



Florida Files Suit Challenging Transportation Mask Mandates

The State of Florida, joined by 20 other states, recently filed a [lawsuit](#) against the Biden administration and other entities challenging the mandatory mask mandates imposed on transportation hubs and airplanes.

On February 1, 2021, the Centers for Disease Control and Prevention (CDC) issued a [mask mandate](#) requiring any person “traveling on conveyances into and within the United States” to wear a mask, including at “transportation hubs.” The mandate allows individuals to remove their masks for brief periods of time to eat or drink, while unconscious, or while wearing an oxygen mask. It also allows for criminal penalties resulting from one or more violations.

In issuing this mandate, the CDC relied heavily on [42 U.S.C. § 264\(a\)](#), which authorizes the CDC to “make and enforce such regulations as in [its] judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases” into the United States or across state lines. A latter portion of this [section](#) clarifies what steps the CDC may take to carry out and enforce such regulations.

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In the suit, plaintiffs contend that the mandate is unlawful and ask the court to enjoin the defendants from enforcing it. The primary argument raised by the plaintiffs is that the mandate is outside the scope of federal power and that the CDC and/or the federal government lack the power/authority to issue the mandate. According to Florida Attorney General [Ashley Moody](#):

President Biden’s shortsighted, heavy-handed, and unlawful travel policies are frustrating travelers and causing chaos on public transportation. Almost 75 percent of these unruly, sometimes violent, incidents are based on this unlawful mask mandate. I know that if you travel at all, everywhere you go, people are frustrated and taking it out on the employees that are charged with enforcing this rule, that they have to wear a mask when this is an unfounded rule and order.

Plaintiffs raise several additional [arguments](#), the first of which is that the mandate is too [broad](#) and



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improperly imposes “economy-wide measures,” as opposed to more discrete measures that are “directly relate[d] to preventing the interstate spread of disease by identifying, isolating, and destroying the disease itself.”

For example, the CDC’s mandate isn’t limited in time, scope, or manner, nor does it impose discrete measures that are necessary to reduce the risk of transmission of Covid-19. Rather, the CDC assumes that it can take “any measures” necessary to achieve this goal.

Additionally, plaintiffs [claim](#) that, in issuing the mandate, the CDC failed to seriously consider any intrastate measures taken to combat and stop the interstate spread of Covid-19, and merely assumed/concluded that such measures were insufficient.

Plaintiffs also [contend](#) that the mandate was issued without the required notice and opportunity to comment pursuant to the Administrative Procedures Act. Conversely, the CDC [contends](#) that these were not required because the mandate was/is not a rule, but emergency action taken due to Covid-19. As a result, the CDC [argues](#), these requirements were not required. Of course, the CDC fails to explain why public comment has still not been allowed nearly 14 months after the mandate was issued.

Recent precedent could potentially bolster some of the plaintiffs’ claims. Specifically, the CDC previously issued an [order](#) imposing severe restrictions on the nation’s cruise industry before sailing was allowed to resume. A court preliminarily [enjoined](#) this order. The CDC also invoked § 264(a) to prohibit [evictions](#) nationwide during the Covid-19 pandemic. The Supreme Court [invalidated](#) this eviction moratorium and noted that the CDC lacked the authority to issue the order because Congress failed to specifically grant such power to the CDC in the relevant statute.

The court’s ultimate decision in this case is important. Plaintiffs assert that they have suffered [damages](#) resulting from this mandate, including fines for non-compliance, harm to their state-specific sovereign interests (many states have laws or policies that conflict with the mandate), and harm to their “quasi-sovereign” interests in the health, safety, and welfare of their citizens (i.e., forcing toddlers to mask can have negative health consequences). It is also important because it can help to further clarify the permissible scope of such mandates and the extent of the CDC’s authority in future cases.

Given Florida’s unwavering commitment to protecting individual rights and freedoms, it is not surprising to see the Sunshine State take the lead in this important case.





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