

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

JOSIE MACHOVEC, CARL HOLME,  
KAREN HOLME, RACHEL EADE  
and ROBERT SPREITZER

Plaintiffs

CASE NO: 2020CA006920AXX  
DIVISION: AF

vs.

PALM BEACH COUNTY, a political  
subdivision of the State of Florida,

Defendant.  
\_\_\_\_\_ /

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

COMES NOW Plaintiffs, JOSIE MACHOVEC, CARL HOLME, KAREN HOLME, RACHEL EADE and ROBERT SPREITZER (hereinafter "Plaintiffs"), by and through the undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.190(a), hereby file this Amended Complaint against Defendant PALM BEACH COUNTY, a political subdivision of the State of Florida, (hereinafter "Defendant" and/or "Palm Beach County"), and state as follows:

**INTRODUCTION**

1. This action stems from the Defendant Palm Beach County's infringement upon well-settled constitutionally protected freedoms of over a million Palm Beach County residents and visitors, including but not limited to our constitutional and fundamental human right to privacy and bodily autonomy. Despite having no authority, actual or apparent, under Florida law to do so, Defendant has recklessly required countless American citizens and Florida residents, including the Plaintiffs, to submit to dangerous medical treatments with well-known risks and potential for serious injuries and death, including being forced to wear harmful medical devices like masks.

### **JURISDICTION AND VENUE**

2. This is a lawsuit for declaratory and injunctive relief pursuant to § 86.011, Fla. Stat.

3. Venue is proper in Palm Beach County, Florida pursuant to § 47.011, Fla. Stat., because it is where the cause of action accrued and because all or part of the claim for relief at issue in this litigation arose in Palm Beach County, and it relates to unlawful orders issued by the County and its agents, including but not limited to the Palm Beach County Board of Commissioners.

### **PARTIES**

4. Plaintiff Josie Machovec is a Florida resident, a resident of Palm Beach County who has been severely impacted by orders issued by Defendant Palm Beach County that interferes with her personal liberty, and constitutional rights, including but not limited to freedom of speech, right to privacy, in addition to the constitutionally protected right to enjoy and defend life and liberty.

5. Plaintiff Carl Holme is a Florida resident, a resident of Palm Beach County, and a business owner who has been severely impacted by orders issued by Defendant Palm Beach County that interferes with his personal liberty, and constitutional rights, including but not limited to freedom of speech, right to privacy, in addition to the constitutionally protected right to enjoy and defend life and liberty.

6. Plaintiff Karen Holme is a Florida resident, a resident of Palm Beach County who has been severely impacted by orders issued by Defendant Palm Beach County that interferes with her personal liberty, and constitutional rights, including but not limited to freedom of speech, right to privacy, in addition to the constitutionally protected right to enjoy and defend life and liberty.

7. Plaintiff Rachel Eade is a Florida resident, a resident of Palm Beach County, and a business owner who has been severely impacted by orders issued by Defendant Palm Beach County that

interferes with her personal liberty, and constitutional rights, including but not limited to freedom of speech, right to privacy, in addition to the constitutionally protected right to enjoy and defend life and liberty.

8. Plaintiff Robert Spreitzer is a Florida resident, a resident of Palm Beach County, and retired public employee with over 30 years of public service who has been severely impacted by orders issued by Defendant Palm Beach County that interferes with his personal liberty, and constitutional rights, including but not limited to freedom of speech, right to privacy, in addition to the constitutionally protected right to enjoy and defend life and liberty.

9. Defendant Palm Beach County is a home rule charter county, a political subdivision of the State of Florida managed by the Palm Beach County Board of County Commissioners ("BOCC"), which is, and was and at all times material to this Complaint comprised of the following officials: Palm Beach County Mayor Dave Kerner, Vice Mayor Robert S. Weinroth, Hal R. Veleche, Gregg K. Weiss, Mary Lou Berger, Melissa McKinlay and Mack Bernard (hereinafter the "Commissioners").

### **FACTS**

10. On February 27, 2020, the CDC announced that it does not recommend the use of face masks to prevent COVID-19. *See*: <https://twitter.com/cdcgov/status/1233134710638825473>.

11. 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 that individuals "strongly *consider* using face coverings while in public." *Guidelines for Opening Up America Again*, The White House (4-16-2020.) (emphasis added).

12. Afterwards, on April 29<sup>th</sup>, 2020, Florida Governor Ron DeSantis issued Executive Order 20-112, which included a "phased approach" to reopening Florida, which did not include the requirement for Floridians to 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 discretion whether to wear a face mask.

13. Prior to unlawfully mandating masks in Palm Beach County, the County recommended, but did not mandate that masks be worn. In fact, the Defendant discouraged residents from using surgical masks or N95 rated masks. *See* Exhibit "A", Emergency Order 2020-004 ("Persons utilizing facial coverings should not procure surgical masks or N95 rated masks, as those are critical supplies for health care workers, law enforcement, fire-rescue, emergency management, or other persons engaged in life and safety activities.").

14. On May 26, 2020, the Food and Drug Administration ("FDA") issued non-binding recommendations indicating that face masks, face shields, and N95 respirators are medical devices when they meet the definition of a device set forth in section 201(h) of the FD&C Act when they are intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease." *See*: <https://www.fda.gov/media/136449/download>.

15. On June 5, 2020, the BOCC entered Emergency Order Number 10 making it, unlike the existing national and state emergency orders, a mandatory requirement for all persons accessing Palm Beach County governmental buildings to wear facial coverings at all times while present in the building. *See* Exhibit "B". Since then, various employees and officials of the Defendant county have been observed and recorded not wearing facial coverings at all times, as purportedly required, including but not limited to Palm Beach County Mayor Dave Kerner.



16. On June 11, 2020, the BOCC entered Emergency Order Number 11 imposing further facial covering mandates, including requiring facial coverings, at all municipal, public, and privately run golf courses in Palm Beach County. *See* Exhibit C. (“Designated signage shall be placed outside the pro-shop and clubhouse outlining the social distancing and facial covering mandates of the CDC Guidelines.”).

17. CDC Guidelines and recommendations are not mandates and do not have the force or effect of federal or state law. *See*: <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-coronavirus-task-force-july-8-2020/>. (“The purpose of CDC’s guidance is — remember, it’s guidance; it’s not requirements” Robert Ray Redfield Jr., Director of the Centers for Disease Control and Prevention, July 8, 2020). Moreover, when CDC Guidelines and recommendations are converted to mandates by counties, including but not limited to the Defendant, they are subject to both the Florida Constitution and U.S. Constitution. “The supreme court has construed the phrase ‘not inconsistent with general law’ to mean ‘contradictory in the sense of legislative provisions which cannot coexist.’ *State v. Sarasota County*, 549 So. 2d 659, 660 (Fla.1989); *Pinellas County v. Eight is Enough in Pinellas*, 775 So. 2d 317 (Fla. App. 2000) (referencing Article VIII Section 1 (g) of our Florida Constitution); *See also* Governor Ron DeSantis’ Executive Order 20-52 (“the CDC currently recommends . . . wearing a facemask *if advised to do so by a healthcare provider or by a public health official . . .*”) (emphasis added).

18. On June 5, 2020, Palm Beach County Mayor Dave Kerner wrote a letter to Governor DeSantis requesting consideration of phase 2 re-opening of Palm Beach County, including entertainment businesses and bars, citing to “conditions and indicators related to the spread of COVID-19” and that existing plans have been “protective of public health”. *See* Exhibit “D”. To date, the Board of County Commissioners has not rescinded its request to re-open the county.

