

Delegate Palakovich Carr - HB 629 - Phones in Poll

Uploaded by: Julie Palakovich Carr

Position: FAV



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.

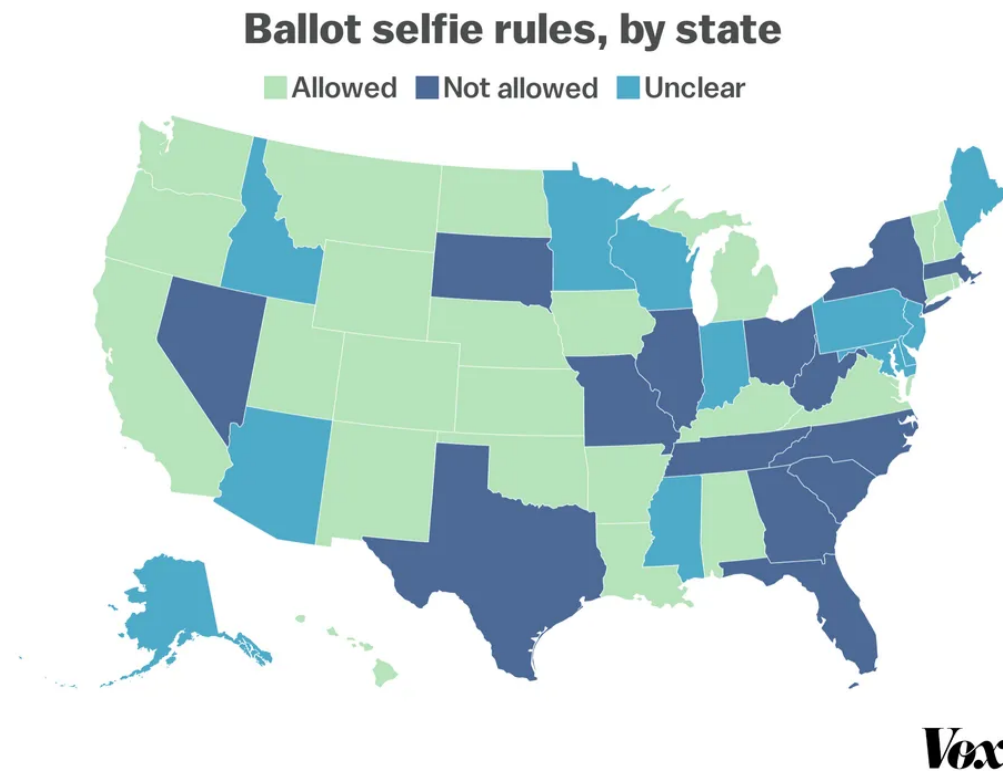
There are many ways smartphones can be useful in the voting process. Smartphones are used by voters to keep track of how they intend to vote, either through a sample ballot app or website or with a photo of their completed sample ballot. Smartphones allow voters to access information needed to make a 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>

HB 629 Philip Wilk Testimony.pdf

Uploaded by: Philip Wilk

Position: FAV

Testimony of Philip Wilk

February 15, 2022

Ways and Means Committee

HB 629: Election Law - Polling Places and Early Voting Centers - Electronic Devices

Position: **FAVORABLE**

Dear Chair Atterbeary and members of the Ways and Means Committee,

Thank you for this opportunity to provide testimony in support of House Bill 629.

My name is Philip Wilk and I am a resident of Montgomery County. I was turned away at my polling station a couple of years ago. I was turned away because all the notes I brought had been prepared on an electronic mobile device, which I brought with me. All voters at the Fallsmead Elementary School voting location were confronted when walking in the door and asked about their mobile devices.

At issue is a state regulation prohibiting electronic devices from being used in polling places. While this apparently is an old regulation, nobody could tell me why it was being selectively being enforced this time or why the regulation even existed in the first place. If this were to enhance security, it would be ineffective as it would rely on a person with malicious intentions to self-identify at the polling location. If this were to prevent recording of a marked ballot, the regulation should simply state this and not preclude the use of electronics for other informed-electorate purposes. I think it's a good thing to prohibit photographing ballots and the regulation should simply state this, if this indeed is the original intent.

When I was suddenly not allowed access to my electronic notes for the purpose of completing my ballot, it came as a complete shock. While I could have printed out my notes at home and returned to the polling station at a later time, I was not able to due to my childcare responsibilities; I had already budgeted all the time I could for voting. I was not able to vote and I should have been able to cast my ballot while referring to my notes on my mobile device. This ill-conceived rule has no place in the 21st century.

Other states allow the use of mobile devices in polling stations and some states actively encourage use in this manner as they wish to promote an informed electorate, as I wish Maryland would.

For these reasons, I respectfully request the committee for a favorable report on HB 629.

LWVMD testimony - HB 629 - Election Law - Polling

Uploaded by: Janet Millenson

Position: INFO



TESTIMONY TO THE HOUSE WAYS AND MEANS COMMITTEE

HB 629 – Election Law – Polling Places and Early Voting Centers – Electronic Devices

POSITION: Informational Only

BY: Nancy Soreng, President

DATE: February 15, 2022

The League of Women Voters of Maryland, a nonpartisan organization with 1500 members statewide, advocates for fair and accessible elections that are feasible to implement. The purpose of this informational testimony is to provide additional context as you consider House Bill 629.

