

HB

7

<TARGET><BILL>HB 7</BILL><SUBJECT>HB
7</SUBJECT><COMM>SCRA30</COMM></TARGET>

ALASKA LEGISLATURE

Representative Jonathan Kreiss-Tomkins

Angoon · Coffman Cove · Craig · Edna Bay · Elfin Cove · Game Creek · Hollis · Hoonah · Kake · Kasaan · Klawock · Kupreanof · Naukati · Pelican Petersburg · Point Baker · Port Alexander · Port Protection · Sitka · Tenakee Springs · Thorne Bay · Whale Pass

rep,jonathan.kreiss-tomkins@akleg.gov

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).

SENATE COMMITTEE REPORT

DATE: 3/3/17

FURTHER: State Affairs

DATE TURNED
IN TO OFFICE: 3 / 13 / 18

Community and Regional Affairs Committee considered CS FOR HOUSE BILL NO. 7(CRA)

HB 7-DISPLAY OF PHOTOS OF MARKED BALLOT

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

and recommends:

- be replaced with SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- adopt previous SCS _____ (_____) Same Title Technical Title Change
 New Title/SCR No. _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
GOV			✓	2

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Beta Gardner</i>	GARDNER	X			
<i>Anna L. Mackinnon</i>	MacKinnon		X		
<i>Chair: Clive Bishop</i>	Bishop	X			

CS FOR HOUSE BILL NO. 7(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 2/22/17

Referred: Rules

Sponsor(s): REPRESENTATIVES KREISS-TOMKINS, Kawasaki, Knopp, Tuck

A BILL

FOR AN ACT ENTITLED

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 15.15.170 is amended to read:

5 **Sec. 15.15.170. Prohibition of political persuasion near election polls. (a)**

6 During the hours the polls are open, a person who is in the polling place or within 200
7 feet of any entrance to the polling place may not

8 **(1)** attempt to persuade a person to vote for or against a candidate,
9 proposition, or question; **or**

10 **(2) physically display a photo, video, or other image of the person's**
11 **or another person's marked ballot in an attempt to persuade a person to vote for**
12 **or against a candidate, proposition, or question.**

13 **(b)** The election officials shall post warning notices at the required distance in
14 the form and manner prescribed by the director.

1 * **Sec. 2.** AS 15.15.280 is amended to read:

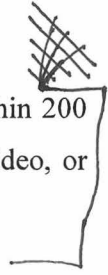
2 **Sec. 15.15.280. Prohibiting the exhibition of marked ballots.** ²⁰⁰ A [SUBJECT
3 TO AS 15.15.240 A] voter may not exhibit the voter's ballot to an election official or
4 any other person so as to enable any person to ascertain how the voter marked the
5 ballot.

6 * **Sec. 3.** AS 15.15.280 is amended by adding a new subsection to read:

7 (b) This section does not apply to a voter who

8 (1) requests assistance under AS 15.15.240; or

9 (2) subject to the prohibition on political persuasion in, or within 200
10 feet of an entrance to, a polling place under AS 15.15.170, shares a photo, video, or
11 other image of the voter's marked ballot with another person or with the public.



CS FOR HOUSE BILL NO. 7(CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 2/22/17

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Sponsor(s): REPRESENTATIVES KREISS-TOMKINS, Kawasaki, Knopp, Tuck

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FOR AN ACT ENTITLED

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4 * **Section 1.** AS 15.15.170 is amended to read:

5 **Sec. 15.15.170. Prohibition of political persuasion near election polls. (a)**

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7 feet of any entrance to the polling place may not

8 **(1)** attempt to persuade a person to vote for or against a candidate,
9 proposition, or question; **or**

10 **(2)** **physically display a photo, video, or other image of the person's**
11 **or another person's marked ballot in an attempt to persuade a person to vote for**
12 **or against a candidate, proposition, or question.**

13 **(b)** The election officials shall post warning notices at the required distance in
14 the form and manner prescribed by the director.