Despite representing to the Governor that Palm Beach County is ready to re-open, Defendant has entered a series of unconstitutional emergency orders available online at: <http://discover.pbcgov.org/coronavirus/Pages/Orders.aspx>, including Defendant's Mask Mandate.

#### THE SCIENCE IGNORED BY DEFENDANT'S COMMISSIONERS

19. Pandemics, like the purported COVID-19 pandemic, are nothing new or novel. Diseases like coronaviruses have been known about and studied for generations. Prior to 2020, neither the State of Florida, nor Defendant Palm Beach County has ever mandated facial coverings as means to prevent or slow the spread of any disease and there is no new evidence proving that is possible.

20. On June 8<sup>th</sup>, after months of data had been collected and analyzed regarding COVID-19, the World Health Organization ("WHO") announced that "[f]rom 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 8<sup>th</sup>, 2020, at 1, located at <https://www.cnbc.com/2020/06/08/asymptomatic-coronavirus-patients-arent-spreading-new-infections-who-says.html>.

21. The Occupational Safety and Health Administration (OSHA) website plainly states that cloth face masks "will not protect the wearer against airborne transmissible infectious agents due to loose fit and lack of seal or inadequate filtration." OSHA also states that surgical masks "will not protect the wearer against airborne transmissible infectious agents due to loose fit and lack of seal or inadequate filtration." See <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>.

22. As for the scientific support for the use of face masks, there are no scientific studies available to date establishing a conclusive relationship between the use of facial coverings and protection against influenza infection. **Bin-Reza, F. et al. (2012)** "The use of mask and respirators

to prevent transmission of influenza: A systematic review of the scientific evidence.” *Influenza and other Respiratory Viruses* 6(4):257-67. See

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5779801/>. Moreover, no studies have been done to demonstrate a cloth mask or N95 mask has any effect on transmission of the COVID-19 virus.

23. A recent study involving 158 healthcare workers aged 21 to 35 years of age found that 81% developed headaches from wearing a face mask. **JJY et al.** (2020) “Headaches Associated with Personal Protective Equipment-A Cross Sectional Study Among Frontline Healthcare Workers During COVID-19,” *Journal of Head and Face Pain*, May 2020, Vol. 60 Issue 5; 864-877. See: <https://headachejournal.onlinelibrary.wiley.com/doi/full/10.1111/head.13811>.

24. In another study of surgical masks, researchers examined the blood oxygen levels in 53 surgeons using an oximeter, measuring blood oxygenation before surgery as well as at the end of surgeries. It was discovered that surgical masks reduced the blood oxygen levels ( $paO_2$ ) significantly. The longer the duration of wearing the mask, the greater the fall in blood oxygen levels. **Bader A et al.** (2008) “Preliminary report on surgical mask induced deoxygenation during major surgery,” *Neurocirugia* 2008;19:12-126.

25. Moreover, people with cancer who are forced to wear masks are at further risk from prolonged hypoxia as the cancer grows best in a microenvironment that is low in oxygen. Low oxygen also promotes inflammation which can promote the growth, invasion and spread of cancers. **Blaylock RL.** (2013) “Immunoexcitatory mechanisms in glioma proliferation, invasion and occasional metastasis,” *Surg Neurol Inter* January 29, 2013; 4:15. See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3589840/>; see also **Aggarwal BB.** (2004) “Nuclear factor-kappaB: The enemy within,” *A Cell Press Journal* September 1, 2004, Vol. 6, Issue 5; 203-208. See [https://www.cell.com/cancer-cell/fulltext/S1535-6108\(04\)00244-2](https://www.cell.com/cancer-cell/fulltext/S1535-6108(04)00244-2).

26. “Face mask use in health care workers has not been demonstrated to provide benefit in terms of cold symptoms or getting colds.” **Jacobs, J. L. et al. (2009)** “Use of surgical face masks to reduce the incidence of the common cold among health care workers in Japan: A randomized controlled trial,” *American Journal of Infection Control*, 2009, Vol. 37, Issue 5; 417-419. See <https://www.ncbi.nlm.nih.gov/pubmed/19216002>.
27. “Among 2862 randomized participants, 2371 completed the study... Among outpatient health care personnel, N95 respirators vs medical masks as worn by participants in this trial resulted in no significant difference in the incidence of laboratory-confirmed influenza.” **Radonovich, L.J. et al. (2019)** “N95 Respirators vs Medical Masks for Preventing Influenza Among Health Care Personnel: A Randomized Clinical Trial,” *JAMA*. 2019, 322(9): 824–833. See <https://jamanetwork.com/journals/jama/fullarticle/2749214>.
28. “...9,171 participants were included. There were no statistically significant differences in preventing laboratory-confirmed influenza, laboratory-confirmed respiratory viral infections, laboratory-confirmed respiratory infection, and influenza-like illness using N95 respirators and surgical masks”. **Long Y., Hu T., Liu L. et al. (2020)** “Effectiveness of N95 respirators versus surgical masks against influenza: A systematic review and meta-analysis,” *J Evid Based Med*. 2020, 13:93-101. See <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jebm.12381>.
29. “Overall, the results of the study indicate that speech and low work rates significantly increase CO<sub>2</sub> rebreathing in RPDs. Based on Australian respirator design standards, it is evident that speech could contribute to inspired CO<sub>2</sub> exceeding the maximal allowable concentrations in inspired air.” **Smith, C. et al. (2013)** “Carbon Dioxide rebreathing in respiratory protective devices, influence speech and work rate in full face mask,” *Ergonomics*. 2013; Vol. 56, Issue 5. See <https://www.tandfonline.com/doi/abs/10.1080/00140139.2013.777128>.

30. “Wearing N95 masks results in hypooxygenemia and hypercapnia which reduce working efficiency and the ability to make correct decision...dizziness, headache, and short of breath are commonly experienced by the medical staff wearing N95 masks. The ability to make correct decision may be hampered, too. The purpose of the study was therefore to evaluate the physiological impact of N95 mask on medical staff.” *Clinical Trial NCT00173017* “The Physiological impact of N95 mask on medical staff” June 2005. See <https://clinicaltrials.gov/ct2/show/NCT00173017>.
31. “Therefore, it can be concluded that N95 and surgical facemasks can induce significantly different temperatures and humidity in the microclimates of facemasks, which have profound influences on heart rate and thermal stress and subjective perception of discomfort.” **Y. Li. et al.** (2005) “Effects of wearing N95 and surgical facemasks on heart rate, thermal stress and subjective sensations,” *Int Arch Occup Environ Health*. 2005; 78(6): 501–509. Published online 2005 May 26. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7087880/>.
32. Facial covering do not protect against droplets in eyes, and will not protect humans from spreading the virus to other humans. **Klompas, M. et al.** (2020) “Universal Masking of Hospitals in the Covid- 19 Era,” *The New England journal of Medicine*. May 21, 2020; 382:e63 DOI: 10.1056/NEJMp2006372. See <https://www.nejm.org/doi/full/10.1056/NEJMp2006372>
33. Wearing a facemask, may cause physiological changes to the Nasal Cavity and statistically significant heart rate and thermal stresses. **Zhu, J. et al.** (2014) “Effects of long-duration wearing of N95 respirator and surgical facemask: a pilot study,” *Lung Pulmonary and Respiratory Research*. November 22 2014; EISSN: 2376-0060. See <https://medcraveonline.com/JLPRR/effects-of-long-duration-wearing-of-n95-respirator-and-surgical-facemask-a-pilot-study.html>.

