

**Statement Before the North Dakota Senate Judiciary Committee**

**“Unmasking Protestors”**

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*Submitted by:*

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### *About the Author*

Hannah E. Meyers is the director of policing and public safety and a fellow at the Manhattan Institute. She also serves on the New York State Domestic Terrorism Task Force. Her work has appeared in outlets including the *New York Times*, the *Wall Street Journal*, and *National Review* and she has provided commentary on *CNN*, *Fox*, and other TV, radio, and podcasts. She has discussed public safety policy at Columbia University, Northwestern Law School, and Hunter College, and delivered expert testimony before the Texas State Legislature.

Previously, Hannah was a senior research director at a corporate firm, managing domestic and international investigations. Prior to that, she was a senior intelligence analyst with the New York City Police Department, where she helped achieve two of the first state-level terrorism convictions, and was seconded to the Federal Bureau of Investigations. She has an MA from Yale University in International Relations and a BA from Dartmouth College in Political Theory. She lives in Manhattan with her husband and their three children.

Thank you to Chairman Larson and the North Dakota Senate Judiciary Committee for the opportunity to address you.

\*\*The Manhattan Institute for Policy Research does not take institutional positions on federal, state, or local legislation, rules, or regulations. Although my comments draw upon my research and writing about public safety as an Institute fellow, my statement is solely my own, and should not be construed as my employer's.

## Statement

Chairman Larson, members of the committee: thank you for the invitation to discuss the need for North Dakota to strengthen and expand its mask ban. I also want to note that I am here as an expert witness to testify and offer technical public policy guidance. All views I express are my own and not those of my employer.

Around the country, people are exploiting masks to conceal their identities to commit crimes and to menace and terrorize citizens.

Many jurisdictions previously had or still have successful bans on the books, and many are creating new bans, which are both constitutional and effective. North Dakota has been ahead of this curve, with a ban passed in 2017, recognizing that when protesters mask to conceal their identity, it increases violence and disorder. The considered amendments to the bill would strengthen this protection.

Anti-masking laws are essential to preserving the First Amendment right to assemble, petition for redress of grievances, and otherwise express ourselves, while preventing intimidation and harassment and maintaining a society where individuals are accountable for their conduct.<sup>1</sup>

Today, the relevance of anti-masking laws is that much starker, since masks are still used to evade identification despite the spread of surveillance and body-worn cameras and facial recognition technology in solving and prosecuting crimes.

### **Masking Undermines Peaceful Free Speech**

Face concealment makes it harder 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, emboldened by being unidentifiable. This is even more true for masked individuals acting in groups, where the added anonymity has been shown to increase irresponsible and violent behavior.<sup>2</sup>

Masking also reduces overall civic strength and engagement because citizens can't trust people whom they can't identify.

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<sup>1</sup> <https://manhattan.institute/article/model-legislation-to-modernize-anti-kkk-masking-laws-for-intimidating-protesters>

<sup>2</sup> [https://arch.library.northwestern.edu/concern/generic\\_works/7w62f865n](https://arch.library.northwestern.edu/concern/generic_works/7w62f865n)

The connection between face concealment and disorder has been made tragically clear over the past year. Ubiquitous masking at anti-Israel demonstrations has permitted them to spiral increasingly into criminality, and contributed to the 200% increase in antisemitic incidents in the year following October 7, 2023 compared to the same period a year earlier.<sup>3</sup>

For example, thousands of chanting demonstrators, many with their faces concealed, flooded Washington, D.C. in June, some sporting symbols of support for US-designated terrorist groups. They occupied and vandalized Lafayette Square across from the White House, spray painting statues and setting off a smoke bomb. U.S. Park Police officers and Secret Service agents attempted to apprehend a protestor, but unidentifiable demonstrators formed a mob, shouting “fuck the police!” and successfully chased them out of the park, preventing any arrests.<sup>45</sup>

Here in North Dakota, concern over a rise in offenders resisting arrest, assaulting officers, and fleeing from police is significant enough to warrant new legislation recently introduced in this state Senate to stiffen the penalties for these offenses. Mandating that mobs be unmasked will help combat resisting arrest.<sup>6</sup>

Similarly, reduced patrol officer ranks in major cities have made it difficult to control unruly demonstrations and make necessary arrests. This, again, is relevant in North Dakota, which is suffering from understaffed police departments. Reporting suggests that at least 57 localities in North Dakota seek police officers, sheriff deputies, or other law enforcement staff, including here in Bismarck.<sup>7</sup>