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2 **Sec. 15.15.280. Prohibiting the exhibition of marked ballots.** A [SUBJECT
3 TO AS 15.15.240 A] voter may not exhibit the voter's ballot to an election official or
4 any other person so as to enable any person to ascertain how the voter marked the
5 ballot.

6 * **Sec. 3.** AS 15.15.280 is amended by adding a new subsection to read:

7 (b) This section does not apply to a voter who

8 (1) requests assistance under AS 15.15.240; or

9 (2) ~~subject to the prohibition on political persuasion in, or within 200~~
10 ~~feet of an entrance to, a polling place under AS 15.15.170,~~ shares a photo, video, or
11 other image of the voter's marked ballot with another person or with the public, ~~except~~
as prohibited by AS 15.15.170.

*(c) Any voter who shares a photo, video, or other image
of the voter's marked ballot with another person or
the public is deemed to have consented to further
transmittal of that image*

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Ver J

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 any 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.

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	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
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

Fund Source (Operating Only)

None							
Total	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
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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.

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version: HB 7
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB007-OOG-DOE-3-09-18
Title: MARKED BALLOT PHOTOS; PERSUASION AT POLLS
Sponsor: KREISS-TOMKINS
Requester: (H) State Affairs

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)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019					
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

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Estimated CAPITAL (FY2019) 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/comments:

Not applicable, initial version

Prepared By: Josephine Bahnke, Director
Division: Division of Elections
Approved By: Shawn Henderson, Administrative Director
Agency: Division of Administrative Services, Office of the Governor

Phone: (907)465-2644
Date: 03/09/2018 09:35 AM
Date: 03/09/2018

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

BILL NO. CSHB 7 (STA)

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. No additional staff will be required to implement the proposed law.

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HB 7– Summary of Changes ver A to ver J

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).

Rideout v. Gardner

Select Language

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Expands Expression

MODE OF EXPRESSION

Electronic / Internet-based Communication

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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University | Statement on
Disability

**Global Freedom of
Expression**
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91 Claremont Ave,
Suite 523
New York, NY 10027
1-212-854-6785

 1-212-854-6785

 GLOBALFREESPEECH@COLUMBIA.EDU

 GLOBALFOEANDI

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

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.”

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.



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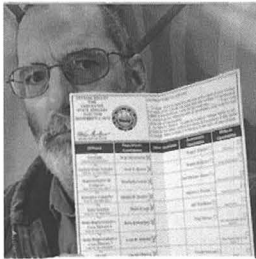
5

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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ALASKA LEGISLATURE
Representative Jonathan Kreiss-Tomkins

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Senator Click Bishop
Chair, Senate Community & Regional Affairs
Capitol 121, Juneau, AK 99801

March 21, 2017

Senator Bishop,

These testimonies were submitted by Tasha Elizarde on behalf of herself, Janessa Goodman, Emme MacDonald, Gillian Smith, Noah Williams, Raven Ward, Carly Dennis, and Tristan Douville.

Sincerely,

A handwritten signature in black ink, appearing to read "JKT".

Representative Jonathan Kreiss-Tomkins

HB7 Testimonies

Juneau, Alaska

Tasha Elizarde; Juneau; House District 33 and Senate District P. “My name is Tasha Elizarde from Senate District P, Juneau. About a week ago I turned 18 years old. The best gift that civically-minded 18-year-old me can get is the ability to vote, and being able to commemorate that moment with a selfie is an even better gift. The act of taking a photo with one’s ballot is borne out of excitement, and other teens in Juneau agree with me. After talking about HB7 with two government classes from Juneau-Douglas High School, the majority of students all believed that this bill deserves to be implemented. Plus, there are teenagers and other excited voters taking photos of themselves while in the ballot booth already, but because of how our current statute is phrased none of these voters know whether or not sharing their excitement with the world via text or social media is legal. The statute deserves to be clarified and updated with our changing times, and because ballot selfies are harmless and only work to promote civic engagement online, CSHB7 should be passed. Thank you.”

