

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA**

JASON I. FRENCH,

Plaintiff,

CASE NO:

vs.

CITY OF JACKSONVILLE, a political  
subdivision of the State of Florida,

Defendant.

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

Plaintiff, JASON I. FRENCH ("French"), through undersigned counsel, hereby sues Defendant, CITY OF JACKSONVILLE, a political subdivision of the State of Florida, ("Jacksonville"), and alleges the following:

**JURISDICTION AND VENUE**

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

## PARTIES

4. Plaintiff, French, is a Florida resident and a resident of Jacksonville. Plaintiff has been negatively impacted by a proclamation that has been issued by Jacksonville, which has caused interference with his personal liberty and business enterprise.

5. Plaintiff is the owner of French Capital Management, LLC, a business located in Jacksonville.

6. Jacksonville is a proper Defendant in this action because Jacksonville created and implemented Emergency Executive Proclamation 2020-005, ("Executive Proclamation 2020-005") on June 29th, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

## FACTS

7. On April 16, 2020, The White House released "Guidelines for Opening Up America Again," (hereafter "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).

8. Afterwards, on April 29th, 2020, the Florida Governor Ron DeSantis released Executive Order 20-112 which included a "phased approach" to reopening Florida after the onset of the virus known as COVID-19. This Order did not include the requirement that Floridians wear face masks in any setting. Executive Order 20-112 *Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, State of Florida, (April 29th, 2020). Executive Order 20-112 left it up to an individual's own discretion whether to wear a face mask.

9. Thereafter, on June 29th, Jacksonville issued Executive Proclamation 2020-005.

Unlike existing national and State of Florida emergency orders, Executive Proclamation 2020-005 requires Jacksonville residents to wear face masks in various circumstances.

10. Executive Proclamation 2020-005 reads in part:

(1) Every person over the age of six (6) who is in a public space shall wear a face mask or covering when not able to engage in social distancing.

(2) Every operator, employee, customer or patron of a business establishment must wear a face mask or covering at all times while at that business establishment unless he or she is able to engage in social distancing or unless wearing a face mask or covering significantly interferes with the provision or receipt of goods or services offered or received at that establishment (i.e. patrons at a restaurant, clients at a barber shop or hair salon, patients at a dentist's office).

(3) The operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation.

(4) Public safety, fire, law enforcement, and other life safety personnel are exempted from this requirement, as their personal protective equipment requirements will be governed by their respective agencies.

(Executive Proclamation 2020-005)

11. Plaintiff is a business owner who is personally and adversely affected by the mandate to wear a mask that is contained within Executive Proclamation 2020-005 and the risk of punishment that exists for not doing so. Plaintiff is presumptively required by Executive Proclamation 2020-005 to wear a mask.

12. According to the Jacksonville Ordinance Code, a violation of an emergency proclamation of the Mayor of Jacksonville is both a criminal and civil offense. Section 674.403 of the Jacksonville Ordinance Code reads in part:

**Violations: civil emergency.**

A person who, knowingly and wilfully:

(a) Fails or refuses, or procures a failure or refusal, to obey, observe or enforce the provisions of an order or directive issued by the Mayor pursuant to his emergency powers under Section 674.303 or Section 674.304; or

(b) Obstructs, interferes with or prevents, or procures the obstruction, interference with or prevention of:

(1) The enforcement, observance or execution of or compliance with any part of an emergency preparedness plan or with an order, directive or regulation issued by the Mayor or issued at the direction of the Mayor; or

(2) The performance of a duty or the exercise of a power by an officer, employee or agent of the City or a emergency preparedness worker, during an actual, impending, mock or practice disaster;

***Shall be guilty of a class D offense.***

(674.403, Jacksonville Ordinance Code) (emphasis added)

Furthermore, a class D offense would result in a by a fine of not more than \$500 or by imprisonment of not more than 60 days, or by both a fine and imprisonment. (Jacksonville Code of Ordinances, § 632.101).

