

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

JUSTIN GREEN,

Case No. 2020-CA-001249

Plaintiff,

v.

ALACHUA COUNTY, and the Honorable
RON DESANTIS, in his capacity as Governor of the
State of Florida,

Defendants.

_____ /

PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION

Plaintiff, JUSTIN GREEN, moves for a temporary injunction against Defendant Alachua County and states as follows:

Introduction

This action involves the mandatory mask requirement contained in Amended Order 2020-21 (the "Order") promulgated by the Alachua County Board of County Commissioners ("BOCC"). Plaintiff seeks emergency injunctive relief to prevent the enforcement of the portions of the Order requiring that citizens wear masks, because the requirement is not within the scope the BOCC's authority to mandate, imposes undue burdens on each and every citizen of Alachua County, and threatens to undermine the laws of the State of Florida and of the United States. This Motion is brought on an emergency basis because it is continuing in nature and has an immediate and deleterious effect, depriving Plaintiff of rights guaranteed under the Florida Constitution and the United States Constitution.

Factual Background

On May 8, 2020, Plaintiff filed the underlying Complaint seeking declaratory and injunctive relief for:

(1) declaration that the BOCC lacked the authority to mandate a mask requirement under Chapter 27 of the Alachua County Code (*see Complaint* at ¶¶ 59-68);

(2) declaration that the mask requirement of the Order constitutes a taking under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §2 of the Florida Constitution (*see Complaint* at ¶¶ 69-76);

(3) declaration that the mask requirement is a violation of the right to privacy under Article I, §9 of the Florida Constitution (*see Complaint* at ¶¶ 77-83);

(4) permanent injunctive relief prohibiting Alachua County from enforcing the mask requirement of the Order, as the requirement is outside the authority of the BOCC, and is presumptively unconstitutional (*see Complaint* at ¶¶ 84-90);

(5) declaration that the mask requirement of the Order violates the Equal Protection Clause contained in Section 1 of the Florida Constitution's Declaration of Rights (*see Complaint* at ¶¶ 91-105); and

(6) permanent injunctive relief prohibiting Alachua County from enforcing the mask requirement of the Order as it is a violation of Plaintiff's civil rights (*see Complaint* at ¶¶ 106-109).

As stated more specifically in Plaintiff's Complaint, beginning March 23, 2020, Alachua County BOCC, under the auspices of the emergency powers granted the Alachua

County Code, has issued successive Orders each of which was based on incomplete or faulty information, mandating seemingly arbitrary and incongruent restrictions on the daily lives of its citizens. This culminated in the issuance of Amended Order 2020-21 (the “Order”) on May 4, 2020. The Order requires, in part, that all citizens wear masks, procured at their own cost, when visiting virtually any location to obtain essential services and supplies. (*see Complaint* at ¶¶ 9 and Exhibit A). This requirement is described as being in keeping with the minimum requirements of the Centers for Disease Control, the executive orders of the Governor Ron DeSantis, the requirements of other counties, and other sources of authority, but is actually more restrictive than those in place in even the hardest hit parts of the state. (*see Complaint* at ¶¶ 12-16).

Moreover, the Order’s mask requirement imposes restrictions even where they would provide no medical or health benefit according to the available data. (*see Complaint* at ¶¶ 29-32, 38-49). Bizarrely, the Order exempts *persons having Covid-19*—as long as they have another qualifying medical condition (including “anxiety”)—while requiring healthy persons with no Covid and no exposure to Covid to implement medical devices into their personal bodies and eliminate their expressive personality. Alachua County has 300 identified cases of Covid—of whom many have already recovered—and 275,000 healthy citizens that do not have Covid and are not a danger to anyone but who are forced to wear masks nonetheless.

The breadth of the Order’s mask requirement, coupled with its vague exceptions, creates an unnecessary burden on the fundamental rights of Plaintiff and invites arbitrary enforcement which can include significant fines and jail time. (*see Complaint* at ¶¶ 95-105).

