



October 15, 2024

## **Consortium of Constituents with Disabilities Members Oppose Banning Face Masks in Public Places**

Washington, DC — The Consortium for Constituents with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQI+ based discrimination and religious intolerance. The undersigned members of the CCD Rights Task Force and fellow CCD organizations oppose banning face masks in public places. This is an issue of great concern to our membership because of the devastating effects of COVID-19 and other infectious diseases on the disability community.

Laws banning masks rob disabled people, their loved ones, and their caregivers of their ability to protect themselves from pressing health threats. Since the fall of widespread mask and vaccination mandates, individual precautions have been the only recourse for people at high risk of bad outcomes if they contract COVID-19. Legislation against one of the best infection prevention tools puts people in danger. These laws impose impossible choices: go to work unmasked and risk infection and death or fall into poverty. Chance the grocery store or go hungry. Gamble with one's life to use public recreational spaces or stay home, mostly in isolation. Exercise one's freedoms of expression and association through political and cultural events or stay safe and alive at home. Statutes and ordinances prohibiting face masks unnecessarily make everything from employment and securing the necessities of life to community participation more difficult for many disabled people and their household members.

Anti-mask laws allow law enforcement to detain people who choose to limit their exposure to COVID-19 and other respiratory illnesses by wearing a mask. They also encourage members of the public to harass people wearing masks. "Exemptions" that track the language of disability rights statutes such as the Americans with Disabilities Act (ADA) – purportedly allowing a mask as a reasonable modification-- are no solution. A person wearing a mask based on disability should not be required to state their need for a modification to the usual rules whenever anyone questions them simply because they are in public. Many people who need masks may not be able to or even know how to request an "exemption" to a mask ban. Nor is the need somehow "obvious." People who are high-risk may not "look sick" and typically have no way to "prove" their need for a mask on the spot.<sup>1</sup> They should not be expected to share health histories with

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<sup>1</sup> See *Invisible Disabilities Association, Looks Can Be Deceiving: Understanding What's on the Inside, Despite What You See on the Outside*. (last visited Sept. 9, 2024), <https://invisibledisabilities.org/publications/invisibleawareness/lookscanbedeceiving/> ("Sometimes we even see someone park [in an accessible space] who has a legal placard... Nevertheless, it seems evident that they must be using someone else's permit because they certainly do not 'look' disabled!... On the other hand, what if the person... told us they actually did have a need to park there?"). It is all too common for younger people with less visible mobility impairments to be harassed for using accessible parking with a permit. Mask bans will have the same result.

any stranger who demands a justification for wearing a mask. The same is true for people with a high-risk household member. People with invisible disabilities or who wear masks to protect a loved one may be hassled by police and members of the public alike. Because of controversies surrounding COVID-19, these interactions can turn violent.<sup>2</sup>

If a high-risk person is forcibly stripped of their mask, questioned by police, perhaps taken to jail in a police cruiser and placed in a holding cell with others, this may cause irreparable harm. Even if the individual's qualification for an exemption is quickly established, an encounter with an infected person during that process could have lethal consequences. The same is true where someone who lives with or is among the primary caregivers for a high-risk person is challenged as to their right to wear a mask. These individuals may have no choice but to return home or continue providing care after being forced to go unmasked at close quarters with others while their reason for wearing a mask is scrutinized.

Disabled people of color -- especially younger, Black or indigenous persons with invisible disabilities -- are likely to be over-policed and disbelieved about their medical needs.<sup>3</sup> Loved ones and caregivers who are people of color are likely to face the same problems. For members of these groups, dangerous scenarios like lengthy interactions with law enforcement or having to remove a mask to appease a threatening busybody are a particularly strong possibility. This means that mask bans are likely to deepen racial inequities in health outcomes.<sup>4</sup>

This kind of legislation has another pernicious effect. It erodes the normalization of using facemasks to prevent the spread of disease in public places. This limits both the public's and the authorities' ability to respond to future outbreaks of respiratory illness quickly. These health threats disproportionately harm the disability community and other marginalized people.<sup>5</sup> Pandemics are expected to be more common in decades to come.<sup>6</sup> Legislation that discourages people from quickly adjusting their behavior to account for shifting risks invites the kind of confusion that cost many lives in the early days of COVID-19. A disproportionate number of the casualties were disabled people.<sup>7</sup> There is no reason to believe it will be different the next time if we insist on repeating our mistakes.

