

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL  
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION**

**TONYA ESTEVEZ  
FERNANDO CESPEDES  
DOMENIC DIFANTE,  
et al**

**CASE # 20-CA-005233**

**Plaintiffs/Petitioners,**

**v.**

**HILLSBOROUGH COUNTY, FLORIDA,  
Defendant/Respondent.**

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**CONSOLIDATED AMENDED VERIFIED PLAINTIFFS' EMERGENCY COMPLAINT  
FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF  
WITH INCORPORATED MOTION FOR TEMPORARY RESTRAINING ORDER  
AND MEMORANDUM OF LAW**

Plaintiffs, in the cases captioned above, by and through their undersigned attorney, and pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., respectfully move this Court for the entry of a Temporary Restraining Order or, in the alternative, move for a Preliminary Injunction enjoining Defendants, HILLSBOROUGH COUNTY, FLORIDA, and the Hillsborough County Sheriff's Office, and all those acting in concert with or at the behest of Defendants, from enforcing, or attempting to enforce the EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP requiring the wearing of protective face coverings in response to County Wide Threat from the COVID 19 Virus, (the "EPG EO") against Plaintiffs. Attached hereto are Affidavits of Verification supporting the request for extraordinary relief articulated herein, which also incorporate the Complaint in this action as a verified basis for the relief requested. In support of the relief requested herein, would show the following:

## **I. INTRODUCTION TO THE COMPLAINT**

1. This is not a case about face masks. This case does not seek to determine whether face coverings are good or bad. However, in an era where protesters urge us to take note of what matters, this is a case to re-establish those things which matter greatly. Process matters. The rule of law matters. The Constitution of the United States and the State of Florida matter. This case seeks to protect and vindicate fundamental liberties that citizens of the United States enjoy free from government interference. In the instant case, Plaintiffs are Florida and Hillsborough County citizens and business owners/managers whose liberties protected by both the Florida and United States Constitutions have been denied through the arbitrary application of an Executive Order issued under a declared State of Emergency by the Hillsborough County Emergency Policy Group (Hereinafter EPG). The liberties protected by the Constitution are not conferred or granted by government to then be rescinded at the will and whims of government officials. These God-given liberties are possessed by the people, and they are guaranteed against government interference by the United States Constitution, which is the supreme law of the land, and by the Constitution of the State of Florida.

2. Any government that has made the grave decision to suspend the liberties of a free people during a health emergency should welcome the opportunity to demonstrate-both to its citizens and to the courts-that its chosen measures are absolutely necessary to combat a threat of overwhelming severity. The government should also be expected to demonstrate that less restrictive measures cannot adequately address the threat. Whether it is strict scrutiny or some other rigorous form of review, courts must identify and apply a legal standard by which to judge the constitutional validity of the government's anti-virus actions.

3. Governments wield the highest state power when confronting a health crisis. But ample

police powers to administer health, safety, and welfare matters do not obviate state and local officials' grave duty to safeguard civil liberties. The "Flatten the Curve" campaign to avoid hospital overload was within state powers as a legitimate and attainable regime. However, any legitimate action that infringes upon civil liberties must closely target the root of crisis. Executive orders, not supported by legislative vote, especially those that impose criminal penalties, must be clearly written and respectful of constitutional due process. Yet Defendant creates an order that compels only business owners/managers to enforce, enlisting them as state actors without their consent, and subjecting them to criminal sanctions for their failure to adhere to the policy decisions of government officials.

4. The constitutional flaws in the challenged "Executive Order" include violations of equal protection, separation of powers, vagueness and overbreadth, arbitrariness, and discriminatory intent. In addition, the EPG as designed by the Hillsborough Board of County Commissioner's (BOCC) violated Florida's Delegation Doctrine. Plaintiffs bring this action challenging the Constitutionality of Respondents' Executive Orders (EO), which have deprived them of numerous rights and liberties under both the U.S. and Florida Constitutions. In doing so, Plaintiffs seek: (1) equitable and injunctive relief to enjoin the enforcement of Respondents' Orders; (2) declaratory relief from this Court in declaring that Respondents' Orders violate Plaintiffs' civil rights under: (a) 42 U.S.C. Section 1983 of the Federal Civil Rights Act ("Section 1983"), (b) the Due Process and (c) Equal Protection Clauses of the 5th and 14<sup>th</sup> Amendments, and (d) Article I, Sections 2, 6, 9, 10, 12, 21, and 23, and Article X, Section 6 of the Constitution of the State of Florida.; (3) attorney's fees and costs for the work done by Plaintiffs' counsel in connection with this lawsuit in an amount according to proof; and (4) for such other and further relief as the Court deems just and appropriate.

**II. A SUMMARY OF THE REASONS FOR  
EMERGENCY AND EXTRAORDINARY RELIEF**

5. As explained in the operative Complaint below, these actions challenge, inter alia, Municipal Code Chapter 22, Sections 22-24 and the BOCC's legislative powers that are unlawfully delegated to EPG therein; and Hillsborough County EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP establishing an Order requiring the Wearing of Protective Face Coverings in response to County Wide Threat from the COVID 19 Virus, on a number of bases, as specified below.

6. In its present form and under authorities given in the County Code Chapter 22, the EPG has displaced the BOCC's legislating authority, and all Executive Orders and legislative type issuances by the EPG should be declared constitutionally void. Non-delegation and Separation of Powers are doctrines of constitutional law under the United States and Florida Constitution and related statutes, and at County level is reinforced further by the County Charter where the three branches of government (executive, legislative, and judicial) are kept separate.