When the criminal justice system *is* trying to attach consequences for lawbreaking, strong mask ban laws can provide a critical extra tool in the toolbox. Such laws, for instance, could have made a huge difference at Columbia University, when agitators with faces obscured by surgical masks, hoods, and keffiyehs vandalized a campus building, taking two maintenance staff hostage. The inability to identify defendants with certainty because of masking was cited by the Manhattan District Attorney in dismissing for lack of evidence 31 of the 46 associated trespass

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<sup>3</sup> <https://www.bbc.com/news/articles/c9wkxv9d99vo>

<sup>4</sup> <https://www.dailywire.com/news/authorities-report-no-arrests-in-anti-israel-protest-that-vandalized-park-near-white-house>

<sup>5</sup> <https://washingtonreporter.news/op-ed/op-ed-hannah-meyers-washington-d-c-needs-a-broad-anti-masking-bill/>

<sup>6</sup> <https://legiscan.com/ND/bill/SB2128/2025>

<sup>7</sup> <https://www.newscoopnd.org/many-towns-struggle-to-recruit-retain-officers/>

arrests.<sup>8</sup> Not only that, but the school administration struggled to justify the presence and the actions of law enforcement.

## **Mask Bans Help Deter and Solve Crime**

In addition to preventing protests from spiraling out of control, mask bans can help reduce crimes like shoplifting and carjacking, that have become harder to deter, solve, and prosecute because of increased face concealment. Highlighting this connection, for example, the Philadelphia Police Department pointed to the surge in face-masking as a driving reason for their 10% drop in homicide clearance rates in 2020.<sup>9</sup> This was more concretely acknowledged in Washington, D.C., when Mayor Muriel Bowser and the City Council passed an omnibus bill last spring that prevents face masking with a tailored focus on such crimes (rather than on protests).<sup>10</sup>

This is very relevant for North Dakota. Attorney General Wrigley recently cited the state's Department of Corrections and Rehabilitation data indicating a 43% increase since 2014 in violent crimes against people or robberies.<sup>11</sup> North Dakota also struggles with recidivism: reportedly 40% of prison inmates here are incarcerated after violating their probation or parole.<sup>12</sup> Strengthening the existing masking laws might strengthen this deterrent to violent crime and enhance this tool for solving it.

## **History and Prevalence of Mask Ban Laws**

Historically, numerous American jurisdictions passed anti-mask laws in response to the rise in activity by the Ku Klux Klan, whose members wore masks and hoods to hide their identities while committing acts of violence and intimidation against blacks, Catholics, and other minority groups.<sup>13</sup> The intention behind these laws was clear: to dismantle the Klan's ability to operate anonymously and unpunished. Such regulations greatly contributed to reducing the Klan's influence and

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<sup>8</sup> <https://www.nbcnews.com/news/us-news/manhattan-da-drops-charges-columbia-university-protesters-hamilton-hal-rcna157976>

<sup>9</sup> <https://why.org/articles/philly-police-face-masks-are-the-number-one-obstacle-for-homicide-investigators/>

<sup>10</sup> <https://washingtonreporter.news/op-ed/op-ed-hannah-meyers-washington-d-c-needs-a-broad-anti-masking-bill/>

<sup>11</sup> <https://www.wdayradionow.com/news/local-news/nd-ag-wrigley-proposes-bill-mandating-violent-crime-convicts-serve-85-percent-of-their-sentences/>

<sup>12</sup> <https://www.wdayradionow.com/news/local-news/nd-ag-wrigley-proposes-bill-mandating-violent-crime-convicts-serve-85-percent-of-their-sentences/>

<sup>13</sup> <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1586&context=jlp>

enhancing the ability of law enforcement to identify and prosecute perpetrators of hate crimes and public disorder.<sup>14</sup>

On January 10, 1923, the North Dakota Senate introduced a bill “banning all citizens over the age of 15 from wearing a mask or any other head covering in front of a public building, in order to conceal their identity.”<sup>15</sup> The law was a response to growing KKK violence in southern states and a desire to prevent the Klan from becoming similarly criminal here in North Dakota.<sup>16</sup> Indeed, the KKK died out in North Dakota following the law, which stayed on the books, reportedly, for around 50 years.<sup>17</sup>

Other states passed mask bans in response to other politically motivated mob violence. New York passed their ban in 1845 in response to uprisings by masked farmers; disguised in leather masks, they wreaked violence, including murdering a sheriff.<sup>18</sup> New York’s effective ban stayed on the books until, like many other states, it repealed its mask ban during the emergency conditions of the Covid pandemic. Currently, a new Democratic bill for a statewide mask ban is making its way through the legislature.

Additionally, many jurisdictions still have their older laws in place, each with their own distinct version for preventing the same abuses.