There are pros and cons to allowing the use of cellphones and other electronic devices in polling places. Currently, regulations prohibit the use of such devices, with very few exceptions. The rules are the same for early voting (COMAR 33.17.06.04) and for Election Day (COMAR 33.07.04.02).

Allowing this use could increase voter satisfaction. Electronic devices can help occupy an adult or a child while waiting in line. For some voters, a polling place “selfie” is the modern-day version of an “I Voted” sticker. They’re proud of their civic engagement and want to capture the moment. Accordingly, some polling places have set up official “selfie walls” *outside* the main room for this purpose.

A more substantive argument for cellphone use is paperless information access. Same-day registration (SDR) requires showing a utility bill or similar proof of residency. These days many people receive those documents only in electronic form. Similarly, not everyone brings a printed sample ballot or written list of how they plan to vote. In practice, though, SDR judges may briefly step outside the polling room to view a utility bill on someone’s phone. Voters wanting to consult their phone for ballot choices are often given paper and pen, told to step outside and make notes, then return to the front of the line.

However, the potentially serious downsides of allowing the use of electronic devices include justifiable concerns about security and privacy. Allowing photography (other than by authorized media representatives) could intimidate voters worried about polling place surveillance or voter suppression. And although the bill would permit a voter to photograph their *own* ballot, there’s no way to prevent a bad actor from surreptitiously capturing an image of another voter’s ballot or Voter Authority Card (VAC). The VAC shows the voter’s name, address, date of birth, party affiliation, voter ID number, and other personal information. Polling places don’t have enough staff for monitoring and enforcement, particularly if only certain uses are to be allowed.

Another risk is harassment of election workers, especially if polling place interactions are live-streamed or recorded on video. A simple technical glitch or miscommunication could rapidly escalate into a threatening situation. Unfortunately, this risk is not theoretical, even in Maryland.

The League of Women Voters of Maryland urges you to take these factors into consideration when evaluating the provisions of HB 629.

HB 629 - Election Law - Polling Places and Early V

Uploaded by: Morgan Drayton

Position: INFO

February 11, 2022

Testimony on HB 629
Election Law – Polling Places and Early Voting Centers – Electronic Devices
Ways and Means

Position: Informational

Common Cause Maryland advises careful consideration before any vote to pass HB 629, which would allow voters to use electronic devices at polling places and early voting centers, including to photograph or record video of the voter or the voter's ballot and to publish or otherwise share such photos and videos. Common Cause Maryland has serious concerns regarding HB 629 and takes no position on the legislation at this time.

Election officials and voters are operating under very difficult circumstances since the 2020 election. According news accounts, academic research and monitoring from democracy organizations like the Carter Center, harassment and intimidation of election officials has risen to new and shocking levels.¹ The Department of Justice has now established a [task force](#) to combat threats to election workers.²

As you consider moving this legislation forward, we urge you to creatively and thoroughly consider the potential unintended consequences of this legislation. Specifically, it is critical that steps are taken to ensure that this legislation does not lead to increased harassment and intimidation of voters and election officials or encourage vote buying or voter coercion. Consider the following scenarios that could put voters and election workers at risk.

- A voter takes a “ballot selfie” photo and shares that photo on a social media platform, but captures in the background of the photo another voter who did not consent, perhaps even capturing in the photo the marked ballot of the non-consenting voter. This might be particularly egregious for a voter whose safety is at risk, such as survivor of domestic violence.

¹ See, e.g., Zack Beauchamp, “‘We are going to make you beg for mercy’: America’s public servants face a wave of threats,” *Vox*, Nov. 18, 2021, <https://www.vox.com/22774745/death-threats-election-workers-public-health-school>; Michael Wines, “Harassed and Harangued, Poll Workers Now Have a New Form of Defense,” *N.Y. Times*, Sept. 18, 2021, <https://www.nytimes.com/2021/09/18/us/election-workers-legal-aid.html>; Sam Levine, “‘It’s been a barrage every day’: US election workers face threats and harassment,” *Guardian*, Nov. 1, 2021, <https://www.theguardian.com/us-news/2021/nov/01/us-election-workers-threats-violence>; Brennan Center for Justice, “Election Officials Under Attack,” June 16, 2021, <https://www.brennancenter.org/our-work/policy-solutions/election-officials-under-attack>.

² U.S. Dept. of Justice, “Justice Department Launches Task Force To Combat Threats Against Election Workers,” July 29, 2021, <https://www.justice.gov/opa/blog/justice-department-launches-task-force-combat-threats-against-election-workers-0>.

Maryland

Holding Power Accountable

- A voter takes a “ballot selfie” video documenting their election experience and posts or livestreams the video of election workers to a social media platform. These poll workers are later doxed and harassed.
- An employer urges employees to take pictures of themselves and their ballots and post them to social media platforms—leading employees to feel pressured and coerced to vote in a manner the employer would prefer.
- Voters are enticed into vote-buying schemes, with photos of marked ballots used as proof in the exchange of votes for money.
- Election workers are attacked while trying to “police” a voter who claims a First Amendment right to film a polling place.

All of the above imagined activities are not explicitly permitted under current law or by HB 629, but may be the unintended consequences of this legislation. In this current threat environment, all of scenarios should be considered and foreclosed before going forward.