

THE RUTHERFORD INSTITUTE

Post Office Box 7482
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD
Founder and President

TELEPHONE 434 / 978 - 3888
www.rutherford.org

Constitutional Q&A: The First Amendment and Your Right to Vote

© 2024 The Rutherford Institute¹

This Q&A is provided for informational purposes only and is not to be taken as legal advice or relied on for guidance as to any proposed action. As laws can change over time and enforcement of laws can be unpredictable, the current law should be checked for any changes and a local attorney licensed in the state should be consulted for guidance.

Free expression at polling places has become a contentious issue with controversies over “ballot selfies”¹ and the wearing of political apparel to polling places, including apparel that does not explicitly reference candidates, ballot issues, or politics.

When Linda McMahon, the wife of then World Wrestling Entertainment (WWE) chairman Vince McMahon, ran for the U.S. Senate in Connecticut, there were questions over whether voters could be turned away for wearing WWE merchandise.² And in Georgia, a man was ordered to remove his NRA hat while going to vote in 2014.³

Since then, the constitutionality of state laws restricting expression at polling places and the taking of ballot selfies has continued to be challenged as a violation of the First Amendment’s guarantee to freedom of speech.

In 2018, the U.S. Supreme Court considered the question of whether a Minnesota law prohibiting the wearing of political apparel inside a polling place on Election Day violated the Free Speech Clause of the First Amendment.⁴ Although the Court did not uphold Minnesota’s specific law due to it being too broad and subjective, the Court ruled in *Minnesota Voters Alliance v. Mansky* that States may indeed prohibit certain political apparel at polling places without running afoul of the First Amendment.

Two later decisions from lower appellate courts then addressed similar issues in 2023. The Fifth Circuit Court of Appeals upheld a Texas statute that prohibits wearing political apparel at or within 100 feet of a polling place if the message relates to a candidate, measure, or political party

¹ The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Va., is committed to protecting the constitutional freedoms of every American and the human rights of all people through its legal and educational programs. The Institute provides legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute’s mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.

on the ballot, or to the conduct of the election.⁵ And the Tenth Circuit upheld a Wyoming statute that banned electioneering and the display of multiple or relatively larger campaign bumper stickers on cars parked or passing within 300 feet of a polling place on Election Day.⁶ The U.S. Supreme Court refused to hear appeals from each of those cases,⁷ thereby indicating that those rulings are correct and that the restrictions are constitutional.

The following Q&A aims to raise awareness about various First Amendment restrictions and issues in polling places.

Q: What are my rights when it comes to voting?

A: The United States Constitution generally grants all citizens aged 18 and older the right to vote in general elections.⁸ A citizen must have registered with the State or local agency responsible for conducting elections within the time prescribed by State law in order to be eligible to vote. Depending on the laws of one's State, the right to vote also may be lost by some disqualifying behavior, such as having committed a crime of a particular severity.

Q: What behaviors are prohibited?

A: Generally, acts that induce, influence, or intimidate other voters are prohibited at voting locations. The law of each State frames this rule of "anti-electioneering" differently in the words of statutes regulating elections. Common examples of prohibited acts include distributing election literature, soliciting, pressuring other citizens from voting for certain candidates, and other ways of actively influencing other voters. Conduct that disrupts or causes interference in the voting place also is prohibited.

Q: Where do the prohibitions take effect?

A: Each State prescribes a "buffer zone," which is an immediate area surrounding the voting place that is off-limits for the purposes of political campaigning. The U.S. Supreme Court upheld the constitutionality of buffer zones in *Burson v. Freeman*, and ruled that the content of political speech may be restricted to some extent at voting precincts in order to provide for elections that are fair and free of pressure or confusion.⁹

Relying partly on *Burson* and *Mansky*, the Tenth Circuit held in *Frank v. Lee* that a 300-foot buffer zone on election day passes constitutional muster because a restricted zone around polling places is permissible to protect voters from confusion, intimidation, and election fraud.¹⁰ The standard of review is relaxed when a State's statute is designed to protect the act of voting.¹¹ In such instances, the statute is constitutional as long as it is reasonable and does not significantly impinge on constitutionally protected rights, thereby granting the States some level of deference. The court concluded that a 300-foot buffer zone is not so wide as to become an impermissible burden; its reasonableness is evident from a long history and substantial consensus.¹²

All 50 States have some restriction on active campaigning near polling places to protect against intimidation of voters.¹³ For example, Virginia law makes it "unlawful for any person (1) to

loiter or congregate within 40 feet of any entrance of any polling place; (2) within that distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or in any manner attempt to influence any person in casting his vote; or (3) to hinder or delay a qualified voter in entering or leaving a polling place.”¹⁴

Similarly, a Massachusetts statute states that “no other poster, card, handbill, placard, picture or circular intended to influence the action of the voter shall be posted, exhibited, circulated or distributed in the polling place, in the building where the polling place is located, on the walls thereof, on the premises on which the building stands, or within one hundred and fifty feet of the building entrance door to such polling place.”¹⁵

Due to subtle differences in these restrictions, e.g. distance from the polling place, it is important to check local election laws.