The Order's mask requirement invades Plaintiff's Constitutional rights but is not narrowly tailored to further a compelling state interest, does not use the least intrusive means, and is presumptively unconstitutional. (see *Complaint* at ¶¶ 22-28). BOCC has acted outside the scope of its authority under the Florida Constitution and the Alachua County Code, and the portion of the Order requiring masks is unlawful and void.

Applicable Law

Under Florida Rule of Civil Procedure 1.610, a party is entitled to a temporary injunction when it establishes: "(1) [a] likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) consideration of the public benefit." *Colonial Bank, N.A. v. Taylor Morrison Servs., Inc.*, 10 So. 3d 653, 655 (Fla. 5th DCA 2009). It is not necessary to show that irreparable harm has already occurred, but only that there is a reasonable probability that such harm will occur unless the unlawful action is prevented. *City of Pompano Beach v. Yardarm Rest.*, 509 So. 2d 1295, 1297 (Fla. 4th DCA 1987).

Granting a motion for temporary injunction rests within a court's "broad discretion," *Sacred Family Invs., Inc. v. Coral Supermarkets, Inc.*, 20 So. 3d 412, 415 (Fla. 3d DCA 2009), and is "guided by established rules of the principles of equity jurisprudence, in view of the particular facts presented in each case." *Muss v. City of Miami Beach*, 312 So. 2d 553, 554 (Fla. 3d DCA 1975).

Additionally, the temporary nature of a temporary injunction is central to a court's inquiry, as "the purpose of a temporary injunction is not to resolve disputed issues, but

to preserve the status quo pending final hearing on the merits.” *TJ Mgmt. Grp., LLC v. Zidon*, 990 So. 2d 623, 625 (Fla. 3d DCA 2008).

Argument

A. Plaintiff will Suffer Irreparable Harm

Unless a temporary injunction is issued, Plaintiff will suffer irreparable harm because enforcement of the restrictions Alachua County has put in place has endangered, and threatens to continue endangering the fundamental Constitutional rights of Plaintiff. “The deprivation of personal rights is often equated with irreparable injury and serves as an appropriate predicate for injunctive relief.” *Hitt v. N. Broward Hosp. Dist.*, 387 So. 2d 482, 485 n.3 (Fla. 4th DCA 1980). In the present case, as alleged above and in the underlying Complaint, the enforcement of the Order’s mask requirement restricts the rights of Plaintiff granted under both the Florida Constitution and the United States Constitution.

The mask requirement not only restricts the rights of Plaintiff in an existential sense, but also has very concrete consequences. A failure to abide by the mask provision of the Order is enforceable by law enforcement, is described as a second degree misdemeanor, and provides for graduated fines from \$125.00 to \$500.00 per violation, mandatory court appearance, and allows that “[a]ll other remedies available at law or equity, including injunction, remain available to the County, even after issuance of a citation.” *Amended Order No. 2020-21* at ¶17.

B. Plaintiff Lacks an Adequate Remedy at Law

No remedy at law exists which could adequately redress Plaintiff's injuries. As alleged above and in the underlying Complaint, due to the potential for arbitrary enforcement, and the overly broad nature of the Order's mask requirement, it is nearly impossible to quantify potential damages, nor even what action could be maintained at law. The test is whether a judgment could be obtained in an action at law. *Stewart v. Magnet*, 181 So. 370, 374, 132 Fla. 498, 505-06 (1938).

It is impossible to retroactively restore Plaintiff's Constitutional rights after they have been violated. Put another way, there is no way a judgment could be obtained to prevent the past deprivation of Plaintiff's Constitutional rights, after the deprivation has already been committed. Further, because an individual's Constitutional rights are invaluable, there is no way to quantify damages for the purpose of maintaining an action at law. *See Zimmerman v. D.C.A. at Welleby, Inc.*, 505 So. 2d 1371 (Fla. 4th DCA 1987) (finding that where damages are said to be speculative and unascertainable, the harm is irreparable and the remedy at law is inadequate).