## LAW

13. Executive Proclamation 2020-005 is unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution. Article 1 § 23 of the Florida Constitution states: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." The explicit constitutional right of privacy listed in the Florida Constitution embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla.1985). Executive Proclamation 2020-005 is a radical infringement of the reasonable and legitimate expectation of privacy that most Floridians expect to have over their own bodily and facial autonomy in addition to their medical privacy. Plaintiff's medical privacy is and will continue to be infringed by Executive Proclamation 2020-005, which requires him to wear a mask or risk receiving criminal and civil punishment for not doing so.

14. Emergency Executive Proclamation 2020-005 is also unconstitutional because it violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution, which reads: "No person shall be deprived of life, liberty or property without due process of law...". The due process clause protects the individual against the arbitrary and unreasonable exercise of governmental power. *Noel v. State*, 191 So. 3d 370, 373 (Fla. 2016). Emergency Executive Proclamation 2020-005 is arbitrary and unreasonable because it is not backed by a compelling state interest or any facts proving such an interest. Due process of law protects against the unreasonable legislative deprivation of life, liberty, or property and Emergency

Executive Proclamation 2020-005 deprives Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way Jacksonville's interference with his private action and personal liberty.

15. An additional reason Emergency Executive Proclamation 2020-005 is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because it is void for vagueness. Emergency Executive Proclamation 2020-005 leaves the most significant terms contained within it undefined. Due process is violated when a law “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)). Significant terms left undefined include: "public space," "face mask or covering," "operator," "business establishment," "patron of a business establishment," "significantly interfere," "ensure." These important terms are unclear and Jacksonville has created immediate confusion for the person of common intelligence. Ultimately, the language of Emergency Executive Proclamation 2020-005 is too vague for the average citizen to understand, forcing Jacksonville residents and employers to guess at its meaning and then be subject to criminal and civil punishment. A law is void for vagueness when persons of common intelligence must guess as to its meaning and differ as to its application, or if it lends itself to arbitrary enforcement at an officer's discretion. *Davis v. Gilchrist County Sheriff's Office*, 280 So. 3d 524, 532 (Fla. 1st DCA 2019). Emergency Executive Proclamation 2020-005 lends itself to arbitrary enforcement at an officer's discretion due to its vagueness and indefinite terms.

16. Additionally, Emergency Executive Proclamation 2020-005 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 and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability." Emergency Executive Proclamation 2020-005 states that the "operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation." (Sec. 3., Emergency Executive Proclamation 2020-005). By arbitrarily requiring businesses and employees to "ensure" compliance with the mask mandate of Executive Proclamation 2020-005, Jacksonville has irrationally assigned business owners new and onerous legal duties without a rational basis, while non-business owners do not have any new legal obligation. Such a classification must bear a rational relationship to a legitimate government interest or it will violate Florida Constitution's equal protection clause. Furthermore, in Emergency Executive Proclamation 2020-005, certain government employees are exempt from wearing masks, namely " Public safety, fire, law enforcement, and other life safety personnel...". (Sec. 4., Emergency Executive Proclamation 2020-005). No difference of risk or exposure and infection exists between those required to wear masks and government employees. Additionally, this exception subsection doesn't just limit these certain employees from the requirement that they wear masks on the job; but instead it suspends mask-requirement for them indefinitely: anywhere they visit in Jacksonville—at any time—is exempted from the legal requirement to wear a mask. By arbitrarily requiring only a portion of the population to comply with the mask mandate, Jacksonville treats

similarly situated people and businesses differently without a rational basis and places unique burdens on some individuals and not on others without justification. Such a classification must bear a rational relationship to a legitimate government interest or it will violate Florida Constitution's equal protection clause. *North Broward Hospital District v. Kalitan*, 219 So. 3d 49, 55 (2017). No conceivable state of facts can provide a rational basis for classifying government employees as existing in a different situation than the average patron or employee. Thus, Jacksonville has no reason for treating government employees differently and the classification is not rationally related to a legitimate end.

17. Finally, Emergency Executive Proclamation 2020-005 is illegal and void because nowhere within emergency response provisions of the Jacksonville Ordinance Code is it allowed for Jacksonville to mandate the wearing of face masks under criminal and civil penalty. Chapter 674 of the Jacksonville Ordinance Code, titled "Disaster preparedness and Civil Emergency," expressly lists the specific and strictly defined powers of the Jacksonville Mayor during an emergency. Subsection 674.304. of the Code lists the "discretionary emergency measures" and the ability to mandate the wearing of masks is absent. Section 674.207, titled "Emergency powers of Mayor," also lacks the express and defined power to mandate face masks. Therefore, Emergency Executive Proclamation 2020-005 is without force and unlawful because power to mandate masks is nonexistent.