Q: Can I wear election-related clothing, including buttons and other apparel, to the polling place?

A: Whether voters may wear political clothing or buttons at polling places depends on State law and can vary by each State.

In *Minnesota Voters Alliance v. Mansky*, the Supreme Court held that a State may choose to prohibit certain apparel at polling places based on the message conveyed on the apparel without violating the First Amendment.¹⁶ The Court ruled that polling places are nonpublic forums where content-based restrictions may be imposed,¹⁷ and justified its decision by balancing the accommodation of the right to engage in even passive or nondisruptive political discourse with the right of others to vote free from discord and distraction.¹⁸

The Court reasoned that States may use these restrictions to prevent problems such as fraud, voter intimidation, confusion, and general disorder.¹⁹ The State has the authority to ensure that a polling place provides voters with a “time for choosing, not campaigning.”²⁰ Thus, the State can take actions to ensure that partisan conflict does not follow a voter into the voting booth, thereby undermining the sense of collective civic responsibility when it matters most.²¹

However, the Supreme Court also made it clear that there are limits to the authority of a State to restrict speech at polling places. A State must draw a reasonable line²² and distinguish what is permissible from what is not.²³ The Court found that Minnesota’s restrictions did not meet this standard because it used overly broad terms.²⁴ Notably, the restrictions were not limited to apparel with messages relating to candidates or issues on the ballot, nor to the conduct of the election.²⁵ Because of this, the election officials had too much discretion and lacked an objective, workable standard.²⁶

But not all laws restricting certain political apparel at polling places are unconstitutionally broad or vague. In *Ostrewich v. Tatum*, the Fifth Circuit upheld a Texas law which prohibited wearing apparel “relating to” a candidate, measure, or political party appearing on the ballot.²⁷ Applying the flexible standard from *Mansky*, the Fifth Circuit concluded that the Texas statute is constitutional.²⁸ The U.S. Supreme Court refused to reconsider the case on appeal.

The fact that two substantially similar laws resulted in different conclusions underscores the necessity of precisely analyzing the language of a relevant statute to ascertain if it is overbroad, vague, and indeterminate, and thus potentially in violation of the First Amendment. While states are not required to provide perfect clarity and precise guidance,²⁹ they must define relevant terms and employ language that is determinable through objective standards. It also appears that restrictions on speech at polling places might need to be limited to only prohibiting messages which relate to candidates and issues on the ballot, as well as the conduct of the election.

To assess whether or not you can wear political apparel to the polls, you should carefully review the relevant laws in your State.

For example, Maryland³⁰ and Virginia³¹ have explicitly permitted wearing apparel at or near polling places that advocates for a particular candidate or ballot issue.

Guidance to voters issued by Alabama,³² Rhode Island,³³ and Florida³⁴ have indicated that those states permit electioneering displays so long as there is no active campaigning and voters leave the polling place promptly after completing their ballots.

On the other hand, California,³⁵ Delaware,³⁶ Indiana,³⁷ Kansas,³⁸ Massachusetts,³⁹ Minnesota,⁴⁰ Montana,⁴¹ Nevada,⁴² New Mexico,⁴³ New York,⁴⁴ South Carolina,⁴⁵ Vermont,⁴⁶ and North Dakota⁴⁷ all have laws explicitly banning this kind of political speech at voting precincts.

Additionally, Hawaii,⁴⁸ Georgia,⁴⁹ Louisiana,⁵⁰ Michigan,⁵¹ South Dakota,⁵² and Tennessee⁵³ more broadly forbid the display of political materials.

Some States provide further guidelines on the limited scope of their laws. For example, Massachusetts explains that it still allows “wearing apparel that may be ‘political’ but not intended to aid or defeat someone or something on the ballot” and clarifies that the “display of materials, phrases, and slogans promoting an issue, position, or ideology not explicitly tied to a campaign or political party on the ballot cannot be prohibited under the 150-Foot Rule.”⁵⁴

Other States have some restriction on electioneering or soliciting votes at polling places which may or may not be interpreted as covering apparel and buttons.⁵⁵

Q: Can I take a selfie with my ballot and post it on social media?

A: This also varies and depends on the laws of the State where you are voting.

When it comes to the issue of “ballot selfies,” many States prohibit the photographing and sharing of marked ballots due to concerns of such a practice being used for vote-buying schemes in the case of photographing one’s own ballot, or for voter intimidation when it comes to photographing the ballots of others.

Some States, including Arizona⁵⁶, California,⁵⁷ Colorado,⁵⁸ Hawaii,⁵⁹ Nebraska,⁶⁰ Oklahoma,⁶¹ and Utah⁶² explicitly permit voter selfies.

