of Elections  
 Office of the Lieutenant Governor  
 Juneau, Alaska

**POSITION STATEMENT:** Testified the department was not opposed to HB 7.

CAROL THOMPSON  
 Absentee and Petition Manager  
 Division of Elections  
 Office of the Lieutenant Governor  
 Anchorage, Alaska

**POSITION STATEMENT:** Commented on HB 7.

MELISSA GOLDSTEIN, Legal Fellow  
 American Civil Liberties Union (ACLU)

Anchorage, Alaska

**POSITION STATEMENT:** Supported HB 7.

**ACTION NARRATIVE**

[3:30:41 PM](#)

**CHAIR CLICK BISHOP** called the Senate Community and Regional Affairs Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Gardner, MacKinnon, and Chair Bishop.

**HB 7-MARKED BALLOT PHOTOS; PERSUASION AT POLLS**

[3:31:23 PM](#)

**CHAIR BISHOP** announced consideration of HB 7 [CSHB 7(CRA), 30-LS0111\J, was before the committee].

[3:31:39 PM](#)

**REPRESENTATIVE KREISS-TOMKINS**, Alaska State Legislature, Juneau, Alaska, sponsor of HB 7, said this measure clarifies something that is a widespread practice now: taking photos of ballots in the voting booth and posting them online. Technically, it's illegal. The prohibition is a vestige from the early 20th century when political machine politics and voter coercion was widespread. HB 7 updates election law to the reality of cellphones.

[3:34:09 PM](#)

**NOAH STARS**, staff to Representative Kreiss-Tomkins, Alaska State Legislature, Juneau, Alaska, provided a sectional analysis of HB 7. He started with section 3, the meat of the bill, which amends the statute that prohibits the displaying of one's ballot. It proposes allowing the sharing of a photo, video, or other image of a voter's ballot within 200 feet of a polling place subject to one prohibition on political persuasion that is identified in section 1.

Section 2 moves part of the statute into section 3.

Section 1 is the part of the bill that prohibits the displaying of one's ballot in photo or video form in the polling place or within 200 feet of it, consistent with existing statute prohibitions.

**SENATOR MACKINNON** asked if the bill proposes that a person can take a picture of a ballot in a voting place but can't transmit

it while they are on the premises or someone else who is on the premises could open it up, and asked how that can be enforced.

REPRESENTATIVE KREISS-TOMKINS said the intent is for a voter to be able to take an image in a polling place but to not show it on their phone as they leave, which would fall within the parameters of campaigning or trying to influence another voter's choice in a place of voting.

SENATOR MACKINNON remarked that one can't control how someone takes and forwards an image. This bill may stop someone from displaying their phone, but it does not stop someone from taking a picture of their ballot and distributing it to everyone on Facebook or other social media platforms where it immediately becomes available and may influence other people on how to vote.

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REPRESENTATIVE KREISS-TOMKINS said that is also a fair point, but he noted that that is the reality they are working within.

SENATOR MACKINNON said it's not a question: she takes voting seriously and if she had a following it would be unfair of her to share her ballot because 15,000 or 25,000 people follow her and she could influence an election very quickly.

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REPRESENTATIVE KREISS-TOMKINS said that is a fair point. He is personally very conservative with social media but has taken a ballot selfie just as a personal memento and never shared it with other people. However, he knows lots of people who are more liberal with sharing what they have done and, in a sense, "the cat is out of the bag." This is already happening on a widespread basis. It's not being enforced, but if someone really wanted to go after this law, it could be challenged on First Amendment grounds and the challengers could prevail. That has already happened in New Hampshire.

Secondly, if he or Senator MacKinnon, being prominent leaders in Alaska, were trying to influence an election, their endorsements might have the same influence as a photo of a ballot.

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SENATOR GARDNER said it's important to recognize that this happens a lot now and agreed there is a First Amendment right if she wants to take a picture of her own ballot for herself. But she worries that people are subjecting those who are waiting in line to campaigning.

