IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

LINDA CUADROS,

Plaintiff,

vs.

MIAMI-DADE COUNTY,

Defendant.
_____/

CASE NO.: 20-012841-CA-27

MIAMI-DADE COUNTY'S MOTION TO DISMISS COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

On the day this case was filed, over one hundred thousand Floridians had been previously diagnosed with coronavirus disease 2019 ("COVID-19"). As of the date of this response, 269,811 Floridians have been infected. The numbers of the ill have grown, day after day after day. Over twenty five percent of those diagnosed in Florida are residents of Miami-Dade County. 4,242 Floridians are dead. Children are suffering from previously rare autoimmune symptoms brought on by COVID-19. There are no studies on the long-term effects of COVID-19 infection. The virus is highly communicable with a potentially long incubation period. It can be spread by people who do not even know they are sick, and who become unwitting agents of spread through the simple act of breathing in public. *See S. Bay United Pentecostal Church v. Newsome*, 140 S. Ct. 1613 (2020) (Roberts, C.J., concurring). There is no known vaccine. The true toll of this pandemic may not be known for years.

Without a vaccine, viral spread can be contained only by two methods. The first is social distancing. Accordingly, Governor DeSantis has issued mandatory quarantines on individuals traveling to Florida from New York and Louisiana, and has issued sweeping orders partially

closing businesses statewide to control the rate of infection. Miami-Dade County has also taken extraordinary actions in response to these extraordinary times, issuing emergency orders designed to slow the spread of illness, preserve hospital capacity, and to avoid widespread deaths of Miami-Dade County residents.

The second, simpler response, is for everyone to wear masks in public areas, to prevent an asymptomatic person from unknowingly spreading illness to others. For that reason, the County enacted Emergency Order 20-20, which requires individuals to cover their mouth and nose when in public.[1]

And it is this minimal requirement to safeguard public health to which Plaintiff objects. Plaintiff argues that this simple, easy, and cost-effective intervention to limit the spread of this deadly disease is unconstitutional—that the Florida Constitution's rights to due process, equal protection, and privacy give her the right to forego wearing an ordinary cloth mask in public. In essence, Plaintiff claims that she has the right to thoughtlessly infect others as she goes unmasked into public. She demands the right to expel tainted droplets and secretions containing potentially millions of virus particles onto other peoples' clothes, into other peoples' food, and onto other peoples' faces, and that somehow this right trumps other peoples' rights to protect their own bodies.

Plaintiffs' purported freedom to spread disease finds no constitutional support. From the founding of our nation, courts have recognized that the U.S. Constitution, which informs the Florida Constitution, authorizes regulation of individual conduct when that conduct has the potential to harm others. This concept is often expressed as "your right to swing your arms ends

[1] True and correct copies of Emergency Order 20-20, as in effect as of the date of the filling of this action, are attached hereto as Exhibit A. A true and correct copy of Emergency Order 20-20, as is amended and as currently effective, is attached hereto as Exhibit B.

just where the other man's nose begins." *See* Chafee, Freedom of Speech in War Time, 32 Harv. L. Rev. 932, 957 (1919).

This authority is at its strongest when dealing with a public health crisis such as the one we currently find ourselves in. As the Florida Supreme Court has long recognized:

> [T]he preservation of the public health is one of the prime duties resting upon the sovereign power of the State. The health of the people has long been recognized as one of the greatest social and economic blessings. The enactment and enforcement of necessary and appropriate health laws and regulations is a legitimate exercise of the police power which is inherent in the State and which it cannot surrender.

Varholy v. Sweat, 15 So. 2d 267, 269-70 (Fla. 1943). Certainly, no court has ever recognized a right under the U.S. or Florida Constitutions for an individual to forgo even the most minimal precautions and to freely walk into an enclosed public space while at risk for spreading a highly virulent and deadly disease.

Not only does Plaintiff's complaint lack a legal basis, but also it fails to allege a factual basis. Plaintiff asks this Court to shackle the County's response to a pandemic but utterly fails to allege any concrete injury. Her interest in this case appears to be philosophical, not actual. But philosophical objections do not confer standing to bring any claim, much less one that asks a court to invent a new fundamental right to "facial autonomy."

This Court cannot grant the relief Plaintiff seeks, not just because she has alleged no actual injury to be remedied. The Florida Constitution neither recognizes nor protects a right to spread sickness and disease to non-consenting people. To the contrary, the Florida Constitution allows—perhaps even mandates—government to respond to immediate threats to the polity from infectious disease. Plaintiff's frivolous complaint must be dismissed with prejudice.

FACTS[2]

Humans have no natural resistance to COVID-19. It is a highly transmissible disease that has killed over 133,000 Americans.[3] *See S. Bay United Pentecostal Church v. Newsome*, 140 S Ct. 1613 (2020) (Roberts, C.J., concurring). It attacks multiple organs throughout the body, and can result in lung failure, stroke, kidney failure, and autoimmune responses in which the body attacks itself. It has killed over 1,000 County residents. *See* Exhibit B, County Order at p. 1.

Recognizing the unprecedented nature of this pandemic, Gov. DeSantis issued a public health emergency on March 1, 2020; at that time there were only 2 confirmed cases in Florida. *See* Office of the Governor, Executive Order 20-51 (March 1, 2020). On March 9, 2020, Gov. DeSantis declared a State of Emergency, as cases had spread to eight distinct counties. *See* Office of the Governor, Executive Order 20-52 (March 9, 2020). Pursuant to these authorities, and in a bid to contain this spread, Gov. DeSantis issued orders drastically curtailing everyday life in Florida: he closed bars and restaurants for weeks, banned non-emergency medical procedures, closed nursing homes to visitors, and required that any person—including Florida residents—traveling into the state from New York or Louisiana be quarantined for 14 days, whether such persons were sick or not. *See* Office of the Governor, Executive Order 20-82 (March 24, 2020); Office of the Governor, Executive Order 20-111 (April 29, 2020).

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[2] The County respectfully requests that the Court take judicial notice of the facts set forth herein that are not drawn from the allegations in the Complaint, as these additional facts are both "generally known within the territorial jurisdiction of the court" and "capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned." § 90.202(11), (12), Fla. Stat. Moreover, a court must take notice of any matter set forth in § 90.202 when a party: requests it; gives the adverse party timely written notice of the request, proof of which is filed with the court; and furnishes sufficient information to the court. Fla. Evid. Code § 90.203.

[3] "As Covid-19 Cases Hit Records in U.S., Deaths Begin Trending Higher", Prang, Allison (Wall Street Journal, July 10, 2020) available at https://www.wsj.com/articles/coronavirus-latest-news-07-10-2020-11594368064

Miami-Dade County declared a State of Local Emergency on March 13, 2020, invoking authority both under section 252.46, Florida Statutes, and also under chapter 8B of the Code of Miami-Dade County.[4] *See* Miami-Dade County Declaration of Local State of Emergency (March 12, 2020). Both the statute and the code grant the County broad authority to issue emergency orders—having the force of law—as needed to preserve human life and health. Like the Governor, the County closed non-essential businesses, closed parks, limited gatherings on public streets, and required that people wear masks while in certain public places, such as grocery stores, where social distancing is difficult to maintain. *See* Miami-Dade County Emergency Orders 07-20 (March 19, 2020); 10-20 (March 24, 2020); 20-20 (April 9, 2020). Emergency Order 20-20 (the "County Order") incorporates the CDC guidance on the wearing of masks and cloth facial coverings. *See* Exhibit B, County Order, paragraphs (1) and (2).

The Centers for Disease Control "recommends wearing cloth face coverings"—masks—"in public settings."[5] As the CDC has advised, COVID-19 spreads primarily when an infected person expels aerosol droplets, which contain millions of virus particles. These droplets spray out when a person talks, sings, yells, coughs, or sneezes.[6] These droplets are then inhaled or ingested by another person, who then becomes an unwilling host for the disease. *See* Order, Exhibit B, at

[4] Pursuant to Florida Evidence Code § 90.202(10), this Court may take judicial notice of "[d]uly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies." Moreover, a court must take notice of any matter set forth in § 90.202 in accordance with Fla. Evid. Code § 90.203. The Emergency Management provisions of the County Code, which were adopted by ordinance, are available online at: https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH8BEMMA. All local emergency orders adopted pursuant to that authority to address COVID-19 are available online at: https://www.miamidade.gov/global/initiatives/coronavirus/emergency-orders.page. The Court may take judicial notice of those orders pursuant to § 90.202(11) and (12). *See supra* n. 1.