Other States do not appear to have prohibitions against ballot selfies, but it is not explicitly permitted in their statutes, such as Arkansas,⁶³ Connecticut,⁶⁴ the District of Columbia,⁶⁵ Idaho,⁶⁶ Kansas,⁶⁷ Kentucky,⁶⁸ Maine,⁶⁹ Michigan,⁷⁰ Montana,⁷¹ New Mexico,⁷² North Dakota,⁷³ Oregon,⁷⁴ Rhode Island,⁷⁵ Virginia,⁷⁶ Vermont,⁷⁷ Washington,⁷⁸ and Wyoming.⁷⁹

On the other hand, Alabama,⁸⁰ Alaska,⁸¹ Florida,⁸² Georgia,⁸³ Illinois,⁸⁴ Iowa,⁸⁵ Louisiana,⁸⁶ Maryland,⁸⁷ Massachusetts,⁸⁸ Mississippi,⁸⁹ Missouri,⁹⁰ Nevada,⁹¹ New York,⁹² North Carolina,⁹³ South Carolina,⁹⁴ South Dakota,⁹⁵ Tennessee,⁹⁶ Texas,⁹⁷ and West Virginia⁹⁸ either prohibit recording devices at polling places or photographing/sharing your ballot.

The legal landscape in Delaware,⁹⁹ Indiana,¹⁰⁰ Minnesota,¹⁰¹ New Hampshire,¹⁰² New Jersey,¹⁰³ Ohio,¹⁰⁴ Pennsylvania,¹⁰⁵ and Wisconsin¹⁰⁶ is somewhat unclear because these states either have vague language in their laws, no specific legislation at all, or judges have declared such laws as unconstitutional.

Q: Are these restrictions on ballot selfies a violation of my First Amendment rights to free expression?

A: Courts have reached different conclusions on this issue.

In *Rideout v. Gardner*, the First Circuit Court of Appeals struck down a New Hampshire law banning a voter from photographing their own marked ballot and sharing the image.¹⁰⁷ The court reasoned that while voter fraud was a compelling state interest, the law in question was not narrowly tailored to such an interest, and the court cited a lack of evidence of complaints of voter fraud as the basis for concluding that the law's restriction on freedom of expression was unwarranted. Since then, federal district courts in Indiana¹⁰⁸ and Michigan¹⁰⁹ also have ruled that a state ban on ballot selfies violates the First Amendment, finding that states were unable to articulate a compelling interest for the bans.

On the other hand, the Sixth Circuit Court of Appeals indicated that prohibitions of ballot selfies could be constitutional without violating the First Amendment. In *Crookston v. Johnson*, the Sixth Circuit stated that Michigan's "ban on photography at the polls seems to be a content-neutral regulation that reasonably protects voters' privacy—and honors a long tradition of protecting the secret ballot."¹¹⁰ The Sixth Circuit explained further that Michigan's "policy advances several serious governmental interests: preserving the privacy of other voters, avoiding delays and distractions at the polls, preventing vote buying, and preventing voter intimidation" as well as avoiding delays for other voters standing in line "as ballot-selfie takers try to capture the marked ballot and face in one frame—all while trying to catch the perfect smile."¹¹¹ The Sixth Circuit also doubted whether a ban on ballot selfies significantly impinged on First Amendment rights since voters could still otherwise express whom they voted for and why.¹¹²

The Sixth Circuit then sought to distinguish its decision from the First Circuit's decision in *Rideout* and from the Indiana district court by stating that those cases "concerned laws that were targeted at ballot selfies, not general bans on ballot-exposure and photography at the polls."¹¹³ However, this was a decision on a preliminary injunction and the Court noted that it was "not

resolving the merits of the case.”¹¹⁴ Further, Michigan later settled the case in the plaintiff’s favor by agreeing that Michigan’s laws “do not apply to displaying a photograph of one’s own marked ballot outside of the 100-foot buffer zone around a polling place,” and further agreeing to “amend the polling place photography and cell phone instructions to allow voters to photograph their own marked ballot within a voting station or voting booth.”¹¹⁵

But in addition to the Sixth Circuit’s decision, there are other rulings which have upheld statutes banning ballot selfies.¹¹⁶ For example, in *Silberberg v. Bd. of Elections of N.Y.*, a federal district court upheld a New York election law prohibiting ballot selfies, reasoning that the law was narrowly tailored to serve the state’s compelling interest in preventing vote-buying and voter intimidation, and in maintaining integrity of the election process by preventing social coercion.¹¹⁷ The court also held in the alternative that New York’s “statute is a reasonable, viewpoint neutral restriction of speech within a non-public forum.”¹¹⁸

There has yet to be any Supreme Court ruling on this issue, however, and so it is still not clear whether or not a ballot selfie ban would be unconstitutional in all cases or how different courts would rule. However, the Supreme Court having refused to reconsider the First Circuit’s decision in *Rideout* might possibly indicate that the Supreme Court would find a similar statute specifically banning ballot selfies to be unconstitutional.¹¹⁹

Q: What can I do to stop these restrictions against wearing political apparel to the polling place and ballot selfies?

