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Rejected for Exposure

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REJECTED FOR EXPOSURE

By Jessica Hanes, Scholarly Publishing Librarian & Seth Quidachay-Swan, Reference Librarian, University of Michigan Law Library

A story published recently in the *Detroit News* about a Michigan man “asserting a constitutional right to take ‘ballot selfies’ by challenging the state’s long-standing ban on voting station and polling place photography” sparked our interest in whether generational social media preferences might be the driving force for citizens who seek to overturn such laws. After all, the plaintiff is among the earliest born into the Millennial generation, over half of which (55%) have shared a selfie on social media as of 2014, a practice that has become ubiquitous even in politics.

The specific Michigan laws in contention, summarized, state that: “If an elector shows his or her ballot or any part of the ballot to any person [...] after the ballot has been marked [...] the ballot shall not be deposited in the ballot box, but shall be marked “rejected for exposure”, and shall be disposed of [...] a note of the occurrence shall be entered on the poll list opposite his or her name and the elector shall not be allowed to vote at the election.”

Interested to know how many states have similar laws, our research found from a 2012 survey that as of that same year, 44 states had a law or some official interpretation (usually a statement by a statewide election official) prohibiting a voter from either filming or photographing their own marked ballot. In states such as Arizona or California, enforcement of such laws is considered discretionary, while other state statutes (District of Columbia) appear to explicitly prohibit ballot selfies. However, the language is somewhat ambiguous as to whether such laws would truly apply to individuals purposefully documenting their own vote. The most extreme laws make ballot selfies a criminal offense and/or void the voter’s ballot (i.e. Pennsylvania, Michigan and Hawaii).

There have been other efforts to loosen such restrictions, as in 2016 where the 1st Circuit Court of Appeals ruled that there was no compelling governmental need to ban voters from posting ballot selfies. The ruling would invalidate restrictions not only in New Hampshire, whose ban was overturned by the ruling, but also laws restricting ballot selfies in Maine, Massachusetts and Rhode Island, in addition to providing a framework for overturning the law in other states such as Michigan. In March of this year, a Michigan House Bill 5430 was introduced that would permit voters to photograph and post a copy of their ballot (on social media). It has been referred to a house committee but no action on it has occurred since.

Curious to know how current law students view this topic (most having been born into the mid to later years of the Millennial generation) we

created an online poll and allowed students to submit answers and optional feedback anonymously for a little over a week. Of the 65 Michigan law students who voluntarily responded to the poll, when asked “Do you think it should be legal to take a ‘ballot selfie’ on election day?” 68% said YES, 21% NO, and 11% ‘I don’t know’. (To clarify the term and reduce confusion for students answering, the term “ballot selfie” in the question was linked to an online definition.

The day we finalized this, a Grand Rapids District Court Judge issued a preliminary injunction prohibiting the state from enforcing its ballot selfie ban, ruling it is an unconstitutional restriction on free speech. We’re interested to know what you think about the outcome of the Michigan ban, especially with the election right around the corner! We’ve created another online poll and would appreciate your feedback. Results will be anonymous unless you choose to identify yourself, and will be shared in the next MichALL newsletter.

Poll URL: http://libguides.law.umich.edu/michall_poll
Michigan ‘ballot selfie’ ban stirs court challenge,

End Notes:

<http://www.detroitnews.com/story/news/politics/2016/10/04/michigan-ballot-selfie-ban-stirs-court-challenge/91587154/>

More than half of Millennials have shared a ‘selfie,’ <http://www.pewresearch.org/fact-tank/2014/03/04/more-than-half-of-millennials-have-shared-a-selfie/>

The politics of the selfie, <http://www.politico.com/story/2014/03/selfies-politics-104910?o=0>
MICH. COMP. LAWS §§ 168.579, 168.738(2),

[http://www.legislature.mi.gov/\(S\(5lmvmlgs0qbneof43pb3fc3v\)\)/mileg.aspx?page=GetObject&objectname=mcl-168-738](http://www.legislature.mi.gov/(S(5lmvmlgs0qbneof43pb3fc3v))/mileg.aspx?page=GetObject&objectname=mcl-168-738)

State Laws: Documenting the Vote 2012, <http://www.dmlp.org/state-law-documenting-vote-2012>

House Bill 5430, <http://www.legislature.mi.gov/documents/2015-2016/billintroduced/House/htm/2016-HIB-5430.htm>

Ballot Selfie definition, <http://www.pcmag.com/encyclopedia/term/68178/ballot-selfie>

Federal court suspends Michigan’s ‘ballot selfie’ ban,

<http://www.detroitnews.com/story/news/politics/2016/10/24/federal-court-suspends-michigans-ballot-selfie-ban/92695282/>