SENATOR MACKINNON said language on page 2, section 2, says: "A voter may not exhibit the voter's ballot to an election official or any other person so as to enable any person to ascertain how the voter marked the ballot." Her question to the sponsor is can they display the actual ballot. She needed a legal interpretation to know if taking a selfie is different than sharing a ballot vote.

CHAIR BISHOP asked if the intention of this bill is to allow a voter to take a selfie in the booth or to take a picture of the ballot to show how you voted and send it out.

REPRESENTATIVE KREISS-TOMKINS replied that a ballot selfie is meant to refer to one taking a photo of one's ballot. However, you could be in the photo at the same time, too.

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ALPHEUS BULLARD, Attorney, Division of Legislative Legal Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, answered that section 3 adds a new subsection (AS 15.15.280 (b) that applies to section 2 saying that section does not apply to a voter who requests assistance as provided in AS 15.15.240 or subject to the prohibition on political persuasion and who is within 200 feet of the entrance of the polling place.

CHAIR BISHOP asked if this doubles down on saying you can't show anything within 200 feet of the booth.

MR. BULLARD answered there is an absolute prohibition to show how you voted on your ballot whether it be with a ballot selfie or otherwise, as long as you're within the polling place or within 200 feet of an entrance to it.

CHAIR BISHOP asked how that is enforced.

[3:49:06 PM](#)

MR. STARS said he would defer that question to the Division of Elections, but the idea is that a ballot selfie should not interfere with the process of voting. And the status quo is when folks ask themselves if they can take a picture of their vote and put it on Facebook, there is not a clear answer. This bill offers a clear answer, which removes an element of voter confusion and creates clear policy.

SENATOR GARDNER asked if she was correct that section 1 says you can't use a photo to persuade others within 200 feet; section 2 says you can't show a ballot to anybody; and section 3 says except if it's somebody who needs help, or you are more than 200 feet away.

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JOSIE BEHNKE, Director, Division of Elections, Office of the Lieutenant Governor, Juneau, Alaska, said the department was not opposed to HB 7. She explained that HB 7 proposes to allow Alaskan voters to take and share ballot selfies. Under existing statute, it is unlawful for a voter to display a marked ballot. The division has no opposition to this bill, but during the last election cycle it fielded a lot of questions from people asking about the legality of selfies.

She further stated that AS 15.15.170 deals with electioneering. AS 15.15.280 addresses conduct in the polling places. She reiterated that there is a lot of voter confusion about what is allowed, and HB 7 would make that clearer.

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MS. BEHNKE said this specific statute was written in around 1960 and didn't contemplate cell phones or cameras being an issue in a polling place. AS 15.56, which is about election crimes, says the penalty for exhibiting a marked ballot in a polling location is to spoil that ballot. Election workers are trained to do that. However, once a ballot goes into the ballot box, it is comingled with all the other ballots making it virtually impossible to enforce.

She said the changes in HB 7 would have no impact on the costs associated with the division's conduct of state and federal elections and no additional staff would be required to implement it.

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SENATOR GARDNER asked what if she is voting absentee, is that a violation of something?

MS. BEHNKE replied this bill just addresses conduct in the polling places.

CAROL THOMPSON, Absentee and Petition Manager, Division of Elections, Office of the Lieutenant Governor, Anchorage, Alaska, replied at this point there isn't any law for absentee ballots

in homes. This bill speaks specifically to actions in the polling place and within a 200-foot radius.

SENATOR MACKINNON said she was looking at the National Conference of State Legislatures (NCSL) in the New Hampshire case that was a federal court decision. Net neutrality comes to mind: when you're posting on Facebook, it is continually gathering data to manipulate everything. For instance, if she googles a set of pearls for her mother's birthday, she gets offered pearls for the next six months. Now images are being put out at a state level that would be a republican or democrat-cast vote. That information could be used in the future to manipulate and target specific IP addresses directly. So, IP addresses on Facebook or other social network platforms can be used to directly influence voters in an election.