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<sup>2</sup> See Newsweek, *Attack on Man for Wearing COVID Mask Violated His Freedom, Friend Says* (Sept. 13, 2023), <https://www.newsweek.com/will-keenan-attacked-wearing-face-mask-covid-debbie-rochon-1826686> (“...Newsweek spoke with former actor Will Keenan, who was attacked last month in Jersey Cape, New Jersey, for wearing a COVID-19 mask. The attack left Keenan blinded in his left eye...”).

<sup>3</sup> See Vilissa Thompson, *Understanding the Policing of Black, Disabled Bodies*, Center for American Progress (Feb. 10, 2021), <https://www.americanprogress.org/article/understanding-policing-black-disabled-bodies/> (“...a person's inability to hear... an officer's commands can be misread as the person being difficult. Those with an awkward gait pattern due to cerebral palsy can be erroneously thought of as being under the influence and subjected to questioning or arrest. Autistic people who are not able to maintain eye contact or repeat the statements given to them may be perceived as displaying hostile or uncooperative behaviors.”).

<sup>4</sup> See Nambi Ndugga, Drishti Pillai, and Samantha Artiga, *Disparities in Health and Health Care: 5 Key Questions and Answers*, KFF (Aug. 14, 2024), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-5-key-question-and-answers/#:~:text=Analysis%20across%20a%20broad%20range,diabetes%20mortality%2C%20and%20cancer%20mortality.>

<sup>5</sup> See Valerie Novack, *Preparations for the Next Pandemic Must Improve Resources for Those At Greater Risk*, Center for American Progress (Apr. 15, 2020), <https://www.americanprogress.org/article/preparations-next-pandemic-must-improve-resources-greater-risk/>.

<sup>6</sup> See Michael Penn, *Statistics Say Large Pandemics Are More Likely Than We Thought*, Duke Global Health Institute (Aug. 23, 2021), <https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought> (“Most people are likely to experience an extreme pandemic like COVID-19 in their lifetime, a new study shows.”).

<sup>7</sup> See Sabrina Epstein, Jessica Campanile, Caroline Cerilli, Prateek Gajwani, Varshini Varadaraj, and Bonnielin K. Swenor, *New obstacles and widening gaps: A qualitative study of the effects of the COVID-19 pandemic on U.S. adults with disabilities*, 14 *Disability and Health J.* 3, 101103 (2021).

Nor should mask bans apply to protestors. The U.S. Supreme Court has repeatedly ruled that anonymous speech is protected by the First Amendment.<sup>8</sup> Moreover, the wearing of a mask may be protected as speech itself, particularly in the current polarized climate. Protestors have the right to wear a mask to protect themselves from COVID-19 or public exposure, or to protest anonymously.<sup>9</sup> Mask bans endanger disabled people and make demonstrations and other public events inaccessible.

Mask bans are harmful and should not be implemented through law or policy. Ending and preventing mask bans will help ensure equal access to public space, prevent the cruel and purposeless harassment of disabled people, especially disabled people of color, and allow for a swift pivot back to precautions in the event of new problems with infectious disease. Neither selective enforcement nor exemptions pursuant to the ADA and similar statutes will be enough to prevent harm. We call for a removal of any bans on the use of masks to prevent infectious disease currently in force and oppose any new measures that would have this effect. Ending mask bans will promote equity and help people with disabilities live and participate safely in their communities.

Access Ready Inc.

American Association of People with Disabilities

American Civil Liberties Union

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

Bazelon Center for Mental Health Law

Caring Across Generations

Center for Public Representation

Communication 4 ALL

CommunicationFIRST

Disability Belongs

Disability Rights Education and Defense Fund

National Disability Rights Network (NDRN)

National Health Law Program

The Advocacy Institute

The Arc of the United States

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<sup>8</sup>See, e.g., *Watchtower Bible & Tract Soc’y of N. Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166-69 (2002); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995); *Talley v. California*, 362 U.S. 60, 64 (1960).

<sup>9</sup>Nicholas Fandos, “In an Online World, a New Generation of Protesters Chooses Anonymity,” *New York Times*, (May 2, 2024), <https://www.nytimes.com/2024/05/02/nyregion/college-campus-protests-anonymity.html>.