

Federal Mandates and Campus Rights: FIRE's Response to Title VI Pressure at Columbia

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Topic: Mask Bans

In its [demand letter](#) to Columbia University, the federal government instructed the school to “ban masks that are intended to conceal identity or intimidate others,” and further required that any masked individual “wear their Columbia ID on the outside of their clothing,” with exceptions for religious and health reasons. Columbia’s initial [response](#) and the [Resolution Agreement](#) each emphasize the authority of public safety to identify masked protesters upon request and reiterated its existing disciplinary policies and ID requirements.

That exchange highlights the need to distinguish between identifying individuals engaged in misconduct and imposing a preemptive requirement that all masked protesters reveal their identities.

Placing a preemptive, blanket requirement on all protesters to identify themselves to college administrators—untethered to engaging in misconduct—risks discouraging students and faculty wishing to express controversial ideas from speaking their minds. Rather than applying a blanket identification requirement that chills protected expression, campus law enforcement should seek the identification of those who violate university policies or the law.

Some individuals may choose to conceal their identity in order to evade or escape detection while committing misconduct. It is, of course, reasonable for public safety officers to ask a person to identify themselves when engaging in such misconduct. However, other protesters may choose anonymity for legitimate, lawful reasons.

Campus protesters may choose to conceal their identity because they wish to express unpopular or controversial ideas. For example, a student who worries he will be ostracized by his peers if he participates in a pro-life rally may feel more comfortable participating if he can wear a mask. Similarly, students and faculty who wish to criticize the college administration and worry they may face consequences over their viewpoints may feel more comfortable conducting their advocacy wearing masks. Thus, masks can empower speech in chilling environments.

Additionally, students and faculty may wish to use anonymity to draw focus away from their identities and toward their message. Requiring them to identify themselves absent misconduct preemptively and unnecessarily strips advocates of this potentially vital tool.

Given these legitimate reasons to protest anonymously, blanket identification requirements encompass both illegitimate uses of masks *and* legitimate, constitutionally-protected uses of masks during campus protests.

The debate over requiring identity for expression is not new; indeed, the right to speak anonymously is foundational to the United States. From Alexander Hamilton to James Madison, the founders relied on anonymity to separate the message from the messenger and avoid censure from the government.

Recognizing these legitimate reasons for anonymous expression, the Supreme Court has repeatedly overturned blanket identification requirements. Take the Supreme Court case *Talley v. California*, for example. In 1958, civil rights activist Manuel Talley was arrested for distributing handbills outside of a market in Los Angeles. The handbills called for a boycott of the store because it sold products from manufacturers who wouldn't offer equal employment opportunities to racial minorities. Because the handbills were signed only with the name of his activist group, rather than his own name, he was arrested and charged with a violation of a Los Angeles ordinance that required handbills to include the author's real name. The Supreme Court struck down the ordinance, arguing that anonymity has played "an important role in the progress of mankind" and that persecuted groups can sometimes only criticize oppressive practices anonymously.

In the 1995 case *McIntyre v. Ohio Elections Commission*, the Supreme Court acknowledged that "the right to remain anonymous may be abused when it shields fraudulent conduct," but further explained that our society "accords greater weight to the value of free speech than to the dangers of its misuse." A blanket ban on mask wearing flips this principle on its head, as it seeks to address the dangers of the misuse of anonymity by fully banning it.