

September TK, 2024

The Honorable Andrea Stewart-Cousins
NY State Senate President Pro Tempore and Majority Leader
330 Capitol Building
Albany, NY 12247

The Honorable Carl E. Heastie
NY Assembly Speaker
932 Legislative Office Building
Albany, NY 12248

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul, President Pro Tempore Stewart-Cousins, and Speaker Heastie,

We are civil rights and racial justice advocates, health care providers and public health experts, Jewish and AAPI organizations, defenders of the First Amendment and the right to protest, criminal legal system reform organizations and public defenders, LGBTQIA+ and HIV/AIDS advocates, disability justice organizations, immigrants' rights advocates, environmental justice organizations, and privacy advocates, among others. While some of us work on only one of these issues, others work on many of them. We do not always agree on every issue, but **we are all united in opposing mask bans** and urge you to do everything in your power to ensure that no legislation that would ban masks advances in New York State.

Mask bans fail to adequately protect health and safety, will inevitably discriminate against people with disabilities and those they associate with, open the floodgates to disproportionate enforcement, penalize individuals for what they are wearing rather than unlawful conduct, fail to protect the right to anonymous political protest and shield individuals from doxing, and will only serve to foment antisemitism.

A Mask Ban Would Place the Health of Individuals, their Loved Ones, and their Communities at Risk.

Masks are an important tool to protect against infectious disease. The United States is currently experiencing a COVID wave,ⁱ with infection rates increasing across the nation. We may also stand at the precipice of an H5N1 (bird flu) outbreak in humans,ⁱⁱ spurring the Centers for Disease Control and Prevention to ask "health departments to distribute existing PPE stocks to farmworkers."ⁱⁱⁱ Against this backdrop, New Yorkers have good reason to choose to mask to protect themselves and their loved ones against contagious disease.

And, masks do not merely protect people from airborne disease. In 2023, wildfire smoke drifting in from Canada forced many New Yorkers to don masks to protect themselves^{iv} at the encouragement of government officials.^v And, there is reason to believe that these smokey conditions will recur.^{vi}

Each of these conditions is likely to disproportionately impact communities of color, precisely because these communities, as a result of a toxic cocktail of socioeconomic factors, physical environment, and inferior access to health care,^{vii} are disproportionately likely to suffer from asthma^{viii} and diabetes,^{ix} as well as COVID-19.^x

New Yorkers mask for many reasons. Some do so because they themselves are immunocompromised or at high-risk of adverse outcomes from contagious disease. Others mask to protect a loved one or

roommate who is high-risk. Still others wish to avoid Long COVID, a condition that has plagued 30% of people have contracted COVID^{xi}—some of whom had no obvious risk factors prior to infection. Some mask to avoid air pollution accompanying wildfire smoke and other airborne particles. Still others mask to avoid getting sick before a major event or obligation. A mask ban threatens to exile all of these people from society.

There is No Way to Craft Sufficient Exceptions to a Mask Ban, and Any Exceptions Will Not be Faithfully and Fairly Applied.

Simply crafting exceptions to a mask ban cannot account for all of the circumstances in which a New Yorker might need or want to mask. Indeed, health exceptions are often too narrowly drawn. For example, it is simply insufficient for mask bans to rely on the declaration of a public health emergency when there is no reason to believe that such an emergency will be declared again. Mask bans that create exceptions only for immunocompromised people offer little protection to the very people they intend to protect, because their family members must still travel through the world unmasked and may return home to infect them.

Furthermore, New Yorkers mask with whatever options are available to them. Many who mask to protect their own health and who can afford it elect to use respirators,^{xii} like N95 or P100 masks, because these masks offer better protection when traveling through a largely unmasked world. Because New York does not distribute high quality masks for free, economically disadvantaged New Yorkers may rely on lower grade surgical masks or homemade or store-bought cloth masks that are more affordable. Exceptions that specify particular types of masks that are permissible threaten to outlaw the only masks that are affordable for lower income New Yorkers.

Moreover, a mask ban with exceptions invites scrutiny of every person who chooses to wear a mask. How are police or courts to determine an individual's subjective reason for masking? How will law enforcement address people who mask for more than one reason? Indeed, existing biases will color who police believe is masking to protect their health, who they think is masking to express their religion, who they believe is masking for a peaceful celebration, and who they think is masking to hide their identity or because they intend commit a crime.

