No, asking you to wear a mask is not an infringement of your constitutional rights

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No, asking you to wear a mask is not an infringement of your constitutional rights

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Dear Dr. Roach:

The second author of this letter recently had a disheartening interaction with the mother of a patient. At issue was his institution’s directive - everyone on the hospital’s grounds must wear a mask to protect against COVID-19. The patient’s mother asserted that asking her to wear a mask was a violation of her “constitutional rights.” The mother’s proclamation, which as we are witnessing is shared by others, revealed an incontrovertibly reality – constitutional illiteracy is rampant.

One would assume that the patient’s mother’s objection to wearing a mask was rooted in hearsay related to the first ten Amendments to the Constitution - the Bill of Rights. The Bill of Rights was crafted as a means to protect Americans from governmental overreach. The First Amendment is very clear “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”[1] Even then, the government may impose regulations impacting First Amendment rights when they meet one of three legal tests.[2] Under the most stringent one, the government’s action can be deemed legal under the “strict scrutiny test” if the government can prove it has a compelling interest, and the action is narrowly tailored.[3] Establishing regulations vital to the protection of the public’s health and safety meets the standard of a “compelling interest” because the government has a responsibility to protect the public.[4] Limiting the regulation to certain locations – airports, government’s buildings – meets the requirement that the regulation be “narrowly tailored.”[4]
Nationwide Children’s Hospital is a private institution. Private entities – restaurants, airlines, grocery stores – cannot violate First Amendment rights because they are not the government. They can, however, impose preconditions for their service e.g., *no shirt, no shoes, no service*, and yes, the requirement to wear a mask while on the premises. The patient’s mother was not thinking of the public’s interest. She was not even thinking of her son’s wellbeing or she would have donned the mask and proceeded with the visit. Her refusal to wear a mask was an unfounded interpretation of what she called her “constitutional rights” – which one, we wish we’d know.

**References**

2. https://www.mtsu.edu/first-amendment/article/31/compelling-state-interest
3. Strict scrutiny | Wex | US Law | LII / Legal Information Institute (cornell.edu)
Declaration of interests

☒ The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

☐ The authors declare the following financial interests/personal relationships which may be considered as potential competing interests: