

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA**

DAVID J. LEAVITT

Plaintiff,

CASE NO: 2020-CA-001136-16-K

vs.

SEMINOLE COUNTY, a
political subdivision of the
State of Florida,

Defendant.

_____ /

**COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

Plaintiff, DAVID LEAVITT ("Leavitt"), through undersigned counsel, hereby sues Defendant, SEMINOLE COUNTY, a political subdivision of the State of Florida, ("Seminole County"), and alleges the following:

JURISDICTION AND VENUE

1. This is a lawsuit for injunctive relief over which this Court has jurisdiction.
2. This is a lawsuit for declaratory judgment over which this Court has jurisdiction under Fla. Stat. § 86 (2019).
3. Venue is proper in Seminole County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to certain orders issued by the County, and because all or part of the claim for relief at issue in this litigation arose in Seminole County.

PARTIES

4. Plaintiff, Leavitt, is a Florida resident, a resident of Seminole County, and business owner who has been severely impacted by the Seminole County Commission's interference with his personal liberty and business enterprise.

5. Seminole County is a proper Defendant in this action because Seminole County created and implemented Executive Order 20-017 on April 30th, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

FACTS

6. On April 16, 2020, The White House released "Guidelines for Opening Up America Again," (the "Guidelines") a publication that included a three-phased approach to opening the country during the response to the virus known as COVID-19 and based on the advice of public health experts. The Guidelines advised it that individuals "strongly *consider* using face coverings while in public." *Guidelines for Opening Up America Again*, The White House (4-16-2020.) (emphasis added).

7. Afterwards, on April 29th, 2020, the Florida Governor Ron Desantis released Executive Order 20-112 which included a "phased approach" to reopening Florida, which did not include the requirement that Floridians wear face masks in any setting. Executive Order 20-112 *Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, State of Florida, (April 29th, 2020). Executive Order 20-112 left it up to an individual's own discretion whether to wear a face mask.

8. Thereafter, on April 30th, 2020, Seminole County issued Executive Order 20-017, entitled, "EXECUTIVE ORDER REGARDING COVID-19 REQUIRING SOCIAL DISTANCING AND ADHERING TO OPENING UP AMERICA GUIDELINES." Unlike the existing national and state orders, Seminole County Executive Order 20-017 requires Seminole county residents to wear face masks.

9. Executive Order 20-017, Section 1 states:

Section 1. "Minimum Standards for Businesses and Places of Assembly. All places of assembly and businesses in Seminole County may open, or remain open, under the following conditions, unless precluded by any order issued by the Governor for the State of Florida:

- a) All persons, employees, patrons, and participants must practice social distancing by staying at least six (6) feet apart.
- b) Businesses which require employee and patrons to be within six (6) feet, both employee and patron must wear a face mask/covering; unless the customer wearing the mask would impede the service, in which case the service provider would need to wear a face mask/covering.

10. Executive Order 20-017, Section 2 and Section 3 state:

Section 2. Penalties. Businesses and individuals that do not comply with this Order on a consistent basis are subject to monetary fines up to \$500 per occurrence, in accordance with Section 72.12, Seminole County Code, and Section 125.69, Florida Statutes (2019). Repeat violations could result in mandatory closure pursuant to Section 72.6(b) (1), Seminole County Code, and other applicable Florida Statutes. This Order is enforceable by any county or municipal law enforcement official, code enforcement official, and emergency management official.

Section 3. Exceptions. This Order does not apply to employees and patrons of first response, government, healthcare/medical, veterinarian, shelter/rehab, childcare, utility providers, construction, and transit agencies.

11. Plaintiff is a business owner who is personally and negatively affected by the mandate to wear a mask.

LAW

12. Under the "EMERGENCY MANAGEMENT" section of Chapter 72 of the Seminole County Code, Seminole County lacks the legal authority to create a mandate for citizens to wear masks. Therefore, Seminole County should be enjoined from enforcing Executive Order 20-017. Section 72.6 expressly lists the exact restrictions that the County may impose on its citizens during a local or state emergency and Seminole County's powers are explicitly limited to those listed inside the ordinance, which does not contain any language forcing private citizens to wear masks. There exists no authority for Seminole County to impose such a mandate. Non-compliance with the Order will result in a 2nd degree misdemeanor, with the accompanying penalty of up to 60 days' jail time and a \$500 dollar fine. Additionally, Executive Order 20-017 is in direct conflict with the The White House "Guidelines for Opening Up America Again," and Governor Desantis' Executive Order 20-112, neither of which include a mandate to wear masks. As opposed to advisory guidelines; Seminole County has taken the radical step of requiring the masks to be worn under the force of law.