Further, police are not the only ones who will be in the business of scrutinizing those who choose to mask. In North Carolina, for example, people going through cancer treatment have reported harassment for masking under that state's mask ban's health exception.^{xiii} And cancer survivors in Nassau County fear similar treatment under that County's mask ban.^{xiv} Their concerns are well-founded. During the Nassau County's mask ban hearing, individuals who wore masks to protect their own health, including some who were visibly disabled, were heckled, harassed, yelled and cursed at, video recorded, and intentionally coughed on by individuals supporting the mask ban.^{xv}

A Mask Ban Would Open the Floodgates for Disproportionate Enforcement.

A mask ban will give police a new pretextual reason to stop, surveil, and scrutinize vulnerable New Yorkers. People of color have consistently been over-policed and subject to greater suspicion and scrutiny, as evidenced by the racial disparities that are pervasive in policing practices—whether looking at stop-and-frisk data,^{xvi} traffic stop data,^{xvii} or which communities are more heavily policed.^{xviii} And, this disparity has persisted when police have been called upon to intervene in relation to public health measures. At the height of the pandemic, law enforcement's role in enforcing public health policies

predictably resulted in racially disparate patterns of enforcement and criminalization of communities that have long been subject to aggressive over-policing. For example, according to data released by the NYPD, more than 80 percent of those ticketed for social distancing-related enforcement at the start of the pandemic were Black and Latinx.^{xix}

There is no reason to believe that a mask ban would be enforced any differently. Rather, a ban will invite law enforcement to continue to stop, surveil, and scrutinize people of color—particularly Black and Latinx people, who are traditionally subject to higher rates of policing, observant Muslim individuals who are likely to be wearing religious head and face garb, and Asian-Americans, who are more likely to mask^{xx} and have been subjected to increased discrimination since the start of the pandemic^{xxi}—as well as poor people, who are more likely to rely on less expensive, lower quality, non-medical grade masks that may read to police as more “suspicious.”

A Mask Ban Would Severely Penalize People for their Attire Rather than Conduct.

A mask ban would subject individuals to criminal penalties for what they elect to wear. If—as its proponents assert—what is precipitating the call for this a mask ban is the desire to address “criminal or threatening behavior,”^{xxii} the response should not be to institute a mask ban. Rather, unlawful behavior will be treated as such, and ranges existing in sentencing decisions already give room to account for the circumstances surrounding any action or event being prosecuted.^{xxiii}

A Mask Ban Fails to Protect the Right to Anonymous Political Protest and Provide Protection Against Retaliation or Doxxing.

All New Yorkers have the right to speak out, no matter how controversial or unpopular their views. The Internet, and social media in particular, has made it easy to identify and retaliate against individuals who gather in public. At Columbia University, for example, activists were targeted by a “doxxing truck” that displayed their names and photos on a billboard under the heading “Columbia’s Leading Anti-Semites,”^{xxiv} and peaceful protestors were advised^{xxv} to wear face coverings to avoid being doxxed. Some well-known and influential New Yorkers, including hedge fund manager William Ackman, have called on employers not to hire students who have been critical of Israel’s conduct, and at least one New York law firm has rescinded offers of employment to law students who participated in protests, and other law firms are actively engaged in surveillance of law students to make those students unemployable.^{xxvi} In the digital age, protestors rely on masks to protect themselves and their families against doxxing and surveillance.

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.

A Mask Ban Will Not Prevent Antisemitism, but May Instead Foment It.

While it remains important to take meaningful action to dismantle antisemitism, a mask ban will not support Jewish safety. For one, a ban could actually fuel more antisemitism by reinforcing antisemitic tropes and contribute to divisiveness. The only way to stop hatred is to stick together to build a future that is free from antisemitism and hatred of all kinds. We are only safe when we are all safe.

Furthermore, mask bans violate Jewish values, as well as the moral tenets of many faiths and people of no faith at all. For example, in Jewish practice, the requirement to preserve life is paramount to nearly every other commandment. A mask ban in the name of “Jewish safety” is not only a violation of civil rights, to many Jews, it is a violation of religious rights and traditions to preserve life. Banning masks endangers many communities, including Jewish people, disabled people, LGBTQIA+ people, Black and Brown people, and people at the intersection of these identities.