[5] The CDC guidance may be found at https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html

[6] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html

p. 1. A mask is a physical barrier that limits the projection of these droplets, protecting the people around you.[7] *Id.* Masking is critical to slow the spread of the pandemic, as an infected person can spread the disease without feeling sick; asymptomatic spread is a critical driver of the spread of this illness. *See* Emergency Order 20-20, Exhibit B. If people only isolate themselves once they feel sick, or only begin to wear a mask once they become ill, it is likely that they have already unwittingly spread COVID-19. If those people had instead worn masks, they would have markedly reduced their risk of unwitting transmission. Both the Surgeon General of Florida and the medical experts consulted by the County recommend that persons wear masks when in public.[8] *See* Order, Exhibit B, at p. 2.

The County Order does not require store bought masks and allows homemade facial coverings.[9] See Emergency Order 20-20, paragraphs 1 and 2. It includes a clear link to the CDC guidance on masks and other facial coverings. It provides a clear definition of cloth facial coverings and masks, as defined by the CDC. *Id.* The County Order does not make children under two wear masks, nor does it require facial coverings for persons with chronic breathing difficulties, persons engaged in strenuous activities, and various other exemptions. *Id.* at paragraph 3. To date, the County has not arrested or prosecuted any firm on individual for violation of the County Order.

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[7] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html

[8] The Public Health Advisory issued on July 2, 2020, by the State Surgeon General may be found at: https://floridahealthcovid19.gov/wp-content/uploads/2020/06/20200622-SOF-DOH-Public-Health-Advisory.pdf

[9] Although Plaintiff did not attach the then-operative County Order to the Complaint, she expressly referenced it throughout her allegations and thus incorporated it in her pleading. Documents incorporated into the complaint by reference are controlling, even if they are not attached, and they should be considered by the Court as part of the complaint. *One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 752 (Fla. 4th DCA 2015) ("[W]here the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss."). The County Order in effect at the time of Plaintiff's filing is attached as Exhibit A. The current effective County Order, as amended, is Exhibit B.

STANDARD OF REVIEW

"When ruling on a motion to dismiss for failure to state a cause of action, the trial court must 'treat as true all of the . . . complaint's well-pleaded allegations, including those that incorporate attachments, and to look no further than the ... complaint and its attachments.'" *Romo v. Amedex Ins. Co*., 930 So. 2d 643, 648 (Fla. 3d DCA 2006) (quoting *City of Gainesville v. State, Dep't of Transp*., 778 So. 2d 519, 522 (Fla. 1st DCA 2001)). Where there is a conflict between the attachments and the representations in the complaint, the attachments to the complaint control. *See Fladell v. Palm Beach Cnty. Canvassing Bd*., 772 So. 2d 1240, 1242 (Fla. 2000) ("If an exhibit facially negates the cause of action asserted, the document attached as an exhibit controls and must be considered in determining a motion to dismiss."); *Appel v. Lexington Ins. Co.*, 29 So. 3d 377, 379 (Fla. 5th DCA 2010) ("Where a document on which the pleader relies in the complaint directly conflicts with the allegations of the complaint, the variance is fatal and the complaint is subject to dismissal for failure to state a cause of action."). And, notwithstanding the four corners of the complaint, "where the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss." *One Call Prop. Serv.*, 165 So. 3d at 752 (*See Veal v. Voyager Prop. & Cas. Ins*. Co., 51 So.3d 1246, 1249 (Fla. 2d DCA 2011) (rejecting argument that the trial court erred by considering the contents of a settlement agreement that was attached to a motion to dismiss).

Where, as here, a facial constitutional challenge is brought against a government regulation, "the complaint must demonstrate that no set of circumstances exists in which the statute can be constitutionally applied." *See Fla. Dep't of Revenue v. City of Gainesville,* 918 So. 2d 250, 256 (Fla. 2005); *see also Cashatt v. State,* 873 So. 2d 430, 434 (Fla. 1st DCA 2004) ("A facial challenge to a statute is more difficult than an 'as applied' challenge, because the challenger must

establish that no set of circumstances exists under which the statute would be valid."). And, a court must afford "a presumption of constitutionality and construe the challenged legislation to effect a constitutional outcome when possible." *Abdool v. Bondi*, 141 So. 3d 529, 550 (Fla. 2014) (citing *Fla. Dep't of Revenue v. Howard,* 916 So. 2d 640, 642 (Fla. 2005)). A plaintiff cannot maintain a cause of action by pointing out that the order "could operate unconstitutionally under some hypothetical circumstances." *Abdool*, 141 So. 3d at 538.

ARGUMENT

Plaintiff seeks declaratory and injunctive relief, arguing that the County Order is fatally inconsistent with the Due Process, Equal Protection, and Privacy provisions of the Florida Constitution; that it is void for vagueness; and that it is not authorized by the County Code. These arguments fail in their entirety: they are wholly unsupported by the Florida Constitution and by Florida precedent. It is instead overwhelmingly clear, from over 120 years of case law, that governments may, in the face of an unprecedented worldwide pandemic, take actions to protect the lives and safety of their residents. This action must be dismissed in its entirety.

Plaintiff's Declaratory Relief Claim Fails Because She Alleges No Real Injury.

"[C]itizens and taxpayers lack standing to challenge government action unless they demonstrate either a special injury, different from the injuries to other taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs taxing and spending powers." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). Moreover, "the bare assertion that [a plaintiff's] legal rights will be affected…without alleging how or why is simply not sufficient to demonstrate that any question now exists which requires an answer through operation of the Declaratory Judgment Act." *Williams v. Howard*, 329 So. 2d 277, 281 (Fla. 1976); *see also LaBella v. Food Fair, Inc.*, 406 So. 2d 1216, 1217 (Fla. 3d DCA 1981) (quoting *Williams*,

329 So. 2d at 283)("Florida courts will not render, in the form of a declaratory judgment, what amounts to an advisory opinion at the instance of parties who show merely the possibility of legal injury on the basis of a hypothetical 'state of facts which have not arisen' and are only 'contingent, uncertain, [and] rest in the future.'"). The issue of "[s]tanding is a threshold issue which must be resolved before reaching the merits of a case." *Solares*, 166 So. 3d at 888.

Here, Plaintiff has only alleged that she is "personally, financially, and negatively affected by the mandate to wear a mask" and that the "travel agency she owns has been burdened by the mask mandate." Compl. ¶ 10. These conclusory allegations—which describe no discrete, particular, identifiable injury of any kind—are insufficient to confer standing on a plaintiff. *See Liebman v. City of Miami*, 279 So. 3d 747, 752 (Fla. 3d DCA 2019), *reh'g denied* (Sept. 12, 2019), *review denied*, SC19-1777, 2020 WL 3412107 (Fla. June 22, 2020) (speculative possibilities, based on factual assumptions pertaining to events that only might occur at some uncertain time in the future, do not create the necessary standing for declaratory or injunctive relief"); *Stein v. BBX Capital Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018) ("While we must accept the facts alleged as true and make all reasonable inferences in favor of the pleader . . . conclusory allegations are insufficient") (citations omitted); *Shands Teaching Hosp. & Clinics, Inc. v. Estate of Lawson ex rel. Lawson*, 175 So. 3d 327, 331 (Fla. 1st DCA 2015) (en banc).

The "mechanical recitation" of the elements of a cause of action supported only by "conclusory allegations" are insufficient to grant this Court jurisdiction. *Turnberry Vill. N. Tower Condo. Ass'n, Inc. v. Turnberry Vill. S. Tower Condo. Ass'n, Inc.*, 224 So. 3d 266, 267 (Fla. 3d DCA 2017). Appeals to inchoate notions of liberty do not describe concrete injury. *See Picou v. Gillum*, 874 F. 2d 1519, 1521 (11th Cir. 1989) ("Bare invocation of a right to be let alone is an

appealing rhetorical device, but it seldom advances legal inquiry, as the "right"—to the extent it exists—has no meaning outside its application to specific activities.").

As the burdens the County Order imposes are *de minimis*, it is perhaps unsurprising that Plaintiff cannot identify any specific, concrete injury the County Order has caused her.[10] The single allegation, that she has been "personally, financially, and negatively" affected by the County Order, is the barest of statements possible. The complaint provides no clue as to her actual injury. Absent a clearly articulated, particular injury, Plaintiff cannot invoke the jurisdiction of this Court. As Plaintiff cannot even articulate the burden the County Order allegedly places on her, she cannot invoke the Declaratory Relief Act, and Count II must therefore be dismissed.

The Florida Constitution's Privacy Clause Does Not Provide a Right to Spread Disease.

The Florida Constitution provides that each "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." Art. I, § 23, Fla. Const. Plaintiff complains that a requirement to cover her mouth and nose with a cloth mask ***when in public*** is an intrusion into her private life that robs her of "bodily and facial autonomy." Compl. at ¶ 13.[11] This position is wholly inconsistent with Florida law.

