



Election Law Update ***(September 4, 2018)***

Election officials please take note of the following changes in the law for the State Primary on September 11th:

APPLICATION OF NEW HAMPSHIRE’S POLLING PLACE ELECTIONEERING LAW:

In an important free speech decision, the US Supreme Court invalidated the application of a Minnesota law banning political speech through the wearing of advocacy paraphernalia inside a polling station. *Minnesota Voters Alliance v. Mansky*, 138 S.Ct. 1876 (2018). In so doing, the Court did affirm that States and local governments may exclude certain forms of advocacy, including passive advocacy like wearing apparel, from polling places in order to provide an island of calm in which voters can peacefully contemplate their election choices.

New Hampshire has a similar statute related to distributing campaign materials at polling places. RSA 659:43, I prohibits any person from distributing, wearing or posting at a polling place any campaign material in the form of a poster, card, handbill, placard, picture, pin, sticker, circular or article of clothing which is intended to influence the action of the voter within the building where the election is being held.

In order to comply with the U.S. Supreme Court’s decision in *Mansky* it is recommended that the RSA 659:43, I be interpreted to only prohibit the wearing of an item of political paraphernalia that advocates for or against any candidate or measure on the ballot for that election. For instance, although a person could not wear a shirt that said vote for Bob Jones for State Representative where Bob Jones was on the ballot, a voter could wear a shirt that says “I support Good Education for Our Children.”

The New Hampshire Department of State has issued a more detailed explanation of this decision and how to comply with the Court’s ruling in the *New Hampshire Election Procedure Manual: 2018-2019*, pp. 185-187. Click [here](#) to access a complete copy of the *Election Procedure Manual*.

ABSENTEE BALLOTING ISSUES:

Signature Match Requirement for Processing Absentee Ballots Unconstitutional

RSA 659:50, III governs the procedure for processing absentee ballots. As most moderators are aware, part of that procedure—found in paragraph III—requires verification that the signature on the affidavit appears to be made by the same person who signed the application, unless the voter is blind or disabled and received assistance.

In response to their absentee ballots being rejected in the 2016 election due to this “signature match” requirement, 275 absentee voters filed an action against the New Hampshire Secretary of State’s Office, alleging constitutional violations, as well as a violation of the Americans with Disabilities Act.

On August 14, 2018, the United States District Court in New Hampshire issued a detailed order in *Mary Saucedo et al. v. William Gardner, Secretary of State* where the judge declared RSA 659:50, III unconstitutional and granted the plaintiffs’ injunction, prohibiting the enforcement of RSA 659:50, III. Among other things, the judge highlighted the lack of consistent methods or guidance for moderators conducting this analysis, as well as the complicated nature of handwriting and signature analysis and comparison.

The outcome of this case is that paragraph III of RSA 659:50 has been effectively deleted. Therefore, moderators should no longer conduct a signature match to determine whether the signatures appear to have been made by the same people. Please [click here](#) for the New Hampshire Attorney General’s and New Hampshire Secretary of State official guidance in response to the *Saucedo* case.

Information About Absentee Voters:

NHMA’s *Town Meeting School Meeting Handbook 2018-2019*, page 38, incorrectly tells moderators to post the list of those who voted by absentee ballot outside the guardrail. Although town clerks are required to maintain a list of voters who request absentee ballots, these lists shall not be available for public inspection at any time without a court order. RSA 657:15, I. Accordingly, do not post the list of those who voted by absentee ballot at the polling place.