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For all of these reasons, we strongly oppose mask ban in New York and urge the legislature and the executive to reject any such proposal.

Sincerely,

CC. Members of the New York State Legislature

ⁱ Fenit Nirappil & Lizette Ortega, *Covid summer wave spreads across U.S., even infecting Biden*, WASH. POST, July 18, 2024, <https://www.washingtonpost.com/health/2024/07/18/biden-covid-summer-wave-symptoms-flirt-variant/>.

ⁱⁱ Helen Branswell (@HelenBranswell), TWITTER (Jun. 28, 2024, 2:17 pm), <https://x.com/HelenBranswell/status/1806753911841361928>.

ⁱⁱⁱ U.S. Department of Agriculture, *USDA, HHS Announce New Actions to Reduce the Impact and Spread of H5N1*, May 5, 2024, <https://www.usda.gov/media/press-releases/2024/05/10/usda-hhs-announce-new-actions-reduce-impact-and-spread-h5n1>.

^{iv} Emma Newburger, *New York City Tops World’s Worst Air Pollution List from Canada Wildfire Smoke*, CNBC, Jun. 7, 2023, <https://www.cnbc.com/2023/06/07/canadian-wildfire-smoke-nyc-residents-urged-to-stay-inside.html>.

^v See, e.g., Eduardo Cuevas, *Should New Yorkers be Wearing Face Masks Outside? NY Experts Say Yes. Here’s Why*, LOHUD.COM, Jun. 7, 2023, <https://www.lohud.com/story/news/2023/06/07/nyc-wear-face-masks-if-people-must-go-outside-amid-wildfire-smoke/70297465007/> (“For people who must be outdoors, a high-quality mask, like an N95, KN95 or KF94, is recommended,” Dr. Ashwin Vasan, commissioner of the New York City Department of Health and Mental Hygiene, told reporters.”); NYC Health, *Guidance of Mask Use When Outdoor Air Quality Is Poor Due to Air Pollution from Wildfire or Other Smoke*, <https://www.nyc.gov/assets/doh/downloads/pdf/eode/mask-guidance-smoke.pdf> (last visited Aug. 1, 2024); New York State, *Governor Hochul Announces One Million N95 Masks to be Made Available to New Yorkers as Effects of Canadian Wildfires Continue to Impact Air Quality in New York State*, Jun. 7, 2023, <https://www.governor.ny.gov/news/governor-hochul-announces-one-million-n95-masks-be-made-available-new-yorkers-effects-canadian> (“Every part of New York State has experienced unhealthy air quality in the last 24 hours as a result of Canadian wildfires, and our number one priority right now is keeping New Yorkers safe,” Governor Hochul said. “Prolonged exposure to this harmful air will cause negative health impacts, which is why we’re making high-quality masks available at high-traffic areas across New York.”); Dan Diamond, *NYC Tells Vulnerable Residents to Mask Up as Wildfire Smoke Engulfs City*, THE WASHINGTON POST, Jun. 7, 2023, <https://www.washingtonpost.com/weather/2023/06/07/nyc-mask-guidance-air-quality-canada-wildfire/>.

^{vi} Brianne Roesser, *New York Could Grapple with Wildfire Smoke Again this Summer*, SPECTRUM NEWS 1, Apr. 23, 2024, <https://spectrumlocalnews.com/nys/buffalo/news/2024/04/23/new-york-could-grapple-with-wildfire-smoke-again-this-summer>; Austyn Gaffney, *Western Wildfire Smoke Reaches the East Coast*, THE NEW YORK TIMES, Jul. 25, 2024, <https://www.nytimes.com/2024/07/25/climate/wildfire-smoke-climate.html>.

^{vii} *NCHSTP Social Determinants of Health*, CENTERS FOR DISEASE CONTROL, <https://www.cdc.gov/nchhstp/socialdeterminants/index.html> (last visited May 14, 2020); see also Ibram X. Kendri, *Stop Blaming Black People for Dying of the CoronaVirus*, ATLANTIC, Apr. 14, 2020, <https://www.theatlantic.com/ideas/archive/2020/04/race-and-blame/609946/>.

