

An Ohio Citizen's Assessment of the State-wide Mask Order and the Law: Arbitrary, Unreasonable, Unlawful, Unenforceable

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Final version: 27 July 2020

FOR WIDEST CIRCULATION

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THE BOTTOM LINE, UP FRONT

The unlawfully ordered restriction (public masking) of every well individual in Ohio should be respectfully defied by all members of the public.

The unlawfully ordered restriction (public masking) of every well individual in Ohio should be publicly defied and abandoned by health authorities, officials, and law enforcement officers. The public should encourage the same and support their effort.

Ohioans are to follow already established laws regarding exposing others to dangerous contagions when, according to our individual conscience, we know or have reasonable cause to believe that we carry a dangerous contagion.

BACKGROUND AND ASSESSMENT

A 2004 Ohio law, last amended in 2013, grants the department of health **ultimate authority** in matters of quarantine and isolation, and grants the department of health the ability to make special or standing orders for preventing the spread of contagious or infectious diseases (ORC 3701.13, 2013). From a cursory exam of the **construction in aggregate** of the laws of Ohio, I assess that such ultimate authority is undefined by constitutional or state law in any sense of the word, "ultimate." The authority constructed in Ohio law is that of a general sense, so "ultimate authority" is not only a poor choice of words, but an invitation for abuse, intentional or unintentional, of state law, of the Constitution of Ohio, and of the People of Ohio from within the department of health and the boards of health of general or city health districts, from officers and employees of the state or any

county, city, or township, and from health care providers, businesses, and other places of public accommodation within the same. ***During the COVID-19 pandemic, I assess that several such abuses have taken place***, but rather than enumerate them all, I will focus on one, the issuance of the state-wide mask order.

“Ultimate authority” in matters of quarantine and isolation has come into direct conflict with, and has been unlawfully applied against, our individual constitutional right of conscience as Ohioans, who, under the general sense of the same authority from the department of health, ***are to follow already established laws regarding exposing others to dangerous contagions***, when, according to our individual conscience, we know or have reasonable cause to believe that we carry a dangerous contagion. Ohioans are routinely a caring, compassionate, conscientious, law-abiding people and are reliable in their own right to protect one another according to their conscience and according to law duly established by their elected representatives decades ago (e.g., ORC 3701.81, 1974). In these days of pandemic, Ohioans are naturally more careful, more compassionate, and more conscientious towards each other and towards the law.

For the issuance of a state-wide mask order, whereby the department of health has circumvented ***every*** individual’s responsibility to follow law according to conscience, herein declared an abuse of power, an abuse of law, an abuse of the Constitution of Ohio (Article I, Section 7), and an abuse of the People of Ohio, ***a firm reminder must go forth to all corners of the republic, by the entire public***, that the People of Ohio are Sovereign and that all political power is inherent in them, not in a single un-elected individual or department as the word, “ultimate” implies.

The People of Ohio are a people of law. Any person who serves the public in any official capacity of relevance has sworn an oath to support, and even defend, the Constitution of Ohio and the Constitution of the United States. It is incumbent upon all of us who have sworn such an oath, regardless of our greater or lesser role, to consistently interpose ourselves between abusers and the Constitution on behalf of the People during the course of our normal duties. It is incumbent upon the People to consistently lend our strength and support to our public servants, regardless of their greater or lesser role, to encourage them in their consistent and confident interposition for us during the course of their normal duties. ***In effect, the unlawfully ordered restriction (public masking) of every well individual in Ohio should be respectfully defied by all members of the public. The unlawfully ordered restriction (public masking) of every well individual in Ohio should be publicly defied and abandoned by the health authorities, officials, and law enforcement officers. The public should encourage the same and support their effort.***

In my assessment, the word, "ultimate" should be removed from the law and the sense of general authority, as found in the aggregate construction, should be allowed to prevail coherently hereafter. The general authority, when issuing special or standing orders, **must submit to the conscience of the People of Ohio to follow duly established laws**. The actions of the department of health, the governor, any health district, county, city, health care provider, business, or place of public accommodation, that were committed in the spirit of ultimate authority and contrary to the sense of general authority, and against the conscience of the People of Ohio, should be **rebuked publicly and reversed immediately**. Until such removal of the word, "ultimate," and afterwards, it is the duty of every oath-swearing official, regardless of their greater or lesser role, to interpose between such unlawful acts and the public and individual conscience during the course of their normal duties.

The Ohio state-wide mask order is arbitrary, unreasonable, unlawful and unenforceable.