In alleging such an absolute entitlement, Plaintiff fundamentally misunderstands the Florida Constitution, which nowhere embraces her absolutist reading. Florida's right to privacy

[10] Plaintiff—a travel agent—is, if anything, likely benefiting from the County Order. The ongoing COVID-19 emergency, and the various quarantines imposed on people both entering and leaving Florida, have decimated the travel industry. *See, e.g.* "COVID Resurgence Threatens Travel Rebound", Sider, Allison (Wall Street Journal, July 7, 2020). Reducing infections, and restoring the confidence to travel, is to Plaintiff's commercial benefit.

[11] Plaintiff appears to be borrowing conceptually from California in defining "bodily autonomy" and "facial autonomy." California courts have invoked a right to bodily autonomy as mandating state funding of abortion services for indigents, *Comm. to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 275, 625 P.2d 779, 793 (Cal. 1981)), prohibiting state limitations on abortion, *People v. Belous*, 71 Cal. 2d 954, 960, 458 P. 2d 194, 197 (Cal. 1969), and allowing strangers to take pictures of unconsenting children. *Parrish v. Superior Court*, 118 Cal. Rptr. 2d 279 (2002). But Florida is not California, and it neither should nor can follow California down this path.

"was not intended to provide an absolute guarantee against all governmental intrusion into the private life of an individual." *Winfield v. Div. of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985) (quoting *Fla. Bd. of Bar Exam'rs re Applicant,* 443 So. 2d 71, 74 (Fla. 1983)); *see also State v. J.P.*, 907 So. 2d 1101, 1124 (Fla. 2004) ("the right to privacy is not a wild card that, when played, suddenly renders any ordinance unconstitutional.") (Cantero, J. dissenting). It does not create penumbras or emanations from which Florida judges can create new rights. It does not undo all governmental authority.

Instead, the provision's reach is limited. As the Florida Supreme Court has recognized, "practically any law interferes in some manner with someone's right of privacy…[a]s the representative of the people, the legislature is charged with the responsibility of deciding where to draw the line. Only when that decision clearly transgresses private rights should the courts interfere." *Stall v. State*, 570 So. 2d 257, 261 (Fla. 1990) (quoting *In re T.W.*, 551 So. 2d 1186, 1204 (Fla. 1989) (Grimes, J., concurring in part, dissenting in part)); *compare with Membreno v. City of Hialeah*, 188 So. 3d 13, 22 (Fla. 3d DCA 2016)("A situation viewed as perfectly acceptable in one community may be viewed as a crisis in another . . . .only democratically elected representative bodies are competent to form the sorts of legislative judgments upon which these legislative choices are based.")

Here, the only courts to examine an order mandating the wearing of masks in response to COVID-19 concluded that it does not violate the right to privacy. *See Ham v. Alachua County*, Case No. 01-2020 CA 001249, Order Denying Request For Temporary Injunction (May 26, 2020) (attached hereto as Exhibit C).[12] That court unequivocally held that "there is no clearly recognized

[12] At the July 9, 2020, hearing on Plaintiff's Motion for Temporary Injunction in the case of *Powers v. Leon County*, Case No. 12-001200, which raised identical challenges, Judge Cooper ruled from the bench that the Leon County's mandatory mask order was constitutional. *See* "Judge

constitutional right not to wear a facial covering in public locations or to expose other citizens of the County to a contagious and potentially lethal virus during a declared pandemic emergency." *Id.* at 2-3.

This conclusion is unsurprising, as Florida's right to privacy is confined to protecting those limited instances where a person actually has a reasonable expectation of privacy. *See Winfield*, 477 So. 2d at 547. Where one has no reasonable expectation of privacy, there is nothing for the privacy clause to protect. *Palm Beach County v. D.B.*, 784 So. 2d 585, 588 (Fla. 4th DCA 2001) ("before the right to privacy attaches and the standard is applied, a reasonable expectation of privacy must exist . . . whether an individual has a legitimate expectation of privacy is determined by considering all the circumstances, especially objective manifestations of that expectation"). Thus, for example, in *North Miami v. Kurtz*, the Florida Supreme Court held that there was no privacy right in hiding one's status as a smoker, as "individuals must reveal whether they smoke in almost every aspect of life in today's society." 653 So. 2d 1025, 1028 (Fla. 1995) (quoting *Stall*, 570 So. 2d at 260). In reaching that conclusion, the Supreme Court relied on the myriad restrictions private actors imposed on smokers, including smoking and non-smoking sections in restaurants and separate hotel rooms for smokers and non-smokers. *Id.* These privately-imposed constraints indicated that "smokers are constantly required to reveal whether they smoke" and thus a smoker could not assert a reasonable expectation of privacy in their smoking habits. *Id.*

Here, it is obvious that a person may objectively expect reasonable constraints on dress and appearance in public spaces. "No shirts, no shoes, no service" signs are so commonplace as to be almost unnoticeable. Schools impose dress codes on their students. Disney World has a dress

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Upholds Leon County Mask Ordinance, Says It Does Not Violate Any Constitutional Rights", Ettters, Karl (Tallahassee Democrat, July 10, 2020). The Court's order has not yet been reduced to writing, and copy will be provided once available.

code—which currently mandates masks—and may refuse entry to those who break it. Airlines may refuse to fly passengers who don't wear proper attire, including masks. A lawyer cannot come into court wearing shorts or a T-shirt and expect to have their case heard. Florida law does not allow one to go into public naked, even in the face of claims that that nudity is a form of religious practice. *S. Florida Free Beaches, Inc. v. City of Miami*, 734 F. 2d 608, 610 (11th Cir. 1984) ("T]he first amendment does not clothe these plaintiffs with a constitutional right to sunbathe in the nude. Neither do they possess a constitutional right of associating in the nude."). Chefs and cooks must wear hair nets; tattoo artists must legally wear gloves. *See* 5K-4.004(6)(b)(5), F.A.C. (2020); 64E-28.009, F.A.C. (2020)(8)(c).

In sum, going into public spaces requires a person to suborn their fashion wishes to the moral, aesthetic, and legal judgment of society. It is objectively manifest that a person must expect constraints on what can be worn in public, and can expect to be excluded from public areas if dressed inappropriately. Whatever rights a person may have to dress themselves in private, that person can have no reasonable expectation that their choice of what to wear or not wear in public will not limit their freedom to enter into various buildings or businesses.[13] Acts that might be protected in private are not protected if performed in public; the right to enjoy obscene material in the privacy of your home does not imply a right to impose that material on the public. *Id.* at 591.

The County Order is consistent with this commonly-held expectation of privacy—or, in this case, lack thereof. The County Order does not apply to a person in their private sphere: a person is not required to wear a cloth mask in their home or in their car. But a mask is required to enter a public space where others may be at risk. No one has an expectation of privacy regarding entry into these public spaces. However broad Plaintiff wants to argue her right of privacy is, "it

[13] A person may have a right to be a nudist in their private home. But that doesn't mean they have the right to be a nudist at La Carretta.

is not so broad that a person can take it with him to the store." *Florida Board of Bar Examiners re Applicant,* 443 So. 2d 71, 74 (Fla. 1983) (citing *State v. Long*, 544 So. 2d 219, 222 (Fla. 2d DCA 1989)), *approved sub nom. Stall v. State*, 570 So. 2d 257 (Fla. 1990) (citation omitted). As there is no reasonable expectation to enter public spaces wearing only what the individual consents to wear, the Florida Constitution's Right to Privacy is unconcerned with the County Order.[14] There is no right to privacy in this context.

The same is true under the U.S. Constitution. For example, the Eleventh Circuit concluded that mandatory helmet laws for motorcycle riders are constitutionally valid, because the public bears the cost of motorcycle injuries. These laws, while applying only to motorcyclists, have benefits that redound throughout the polity:

> It is true that a primary aim of the helmet law is prevention of unnecessary injury to the cyclist himself. But the costs of this injury may be borne by the public. A motorcyclist without a helmet is more likely to suffer serious head injury than one wearing the prescribed headgear. State and local governments provide police and ambulance services, and the injured cyclist may be hospitalized at public expense. If permanently disabled, the cyclist could require public assistance for many years.

Picou, 874 F. 2d at 1522. Helmets also make motorcyclists less prone to distraction, and thus make the roads safer for all. As an individual's decision to not wear a helmet creates harms to the general public, there is no private right at issue and thus no Constitutional violation if the state mandates wearing a helmet.

