



Youngkin's school mask mandate ban set to be next legal front in culture war: 'Clearly headed for litigation'

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January 17, 2022

Several large school districts in Virginia say they will ignore new Gov. Glenn Youngkin's executive order giving parents the right to decide whether their child will wear a mask in class, a move that may lead to a legal battle that will be the latest major front in the national culture war over schools.

"I wouldn't be surprised if there's a lawsuit filed tomorrow by certain school boards against the executive order," Cato Institute vice president Ilya Shapiro, who supports the order, told Fox News Monday.

The Republican Youngkin Saturday signed an executive order giving parents the authority to choose whether their children wear masks in schools. He quickly met resistance from Arlington Public Schools (APS), Alexandria City Public Schools (ACPS), Richmond Public Schools (RPS), and Fairfax County Public Schools (FCPS), all of which said they would keep their existing mask mandates in place despite the governor's order.

"Arlington Public Schools will continue to require all staff and students to wear masks inside on school grounds and on buses, as part of our layered approach to safety," it said on its website almost immediately after the governor signed his order.

RPS Superintendent Jason Karmas also said the district will keep a "100% mask mandate for students, staff, and visitors." ACPS and FCPS also both cited Centers for Disease Control and Prevention (CDC) guidelines on masking in schools as they announced they will flout Youngkin's order.

APS gave the most detailed explanation of its position, arguing that Virginia law de facto requires masking in schools because the CDC recommends it.

"Current law in Virginia, per SB1303, says: school divisions need to 'provide such in-person instruction in a manner in which it adheres... to any currently applicable mitigation strategies... provided by the federal Centers for Disease Control and Prevention,'" the district said.

George Washington University Law School professor Jonathan Turley told Fox News that Youngkin faces a "tough fight" to keep his order in effect because SB1303 "curtailed the inherent right of the state to reach its own conclusions on such public health questions." That law, a product "of the democratic legislative process," means that schools "probably can" ignore Youngkin, Turley said. But, he added, the traditional powers of state governors may give Youngkin a fighting chance in court.

"Senate Bill 1303 ... instructs these districts to pursue public health measures to protect children. It does not mandate masks. Yet, there is a conflict between that authorization and the inherent powers of the Governor," Turley said. "This is clearly headed for litigation."

The Youngkin order does not directly ban mask mandates. In what Shaprio called "really good lawyering," it cites a separate part of Virginia law giving parents broad rights over how to raise

their children, and on that authority says they may "elect for their children not to be subject to any mask mandate."

"Youngkin's executive order is not the same as, say, Ron DeSantis' in Florida, which said schools cannot impose mandates. All Youngkin says is that parents can opt out of any mandates," Shapiro said. "And so schools can and will maintain their mandates and parents will opt out."

Shapiro further called SB1303 "vague," and said governors like Youngkin have broad "general background power to regulate in all sorts of ways," compared to a U.S. president who would be more likely to be stymied by the courts if he took a similar action.

Shapiro also said that despite SB1303, former Gov. Ralph Northam, a Democrat, felt the need to order masks in schools separately.

"If the law already required that, then he wouldn't have had to put out that order," Shapiro said.

In a "Fox News Sunday" interview, Youngkin appeared to indicate his order and school district mask mandates can coexist, allowing districts to keep their mandates but barring them from being enforced against children whose parents are okay with them going maskless.

"In Virginia, it is clear under law that parents have a fundamental right to make decisions for their children's upbringing, their education and their care," the governor said. "And so, we are providing parents an opt-out. We're providing them the ability to make the right decision for their child with regards to their child's well-being."

Turley, meanwhile, said the questionable science about the effectiveness of cloth and surgical masks could hurt the school districts' cases more than anything.

"What is notable however is that the districts require the use of any mask, including the common paper masks which have been shown to offer little real protection. The districts may find

themselves hoisted by their own petard," he said. "If they are following science, there is considerable information questioning the value of the common paper masks used by students. Moreover, it is common for students to reuse and continually take on and off their masks. The real protection afforded by the rule could be challenged with the underlying authority to ignore the Governor's order."

Representatives for Arlington Public Schools, Richmond Public Schools and Fairfax County Public Schools did not respond to a request for comment from Fox News. Alexandria City Public Schools Chief of School and Community Relations Julia Burgos said, "The superintendent and School Board will be reviewing and discussing the new executive orders and the implications for ACPS."

The governor's order will go into effect next Monday.