

Unfavorable Testimony- SB0709 (“Unmask Hate Act”)

Delivered by Elizabeth Estochen (Maryland Resident) to the Maryland Senate Judiciary Committee, 26 Feb 2025.

The “Unmask Hate Act” violates First Amendment civil liberties and criminalizes the use of PPE to protect one’s health. This bill over-regulates conduct that is already prohibited (harassment and intimidation), tacking on additional criminal penalties for masked individuals. The effect of this bill, should it become law, would be that a masked individual could be charged with the same penalties already available to law enforcement for the same conduct but more easily, with less warning, and with additional penalties, simply because the individual wore a mask. This bill uses “harassment” and “intimidation” as pretext; it ultimately reduces to a clear animus against people who wear any mask in public. As Vic Wiener, staff attorney from the Juvenile Law Center was [quoted](#) regarding Philadelphia’s recent mask ban, “It creates a new crime that people can be charged with. It creates a justification for police to stop a larger group of people...It creates a tremendous risk of harassment and more over-policing, especially of young Black people.”

At the HB1081 hearing, Delegate Scott Phillips raised concern about this bill being used by police proactively at protests against people wearing masks. Meredith Weisel (Vice President, State and Local Advocacy of the ADL, who sat with bill sponsor Adrian Bofo) insisted that this bill would not target those engaging in protest. When referencing other states and instances where these bans have been used, there are clear and countless instances of these laws being used for the express purpose of deterring and criminalizing protest. As recently as 2019, anti-mask laws were used against Occupy Wall Street protesters, anti-racism protesters, and police violence protesters. In the past year, these mask bans have been used at various universities including University of North Carolina, University of Florida, and University of Texas at Austin. At UT Austin, state troopers were called to violently break up protests after the school rescinded permission for a rally on the grounds that protesters had a “declared intent to violate our policies and rules.” One of the rules the administrators cited was a university ban on wearing face masks “to obstruct law enforcement.” ([ACLU](#))

The sponsors of this bill claim its purpose is to protect marginalized communities, citing hate groups like the KKK to add validity to their argument. However, there is documented and empirical evidence, as shown in [California Law Review’s](#) “Masking Up: A COVID-19 Face-off Between Anti-Mask Laws and Mandatory Mask Orders for Black Americans” that: “anti-mask laws were only superficially intended to protect Black Americans, have continued to harm minorities during COVID-19, and should be repealed.” Meanwhile, there is no statistical or empirical evidence that such mask bans deter criminal activity. Ernesto Lopez from the Council of Criminal Justice stated when asked about the correlation between masks and criminality, “For

what it's worth, there are too many confounding variables and too little data to be sure if mask-wearing is associated with crime." ([Slate](#))

This bill's authors have acknowledged that this bill will negatively affect individuals who wear masks for health reasons by including an "affirmative defense in a proceeding under this section" for people "wearing a mask to limit the spread of airborne illnesses" in order to preemptively squash the valid concerns of mask wearing for health and religious reasons. But in practice, this exemption does nothing besides create a façade of non-discrimination. When someone is arrested and processed, they are forced to remove their mask regardless of the reason they are wearing one. As the CDC has noted, "[b]ecause of the congregate living arrangements in...detention facilities, the risk of COVID-19 transmission is higher in these settings compared with the general population[.]" A court case months after an improper arrest resulting in an innocent verdict does not undo the harm that can and will be done by forcing at-risk individuals to unmask. Individuals who mask to avoid serious health impacts—especially at a time when the US is experiencing record influenza numbers and deaths, H5N1, tuberculosis, measles, and covid-19 outbreaks—will undoubtedly be less likely to exercise their Constitutionally protected right to assemble when forcible mask removal and harsh penalties are the outcomes.

The redundancy of such a bill as this one is worth reiterating. In the 2/18 HB1081 hearing, Delegate Robin L. Grammer, Jr. asked, "I think a lot of the activities we're describing fall under this (harassment). In your cases, this would clearly fall under harassment, so why wouldn't it be charged as that?" Chairman Luke Clipper asked, after being given an example by Weisel and Boafu where the proposed penalties would be used, "Why isn't the example you gave an assault?" With no real rebuttal provided in response to these concerns, it seems clear that this bill is at best useless, and at worst, targeted. There is no need for a bill like this, which will only create more headache in the courts as the arresting officer must prove "intent" of the defendant, and treads the territory of violating citizens' First Amendment rights.

Health and religious exemption carveouts do not deter the harm passing and enforcing this bill will cause. This bill seeks to create a loophole to violate First Amendment rights for which cases like *Healy v. James*, *Snyder v. Phelps*, *Hess v. Indiana*, and *Brandenburg v. Ohio* have already set precedent. No just law can promise to avoid irreversible harm at time of enforcement by providing a remedy individuals may only rely on in court. No just law can force Marylanders to trade one fundamental interest (their right to protect their health) against another (their right to assemble).

Thank you,
Elizabeth Estochen