

Statement before the Texas Senate Committee on State Affairs

“Unmasking Protestors”

*October 16, 2024, 9:00AM CT, Texas Capitol, Room E1.028
Austin, Texas*

Submitted by:

Hannah E. Meyers
Director of Policing and Public Safety, Fellow
Manhattan Institute for Policy Research
52 Vanderbilt Avenue
New York, NY 10017

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.

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 Lt. Governor Patrick, Chairman Hughes, and the Texas Senate 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 the economy as an Institute fellow, my statement is solely my own, and should not be construed as my employer's.

Statement

Chairman Hughes, members of the committee: thank you for the invitation to discuss the urgent need for Texas to re-instate a mask ban. Around the country, people are exploiting masks to conceal their identities while committing crimes and terrorizing citizens. As I will detail, many jurisdictions, like Texas, previously had or still have successful bans on the books, and many are creating new bans, which are both constitutional and effective.

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.¹ 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; and masking reduces overall civic strength and engagement because citizens can't trust people whom they can't identify.

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.²

For example, thousands of chanting demonstrators, many with their faces concealed, flooded Washington 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.³⁴

Masking has also made it difficult to stop protestors from impeding critical urban functioning. New York City, for instance, experienced about 2,000 protests in the half-year following October 7, 2023—including incidents involving more than 10,000 participants illegally blocking bridges and major infrastructure.⁵

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

² <https://www.bbc.com/news/articles/c9wkxv9d99vo>

³ <https://www.dailywire.com/news/authorities-report-no-arrests-in-anti-israel-protest-that-vandalized-park-near-white-house>

⁴ <https://washingtonreporter.news/op-ed/op-ed-hannah-meyers-washington-d-c-needs-a-broad-anti-masking-bill/>

⁵ <https://www.nytimes.com/2024/01/08/nyregion/palestinian-protest-holland-tunnel-brooklyn-bridge.html>

New York’s inability to deter these large-scale disturbances was exacerbated by far-reaching criminal justice reforms and popular narratives that limited the ability of the criminal justice system to attach consequences to “low-level” offending. This has a huge impact on offenses associated with chaotic demonstrations, such as trespass, obstruction, disorderly conduct, and resisting arrest.

In Manhattan, for instance, the District Attorney’s office dismissed 40% of trespass cases last year, with another 30% adjourned in contemplation of dismissal: effectively, the same outcome.⁶ Compare this to a decade ago, before major criminal justice reforms were enacted, when the Manhattan DA dismissed only 6% of trespass prosecutions. In real numbers, the county arraigned 4,756 trespass cases ten years ago; by 2021, it arraigned only 608.⁷

This is a pattern in many cities nationwide, where policies emphasize non-prosecution for lower-level offenses. And this is of particular relevance in Texas, where there is sufficient concern with such policies that a newly proposed state law could lead to the firing of elected prosecutors for refusing to take on low-level offenses.⁸ In Austin, in particular, the district attorney’s policies have reportedly contributed to 7,000 criminal cases still waiting to be prosecuted.⁹

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 Austin, where the police department is now reportedly 500 officers below the full 2,000-officer ranks when it’s at full staffing.¹⁰

When the criminal justice system *is* trying to attach consequences for lawbreaking, 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 masked 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 arrests.¹¹ Not only that, but the school administration struggled to justify the presence and the actions of law enforcement.

Compare that to here at the University of Texas at Austin, when, in April, dozens of local and state troopers were called in to contain protestors, preventing a planned occupation of the main campus lawn¹² and making 57 arrests.¹³ A week later, law enforcement arrested 79 protestors

⁶ <https://data.manhattanda.org/>

⁷ <https://data.manhattanda.org/>

⁸ <https://www.austinchronicle.com/daily/news/2024-03-05/d-a-candidates-focus-on-safety-data-shows-austin-crime-rates-decreasing/>

⁹ <https://www.thefp.com/p/austin-democrats-progressive-policies>

¹⁰ <https://www.foxnews.com/us/austin-police-shortages-leave-section-city-without-single-officer-unsustainable-path>

¹¹ <https://www.nbcnews.com/news/us-news/manhattan-da-drops-charges-columbia-university-protesters-hamilton-hal-rcna157976>

¹² <https://www.pbs.org/newshour/nation/columbia-university-says-its-making-important-progress-with-gaza-protesters>

¹³ <https://www.statesman.com/story/news/politics/state/2024/05/02/ut-protest-encampment-texas-universities-first-amendment-pro-palestine-israel/73454239007/>

after dozens of people set up an encampment on the campus’s South Mall.¹⁴ Reportedly, 78 protestors were arrested and charged with criminal trespass and one received an additional obstruction charge, another for interfering with public duties.¹⁵ Unlike the Columbia administration, a UT-Austin spokesperson was able to explain that law enforcement was called because protestors violated the school’s “no mask” rules¹⁶ for demonstrations.¹⁷ This underscores that mask ban rules provide an extra grounding for criminal justice and institutional interventions. A statewide law could provide that much more.