The County Order operates in a similar fashion. The impacts from COVID-19 are real and undisputed. *See S. Bay United Pentecostal Church v. Newsome*, 140 S Ct. 1613 (2020) (Roberts, C.J., concurring). It is spreading in this community, invisibly, day after day. Inevitably, the wider it spreads, the more deaths will accrue. It is also undisputed that facial coverings help reduce the

[14] If the County lacks the authority to mandate wearing masks in public to protect the public health, it is difficult to see how the state has the authority to mandate wearing pants in public to protect public morals.

spread of COVID-19. As Plaintiff concedes, the CDC and Gov. DeSantis both urge the use of masks. The Surgeons General of Florida and the United States also recommend wearing masks in public. Indeed, a person who does not wear a mask puts others at risk, and those risks metastasize into the community: as COVID-19 spreads, it takes a toll in human life, in hospital capacity, in public financial resources, and in private financial pain to both business owners and consumers. Neither the Florida nor the U.S. Constitution mandate the polity to socialize these costs in exchange merely because an individual does not want to wear a mask in public.

The County Order itself refers to the effectiveness of masks in slowing the spread of an acknowledged pandemic. It is therefore obvious on the face of the County Order that the County Order has a real and substantial relation to slowing the disease. The rational basis for the County Order is thus apparent. And because the Constitution neither recognizes Plaintiff's claim of privacy nor her demand that the public bear the costs of this demand, a rational basis is all that is required.[15] The complaint must therefore be dismissed.

Plaintiff cannot avoid this conclusion by arguing that her case is akin to cases dealing with medical treatments, as her reliance on *Burton v. State*, 49 So. 3d 263 (Fla. 1st DCA 2010), suggests. Compl. ¶ 20.[16] The Florida Constitution does protect a right to refuse medical treatment, such as respirators and blood transfusions. *See id.*; *In re Guardianship of Browning*, 568 So. 2d 4, 10 (Fla.

[15] The fact that mask orders are a recent phenomenon does not change this analysis. Vaccine requirements were new once. Seatbelt laws were novel once. Both are constitutional. *See Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905) (mandatory vaccination requirements are constitutional); *Richards v. State,* 743 S.W. 2d 747, 749-50 (Tex. App. 1987), *appeal dismissed*, 489 U.S. 102, (1989)(Texas' seat belt law does not deprive person of any rights protected by right to privacy).

[16] The mere fact that the County Order is related to public health also does not subject it to the right of privacy. *See Ricketts v. Vill. of Miami Shores*, 232 So. 3d 1095, 1099 (Fla. 3d DCA 2017) (while privacy provision allows medical patient to refuse life sustaining food, the privacy provision does not apply to the growing of a vegetable garden). The point of a facial covering is not to treat someone who is ill; it is to prevent someone who is ill from spreading COVID to other persons. It is to protect the public health against the wearer, not to treat the wearer.

1990). But those treatments involve inserting medicine or medical devices into one's body—interventions that are physically invasive. Clothes, on the other hand, are not medicine. Indeed, they are the bare minimum necessary to function in public in a civilized society. And in the midst of a pandemic that spreads through aerosolized saliva, so are masks. In other words, the County Order doesn't mandate Plaintiff to take something into her body—it mandates that ***she prevent infectious virus particles from coming out of her body***. Plaintiff's view of the right to refuse medical treatment would not only allow a person to refuse an anti-diarrheal medication—it would also allow that person to defecate on the street. That is obviously not the law, and Plaintiff's attempt to analogize mask-wearing in public to medical treatment is fatuous. Simply put, the County Order implicates no fundamental constitutional right.

And even if constitutional privacy were, somehow, implicated, the County Order would survive strict scrutiny. The right to privacy bows before a compelling state interest. *Browning*, 568 So. 2d at 14. The preservation of human life and health in the face of an emergency is not just ***a*** compelling government interest: it is perhaps ***the most*** compelling government interest. It is axiomatic that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *In re Abbott*, 954 F. 3d 772, 784 (5th Cir. 2020) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905)) (upholding restrictions on medical providers to preserve hospital capacity for COVID-19 patients); *see also In re Rutledge*, 956 F.3d 1018 (8th Cir. 2020) (acknowledging that in response to COVID-19, "the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."); *Compagnie Francaise de Navigation a Vapeur v. La. State Bd. of Health*, 186 U.S. 380, 393 (1902) (upholding Louisiana's right to quarantine passengers aboard vessel—even where all were

healthy—against a Fourteenth Amendment challenge); *Prince v. Massachusetts*, 321 U.S. 158, 166–67, (1944) (noting that "[t]he right to practice religion freely does not include liberty to expose the community ... to communicable disease"); *Hicox v. Christie*, 205 F. Supp. 3d 579, 591 (upholding quarantine order on persons traveling from countries where Ebola virus was spreading). This interest is overwhelming, and justifies extraordinary action, to say nothing of the minimal action the County Order requires.

Florida law is wholly in accord. *Varholy*, 15 So. 2d at 269-70 (upholding quarantine and involuntary treatment of persons spreading venereal disease); *Lewis v. City of Miami*, 173 So. 150, 151 (Fla. 1937) ("[T]he public policy of this state has been legislatively declared in favor of the protection of the interest of the inhabitants of this state, as individuals, from exposure to persons known to be afflicted with vile and loathsome communicable infectious, contagious and communicable venereal diseases…"); *Davis v. City of S. Bay,* 433 So. 2d 1364 (Fla. 4th DCA 1983)("there are circumstances in which a public emergency, for instance, a fire, *the spread of infectious or contagious diseases* or other potential public calamity, presents an exigent circumstance before which all private rights must immediately give way under the government's police power")(*emphasis added); cf. Shriners Hosps. for Crippled Children v. Zrillic*, 563 So. 2d 64, 68 (Fla. 1990) ("even constitutionally protected property rights are not absolute, and 'are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are necessary to secure the health, safety, good order, [and] general welfare."). Plaintiff cannot credibly argue that the County lacks a compelling interest in stopping the uncontrolled spread of COVID-19.

The order to wear masks in public is also narrowly tailored. It merely requires wearing a piece of fabric. It only applies to people in public areas, not in their homes or cars. *See* County

Order, Exhibit B. It exempts young children and people with medical conditions that might otherwise preclude wearing a mask. And the burden of wearing this basic piece of fabric while in public is *de minimis* at best. It does not interfere with anyone's ability to be out in public or use their body or property.[17] The burden is so small, in fact, that Plaintiff has failed to articulate any actual impact on her beyond the philosophical. And if Plaintiff and her fellow travelers would simply comply with the mask order, more severe—albeit still compelling and narrowly tailored—restrictions might become unnecessary.

In sum, Plaintiff's claim to "bodily and facial autonomy" asks this Court to create for her a right to expel a virus into the faces and onto the food of County residents who are trying their best to keep themselves and their families safe. The Florida Constitution does not recognize this right. The right of the government to protect residents from deadly disease is long settled. And even in more mundane contexts, the Florida Constitution is not offended by dress codes in public areas.

The County Order is a rationally-related—indeed, a narrowly tailored—response to the ongoing public health crisis and bears an undisputed relationship to public health. Plaintiff's privacy claims must be dismissed with prejudice.

Plaintiff Does Not State a Claim Under the Due Process Clause.

Plaintiff argues that the County Order violates her right to substantive due process under Florida law. The Florida Supreme Court, has long held that "[u]nder the police power, the [government] has the right to adopt suitable . . . regulations for the protection of health . . . . This power . . . is very great, and the discretion . . . of the government . . . , in the employment of means

[17] Were the Order unconstitutional, presumably the *more restrictive* quarantine and business closure orders issued by Governor DeSantis would also be unconstitutional.

to that end, is very large." *Maxcy v. Mayo*, 139 So. 121, 129 (Fla. 1931) (holding that substantive due process does not ban the use of arsenic to combat citrus disease). Thus, in *Haire v. Florida Department of Agriculture*, the Florida Supreme Court held that substantive due process does not prevent the state from addressing disease and affirmed the right of the state to destroy diseased citrus trees on private property—sometimes in the backyards of private homes. 870 So. 2d 774, 782 (Fla. 2004). The Court specifically found "a valid exercise of the State's police power to protect the health, welfare, and safety of the public all that is required is that the law not be arbitrary or capricious, and the Court need only determine that the law bears a reasonable and substantial relationship to the purpose sought to be attained." *Id.* If preventing the spread of infectious disease to citrus crops is a valid exercise of government power, then so is preventing the spread of an infectious disease to humans. *Varholy*, 15 So. 2d at 267; *Lewis*, 173 So. at 151. And as discussed above—and is obvious from the fact that even Plaintiff concedes that medical experts recommend wearing a mask—the County Order bears a rational relationship to this governmental purpose.