Janessa Goodman; Juneau; House District 33 and Senate District P. “My name is Janessa Goodman. I am in House District 33 and Sam Kito is my rep. I am in support of the HB7 bill. Selfies are becoming increasingly popular today in the modern world, and are a fun way to showcase an activity. It could inspire more people to vote as well. Not to mention the fact that literally anyone who would post a selfie most likely would talk about their political views online anyway. Sharing/taking a selfie is harmless. Plus, taking a selfie with the ballot does not mean you HAVE to showcase who you voted for, which means it is as safe as you allow it to be.”

Emme MacDonald; Juneau; House District 33 and Senate District P. “My name is Emme MacDonald. I am in House District 33. I recently turned 18 and was able to vote in the 2016 presidential election, and I think that it is important to be able to express my opinion and my vote in whatever way I choose to. In my generation, selfies are popular and harmless, even in the ballot box.”

Gillian Smith; Juneau; House District 33 and Senate District P. “My name is Gillian Smith, and I live in House District 33. In recent years we have been seeing a lack of youth voter turnout. This past election, social media was a powerful outlet for expression of political opinion. While that influence has both negative and positive effects, it is clearly a way to increase youth involvement in politics. Sharing ballot box selfies would be another way for youth to encourage their peers to use their rights and have a say in politics.”

Noah Williams; Juneau; House District 33 and Senate District P. “Allowing voters to capture and share photographs of their ballots would encourage voter turnout, a keystone of democracy, through the power of social media. Vote yes on House Bill 7.”

Raven Ward; Juneau; House District 34 and Senate District P. “I am Raven Ward, I live in house district 34 and I was recently informed about House Bill 7. As I am currently seventeen years of age I have not been able to vote yet, but I know the importance of voting and intend to participate as soon as I am able. I think it should be allowed to take pictures in a voting booth. It doesn't affect me how other people want to express their vote, and although I don't personally want to photograph myself in a voting booth, I think people should be able to decide that for themselves.”

Anchorage, Alaska

Carly Dennis; Anchorage. “As an 18 year-old senior in high school, I can appreciate the power of social media over young people. Youth represent a powerful and underrepresented demographic, and we need to do everything we can to mobilize my generation. I want to be able to document my participation in elections to help catalyze my peers into similar action. I think CSHB7 is a valuable bill that will help engage young people in our democracy.”

Craig, Alaska

Tristan Douville; Craig; House District 35 and Senate District R. “I'm writing in support of HB7 because I believe that we can increase voter turnout by allowing voters to take pictures with their ballots. I think that seeing a picture of a colleague voting would inspire others to get out and vote.”



March 21, 2017

The Honorable Click Bishop, Chair
Senate Community and Regional Affairs Committee
Alaska Senate
State Capitol
Juneau, AK 99801

by email: Senator.Click.Bishop@akleg.gov

Re: Constitutional Support for HB 7: An Act relating to the exhibition of marked ballots

Dear Chair Bishop:

The American Civil Liberties Union of Alaska Foundation supports HB 7 because it codifies the fundamental constitutional protections for core political speech and creates important clarification for the Division of Elections about the constitutional limitations in the enforcement of Alaska's ballot laws. Publishing a ballot photograph or a "ballot selfie," which generally occurs through social media, is an important and effective means of political expression that is protected by the First Amendment.¹ As one federal judge noted, "Celebrities, politicians and government leaders, even Pope Francis and the Dali Lama, have had selfies taken, posted, and viewed thousands or millions of times."²

Thank you for the opportunity to provide testimony about House Bill 7. The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska, and our mission is to preserve and expand the individual freedoms and civil liberties guaranteed by the Alaska and United States Constitutions. We urge the committee to pass HB 7.

Leon Rideout, a Republican politician from the New Hampshire House of Representatives, was on the ballot for the primary election in September 2014.³ He went to his local polling place in Lancaster, and after marking his ballot, took a photograph of himself holding the ballot, which indicated that he had voted for himself.⁴ A few hours after casting his ballot, he posted the photograph to Twitter, with the caption "#COOS7 vote in primary 2014

¹ See *id.*; *Indiana Civil Liberties Union Foundation, Inc. v. Indiana Sec'y of State*, 1:15-cv-01356, 2017 WL 264538, at *3-4 (S.D. Ind. Jan. 19, 2017).