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- ^{viii} E.g. *Asthma in the Black Community*, NAT'L HEART, LUNG, & BLOOD INST., May 2023, https://www.nhlbi.nih.gov/sites/default/files/publications/asthma_in_black_community_fact_sheet.pdf
- ^{ix} E.g. Michael Merschel, *The challenge of diabetes in the Black community needs comprehensive solutions*, Amer. Heart Association News, July 13, 2021 ("According to the Department of Health and Human Services' Office of Minority Health, 13.4% of Black men and 12.7% of Black women have been diagnosed with diabetes. Combined, their rate is 60% higher than that of white people."); Jose E. Rodriguez & Kendall M. Campbell, *Racial and Ethnic Disparities in Prevalence and Care of Patients With Type 2 Diabetes*, 35 CLIN DIABETES 66, 66 (2017) ("The prevalence of diagnosed type 2 diabetes by racial/ethnic group is as follows: Asians 9.0%, African Americans 13.2%, Hispanic 12.8%, and non-Hispanic whites 7.6%. There is a wide variation in prevalence in the Native American population (e.g., 6.0% in Alaskan Natives and 24.1% in southern Arizona Native American groups) and among Hispanics (e.g., 8.5% in Central/South Americans, 9.3% in Cubans, 13.9% in Mexican Americans, and 14.8% in Puerto Ricans).").
- ^x *Fatalities*, NYS DEP'T OF HEALTH, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last visited May 26, 2020); see also *The Color of Coronavirus: COVID-19 Deaths By Race And Ethnicity in the U.S.*, AMP RESEARCH LAB, May 20, 2020, <https://www.apmresearchlab.org/covid/deaths-by-race>; John Eligon, Audra D.S. Burch, Dionne Searcey, & Richard A. Oppel Jr., *Black Americans Face Alarming Rates of Coronavirus Infection in Some States*, N.Y. TIMES, Apr. 14, 2020, <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>.
- ^{xi} Alice Burns, *As Recommendations for Isolation End, How Common is Long COVID?*, KFF, Apr. 9, 2024, <https://www.kff.org/coronavirus-covid-19/issue-brief/as-recommendations-for-isolation-end-how-common-is-long-covid/>.
- ^{xii} See *generally Approved Particulate Filtering Facepiece Respirators*, CDC, Sept. 15, 2021, https://www.cdc.gov/niosh/npptl/topics/respirators/disp_part/default.html.
- ^{xiii} Carly Haynes, *'Scared to Put on My Mask': Cancer Patient Says She was Intentionally Coughed on in Spat Over Mask*, WRAL NEWS, Jun. 12, 2024, <https://www.wral.com/story/scared-to-put-on-my-mask-cancer-patient-says-she-was-intentionally-coughed-on-in-spat-over-mask/21478890/>.
- ^{xiv} E.g. Kelly Betts, *I'm a cancer survivor. Nassau County's mask ban is a threat to my life.*, MSNBC, Aug. 17, 2024, <https://www.msnbc.com/opinion/msnbc-opinion/nassau-county-bans-masks-endangers-vulnerable-residents-rcna166981>.
- ^{xv} Aff. of Attorney William Tronsor, *G.B.; S.S.; et al. v. Nassau County*, No. 2:24-cv-05884-JMA-SIL (E.D.N.Y. filed Aug. 22, 2024).
- ^{xvi} See, e.g., Long Island United to Transform Policing & Community Safety, *Monitoring Police Reform in Nassau County: Tracking Implementation Three Years After George Floyd's Death ("Monitoring Police Reform")*, Oct. 2023, at 10-11 (noting that Black and Latinx people are disproportionately subjected to pat-downs in Nassau County); NYCLU, *A Closer Look at Stop-and-Frisk in NYC*, Dec. 12, 2022, <https://www.nyclu.org/data/closer-look-stop-and-frisk-nyc>.
- ^{xvii} *Monitoring Police Reform*, *supra* note 24, at 12 (describing how in Nassau County Black and Latinx people were more likely to be subject to a vehicle and traffic stop, and noting that the disparities became more pronounced between 2021 and 2022); NYCLU, *NYPD Traffic Stops Data*, Sept. 14, 2023, <https://www.nyclu.org/data/nypd-traffic-stops-data> ("data shows that NYPD officers are more likely to stop, arrest, search, and use force against Black and Latinx drivers").
- ^{xviii} See, e.g., Dee Gill, *Smartphone Records Reveal Racial Disparities in Neighborhood Policing*, UCLA Anderson Review, Oct. 25, 2023, <https://anderson-review.ucla.edu/smartphone-records-reveal-racial-disparities-in-neighborhood-policing/> ("A study of police movements in 23 major U.S. cities finds officers spend considerably more time in Black neighborhoods than in other areas with similar socioeconomic demographics and crime-driven demand for policing."); Robyn Smyton, *How Racial Segregation and Policing Intersect in America*, Tufts Now, Jun. 17, 2020 ("due to a number of factors, 'predominately Black neighborhoods are simultaneously over-policed when it comes to surveillance and social control, and under-policed when it comes to emergency services'"); *NYPD Traffic Stops Data*, *supra* note 25 (noting that "[t]here are . . . geographic disparities that show drivers in certain boroughs and particular neighborhoods are more likely to face NYPD scrutiny").
- ^{xix} Erin Durkin, *Black and Latino New Yorkers get Vast Majority of Social Distancing Summonses*, POLITICO, May 5, 2020, <https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