Respectfully,

//SIGNED//

Stephen Faris

SUPPORTING REFERENCES (ANALYSIS FOLLOWS)

DIRECTOR'S ORDER, Re: Director's Order for Facial Coverings throughout the State of Ohio, 23 July 2020

"... to mitigate the spread of COVID-19 in Ohio, I Order all residents of the State of Ohio to wear facial coverings (masks) when out in public in accordance with the requirements set forth in Section 3 of this order." (Paragraph 1. Preamble)

"This Order shall be effective at 6:00 p.m. on July 23, 2020 and remains in full force and in effect until the Governor's Executive Order expires or the Director of the Ohio Department of Health rescinds or modifies this Order, whichever occurs sooner." (Paragraph 5. Duration)

Ohio Revised Code 3701.13, Department of Health - Powers, as of 2013

"The department of health shall have supervision of all matters relating to the preservation of the life and health of the people and have **ultimate authority** in matters of **quarantine and isolation**, which it may declare and enforce, when neither exists, and modify, relax, or abolish, when either has been established..." (Paragraph 1)

"The department may make special or standing orders or rules for... preventing the spread of contagious or infectious diseases..." (Paragraph 2)

Ohio Revised Code 3701.352, Department of Health - Violations Prohibited, as of 2012

"No person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event."

Ohio Revised Code 3701.56, Department of Health - Enforcement of Rules and Regulations, as of 2004

"Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts."

Ohio Administrative Code 3701-3-01, Communicable Diseases (Definitions, Item W), as of 2016

“‘Quarantine’ means the ***restriction of the movements or activities of a well individual*** or animal ***who has been exposed*** to a communicable disease during the period of communicability of that disease and in such a manner that transmission of the disease may have occurred. ***The duration of the quarantine ordered shall be equivalent to the usual incubation period [see notes in analysis below]*** of the disease to which the susceptible person or animal was exposed.”

Ohio Administrative Code 3701-3-01, Communicable Diseases (Definitions, Item R), as of 2016

“‘Isolation’ means the ***separation of an infected individual [see notes in analysis below]***, from others during the period of disease communicability in such a way that prevents, as far as possible, the direct or indirect conveyance of an infectious agent to those who are susceptible to infection or who may spread the agent to others.”

Ohio Administrative Code 3701-3-01, Communicable Diseases (Definitions, Item S), as of 2016

“‘Pandemic’ means an epidemic disease that is occurring throughout a very wide area, usually several countries or continents, and usually affecting a large proportion of the population.”

Ohio Administrative Code 3701-3-01, Communicable Diseases (Definitions, Item J), as of 2016

“‘Epidemic’ or ‘outbreak’ means the occurrence of cases of disease in numbers greater than expected in a particular population or for a particular period of time.”

Ohio Revised Code 3701.81, Department of Health - Exposing others to contagion, as of 1974

“(A) No person, knowing or having reasonable cause to believe that he is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself to other persons, except when seeking medical aid.”

“(B) No person, having charge or care of a person whom he knows or has reasonable cause to believe is suffering from a dangerous, contagious disease,

shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion."

"(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort, or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion."

The Constitution of the State of Ohio, Bill of Rights, Article I, Section 7, as of 1851

"... nor shall any interference with the rights of conscience be permitted."

Ohio Revised Code 2921.45, Offenses Against Justice and Public Administration - Interfering with civil rights, as of 1974

"(A) No public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to **deprive any person of a constitutional or statutory right.**"

"(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree."

Ohio Revised Code 4112.02, Civil Rights Commission - Unlawful discriminatory practices, as of 2017

"It shall be an unlawful discriminatory practice:

(G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, military status, national origin, disability, age, or ancestry, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation."

42 U.S. Code, Section 2000a. Prohibition against discrimination or segregation in places of public accommodation (1964)

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, **religion [see notes in analysis below]**,

or national origin."

42 U.S. Code, Section 2000a-1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency (1964).

"All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, **if such discrimination or segregation is or purports to be required by any law**, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

42 U.S. Code, Section 2000a-2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a-1 of this title (1964)

"No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a-1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a-1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a-1 of this title."

Leviticus 15:8

"And if he that hath the issue spit upon him that is clean, then he [the clean] shall wash his clothes, and bathe himself in water, and be unclean until the even."

Exodus 23:1

"Thou shalt not raise a false report: put not thine hand with the wicked to be an unrighteous witness."

ANALYSIS

Key points to observe from the references are the following:

1. Special or standing orders for masking in public represent both a restriction of movement and a restriction of activity (a mode of quarantine) of a susceptible person, **a well individual who has been exposed to a communicable disease**, to prevent the spread of such a disease.
2. Applied to **single**, susceptible, well individuals with an adjudicative due

process of law on an individual basis (see notes below), or applied to **every** susceptible well individual as determined **by the conscience** of every susceptible well individual, such orders **may** be reasonable, lawful, inviolable, and enforceable.