² *Silberberg v. Bd. Of Elections of N.Y.*, --- F.3d ---, 2016 WL 6537691 (S.D.N.Y. Nov. 3, 2016).

³ *Rideout v. Gardner*, 123 F. Supp. 3d 218, 226 (D.N.H. 2015), *aff'd*, 838 F.3d 65 (1st Cir. 2016).

⁴ *Id.*

#nhpolitics.”⁵ Around the same time, another individual—Andrew Langlois—who was unhappy with the choices he was given for the Republican primary for the U.S. Senate seat, posted a photograph of himself with his marked ballot on Facebook, writing “Because all of the candidates suck, I did a write-in of [my recently deceased dog].”⁶

After the New Hampshire Attorney General’s Office brought criminal proceedings against them under a similar New Hampshire law prohibiting ballot photographs, Langlois and Rideout’s challenges to the constitutionality of the New Hampshire law resulted in a decision by the U.S. Circuit Court of Appeals for the First Circuit holding that a restriction on ballot selfies violated the constitutional guarantees of core political speech—*Rideout v. Gardner*.⁷ As the court explained, vote-buying, the justification for prohibiting ballot selfies, “does not respond to a present actual problem in need of solving.”⁸

Other states have historically enacted statutes like the one AS 15.15.280 in order to counteract vote-buying. Restricting ballot selfies in order to counteract vote-buying fails to pass muster under the First Amendment for three reasons:⁹

- (1) “The ‘compelling’ nature of the government’s interest in enacting sweeping laws to guard against vote buying is subject to considerable doubt,[] given that vote buying is so rare as to be statistically non-existent even in jurisdictions where it is theoretically easy to accomplish”;¹⁰
- (2) Photographs of a ballot are not evidence of vote-buying because a voter could simply request another ballot and change his or her vote after photographing it;¹¹ and
- (3) It is too broad: prohibitions on ballot photographs unnecessarily includes a substantial amount of protected political speech that is not related to unlawful vote-buying.¹²

⁵ *Id.*

⁶ *Id.*

⁷ 838 F.3d 65 (1st Cir. 2016).

⁸ *Id.*

⁹ Prohibiting photographs of a ballot is an unconstitutional response to vote-buying whether it the court views the restriction as a content-based one (strict scrutiny), or as a general restriction on the time, place, and manner of speech (intermediate scrutiny). *Id.*

¹⁰ Daniel A. Horwitz, A Picture’s Worth A Thousand Words: Why Ballot Selfies Are Protected by the First Amendment, 18 SMU Sci. & Tech. L. Rev. 247, 250 (2015) (citations omitted).

¹¹ Voters may indicate that a ballot is spoiled with “improper[] marks” and request up to three ballots, with the spoiled ballots destroyed by the election board. AS 15.15.250; *see also* AS 15.20.061 (allowing voters to request up to three ballots for spoiled *absentee* ballots).

Current law provides that no voter shall exhibit a ballot to “an election official or any other person so as to enable the person to ascertain how the voter marked the ballot.”¹³ Violations of this law prohibit election officials from submitting the marked ballot to the ballot box, and instead requires them to mark an exhibited ballot as “spoiled” and to destroy it.¹⁴

HB 7 would appropriately include a new exception to voters who “share[] a photo, video, or other image of the voter’s marked ballot with another person or with the public.” Although the Division of Elections had indicated that it would not enforce AS 15.15.280 in the most recent November 8 election,¹⁵ HB7 clears up conflicting constitutional and statutory directives to the Division of Elections. HB 7 makes clear to the Division that that photographs of premarked ballots are constitutionally protected and ought not to be grounds to spoil and destroy a voter’s submitted ballot.¹⁶

Section 1 of HB 7 draws the appropriate balance of prohibiting campaigning¹⁷ in the polling place by preventing an individual from *physically* showing or displaying a photograph of their marked ballot in a polling place in an attempt to campaign. The constitutionally protected speech remains lawful in Section 3, which provides that, subject to the prohibition on campaigning, merely “sharing” one’s marked ballot on social media is permitted.

