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General Government

States revise laws to address ‘ballot selfies’ in voting booths

[March 3](#) — In response to the prevalence of cellphone use, several states have enacted legislation to address use of the devices in polling places, including voters taking and sharing photos of themselves with their marked ballots (“ballot selfies”). Legislative changes and recent court orders may cause more states to examine their laws governing behavior around voting booths.

Texas and many other states generally prohibit photography in polling places. Under Texas Election Code, [sec. 61.014](#), a person may not use a wireless communication device or record images or sound within 100 feet of a voting station. The presiding judge may require violators to turn off the device or leave the polling place. In some states, such as Wisconsin, it is illegal to show one’s marked ballot to another person.

Recently, some states have moved explicitly to ban ballot selfies, while other states have considered or approved legislation that allows them.

State approaches to ballot selfies

New Hampshire and Indiana have enacted laws in recent years explicitly prohibiting voters from taking and sharing pictures of their ballots, although federal court orders barring enforcement of these laws on First Amendment grounds have led to uncertainty about the issue. Utah now allows voters to take pictures of their own ballots, and other states are considering similar legislation.

Banning ballot selfies. A 2014 New Hampshire law made it illegal for voters to take and share on social media or by other means digital photographs of their marked ballots. Each violation was punishable by a possible fine of up to \$1,000. Three

voters under investigation for posting ballot selfies on social media challenged the law on First Amendment grounds. New Hampshire’s secretary of state defended the law on the basis that it was needed to prevent vote buying and voter coercion, as compromised voters could use photos of marked ballots to show that they voted in a particular way. An August 2015 [decision](#) from a federal district judge invalidated the law.

The judge concluded the law was a content-based restriction on speech that could not survive strict scrutiny, the most rigorous standard of judicial review to determine a law’s constitutionality, because it did not serve compelling state interests and was not narrowly tailored to achieve those interests. The decision says the defense had not demonstrated that vote buying and voter coercion were actual or imminent problems in the state and argues the law was overinclusive, likely to punish mainly the innocent and not those participating in voter fraud schemes. New Hampshire has appealed the ruling.

Indiana enacted a law last year that banned distributing or sharing images of a voter’s ballot taken in a polling place using social media or by other means. In October, a federal district judge in Indiana granted a preliminary injunction halting enforcement of it. The judge in her [order](#) provided reasons for granting the injunction that were similar to those in the New Hampshire decision. A final ruling in the Indiana case has not yet been made.

Legalizing ballot selfies. In March 2015, Utah’s governor signed a [bill](#) that allows voters to take and share pictures of their own ballots. The Utah law also made it a class C misdemeanor (in Utah, punishable by up to 90 days in jail and/or a maximum fine of \$750) if an individual takes a photograph of a ballot other than that person’s own ballot at a polling place.

(continued on page 2)

Other states are considering legislation to allow voters to take and share images of their ballots, including one [proposal](#) in California and [another](#) in Nebraska.

According to an issue briefing from the National Association of Secretaries of State, there is not a clear consensus among states on what is permissible regarding ballot selfies and, until more legal clarity exists, states will need to clearly communicate their policies for 2016.

Debate on photographing ballots

Some say ballot selfies are an innocent and constitutionally protected form of communication used to show pride in civic participation and that allowing ballot selfies encourages youth engagement in the political process. They say many voters already unknowingly violate laws banning the taking and sharing of these photos and that other laws can be used to prosecute alleged voter fraud. Others express concerns that allowing photos of completed ballots to be taken and shared could lead to the re-emergence of bribery and coercive practices. They also say

sharing one's vote through the photos might compromise ballot secrecy and voter privacy.

