



TO: Interested Parties
FROM: The New York Civil Liberties Union
DATE: August 13, 2024
RE: **Why Mask Bans Have No Place in New York**

Laws banning people from wearing masks in public are being considered in New York as a way to clamp down on controversial speech and protest. Such bans jeopardize New Yorkers' health and safety, risk selective and racially-biased enforcement, and undermine protections for those engaging in peaceful demonstrations while expressing political opinions that may be unpopular.

Why New York Should Not Ban Face Coverings:

It Undermines Public Health: New Yorkers have good reason to use face coverings to protect themselves against contagious diseases, especially in crowded spaces like subway cars, protests, and other public gatherings, and polluted air. Four years after the height of the COVID-19 pandemic, the virus remains an ongoing threat to public health and safety: currently, [the United States is experiencing a COVID-19 wave](#), and here in New York, [COVID-19 hospitalizations are still surging](#). New infectious diseases are emerging, like a new bird flu outbreak amongst humans (H1N5), doctors are still understanding the mysterious, life-long impacts of long COVID, and just a few months ago, [wildfire smoke smothered New York air](#). Implementing a mask ban now would be particularly ill-timed and put many New Yorkers at risk.

It Disparately Hurts New Yorkers with Disabilities and Those Who Are Immunocompromised: Whether there's a declared health emergency or not, mask bans would subject those who are medically vulnerable and their family members to criminalization and harassment, forcing them to risk their safety whenever they enter the public sphere. We've seen this play out: in North Carolina, [cancer treatment patients have reported harassment for masking under that state's mask ban's health exception](#). Health and religious exceptions are also inadequate and hard to implement appropriately: in Nassau County, for instance, exceptions only apply to those seeking to protect their own health — not the health of a loved one — and law enforcement will be in charge of determining who is allowed to mask and who isn't. Police officers are not health professionals capable of deciding who needs to mask.

A mask ban will also likely violate the Americans with Disabilities Act by potentially banishing people with disabilities from the public sphere. Medically vulnerable people should not have to fear harassment, intimidation, or arrest for trying to safely engage in activities like eating at restaurants, attending religious services, or even visiting the doctor.

It Risks Racially-Biased Enforcement: A new mask ban will only give police new pretextual reason to stop, surveil, and scrutinize vulnerable New Yorkers. It is well documented that people of color — particularly Black and Latinx people — are [disproportionately subjected to higher rates of policing](#). There's also an increased risk of police encounters that violate people's constitutional rights to exercise their religion; Muslim women who may wear religious clothing that covers their faces, for instance, may be put at risk for increased police encounters.

It Threatens Controversial Speech and Protest: All New Yorkers have the right to speak out, no matter how controversial or unpopular their views. In the digital age, protestors rely on masks to protect themselves and their families against doxxing and surveillance. In the past year, the public identification of many people speaking out about Israel and Palestine [has led to harmful consequences for their safety and careers](#). Individuals' faces have been blasted across the internet and [paraded on moving billboard trucks](#), [employers have fired workers for their views](#), [CEOs have forced universities to hand over names of protesters to blacklist them from jobs](#), and [companies have even demanded candidates disclose their involvement in protests](#) during the hiring process.

Police Should Respond to People's Action, Not Their Attire: Criminal activity is already actionable by law enforcement, and concerns that masks disguise crime must not be answered by banning anonymous protest. Police should respond to a person's actions, not their attire. The overwhelming majority of protests in the last year have been peaceful, and elected officials should not rush to impose harsh, life-altering consequences in response to a peaceful, if controversial, movement.

After September 11th, swathes of Muslim and Arab men were surveilled, torn from their families, and detained in gruesome conditions for months on end not because they had any connection to September 11th, but [simply because they looked visibly Muslim or Arab based on their attire or physical features](#). Laws that criminalize someone's attire fly in the face of our country's free expression principles, target vulnerable communities, and threaten the foundation of our civil liberties.

The History of Mask Bans in New York Is About Censorship:

In New York, anti-mask laws were passed as a [direct response to rent protests in 1845](#) and have since been used as a way to target important social movements. This runs counter to the prevailing narrative that mask bans in our state were implemented to protect people against white supremacy or violent groups like the Klu Klux Klan.

New York's mask ban has been selectively enforced, including by [criminalizing anti-war protestors](#), [LGBTQ people riding the subway](#), [people wearing bandanas on May Day](#), and [people wearing Guy Fawkes masks during Occupy Wall Street in 2011](#). There's no reason to assume a new mask ban wouldn't be similarly utilized to selectively arrest, doxx, surveil, and silence people of color and protestors the police disagree with.

###