C. Plaintiff has a Substantial Likelihood of Success on the Merits

Plaintiff has a substantial likelihood of success on the merits because Alachua County has invaded the individual rights of Plaintiff, and thereby raised the presumption that Alachua County's mask requirement is unconstitutional. A movant establishes a substantial likelihood of success on the merits "if good reasons for anticipating that result are demonstrated." *Naegele Outdoor Advertising Co., Inc. v. City of Jacksonville*, 634 So.2d 750, 753 (Fla. 1st DCA 1995).

It is clear from the facts alleged hereinabove, and in the underlying Complaint, that the Order's mask requirement invades Plaintiff's right to privacy. In order to intrude on Plaintiff's fundamental right to privacy, the County must meet a "strict scrutiny" standard. *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So.2d 612, 635 (Fla. 2003) ("Florida courts consistently have applied the 'strict' scrutiny standard whenever the Right of Privacy Clause was implicated, regardless of the nature of the activity.")

The initial presumption where strict scrutiny is required is that the legislation in question is unconstitutional. *Id.* at 625 n.16. Plaintiff does not need to prove the mask requirement is unconstitutional. Rather, Alachua County must prove that the Order's mask requirement is the least intrusive and most narrowly tailored means to further a compelling state interest. Since the Order's mask requirement is presumed unconstitutional, Plaintiff's success on the merits should also be presumed until and unless the County proves otherwise.

D. Granting a Temporary Injunction Will Serve the Public Interest

Here, Plaintiff has demonstrated that the mask requirement of Alachua County's Order blatantly intrudes upon Plaintiff's and the public at large's fundamental Constitutional rights. The mask requirement potentially burdens all 275,000 residents of Alachua County. The public has an interest in preventing Alachua County from invading their constitutional rights and imposing unprecedented restrictions on individuals by executive order (without legislative process). The mask requirement of Alachua County's Order runs afoul of public policy, and Plaintiff has suffered, and will continue to suffer, irreparable injury if Alachua County is not enjoined.

E. The Temporary Injunction Bond Should be Nominal

The purpose of an injunction bond is to provide sufficient funds to cover the adverse parties' costs and damages if the injunction is wrongfully issued. *See Metalmax Cutting Tools, Inc. v. Mill-Tech USA, Inc.*, 794 So. 2d 609 (Fla. 2d DCA 2001). This Court may consider factors other than anticipated costs and damages in setting an injunction bond, including the adverse parties' likelihood of overturning the temporary injunction. *Id.* In this proceeding, for the reasons stated herein, it is highly unlikely that any party will be found to have been wrongfully enjoined, or that any damages would result given that Alachua County's mask requirement is presumptively unconstitutional.

Moreover, even if the injunction were found to have been improvidently issued, Alachua County cannot show that it would suffer any harm. Alachua County's mask requirement has been shown to be not narrowly tailored to further a compelling state interest in protecting public health because, on its face, it cannot be consistently enforced, is badly overbroad, and ignores the medical opinion of Alachua County's own Health Department Administrator.

Florida Rule of Civil Procedure 1.610(b) provides in relevant part that "[w]hen any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof, **the court may require or dispense with a bond**" (emphasis added).

Therefore, Plaintiff respectfully requests that the bond be set in a de minimis amount, if one is necessary at all.

Conclusion

WHEREFORE, Plaintiff requests that this Court enter a temporary injunction enjoining Alachua County from enforcing the mask requirement of Amended Order 2020-21 and for such other and further relief this Court deems just and proper.

Dated this 8th day of May, 2020.



Childers Law, LLC
2135 NW 40th Terrace, Suite B
Gainesville, Florida 32605
tel 866-996-6104 fax 407-209-3870
net jchilders@smartbizlaw.com

/s/Seldon J. Childers
Seldon J. Childers
Florida Bar No. 61112
jchilders@smartbizlaw.com
James W. Kirkconnell
Florida Bar No. 21044
jkirkconnell@smartbizlaw.com
J. Eric Hope
Florida Bar No. 65379
ehope@smartbizlaw.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 8th day of May, 2020, by electronic mail to the following: STorres@alachuacounty.us, bswain@alachuacounty.us, Joe.Jacquot@eog.myflorida.com, citizenservices@myfloridalegal.com.

/s/ Seldon J. Childers, Esq. .
Florida Bar No. 61112