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What is H.R. 6054 (The “Unmasking Antifa Act of 2018”)?

H.R. 6054 (the bill) is Congressional legislation introduced by Rep. Dan Donovan (R-NY) and co-sponsored by Rep. Paul Gosar (R-AZ) and Rep. Ted Budd (R-NC) in July of 2018.ⁱ The bill has been referred to the House Judiciary’s Subcommittee on Crime, Terrorism, Homeland Security and Investigations.

Having failed to obtain convictions against the #J20 Defendants, members of Congress are attempting to **specifically target individuals involved in countering alt-right activity with higher penalties.**

What does the bill do?

- It states that anyone wearing a “disguise” who injures, oppresses, threatens or intimidates a person exercising their constitutional rights is subject to **imprisonment for up to 15 years.**ⁱⁱ
- It raises the penalty for individuals that destroy or damage property, or attempt or conspire to do so, to imprisonment for up to **2 additional years in prison if that individual is in “disguise.”**ⁱⁱⁱ
- It **specifically exempts any law enforcement officers** from the requirements of the law.^{iv}
- The bill specifically includes “wearing a mask” as a “disguise” but **remains vague** as to how narrow or wide the definition extends. This vague definition means that the law could apply only to masks, or to a **wide variety** of face coverings from facemasks to bandanas. “Oppress” is also **not defined**, creating further confusion and the **potential for targeted enforcement.**^v

Is this a new idea?

18 states currently have laws that prohibit the wearing of masks in some form or another.^{vi} Most of these laws were enacted in order to combat KKK activities but have been increasingly used to target left-wing protestors.^{vii} Rep. Donovan’s office cited these existing state laws in a fact sheet supporting his bill that also listed off multiple fabricated instances of “Antifa” violence.^{viii}

Is this law Constitutional?

It’s Viewpoint Discrimination

While under certain circumstances the government can regulate the subject matter or manner of speech, the government is generally never permitted to single out a particular opinion for stricter regulation.^{ix}

Looking at the title of the bill, along with supporting statements from Rep. Donovan, it is clear that Antifascist related speech and assembly are being explicitly targeted. Where a government law or regulation does chill or prohibit certain viewpoints either on its face or through the laws application, it is presumed to be unconstitutional.^x

It’s Overly Vague

A law violates the Due Process Clause of the 5th Amendment when it defines a crime, particularly a crime dealing with free speech, so that ordinary people “of common intelligence” have to “guess at its meaning”.^{xi}

As mentioned above, “disguise” is not defined anywhere in the bill and only one example, that of a mask, is given. “Oppress” on the other hand is not defined at all. Both the significant confusion as to what crime this bill describes and the wide discretion provided to law enforcement officers and prosecutors in order to enforce such a vague law, raises significant Due Process issues.

What does this mean for protestors?

Given recent prosecutorial trends, this bill, if passed, would put **any individual** that attends a protest or demonstration opposing right-wing groups in danger of **substantial time in prison.**^{xii} This creates a hard choice for protestors and activists: choose to not wear a mask and risk being identified by violent right—wing extremist groups and face harassment, or wear a mask and face up to 15 years in jail?

On the other hand, this bill allows Law Enforcement Officers to attend protests or walk their beat while wearing a mask, **but ordinary citizens could face a decade and a half for doing the same.**

This bill will not only levy greater criminal penalties for anti-fascist protestors, but will **make anti-fascist protestors more identifiable to alt-right groups, leading to targeted harassment and violence against those identified.**

What can I do to stop this bill?

Step 1 – Contact members of the Subcommittee on Crime, Terrorism, Homeland Security and Investigations and ask them to provide a negative report to the House Committee on the Judiciary!

[Jim Sensenbrenner](#), WI, *Chair* – (202) 225-5101
[Louie Gohmert](#), TX, *Vice Chair* – (202) 225-3035
[Trey Gowdy](#), SC – (202) 225-6030
[Steve Chabot](#), OH – (202) 225-2216
[Ted Poe](#), TX – (202) 225-6565
[John Ratcliffe](#), TX – (202) 225-6673
[Martha Roby](#), AL – (202) 225-2901
[Mike Johnson](#), LA – (202) 225-2777
[John Rutheford](#), FL – (202) 225-2501
[Keith Rothfus](#), PA – (202) 225-2065

[Sheila Jackson Lee](#), TX, *Ranking Member* – (202) 225-3816
[Val Demings](#), FL – (202) 225-2176
[Karen Bass](#), CA – (202) 225-7084
[Cedric Richmond](#), LA – (202) 225-6636
[Hakeem Jeffries](#), NY – (202) 225-5936
[Ted Lieu](#), CA – (202) 225-3976
[Jamie Raskin](#), MD – (202) 225-5341

Step 2 – Contact House Committee on the Judiciary members and ask them to table the bill! It only needs 21 votes to pass!

[Bob Goodlatte](#), VA, *Chair* – (202) 225-5431
[Jim Sensenbrenner](#), WI – (202) 225-5101
[Lamar S. Smith](#), TX – (202) 225-4236
[Steve Chabot](#), OH – (202) 225-2216
[Darrell Issa](#), CA – (202) 225-3906
[Steve King](#), IA – (202) 225-4426
[Louie Gohmert](#), TX – (202) 225-3035
[Jim Jordan](#), OH – (202) 225-2676
[Ted Poe](#), TX – (202) 225-6565
[Tom Marino](#), PA – (202) 225-3731
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[Raúl Labrador](#), ID – (202) 225-6611
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[Steve Cohen](#), TN – (202) 225-3265
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[Luis Gutiérrez](#), IL – (202) 225-8203
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[Cedric Richmond](#), LA – (202) 225-6636
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[David Cicilline](#), RI – (202) 225-4911
[Eric Swalwell](#), CA – (202) 225-5065
[Ted Lieu](#), CA – (202) 225-3976
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[Pramila Jayapal](#), WA – (202) 225-3106
[Brad Schneider](#), IL – (202) 225-4835
[Val Demings](#), FL – (202) 225-2176

ⁱ <https://www.congress.gov/bill/115th-congress/house-bill/6054/text?format=txt>

ⁱⁱ Unmasking Antifa Act of 2018, H.R. 6054, 115th Congress § 2 (2018).

ⁱⁱⁱ Unmasking Antifa Act of 2018, H.R. 6054, 115th Congress § 3 (2018).

^{iv} Unmasking Antifa Act of 2018, H.R. 6054, 115th Congress § 2 (2018).

^v Unmasking Antifa Act of 2018, H.R. 6054, 115th Congress (2018).

^{vi} <https://www.motherjones.com/politics/2017/09/masks-protests-antifa-black-bloc-explainer/>

^{vii} <https://www.thedailybeast.com/republican-congressmen-are-pushing-anti-antifa-bill>

^{viii} <https://itsgoingdown.org/unmasking-antifa-fact-sheet/>

^{ix} *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819 (1995)

^x *Id.*

^{xi} *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926)

^{xii} <https://www.nlg.org/nlg-calls-on-dc-prosecutors-to-drop-all-charges-against-j20-demonstrators-legal-observers-and-journalists/>