13. Seminole County's Executive Order 20-017 is unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution. Article 1 § 23 of the Florida Constitution states: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." The explicit constitutional right of privacy listed in the Florida Constitution embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield v. Division of Pari-Mutuel Wagering*,

477 So.2d 544, 548 (Fla.1985). Seminole County's Executive Order 20-017 is a radical infringement of the reasonable and legitimate expectation of privacy that most Floridian's expect to have over their own bodily and facial autonomy.

14. Seminole County's Executive Order 20-017 is unconstitutional because it violates the Due Process Clause of Art. 1 § 29 of the Florida Constitution, which reads: "No person shall be deprived of life, liberty or property without due process of law...". The due process clause protects the individual against the arbitrary and unreasonable exercise of governmental power. *Noel v. State*, 191 So. 3d 370, 373 (Fla. 2016). Seminole County Executive Order 20-017 is arbitrary and unreasonable and not backed by a compelling state interest or any facts proving such an interest. Due process of law protects against the legislative deprivation of life, liberty, or property and Executive Order 20-017 deprives Plaintiff of his liberty. Plaintiff has been deprived of substantial due process by way of the Seminole county's interference with his private action.

15. To obtain a preliminary injunction, Plaintiff must prove: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017). All four elements are shown and proved below.

16. Unless an injunction is issued, Plaintiff will suffer irreparable harm because his Constitutional rights are being violated. The mask requirement infringes Plaintiff's right to privacy under the Florida Constitution. Worse, Plaintiff will be arrested and fined if he does not comply with the unconstitutional mandate. *Seminole County*, Executive Order 20-017,

(4-30-2020.) There is a significant likelihood of irreparable harm to Plaintiff and 471,000 other Seminole County residents resulting from the enforcement of the Executive Order.

17. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which are being infringed upon by government. The test for the unavailability of an adequate remedy at law is whether the "irreparable injury is an injury that cannot be cured by money damages." *Lutsky v. Schoenwetter*, 172 So.3d 534, 534 (Fla. 3d DCA 2015) (citing *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So.3d 1081, 1092 (Fla. 3d DCA 2014)). The deprivation of Plaintiff's rights cannot be remedied by money or any judgment other than an injunction. The ability to move and free freely has been deprived from Plaintiff, disallowing him to be "let alone and free." Art. 1 § 23, Fla. Const.

18. Plaintiff has a very high likelihood of success on the merits because Seminole County's Executive Order 20-017 is presumptively invalid, since it implicates and infringes Plaintiff's privacy right. Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional; thus, the burden of proof rests with the government to justify an intrusion on privacy. *Weaver v. Myers*, 229 So. 3d 1118, 1133 (Fla. 2017). This explicit constitutional right of privacy embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield*, 548. This state constitutional right to privacy includes the right to liberty. *State v. J.P.*, 907 So. 2d 1101, 1115 (Fla. 2004). (holding that the Florida constitutional right to privacy includes the right to liberty and self-

determination). An integral component of self-determination is the right to make choices pertaining to one's health and to determine what shall be done with one's own body. *Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010). Furthermore, Seminole County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Seminole County commission regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion.

19. A temporary injunction of Executive Order 20-017 will serve the public interest. The citizens of Seminole County public are burdened by the over-reach of their local government not seen in the history of Florida. The mask requirement violates both the Plaintiff's and the public's fundamental Florida Constitutional rights. 471,000 Seminole county residents are unduly burdened by it. The public has a strong interest in protecting their rights and ability to control their own bodies in the workplace.

COUNT I
INJUNCTIVE RELIEF

20. Plaintiff realleges and incorporates herein paragraphs 1 – 19.

21. Plaintiff seeks injunctive relief enjoining Seminole County from enforcing Executive Order 20-017.

COUNT II
DECLARATORY JUDGMENT

22. Plaintiff realleges and incorporates herein paragraphs 1 – 19.

23. Plaintiff seeks declaratory judgment declaring Executive Order 20-017, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 9 and 23 of the Florida Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

- (a) a declaration that Seminole County Commission lacked the authority to mandate a mask requirement under Chapter 72 of the Seminole County Code.
- (b) a declaration that Executive Order 20-017 violates the Florida Constitution.
- (c) a temporary injunction enjoining Seminole County from enforcing Emergency Order 20-17.
- (d) and any other further relief as this Court deems just and proper.

DATED this 10th day of May, 2020.

/s/ Anthony F. Sabatini
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