3. Applied to **every** well individual of undetermined susceptibility in an administrative fashion, such orders **are** arbitrary, unreasonable, unlawful, and unenforceable.
4. In order to be legally considered for an ordered restriction of movement or activity (e.g., quarantine by public masking), a single well individual must be known, or be reasonably believed, by oneself and/or by health care providers and/or by one to whom charge is given over the individual, to have been made susceptible to such a disease, that is:
 1. Exposed to a communicable disease;
 2. Exposed during the period of communicability;
 3. Exposed in a manner that transmission may have occurred.
5. Single, susceptible, well individuals are already lawfully expected, under the general sense of authority of the department of health, (ORC 3701.81, "Exposing") to take reasonable measures to prevent exposing oneself to others when knowing or having reasonable cause to believe that one may be suffering from a dangerous, contagious disease.
6. Therefore, **it is arbitrary, unreasonable, unlawful, and unenforceable** to use a health order to ultimately circumvent the conscience of **every** well individual of undetermined susceptibility regarding one's reasonable cause to believe whether or not one may be suffering from a dangerous, contagious disease ("... nor shall any interference with the rights of conscience be permitted." *The Constitution of the State of Ohio, Bill of Rights, Article I, Section 7*).
7. Also, **it is arbitrary, unreasonable, unlawful, and unenforceable** to use a health order to ultimately circumvent, without adjudicative due process of law on an individual basis, **every** well individual's conscience regarding one's own reasonable measures (method and duration) of preventing exposure to others should one believe oneself to be susceptible, that is, exposed to a dangerous, contagious disease ("... nor shall any State deprive any person of ... liberty ... without due process of law." *Constitution of the United States of America, Amendment XIV, Section 1*).
8. Persons having charge or care of a well individual for whom it is known, or for whom there may be cause to reasonably believe, may be suffering from a dangerous, contagious disease, are already lawfully expected, under the general sense of authority of the department of health, to take reasonable measures to protect others from exposure and to inform health authorities of the existence of the contagion (ORC 3701.81, "Exposing" and ORC 3701.23, "Reporting").
9. Therefore, **it is arbitrary, unreasonable, unlawful, and unenforceable** to

use a health order to ultimately circumvent, without adjudicative due process of law on an individual basis, the conscience of **every** person having charge or care of well individuals regarding whether or not the well individual may be suffering from a dangerous, contagious disease and regarding one's reasonable measures (method and duration) to protect others from the contagion.

10. Persons having charge of business and/or places of public conveyance or public accommodation, wherein it is known or with reasonable cause it is believed that the public is being exposed to a dangerous, contagious disease, are already lawfully expected, under the general sense of authority of the department of health, to take reasonable measures to protect the public from exposure and to inform health authorities of the existence of the contagion (ORC 3701.81, "Exposing" and ORC 3701.23, "Reporting").
11. Therefore, **it is arbitrary, unreasonable, unlawful, and unenforceable** to use a health order to ultimately circumvent, without adjudicative due process of law on an individual basis, the conscience of **every** person having charge of such a place regarding whether or not the public may be exposed to a dangerous, contagious disease and regarding one's reasonable measures (method and duration) to protect the public from the contagion.
12. Also, **it is arbitrary, unreasonable, and unlawful** on the part of those in charge of places of business or public conveyance or public accommodation, regardless of a state-wide mask order, to discriminate or segregate individuals not publicly masked by restricting full access to the facility or service (42 U.S. Code, Section 2000a-1; see notes below regarding religious discrimination) without knowing or having reasonable cause to believe the individual is carrying a dangerous, contagious disease onto the premises.
13. **Lawfully ordered** restriction of movement or activity (e.g., public masking) of a single, susceptible, well individual, having occurred by adjudicative due process of law **on an individual basis** with a preponderance of medical evidence, lawfully established, should not be violated (see notes below).
14. **Lawfully ordered** restriction of movement or activity (e.g., public masking) of a single, susceptible, well individual, having occurred by adjudicative due process of law **on an individual basis** with a preponderance of medical evidence, lawfully established, should be enforced (see notes below).
15. Unlawfully ordered restriction of movement or activity (e.g., public masking) of single, susceptible, well individuals and the unlawfully ordered restriction of **every** well individual in Ohio should be respectfully defied by all members of the public.
16. Unlawfully ordered restriction of movement or activity (e.g., public masking) of single, susceptible, well individuals and the unlawfully ordered restriction of **every** well individual in Ohio should be publicly defied and abandoned by the health authorities, officials, and law enforcement officers. The public should encourage the same and support their effort.

NOTES

- The method and duration of preventing exposure to others is not only a matter of conscience, but that of religion, wherein, for example, the method would *not* be that of public masking, and the duration would *not* be that of the usual incubation period of the disease (see Leviticus 15:8). Regardless, ***it is arbitrary, unreasonable, unlawful, and unenforceable*** to restrict any susceptible, well individual's movement or activity for an unspecified or extended duration without due process of law on an individual basis.
- It may be unrealistic to perform due process of law on an individual basis for any susceptible, well individual because one's conscience or religious observance may allow for a duration of preventing exposure to others that is simply too short to accomplish the due process (see Leviticus 15:8). If due process is unrealistic, the order itself would be unrealistic, as well as any sense of violating or enforcing the order.
- An additional [protected] religious argument for refraining from public masking, especially for well individuals of undetermined susceptibility, is that one should not be forced to raise a false report (Exodus 23:1) about oneself, i.e., conduct oneself in the manner of a susceptible, well individual by complying with a law, that by one's conscience, does not apply.
- Infected individuals are not included in my assessment, but implications towards them are under consideration.