34. A 2015 study compared “the efficacy of cloth masks to medical masks in hospital healthcare workers . . . The rates of all infection outcomes were highest in the cloth mask . . . Penetration of cloth masks by particles was almost 97% and medical masks 44% . . . This study is the first RCT of cloth masks, and the results caution against the use of cloth masks . . . Moisture retention, reuse of cloth masks and poor filtration may result in increased risk of infection.”

**MacIntyre R. et al** (2015) “A cluster randomized trial of cloth masks compared with medical masks in healthcare workers,” *BMJ Open* 2015; 5 (4): e006577. See: <https://bmjopen.bmj.com/content/5/4/e006577>.

35. According to Dr. Margan Zajdowicz, a retired infectious disease physician who spent many years in clinical practice and emergency preparedness and pandemic planning for the US Navy, who also holds a Doctor of Medicine degree from the University of Maryland School Of Medicine and a Master of Public Health degree from Old Dominion University/Eastern Virginia School of Medicine, “SARS CoV-2 is a tiny particle, about 0.125 microns in diameter, varying in size from 0.06 to 0.14 microns.” As a result of its microscopic size, cloth and surgical masks do a poor job of filtering and keeping viruses out of the mask. See: <https://my.lwv.org/california/pasadena/article/life-time-coronavirus-dr-margan-zajdowicz-0>; See also: <https://www.cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data> (“Masks-for-all for COVID-19 not based on sound data” according to Dr. Lisa Brosseau, a national expert on respiratory protection and infectious diseases and retired professor at University of Illinois at Chicago, and Dr. Margaret Sietsema, who is also an expert on respiratory protection and an assistant professor at the University of Illinois at Chicago.)

36. The CDC’s own report on May 22, 2020 indicated that symptomatic carriers of COVID – 19, ranging from mild to severe have a 99.6 Percent rate of survival. See

<https://web.archive.org/web/20200522214936/https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios-h.pdf>.

37. During a press conference on June 19, 2020, Palm Beach County Mayor Kerner announced the formation of the “COVID Education and Compliance Team” to purportedly educate and bring businesses into compliance with Defendant’s new mandates, including facial mask requirements.

38. On June 22, the Florida Surgeon General issued a non-mandatory public health advisory “encouraging” but not requiring individuals to follow both CDC recommendations and safety protocols issued by OSHA. *See* Exhibit “E”.

39. Before voting in favor of the unlawful order, Defendant Palm Beach County's Vice Mayor Robert Weinroth admitted during a public hearing held on June 28, 2020, that Defendant's Mask Mandate is a mistake and also compared the penalty for not wearing a mask to pulling people over for speeding. *See* <https://www.facebook.com/pbcgov/videos/613071185980642/>. ("I hate the idea of talking about mandatory face coverings . . . it goes against my grain and I said at the last meeting and I was picked apart about it, that it was a mistake . . . this needs to be a civil citation . . . this is not the way that we want our community to act and I feel that a civil citation just the same way as we treat a speeder is the way to go . . .").

40. Defendant's Commissioner Gregg Weiss also indicated during public hearings before enacting Defendant’s Mask Mandate his intent to extend Defendant’s unlawful Mask Mandate to a length of time not permitted by Florida law. *See Id.* ("We are continuing to move in the wrong direction . . . 30 days—I think that is too soon . . . we have to learn to live with this virus and the way we live with the virus is by physical distancing . . . and when not able to physical distance we have to find some other barrier . . . by wearing a face covering so that when we breathe or we speak or we do anything that, those particles don't fall far away from us, that they're kept very

close to us so they don't infect other people . . . personally I thought that we should go for a year, but I could set it for four months . . . four months would be an appropriate amount of time . . . I would rather that we would extend this out . . ."). *Id.*

41. Defendant's Commissioner Melissa McKinlay, who voted for the unlawful mandate and suggested it be extended every thirty days, also compared unlawfully forcing people to wear medical devices that restrict oxygen on their faces as somehow akin to seatbelt laws, which is fallacious and unreasonable considering the fact that driving a heavily regulated motor vehicle is a privilege that is, as a matter of law, unlike a fundamental constitutional and human right such as breathing fresh air. Commissioner McKinlay, before violating her Art. VI § 3 oath to protect and defend the Constitution of the United States and Constitution of the State of Florida, boasted that "the idea that we are somehow trampling the U.S. Constitution does not resonate with me". *Id.*

42. An overwhelming number of Palm Beach County residents spoke out against Defendant's Mask Mandate on the June 23, 2020 meeting. *Id.* It should be noted that the Defendant's Mayor Dave Kerner, evidencing clear disdain for freedom of speech, arbitrarily limited public comments to only two minutes instead of the customary three minutes afforded to speakers. At a prior meeting concerning unconstitutional restrictions being considered by the Defendant's Commissioners, Mayor Kerner attempted to limit the public comment time limit to only one minute, but then backtracked after many members of the public expressed outrage over the announcement. *See:* <https://www.facebook.com/pbcgov/videos/324834345147966/>.

43. On June 23, 2020, despite overwhelming opposition from Palm Beach County residents, the Defendant's BOCC voted unanimously (7-0) to mandate masks for Palm Beach County.

44. Before signing the emergency order giving rise to the above-captioned action Defendant's Mayor Dave Kerner reportedly informed the South Florida Sun Sentinel that Defendant Palm



Beach County will require facial coverings and people who violate the rules could be fined. *See* <https://www.sun-sentinel.com/coronavirus/fl-ne-masks-palm-beach-commission-masks-20200623-65unmcrh7vcerb3aphn4z2czem-story.html>

45. On June 24, 2020, Defendant Palm Beach County entered Emergency Order Number 2020-012. (hereinafter “Defendant’s Mask Mandate” and/or “EO #12”). *See* Exhibit “D”. Portions of Defendant’s Mask Mandate includes the following requirements:

5. A facial covering includes any covering which snugly covers the nose and mouth, whether store bought or homemade, mask or clothing covering including but not limited to, a scarf, bandana, handkerchief, or other similar cloth covering and which is secured in place. Examples of compliant homemade facial coverings may be found on the CDC website: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

Persons wearing face coverings should review the CDC and Florida Department of Health guidelines regarding safely wearing, removing, and cleaning facial coverings. Persons should not procure N95-rated masks for general use as those are critical supplies for health care workers, law enforcement, fire-rescue, emergency management, or other persons engaged in life and safety activities. In addition, in lieu of a facial covering as defined in this section, persons may wear clear, plastic face shields, consisting of a piece of rigid, clear plastic attached to a headband that extends below the chin, whether store or homemade. For persons who are unable to safely utilize face coverings, businesses shall offer accommodation when required by the Americans with Disabilities Act which may include, but is not limited to, offering curbside service or any other reasonable accommodation.

6. **Compliance.** All businesses and establishments as provided for in Section 4 of this Order shall ensure compliance with the provisions of this Order and shall establish a process for verification of compliance upon customer entry into the establishment. A failure to establish and ensure such compliance may result in fines, penalties, and/or any other enforcement measures against the business as set forth in this order and as otherwise authorized by law.

8. **Enforcement:** The Sheriff of Palm Beach County, other law enforcement agencies including municipal law enforcement agencies, and any other personnel authorized by law, including but not limited to, the personnel described in Section 9-37 of the Palm Beach County Code of Ordinances, are authorized to enforce this Order. Compliance and enforcement processes shall include the provision of a warning and opportunity to correct before citations resulting in fines are issued.

