

HB

7

<TARGET><BILL>HB 7</BILL><SUBJECT>HB
7</SUBJECT><COMM>HCRA30</COMM></TARGET>

ALASKA LEGISLATURE

Representative Jonathan Kreiss-Tomkins

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Committees:
State Affairs, Chair
Fisheries
Judiciary



Juneau, Alaska 99801 (Jan. – April)
State Capitol, Room 411
907.465.3732

Sitka, Alaska 99835 (May – Dec.)
201 Katlian Street, Ste. 103
907.747.4665

HB 7 Sponsor Statement - Ballot Selfies

This bill would officially allow Alaskan voters to take and share “ballot selfies” — the photos that people take of themselves or their ballots in the voting booth. Technically, it’s illegal to share one in Alaska right now, though in practice, the law goes unenforced.

Sharing ballot photos was traditionally prohibited to prevent voter intimidation and vote buying (e.g., someone tells or pays you to vote a certain way, and makes you show picture of your ballot to prove you did). But technology and the internet have changed the reasons we take and share pictures: ballot selfies have become a common way to express support for a candidate, a cause, or the act of voting itself.

Alaska would be stepping into well-charted territory by allowing ballot selfies. Many other state recognize ballot selfies as a form of political speech, protected under the First Amendment. Bans on selfies have been struck down as unconstitutional in New Hampshire, Indiana, Nebraska, Rhode Island, Michigan, California, and Utah, joining states like Washington, Oregon, California, and Montana which never outlawed selfies to begin with.

There’s no evidence to suggest ballot buying is a widespread problem in Alaska: the state does not enforce the current law that bans ballot photos. If ballot selfies are legalized, standing laws which criminalize voting interference would remain (AS 15.56.030).

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HB 7– Summary of Changes ver A to ver D

Section 1.

Page 1, lines 9-12: Adds clarifying language to explicitly prohibit physically displaying a photo, video, or other image of a person’s marked ballot within a polling place or 200 feet of the entrance to any polling place.

Section 3.

Page 2, lines 9-10: Adds language that harmonizes AS 15.15.280 (prohibition on display of marked ballots) and AS 15.15.170 (prohibition on electioneering in the polling place).

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Ver D
Sectional for HB 7 — Ballot Selfie Bill

“An Act relating to the exhibition of marked ballots.”

Section 1.

Harmonizes section 3 with existing section AS 15.15.170 by clarifying that it is prohibited to physically display a photo, video, or other image of a marked ballot to another person within the polling place or within 200 feet of any entrance to the polling place.

Section 2.

Conforming amendment to existing AS 15.15.280.

Section 3.

Allows a voter to share a photo, video, or other image of her or his own marked ballot with the public, if they so choose, subject to the restriction in section 1.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 7(STA)

- 1 Page 1, line 10, following "**person's**":
- 2 Insert "**or another person's**"

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSHB 7(STA)
Fiscal Note Number:	1
(H) Publish Date:	2/6/2017

Identifier: HB007-OOG-DOE-1-27-17
 Title: DISPLAY OF PHOTOS OF MARKED BALLOT
 Sponsor: KREISS-TOMKINS
 Requester: (H) STA

Department: Office of the Governor
 Appropriation: Elections
 Allocation: Elections
 OMB Component Number: 21

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By:	Josephine Bahnke, Director	Phone:	(907)465-2644
Division:	Division of Elections	Date:	01/27/2017 05:39 PM
Approved By:	Guy Bell, Administrative Director	Date:	01/27/17
Agency:	Division of Administrative Services, Office of the Governor		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

This legislation proposes to allow Alaskan voters to take and share "ballot selfies" - the photos that people take of themselves or their ballots in the voting booth. Under existing Alaska Statute, it is unlawful for a voter to display a marked ballot.

This change has no impact on the financial costs associated with the division's conduct of state and federal elections. Nor will any additional staff be required to implement the proposed law.

NEWS > COLORADO NEWS

Temporary restraining order sought banning enforcement of Colorado law restricting ballot selfies

By **KIRK MITCHELL** | kmitchell@denverpost.com | The Denver Post

PUBLISHED: October 31, 2016 at 8:56 am | UPDATED: October 31, 2016 at 9:06 am

Federal Judge Christine Arguello will hear arguments Wednesday in Denver both for and against a Colorado law originally passed in 1891 that bans people 125 years later from publishing their ballot choices through cellular phone selfies.

Caryn Ann Harlos, the spokeswoman for the Libertarian Party of Colorado, said Monday that the “outdated law” violates citizens’ rights of free speech. She and others are seeking a preliminary injunction preventing authorities from enforcing the law.

“Ultimately we’re hoping that the law be struck down as unconstitutional,” Harlos said Monday. “Colorado has imposed abysmal restrictions upon our rights to free political speech.”

But Suzanne Staiert, deputy secretary of state, recently said in a statement that the law protects voters from undo voter coercion.

“We believe the current law protects the integrity of the election and protects voters from intimidation or inducement,” Staiert said in a recent public statement. “In fact, given Colorado’s unique election system and rise of social networking, the prohibition may be more important in Colorado than in other states and may be more timely today than ever.”

The Colorado Libertarian party has invited people to go to the Alfred A. Arraj U.S. District Courthouse with their marked ballots concealed in envelopes for a “demonstration of support.” If Arguello issues the restraining order preventing law enforcement from enforcing the law protesters will do a “group ballot selfie picture,” Harlos said.