SENATOR MACKINNON said the NCSL memo references a blog by Ethan Wilson, dated 8.27.2015, which says: "Election scholars disagree as to whether legalizing ballot selfies will actually promote voter buy-in or other fraud." She is thinking of the inquiry at the national level as to whether a foreign country tried to invade into American politics. If a social network has IP addresses with how each person is voting based on photo-sharing of images, then foreign countries, because of that exposure, would have direct access if they could breach into the data of the seller.

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SENATOR MACKINNON said she agreed with the court that selfies are something we are faced with these days, but she would still err on the note of caution.

CHAIR BISHOP asked Ms. Behnke to expound on how to make HB 7 a better bill.

MS. BEHNKE said the House had concerns about electioneering within 200 feet of a polling place and asked that language to be included. Election workers are trained to use specific rules in the polling place and electioneering is one of them. So, they worked closely with the sponsor to get that included in version \J of HB 7. She could follow up with the committee on recommendations. The division is doing some things administratively like putting up signage (a cellphone circled with a line through it) should HB 7 not become law.

CHAIR BISHOP asked her to work with his staff on the committee substitute.

SENATOR GARDNER asked Ms. Behnke if she is concerned with the bill as drafted.

MS. BEHNKE answered no.

SENATOR MACKINNON asked, knowing what the Internet can do and what it is alleged to have done during the national campaign, as the coordinator of elections for the state of Alaska, doesn't she think that people can be targeted once their information is exposed.

MS. BEHNKE answered that she hadn't considered the election security standpoint in this bill; they thought about this bill as an expression of celebrating the act of voting.

SENATOR MACKINNON asked the division to go back and at least look at securing data. She didn't want folks who take their picture in a booth to be the subject of any kind of criminal action for expressing themselves and she knows the sponsor's heart is in the right place for wanting to encourage voting through a social media platform that many people participate in.

[4:06:41 PM](#)

SENATOR GARDNER said they can't prevent this from happening at the voting booth, but the bill attempts to make sure if you do that then you can't use the picture within 200 feet of the polling place.

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CHAIR BISHOP opened public testimony.

[4:08:30 PM](#)

MELISSA GOLDSTEIN, Legal Fellow, American Civil Liberties Union (ACLU), Anchorage, Alaska, supported HB 7, because it provides clarity about Alaska's ballot laws, so that they are interpreted in a way that is supported by the Constitution. Prohibitions on ballot-sharing were originally passed in response to widespread electioneering issues such as vote-buying back in the 1890s; Alaska likely adopted these election laws wholesale. Today, vote-buying is so rare that it is statistically non-existent.

She said photographing marked ballots is protected speech under the First Amendment. This type of speech is known as core political speech and is one of the most protected rights. Photographs restricted based on what they contain, in this case the ballot, is a content-based restriction, and those are the

ones that receive the highest level of scrutiny, because they control speech. Laws prohibiting photographs of marked ballots are too broad, because they prohibit constitutionally protected speech and not just the speech related to vote buying.

MS. GOLDSTEIN said the ACLU has successfully challenged laws in other states that have enforced prohibitions on photographing marked ballots. Today, several other states have expressly authorized them. And this statute hasn't been a problem in Alaska because the Division of Elections has a reasonable interpretation that this law should not be enforced against people photographing their own ballots.

HB 7 harmonizes Alaska code to conform with the Division of Election's practice and First Amendment Law, clarifying Alaska law and safeguarding protected First Amendment speech.

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CHAIR BISHOP, finding no further comments, closed public testimony on HB 7.

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At ease

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CHAIR BISHOP called the meeting back to order and said HB 7 will go to the State Affairs Committee next, and he would like the Division of Elections to let the sponsor know of any concerns before it is scheduled in that committee.

CHAIR BISHOP commented the last thing he would advise his kids to do is take a ballot selfie, because 20 years from now she would be interviewing for a job somewhere and the employer would bring it up and ask how she voted. Then she would have to remember. "The less you say the less you have to defend," he advised.

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SENATOR MACKINNON moved to report HB 7 [CSHB 7(CRA), 30-LS0111\J, from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[4:13:53 PM](#)

CHAIR BISHOP, finding no further business, adjourned the Senate Community and Regional Affairs Committee meeting at 4:13 p.m.