



OPINION | COMMENTARY

# You Must Wear a Mask—or You May Not

Some states suspend anti-Klan laws to combat coronavirus.

By Randy Maniloff  
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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.)

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Virginia’s 1950 antimask 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.”

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Some antimask laws, including Georgia’s and Virginia’s, were enacted 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.

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