We appreciate the opportunity to share our concerns about HB 7 with the Senate Community and Regional Committee.

Sincerely,



Tara A. Rich
Legal & Policy Director

cc:

¹² *Rideout*, 838 F.3d at 73; *Indiana Civil Liberties Union*, 2017 WL 264538, at *7.

¹³ AS 15.15.280.

¹⁴ AS 15.15.300.

¹⁵ Erica Martinson, “Can I post a selfie from the ballot booth? Bring a gun? And other questions about voting in Alaska.” *Alaska Dispatch*, Nov. 6, 2016, available at <https://www.adn.com/politics/2016/11/06/can-i-post-a-selfie-from-the-ballot-booth-in-alaska-and-other-questions-about-voting-in-the-last-frontier>.

¹⁶ See AS 15.15.300.

¹⁷ AS 15.15.170; see also *Burson v. Freeman*, 504 U.S. 191, 210-211 (1992).

HB 7

Summary of amendments discussed with Rep. Kreiss-Tompkins' staff

A: Would rewrite pg. 2, lines 9-11 to shorten up the paragraph, per a suggestion from the Division of Elections. Our legal services comment was that it has no substantive effect, and would probably be rewritten back the way it is by their editors.

B: Is intended to provide extra protection to a person who shares or reposts a photo of a ballot that a voter has posted on social media, per a concern by Rep. Kito.

C: Is an amendment offered by Rep. Eastman on the House floor, but which failed 14-26. The sponsor's staff may be able to explain why he would now want it added in the Senate.

D: Is a change requested by the Division of Elections to repeal the requirements in AS15.50.060(a) of what features a voting booth needs to have. According to the Division of Elections (per the sponsor's staff), this requirement is outdated, and the specific vendor for which it was written is no longer in business. Adding this repealer to HB 7 would require a title change.

ITEM # A

30-LS0111V

1 * Sec. 2. AS 15.15.280 is amended to read:

2 **Sec. 15.15.280. Prohibiting the exhibition of marked ballots.** A [SUBJECT
3 TO AS 15.15.240 A] voter may not exhibit the voter's ballot to an election official or
4 any other person so as to enable any person to ascertain how the voter marked the
5 ballot.

6 * Sec. 3. AS 15.15.280 is amended by adding a new subsection to read:

7 (b) This section does not apply to a voter who

8 (1) requests assistance under AS 15.15.240; or

9 (2) ~~subject to the prohibition on political persuasion in, or within 200-~~
10 ~~feet of an entrance to, a polling place under AS 15.15.170,~~ shares a photo, video, or

11 other image of the voter's marked ballot with another person or with the public, ~~except as~~

prohibited by AS 15.15.170.

NO substantive effect

alphrus' version

*Recommended
by Div. of Elect.*

ITEM # B

3/17/2017

[RepJKT] HB 7 Update and Eastman's Amendments - alicianorton514@gmail.com - Gmail

"ANY VOTER WHO MAKES AVAILABLE AN IMAGE OF THE VOTER'S OWN BALLOT THROUGH ELECTRONIC MEANS AFTER IT IS PREPARED FOR VOTING IS DEEMED TO HAVE CONSENTED TO THE TRANSMITTAL OF THAT IMAGE"

Makes shared ballot photos

Public record

What is the problem?