A: You can contact your State legislators to change the law. While States can impose certain restrictions, they do not have to do so, and those laws can be changed. And if a law appears to be overly broad and unconstitutional, then it can possibly be challenged in court.

Q: What if I have a disability?

A: The Help America Vote Act (HAVA), a federal election reform law enacted in 2002, stipulates that States “[provide] physical access for individuals with disabilities, [provide] nonvisual access for individuals with visual impairments, and [provide] assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language” at polling places¹²⁰ HAVA mandates states to furnish polling stations with equipment to accommodate those with disabilities and provide alternative ways of voting.

Also, pursuant to Voting Accessibility for the Elderly and Handicapped Act, States are required to provide aid to handicapped and elderly voters, including instructions printed in large type and conspicuously displayed at each permanent registration facility and polling place, and information by telecommunications devices for the deaf.¹²¹

Q: Can I have someone accompany me to the voting booth?

A: Some States allow voting center staff to accompany voters to the booth as necessary, and may also allow an individual under the age of 18 to accompany the voter provided that the individual is in care of the voter.¹²²

Should you have further questions or want to request legal assistance in defending your constitutional rights, please contact the Legal Department at legal@rutherford.org.

The Rutherford Institute
Post Office Box 7482
Charlottesville, VA 22906
(434) 978-3888
www.rutherford.org

Citations

¹ Terkel, Amanda, “Snapchat Wants To Make ‘Ballot Selfies’ Legal On Election Day,” HUFFINGTON POST, April 22, 2016, http://www.huffingtonpost.com/entry/snapchat-ballot-selfie-photo_us_571a610de4b0d4d3f7233217.

² “Connecticut Secretary of State Says WWE Apparel OK at Polling Places,” CNN, October 26, 2010, <http://www.cnn.com/2010/POLITICS/10/26/pol.connecticut.wwe/index.html>.

³ “Election Official Says the Three Pro-Gun Letters on This Man's Baseball Cap Make a Political Statement, So They Made Him Remove It - Tea Party News,” Tea Party, October 28, 2014, <http://www.teaparty.org/election-official-says-three-pro-gun-letters-mans-baseball-cap-make-political-statement-made-remove-64390/>.

⁴ *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876 (2018); “Rutherford Institute Asks U.S. Supreme Court to Strike Down Minn. Law Banning Political Expression on Clothing Worn at Polling Places,” THE RUTHERFORD INSTITUTE, Jan. 12, 2018,

https://www.rutherford.org/publications_resources/on_the_front_lines/rutherford_institute_asks_u.s._supreme_court_to_strike_down_minn._law_.

⁵ *Ostrewich v. Tatum*, 72 F.4th 94 (5th Cir. 2023); “Supreme Court Gives Government the Green Light to Obstruct Citizens From Voting at Polling Places Based on the Content of Speech on Clothing,” THE RUTHERFORD INSTITUTE, Feb. 2, 2024,

https://www.rutherford.org/publications_resources/on_the_front_lines/supreme_court_gives_government_the_green_light_to_obstruct_citizens_from_voting_at_polling_places_based_on_the_content_of_speech_on_clothing_.

⁶ *Frank v. Lee*, 84 F.4th 1119 (10th Cir. 2023).

⁷ *Ostrewich*, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-535.html>;

Frank, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-901.html>.

⁸ U.S. Const. Amend. XXVI.

⁹ *Burson v. Freeman*, 504 U.S. 191 (1992).

¹⁰ *Frank v. Lee*, 84 F.4th 1119 (10th Cir. 2023).

¹¹ *Id.* at 1141.

¹² *Id.* at 1144.

¹³ *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876, 1883 (2018).

¹⁴ Virginia Code § 24.2-604.

¹⁵ Mass. Gen Laws ch. 54, § 65.

¹⁶ *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876, 1888 (2018).

¹⁷ *Id.* at 1885-86.

¹⁸ *Id.* at 1887-88, 1892.

¹⁹ *Id.* at 1886.

²⁰ *Id.* at 1887.

²¹ *Id.* at 1888.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 1888-89.

²⁵ *Id.* at 1890.