Authorized personnel may issue civil citations resulting in fines not to exceed two hundred fifty dollars (\$250) for the first violation and five hundred dollars (\$500) for each additional violation. Each incident of a continuing violation shall be deemed a separate additional violation. A fine schedule specific to individuals and businesses will be established by Board of County Commissioners resolution for implementation of this section.

46. Defendant's Mask Mandate also requires all Palm Beach County businesses and establishments to conspicuously post a sign at all entry points attached to as Exhibit 1 to EO #12, stating:

**BY ORDER OF PALM BEACH COUNTY**

**Facial Coverings Required**

**Absent a legal exception, all patrons must wear facial coverings except while actively consuming food or beverage.** This means you must wear a facial covering when entering, exiting, or otherwise away from your assigned table, including when visiting the restroom.

**Staff must wear facial coverings** during all in-person interactions with the public.

**Social Distancing**

Even while wearing facial coverings, **patrons must, wherever possible, maintain six feet of social distancing**, including while waiting to be seated.

47. Defendant's Mask Mandate also requires all Palm Beach County retail and other establishments to conspicuously post a sign at all entry points attached to the order as Exhibit 2, stating:

**BY ORDER OF PALM BEACH COUNTY**

**Facial Coverings Required**

**Absent a legal exception, all patrons must wear facial coverings**, including while entering, exiting, or otherwise moving around an establishment.

**Staff must wear facial coverings** during all in-person interactions with the public.

**Social Distancing**

Even while wearing facial coverings, **patrons must, wherever possible, maintain six feet of social distancing**, including while waiting to be seated.

*See* Exhibit “D”, pages 7-8.

48. Defendant’s order further states “This Order shall be effective as of 12:01 a.m. on June 25, 2020 and shall automatically expire at 12:01 a.m. on July 24, 2020, unless extended by subsequent order or Board of County Commissioner action. In addition, this Order may be terminated at any time by subsequent order or Board of County Commissioners action.”

49. Plaintiffs are Palm Beach County residents who have and will continue to suffer irreparable harm by Defendant’s Mask Mandate and other unconstitutional restrictions, including social distancing mandates, and any similarly unconstitutional orders enacted by the Palm Beach County Board of Commissioners.

50. On July 7, 2020, during a live, televised public meeting held by the Defendant’s Board of County Commissioners, Palm Beach County Mayor Dave Kerner threatened Palm Beach County residents who were not wearing masks with removal from the public meeting, claiming, “it’s the law.” Around 10:31 A.M., Plaintiff Karen Holme—who is expressly exempt from wearing a mask—was shamed and ousted from the meeting by Defendant’s Mayor for not wearing a mask, despite the fact other officials, including Defendant’s Commissioner Melissa McKinlay, were unmasked at the time. Mayor Kerner stated, “I am going to ask you to leave the chambers or put your mask on . . .” After Plaintiff Karen Holme did not comply with the directive, Mayor Kerner directed a deputy to remove her from the public meeting, stating to Plaintiff, “Please remove yourself from the chamber . . . You are not to return for 24 hours.” *See*: <https://www.msn.com/en-us/video/other/woman-removed-from-palm-beach-county-meeting-for-not-wearing-mask/vi-BB16rByA>. Full video of Defendant’s meeting showing the irreparable harm caused by Defendant’s Mask Mandate is available at Defendant’s Facebook, which further evidences

injunctive relief is necessary to prevent harm to individuals, including but not limited to Plaintiffs and other similarly situated citizens in Palm Beach County. See: <https://www.facebook.com/watch/live/?v=1185865778424371>.

51. The fine schedule for civil citations for violations of Defendant's Mask Mandate includes \$25, \$50 and \$100 fines for individuals and \$250, \$350 and \$500 fines for businesses. See Exhibit "F" ("Each incident of a continuing violation shall be deemed a separate additional violation. Court costs are also assessed by the Clerk of Court for each violation as required by law.")

52. There is a bona fide dispute between the parties and a need for a declaration as to the constitutionality of Defendant's Mask Mandate, as to which the parties have actual, present, adverse, and antagonistic interests. The facts relevant to the dispute are well-known and readily ascertainable. Plaintiffs are not merely seeking legal advice from the court. Plaintiffs present actual disputes and have ascertainable powers, rights, and authority under the Florida Constitution.

## **FLORIDA CONSTITUTION**

### **Basic Rights**

53. Article I, Section 2, of the Florida Constitution states as follows: "Basic rights.—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, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability." Art I, 2, Fla. Const.

54. As the Florida Supreme Court explained in *Traylor v. State*, 596 So. 2d 957 (Fla. 1992):

"When called upon to decide matters of fundamental rights, Florida's state courts are bound under federalist principles to give primacy to our state Constitution and to give independent legal import to every phrase and clause contained therein. We are similarly bound under our Declaration of Rights to construe each provision freely in order to achieve the primary goal of individual freedom and autonomy. The text of our Florida Constitution begins with a Declaration of Rights--a series

of rights so basic that the framers of our Constitution accorded them a place of special privilege. These rights embrace a broad spectrum of enumerated and implied liberties that conjoin to form a single overarching freedom: They protect each individual within our borders from the unjust encroachment of state authority--from whatever official source--into his or her life. Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government.”

55. The Florida Supreme Court, over half a century ago, addressed the fundamental principle of robust individualism that underlies our system of constitutional government in Florida, stating:

“It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights...have cost much, and breathe the spirit of that sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government. No race of hothouse plants could ever have produced and compelled the recognition of such a stalwart set of basic principles, and no such race can preserve them. They say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights of personal liberty and private property, "Thus far shalt thou come, but no farther."

*Id. See also State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 102-03, 120 So. 335, 347 (1929).

### **Freedom of Speech**

56. Article I, Section 4 of the Florida Constitution further states that “No law shall be passed to restrain or abridge the liberty of speech or of the press.” Art I, 4, Fla. Const.

57. Both the federal courts and Florida district courts of appeal have presumed irreparable harm when certain fundamental rights, including freedom of speech are violated. *See Gainesville Woman Care, LLC, et al. v. State*, 210 So. 3d 1243 (Fla. 2017); *see also Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir.1983) (irreparable injury presumed from violation of First Amendment rights “for even minimal periods of time”).

58. “Special rules of decision apply in cases where a statute makes speech punishable as a crime. 'Because First Amendment freedoms need breathing room to survive, government may

regulate in the area only with narrow specificity.” *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405, 418 (1963).

59. When a statute punishes only spoken words it can withstand attack upon its facial constitutionality only if it is not susceptible of application to speech. Statutes regulating speech must punish only unprotected speech and not be susceptible of application to protected expression. *Gooding v. Wilson*, 405 U.S. 518, 522 (1972). Where a legislative enactment is susceptible of application to protected speech, it is constitutionally overbroad and therefore is facially invalid.” *See Lewis v. New Orleans*, 415 U.S. 130, 134 (1974); *Spears v. State*, 337 So. 2d 977 (Fla. 1976).

60. The mere possibility that a statute will ensnare protected as well as unprotected speech may be sufficient to invalidate the statute. *Brown v. State*, 358 So. 2d 16 (Fla. 1978). When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad. *See Southeastern Fisheries Ass'n, Inc. v. Department of Natural Resources*, 453 So. 2d 1351, 1353 (Fla.1984).

