



Can Voters Be Required to Wear Face Coverings at Polling Places?

September 10, 2021

We have received many inquiries from local officials about whether they may, or must, require voters to wear face coverings at the polls on election day. This memorandum addresses that issue.

Face coverings may be required in the polling place.

Part 2, Art. 32 of the N.H. Constitution provides that elections “shall be . . . governed by [the] moderator,” and, as such, the moderator has the authority to manage the polling place, including the authority to choose whether to require a mask at the polling place.

Note, of course, that governing bodies also have a role if the election takes place in a municipal building. A building may make itself available to outside groups subject to rules, such as requiring users to wear masks, and RSA 41:11-a gives governing bodies authority over town buildings.

But voters without face coverings must be permitted to vote.

While the moderator may require masks in the polling place, every qualified voter must be given an opportunity to cast a ballot, even if not wearing a mask. Therefore, moderators who require masks must establish alternative means of participation for voters who do not wear masks.

Potential alternatives for non-masked voters.

Any moderator contemplating requiring masks should call the Attorney General Office’s election hotline 1-866-868-3703 to discuss alternatives. Each polling place is unique and no one-size-fits-all solution will work everywhere, but alternatives such as separate spaces within the polling place for unmasked voters, outdoor spaces for unmasked voters, or, potentially, accessible voting pursuant to RSA 659:20-a may be permissible in your particular situation. Assuming that such alternatives are available and refused, it may be permissible to deny the unmasked voter entry to the polling place, but such a possibility should be discussed with town counsel and the election hotline prior to the election.