-
- ²⁶ *Id.* at 1888, 1891-92.
- ²⁷ *Ostrewich v. Tatum*, 72 F.4th 94 (5th Cir. 2023).
- ²⁸ *Id.* at 105-07.
- ²⁹ *Mansky*, 138 S.Ct. at 1891.
- ³⁰ *Summary Guide Maryland Candidacy & Campaign Finance Laws*. Maryland State Board of Elections. Chapter 12.6
http://www.elections.state.md.us/pdf/summary_guide/summary_guide.pdf.
- ³¹ Va. Code § 24.2-604(D).
- ³² *Alabama Voter Guide 2024*, Office of the Secretary of State, State of Alabama, <https://www.sos.alabama.gov/sites/default/files/2024%20Voter%20Guide.pdf>.
- ³³ Rhode Island, 410-RICR-20-00-12, TITLE 410 - BOARD OF ELECTIONS, CHAPTER 20 – ELECTIONS, PART 12 - Polling Place Conduct.
- ³⁴ Berman, Dave, "Voting Today? 10 Things to Know for Florida's Primary," Florida Today. March 14, 2016. <http://www.floridatoday.com/story/news/politics/elections/2016/03/14/10-things-know-you-go-polls-vote-primary/81741930/>.
- ³⁵ CA Elec Code § 319.5 (2023).
- ³⁶ Del. Code tit. 15 § 4942 (2024).
- ³⁷ Ind. Stat. Ann. § 3-14-3-16 (2022).
- ³⁸ KS Stat § 25-2430 (2021).
- ³⁹ Mass. Gen. Laws Ann. ch. 54, § 65.
- ⁴⁰ Minn. Stat. § 211B.11(1) (2023).
- ⁴¹ Mont. Code Ann. §13-35-211 (2023).
- ⁴² Nev. Rev. Stat. § 293.740.
- ⁴³ N.M. Stat. Ann. § 1-20-16 (2011).
- ⁴⁴ N.Y. Elec. Law Ann. § 8-104(1) (2022).
- ⁴⁵ S.C. Code Ann. § 7-25-180 (2022).
- ⁴⁶ Vt. Stat. Ann., Tit. 17, § 2508(a)(1) (2023).
- ⁴⁷ N.D. Cent. Code Ann. §16.1-10-03 (2023).
- ⁴⁸ Haw. Rev. Stat. § 11-132(d) (2024).
- ⁴⁹ Ga. Code Ann. § 21-2-414(a) (2024).
- ⁵⁰ La. Rev. Stat. Ann. § 18:1462 (2021).
- ⁵¹ Mich. Comp. Laws Ann. § 168.744 (2024).
"Elections & Voting." Michigan.gov. Accessed October 14, 2016. <http://www.michigan.gov/sos/0,1607,7-127-29836-202488--F,00.html>.
- ⁵² S.D. Codified Laws § 12-18-3 (2024).
- ⁵³ Tenn. Code Ann. § 2-7-111(b) (2024).
- ⁵⁴ Massachusetts Election Advisory #24-02, Feb. 23, 2024, https://www.sec.state.ma.us/divisions/elections/download/advisories/Election_Advisory-24-02.pdf.
- ⁵⁵ See, e.g., Alaska Stat. §§ 15.15.170, 15.56.016(a)(2) (2023) (prohibiting active campaigning in or within 200 feet of the polling place); Arkansas Code § 7-1-103 (8)(B) (2020); Colo. Rev. Stat. § 1-13-714(1); Conn. Gen. Stat. § 9-236 (2023); Wis. Stat. § 12.03 (2023).
- ⁵⁶ AZ Rev Stat § 16-1018 (2020).
- ⁵⁷ Cal. Elec. Code § 14291 (2023).
- ⁵⁸ Miller, Blair, "Hickenlooper signs Colorado bill allowing 'ballot selfies,'" Denver 7 ABC, Mar. 17, 2017, <https://www.denver7.com/news/politics/hickenlooper-signs-colorado-bill-allowing-ballot-selfies>.
- ⁵⁹ HI Rev Stat § 11-121 (2022).
- ⁶⁰ Neb. Rev. Stat. § 32-1527 (2024).
- ⁶¹ Oklahoma 2019 Regular Session HB 1259 (amending 26 O.S. 2011 section 7-109 to allow a voter to "take a digital image or photograph of his or her marked ballot and distribute or share the image via social media or by any other means if performed voluntarily and in compliance with state and federal law"), http://webserver1.lsb.state.ok.us/cf_pdf/2019-20%20ENR/hB/HB1259%20ENR.PDF.
- ⁶² UT Code § 20A-3-504 (2019).
- ⁶³ Willingham, A.J., et al., "Here's what each US state says about taking ballot selfies," CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html> ("There's no law

against taking selfies, says the [Arkansas] Secretary of State's Office, as long as you're not being disruptive in the polling place or taking pictures of other people's ballots").

⁶⁴ Puckett, Jason and Linda Johnson, "VERIFY: Which states allow voters to share photos of their ballots online?," NEWS CENTER MAINE, Oct. 15, 2020, <https://www.newscentermaine.com/article/news/verify/verify-ballot-selfies-different-states-different-rules/507-00b7b9e0-d8d3-4843-9be0-dfe40666c2fc>.

⁶⁵ D.C. Code § 1-1001.09 (2024); Willingham, A.J., et al., "Here's what each US state says about taking ballot selfies," CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>.

⁶⁶ Puckett, Jason and Linda Johnson, "VERIFY: Which states allow voters to share photos of their ballots online?," NEWS CENTER MAINE, Oct. 15, 2020, <https://www.newscentermaine.com/article/news/verify/verify-ballot-selfies-different-states-different-rules/507-00b7b9e0-d8d3-4843-9be0-dfe40666c2fc>.