61. “The First Amendment to the United States Constitution and Article I, Section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate.” *See, e.g., Texas v. Johnson*, 491 U.S. 397 (1982); *Brown v. Louisiana*, 383 U.S. 131 (1966); *Sult v. State*, 906 So. 2d 1013, 1018 (Fla. 2005).

62. The overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially “because it also threatens others not before the court — those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid.” *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985). The doctrine contemplates the pragmatic judicial

assumption that an overbroad statute will have a chilling effect on protected expression. *City of Daytona Beach v. Del Percio*, 476 So. 2d 197, 202 (Fla.1985); *Sult*, 906 So. 2d 1013 (Fla. 2005).

63. The overbreadth doctrine applies when legislation criminalizes constitutionally protected activities along with unprotected activities, by sweeping too broadly and infringing upon fundamental rights. See *Firestone v. News–Press Publ'g Co.*, 538 So. 2d 457, 459 (Fla.1989) (citing *State v. Gray*, 435 So. 2d 816, 819 (Fla.1983)). The overbreadth doctrine, applied facially, however, is “strong medicine” that must be used sparingly. *Del Percio*, 476 So. 2d at 202 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). Accordingly, the first step in an overbreadth analysis is determining whether the statute restricts First Amendment rights, and whether the restrictions are substantial. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982); *State v. Catalano*, 104 So. 3d 1069, 1078 (Fla. 2012)).

64. “The duty rests upon all courts, state and national, to guard, protect, and enforce every right granted or secured by the Constitution of the United States, whenever such rights are involved in any proceeding before the court and the right is duly and properly claimed or asserted.” *Montgomery v. State*, 55 Fla. 97, 103 (Fla. 1908); *Lieberman v. Marshall*, 236 So. 2d 120 (Fla. 1970).

### **Due Process**

65. The Florida Constitution also guarantees that “No person shall be deprived of life, liberty or property without due process of law”. Art I § 9, Fla. Const.

66. “Substantive law is that which declares what acts are crimes and prescribes the punishment therefor, while procedural law is that which provides or regulates the steps by which one who violates a criminal statute is punished.” *State v. Garcia*, 229 So. 2d 236, 238 (Fla. 1969). However, the distinction between what is substantive and procedural law is not always simple or certain. See

*Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla.2000); *Garcia*, 229 So. 2d at 238; *Barrett v. State*, 862 So. 2d 44 (Fla. App. 2003).

67. “Essentially the same as the federal rational basis test, the Florida rational basis test has played a central role in the separation of powers under the Florida Constitution for decades . . . When a law regulating business or economic matters, which does not create a suspect class or infringe upon a fundamental right, is challenged as violating the substantive due process protected by Florida's Declaration of Rights, the law must be upheld if it bears a rational basis to a legitimate government purpose.” *Silvio Membreno & Fla. Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 19 (Fla. 3rd DCA 2016). However, whenever there is an infringement upon a fundamental right, strict scrutiny analysis requires careful examination of the governmental interest claimed to justify the classification in order to determine whether that interest is substantial and compelling and requires inquiry as to whether the means adopted to achieve the legislative goal are necessarily and precisely drawn. *Examining Board v. Flores De Otero*, 426 U.S. 572, 605 (1976). This test, which is almost always fatal in its application, imposes a heavy burden of justification upon the state and applies only when the statute operates to the disadvantage of some suspect class such as race, nationality, or alienage or impinges upon a fundamental right explicitly or implicitly protected by the constitution. Those fundamental rights to which this test applies have been carefully and narrowly defined by the Supreme Court of the United States and have included rights of a uniquely private nature such as abortions. *See e.g. Roe v. Wade*, 410 U.S. 113 (1973); the right to vote, *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Bullock v. Carter*, 405 U.S. 134 (1972); the right of interstate travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969); free speech rights, *Williams v. Rhodes*, 393 U.S. 23 (1968); and procreation, *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *See also In re Estate of Greenberg*, 390 So.2d 40 (Fla. 1980).



### **Rights to Privacy and to Choose or Refuse Medical Treatment**

68. Additionally, 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”. Art I § 23, Fla. Const.

69. The Florida Constitution’s privacy right embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal constitution. includes the right to liberty. *See Winfield v. Div. of Pari–Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985).

70. Florida’s Right of Privacy also 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. *In re Guardianship of Browning*, 568 So. 2d 4, 9-12 (Fla. 1990)(“Recognizing that one has the inherent right to make choices about medical treatment, we necessarily conclude that this right encompasses all medical choices.”).

71. The Florida Supreme Court “has also [declared] in various contexts that there is a constitutional privacy right to refuse medical treatment. Those cases recognized the state's legitimate interest in (1) the preservation of life, [and] (2) the protection of innocent third parties ... However, we held that these interests were not sufficiently compelling to override the patient's right of self-determination[.]” *Krischer v. McIver*, 697 So. 2d 97, 102 (Fla. 1997).

72. “Recognizing that one has the inherent right to make choices about medical treatment, we necessarily conclude that this right encompasses all medical choices . . . The issue involves a patient's right of self-determination and does not involve what is thought to be in the patient's best interests . . . [A] competent person has the constitutional right to choose or refuse medical treatment

and that right extends to all relevant decisions concerning one's health.” *In re Guardianship of Browning*, 568 So. 2d at 10-11.

73. As Governor DeSantis rightfully stated on June 19, 2020, "the Constitution is not suspended just because you have a pandemic.”

**Defendant’s Mask Mandate Is Subject to Strict Scrutiny**

74. It is well settled that to invade a citizen’s fundamental right of privacy, Defendant 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.”)

75. Strict scrutiny requires the Defendant to show that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means. *See Winfield*, 477 So. 2d at 547 (explaining that where a law intrudes on fundamental right to privacy guaranteed in Florida’s Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

76. To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. *State v. J.P.*, 907 So. 2d at 1110.

77. Where strict scrutiny is required, the offending legislation is presumed to be unconstitutional and the County has the burden of proving that the law passes muster. *N. Fla. Women's Health & Counseling Servs., Inc.*, 866 So. 2d at 625, n.16 (“The legislation is presumptively unconstitutional . . . the State must prove that the legislation furthers a compelling State interest through the least intrusive means”).

### Section 252.38, Florida Statutes – Defendant’s Emergency Powers

78. Under Florida Statute Section 252.38, entitled “Emergency Management Powers of Political Subdivisions”, Defendant Palm Beach County does not have legal authority to create a mandate for citizens to wear facial coverings. Palm Beach County relies on 252.38(5)(a) which states, “. . . and taking whatever *prudent* action is *necessary to ensure* health, safety, and welfare . . .” (emphasis added).

79. “The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments.” § 252.38, Fla. Stat. Defendant’s blatant, willful and audacious disregard for the very limited authority local governments are afforded under Florida law is highlighted by EO #12’s express duration of ***thirty (30) days***, not seven (7).

80. Defendant Palm Beach County’s top officials, including those who voted for Defendant’s Mask Mandate, have also indicated during livestreamed public hearings their interest in extending Defendant’s unlawful Mask Mandate to one year, or perhaps indefinitely.

81. Defendant has not and cannot demonstrate facial coverings are prudent or necessary to ensure health, safety, and welfare. In fact, facial coverings not only do not ensure health, safety, or welfare, but rather can cause serious harm and even death. In fact, multiple children have already died as a result of wearing facial coverings. See <https://nypost.com/2020/05/06/two-boys-drop-dead-in-china-while-wearing-masks-during-gym-class/>. This is further evidenced by Defendant’s attempt to exclude those who have health conditions from the Mask Mandate since it is undeniable wearing masks can be harmful, especially to persons with pre-existing health conditions.

