World

Markets

Opinion

11 4

Life & Arts Real Estate WSJ. Magazine

Randy Maniloff *

Q

Tech

April 28, 2020 Print Edition

Business

Rethinking a career in healthcare? Now is the time. We want you to join us! ROSEMAN UNIVERSITY

OPINION | COMMENTARY SHARE

 ${\succ\!\!\!<}$

45

Home

You Must Wear a Mask—or You May Not

Some states suspend anti-Klan laws to combat coronavirus.

By Randy Maniloff April 28, 2020 6:40 pm ET

SAVE PRINT A TEXT

Politics

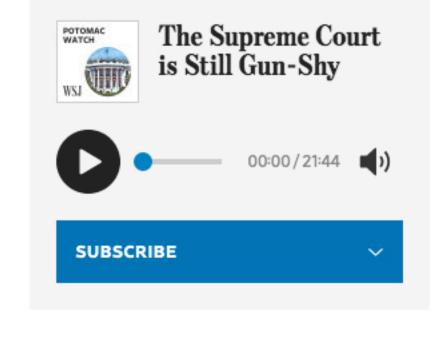
Economy



Shoppers in protective masks line up outside a Whole Foods in New York, April 16. PHOTO: JOEL MARKLUND/ZUMA PRESS

When it comes to masks, it sometimes seems as if everything that isn't forbidden is compulsory. The Centers for Disease Control and Prevention discouraged the public from wearing them to prevent infection, until it changed its advice on April 3. Some governors have since mandated their use "where you come into contact with other people in a situation that is not socially distanced," as New York's Andrew Cuomo put it. But at least 18 states, including New York, have laws making it a crime to wear a mask in public.

Georgia's Gov. Brian Kemp signed an order suspending his state's 1951 law that makes it a misdemeanor to wear, on public property, "a mask, hood, or device by which any portion of the face is so hidden" that it conceals one's identity. The law has a few exceptions, including Halloween costumes and masquerade balls. (New York makes a similar exception.)



law is similar to Georgia's but comes with an impressively farsighted exception for a declaration of a state of emergency "in response to a public health emergency."

Virginia's 1950 antimask



to prevent members of the Ku Klux Klan from concealing their identities. In State v. Miller (1990), a Klansman unsuccessfully challenged the statute on First Amendment grounds. The Georgia Supreme Court held that the statute passes constitutional muster when applied against a citizen who knows, or should know, that the mask "gives rise to a reasonable apprehension of intimidation, threats or impending violence."

In 1999, a federal district court ordered New York to allow masked Klansmen to rally near City Hall. The Second U.S. Circuit Court of Appeals partly reversed, holding that the state's antimask law could be enforced, and the Klansmen held a bare-faced rally.

Constitutional protections couldn't save Timothy Ryan after he was arrested for wearing a mask in an Illinois courthouse to protest the building's air quality. In Ryan v. County of DuPage (1995), the Seventh Circuit ruled that the antimask rule was reasonable. "Imagine what a witness in a criminal case would think, or a juror, if either saw masked people sitting in the spectator section of the courtroom," Judge Richard Posner wrote.

Yet in Ghafari v. Municipal Court for San Francisco (1978), a state appeals court struck down as unconstitutional the application of California's antimask law to an Iranian student peacefully picketing the Iranian Consulate. Fearful of retaliation by the shah's government,

he concealed his identity. The court concluded that the state's fear "that the mere appearance of anonymous persons in public will inevitably lead to violence and other illegal activities" was unfounded. Wearing a mask to stop the spread of infection would seem a simple matter of public health, but these days people will politicize anything.

After Mr. Kemp issued his order in Georgia, Macon's WGXA-TV

tweeted: "Is it okay for Klan members to wear hoods to prevent spreading the virus?" The station promptly deleted the tweet. Mr. Maniloff is an attorney at White & Williams LLP in Philadelphia

and an adjunct professor at Temple University's Beasley School of

Law.



RECOMMENDED VIDEOS

As Georgia Begins to Reopen, Many Choose to Stay Home



Stimulus Doesn't Work for Some Small Businesses In the Elevator With

the CEO Shaking Up

the Bra Industry



Why the Coronavirus Is a Threat to U.S.-China Relations



At Least 23 Dead in Canada Shooting Rampage



MOST POPULAR ARTICLES

The Secret Group of Scientists and Billionaires Pushing a Manhattan Project for Covid-19



Devil'-Bill Comes Due for Overextended Airbnb Hosts Next Wave of IRS

'A Bargain With the



Stimulus Payments Set to Hit Bank Accounts in Coming Days



Outdoors? Some School Districts Plan to End the Year

Should You Wear a

Mask When Exercising



Early

WSJ MEMBER MESSAGE Save 50% on At-Home Workouts with Aaptiv

cardio, and yoga with no equipment needed REDEEM NOW

Get access to thousands of expert-led

workouts, including at-home strength,