

Testimony before the Arizona House of Representatives Judiciary Committee Regarding HB 2862 and Unlawful Masking

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About the Author

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* The Manhattan Institute does not take institutional positions on legislation, rules, or regulations. Although my comments draw upon my research as a MI scholar, the views represented in my testimony are solely my own, not my employer's.

Chair Nguyen and Members of the Arizona House of Representatives Judiciary Committee, thank you for the opportunity to provide testimony in support of HB 2862.

Across the United States, and in Arizona, people are exploiting masks to conceal their identities while committing crimes and terrorizing citizens. This vital legislation would create a new criminal offense for wearing a mask with the intent to conceal one's identity at certain gatherings.

Just as Ku Klux Klan members used white hoods to conceal their identities and terrorize their targets, modern activists are using keffiyehs, Guy Fawkes masks, balaclavas, and other inherently intimidating face coverings. Indeed, face-masking is pervasive among participants in demonstrations that have grown in frequency and disruptiveness.

The Need for Anti-Masking Laws to Promote Public Order

We have seen this problem repeatedly play out on our streets, on mass transit, and in our schools, such as when a mob of anti-Israel protesters seized a Columbia University building in New York in April 2024.¹ They took two maintenance workers hostage in the process before finally being ousted by police the next day. Dozens were arrested but, two months later, the Manhattan district attorney's office dropped the charges against nearly 70 percent of them because it would have been "extremely difficult" to win convictions.² As one prosecutor explained, some of the agitators wore surgical masks, hoods, and keffiyehs, making it hard to identify which individuals took which actions.

As the Columbia case made clear, face-concealment makes it far more difficult for law enforcement to make arrests and harder for prosecutors to sufficiently identify offenders to bring successful cases. Offenders also tend to behave worse when they are masked; and masking reduces overall civic strength and engagement because citizens can't trust people whom they can't identify.

There is an obvious and simple answer to protesters' growing aggressiveness, an answer that proved effective against their forebears in the KKK, and an answer presented in HB 2862: denying intimidating and violent protesters the right to conceal their identities via face coverings. Hamas supporters, Antifa, Patriot Front, and others act boldly so long as they can remain anonymous. HB 2862 would strip them of this anonymity and the intimidating power of the keffiyeh and black bandana, making them far less likely to engage in criminal behavior.

When properly conceived, anti-masking laws like HB 2862 can help thwart criminals who cloak their identities not to express themselves, but as a means to terrorize and silence others. And they can help maintain a society where individuals are accountable for their conduct.

Historical Background and Modern Application

Anti-masking laws are critical tools for maintaining public safety and accountability, which is why the U.S. has a long history of such laws. They originated at a time when the KKK, using the anonymity provided by masks, engaged in acts of violence and intimidation against

¹ <https://www.nytimes.com/2024/05/02/nyregion/columbia-students-hamilton-hall.html>

² <https://www.nbcnews.com/news/us-news/manhattan-da-drops-charges-columbia-university-protesters-hamiltonhal-rcna157976>

blacks, Catholics, and other minority groups.³ The intention behind these laws was clear: to dismantle the Klan's ability to operate unseen and unpunished. States like Alabama, Florida, and Virginia, among others—see the appendix for a list of examples—implemented these laws specifically to counter the Klan's activities, to stem the tide of violence, and to maintain public order. Such regulations greatly contributed to reducing the Klan's influence and enhancing the ability of law enforcement to identify and prosecute perpetrators of hate crimes and public disorder.

That purpose is relevant today, when anonymity shields unlawful and disorderly behavior and enhances its power of intimidation. But the relevance of anti-masking laws extends beyond their original context. In an age of facial recognition technology and other modern surveillance tools, masks can still be used to evade legal accountability. By mandating visibility, HB 2862 would help ensure that individuals cannot hide behind anonymity to engage in criminal activities, terrorize, or otherwise disturb the peace. This is particularly important during public demonstrations, when the potential for violence can escalate quickly and when knowing the identity of those involved becomes crucial for Arizona's law enforcement.

Constitutionality and Court Rulings

The constitutionality of these laws has been repeatedly upheld, affirming that the public's right to safety and the state's ability to enforce its laws can supersede individual rights to anonymity and anonymous expression in certain circumstances.⁴

As recently as 2004, the U.S. Court of Appeals for the Second Circuit upheld New York's anti-mask law (which would be repealed during the Covid-19 pandemic).⁵ In 2021, Georgia's Court of Appeals upheld a protester's conviction for a mask ban violation where: "the evidence showed that defendant was masked and his arms were interlocked with a group of counter-protesters who were shouting obscenities, chanting anti-police slogans, and banging a [drum], and defendant was asked to take the mask off multiple times but never did."⁶

Conclusion

Far from infringing on First Amendment freedoms, HB 2862 is essential to preserving the rights to assemble, to petition for redress of grievances, and otherwise to express ourselves while preventing intimidation and harassment.

Prohibiting the intentional concealment of one's identity at public assemblies promises to improve public safety, accountability, and the democratic process in Arizona, while protecting peaceful free speech. I commend this Committee for taking up this vital legislation. Thank you.

³ <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1586&context=jpg>

⁴ <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3009&context=flr>

⁵ <https://caselaw.findlaw.com/court/us-2nd-circuit/1422873.html>

⁶ <https://caselaw.findlaw.com/court/ga-court-of-appeals/2128016.html>

Appendix: Examples of State Anti-Masking Laws

Alabama: Alabama Code [§ 13A-11-9](#) makes it illegal to wear a mask or hood in public places, with a few exceptions, such as for holiday costumes or occupational safety gear.

California: California Penal Code [§ 185](#) makes it illegal to wear a mask or disguise to evade police detection while committing a public offense.

Florida: Florida Statute [§ 876.12](#) prohibits wearing a mask or hood in public places and on public roads.

Georgia: Georgia Code [§ 16-11-38](#) makes it unlawful for any person to wear a mask in public places or on private property without the owner's permission, unless for work safety, theatrical productions, or emergency protection.

Louisiana: Louisiana RS [§ 14:313](#) prohibits the wearing of masks in public with the intent to conceal one's identity, except for religious purposes, safety in occupations, or traditional holiday costumes like Mardi Gras.

Michigan: MCL [§ 750.396](#) prohibits people from wearing a mask or any type of face covering that conceals their identity during the commission of a crime.

North Carolina: North Carolina General Statute [§ 14-12.8](#) bans wearing masks in public spaces, aimed at preventing individuals from concealing their identities.

Virginia: Virginia Code [§ 18.2-422](#) prohibits any person over 16 years old from wearing a mask with the intent to conceal his or her identity in public spaces or on private property without written permission from the property owner.

For an example of a recently repealed anti-mask law, see:

New York: New York Penal Law [§ 240.35](#) prohibited two or more people from congregating in public while wearing masks or disguises that obscure their identities. This two-century-old law was repealed during the Covid-19 pandemic, but its revival has been debated, with certain counties enacting their own local laws to this effect.