18. To obtain a preliminary injunction, Plaintiff must prove: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief

will serve the public interest. *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017). All four elements are shown and proved below.

19. Plaintiff has a very high likelihood of success on the merits because Emergency Executive Proclamation 2020-005 is presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida's Constitutional and the Due Process Clause of the Florida Constitution. Due to the fundamental and highly guarded nature of the constitutional right to privacy, any law that implicates the right, regardless of the activity, is subject to strict scrutiny and, therefore, presumptively unconstitutional; thus, the burden of proof rests with the government to justify an intrusion on privacy. *Weaver v. Myers*, 229 So. 3d 1118, 1133 (Fla. 2017). This state constitutional right to privacy includes the right to liberty. *State v. J.P.*, 907 So. 2d 1101, 1115 (Fla. 2004). (holding that the Florida constitutional right to privacy includes the right to liberty and self-determination). An integral component of self-determination is the right to make choices pertaining to one's health and to determine what shall be done with one's own body. *Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010). Furthermore, Jacksonville has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Jacksonville regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion. Ultimately, this explicit constitutional right of privacy embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield*, 548.

20. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which Jacksonville government is infringing upon. The test for the

unavailability of an adequate remedy at law is whether the “irreparable injury is an injury that cannot be cured by money damages.” *Lutsky v. Schoenwetter*, 172 So.3d 534, 534 (Fla. 3d DCA 2015) (citing *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So.3d 1081, 1092 (Fla. 3d DCA 2014)). The deprivation of Plaintiff's rights cannot be remedied by money or any judgment other than an injunction. The ability to move freely has been deprived from the Plaintiff, disallowing him to be "let alone and free." Art. 1 § 23, Fla. Const..

21. Unless an injunction is issued, Plaintiff will suffer irreparable harm because his Constitutional rights are being violated. The mask requirement infringes Plaintiff's right to privacy under the Florida Constitution, Article 1, Section 23. The likelihood of irreparable harm resulting from Emergency Executive Proclamation 2020-005's enforcement is significant not only for the Plaintiff, but also for Jacksonville's other 900,000 residents and employees.

22. A temporary injunction of Emergency Executive Proclamation 2020-005 will serve the public interest. The citizens of the Jacksonville public are burdened by the over-reach of their local government unprecedented in Florida history. The mask requirement violates both the Plaintiff's and the public's fundamental Florida Constitutional rights. It unduly burdens 900,000 Jacksonville residents and employees. The public has a strong interest in protecting their rights and their ability to control their own bodies and health. Additionally, the Emergency Executive Proclamation 2020-005 is written so vaguely that it lends itself to arbitrary enforcement at an officer's discretion.

**COUNT I**  
**INJUNCTIVE RELIEF**

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

24. Plaintiff seeks injunctive relief enjoining Jacksonville from enforcing Emergency Executive Proclamation 2020-005.

**COUNT II**  
**DECLARATORY JUDGMENT**

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

26. Plaintiff seeks declaratory judgment declaring Emergency Executive Proclamation 2020-005, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

27. Plaintiff seeks declaratory judgment declaring that Emergency Executive Proclamation 2020-005 is illegal and void since the City of Jacksonville had no legal power to create or implement it.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Emergency Executive Proclamation 2020-005 violates Article I Sections 2, 9, and 23 of the Florida Constitution.

(b) a declaration that Emergency Executive Proclamation 2020-005 is illegal and void since the City of Jacksonville had no power to create or implement it.

(c) a temporary injunction enjoining Jacksonville from enforcing Emergency Executive Proclamation 2020-005.

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

**VERIFICATION**

I, JASON I. FRENCH, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By: */s/ Jason Ian French*

JASON I. FRENCH

**DATED** this 5th day of July, 2020.

*/s/ Anthony F. Sabatini*  
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