

Viral Video Claims California Gov Gavin Newsom Has ‘No Legal Authority’ To Mandate Face Masks Be Worn

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June 29, 2020

A video shared on Facebook claims Democratic California Gov. Gavin Newsom “has no legal authority” to mandate residents wear face masks.

Verdict: False

The California Emergency Services Act gives Newsom broad authority to issue health mandates during a state of emergency such as the coronavirus pandemic. Legal experts said the governor has the power to mandate California residents wear face coverings.

Fact Check:

Newsom announced on June 18 that California residents are required to wear face coverings in “high-risk settings” as some counties began to ease restrictions meant to curb the spread of the new coronavirus, according to NPR. Michigan, New York and Delaware, among other states, already have statewide mask orders in place, according to The Associated Press.

The order requires people to wear face coverings when in line or inside indoor public spaces, in health care settings, while waiting for or riding public transportation, in outdoor spaces where maintaining six feet of distance is not feasible and in most workplaces, among other settings. People who are exempt from the mandate include children under the age of two, individuals with medical, mental health or developmental disabilities that prevents them from wearing masks and those eating or drinking in restaurants where social distancing is possible, according to NPR.

Some social media users have questioned the legality of such a mandate, with one viral video caption reading, “Contrary to the LA Times story, Newsom did NOT issue any mandatory mask orders in CA! (He has no legal authority to do so.)”

Kate Folmar, a spokesperson for the state’s Health and Human Agency, told PolitiFact that “the State Legislature has given the Governor broad authority to respond to state emergencies like the COVID-19 pandemic” through the California Emergency Services Act. Newsom declared a state of emergency, making that law applicable, on March 4.

“The Governor may make, amend, and rescind orders and regulations necessary to carry out the provisions of this chapter,” reads section 8567 of the California Emergency Services Act. “The orders and regulations shall have the force and effect of law.”

That same executive order, which required Californians to heed public health guidelines, grants the state the ability to enforce the state's Department of Public Health rules, according to the Sacramento Bee. While the rule change was technically termed "guidance," the California Department of Health told the Daily Caller News Foundation in an email that the mask mandate "is enforceable if necessary, as a misdemeanor carrying a potential financial penalty and other penalties."

"That's the authority under which the governor declared an emergency on March 4," Leslie Jacobs, who teaches constitutional law at McGeorge School of Law, told PolitiFact. "That transfers all the authority of the state to the governor, to the extent necessary, to address the COVID emergency."

William Galston, a senior fellow at the Brookings Institution and the chair of their governance studies program, agreed Newsom's face mask mandate was within his power as governor.

"As a constitutional matter, the states have the principal responsibility for ensuring public health and safety," Galston told the DCNF in an email. "Most states – including California – have enacted statutes giving governors broad executive authority to do so. In my judgment, this is not a close legal call."

The state health and safety code allows the California Department of Public Health to "take measures as are necessary to ascertain the nature of the disease and prevent its spread" to prevent and control the spread of contagious, infectious or communicable disease, according to the Los Angeles Times.

"The Department of Public Health would appear to have sufficient authority to direct the public to wear masks in order to prevent the pandemic's spread," said former state appellate court Judge Daniel M. Kolkey to the Los Angeles Times.

Walter Olson, a senior fellow at the Cato Institute, told the DCNF that California law "gives the state government very broad public health powers."

"There are always going to be some avenues for legal challenge," he said in an email. "For example, litigants could argue that a state of emergency has been kept in effect even though the emergency is over, or that an order is irrational because it doesn't actually reduce disease transmission."

But Olson cast doubt on the strength of such arguments, saying, "I don't think those arguments would be very successful with judges under current conditions."