Even if Plaintiff could somehow convince this Court that those precedents only allow government to save trees but not lives, Plaintiff still would not state a claim under the substantive due process clause. Under Florida law, "substantive due process protects fundamental rights that are so implicit in the concept of ordered liberty that neither liberty nor justice would exist if they were sacrificed . . . *Chakra 5, Inc. v. City of Miami Beach*, 254 So. 3d 1056, 1066 (Fla. 3d DCA 2018) (citations and quotations omitted). Absent a threat to such a fundamental right, the obligations of the due process clause are minimal. A government order satisfies substantive due process if it "bears a rational relation to a permissible legislative objective that is not discriminatory, arbitrary, capricious, or oppressive." *Lasky v. State Farm Ins. Co.*, 296 So.2d 9, 15 (Fla. 1974); *see also Membreno*, 188 So. 3d at 31. Therefore, analysis of a substantive due

process claim "begins with a "careful description of the asserted right." *Jackson v. State*, 191 So. 3d 423, 428 (Fla. 2016).

Here, Plaintiff only makes a mechanical reference to the County Order depriving her of her liberty. But Plaintiff never identifies what liberty is at issue.[18] If she refers to a right to not wear a mask, then that right, if it exists at all, is not fundamental. To the contrary, as was discussed above, neither the Florida nor U.S. Constitutions provide a fundamental right to dress how one wants. If she refers to a right to spread disease, then she asks for something that is offensive to the ordered liberty protected by substantive due process.[19] Ordered liberty does not afford one person rights at the expense of another. Ordered liberty instead recognizes that "we are a society of individuals who make a whole community," and that substantive due process does not protect a "right…to affect the world about the rest of us, and to impinge on other privacies." *Stall v. State*, 570 So. 2d at 262 (quotations omitted). Whatever freedom Plaintiff has stops at the point where her secretions leave her nose or mouth and lodge themselves in someone else's.

Substantive due process is not offended by actions to minimize disease. The County Order is rationally related to minimize the havoc COVID-19 is wreaking in Miami-Dade, in Florida, and across the nation. Because Plaintiff cannot articulate any right that is protected by substantive due process, her substantive due process claims must be dismissed.

The County Order Does Not Violate Equal Protection, Because Its Distinctions Between Businesses that Provide Lesser and Greater Risks to Spread COVID-19 Are Rational.

[18] As explained in the preceding section, the County Order does not implicate the constitutional right to privacy, and Plaintiff has identified no other fundamental right at issue.

[19] Indeed, the Florida legislature has criminalized the knowing spread of sexually transmitted disease without disclosing such action to one's partner. § 384.24, Fla. Stat. The Florida Supreme Court recently interpreted that statute, but its constitutionality went unchallenged. *Debaun v. State*, 213 So. 3d 747 (Fla. 2017).

Plaintiff argues that the County Order violates equal protection because it treats construction sites and grocery stores differently from other businesses. This argument fails. As an initial matter, this claim is now moot because Emergency Order 20-20 was subsequently amended to require masks in all businesses. *See* Exhibit B. The currently-operative order does not differentiate between construction sites and office buildings.

But Plaintiff's equal protection claim would fail even if the distinction remained. "Equal protection is not violated merely because some individuals are treated differently than others. Instead, it requires that persons ***similarly situated*** be treated similarly." *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 899 (Fla. 2018) (emphasis added). The County is wholly empowered to "to establish classifications, to make distinctions among persons or groups, without running afoul of equal protection law." *Hechtman v. Nations Title Ins. of N.Y.,* 840 So. 2d 993, 996–97 (Fla. 2003). Moreover, even where a law distinguishes between similarly situated entities, the state need only proffer a rational basis for the distinction, and the Court should defer to the choices made by a co-equal branch of government. Florida courts have been clear that "when applying the rational basis test, courts undertake only a limited review that is highly deferential to the legislature's choice of ends and means." *Progressive Am. Ins. Co. v. Eduardo J. Garrido D.C. P.A.*, 211 So. 3d 1086, 1091 (Fla. 3d DCA 2017).[20]

Here, the distinction is obvious. The nature of some businesses makes it difficult to achieve social distancing consistently, whereas the nature of others makes it easier to achieve. In the former, employees and patrons are required to wear masks, while in the latter they are not. Places

[20] Heightened review would not be appropriate in this case. The County Order does not draw distinctions on the basis of race, sex, religion, or other protected categories. Neither grocery stores nor construction sites enjoy special protected status at law. Nor does the County Order implicate a fundamental interest, as explained in the preceding sections.

where social distancing is hard to achieve pose a greater risk for inadvertent spread of COVID-19 than places where social distancing is easier.

This distinction is entirely rational and is shared by other government entities. The CDC, for example, provides discrete guidance for grocery stores, construction sites, and ride-share vehicles.[21] It provides discrete guidance for different industry segments because these industries are different from other each other both in business model and risk profile. The risk of spreading COVID at a cramped construction site with ten employees exerting themselves shoulder to shoulder hanging drywall is different than the risk of spread in an office with employees each seated ten feet apart and not physically exerting themselves. The potential congestion in a Publix—which is generally packed with people at all hours—is different than the potential congestion at a travel agency. Where social distancing may not always be consistently achievable, wearing a mask provides an extra layer of protection from the disease, and helps ensure that patrons and employees don't carry the disease home to vulnerable spouses, children, and grandparents.

Moreover, the law does not allow Plaintiff to argue that the County should have drawn a different line to her satisfaction. "The fact that there may be differing views as to the reasonableness of the Legislature's action is simply not sufficient to void the legislation." *Warren v. State Farm Mut. Auto. Ins. Co.,* 899 So. 2d 1090, 1096 (Fla. 2005). Nor can Plaintiff contest the factual basis of the County Order. The Supreme Court has been remarkably clear that "under a rational basis test, a legislative choice is not subject to courtroom fact-finding." *Haire,* 870 So. 2d at 787; *see also Membreno*, 188 So. 3d at 26 ("Legislative choices in economic regulations are not

[21] *See*, *e.g.*, https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/grocery-food-retail-workers.html; https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/construction-workers.html; and https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/rideshare-drivers-for-hire.html.

subject to courtroom fact finding because such laws 'may be based on rational speculation unsupported by evidence or empirical data.'") (citations omitted). Even under normal circumstances, the law requires that a plaintiff seeking to attack the wisdom of a government action do so at the ballot box, not the courtroom. Under emergency circumstances such as this--as new facts about the disease continue to emerge, including the ebb and flow of containment and risk--the commands laid down by the Supreme Court and the Third District Court of Appeals that courts must abstain from appointing themselves legislators ring all the louder.

The County Order distinguishes between places where the risk of catching COVID are higher from places where the risk is lower. This distinction is rational. Because this Court is not empowered to second-guess the precise location where that distinction was drawn, Plaintiff's equal protection claim must be dismissed.

The County Order Is Not Void for Vagueness.

Plaintiff next argues that the County Order is void for vagueness. A law is void for vagueness only "when persons of common intelligence must guess as to its meaning and differ as to its application." *Samples v. Florida Birth–Related Neurological Injury Comp. Ass'n*, 114 So. 3d 912, 919–20 (Fla. 2013). This does not mean, though, that laws must be perfectly clear. The Supreme Court recently cautioned that "run-of-the-mill ambiguity regarding particular applications" does not render a statute impermissibly vague. *Martin v. State*, 259 So. 3d 733, 741 (Fla. 2018). Accordingly, the "failure to define a statutory term does not in and of itself render a provision unconstitutionally vague." *State v. Hagan*, 387 So. 2d 943, 945 (Fla. 1980). Moreover, "the specificity with which the legislature must set out statutory standards and guidelines may depend upon the subject matter dealt with and the degree of difficulty involved in articulating finite standards." *Askew v. Cross Key Waterways*, 372 So. 2d 913, 918 (Fla. 1978).

Plaintiff contends that a person of common intelligence does not understand what a grocery store, a pharmacy, or a construction site is. The County has a higher opinion of the common intelligence of County residents than does Plaintiff. All of these terms have common sense, plain-usage meanings. None of these terms is unduly ambiguous; they are terms that are used in common conversation among residents. If asked, the County believes that residents could tell the difference between a grocery store and a travel agency. Indeed, the courts of this state have held that there is a "commonly recognized definition of the term groceries" based on the ordinary dictionary definition, *Winn-Dixie Stores, Inc. v. 99 Cent Stuff-Trail Plaza, LLC*, 811 So. 2d 719, 722 (Fla. 3d DCA 2002), and have likewise defined "pharmacy" by reference to existing dictionary definitions. *Ex parte Sarros*, 156 So. 396, 400 (Fla. 1934). The existence of dictionary definitions of the relevant terms is sufficient to defeat a vagueness challenge. *Powell v. State*, (Fla. 1st DCA 1987) ("Although the critical words are not statutorily defined, they can be readily understood by reference to commonly accepted dictionary definitions.").