82. As admitted by Defendant, not everyone can wear masks because masks lower oxygen levels when placed tightly on the nose and mouth and humans necessarily use noses and mouths to breath by extrapolating oxygen from air inhaled and then releasing toxins and carbon dioxide

when exhaling—which is common knowledge and basic human science that is taught in grade schools in Palm Beach County and throughout Florida. *See e.g.* "Just Breath! Respiratory Lab" located at <https://www.cpalms.org/Public/PreviewResourceLesson/Preview/129067>. (“As oxygen enters the mouth and nose, it travels down the trachea. It then moves into one of two bronchi that then delivers it to each lung. The diaphragm helps the lungs expand and fill with oxygen as this is happening. The bronchi branches off into alveoli and then directly in to the bloodstream. The red blood cells drop off the oxygen and pick up the carbon dioxide that needs to leave the body. The carbon dioxide travels back out through to bronchi, trachea and finally, through the nose and mouth.”). Restricting oxygen intake with a mask is a hazard for all who need fresh air to survive.

83. Section 252.50, Florida Statutes states, “Any person violating any provision of ss. 252.31-252.90 or any rule or order made pursuant to ss. 252.31-252.90 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

**Section 381.00315, Florida Statutes and State Emergency Orders Powers**

84. Defendant Palm Beach County has no authority, actual or apparent, under Section 381.00315 to force medical treatments upon any individual in Palm Beach County, including but not limited to forcing people to wear medical devices such as facial coverings.

85. Florida Statute 381.00315, “Public Health Advisories; Public Health Emergencies; Isolation and Quarantine” expressly delegates the task of providing treatment during a health emergency, to the State Health Officer, which is the Florida Surgeon General.

86. During a public health emergency, section 381.00315(1)(c)4, Florida Statutes, only permits the State Health Officer to order examination, testing or treatment of individuals. If treatment is ordered, it must be performed by a “qualified person authorized by the State Health Officer.”

87. The State Health Officer, who is the Florida Surgeon General, has not ordered facial coverings be worn or mandated by any individual(s) in Florida, and certainly has not ordered that Palm Beach County impose county-wide medical treatment, such as mandatory facial coverings.

88. The State Health Officer has only issued a **non-mandatory** public health advisory “encouraging” **but not requiring** individuals to follow both CDC recommendations AND safety protocols issued by OSHA. *See* Exhibit “E”. (“All individuals in Florida *should* wear face coverings . . .”) (emphasis added).

89. “[W]hile states and the federal government have wide latitude in issuing emergency orders to protect public safety or health, they do not have carte blanche to impose any measure without justification or judicial review.” *Robinson v. Attorney Gen.*, 20-11401-B, 2020 WL 1952370, at \*5 (11th Cir. Apr. 23, 2020).

#### **Florida Law Surrounding Defendant’s Unlawful Practice of Mass Medicine**

90. Since the Defendant County has taken the unprecedented and completely unlawful step of pretending to be a health care provider for all Palm Beach County residents and visitors, Defendant necessarily falls under the scope of Section 381.026, “Florida’s Patient’s Bill of Rights and Responsibilities”, which provides that it is public policy of Florida that the interests of patients be recognized in a patient’s bill of rights and responsibilities and that a health care facility or health care provider may not require a patient to waive his or her rights as a condition of treatment.

91. However, under Section 381.026(4)(b), Florida’s Patient’s Bill of Rights and Responsibilities, the individual dignity of a patient must be respected at all times, a patient has the right to refuse any treatment and a patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments. Thus, if Defendant

is now pretending to be a health care provider, not only is the Defendant practicing medicine without a license, but Defendant's unlawful Mask Mandate clearly violates the dignity of every patient by eliminating the right to refuse any treatment from all "non-exempt" patients.

92. Medical recommendations and treatments cannot be mandated by health care providers, as well as state or local governments because the law in Florida is clear: Every person has the right "to be let alone and free from government intrusion into the person's private life." Art. I, sec. 23, Fla. Const. This fundamental right to privacy encompasses a person's "right to the sole control of his or her person" and the "right to determine what shall be done with his own body." *In re Guardianship of Browning* at 10. The Florida Supreme Court has specifically recognized that "a competent person has the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning one's health." *Id.* at 11.

93. A patient's fundamental constitutional right to refuse medical intervention "can only be overcome if the state has a compelling state interest great enough to override this constitutional right." *Singletary v. Costello*, 665 So. 2d 1099, 1105 (Fla. 4th DCA 1996); *Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010). Defendant Palm Beach County has no compelling interest in forcing countless Palm Beach County residents to suffocate themselves with medical devices.

94. The requirement that a medical professional be licensed before being able to lawfully render a medical recommendation or medical treatment is necessary to protect citizens from harm and to ensure safe practice. *See Serian v. State*, 588 So. 2d 251, 253 (Fla. 4th DCA 1991) ("... the clear public policy of the state of Florida as expressed in the optometry licensing law is the protection of the citizens of the state . . . It is the legislative intent that such persons who fall below minimum standards or who otherwise present a danger to the public shall be prohibited from practicing in this state.")

95. Medical recommendations and treatments are not one-size-fits-all and necessarily must be determined on an individualized, patient-by-patient basis. Forcing medical treatments upon individuals without informed consent by non-licensed officials, like the Defendant's Commissioners, none of whom are doctors or licensed medical professionals, is unlawful in many ways, including violating both the Florida Constitution and Florida's Patient Bill of Rights.

#### **Recent Cases in Other States Striking Down Unconstitutional State Emergency Orders**

96. In a recent Wisconsin Supreme Court decision striking down the Wisconsin governor's statewide stay-at-home order as unconstitutional, the Court stated, "As the United States Department of Justice has recently written in a COVID-19-related case raising constitutional issues, 'There is no pandemic exception . . . to the fundamental liberties the Constitution' safeguards. Indeed, 'individual rights secured by the Constitution do not disappear during a public health crisis.'" *See Wisconsin Legislature v. Palm*, Case No. 2020AP765.

97. In Ohio, a state court ruled that private property rights are fundamental rights in Ohio, and that the Ohio Department of Health has both violated those rights and exceeded its own authority in "criminalizing lawful businesses, and imposing strict liability for violations, including severe criminal, civil, and equitable penalties" . . . "The director has no statutory authority to close all businesses, including the plaintiffs' gyms ... She has acted in an impermissibly arbitrary, unreasonable, and oppressive manner without any procedural safeguards." *See Rock House Fitness, LLC et al v. Amy Acton, et al.*, Case No. 20CV000631.

98. On Friday, June 26, 2020, a federal court struck down part of an unconstitutional emergency order placing restrictions on religious gatherings, stating "It is not the judiciary's role to second guess the likes of Governor Cuomo or Mayor de Blasio when it comes to decisions they make in such troubling times, that is, until those decisions result in the curtailment of fundamental

rights without compelling justification.” See

<https://www.law.com/newyorklawjournal/2020/06/26/federal-judge-rules-against-new-yorks-outdoor-gathering-restrictions/>.