While Harlos points out that “it may be claimed” that no has ever been prosecuted under the law, all laws are ultimately a threat of state force.

“It is the metaphorical lifting of one’s shirt to show there is a gun in the waistband, which gun can always be turned against those engaging in unpopular political speech at any time the government chooses,” Harlos said in a news release.

The firestorm over the so-called ballot selfies started Oct. 20 after Denver District Attorney Mitch Morrissey issued a news release to remind people that it is illegal to show someone else a completed ballot, including selfies and other pictures posted on social media.

TAGS: **BALLOT SELFIES, ELECTION 2016, MITCH MORRISSEY**

Kirk Mitchell of The Denver Post.

Kirk Mitchell

Kirk Mitchell is a general assignment reporter at The Denver Post who focuses on criminal justice stories. He began working at the newspaper in 1998, after writing for newspapers in Mesa, Ariz., and Twin Falls, Idaho, and The Associated Press in Salt Lake City. Mitchell first started writing the Gold Case blog in Fall 2007, in part because Colorado has more than 1,400 unsolved homicides.



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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.

ADVERTISING

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

ISRAEL BEYOND BELIEF

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](#).

Intersect newsletter

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The corner of the Internet and interesting.

“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.”

Caitlin Dewey is the food policy writer for Wonkblog. Subscribe to her daily newsletter: tinyletter.com/cdewey.

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The Post Recommends

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Here's what we know so far about the advisers named by Trump in a meeting with The Washington Post.

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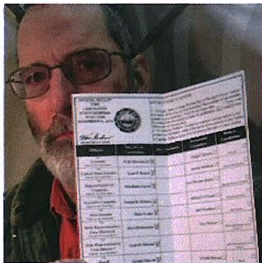


27 [BALLOT SELFIES ARE CONSTITUTIONALLY PROTECTED. NOW WHAT?](#)

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 of the selfie, and more specifically, the ballot selfie. The court decision, handed down by United States District Judge Paul Barbadoro, held a New Hampshire law banning all disclosure of one'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 can be restricted only by meeting the highest standard of constitutional scrutiny—triggering strict scrutiny is generally known as sounding the death knell for the government action being challenged.

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

Elections scholars disagree as to whether legalizing ballot selfies will actually promote vote-buying and other frauds. Despite the potential for fraudulent behaviors, however, the courts must determine whether bad acts constitute 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 press and 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.

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

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 transfer an electronic image of the individual's ballot in a manner that allows the image to be viewed by the individual or another. 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?

Ethan Wilson is a policy associate in NCSL's Center for Ethics in Government.

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Rideout v. Gardner

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DATE OF DECISION

August 11, 2015

OUTCOME

Law or Action Overturned or Deemed Unconstitutional

CASE NUMBER

14-cv-489-PB

REGION & COUNTRY

United States, North America

JUDICIAL BODY

Appellate Court

TYPE OF LAW

Constitutional Law

THEMES

Political Expression

TAGS

First Amendment, Censorship

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CASE ANALYSIS

Case Summary and Outcome

New Hampshire passed a law that makes it unlawful for voters to take and disclose photos of their voting ballots to show others how they have voted. Three voters investigated under this law challenged it on First Amendment grounds. The court ruled that the new law is a content-based restriction on speech that cannot survive the standard of strict scrutiny.

Facts

In 2014, an existing law that forbid voters from disclosing their voter ballots was amended. The amended law, the New Hampshire Revised Statute § 659:35, penalized with fines the taking and sharing of digital images or photographs of marked voter ballots and sharing those images on social media or in other public ways.

The amendment aimed to curb buying votes. The court noted that New Hampshire did not offer evidence showing that vote buying or voter coercion occurred in New Hampshire since the late 1800s.

The plaintiffs in this case are three of the four people the Attorney General began to investigate in an alleged violation of the statute.

Leon Rideout, the first plaintiff, photographed his marked voter ballot and posted in on Facebook and Twitter. Andrew Langlois, the second plaintiff, wrote the name of his dead dog on his ballot, took a picture of it and shared in on Facebook. Brandon Ross, the third plaintiff, took a photo of his marked voter ballot and posted in on Facebook with a phrase "Come at me bro," as he was aware of the amended law.

Decision Overview

Honorable Judge Paul Barbadoro, of the New Hampshire U.S. District Court, wrote the memorandum and order. The Court first ruled on whether the restriction on speech was content based or content neutral. The distinction is important because, content based speech must withstand higher scrutiny. Applying precedent from *Reed v. Town of Gilbert*, 135 S. Ct. 2218

(2015), the Court ruled that the amended law is content based because it restricts speech on the basis of its subject matter. The Court dismissed the state’s defense that a ballot is a non–public forum and thus, strict scrutiny should not be applied. To the Court, the argument was flawed because the law did not restrict speech on the ballot, but the public dissemination of the ballot.

To withstand strict scrutiny, a law must further a compelling interest and be narrowly tailored to achieve that interest. For an interest to be compelling, it must address an actual problem. New Hampshire does not have a problem with voter buying or other voter fraud, so no problem exists that the law alleges to address.

DECISION DIRECTION



GLOBAL PERSPECTIVE



CASE SIGNIFICANCE



OFFICIAL CASE DOCUMENTS



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