Social distancing, of course, is a term everyone has come to understand. Even for those who do not, the concept is readily defined in the guidance provided by both the CDC and the Governor and disseminated by local print, television, and online media. *See, e.g.*, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html; https://floridahealthcovid19.gov/prevention/. And for those who do not understand what a "cloth facial covering" is, the County Order provides links to both an express definition and to the CDC's information page on the subject.

Lastly, as this is a facial challenge, Plaintiff can only succeed by showing that no person in any context could discern the meaning of the County Order. This is not the case, as the terms used in the County Order have sufficient definition to guide most of the people most of the time.

Plaintiff's vagueness challenge fails, as the County Order contains definitions and uses terms in their ordinary, plain English, dictionary standard way. Plaintiff's facial vagueness claim must be dismissed.

The County Has the Power to Enact the County Order

Finally, Plaintiff contends that the County Mayor lacked the authority to promulgate the County Order. Plaintiff argues that Section 8B-7 of the Code contains a finite list of actions that the County Mayor can take or orders he can enact. This is false. As in any question of statutory construction, the starting place is the plain text of the legislative enactment. *Debaun v. State*, 213 So. 3d 747, 751 (Fla. 2017) ("When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control . . .") (quoting *Paul v. State*, 129 So. 3d 1058, 1064 (Fla. 2013)). Here, in addition to the specific grant of authority contained in Section 8B-7(2)(a)-(n), that section also contains subsection (o), which allows the County Mayor to issue: "Such other orders as are immediately necessary for the protection of life and property; provided, however that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter." This subsection is a clear grant of authority to issue any orders needed to address any unforeseen emergency, such as the first global pandemic since 1918. Plaintiff cannot ignore this plain grant of authority from the Board of County Commissioners to the County Mayor. This Court must give force to the words of that ordinance. *Debaun,* 213 So. 3d at 751.

Moreover, the only condition on the use of this authority has been met: the Board of County Commissioners, at a duly notice public meeting, and after providing the public a right to

be heard, ratified the County Order.[22] The County Order is thus vested with the full power of County government acting under the County's Home Rule Charter to secure the safety and welfare of the population. Plaintiff's claim that the County Order is not authorized by the County Code is wholly inconsistent with the plain language of Section 8B-7(2)(o) and therefore fails as a basic matter of statutory interpretation.

CONCLUSION

These are extraordinary times. A hitherto unknown disease has turned life upside down, shuttering courts and businesses, quarantining individuals, and devastating hospitals. Over a hundred thousand Americans are dead. And in response to these extraordinary circumstances, the County Order created a *de minimis* rule: wear a cloth mask when in businesses where social distancing is hard to achieve. Doing so could save a hospital bed. It could save a life.

The County Order is wholly consistent with the Florida Constitution. It offends neither the right to privacy, nor substantive due process, nor equal protection. It is not vague. It is authorized not simply by the County Code, but by Florida precedent dating back over a hundred years, which recognizes that "the health of the people has long been recognized as one of the greatest social and economic blessings", and that it is a core function of government to act to secure the public health. Plaintiff's rights—whatever they may be—do not extend to a right to transmit disease to her fellow citizens; there is no right to breathe virus onto the faces of County residents. The County is wholly authorized to act, consistent with the Constitution, to prevent such actions. Plaintiff's complaint must be dismissed.

[22] See Miami Dade County Resolution No. R-523-20, adopted at the Board of County Commission Meeting of May 19th, 2020. That resolution is publicly available only, and attested to by the Clerk of the Courts, at http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2020/200857min.pdf

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail through the Florida Court's E-Portal System to all counsel/parties of record on this 13th day of July, 2020.

/s/ David M. Murray
Assistant County Attorney

Filed For Record
Harvey Ruvin
Clerk, Circuit and
County Courts
April 9, 2020
9:34 PM
By: Ina Fredricks
e16277

MIAMI-DADE COUNTY EMERGENCY ORDER 20-20

WHEREAS, section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19/novel Coronavirus in Florida; and

WHEREAS, on March 9, 2020, the Governor issued Executive Order Number 20-52, declaring a State of Emergency for the State of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, on March 12, 2020, the County Mayor declared a State of Emergency for all of Miami-Dade County; and

WHEREAS, on March 30, 2020, the Governor issued Executive Order Number 20-89, restricting the operations of non-essential businesses in certain South Florida counties and requires such establishments to take reasonable actions to comply with the United States Centers for Disease Control and Prevention (CDC) guidelines on social distancing; and

WHEREAS, the CDC believes that social distancing in the most effective way of slowing the spread of COVID-19; and

WHEREAS, on April 3, 2020, the CDC recommended that persons wear masks, including cloth masks or other facial coverings, in situations where it is difficult to attain social distancing, in order to help control the spread of COVID-19; and

WHEREAS, COVID-19/novel Coronavirus poses a health risk to Miami-Dade County residents, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

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.

EXHIBIT A

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.

Enacted:
Signed: _____
COUNTY MAYOR

Date: 4/9/2020 Time: 18:20

Witness: _____

Cancelled:
Signed: _____
COUNTY MAYOR

Date: _____ Time: ___:___

Witness: _____

FILED FOR RECORD
HARVEY RUVIN
Clerk, Circuit & County Court
On: July 2nd, 2020
At: 8:3 am
By: Sandra Hernandez
Sandra Hernandez (e24037)

MIAMI-DADE COUNTY

AMENDMENT NO. 1 TO MIAMI-DADE COUNTY EMERGENCY ORDER 20-20

WHEREAS, section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order No. 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of coronavirus disease 2019 (COVID-19) in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order No. 20-52, declaring a State of Emergency for the State of Florida related to COVID-19; and

WHEREAS, on March 12, 2020, the County Mayor declared a Local State of Emergency for all of Miami-Dade County related to COVID-19; and

WHEREAS, COVID-19 is transmitted by infected persons expelling respiratory droplets containing virus particles when they breathe, talk, cough, sneeze, or raise their voice, which are then ingested or inhaled by persons around them; and

WHEREAS, many persons infected by COVID-19 are contagious while they are asymptomatic, and can therefore spread the disease unwittingly; and

WHEREAS, masks and other facial coverings are a simple barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the facial covering coughs, sneezes, talks, or raises their voice; and

WHEREAS, on April 9, 2020, Miami-Dade County issued Emergency Order 20-20, which required persons inside buildings to wear facial coverings consistent with the United States Centers for Disease Control and Prevention (CDC) guidelines; and

WHEREAS, the governor of Florida has stated that local jurisdictions are authorized to enact mask or facial covering orders as may be needed to address local circumstances; and

WHEREAS, on June 20, 2020, Dr. Scott Rivkees, the State Surgeon General, issued a Public Health Advisory recommending that "all individuals in Florida should wear facial coverings in all settings where social distancing is not possible"; and

EXHIBIT B

WHEREAS, the CDC continues to recommend that persons wear facial coverings, including masks and other facial coverings, in situations where it is difficult to attain social distancing, in order to help control the spread of COVID-19, as described at the following link: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html; and

WHEREAS, these CDC recommendations, and the findings they are based on, are incorporated herein by reference; and

WHEREAS, medical experts and epidemiologists at the University of Miami, Florida International University, and Jackson Health System have provided recommendations to the County indicating that wearing of masks and other facial coverings is an effective method of reducing the spread of COVID-19 throughout the community; and

WHEREAS, COVID-19 cases have recently spread rapidly in Miami-Dade County; and

WHEREAS, currently, since March, nearly 40,000 County residents have tested positive for COVID-19, and 1,000 have died of the disease; and

WHEREAS, COVID-19 poses a health risk to Miami-Dade County residents, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions; and

WHEREAS, the long-term effects of COVID-19 on persons who recover are currently unknown; and

WHEREAS, hospital capacity and medical availability is diminishing as COVID-19 patients require hospitalization, which will limit the ability of hospitals to perform discretionary medical procedures and may impact the delivery of life saving services; and

WHEREAS, trying to control the spread of COVID-19 through business closures, while sometimes necessary, imposes a substantial economic cost on local businesses and their employees; and

WHEREAS, widespread, consistent usage of masks and other facial coverings will help the County to avoid future business closures, provide confidence to business customers and tourists, and help limit economic harm to the community; and

WHEREAS, wearing masks and other facial coverings is a more cost-effective means of addressing the COVID-19 pandemic than are business closures, quarantines, or other solutions; and

WHEREAS, masks and other facial coverings are now required by many private businesses of their customers such as airlines and Walt Disney World; and

WHEREAS, as of June 30, 17 states have issued orders requiring the wearing of a face covering in public to reduce the spread of COVID-19; and

WHEREAS, some municipalities currently require masks and other facial coverings in any public area, and a County wide order will reduce confusion and promote compliance; and

WHEREAS, this amendment requires persons to wear a mask or other facial covering while in public, subject to certain exceptions; and

WHEREAS, based on the guidance of the medical community, and in light of the ongoing spread of COVID-19 in the County, I find it is necessary to issue mandatory guidelines to limit the spread of COVID-19, preserve hospital capacity, and prevent unnecessary loss of life and health; and

WHEREAS, section 8b-7(2)(o) of the Code of Miami-Dade County authorizes the County Mayor to issue any order as may be necessary for the protection of human life and health; and

WHEREAS, section 252.46, Florida Statutes, authorizes the County to issue emergency orders as necessary to protect life and health,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

A. Emergency Order 20-20 is replaced in its entirety by the following:

1. All persons throughout Miami-Dade County shall wear a mask or other facial covering when in public, except as set forth in paragraph (3) below.