99. After the State of California’s Governor recently overstepped his power using unlawful emergency orders, a California court entered an order barring California’s Governor “from further exercising any legislative powers in violation of the California Constitution and applicable statute, specifically from unilaterally amending, altering, or changing existing statutory law or making new statutory law.” See <https://sanfrancisco.cbslocal.com/2020/06/12/judge-limits-california-gov-gavin-newsoms-emergency-rule-making-during-pandemic/>

## **COUNT I – DECLARATORY JUDGMENT**

### **LACK OF AUTHORITY**

100. Paragraphs 1 - 99 are incorporated by reference.

101. There simply exists no authority for Defendant Palm Beach County to impose such an arbitrary and utterly unconstitutional and unlawful mandate. Shockingly, non-compliance with the Defendant’s unlawful order will result in either a \$250 or \$500 dollar fine. Additionally, the unlawful Mask Mandate is in direct conflict with the White House "Guidelines for Opening Up America Again," and Governor DeSantis' executive orders which do not require citizens to wear facial coverings anywhere in the United States of America. As opposed to advisory guidelines, Palm Beach County has taken the most restrictive and completely unconstitutional step of requiring that masks be worn under the force of law.

102. Defendant Palm Beach County does not have legal authority under Section 252.38, Florida Statutes to create a mandate for citizens to wear facial coverings.



103. Additionally, the 30-day Mask Mandate is unlawful because it exceeds 7 days as required by § 252.38, Fla. Stat.

104. Moreover, Defendant's unconstitutional Mask Mandate violates Art. VIII § 1 of the Florida Constitution, which provides that "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact ordinances not inconsistent with general law."

105. The Defendant's Mask Mandate recklessly disregards both Florida law and basic constitutional protections shared by millions of Americans, including the Plaintiffs.

106. Defendant has not and cannot demonstrate facial coverings are prudent and necessary to ensure health, safety, and welfare. In fact, facial coverings do not ensure health, safety, or welfare, but rather can cause serious harm and even death, in addition to civil unrest, conflict and division, as well as widespread discrimination. *See e.g.* <https://www.tmz.com/2020/06/27/trader-joes-customer-goes-nuts-over-face-masks/> (Trader Joes shopper ordered to leave store, now being disparaged online for simply trying to buy groceries without a mask due to breathing problems); *see also* <https://news.yahoo.com/dad-two-kids-thrown-walmart-211635150.html> (father and his two children removed from Walmart by police after defying mask mandate).

## **COUNT II - DECLARATORY JUDGMENT**

### **VIOLATION OF BASIC RIGHTS**

107. Paragraphs 1 - 106 are incorporated by reference.

108. Defendant's unconstitutional Mask Mandate clearly violates Art I, 2, Fla. Const. because it deprives persons, including the Plaintiffs, of life, liberty and the pursuit of happiness.

109. Defendant's Mask Mandate not only deprives over a million Palm Beach County residents of the right to breathe, it also jeopardizes the spirit of the sturdy and self-reliant philosophy of individualism which underlies and supports our entire system of government through arbitrary and autocratic power to invade vital rights of personal liberty. *See also State ex rel. Davis*, 97 Fla. 69, 102-03, 120 So. 335, 347 (1929).

### **COUNT III – DECLARATORY JUDGMENT**

#### **VIOLATION OF RIGHT TO DUE PROCESS**

110. Paragraphs 1 - 109 are incorporated by reference.

111. The Palm Beach County Mask Mandate is unconstitutional because it violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution because it deprives Plaintiffs, and countless other citizens of Palm Beach County and the United States of life, liberty or property without due process of law.

112. Defendant's unlawful Mask Mandate is an arbitrary and unreasonable exercise of governmental power. *Noel v. State*, 191 So. 3d 370, 373 (Fla. 2016).

113. The Defendant's unconstitutional Mask Mandate is not only arbitrary and unreasonable, but it is not backed by any compelling state interest or facts proving such an interest.

114. Due process of law protects against the legislative deprivation of life, liberty, or property and this Defendant's Mask Mandate deprives millions of Palm Beach County residents and American citizens, including the Plaintiffs.

115. Moreover, because Defendant's Mask Mandate is unconstitutionally vague, any person violating the unlawful emergency order could be guilty of a misdemeanor of the second degree, pursuant to Section 252.50, Florida Statutes.

#### **COUNT IV – DECLARATORY JUDGMENT**

##### **VIOLATION OF RIGHT TO PRIVACY & BODILY AUTONOMY**

116. Paragraphs 1 - 115 are incorporated by reference.

117. The Defendant's Mask Mandate is unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution and violates every natural person's right to be let alone and free from governmental intrusion into private life.

118. Defendant's Mask Mandate violates the explicit constitutional right of privacy listed in the Florida Constitution, which embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield*, 477 So. 2d at 548.

119. Defendant's unconstitutional Mask Mandate is a radical infringement on the well-settled constitutional and human right to privacy shared by all Floridians, which includes our rights to self-determination, bodily autonomy, medical freedom and liberty. *State v. J.P.*, 907 So. 2d at 1115.

#### **COUNT V – DECLARATORY JUDGMENT**

##### **VIOLATION OF EQUAL PROTECTION**

120. Paragraphs 1 - 119 are incorporated by reference.

121. Defendant's Mask Mandate 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...".

122. By arbitrarily requiring only certain persons or business to comply with Defendant's mask and social distancing mandates, while others do not have to comply, Defendant Palm Beach

County unlawfully treats similarly situated people and businesses differently without any rational or constitutional basis.

123. There is no conceivable state of facts that could provide a rational basis for Defendant's Mask Mandate or any other emergency orders enacted under the guise of disease prevention. Pharmacies, grocery stores, and other places are burdened by unlawful mask and social distancing requirements while other businesses are not. Walmart remains open, yet Defendant Palm Beach County is announcing plans to close the beach to Americans celebrating Independence Day. <https://www.nbcmiami.com/news/local/palm-beach-county-plans-on-closing-its-beaches-for-fourth-of-july-weekend-according-to-mayor/2255082/>.

124. Defendant's unconstitutional Mask Mandate is not rationally related to any legitimate end. Defendant's unlawful mandate bears no rational relationship to a legitimate government interest and blatantly violates the Florida Constitution's Equal Protection Clause. *North Broward Hospital District v. Kalitan*, 219 So. 3d 49, 55 (2017).

## **COUNT VI – DECLARATORY JUDGMENT**

### **VOID FOR VAGUENESS**

125. Paragraphs 1-124 are incorporated by reference.

126. Defendant's Mask Mandate also violates Art. 1 § 9 of the Florida Constitution because it is void for vagueness.

127. Defendant's Mask Mandate 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)).

128. Defendant's unlawful Mask Mandate is so ridiculously vague, by exempting "persons who have a medical condition that makes the wearing of a facial covering unsafe such as, but not limited to, asthma, COPD, *other conditions that reduce breathing or lung capacity*", that the Defendant has included as exempt (in a mandate targeting "stopping the spread of COVID") persons who have medical conditions exactly like COVID-19, which can reduce breathing and lung capacity. The absurdity of the Mask Mandate is revealed by overwhelming scientific evidence showing masks can't stop the spread of COVID-19.

