



Testimony in Opposition to HB 4126
Kelly Simon, Interim Legal Director of ACLU of Oregon
House Committee on Judiciary
February 10, 2020

Chair Sanchez and Members of the Committee:

The American Civil Liberties Union of Oregon¹ is a long-time advocate of free expression and free association rights under the First Amendment and Oregon Constitution. Laws criminalizing face masks at protests chill the exercise of these rights. For this reason, we strongly oppose House Bill 4126.

Growth in widespread surveillance raises serious concerns for many Oregonians. The ACLU of Oregon's legal observers have attended many protests over the last several years. We have observed police and immigration authorities photograph and record people at these events. We also know that police can arbitrarily and without notice to the crowd classify a protest as a "riot" based on isolated actions of a few protesters. Under this proposed law, peaceful protesters at such an event risk being charged with a serious felony based on the fact that they are wearing a mask—even a bandanna designed to protect against tear gas or a mask that parodies a public figure.

There are many legitimate and constitutionally protected reasons a person might want to wear a mask to a protest, including:

- The fear of being subject to indiscriminate use of tear gas or pepper spray.²
- Concerns regarding immigration status.
- Avoiding recognition by bosses, landlords, overbearing parents or relatives, etc.
- Avoiding doxing and retaliation (physical and otherwise) from the public for expression of unpopular views.
- Avoiding an abuser.
- Avoiding the spread of germs.
- Phobia of interacting with other people
- Costumes for holidays.

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We have more than 28,000 members in the State of Oregon, and that number is growing as we speak.

² In Portland, ACLU of Oregon legal observers regularly attend protests at which Portland Police officers deploy chemical agents upon the crowd, including those peacefully gathered and lawfully engaging in protected activity. Our legal observers have been subjected to these weapons and pepper spray, and some carry bandanas or other face coverings with them for protection.

- Religious garb.
- Expressive costumes to communicate a message (political or social commentary, or another form of performance art).

This law is unnecessary. Oregon already has laws in our state to prosecute individuals who threaten public safety. If individuals behave in a manner that constitutes a crime at a protest, then our existing laws related to that type of behavior should kick in. A face mask prohibition in Oregon law would be subject to certain constitutional challenge and is counterproductive to keeping the public safe.

For these reasons, the ACLU of Oregon is strongly opposed to HB 4126. Thank you for your time and consideration.