2. A mask or other facial covering shall comply with the recommendations of the CDC, as such recommendations may change from time to time. The current CDC guidelines recommend wearing a mask or facial covering which snugly covers the face and mouth, whether store bought or homemade, which is secured with ties or ear loops, include multiple layers of fabric, allow for breathing without restriction, and which is able to be laundered and machine dried without damage or losing shape. Examples of compliant homemade masks and other facial coverings 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 wearing facial coverings should review the CDC and Florida Department of Health guidelines regarding safely applying, removing, and cleaning such coverings, which are found at:

   https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html

3. Masks and other facial coverings shall not be required:
   - i) at or inside a private residence;
   - ii) inside a private automobile;
   - iii) at or inside any religious institution, without limitation;
   - iv) inside a hotel, motel, or commercial lodging establishment guest room, or inside any apartment;
   - v) of children under the age of two years;
   - vi) of persons who cannot wear a mask or facial covering due to an existing medical condition;
   - vii) of an individual who is hearing impaired or an individual who is communicating with an individual who is hearing impaired;
   - viii) where federal or state safety or health regulations prohibit the wearing of facial coverings;
   - ix) of persons actively engaged in strenuous physical activity, either inside or outdoors;
   - x) of persons swimming or engaged in other activities which may cause the facial covering to become wet;
   - xi) while persons are actively eating, drinking, or smoking; and
   - xii) while a person is receiving services which require access to that person's nose or mouth.

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 9:00 a.m., July 2, 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.

B. 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.

Enacted:
Signed: _____
COUNTY MAYOR

Date: 7/2/2020 Time: 07:05

Witness: _____

Cancelled:
Signed: _____
COUNTY MAYOR

Date: _____ Time: ___:___

Witness: _____

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

JUSTIN GREEN,
Plaintiff,

vs.

ALACHUA COUNTY, a political subdivision of the State of Florida, and the Honorable **RON DESANTIS**, in his official capacity as Governor of the State of Florida,
Defendants.

CASE NO.: 01-2020-CA-001249

DIVISION: J

ORDER DENYING PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE comes before the Court upon the Plaintiff's "Emergency Motion for Temporary Injunction," filed May 8, 2020, pursuant to Fla. R. Civ. P. 1.610. On May 21, 2020, a hearing was held on the motion. Upon consideration of the motion, the evidence presented at the hearing, the legal argument of the parties, and the record, this Court finds and concludes as follows:

The Plaintiff moves the Court to enter a temporary injunction enjoining Alachua County from enforcing the mask requirement of Amended Emergency Order 2020-21. Plaintiff asserts that the mask requirement is not within the scope of the Alachua County Board of County Commissioner's (BOCC) authority and that it has an immediate and deleterious effect on the Plaintiff's rights guaranteed under both the United States Constitution and the Florida Constitution.

The purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought. *State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC,* 236 So. 3d 466, 472 (Fla. 1st DCA 2018), *reh'g denied* (Feb. 21, 2018) (citing *Planned Parenthood of Greater*

EXHIBIT C

Orlando, Inc. v. MMB Props., 211 So.3d 918, 924 (Fla. 2017)). A temporary injunction is an extraordinary remedy that should be granted sparingly. *Id.* (citing *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017)). This is especially true where, as here, the act being enjoined is an act of a co-equal branch of government. *Florida Dep't of Health v. Florigrown, LLC*, 44 Fla. L. Weekly D1744 (Fla. 1st DCA July 9, 2019) (Wetherell, J., concurring), *review granted*, SC19-1464, 2019 WL 5208142 (Fla. Oct. 16, 2019). To obtain a temporary injunction, the movant must establish (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. *Bayfront HMA Med. Ctr., LLC*, 236 So. 3d at 472.

1. *Substantial Likelihood of Success on the Merits*

"A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 753 (Fla. 1st DCA 1994), *approved sub nom. Naegele Outdoor Advert. Co., Inc. v. City of Jacksonville*, 659 So. 2d 1046 (Fla. 1995), *as modified on reh'g* (Aug. 24, 1995). "It is not enough that a merely colorable claim is advanced." *Id.* The petition or other pleading must demonstrate prima facie, clear legal right to the relief requested. *Mid-Florida At Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357–58 (Fla. 5th DCA 1988). The establishment of a clear legal right to the relief requested is an essential requirement prior to the issuance of a temporary injunction. *Id.*

Here, the Plaintiff fails to show a prima facie, clear legal right to the relief requested. There is no recognized constitutional right *not* to wear a facial covering in *public* locations or to expose other citizens of the county to a contagious and potentially lethal virus during a declared

pandemic emergency.[1] Article I, § 23, Florida Constitution, "was not intended to provide an absolute guarantee against all governmental intrusion into the private life of an individual." *Stall v. State*, 570 So. 2d 257, 262 (Fla. 1990) (citing *Florida Board of Bar Examiners re Applicant*, 443 So.2d 71, 74 (Fla.1983)).

For example, in *Picou v. Gillum*, which dealt with Florida's motorcycle helmet laws, the Eleventh Circuit Court of Appeals noted that "[t]here is little that could be termed private in the decision whether to wear safety equipment [in public]." The Court went on to explain that

> there is no broad legal or constitutional "right to be let alone" by government. In the complex society in which we live, the action and nonaction of citizens are subject to countless local, state, and federal laws and regulations. Bare invocation of a right to be let alone is an appealing rhetorical device, but it seldom advances legal inquiry, as the "right"—to the extent it exists—has no meaning outside its application to specific activities. The Constitution does protect citizens from government interference in many areas—speech, religion, the security of the home. But the unconstrained right asserted by appellant has no discernable bounds, and bears little resemblance to the important but limited privacy rights recognized by our highest Court. As the Court has stated, "the protection of a person's *general* right to privacy—his right to be let alone by other people—is like the protection of his property and his very life, left largely to the law of the individual States." *Katz v. United States*, 389 U.S. 347, 350–51, 88 S.Ct. 507, 510–11, 19 L.Ed.2d 576 (1967) (citations omitted).
> ...
> The helmet requirement does not implicate appellant alone. Motorcyclists normally ride on public streets and roads that are maintained and policed by public authorities. Traffic is often heavy, and on highways proceeds at high rates of speed. The required helmet and face shield may prevent a rider from becoming disabled by flying objects on the road, which might cause him to lose control and involve other vehicles in a serious accident. See *Bogue*, 316 F.Supp. at 489.
>
> It is true that a primary aim of the helmet law is prevention of unnecessary injury to the cyclist himself. **But the costs of this injury may be borne by the public**. A motorcyclist without a helmet is more likely to suffer serious head injury than one wearing the prescribed headgear. State and local governments provide police and ambulance services, and the injured cyclist may be hospitalized at public expense…. see, e.g., *Kassell v. Consolidated Freightways Corp.*, 450 U.S. 662, 675, 101 S.Ct. 1309, 1318, 67 L.Ed.2d 580 (1981), we think Florida's helmet requirement a rational exercise of its police powers.

[1] *See Nucci v. Target Corp.*, 162 So. 3d 146, 153 (Fla. 4th DCA 2015) ("Before the right to privacy attaches, there must exist a legitimate expectation of privacy.").

> **Legislatures and not courts have the primary responsibility for balancing conflicting interests in safety and individual autonomy. Indeed, the evidence suggests that arguments asserting the importance of individual autonomy may prevail in the political process.**
> **…**
> **Although a narrow range of privacy rights are shielded from the political process by the Constitution, the desirability of laws such as the Florida helmet requirement is a matter for citizens and their elected representatives to decide.**

Picou v. Gillum, 874 F.2d 1519, 1521–22 (11th Cir. 1989) (emphasis added).[2]

The protection of the safety and welfare of the public is inherent in the role of local government.[3] "Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, ... matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996). "It is in the public interest to have a healthy, whole citizenry." *Bogue v. Faircloth*, 316 F. Supp. 486, 489 (S.D. Fla. 1970). "[N]o person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them." *State v. Eitel*, 227 So. 2d 489, 491 (Fla. 1969).