⁶⁷ Kan. Stat. § 25-2422 (2024); Salazar, Daniel, "Are ballot selfies illegal in Kansas?," THE WICHITA EAGLE, Oct. 28, 2016, <https://www.kansas.com/news/politics-government/election/article111192347.html> (legal but not desirable).

⁶⁸ Willingham, A.J., et al., "Here's what each US state says about taking ballot selfies," CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>.

⁶⁹ Me. Rev. Stat. tit. 21-A, § 674 (2023);

Puckett, Jason and Linda Johnson, "VERIFY: Which states allow voters to share photos of their ballots online?," NEWS CENTER MAINE, Oct. 15, 2020, <https://www.newscentermaine.com/article/news/verify/verify-ballot-selfies-different-states-different-rules/507-00b7b9e0-d8d3-4843-9be0-dfe40666c2fc>.

⁷⁰ "Michigan secretary of state settles 'ballot selfie' case," MICHIGAN DEPARTMENT OF STATE, May 8, 2019, <https://www.michigan.gov/sos/Resources/News/2019/05/08/michigan-secretary-of-state-settles-ballot-selfie-case>.

⁷¹ Montana Commissioner of Political Practices, Advisory Opinion COPP-2018-AO-002, "Ballot Selfies," Aug. 3, 2018, https://politicalpractices.mt.gov/_docs/2018-Advisory-Opinions/2018-AO-002-Ballot-Selfies-Final.pdf ("Voluntarily taking a picture of yourself (a 'selfie') with your marked ballot and sharing the image on social media or with family and friends does not violate the prohibitions of Mont. Code Ann. § 13-35-201." "However an election official chooses to accommodate a voter's right to take a ballot selfie in a polling place, a citizens' right to engage in political speech must be allowed so long as the voter's behavior does not disrupt the election taking place. The Commissioner continues the standing interpretation of the law to allow individuals to voluntarily take a photograph of themselves with their ballot wherever they are, and to share it with whomsoever they chose" But note: "This advisory opinion may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules.").

⁷² Demsas, Jerusalem, "Ballot selfies, state by state," Vox, Oct. 28, 2020, <https://www.vox.com/21523858/ballot-selfies-state-rules>.

⁷³ Id.

⁷⁴ "Secrecy of the Ballot and Ballot Selfies," NATIONAL CONFERENCE OF STATE LEGISLATURES, July 17, 2024, <https://www.ncsl.org/elections-and-campaigns/secrecy-of-the-ballot-and-ballot-selfies>.

⁷⁵ Demsas, Jerusalem, "Ballot selfies, state by state," Vox, Oct. 28, 2020, <https://www.vox.com/21523858/ballot-selfies-state-rules>; Willingham, A.J., et al., "Here's what each US state says about taking ballot selfies," CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>.

⁷⁶ Attorney General of Virginia, Advisory Opinion 16-038, Sept. 29, 2016, https://www.oag.state.va.us/files/Opinions/2016/16-038_Bell_Lind_issued.pdf ("While...a voter may not carry a ballot away from a polling place or vote any ballot other than that provided by the officers of election, these prohibitions do not otherwise constitute a prohibition on photography of one's own ballot. ...However, all relevant statutory and regulatory provisions governing conduct in the polling place remain in effect, and apply to the extent that officers of election conclude an individual's behavior impedes the orderly conduct of the election, as prohibited by § 24.2-604(A) of the Code of Virginia, or impinges upon another voter's constitutional right to a secret ballot in violation of § 24.2-607, the officers of election may take appropriate action pursuant to § 24.2-604(E)..").

⁷⁷ Kinzel, Bob, "Can You Take A 'Ballot Selfie' In Vermont? The Secretary Of State Says Yes," VERMONT PUBLIC, Nov. 7, 2016, <https://www.vermontpublic.org/vpr-news/2016-11-07/can-you-take-a-ballot-selfie-in-vermont-the-secretary-of-state-says-yes#stream/0>.

⁷⁸ Washington Secretary of State, "Frequently Asked Questions about Elections," accessed Oct. 24, 2024, <https://www.sos.wa.gov/elections/voters/helpful-information/frequently-asked-questions-about-elections> ("The state of Washington does not directly prohibit ballot selfies. However, it is illegal to view another's ballot for a purpose prohibited by law, such as vote buying.").