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 2020.¹⁸ This was more concretely acknowledged in Washington, 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).¹⁹

This is very relevant for Texas, which has suffered from increasing shoplifting over recent years. For instance, it was reported that Dallas experienced a 73% growth in retail theft in just the first half of last year—part of an overall 20% rise since 2019.²⁰ The National Retail Federation rated Houston as the third most affected metro-area impacted by organized retail crime in 2022; and both Houston and Dallas-Fort Worth among top ten rankings in recent years.²¹ Dallas Police Department reported a 56% annual increase in shoplifting as of last November. And Dallas Police data indicate that, year-to-date in 2024, shoplifting is up again 9% and robbery from businesses is up 10%.

Masking has made it difficult to solve and prosecute these cases. For instance, in Fort Worth, in May, four masked burglars made off with around \$10,000-worth of medication from a pharmacy and could not be identified by police.²² While it can’t always prevent masking, a ban can help remove the normalization of masking, provide critical pretext for officers to investigate before a crime happens, and deter offenders from masking altogether.

¹⁴ <https://www.statesman.com/story/news/politics/state/2024/05/02/ut-protest-encampment-texas-universities-first-amendment-pro-palestine-israel/73454239007/>

¹⁵ <https://www.statesman.com/story/news/politics/state/2024/05/02/ut-protest-encampment-texas-universities-first-amendment-pro-palestine-israel/73454239007/>

¹⁶ <https://catalog.utexas.edu/general-information/appendices/appendix-c/speech-expression-and-assembly/>

¹⁷ <https://www.texastribune.org/2024/04/29/ut-austin-pro-palestinian-demonstrations-free-speech/>

¹⁸ <https://why.org/articles/philly-police-face-masks-are-the-number-one-obstacle-for-homicide-investigators/>

¹⁹ <https://washingtonreporter.news/op-ed/op-ed-hannah-meyers-washington-d-c-needs-a-broad-anti-masking-bill/>

²⁰ <https://www.dallasnews.com/business/retail/2023/11/07/shoplifting-up-73-in-dallas-as-retailers-rush-to-put-merchandise-out-of-reach/>

²¹ https://cdn.nrf.com/sites/default/files/2023-09/NRF_National_Retail_Security_Survey_2023.pdf

²² <https://www.wfaa.com/article/news/crime/masked-burglars-steal-prescription-drugs-north-texas-pharmacy/287-4b613ffb-a48b-4ab5-8513-b9d3152880a9>

History and Prevalence of Mask Ban Laws

Like numerous other American jurisdictions, Texas passed an anti-mask law in 1925²³ 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.²⁴ This law was codified as Article 454a-g²⁵ of the Texas Penal Code and remained until the re-codification of the Texas Penal Code in 1974.²⁶

The intention behind these laws was clear: to dismantle the Klan's ability to operate unseen and unpunished. 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.²⁷

Some states, like New York, repealed their similar mask bans during the emergency conditions of the Covid pandemic. However, many still have these 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 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.

²³ <https://www.sll.texas.gov/faqs/anti-mask-law/#:~:text=COVID%2D19%20mask%20laws&text=A%20statewide%20mask%20mandate%20was,the%20Texas%20Health%20%26%20Safety%20Code>.

²⁴ <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1586&context=jlp>

²⁵ <https://www.sll.texas.gov/library-resources/collections/historical-texas-statutes/bookreader/1928/#page/1138/mode/2up>

²⁶ <https://texashistory.unt.edu/ark:/67531/metaph221792/m1/1604/>

²⁷ <https://manhattan.institute/article/model-legislation-to-modernize-anti-klk-masking-laws-for-intimidating-protesters>

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 State has two proposed bills—one drafted by Democratic legislators and one by Republican legislators—that would reinstate mask restrictions. New York’s Nassau County enacted its own Mask Transparency Act in August, which makes mask-wearing a misdemeanor offense, punishable by up to a year in jail or a \$1,000 fine.²⁸ 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.²⁹ 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.³⁰

Constitutionality and Other Concerns

Finally, although citizens have raised reasonable concerns that a mask ban would infringe on protected religious practices, medical needs, or other rights. However, the 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.³¹

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.”³² Similarly, in 2004, the U.S. Court of Appeals for the Second Circuit upheld New York’s anti-mask law.³³

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.³⁴

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

²⁸ <https://www.nassaucountyny.gov/AgendaCenter/ViewFile/Item/3192?fileID=247452>

²⁹ <https://spectrumlocalnews.com/nys/central-ny/politics/2024/08/28/police-in-nassau-county-make-arrest-under-new-law-banning-face-masks>

³⁰ https://www.timesofisrael.com/liveblog_entry/keffiyeh-clad-protester-outside-synagogue-charged-with-violating-ny-countys-mask-ban/

³¹ <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3009&context=flr>

³² <https://caselaw.findlaw.com/court/ga-court-of-appeals/2128016.html>

³³ <https://caselaw.findlaw.com/court/us-2nd-circuit/1422873.html>

³⁴ <https://manhattan.institute/article/model-legislation-to-modernize-anti-kkk-masking-laws-for-intimidating-protesters>