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[2] *See also Pac. Legal Found. v. Dep't of Transp.*, 593 F.2d 1338, 1347 n. 72 (D.C.Cir.1979) ("Petitioners also assert that the passive restraint rule violates the individual's right to privacy. We find no basis for this contention. Passive restraints protect not only the owner or driver of the car, but also any passengers, and thus involve more than a purely individual concern. Also, by their very nature passive restraints involve no intrusion on an intimate area of activity, as in cases concerning the family or procreation decisions where courts have defended privacy interests."). The United States Supreme Court itself rejected a due process attack on a similar traffic-safety law during the pre-*Bowers* period, albeit by summary affirmance of a lower court decision. *See Simon v. Sargent*, 409 U.S. 1020, 93 S.Ct. 463, 34 L.Ed.2d 312 (1972), *aff'g* 346 F.Supp. 277, 279 (D.Mass.) (concluding there was no constitutional right not to wear a motorcycle helmet).

[3] *See* § 252.38, Fla. Stat. (2019) ("Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."); *see also State Dept. of Agric. & Consumer Services Div. of Animal Indus. v. Denmark*, 366 So. 2d 469, 470 (Fla. 4th DCA 1979) ("It is within the police power of the State to enact laws to prevent the spread of infectious or contagious diseases.").

Furthermore, “there are circumstances in which a public emergency, for instance, a fire, the spread of infectious or contagious diseases or other potential public calamity, presents an exigent circumstance before which all private rights must immediately give way under the government's police power.” *Davis v. City of S. Bay*, 433 So. 2d 1364, 1366 (Fla. 4th DCA 1983).

The temporary mandate to wear masks in limited circumstances is similar to the requirement to wear helmets or seatbelts. The stated purpose for the mask requirement is to limit the spread of this contagious, airborne virus and the BOCC has provided evidence which includes substantial data indicating that face coverings may assist in reducing the spread of the virus. Alachua County is responsible for reducing the spread of COVID-19 among its citizens and also for ensuring its citizens have access to medical care if they become infected. An individual Alachua County citizen’s right to be let alone is no more precious than the corresponding right of his fellow citizens not to become infected by that person and potentially hospitalized. The evidence reflects that the BOCC has weighed public health data from the World Health Organization, the United States Centers for Disease Control and Prevention, the Florida State Department of Health, the University of Florida, and other public health recommendations in enacting the requirement of wearing facial coverings in certain public locations. It is not the role of the Court to second guess the prudence of BOCC’s decision given the conflicting evidence as to the extent of the efficacy of facial coverings.

This Court additionally finds that the facial covering requirement contained in the County’s emergency order is neither a medical treatment, compelled or otherwise, nor compelled speech. The Plaintiff cites to no precedent which directly supports these arguments and this Court declines to adopt the interpretation put forth by the Plaintiff.

Because the facial covering requirement does not violate any of the constitutional rights asserted by the Plaintiff, strict scrutiny does not apply in this case. There is no recognized right to a reasonable expectation to privacy in a public location, particularly as that right pertains to facial coverings. In addition, the emergency order only requires the use of a facial covering under limited circumstances where a person is coming into contact with the public in a closed setting, such as public transit and a business where social distancing measures are not possible or are difficult to implement. The requirement to wear a facial covering during the limited circumstances set forth in the ordinance is a minimal inconvenience; and, its benefits to the public in potentially reducing the spread of COVID-19 outweigh any inconvenience. Furthermore, pursuant to section 252.38(3)(a)5., Florida Statutes, the County's emergency order is subject to review every 7 days.[4] Thus, the facial covering requirement is not permanent and is subject to removal by the BOCC at each weekly review of the emergency order.

2. Lack of an Adequate Remedy at Law

"Injunctive remedies do not ordinarily lie where there is an adequate remedy at law available to the complaining party." *Meritplan Ins. Co. v. Perez*, 963 So. 2d 771, 776 (Fla. 3d DCA 2007). Here, the Plaintiff has failed to assert any actual damage which could not be remedied by law were the facial covering requirement found to be unconstitutional. Although the Plaintiff asserts that his rights are being violated, as previously noted, there is no recognized constitutional right to privacy, under either the U.S. Constitution or the Florida Constitution, implicated here; nor is there forced medical treatment or compelled speech. Even if the mask requirement were to ultimately be found unconstitutional, it is a *de minimis* infringement on the

[4] § 252.38, Fla. Stat. (2019) ("The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments."). *See also* Op. Att'y Gen. 2004-58 (2004) ("I am of the opinion that when a county has declared a state of local emergency pursuant to section 252.38(3)(a) 5., Florida Statutes, and wishes to extend that declaration, such declaration must be renewed every seven days.").

plaintiff's public interactions. Although the county's emergency order does not mandate that an individual purchase masks for themselves or for their employees, if they are a business, [5] any such cost paid by an individual or business is capable of being remedied by monetary compensation.[6] Furthermore, as noted in the County's response, the Plaintiff could file a federal § 1983 claim seeking damages.

3. Likelihood of Irreparable Harm Absent the Entry of an Injunction

"It is standard hornbook law that a temporary injunction will only be issued in situations wherein the plaintiff can clearly demonstrate that irreparable injury would follow the denial of the injunction." *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So. 2d 372, 373 (Fla. 1st DCA 1986) (citing *Cramp v. Board of Public Instruction of Orange County*, 118 So.2d 541, 554 (Fla.1960). "Irreparable injury will never be found where the injury complained of is 'doubtful, eventual, or contingent.'" *Id.* (quoting *First National Bank in St. Petersburg v. Ferris*, 156 So.2d 421, 424 (Fla. 2d DCA 1963)). "Mere general allegations of irreparable injury are not sufficient." *Stoner v. S. Peninsula Zoning Comm'n*, 75 So. 2d 831, 832 (Fla. 1954). Furthermore, "[t]he long established rule in this jurisdiction is that before an injunction will issue, it must appear that there is a reasonable probability, not a bare possibility, that a real injury will occur." *Miller v. MacGill*, 297 So. 2d 573, 575 (Fla. 1st DCA 1974).

Here, the Plaintiff fails to allege a reasonable probability that a *real injury* will occur unless the temporary injunction is issued. The wearing of a face covering in public under the limited circumstances contained in the emergency order will not, in any way, alter the Plaintiff's

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[5] To the extent that a person or business does so, that is a personal or business decision, not the product of state action.

[6] "Irreparable harm for the purpose of an injunction is not established where the harm can be compensated for adequately by money damages." *Supreme Serv. Station Corp. v. Telecredit Serv. Ctr., Inc.*, 424 So. 2d 844, 844–45 (Fla. 3d DCA 1982).

physical person or result in permanent disfigurement. Thus, a temporary injunction is not appropriate.

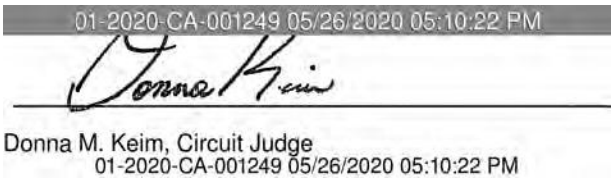
4. Injunctive Relief Will Serve the Public Interest

"[C]onsideration of the public interest militates against issuance of a temporary injunction in this case." *DiChristopher v. Bd. of County Com'rs*, 908 So. 2d 492, 497 (Fla. 5th DCA 2005), *decision clarified on denial of reh'g* (Aug. 12, 2005). The prevention of the spread of COVID-19 "is clearly needed for the health and safety of the public." *Id.* "Where the potential injury to the public outweighs an individual's right to relief, the injunction will be denied." *Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004); *see also Knox v. Dist. Sch. Bd. of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002) ("[A]n injunction may be denied where the injury to the public outweighs any individual right to relief."). Here, there is a global pandemic involving COVID-19, a virus which the CDC and others advise is spread through airborne transmission and is spread by asymptomatic individuals. Multiple sources relied upon by the County reflect that mitigation is dependent upon the use of social distancing and personal protection equipment, such as face masks/coverings. The County's need to take measures to control the spread of COVID-19 clearly outweighs the Plaintiff's private interest in not wearing a mask in the limited circumstances required by the county's emergency order; and, an injunction in this situation would disserve the public interest.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

Defendant's motion is hereby **DENIED**.

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, on this Tuesday, May 26, 2020.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished by e-mail delivery, on this Tuesday, May 26, 2020, to the following:

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