



PUBLIC HEALTH STATUTES AND REGULATIONS Fact Sheet

The CDC Transportation Mask Mandate and Mootness: A Q&A Explanation of *Health Freedom Defense Fund v. Biden*

Overview

In *Health Freedom Defense Fund v. Biden*, the Eleventh Circuit vacated a lower court decision invalidating the Centers for Disease Control and Prevention (CDC) transportation mask mandate. Because the mask mandate would have ended on its own terms when the federal COVID-19 Public Health Emergency expired on May 11, 2023, the Eleventh Circuit determined the case was moot. This Q&A describes the doctrine of mootness and the implications of this case.

Background


In February 2021, the CDC published an [order](#) requiring masks on transportation conveyances and at transportation hubs, relying on its authority under section 361(a) of the Public Health Service Act (PHSA), codified at [42 U.S.C. 264](#). The order stated that the requirement would remain in effect unless “modified or rescinded” or until the conclusion of the public health emergency.

Two individuals and a non-profit organization filed a lawsuit in federal court challenging CDC’s authority to issue the order. In April 2022, the judge issued an [opinion](#) stating that CDC’s authority is limited to the categories of action enumerated in the PHSA and that the prevention of droplet spread through masking did not qualify as “sanitation,” a related “other measure,” or any of the other listed categories. The judge also determined that the mandate violated the Administrative Procedure Act because CDC did not follow the law’s notice-and-comment requirement and was arbitrary and capricious because CDC failed to adequately explain its reasoning. This ruling ended the mask mandate.

On appeal, [the Eleventh Circuit determined](#) that the case was moot because the order would have expired by its own terms upon conclusion of the public health emergency. Because the lower court decision was vacated (i.e., cancelled or rendered void), it does not create precedent for future cases.

Q1: What authority did CDC cite for issuing the mask mandate?

Generally, public health powers are reserved to the states. However, the [PHSA](#) grants the Surgeon General power to make and enforce regulations necessary “to prevent the introduction, transmission, or spread of communicable diseases” between states or territories. The PHSA states that the Surgeon General “may provide for such inspection, fumigation,



disinfection, sanitation, pest extermination, destruction of animals or articles . . . and other measures, as in [their] judgment may be necessary.” This [authority was later transferred](#) from the Surgeon General to the Department of Health, Education, and Welfare (forerunner to the Department of Health and Human Services) and subsequently delegated to the CDC.

CDC also cited a [federal regulation](#) giving the CDC Director authority to take measures to prevent the spread of disease from one state or territory to another when state or local action is insufficient to prevent such spread.

Q2: What does it mean for a case to be moot?

The United States Constitution prohibits federal courts from issuing opinions outside of an active, concrete case. A federal court may only rule on certain types of “cases” or “controversies.” To comply with this requirement, a plaintiff must show “standing”: (1) they suffered an injury; (2) the defendant caused the injury; and (3) a decision by the court can provide relief. [Spokeo, Inc. v. Robins, 578 U.S. 330, 338 \(2016\)](#). However, sometimes a plaintiff may have standing at the beginning of litigation but lose standing as the circumstances surrounding the case change. The harm may cease or the court may no longer be able to provide relief. When this happens, the case is moot and a federal court no longer has power to decide the case. See [Burke v. Barnes, 479 U.S. 361, 363 \(1987\)](#).

Q3: Are there exceptions to the mootness doctrine when a case may still be decided?

Yes. There are two primary exceptions to the mootness doctrine: “voluntary cessation” and harms that are “capable of repetition, yet evading review.” First, a defendant cannot avoid litigation simply by ceasing their harmful conduct voluntarily. If there is a reasonable basis to expect the defendant will resume the conduct, the case is not moot. [United States v. W.T. Grant Co., 345 U.S. 629, 632-33 \(1953\)](#); [Friends of the Earth v. Laidlaw, 528 U.S. 167, 189 \(2000\)](#). Second, recognizing that some harms are too short in duration to be fully litigated but could recur in the future, a case is not moot if the same plaintiff is likely to be subject to the same action again. [Southern Pac. Terminal Co. v. Interstate Commerce Commission, 219 U.S. 498, 515 \(1911\)](#); [Davis v. Federal Election Commission, 554 U.S. 724, 735 \(2008\)](#).

Q4: Why did the Eleventh Circuit decide that *Health Freedom Defense Fund v. Biden* was moot?


On June 22, 2023, the Eleventh Circuit issued an opinion determining the case was moot. The Court reasoned that the mask mandate would have expired at the end of the public health emergency on May 11, 2023. For that reason, the lawfulness of the mandate was no longer a live controversy, and the Court could not provide meaningful relief. There was no longer any mandate for the Court to invalidate or reinstate.

Additionally, the Court determined that the case did not meet either of the exceptions that would permit it to decide a moot case. First, the mandate expired on its own terms and without any evidence that the government ended the mandate to avoid litigation. There was also no evidence that CDC had plans to issue an identical mask mandate in the future. For these reasons, the voluntary cessation exception did not apply. Second, the Court determined that there was no reasonable, non-speculative expectation that the same plaintiffs would be subject to a nationwide transportation mask mandate again. Therefore, the case was not “capable of repetition, yet evading review.”

Q5: What are the implications for CDC’s authority?

Whether CDC has authority to issue a nationwide transportation mask mandate remains unclear. Because the Eleventh Circuit vacated the district court’s decision, the earlier decision does not create precedent on which future cases can rely. As a basis for vacating, the Court followed a [relatively uncommon but established practice](#). When a case becomes moot during an appeal, the appellate court will generally vacate the lower court decision. Otherwise, the losing party would be stuck with a decision that creates precedent but cannot be appealed. Having been dismissed as moot, this case neither rejects nor confirms CDC’s authority to issue the mandate.

More broadly, this case does not clarify the extent of CDC’s authority under the Public Health Service Act. The federal government argued that the terms “sanitation” and “other measures” in the PHSA give CDC authority to issue orders like a mask mandate. In contrast, the district court narrowly interpreted the word “sanitation” to include only the “active cleaning”



of property and considered a mask mandate too dissimilar from the enumerated actions to be included under “other measures.”

In different orders, the CDC cited the same section of the PHS Act and the same federal regulation as authority for issuing a federal eviction moratorium. In [Alabama Association of Realtors v. Department of Health and Human Services](#), the United States Supreme Court determined that CDC lacked authority to issue these orders, considering the connection between an eviction moratorium and prevention of interstate disease spread too indirect. The connection between masking and disease spread is more immediately clear, but it is difficult to predict whether the Supreme Court would consider the connection close enough to fall within CDC’s power under the PHS Act.

Q6: Are there implications for state and local health departments?

This case does not have an immediate effect on state or local health departments, but there are possible implications worth considering. In a future emergency, legal uncertainty about CDC’s authority could affect whether or how quickly the federal government acts. In the absence of federal action, there may be additional pressure on state and local governments to prevent disease transmission. State and local health departments should be well-versed in the scope of their own authority.

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Support for the Network is provided by the Robert Wood Johnson Foundation (RWJF). The views expressed in this fact sheet do not represent the views of (and should not be attributed to) RWJF.

September 2023



Robert Wood Johnson Foundation