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Virginia
Freedom Keepers
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About Us:

Virginia Freedom Keepers (VFK) is the local state chapter of Freedom Keepers United (FKU), a National 501(c)3 organization. FKU's mission is to raise national awareness of current and upcoming legislation regarding medical freedom and unconstitutional mandates. As a bipartisan group, the concerted goal is to build positive relationships and be a light to our community.

Founded in 2019, VFK exists to provide accurate and up to date information regarding medical freedom and medical mandates. Our goal is to educate and connect our members through social campaigns, advocacy, community events and to provide resources for effective advocacy. VFK serves as a resource for all who want to expand their knowledge, educate their sphere of influence, and to connect with other advocates who are working together to achieve this goal.

REGULATORY SPOTLIGHT

Virginia's "Mask Mandate" by Executive Order 63

In light of the Virginia Governor's new "mask mandate", it's important for citizens of the Commonwealth to understand their rights pertaining to this medical mandate.

1.0 Background

On March 12th, the Commonwealth's Governor Ralph Northam declared a state of emergency in effect until June 10, 2020 via [Executive Order 51](#). At the time of the Executive Order, the Governor declared the anticipated effects of COVID-19 constituted a disaster as described in [§ 44-146.16 of the Code of Virginia \(Code\)](#) and put the order in place "...to prepare and coordinate our response to the potential spread of COVID-19."

Designed to deal with emergencies "which...may result in substantial injury or harm to the population...and may involve governmental action beyond that authorized or contemplated by existing law", [Virginia Code Chapter 3.2 Emergency Services and Disaster Law](#) allows for broad powers during state of emergencies. In layman terms, it's intended to untie the hands of the Governor when thrown into the uncharted waters of an emergency. It affords the necessary time and resources to deal effectively without the red tape.

Through what's called emergency services, the Governor can enact certain tactics during an emergency since "governmental inaction for the period required to amend the law to meet the exigency" could "work immediate and irrevocable harm upon the citizens". An example of these services is "hazard mitigation" techniques – an action taken to reduce or eliminate the long-term risk to human life.

Although not made specific by Governor Northam, the "mask mandate" may be one such example of his interpretation and use of a hazard mitigation technique.

2.0 What is the "mask mandate"?

Governor Northam's "mask mandate" goes into effect May 29, 2020. Citing that face coverings should be worn in private and public buildings, while using public transportation and other indoor gatherings, he outlined the ground rules in [Executive Order 63](#).

Exceptions outlined by the order include not requiring a covering while eating, drinking or exercising and for those under 10 years of age. The order also includes medical exceptions for individuals who have trouble breathing or other health conditions that "prohibit wearing a face covering". It explains that nothing in the order "shall require the use of a face covering by any person for whom doing so would be contrary to his or her health or safety because of a medical condition".

Furthermore "any person who declines to wear a face covering because of a medical condition shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition".

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Our Focus:

Connection.

Connecting constituents to each other and their representatives.

Community.

Community building through our group platform.

Education.

Educating our members so they can better educate their sphere of influence.

Empowerment.

Empowering each member to lobby for medical freedom in Virginia.

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3.0 What are the Commonwealth's, businesses' and citizens' risks & rights?

- For the Commonwealth, the liabilities around this "mask mandate" are made clear in the [Virginia Code](#). The Commonwealth cannot be held liable (except in cases of willful misconduct) for any injury a person would sustain from a hazard mitigation technique – such as a "mask mandate" - if it causes injury or death.
- For businesses, it appears private corporations are afforded the same immunity in the Code should a patron be injured or die from the "mask mandate" if they are "engaged in any emergency services activities promulgated pursuant to the provisions" of the chapter. Again, except in cases of willful misconduct.

However, there are other risks posed to businesses since authorities will not be "policing" the order. Instead, the Virginia Department of Health (VADH) will enforce the mandate and it reasonably follows that businesses may be at risk of losing their license if the VADH takes enforcement action on those seen to not be properly policing the Governor's new mandate.

But implementing changes in policies to meet the order's face coverings requirement coupled with the need to allow necessary medical exceptions may prove difficult and fraught with other real liability. For example, the Americans with Disabilities Act (ADA) allows a person being subjected to discrimination based on a disability to be able to seek civil action according to Section 36.501. As such, a business found discriminating could be sued unless an individual posed a "direct threat" (not based on speculation or generalizations).

- For citizens, as is the case with any executive order issued by the Commonwealth, a class 1 misdemeanor for those who defy is the defined penalty by law despite the Governor's indication that this will not be enforced.

However, citizens with "trouble breathing" and those whose "health conditions prohibit wearing a face covering" are noted by the Governor as exceptions to the order and the penalty would not apply. Simply put, the "mask mandate" is not intended to be followed when harm could be caused to the wearer. Those citizens who decline "to wear a face covering because of a medical condition" are "not required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition".

Note: Complying citizens who sustain either injury or death have no recourse against the Commonwealth or its agents unless willful misconduct can be proven.

4.0 Conclusion

While it is not designed to cause reprisal from authorities or exclude those with medical exemptions from accessing goods or services, this mandate is ripe with misinterpretation and improper enforcement potential. It has the potential to put businesses in line for civil suits or government action. Therefore, it is important for citizens to understand their medical rights around this mandate and for businesses to not overstep.