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Making Permanent the Repeal of the “Mask Ban”

[A10446A \(Quart\) / S08415 \(Bailey\)](#)

In the midst of the coronavirus pandemic, Governor Andrew Cuomo rightly issued an executive order¹ suspending a provision in the penal code that normally prohibits wearing masks in public.² Prior to the suspension, this statute conflicted with an earlier executive order requiring that New Yorkers wear face masks while in public to help stop the spread of COVID-19, presenting unique challenges to Black people and other New Yorkers of color, who are disproportionately likely to be harmed or die due to the pandemic and at the hands of police. However, the executive order suspending this problematic statute is set to expire on June 13 and the compounding pandemics -- COVID-19 and racism -- continue with no clear end in sight. Moreover, loitering laws, such as the one containing the mask ban, have long served as a pretext for racist and anti-LGBTQ oppression by law enforcement, and have no place in a just society.^{3 4}

We therefore applaud the Legislature’s passage of [A10446A \(Quart\) / S08415 \(Bailey\)](#), which repeals the 175 year-old statute making it a violation to wear a mask in public, subject to a possible fifteen-day sentence of imprisonment and potentially devastating surcharges and fees. This is a simple yet important step toward removing unnecessary and outdated statutes that allow for discriminatory and abusive police practices and put public health at risk.

As New York State continues the process of re-opening, wearing masks in public will remain an important intervention for limiting spread of the coronavirus and all New Yorkers must be reassured of

¹ [Executive Order No. 202.31](#) suspends the prohibition on wearing masks or face coverings in public under Penal Law 240.35.

² [Executive Order 202.17](#) requires people to wear face coverings in public “when in a public place and unable to maintain, or when not maintaining, social distance.”

³ <https://newrepublic.com/article/157370/brief-criminal-history-mask>

⁴ <https://archive.thinkprogress.org/new-york-city-police-use-150-year-old-law-against-wearing-masks-to-arrest-wall-street-demonstrators-641e42aafd67/>

their right to do so. Yet separate and apart from the current pandemic, presuming it eventually subsides, this law is necessary to protect people from arbitrary and abusive police action. While the mask ban may rarely be enforced, we know that other outdated laws, such as New York's gravity knife ban, have been weaponized by police against Black people and other people of color, after lying dormant for decades, with no legitimate public safety justification.⁵ The mask ban is so absurd that it requires city permits for costume parties. Criminalizing common behavior that is widely accepted only serves to confuse the public and allow for the targeting of marginalized people. Simply put, the state should not give police legal authority to arrest or ticket oppressed people, whether they are engaged in cultural or political expression, and wearing a mask should not be a crime.

Some have expressed concern that eliminating the prohibition on public mask wearing will empower white supremacist organizations like the Klu Klux Klan. However, in New York these laws were passed as a direct response to rent protests, and have been used to target important protest movements, including anti-war protests in the 1960s, as well as criminalize trans and gender non conforming people -- not as a protection against white supremacy.⁶

A10446A/S08415 was delivered to the Governor for signature on June 5, 2020.⁷ This legislation is necessary to ensure that all New Yorkers feel safe wearing a mask in public, without the threat of police harassment, arrest, prosecution, or worse.

We call on Governor Cuomo to permanently repeal the mask-ban by signing A10446A/S08415 into law immediately.

⁵ The gravity knife ban was finally repealed in 2019 by a nearly unanimous vote of the legislature. It had previously been found [unconstitutional in federal court](#), where a judge cited the "high risk of arbitrary and discriminatory enforcement."

⁶ <https://newrepublic.com/article/157370/brief-criminal-history-mask>

⁷ <https://www.nysenate.gov/legislation/bills/2019/s8415>