

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

LINDA CUADROS

Plaintiff,

CASE NO:

vs.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Defendant.

_____ /

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

Plaintiff, LINDA CUADROS ("Cuadros"), through undersigned counsel, hereby sues Defendant, MIAMI-DADE COUNTY, a political subdivision of the State of Florida, ("Miami-Dade 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 Miami-Dade County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to certain orders issued by Miami-Dade County, and because all or part of the claim for relief at issue in this litigation arose in Miami-Dade County.

PARTIES

4. Plaintiff, Cuadros, is a Florida resident, a resident of Miami-Dade County, and business owner who has been severely impacted by orders issued by Miami-Dade County that have caused interference with her personal liberty and business enterprise.

5. Miami-Dade County is a proper Defendant in this action because Miami-Dade County created and implemented Emergency Order 20-20 ("Emergency Order 20-20") on April 9th, 2020, which deprives Plaintiff's rights guaranteed to her 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 9th, 2020, Miami-Dade County issued Emergency Order 20-20. Unlike the existing national and state emergency orders Emergency Order 20-20 requires all Miami-Dade County residents to wear face masks in various circumstances.

9. Miami-Dade County Emergency Order 20-20, Section 1 states:

1. Persons working in or visiting grocery stores, restaurants, pharmacies, construction sites, public transit vehicles, vehicles for

hire, and locations where social distancing measures are not possible shall wear facial coverings as defined by the CDC.

2. A facial covering includes any covering which snugly covers the face and mouth, whether store bought or homemade, and which is secured with ties or ear loops. Examples of compliant home-made masks may be found at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>. Persons should not utilize N95 rated masks, as those are critical supplies for health care workers, police, fire, emergency management, or other persons engaged in life/safety activities. Persons who wear masks should review the CDC and Florida Department of Health guidelines regarding safely applying, removing, and cleaning masks.

3. A mask shall not be required for children under two or persons who have trouble breathing due to a chronic pre-existing condition.

4. This order does not change or alter any social distancing requirements imposed in any other Emergency Order.

5. The provisions of this order shall serve as minimum standards. Municipalities may impose more stringent standards within their jurisdictions, as permitted by law.

6. This order shall be effective as of 11:59 p.m. on April 9, 2020.

7. This order shall expire upon the expiration of the existing Miami-Dade County State of Local Emergency, except that if such State of Local Emergency is extended, this order shall also be deemed to extend for the duration of such extension. This order may be cancelled earlier by action of the County Mayor.

8. This order shall be provided to all appropriate media consistent with the requirements of section 8B-7(2)(n) of the Code of Miami-Dade County.

10. Plaintiff is a business owner who is personally, financially, and negatively affected by the mandate to wear a mask. Additionally, the travel company she owns has been burdened by the mask mandate of Emergency Order 20-20.

11. On June 8th, the World Health Organization ("WHO") announced that "From the data we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual," casting serious doubt on the rationality and effectiveness of wearing masks in public places. William Feuer, *Asymptomatic spread of coronavirus is 'very rare,' WHO says*, CNBC, June 8th, 2020, at 1, <https://www.cnbc.com/2020/06/08/asymptomatic-coronavirus-patients-arent-spreading-new-infections-who-says.html>.

LAW

12. Under the Section 8B of the Code of Miami-Dade County, titled "Emergency Management," Miami-Dade County lacks the legal authority to create a mandate for citizens to wear masks. Therefore, Miami-Dade County should be enjoined from enforcing Emergency Order 20-20. Section 8B-7(2) expressly lists the exact actions that the County Manager may impose on its citizens during a local or state emergency and Miami-Dade 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 Miami-Dade County to impose such a mandate. Non-compliance with the Emergency Order will result in a 2nd degree misdemeanor, with the accompanying penalty of up to 60 days' jail time and a \$500 dollar fine (Florida Statute § 252.50). Additionally, Emergency Order 20-20 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; Miami-Dade County has taken the radical step of requiring the masks to be worn under the force of law.

13. Miami-Dade County Emergency Order 20-20 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). Miami-Dade County Emergency Order 20-20 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. Miami-Dade County Emergency Order 20-20 is unconstitutional because it violates the Due Process Clause of Art. 1 § 9 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). Miami-Dade County Emergency Order 20-20 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 Emergency Order 20-20 deprives Plaintiff of her liberty. Plaintiff has been deprived of substantial due process by way of the Miami-Dade County's interference with her private action.

15. Miami-Dade County Emergency Order 20-20 is unconstitutional because it violates the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution, which reads:

"All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, *to be rewarded for industry...*" (emphasis added). By arbitrarily requiring only certain places of business to comply with the mask mandate, while other businesses do not have to comply, Miami-Dade County treats similarly situated people and businesses differently without a rational basis. There is no conceivable state of facts that could provide a rational basis for classifying some businesses different than others in this instance. Pharmacies, construction sites, and other places are burdened with the mask constraint while other businesses are not. Miami-Dade County has no reason for treating them differently and the classification is not rationally related to a legitimate end. Such a classification must bear a rational relationship to a legitimate government interest or it will violate Florida Constitution's equal protection clause. *North Broward Hospital District v. Kalitan*, 219 So. 3d 49, 55 (2017).

16. Miami-Dade County Emergency Order 20-20 is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution because it is void for vagueness. Emergency Order 20-20 leaves significant terms undefined. A statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and application violates the first essential requirement of due process of law; due process is violated when a statute "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning." *D'Alemberte v. Anderson*, 349 So.2d 164, 166 (Fla. 1977) (quoting *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 (1927)). Emergency Order 20-20 Section 1 reads: "Persons working in or visiting grocery stores, restaurants, pharmacies, construction sites, public transit vehicles, vehicles for hire, and locations where social distancing measures are

not possible..." None of the terms in this section are defined and therefore too vague for the average citizen to understand, resulting in forcing Miami-Dade residents to guess and be subject to punishment.

17. 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.

18. 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 she does not comply with the unconstitutional mandate. *Miami-Dade County*, Emergency Order 20-20. There is a significant likelihood of irreparable harm to Plaintiff and 2,717,000 other Miami-Dade County residents resulting from the enforcement of the Emergency Order.

19. 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 her to be "let alone and free." Art. 1 § 23, Fla. Const.

20. Plaintiff has a very high likelihood of success on the merits because Miami-Dade County Emergency Order 20-20 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, Miami-Dade County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Miami-Dade County commission regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion.

21. A temporary injunction of Miami-Dade County Emergency Order 2020 will serve the public interest. The citizens of the Miami-Dade 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. 2,717,000 Miami-Dade 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

22. Plaintiff realleges and incorporates herein paragraphs 1 – 21.

23. Plaintiff seeks injunctive relief enjoining Miami-Dade County from enforcing Emergency Order 20-20.

COUNT II
DECLARATORY JUDGMENT

24. Plaintiff realleges and incorporates herein paragraphs 1 – 21.

25. Plaintiff seeks declaratory judgment declaring Emergency Order 20-20, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Miami-Dade County lacked the authority to mandate a mask requirement under Section 8B of the Code of Miami-Dade County.

(b) a declaration that Emergency Order 20-20 violates Article I Sections 2, 9, and 23 of the Florida Constitution.

(a) a temporary injunction enjoining Miami-Dade County from enforcing Emergency Order

20-20

(d) and any other further relief as this Court deems just and proper.

DATED this 16th day of June, 2020.

/s/ Anthony F. Sabatini
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