129. There are various terms in Defendant's confusing and inexplicable Mask Mandate that are not defined and clearly too vague for the average person to understand, resulting in forcing millions of Palm Beach County residents and visitors, including the Plaintiffs, to guess at the meanings and be subjected to punishment and criminal consequence. These are just some examples of the vague and undefined language and terms in EO #12:

- "obtaining any good or service or otherwise visiting or working in any business or establishment, including entering, exiting, and otherwise moving around within the establishment";
- "Where social distancing in accordance with CDC guidelines is not possible or not being practiced";
- "Any outdoor areas that are open and regularly accessible";
- "...or any other activity requiring a presence in a governmental building";
- "children under 2 years of age";
- "federal or state safety or health regulations";
- "or other life safety personal that have Personal Protective Equipment requirements governed by their respective agencies";
- "engaged in exercise";
- "facial grooming and treatment";
- "medical condition";
- "unsafe";
- "removed temporarily";
- "hearing impaired";
- "persons who are unable to safely utilize face covering" ;

- “or any other reasonable accommodation”;
- “process for verification”;
- “and as otherwise authorized by law”;
- “religious beliefs and practices”; and
- “persons”

130. Defendant’s Mask Mandate is void for vagueness because it arbitrarily and absurdly discriminates against anyone over the age of 2 years of age, and countless citizens, including the Plaintiffs who do not fall within any of the unlawful order’s vague and ambiguous exceptions.

131. Defendant’s unlawful Mask Mandate does not define “businesses and establishments” and by referring to “businesses or establishments of any type” millions are left to guess what businesses means. Is a food truck an establishment? Is a storage locker an establishment? The frequent use of the words “including, but not limited to” throughout the order makes these terms even more overly broad and rendering the Mask Mandate void for vagueness.

132. It is unclear whether Defendant’s Mask mandate includes condominiums, but if so, it would be an attempt to amend Florida condominium law without consent of the legislature, or voters.

133. Defendant’s unconstitutionally vague Mask Mandate does not define “persons”, so it is unclear whether the term includes residents, visitors, or both. Are non-citizens included? One is only left to guess, which is why the unlawful order is void for vagueness.

134. Moreover, Defendant’s Mask Mandate is impermissibly vague because it does not define “public places”. It also discriminates against multi-family housing, like apartments and condominiums, by only exempting single family homes.

135. The unconstitutionally vague “medical condition” exception is so vague that by exempting “persons who have a medical condition that makes the wearing of a facial covering unsafe such as, but not limited to, asthma, COPD, other conditions that reduce breathing or lung capacity” the

Defendant has actually included as exempt from the mandate persons who have COVID-19, which can reduce breathing and lung capacity, thus negating the order's stated purpose.

## **COUNT VII - DECLARATORY JUDGMENT**

### **VIOLATION OF FREEDOM OF SPEECH**

136. Paragraphs 1 - 135 are incorporated by reference.

137. The Defendant's unlawful Mask Mandate is also clearly unconstitutional because it violates the freedom of speech of millions of Palm Beach County residents and visitors guaranteed by Article 1 § 4 of the Florida Constitution, which reads in pertinent part "No law shall be passed to restrain or abridge the liberty of speech ..."

138. Defendant's unlawful Mask Mandate unquestionably restrains verbal as well non-verbal speech critical for the ability of countless citizens in Palm Beach County to communicate effectively and has had a devastating chilling effect on freedom of speech in Palm Beach County.

139. There are countless examples of Defendant's unmasked officials and employees, including but not limited to the Palm Beach County Board of Commissioners, not practicing what they preach, often when speaking during formal televised meetings and press conferences so their own speech is not impaired and can communicate effectively. Defendant's double standard has been documented extensively by citizens, journalists, and civil liberties organizations alike.

140. It is without doubt that facial coverings severely impinge on speaking and not only impairs speech, but also discourages people from speaking or communicating with others due to difficulties such as inability to hear a muffled voice, or difficulties breathing, as many experience while being forced to wear suffocating medical devices.

141. Defendant's unconstitutional Mask Mandate recklessly discriminates against thousands of facial expressions which do not fall within arbitrary and inexplicable exceptions.

142. Defendant's Mask Mandate violates freedom of speech because a mask is in and of itself a form of speech. By forcing countless individuals, including the Plaintiffs to wear a mask or a muzzle, Defendant Palm Beach County, has not protected anyone from harm or disease, but rather unjustly and unlawfully forced a warped and potentially harmful form of speech upon millions.

143. Defendant's Mask Mandate's infringement upon freedom of speech is so egregious that it infringes upon childhood development and the learning of speech. Children, as well as adults, need to see mouths moving and facial expressions to develop speech and learn to communicate properly as living, breathing human beings have been for countless generations. Without question, Defendant's Mask Mandate literally curbs free speech for over a million people in Palm Beach County, including kids still learning how to speak but now must do so wearing a harmful medical device that impedes and prevents speech.

### **COUNT VIII**

#### **PERMANENT INJUNCTION**

144. Paragraphs 1 – 143 are incorporated by reference.

145. Unless a permanent injunction is issued, Plaintiffs and millions of similarly situated citizens will suffer irreparable harm because their constitutional rights are being violated.

146. Defendant's unlawful Mask Mandate infringes upon the Plaintiffs rights guaranteed by the Florida Constitution.

147. Worse, the Plaintiffs will be fined and could even face arrest and imprisonment if they do not comply with the unconstitutional mandate.

148. There is a significant likelihood of irreparable harm to the Plaintiffs as well as roughly 1.5 million Palm Beach County residents resulting from enforcement of the Mask Mandate.

149. The Plaintiffs lack an adequate remedy at law.



150. No other remedy exists to protect the Plaintiffs' rights, which are being infringed upon by the Defendant.

151. 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)).

152. The deprivation of the Plaintiffs' constitutional rights cannot be remedied by money or any judgment other than an injunction. The Plaintiffs have been deprived of the ability to move freely, disallowing them to be "let alone and free." Art. 1 § 23, Fla. Const.

153. Defendant's Mask Mandate is presumptively invalid since it implicates and infringes the Plaintiffs' privacy rights. 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 and Defendant is unable to justify such an infringement. *Weaver v. Myers*, 229 So. 3d 1118, 1133 (Fla. 2017).

154. Moreover, Plaintiffs' constitutional rights of privacy guaranteed by 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 and includes the right to liberty. *Winfield*, 477 So. 2d at 548; *State v. J.P.*, 907 So. 2d at 1115 (holding that the Florida constitutional right to privacy includes the right to liberty and self-determination).

155. Furthermore, Defendant Palm Beach County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Palm Beach County commission regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion.

156. A permanent injunction of Defendant's Mask Mandate will serve the public interest. Millions of Palm Beach County residents and visitors are burdened by the over-reach of their local government in a fashion not seen before in the history of Florida. The mask requirement violates both the Plaintiffs' and the public's fundamental Florida Constitutional rights. 1,497,000 Palm Beach 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 and in public.

**REQUEST FOR EXPEDITED CONSIDERATION**

157. Plaintiffs respectfully request that this Court expedite consideration of this action pursuant to § 86.111, Fla. Stat., which authorizes the Court to "order a speedy hearing of an action for a declaratory judgment" and "advance it on the calendar."

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter:

- a) a declaration that Defendant Palm Beach County lacked the authority to mandate a mask requirement under Florida law.
- b) a declaration that the Defendant Palm Beach County's Mask Mandate violates Article I Sections 2, 4, 9 and 23 of the Florida Constitution;
- c) an injunction enjoining Defendant Palm Beach County from enforcing its unconstitutional and unlawful Mask Mandate;
- d) an injunction enjoining Defendant Palm Beach County from violating the Florida Constitution and any and all applicable statutes; and
- e) any and all further relief as is just and proper.

### **VERIFICATION**

I hereby swear or affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge. /s/ Louis Leo IV, Counsel for the Plaintiffs.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed to all counsel and parties of record using the Florida Courts E-Filing portal system.

**DATED** this 12th day of July, 2020.

Respectfully Submitted,

/s/ Louis Leo IV

**Louis Leo IV, Esq.**

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