-
- ⁷⁹ Wyo. Stat. § 22-26-114 (2024); Willingham, A.J., et al., “Here’s what each US state says about taking ballot selfies,” CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>.
- ⁸⁰ Alabama Secretary of State, “Frequently Asked Questions,” accessed Oct. 24, 2024, <https://www.sos.alabama.gov/alabama-votes/faqs> (“If your cell phone has a camera, you cannot take photographs or film video inside the polling place.” But this same website also states that “voters are permitted to take a picture of or with their ballot, as long as they do not disclose the content of any other voter’s ballot or disrupt the voting process.”).
- ⁸¹ Alaska Stat. § 15.15.280 (2022).
- ⁸² Fla. Stat. § 102.031 (2023).
- ⁸³ GA Code § 21-2-413 (2024).
- ⁸⁴ 10 Ill. Comp. Stat. 5/29-9 (2024); Willingham, A.J., et al., “Here’s what each US state says about taking ballot selfies,” CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>.
- ⁸⁵ Iowa Code § 49.88 (2022).
- ⁸⁶ La. Rev. Stat. § 18:1461.7 (2023).
- ⁸⁷ Willingham, A.J., et al., “Here’s what each US state says about taking ballot selfies,” CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html>; Maryland State Board of Elections, “Election Day Questions,” accessed Oct. 24, 2024, https://elections.maryland.gov/voting/election_day_questions.html (“You cannot use your cell phone, pager, camera, and computer equipment in an early voting center or at a polling place.”).
- ⁸⁸ Mass. Gen. Laws ch. 56, § 25.
- ⁸⁹ Miss. Code § 23-15-555 (2015).
- ⁹⁰ Mo. Rev. Stat. § 115.637 (2018).
- ⁹¹ Nev. Rev. Stat. § 293.274.
- ⁹² N.Y. Elec. Law § 17-130 (2021).
- ⁹³ N.C. Gen. Stat. § 163-166.3 (2023).
- ⁹⁴ S.C. Code § 7-25-100 (2020).
- ⁹⁵ S.D. Codified Laws § 12-18-27 (2023).
- ⁹⁶ Tenn. Code. § 2-7-142 (2020).
- ⁹⁷ Tex. Elec. Code § 61.014 (2023).
- ⁹⁸ W. Va. Code § 3-4a-23 (2023); Demsas, Jerusalem, “Ballot selfies, state by state,” Vox, Oct. 28, 2020, <https://www.vox.com/21523858/ballot-selfies-state-rules>.
- ⁹⁹ Del. Code tit. 15 § 7557 (2021); but see “Ballot selfies,” BALLOTPEDIA, Sept. 30, 2024, https://ballotpedia.org/Ballot_selfies#cite_note-ap-2 and Brandt, Joe, “Ballot Selfies: Where You Can and Can’t Take a Photo While Voting,” NBC PHILADELPHIA, Nov. 3, 2020, <https://www.nbcphiladelphia.com/news/politics/decision-2020/ballot-selfies-where-you-can-and-cant-take-a-photo-while-voting/2577750/> (“State officials have told numerous media outlets that there is no law on the books banning ballot selfies. However, [cell phones are prohibited inside polling places](#), according to the state elections website”).
- ¹⁰⁰ Ind. Code § 3-11-11-16 (2023); “Secrecy of the Ballot and Ballot Selfies,” NATIONAL CONFERENCE OF STATE LEGISLATURES, July 17, 2024, <https://www.ncsl.org/elections-and-campaigns/secrecy-of-the-ballot-and-ballot-selfies> (a federal judge barred the state from enforcing the law that voters could not take a digital image of the voted ballot while in a polling place or distribute or share the image by social media, reasoning that a photo of one’s ballot is constitutionally protected speech).
- ¹⁰¹ Minn. Stat. § 204C.17 (2023) (prohibits revealing to anyone in the polling place who a voter voted for).
- ¹⁰² N.H. Rev. Stat § 659:35 (2022) (prohibition to show ballot includes taking a digital image and sharing it via social media). However, in 2017, the U.S. Supreme Court denied hearing an appeal to reconsider a ruling by the First Circuit in *Rideout v. Gardner*, 838 F.3d 65 (1st Cir. 2016), which struck down a New Hampshire law prohibiting ballot selfies. *Gardner v. Rideout*, S.Ct. No. 16-828 (petition denied Apr. 3, 2017), <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-828.htm>.
- ¹⁰³ N.J. Stat. § 19:15-26 (2023); Kanzler, Kaitlyn and Racioppi, Justin, “Tempted to take that ballot selfie? Don’t – they’re illegal in NJ,” NORTHJERSEY, Nov. 6, 2018, <https://www.northjersey.com/story/news/politics/elections/2018/11/06/ballot-selfies-illegal-nj-dont-take-picture-voting-booth/1902237002/>; Brandt, Joe, “Ballot Selfies: Where You Can and Can’t Take a Photo While Voting,”

NBC PHILADELPHIA, Nov. 3, 2020, <https://www.nbcphiladelphia.com/news/politics/decision-2020/ballot-selfies-where-you-can-and-cant-take-a-photo-while-voting/2577750/> (“Nope. Don’t do it.”).

¹⁰⁴ Ohio Code § 3501.35; “Ballot selfies illegal under Ohio election law,” Fox8, Nov. 5, 2019, <https://fox8.com/news/ballot-selfies-illegal-under-ohio-election-law/>; challenged in *Kareem v. Cuyahoga Cnty. Bd. of Elections*, No. 1:20-cv-02457 (N.D. Ohio).

