

Honolulu, Hawaii

March 3, 2016

RE: H.B. No. 27

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 27 entitled:

"A BILL FOR AN ACT RELATING TO ELECTIONS,"

begs leave to report as follows:

The purpose of this measure is to repeal the prohibition against willfully exhibiting one's own election ballot.

One concerned individual testified in support of this measure. One concerned individual testified in opposition. The Office of Elections provided comments.

In accordance with this measure, voters may photograph their voted ballot in the voting booth or at home and disseminate the photograph by electronic device or electronic media; provided that the voter's act is not an election offense, including vote buying or voter coercion. While this bill clarifies that a voter may take a photograph of the voter's own ballot, it does not remove the prohibition of displaying a voter's marked ballot or a photograph of a marked ballot to other voters while in the polling place. According to a recent case, voters' disclosure of their voted ballots, including "ballot selfies," is speech that may be protected by the United States Constitution First Amendment. Rideout v. Gardner, 2015 WL 4743731 (D.N.H. Aug. 11, 2015).

Voters may use an electronic device, including mobile phone, in the voting booth to assist them to vote their ballot; provided that the voter is not committing an election offense, including vote buying or voter coercion, which is still subject to section



19-4, Hawaii Revised Statutes, with penalties that include a fine of not less than \$1,000 nor more than \$5,000, or imprisonment for not more than two years, or both.

Voters do not forfeit their ballot because the voter disseminates a photograph of their voted ballot.

Campaigning and electioneering at the polling place and voter coercion are prohibited by federal and state law and is a misdemeanor.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 27 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary,



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KARL RHOADS, Chair