In Alabama, for example, it’s illegal to wear a mask or hood in public places, with a few exceptions, such as for holiday costumes or occupational safety gear. In California, it’s illegal to wear a mask or disguise to evade police detection while committing a public offense.

In Florida, it’s prohibited to wear a mask or hood in public places and on public roads. In Georgia, it’s 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.

In Louisiana, it’s prohibited to wear masks in public with the intent to conceal one’s identity, except for religious purposes, safety in occupations, or traditional

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<sup>14</sup> <https://manhattan.institute/article/model-legislation-to-modernize-anti-klk-masking-laws-for-intimidating-protesters>

<sup>15</sup> <https://www.inforum.com/lifestyle/the-rise-and-fall-of-the-klk-in-a-north-dakota-city>

<sup>16</sup> <https://news.prairiepublic.org/show/dakota-datebook-archive/2022-05-24/klk-de-masked>

<sup>17</sup> <https://www.nbcnews.com/storyline/dakota-pipeline-protests/pipeline-protesters-decry-north-dakota-bills-criminalize-protests-n706681>

<sup>18</sup> [https://nymag.com/intelligencer/2011/09/old\\_anti-mask\\_law\\_foiling\\_wall.html](https://nymag.com/intelligencer/2011/09/old_anti-mask_law_foiling_wall.html)

holiday costumes like Mardi Gras. Michigan prohibits people from wearing a mask or any type of face covering that conceals their identity during the commission of a crime.

North Carolina bans masking in public spaces. And Virginia 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.

### **The Reintroduction of Mask Ban Laws**

Many jurisdictions have enacted or proposed new mask bans over the past year in response to anti-Israel protests, which increasingly involve criminality, antisemitism, and overt support for terrorism.

For example, New York's Nassau County enacted its Mask Transparency Act in August.<sup>19</sup> Since then, the Nassau Police Department arrested an individual in a ski mask in the summer heat who, it turned out, was concealing a 14-inch knife.<sup>20</sup> Nassau officers also used the ban to arrest an individual who was part of a group mobbing a synagogue, and using a keffiyeh scarf to conceal his face.<sup>21</sup>

North Dakota knows better than most states the importance of ensuring safe, peaceful, constitutional protest. Chaotic demonstrations large and small relating to the Dakota Access Pipeline harmed both protestors and law enforcement, and damaged the wellbeing of the state overall by creating distrust, disorder, and enormous financial cost to taxpayers.<sup>22</sup> These protests and the continued use of masks to further related lawlessness and disorder, inspired North Dakota's 2017 law. And there is good reason to strengthen this law now.

### **Constitutionality and Other Concerns**

Finally, citizens have raised reasonable concerns that a mask ban would infringe on protected religious practices, medical needs, or other rights. However, the

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<sup>19</sup> <https://www.nassaucountyny.gov/AgendaCenter/ViewFile/Item/3192?fileID=247452>

<sup>20</sup> <https://spectrumlocalnews.com/nys/central-ny/politics/2024/08/28/police-in-nassau-county-make-arrest-under-new-law-banning-face-masks>

<sup>21</sup> [https://www.timesofisrael.com/liveblog\\_entry/keffiyeh-clad-protester-outside-synagogue-charged-with-violating-ny-countys-mask-ban/](https://www.timesofisrael.com/liveblog_entry/keffiyeh-clad-protester-outside-synagogue-charged-with-violating-ny-countys-mask-ban/)

<sup>22</sup> <https://www.nbcnews.com/storyline/dakota-pipeline-protests/pipeline-protesters-decry-north-dakota-bills-criminalize-protests-n706681>

constitutionality of these bans 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.<sup>23</sup>

For instance, 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."<sup>24</sup> Similarly, in 2004, the U.S. Court of Appeals for the Second Circuit upheld New York's anti-mask law.<sup>25</sup>

Further, many situations require the court to assess the sincerity of claims relating to religious garb or medical protective gear, and judges are well-equipped to make similar adjudications in mask ban cases. Additionally, exemptions like allowing a mask for a Halloween celebration or masquerade ball, but not for other purposes, are categorical (not viewpoint-based), so pass constitutional muster.<sup>26</sup> This applies directly to the amendment being considered to North Dakota's current law.

Thank you, Chairman Larson and committee members for the opportunity to speak today, this concludes my remarks. I'm happy to answer any questions you may have.

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<sup>23</sup> <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3009&context=flr>

<sup>24</sup> <https://caselaw.findlaw.com/court/ga-court-of-appeals/2128016.html>

<sup>25</sup> <https://caselaw.findlaw.com/court/us-2nd-circuit/1422873.html>

<sup>26</sup> <https://manhattan.institute/article/model-legislation-to-modernize-anti-klk-masking-laws-for-intimidating-protesters>