¹⁰⁵ 25 P.S. § 3530; Brandt, Joe, “Ballot Selfies: Where You Can and Can’t Take a Photo While Voting,” NBC PHILADELPHIA, Nov. 3, 2020, <https://www.nbcphiladelphia.com/news/politics/decision-2020/ballot-selfies-where-you-can-and-cant-take-a-photo-while-voting/2577750/>.

¹⁰⁶ Compare Wisc. Stat. § 12.13(1)(f) (2023) (prohibiting showing of ballot to any other person) with Willingham, A.J., et al., “Here’s what each US state says about taking ballot selfies,” CNN, Nov. 2, 2018, <https://www.cnn.com/2018/11/02/us/taking-selfies-when-voting-laws-in-states-trnd/index.html> (Wisconsin state election commission representative says voter may take a selfie unless they create a distraction, but “really suggest you don’t post a selfie with your marked ballot”).

¹⁰⁷ *Rideout v. Gardner*, 838 F.3d 65 (1st Cir. 2016).

¹⁰⁸ *Indiana Civil Liberties Union Found., Inc. v. Indiana Sec’y of State*, No. 1:15-cv-01356, 2015 WL 12030168 (S.D. Ind. Oct. 19, 2015).

¹⁰⁹ *Crookston v. Johnson*, No. 1:16-cv-01109, W.D. Mich., Oct. 24, 2016; *but see Crookston v. Johnson*, 841 F.3d 396 and 854 F.3d 852 (Mem.) (6th Cir. 2016) (staying and reversing the trial court’s preliminary injunction to prevent Michigan from enforcing its bans on ballot exposure and photography at the polls due in part to doubt about Crookston’s odds of success on the merits of his First Amendment violation claim). Crookston and Michigan later settled the lawsuit in Crookston’s favor in 2019 with Michigan agreeing that “Michigan Compiled Laws sections 168.579 and 168.738(2) do not apply to displaying a photograph of one’s own marked ballot outside of the 100-foot buffer zone around a polling place,” and further agreeing to “amend the polling place photography and cell phone instructions to allow voters to photograph their own marked ballot within a voting station or voting booth.” *Crookston v. Benson*, No. 1:16-cv-01109, W.D. Mich., “Stipulation and Order Dismissing Plaintiff’s Case,” ECF No. 100, Exhibit A “Settlement Agreement,” May 8, 2019, [https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Disclosure/Lobby-Disclosure/Order-and-settlement-agreement.pdf?rev=229dc2a403424f76a4a07e6c4cd5e30a&hash=AB7E8FBC1D7D65C7A7475050F7EEAAE6](https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Disclosure/Lobby-Disclosure/Order-and-settlement-agreement.pdf?rev=229dc2a403424f76a4a07e6c4cd5e30a&hash=AB7E8FBC1D7D65C7A7475050F7EEAAE6;); “Michigan secretary of state settles ‘ballot selfie’ case,” MICHIGAN DEPARTMENT OF STATE, May 8, 2019, <https://www.michigan.gov/sos/Resources/News/2019/05/08/michigan-secretary-of-state-settles-ballot-selfie-case>.

¹¹⁰ *Crookston v. Johnson*, 841 F.3d 396, 399-400 (6th Cir. 2016).

¹¹¹ *Id.* at 400.

¹¹² *Id.* at 400.

¹¹³ *Id.* at 400-01.

¹¹⁴ *Id.* at 401.

¹¹⁵ *Crookston v. Benson*, No. 1:16-cv-01109, W.D. Mich., “Stipulation and Order Dismissing Plaintiff’s Case,” ECF No. 100, Exhibit A “Settlement Agreement,” May 8, 2019, <https://www.michigan.gov/sos/-/media/Project/Websites/sos/Elections/Disclosure/Lobby-Disclosure/Order-and-settlement-agreement.pdf?rev=229dc2a403424f76a4a07e6c4cd5e30a&hash=AB7E8FBC1D7D65C7A7475050F7EEAAE6>; “Michigan secretary of state settles ‘ballot selfie’ case,” MICHIGAN DEPARTMENT OF STATE, May 8, 2019, <https://www.michigan.gov/sos/Resources/News/2019/05/08/michigan-secretary-of-state-settles-ballot-selfie-case>.

¹¹⁶ *See, e.g., Silberberg v. Bd. of Elections of N.Y.*, 272 F.Supp.3d 454 (S.D. N.Y. 2017); *Oettle v. Guthrie*, 2020 IL App (5th) 190306 (Ill. App. 2020).

¹¹⁷ *Silberberg v. Bd. of Elections of N.Y.*, 272 F.Supp.3d 454, 459 (S.D. N.Y. 2017).

¹¹⁸ *Id.*

¹¹⁹ *Gardner v. Rideout*, S.Ct. No. 16-828 (petition denied Apr. 3, 2017), <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/16-828.htm>.

¹²⁰ 52 U.S.C. § 20901(b)(1)(G) (2021).

¹²¹ 52 U.S.C. §§ 20101 et seq.

¹²² *E.g.*, Maryland Code, Election Law § 10-308.