

118TH CONGRESS
1ST SESSION

S. 2738

To prohibit through December 31, 2024, the imposition of a mask mandate on passengers of air carriers or public transit and in educational settings within the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7, 2023

Mr. VANCE (for himself, Mr. HAWLEY, Mr. SCHMITT, Mr. BRAUN, Mr. MARSHALL, Ms. LUMMIS, Mr. BUDD, Mr. BARRASSO, Mrs. BRITT, Mrs. BLACKBURN, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit through December 31, 2024, the imposition of a mask mandate on passengers of air carriers or public transit and in educational settings within the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom to Breathe
5 Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AIR CARRIER.—The term “air carrier”
2 means an air carrier conducting passenger oper-
3 ations under part 121 of title 14, Code of Federal
4 Regulations.

5 (2) APPLICABLE PERIOD.—The term “applica-
6 ble period” means the period that begins on the date
7 of enactment of this Act and ends on December 31,
8 2024.

9 (3) COMMUTER RAIL PASSENGER TRANSPOR-
10 TATION.—The term “commuter rail passenger trans-
11 portation” has the meaning given the term in sec-
12 tion 24102 of title 49, United States Code.

13 (4) ESEA DEFINITIONS.—The terms “elemen-
14 tary school” and “secondary school” have the mean-
15 ings given the terms in section 8101 of the Elemen-
16 tary and Secondary Education Act of 1965 (20
17 U.S.C. 7801 et seq.).

18 (5) COVERED EDUCATIONAL INSTITUTION.—
19 The term “covered educational institution” means
20 an elementary school, secondary school, or institu-
21 tion of higher education, that receives Federal funds.

22 (6) INSTITUTION OF HIGHER EDUCATION.—The
23 term “institution of higher education” has the
24 meaning given that term in section 102 of the High-
25 er Education Act of 1965 (20 U.S.C. 1002).

1 (7) MASK.—The term “mask” means a mate-
2 rial covering the nose and mouth of the wearer, ex-
3 cluding face shields.

4 (8) MASK MANDATE.—The term “mask man-
5 date” means an order, directive, or ordinance which
6 requires an individual to wear a mask to travel on
7 any conveyance, or to enter or remain in any place
8 within the United States, in response to a public
9 health emergency.

10 (9) NATIONAL AIRSPACE SYSTEM.—The term
11 “national airspace system” has the meaning given
12 such term in section 245.5 of title 32, Code of Fed-
13 eral Regulations (or a successor regulation).

14 (10) PUBLIC TRANSIT.—The term “public tran-
15 sit”—

16 (A) means a regular, continuing shared-
17 ride surface transportation service that is open
18 to the general public or open to a segment of
19 the general public defined by age, disability, or
20 low income; and

21 (B) includes—

22 (i) intercity passenger rail transpor-
23 tation provided by the entity described in
24 chapter 243 of title 49, United States
25 Code (or a successor to such entity);

- 1 (ii) intercity bus service;
2 (iii) charter bus service;
3 (iv) school bus service;
4 (v) sightseeing service;
5 (vi) courtesy shuttle service for pa-
6 trons of 1 or more specific establishments;
7 (vii) intra-terminal or intra-facility
8 shuttle services; and
9 (viii) commuter rail passenger trans-
10 portation.

11 **SEC. 3. RESTRICTIONS ON THE USE OF FEDERAL FUNDS.**

12 During the applicable period, notwithstanding any
13 other provision of law, no Federal funds may be obligated
14 or expended to propose, establish, implement, or enforce,
15 directly or indirectly through the imposition of a condition
16 on receipt of Federal funds, any requirement that an indi-
17 vidual wear a mask or comply with a mask mandate while
18 traveling as a passenger of an air carrier in the national
19 airspace system, using public transit, or while in any ele-
20 mentary school, secondary school, or institution of higher
21 education.

1 **SEC. 4. PROHIBITIONS ON IMPOSING A MASK MANDATE ON**
2 **PASSENGERS OF AIR CARRIERS IN THE NA-**
3 **TIONAL AIRSPACE SYSTEM.**

4 (a) **NO MASK REQUIREMENTS ON PASSENGERS OF**
5 **AIR CARRIERS IN THE NATIONAL AIRSPACE SYSTEM.—**
6 Notwithstanding any other provision of law, during the ap-
7 plicable period, neither the President nor any other Fed-
8 eral officer, employee, agency, or office shall issue or en-
9 force an order requiring an air carrier to impose a mask
10 mandate on individuals who are passengers of the air car-
11 rier in the national airspace system.

12 (b) **NO AUTHORITY TO REFUSE AIR TRANSPOR-**
13 **TATION.—**During the applicable period, no certificate
14 holder under part 119 of title 14, Code of Federal Regula-
15 tions, which conducts scheduled operations under part 121
16 of that title, nor any other air carrier who provides pas-
17 senger air transportation in the national airspace system,
18 shall refuse transportation to a passenger on the basis
19 that the passenger refuses to wear a mask or comply with
20 a mask mandate while traveling in the national airspace
21 system.

