



DIGITAL FOURTH

The Massachusetts campaign to protect digital data from warrantless government surveillance

June 12, 2025.

RE: WRITTEN TESTIMONY IN SUPPORT OF S. 1427, "An Act prohibiting municipal bans of face coverings for protective or medical use"

Dear Rep. Lewis, Rep. Sabadosa, Senator Rausch, Senator Keenan, and other members of the Joint Committee on Municipalities and Regional Government,

Digital Fourth is a member-run, all-volunteer civil liberties organization, focusing on issues relating to privacy and surveillance, founded in Cambridge, MA in 2012. We regularly testify to the Legislature on important bills on these issues. Here, we have the interesting situation that two bills dealing with the same question -- the extent to which municipalities can prohibit individuals from wearing face masks -- have gone to different Committees. The first, S. 1427, is before your committee; the second, H. 1981, has not yet received a hearing at Judiciary.

We strongly support a favorable report for S. 1427. S. 1427 forbids municipal or board of health measures that prohibit "the wearing of face coverings for protective or medical use in any indoor or outdoor space open to the public." With respect to observations regarding the importance of protecting the health of Massachusetts residents, we support the testimony already provided by Massachusetts Coalition for Health Equity.

In our own testimony, we urge you to also consider the broader "protective uses" in the bill, which we understand to mean other uses that, in the opinion of the mask-wearer, will protect them in ways not limited to their health. As a privacy- and surveillance-focused organization, we believe in people's privacy rights, and would like to express our support for people wearing masks for privacy-related reasons, especially in the context of public protests.

There have in fact been repeated municipal efforts, including in Boston, to prohibit mask-wearing even with no criminal intent; Boston's most recent effort [came in fall 2019](#), but that legislative effort petered out in early 2020 thanks to the COVID pandemic. This year, police in Massachusetts have been [increasing](#) their use of face surveillance. The Trump administration is trying to require both [universities](#) and local governments to hand over drone and camera data of protests, presumably so that the administration can then identify unmasked people engaging in disfavored activities as well as crimes. In the Los Angeles area this week, the federal government has [directly intervened](#) to [conduct aerial surveillance](#) of protests using drones, as they did previously during the George Floyd protests. President Trump posted on June 5 on Truth Social, *"From now on, MASKS WILL NOT BE ALLOWED to be worn at protests. What do these people have to hide, and why???"* He cited no legal authority under which he would be able to prevent protesters from wearing masks, but the troubling possibility is that he may plow ahead without legal authority, on the theory that he

is very unlikely to be held accountable. At this time, we should not at any point be requiring protesters to be unmasked.

Inappropriate aerial surveillance of protesters may escalate still further, into violence. Regarding this coming weekend's military parade in DC, the President has [threatened any protesters with "heavy force."](#) Abroad, U. S. military drone technology has already been used in attacks on [weddings](#), [funerals](#) and [hospitals](#). Even domestically, lethal extrajudicial attacks on members of [disfavored groups](#) and [people accused of violence](#) are not unknown. The guardrails intended to protect us at home from our own government are getting weaker. The [new facial recognition and AI-based targeting capabilities of military technology](#) mean that today's protesters face risks of identification that previous generations of protesters did not. The First Amendment, of course, ought to restrain the President from escalating further; but who among us can be fully confident that it will?

In this context, Massachusetts residents would benefit from a clear signal from the Legislature that masking in public is OK, whether for health or other "protective" reasons. Our own organization has always been explicitly peaceful and law-abiding, but our members include people who mask in public simply because they are privacy-conscious. These members dislike on principle having cameras, whether municipal or in private hands, photographing their facial features while they are out and about in public. Our organization also includes people protesting the policies of the administration. These members have an interest in being able to protest without having their facial features fed into a federal facial recognition algorithm for them to be investigated as an opponent or dissenter and "doxxed", "swatted", harassed or prosecuted. Both the [Supreme Court](#) and Massachusetts' [Supreme Judicial Court](#) have recognized that people have a privacy interest in the pattern of their movements in public. To sum up, people can have perfectly valid reasons for masking, even if they have no health conditions that a mask would help with. The bill you report out should recognize and accommodate these purposes as valid.

We should add that at present, Massachusetts is not precisely a "stop and identify" state. No person stopped in the street by a police officer is required by law to share their identity. However, if there is probable cause for a vehicular stop, you must identify yourself to law enforcement when asked. If you are arrested, it is unlawful to provide false identifying information to a police officer, which is appropriate. No municipality should be able to furnish probable cause to police to order any member of the public that they should remove their mask, unless they have been detained for a different crime. We therefore urge a favorable report for this bill.

If you have further questions or concerns, please contact Alex Marthews, Co-Chair, Digital Fourth, at digitalfourth@protonmail.com.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Marthews".

Alex Marthews, Co-Chair, Digital Fourth