ITEM # BC

Would create a new crime
Class A misdemeanor
Higher bar for prosecution

30-LS0111V.1
Bullard
2/28/17

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 7(CRA)

BY REPRESENTATIVE EASTMAN

Article 5 in State Constitution
may be an underpinning

1 Page 1, line 1:

2 Delete "the exhibition of"

3 Following "ballots":

4 Insert "; relating to penalties for unlawful conduct relating to marked
5 ballots;"

6 Following "and":

7 Insert "relating to"

8

9 Page 2, line 10, following "AS 15.15.170,"

10 Insert "and subject to the prohibition on ^{coercing} ~~soliciting~~ or inducing a voter to share an
11 image of the voter's ballot under AS 15.15.295,"

12

13 Page 2, following line 11:

14 Insert new bill sections to read:

15 "* Sec. 4. AS 15.15 is amended by adding a new section to read:

16 **Sec. 15.15.295. Privacy of marked ballot.** A person may not

17 (1) photograph, film, or otherwise capture an image, or attempt to
18 capture an image, of another person's marked ballot; or

19 (2) ^{coerce} ~~solicit~~ or induce a voter to share a photo, video, or other image of
20 the voter's marked ballot with that person or with the public.

21 * Sec. 5. AS 15.56.035(a) is amended to read:

22 (a) A person commits the crime of unlawful interference with voting in the
23 second degree if the person

1 (1) has an official ballot in possession outside of the voting room
2 unless the person is an election official or other person authorized by law or local
3 ordinance, or by the director or chief municipal elections official in a local election;

4 (2) makes, or knowingly has in possession, a counterfeit of an official
5 election ballot;

6 (3) knowingly solicits or encourages, directly or indirectly, a registered
7 voter who is no longer qualified to vote under AS 15.05.010, to vote in an election;

8 (4) as a registration official

9 (A) knowingly refuses to register a person who is entitled to
10 register under AS 15.07.030; or

11 (B) accepts a fee from an applicant applying for registration;

12 (5) violates AS 15.20.081(a) by knowingly supplying or encouraging
13 or assisting another person to supply to a voter an absentee ballot application form
14 with a political party or group affiliation indicated if the voter is not already registered
15 as affiliated with that political party or group;

16 (6) knowingly designs, marks, or encourages or assists another person
17 to design or mark an absentee ballot application in a manner that suggests choice of
18 one ballot over another as prohibited by AS 15.20.081(a); [OR]

19 (7) knowingly submits or encourages or assists another person to
20 submit an absentee ballot application to an intermediary who could control or delay
21 the submission of the application to the division of elections or who could gather data
22 from the application form as prohibited by AS 15.20.081(a); or

23 (8) violates AS 15.15.295 by knowingly

24 (A) photographing, filming, or otherwise capturing an
25 image, or attempting to capture an image, of another person's marked
26 ballot; or

27 (B) ^{coercing} ~~soliciting~~ or inducing a voter to share a photo, video, or
28 other image of the voter's marked ballot with that person or with the
29 public."

Sec. 15.15.060. Polling places, voting booths, and supplies. (Amended as follows)

(a) Immediately following the appointment of the election board, the election supervisor in conjunction with the election board chair shall secure polling places for holding the election, suitable ballot boxes that will assure security, and an adequate number of voting booths or screens, national flags, pens, and pencils. At every polling place, at least one voting booth shall be furnished and not less than one voting booth or screen shall be furnished for each 100 votes or fractional part of 100 votes cast in the previous election. [AT EVERY POLLING PLACE, AT LEAST ONE-HALF OF THE VOTING BOOTHS USED SHALL BE NOT LESS THAN SIX FEET IN HEIGHT, ENCLOSED ON THREE SIDES, AND PROVIDED WITH A CURTAIN EXTENDING FROM THE TOP OF THE VOTING BOOTH TO WITHIN APPROXIMATELY 30 INCHES OF THE FLOOR. THE CURTAIN OF THE VOTING BOOTH MUST CONCEAL THE VOTER WHILE VOTING.] The election supervisor and the election board chair may, in an emergency, secure an alternate location for a polling place.

ITEM # ~~1~~ D

would this require a title change?

