

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of HB 629
Election Law - Polling Places and Early Voting Centers - Electronic Devices**

This legislation would allow voters to bring an electronic device into a polling location and to use the device to access information while they are voting and to take a photo of themselves and/or their ballot (aka “a ballot selfie”).

During the 2020 general election, I heard from and personally observed several voters who were turned away from the polls because they had a smartphone in their hand.

Although there is no statutory ban in Maryland on using an electronic device while voting, the State Board of Elections adopted regulations in 2000 to prohibit electronic devices from being used in polling places.¹ The state regulations are specific to polling places and do not apply to voters completing a mail-in ballot.

These regulations predate the invention of smartphones. Now, almost all Marylanders carry a smartphone with them.

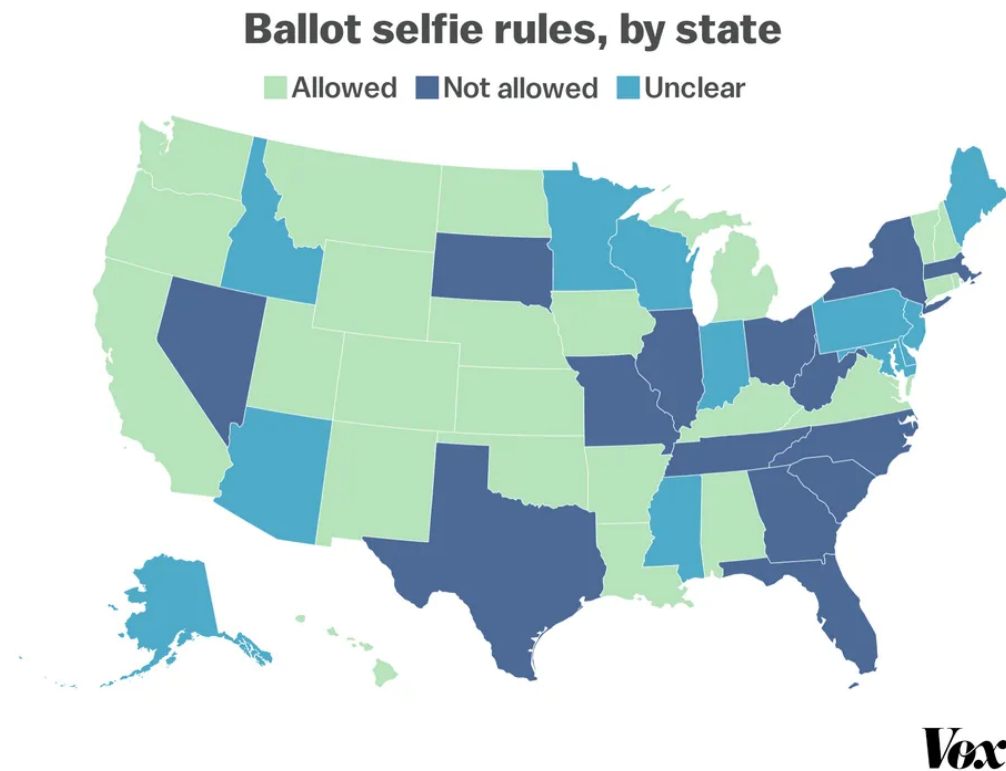
There are many ways smartphones can be useful in the voting process. Smartphones are used by voters to keep track of how they intend to vote, either through a sample ballot app or website or with a photo of their completed sample ballot. Smartphones allow voters to access information needed to make a decision on a particular race or ballot question, such as viewing an online voters guide from the League of Women Voters, news articles, or a candidate’s website. Phone apps provide translation services or magnification of small fonts. By prohibiting phones in polling places, Maryland is suppressing the ability of voters to be fully informed in casting their ballot.

Additionally, some voters are eager to share their enthusiasm for voting through a ballot selfie shared on social media. People may want to show off the fact that they have participated in the democratic process and to encourage others in their social networks to vote.

¹ COMAR 33.07.04.02

Other States Allow Phones in Polls

Thirty-four states plus the District of Columbia are less restrictive than Maryland in allowing voters to use an electronic device at a polling place.^{2,3,4,5} Notably, twenty-eight states and D.C. specifically allow voters to take an image with their completed ballot, should they wish.



As the reliance on technology continues to grow, Maryland is falling behind other states in granting voters access to a smartphone.

Preserving Free Speech

Maryland's current regulations may be unconstitutional and leave us vulnerable to a court challenge. Other states that enacted bans on ballot selfies have had their laws struck down in court as a violation of the First Amendment right to free speech.

² 19 states + DC have no restrictions: AR, CA, CO, CT, DC, HI, IN, KS, ME, NH, NM, ND, OR, PA, RI, VA, VT, WA, WI, and WY.

³ 9 states allow voters to take a selfie with their own ballot only: AL, IA, KY, LA, MI, MT, NE, OK, and UT

⁴ 6 states allow voters to take a selfie with a blank ballot only: AK, ID, MA, MN, MS, and MO.

⁵ 16 states don't allow photography in the polling station and/or of one's ballot: AZ, DE, FL, GA, IL, MD, NC, NJ, NV, NY, OH, SC, SD, TN, TX, and WV.

A federal court struck down New Hampshire's prohibition on ballot selfies and concluded that "the ballot selfie is constitutionally protected political speech that can be restricted only by meeting the highest standard of constitutional scrutiny."⁶ In this case, there were no specific instances of vote buying, voter coercion, or other frauds linked to ballot selfies and therefore the state did not have a compelling reason for restricting the act. The United States First Circuit Court of Appeals subsequently upheld the ruling, comparing the New Hampshire law's means of preventing voter fraud to "burning down the house to roast the pig."

Similarly, a court struck down an Indiana state law on similar grounds.

What this Bill Does

- Allows the use of electronic devices in polling places so that voters can access information.
- Allows the use of electronic devices in polling places to take a photo of yourself and your ballot and be allowed to share that photo with others.
 - Prohibits voters from photographing or video recording other people or their ballot.
- Prohibits voters from making phone or video calls.
- Allows election officials to intervene should the use of the electronic device become disruptive.
- Would go into effect in 2023, after the upcoming elections.

⁶ <https://www.ncsl.org/research/elections-and-campaigns/secretcy-of-the-ballot-and-ballot-selfies.aspx>