^{xx} Brittany N. Hearne & Michael D. Nino, *Understanding How Race, Ethnicity, and Gender Shape Mask-Wearing Adherence During the COVID-19 Pandemic: Evidence from the COVID Impact Survey*, 9 SPRINGER NATURE, 176 (2022).

^{xxi} Neil G. Ruiz, Juliana Mensace Horowitz, & Christine Tamir, *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak*, PEW RESEARCH CENTER, July 1, 2020, <https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/>.

^{xxii} E.g. Edward Helmore and agencies, *New York governor considers face-mask ban on subway to deter crime*, THE GUARDIAN, June 15, 2024, <https://www.theguardian.com/us-news/article/2024/jun/15/new-york-face-masks-ban-subway-crime>.

^{xxiii} Federal law has long prohibited the types of intimidating and harassing actions a mask ban purports to address. The Ku Klux Klan Act of 1871, now codified at 42 U.S.C. § 1985, addresses behaviors that are intended to interfere with an individual's civil rights. Section 1985(3), for example, specifically makes it a civil rights violation where "two or more persons ... go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws. . . ." This covers situations in which people violate civil rights while masked and obviates the need for the proposed mask ban.

^{xxiv} Karam, Esha. *'Doxxing Truck' Displaying Names and Faces of Affiliates it Calls 'Antisemites' Comes to Columbia*, COLUMBIA SPECTATOR, Oct. 25, 2023, <https://www.columbiaspectator.com/news/2023/10/25/doxing-truck-displaying-names-and-faces-of-affiliates-it-calls-antisemites-comes-to-columbia/>.

^{xxv} Ramirez, Isabella. *Shafik, 'Disheartened' by 'Abhorrent Rhetoric,' Reaffirms Safety in New Statement on Escalating Violence in Israel and Gaza*, COLUMBIA SPECTATOR, Oct. 18, 2023, <https://www.columbiaspectator.com/news/2023/10/18/shafik-disheartened-by-abhorrent-rhetoric-reaffirms-safety-in-new-statement-on-escalating-violence-in-israel-and-gaza/>.

^{xxvi} Farrell, Maureen. *A Prestigious Law Firm Rescinded Job Offers for Columbia and Harvard Students, but It May Reverse Itself*, THE NEW YORK TIMES, Oct. 17, 2023, <https://www.nytimes.com/2023/10/17/business/davis-polk-employment-columbia-harvard-israel-palestine.html>; Emily Flitter, *A Wall Street Law Firm Wants to Define Consequences of Israel Protests*, THE NEW YORK TIMES, July 8, 2024, <https://www.nytimes.com/2024/07/08/business/sullivan-cromwell-israel-protests.html?searchResultPosition=3>; Joe Patrice, *Biglaw Firm's Antisemitism Fight Seems More Concerned With Anti-War Protests*, ABOVE THE LAW, June 20, 2024, <https://abovethelaw.com/2024/06/sullivan-cromwell-law-school-antisemitism/>.