HB 1

AMENDMENT

OFFERED IN THE SENATE
TO: CSHB 7(CRA)

1 Page 1, line 1:

2 Following "Act":

3 Insert "**relating to voting booths;**"

4 Delete "**and**"

5 Insert "**; and relating to**"

6

7 Page 1, following line 3:

8 Insert new bill sections to read:

9 **"* Section 1.** AS 15.15.060(a) is amended to read:

10 (a) Immediately following the appointment of the election board, the election
11 supervisor in conjunction with the election board chair shall secure polling places for
12 holding the election, suitable ballot boxes that will assure security, and an adequate
13 number of voting booths or screens, national flags, pens, and pencils. At every polling
14 place, at least one voting booth shall be furnished and not less than one voting booth
15 or screen shall be furnished for each 100 votes or fractional part of 100 votes cast in
16 the previous election. [AT EVERY POLLING PLACE, AT LEAST ONE-HALF OF
17 THE VOTING BOOTHS USED SHALL BE NOT LESS THAN SIX FEET IN
18 HEIGHT, ENCLOSED ON THREE SIDES, AND PROVIDED WITH A CURTAIN
19 EXTENDING FROM THE TOP OF THE VOTING BOOTH TO WITHIN
20 APPROXIMATELY 30 INCHES OF THE FLOOR. THE CURTAIN OF THE
21 VOTING BOOTH MUST CONCEAL THE VOTER WHILE VOTING.] The election
22 supervisor and the election board chair may, in an emergency, secure an alternate
23 location for a polling place.

1 * **Sec. 2.** AS 15.15.060(b) is amended to read:

2 (b) To **ensure** [ASSURE] administrative economy and to protect the secrecy
3 of the ballot, the director may adopt regulations prescribing

4 (1) the type of polling place for holding the election; **and**

5 (2) the requirements regarding ballot boxes, voting screens, **voting**
6 **booths**, national flags, and other supplies [; AND

7 (3) SUBJECT TO THE SPECIFICATIONS OF (a) OF THIS
8 SECTION, THE REQUIREMENTS REGARDING VOTING BOOTHS]."

9

10 Page 1, line 4:

11 Delete "**Section 1**"

12 Insert "**Sec. 3**"

13

14 Renumber the following bill sections accordingly.

EDITION: UNITED STATES

Business Markets World Politics Tech Commentary Breakingviews Money Life

POLITICS | Mon Apr 3, 2017 | 10:03am EDT

U.S. top court won't revive New Hampshire ballot 'selfie' ban

By Andrew Chung | WASHINGTON

The U.S. Supreme Court on Monday rejected New Hampshire's bid to revive a state law barring voters from taking "selfie" photos with their ballots during elections that a lower court struck down as a violation of free speech rights.

New Hampshire banned such selfies in 2014, saying the photos could set the stage for a return of the kind of vote-buying or voter intimidation that was rampant in the 19th century.

The Supreme Court declined to hear the state's appeal of a ruling by the Boston-based 1st U.S. Circuit Court of Appeals last September that the law ran afoul of the U.S. Constitution's First Amendment, which guarantees free speech. The state cannot curtail speech based on a hypothetical danger, the appeals court stated.

Ballot selfies have become a popular way for voters to show support for favored candidates through postings on social media platforms such as Twitter, Facebook and Snapchat.

Three New Hampshire residents who were under investigation for violating the law, including a man who wrote in the name of his dog to express dismay at his choices in the 2014 Republican primary for the U.S. Senate, sued the state that year claiming the measure violated the First Amendment.

The 1st Circuit agreed last year, noting that New Hampshire had no complaints of vote-buying or evidence that people were being coerced to vote a certain way.

New Hampshire's secretary of state, William Gardner, appealed to the Supreme Court, noting that 18 states had laws that in some form prevented voters from displaying their ballots.

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Digital photography and social media could allow an invasion of the sanctity of the voting booth and "eliminate the anonymity of the secret ballot," Gardner said. "With recent advances in technology, one's right to vote freely without fear of retaliation is in jeopardy," Gardner added.

Some states, including nearby Rhode Island, have passed laws explicitly allowing ballot selfies, reasoning in part that the trend has helped younger voters show their enthusiasm for the democratic process.

(Reporting by Andrew Chung; Editing by Will Dunham; Editing by Will Dunham)

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