



## Mandatory masks on campus: Is it constitutional?

Ethan Khaldarov

June 25, 2020

As states begin to open up, colleges across the country have been racing to put together reopening plans for their institutions. Requiring students to wear masks has been one of the main components of many of these reopening plans.

As these policies are implemented, many Americans are questioning whether they are constitutional, or even enforceable, and legal experts are starting to weigh in.

“Requiring masking everywhere on campus, including outside in a non-mass-event (sporting event, rally, outdoor lecture, etc.) circumstance, would be a tougher sell, legally speaking,” [Tweet This](#)

The question about the constitutionality of forced mask-wearing has reached experts in the legal field. **Sejal Singh**, former assistant deputy public defender for the New Jersey Office of the Public Defender, and assistant professor in the division of criminal justice at St. John’s University, told *Campus Reform* that mandatory mask-wearing will likely be “difficult to enforce” from a “legal standpoint.”

“Faculty, staff, and school administrators will most likely strongly encourage students and faculty to wear masks. For example, if a student is not wearing a mask, I could see public safety reminding a student to wear a mask but I do not believe colleges and universities will take any legal action or fine students for not wearing a mask,” said Singh, who pointed out that “even in New York, although Gov. Cuomo made mask-wearing mandatory, there was no real consequence for violating the order.”

Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute told *Campus Reform* that mandatory masks on public campuses would be harder to legally justify than at private schools, but that indoor mask mandates are likely to be deemed acceptable by courts.

“For public colleges, the legal standard would be the same as for a general law requiring people to wear masks,” explained Shapiro. “The question a court would look at is whether the government is justified in issuing the rule. Given that universities involve people coming in close contact in indoor spaces fairly regularly/constantly and we’re dealing with a virus that transmits that way, I can’t see a court striking down a mask mandate—at least one that requires mask-wearing in public indoor spaces.”

*The radical left will stop at nothing to intimidate conservative students on college campuses. You can help expose them. [Find out more »](#)*

“Requiring masking everywhere on campus, including outside in a non-mass-event (sporting event, rally, outdoor lecture, etc.) circumstance, would be a tougher sell, legally speaking,” Shapiro added.

But in some places, governments are even having a hard time justifying these mandates at all. In the early days of coronavirus Judge Mark Henry of Galveston County, Texas **stated** that he “will not be mandating it because I believe it is unconstitutional to do so.” More recently in Riverside County, California, county officials voted **against** Gov. Gavin Newsom’s order mandating that California residents wear masks.

Rider University Vice President for Marketing and Communication Kristine Brown **says** that the school “recommen[s] adherence to social distancing guidelines” and “encourag[es] people on campus who may come into contact with one another to wear a face covering,” in order to comply with government “guidelines.”

Language like this - "encouraging," rather than mandating - is being adopted by many universities.

Legal experts claim that universities will face many challenges when they reopen in the fall. Universities will have to be prepared to answer tough legal questions.

Jim Keller, a litigation lawyer and co-chair of Saul Ewing Arnstein & Lehr LLP, **emphasized** that universities have to anticipate tough legal questions when requiring masks such as “is there a legal risk? Are they going to sue us? Is there some kind of constitutional claim there?”