22 (c) **NO AUTHORITY TO ISSUE OR ENFORCE MASK**
23 **MANDATES ON PASSENGER AIR CARRIER OPERATIONS IN**
24 **RESPONSE TO A PUBLIC HEALTH EMERGENCY.—**Section
25 361 of the Public Health Service Act (42 U.S.C. 264) is
26 amended by adding at the end the following:

1 “(f) Nothing in this section authorizes the Secretary
 2 to require individuals to comply with a mask mandate (as
 3 defined in section 2 of the Freedom to Breathe Act) while
 4 traveling as a passenger of an air carrier (as defined in
 5 such section) in the national airspace system (as defined
 6 in such section) in response to a public health emergency
 7 declared under section 319 during the applicable period
 8 (as defined in such section).”.

9 **SEC. 5. PROHIBITIONS ON IMPOSING A MASK MANDATE ON**
 10 **PASSENGERS USING PUBLIC TRANSIT.**

11 (a) **NO MASK REQUIREMENTS ON PASSENGERS**
 12 **USING PUBLIC TRANSIT.**—Notwithstanding any other
 13 provision of law, during the applicable period, neither the
 14 President nor any other Federal officer, employee, agency,
 15 or office shall issue or enforce an order requiring a Fed-
 16 eral, State, or local public transit agency or authority to
 17 impose a mask mandate on passengers using public tran-
 18 sit.

19 (b) **NO AUTHORITY TO REFUSE PUBLIC TRANSIT.**—
 20 During the applicable period, no public transit operator
 21 shall refuse transportation to a passenger on the basis
 22 that the passenger refuses to wear a mask or comply with
 23 a mask mandate.

24 (c) **NO AUTHORITY TO ISSUE OR ENFORCE MASK**
 25 **MANDATES ON PASSENGER AIR CARRIER OPERATIONS IN**

1 RESPONSE TO A PUBLIC HEALTH EMERGENCY.—Section
 2 361 of the Public Health Service Act (42 U.S.C. 264),
 3 as amended by section 4(c), is amended by adding at the
 4 end the following:

5 “(g) Nothing in this section authorizes the Secretary
 6 to require individuals to comply with a mask mandate (as
 7 defined in section 2 of the Freedom to Breathe Act) while
 8 using public transit (as defined in such section) in re-
 9 sponse to a public health emergency declared under sec-
 10 tion 319 during the applicable period (as defined in such
 11 section).”.

12 **SEC. 6. PROHIBITIONS ON IMPOSING A MASK MANDATE IN**
 13 **EDUCATION SETTINGS.**

14 (a) NO MASK REQUIREMENTS IN SCHOOLS OR INSTI-
 15 TUTIONS OF HIGHER EDUCATION.—Notwithstanding any
 16 other provision of law, during the applicable period, nei-
 17 ther the President nor any other Federal officer, employee,
 18 agency, or office, shall issue or enforce a mask mandate
 19 requiring individuals to wear a mask in any elementary
 20 school, secondary school, or institution of higher edu-
 21 cation.

22 (b) NO AUTHORITY TO REFUSE ACCESS TO EDU-
 23 CATION.—During the applicable period, a covered edu-
 24 cational institution shall not refuse entry to or participa-
 25 tion in any educational service or activity to a student,

1 teacher, parent, or other individual on the basis that the
2 student, teacher, parent, or other individual refuses to
3 wear a mask or comply with a mask mandate during the
4 educational service or activity.

5 (c) NO AUTHORITY TO ISSUE OR ENFORCE MASK
6 MANDATES IN EDUCATIONAL SETTINGS IN RESPONSE TO
7 A PUBLIC HEALTH EMERGENCY.—Section 361 of the
8 Public Health Service Act (42 U.S.C. 264), as amended
9 by section 5(e), is further amended by adding at the end
10 the following:

11 “(h) Nothing in this section authorizes the Secretary
12 to require individuals to comply with a mask mandate (as
13 defined in section 2 of the Freedom to Breathe Act) in
14 any elementary school or secondary school (as such terms
15 are defined in section 8101 of the Elementary and Sec-
16 ondary Education Act of 1965) or institution of higher
17 education (as defined in section 102 of the Higher Edu-
18 cation Act of 1965) in response to a public health emer-
19 gency declared under section 319 9 during the applicable
20 period (as defined in such section).”.

21 **SEC. 7. REGULATIONS.**

22 Not later than 90 days after the date of enactment
23 of this Act, the head of each Federal agency or office to
24 which this Act applies shall issue such new or revised regu-
25 lations as are necessary to carry out this Act.

1 **SEC. 8. PREEMPTION.**

2 The provisions of this Act shall supersede any provi-
3 sion of Federal, State, Tribal, territorial, or local law, dec-
4 laration, guidance, or directive to the extent that such
5 laws, declarations, guidance, or directives are inconsistent
6 with this Act.

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