

Taking a selfie in the voting booth might be illegal - AvvoStories

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POLITICS, CRIME, NEWS, RIGHTS

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Nowadays we document our lives online—sharing everything from a meal at a trendy restaurant to the birth of a new child with a selfie posted to social media. So snapping a quick pic of you and your ballot at the voting booth to show off your civic pride might sound like a fun idea. Doing so, however, could possibly get you in big trouble: laws in many states—including Tennessee, as [Justin Timberlake recently found out](#)—ban photography at polling places.

What is legal

Laws about photography at polling places vary widely from state to state, and enforcement is spotty everywhere that such laws exist. In Washington State, where most voting is done by mail-in ballot, there are no restrictions at all. Until recently, [California](#) law prohibited any voter from showing his or her ballot to another person after marking it, but had never prosecuted anyone for publishing a photo of their marked ballot.

At the extreme end of the spectrum, showing your marked ballot to anyone else or asking to see another person's marked ballot is a class-one *felony* in [Wisconsin](#). In many states, there are also laws restricting photography in or near a polling place, even when ballots are not being photographed. During the 2012 election, the Digital Media Law Project compiled a [summary](#) of the laws in each state.

But why?

To modern voters used to publicly documenting every aspect of their lives, such privacy laws might seem silly. But in an earlier age, the rationale was clear. The ballot was secret; how one voted was a private, anonymous act, influenced only by the individual's conscience. The only conceivable reason for documenting how one voted was the intention to receive payment for that vote. An [academic paper](#) in 1998 on voter fraud quoted an 1889 source explaining the value of a secret ballot:

"No man has ever placed his money corruptly without satisfying himself that the vote was cast according to the agreement, or in a phrase which became only too common during the last campaign, without proof that 'the goods were delivered . . .'"

However, that same paper concluded that while ballot privacy laws may affect the methodology of bribery, they do not eliminate the incentive or the practice.

The more things change

There is also a surprisingly strong historical precedent for [voter intimidation](#) throughout the United States, even in recent elections. Many states have laws banning specific behaviors in or around polling place—behaviors that could be used for voter intimidation, including loitering, photographing voters or interfering with them, blocking the entrance, or engaging in campaigning activity.

In fact, the Republican National Committee is still subject to a [federal court order](#) restricting the RNC from engaging in actions related to "ballot integrity, ballot security or other efforts to prevent or remedy vote fraud," especially in areas where racial or ethnic demographics might be a motivating factor. The decree came in response to claims of voter intimidation in minority areas in the 1970s and early 1980s, and was upheld as recently as 2013.

Although studies have found that in-person voter fraud is [extremely rare](#), voter intimidation is still an issue and could evolve with technology. In New Mexico, voters recently received a [flyer](#) from the Republican Party that implied their votes were not anonymous, and that a "wrong" vote could be made public. (Victims of polling place intimidation do have [legal recourse](#) regardless of whether photography was involved – voter intimidation by any means is a [federal](#) crime.)

Jessica Levinson, president of the Los Angeles City Ethics Commission and a clinical law professor at Loyola Law School, told the [LA Times](#) that changing secret ballot laws might make it easier for organizations or employers to pressure voters: "*An employer could say, 'Oh, we're all voting for this today, really looking forward to seeing your ballot on Facebook later.'*"

Social media pressure

Not everyone is convinced that existing laws are relevant today, however. Earlier this year, Snapchat filed an [amicus brief](#) in a New Hampshire lawsuit arguing that ballot selfies are the way younger voters engage with the political process and that news gatherers have a first amendment interest in sharing those images, including the

process and that news gatherers have a first amendment interest in sharing those images—including the documentation of any irregularities occurring at the polls. The court struck down New Hampshire's law.

Some lawmakers agree with Snapchat's assessment, too. Arguing that anything that encourages civic enthusiasm should be encouraged in these days of low voter turnout, California Assemblyman Marc Levine sponsored a bill to legalize ballot selfies. It was signed into law just in time for California voters to legally document and share their participation in this year's historic election.

Image courtesy of PopSugar

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