Recent Texas proposals

While Texas law prohibits using wireless communication devices and recording within 100 feet of voting stations, the 84th Legislature considered, but did not enact, a bill that would have authorized limited cellphone use in voting booths. [HB 675](#) by G. Bonnen, which passed the House but did not receive a hearing in the Senate Committee on State Affairs, would have allowed the use of a mobile phone in a voting station to access information that was downloaded, recorded, or created on the phone before the person entered the polling place. The bill would not have changed the restrictions on recording images or sounds, although some raised concerns that permitting any cellphone use could allow for voters to be paid or coerced to take pictures of their marked ballots as proof of their vote or to photograph others and infringe on their privacy.

— by Mary Beth Schaefer

General Government

ERS trustees approve health plan option for state employees

[March 14](#) — The board of trustees for the Employees Retirement System of Texas (ERS) has approved a new optional health plan for state employees, as directed by [HB 966](#) by Crossover, enacted in 2015 by the 84th Legislature. The [consumer-directed health plan](#) combines high-deductible health insurance with health savings accounts to help pay for medical expenses.

Employees and retirees who are not eligible for Medicare will be able to enroll themselves and their dependents in the new plan during this summer's open enrollment period. Coverage begins Sept. 1, 2016. A study conducted in 2008 for ERS estimated that 3 percent of employees would select a high-deductible plan if one were offered.

High-deductible health plan

The board last month approved a new, high-deductible health plan to be administered by UnitedHealthcare, which administers the current HealthSelect of Texas insurance program. HealthSelect and HMO plans now offered by the state have deductibles only for prescriptions and for out-of-network and out-of-area services.

Employees who enroll in the new option will have a deductible of \$2,100 per individual and \$4,200 per family for in-network health providers. Higher deductibles of \$4,200 per individual and \$8,400 per family will apply for enrollees who use out-of-network providers. Deductibles must be met before the plan will pay for most medical and prescription benefits, although preventive services such as annual well exams, screenings, and vaccines will be covered at no cost.

Once applicable deductibles are met, the plan will pay 80 percent for in-network services and 60 percent for out-of-network services until out-of-pocket maximums are met. The out-of-pocket maximum is \$6,550 per individual and \$13,100 per family within the network and \$13,100 per individual and \$26,200 per family outside of the network.

The new plan will offer the same network of doctors as the existing HealthSelect plan but, unlike the existing plan, will not require participants to obtain a referral from a primary care provider in order to visit a specialist.

The state will pay the full insurance premium for employees and half the premium for dependents, which is similar to existing

(continued on page 3)

state health insurance plans. The ERS-approved design for the high-deductible plan will reduce the dependent premium by 10 percent of the traditional plan premium. The ERS board is scheduled to approve in May the monthly premiums for the high-deductible health insurance plan and other health plans that will be offered beginning Sept. 1, 2016.

Health savings accounts

Participants in the high-deductible health plan will receive monthly deposits from the state into health savings accounts set up by a vendor selected by ERS. The state will make monthly deposits into these accounts of \$45 per month for employee coverage or \$90 per month for family coverage.

Participants may contribute to their health savings accounts an amount up to a maximum set each year by the Internal Revenue Service. The contribution limits for calendar year 2016 are \$3,350 for single coverage and \$6,750 for family coverage. The contributions are tax deductible, interest earned on the accounts is tax-free, and expenditures for qualified medical expenses are not taxed.

Employees who enroll in the consumer-directed health plan will not be eligible for the state's flexible savings account program but will be able to use their health savings account funds for dental and vision care costs.

HB 966 requires ERS to study implementation of the consumer-directed health plan and report to the Legislature by January 1, 2020.

ERS discussion

At a recent meeting, ERS trustees and staff discussed perceived benefits and drawbacks of the new plan. Some noted that the health savings accounts offer significant tax advantages and are portable when employees change jobs or leave state employment. Others expressed concerns about employees enrolling in the high-deductible plan because of slightly lower monthly premiums for dependent coverage without having sufficient funds for an unexpected medical issue and the resulting deductible and out-of-pocket maximum costs. ERS officials said they are planning an extensive communication campaign on the benefits and risks of selecting the consumer-directed health plan instead of the more traditional insurance plans.

— by *Janet Elliott*