7. The EPG was delegated legislative powers under County code Chapter 22, Section 22 by the County BOCC where such powers are lawfully vested in the County BOCC by the Florida Constitution, associated Statutes, and the County Charter. Local governments are considered arms of the Florida state legislature. Authority for County governments is granted by Article VIII, § 1 of the Florida Constitution, Florida Statute §125.01;125.011 and 125.66. Chapter 252, Florida Statutes authorizes emergency operations by local governments without rescission or change to legislative authority. Hillsborough County enacted Hillsborough County Code of Ordinances and Laws Chapter 22, Article II, Sections 22-23 in order to protect the health, safety, and welfare of the County's residents during declared emergencies. In this, without any authority, it created a

legislative body that replaces the County's BOCC.

8. The BOCC, as the legislating body of Hillsborough County, may not delegate law-making to other branches. In this particular case, the Sheriff of Hillsborough County, a Constitutional Officer of the State of Florida, and a member of Judicial branch of government, is a voting member of a legislative body. The Sheriff has a duty to enforce state laws and statutes, and County ordinances; within Constitutional bounds, and to ensure the security and safety of Hillsborough's citizens. This is accomplished through the delivery of law enforcement services, the operation of the County Jail, and the provision of court security. The Office of the Sheriff functions as an Executive Officer of the court. Under Florida law, the Sheriff derives his legal authority from the Constitution of the State of Florida and is not part of the County legislative branch. The Sheriff is vested with the ability to appoint and direct deputies who will act in his name and office to enforce the appropriate and applicable laws of the State of Florida.

9. The EPG, with members unelected as a body of any type, where no citizen in the County may vote to remove every single EPG member from their elective offices which are not associated with the EPG, is acting in the stead of the County's elected government, and within the legislative branch of the State government. In addition to the Sheriff, the EPG includes mayors from Tampa, Temple Terrace and Plant City, the County Administrator who is Chief of the County's Executive branch, and the School Board Director: none of whom can under the most expansive imagination be viewed as being rightfully vested with legislative authority as has happened within our County.

10. Only three County Commissioners, the Hillsborough County Sheriff, select mayors, the County Administrator and the School Board Director are voting members of this EPG that is empowered to enact executive orders enforceable as criminal laws subject to prosecution in a County Criminal Court, jail and/or fines. This is all counterintuitive to the Non-Delegation and

Separation of Powers Doctrines inherent to the Florida and United States Constitutions, and the Hillsborough County Charter. In near irony, under the County Code that created it, the EPG without any oversight declares emergencies that empower it to enact Executive Orders that serve as laws that are subject to no review outside the Courts in an action such as this.

11. Accordingly, the fact that the EPG as designed consists of the Hillsborough County Sheriff and three different mayors, each of whom are voting member of this board empowered to enact orders subject to prosecution in a County Criminal Court, violates the Florida and United States Constitution separation of powers doctrine.

12. In addition to the constitutional flaws with respect to the EPG enacting a criminal law outside the legal legislative authority by an entity that cannot issue such laws the challenged "Executive Order as written violates Plaintiff's, and others similarly situated, their rights to equal protection found under the both United States and Florida Constitution.

13. Additionally, the EPG EO is unconstitutionally vague and overbroad, and violates both the United States and Florida constitutions require criminal laws to state explicitly and definitely what conduct is punishable, and when reviewed must at a minimum pass rational basis review. Laws and the underlying authorities that violate these standards should rightfully be declared void, where the offensive portions of code or ordinances may be severed to leave any legitimate parts. Vagueness, overbreadth and underinclusive doctrines rests on the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, and Article I, Section 9 of the Florida Constitution. By requiring fair notice of what is punishable and what is not, the law should apply equally without being open to arbitrary application upon the whim of those enforcing it, should not encompass more activity than required by irrationally precluding the exercise of the rights guaranteed by the U.S. and Florida Constitutions, and should not omit persons and groups

such that there can be no rational basis for the "law." An order of the curfew's nature should be void for vagueness if the order's delegation of authority to police and/or administrators is so extensive that it would lead to arbitrary arrests, fines, and prosecutions.

14. The flaws identified in the challenged legislative body and its unconstitutional EO allow unbridled discretion by law enforcement which aside from now making and enforcing the law, is also judge and jury as the EO is impossibly tangled by exceptions that make it impossible for anyone to know what is allowed and what is not allowed, and decisions as to such may arbitrarily be made by law enforcement, even including with encouragement by EPG members' encouragement of who to target and when under such law.

### **III. JURISDICTION AND VENUE**

15. The Plaintiffs in this action are a number of individuals who reside in Hillsborough County who are impacted by the EPG EO, and the potential criminal penalties attached thereto and whose civil liberties and constitutional rights are being violated.

16. This is an action for declaratory and injunctive relief, that also seeks a TRO, and this action is related to the separate actions specified above.

17. This in an action challenging the constitutionality of the Hillsborough County Code, Chapter 22 Sections 22-24 and the EPG as a legislative body. This action subsequently challenges Hillsborough County EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP establishing an Order requiring the Wearing of Protective Face Coverings (Hereinafter EPG EO) in response to County Wide Threat from the COVID 19 Virus and the procedures by which it was enacted which adversely affect each individual Plaintiff's civil liberties and constitutional rights

18. This is an action for temporary and permanent injunctive relief and for a declaratory judgment and related relief. The jurisdiction of this Court is invoked pursuant to Chapter 86 et.seq. Florida Statutes, which authorizes circuit courts to enter declaratory judgments related to controversies within the jurisdiction of the circuit court. The jurisdiction of this Court is also invoked pursuant to Rule 1.610, Fla.R.Civ.Pro., Chapter 26.012(3), Florida Statutes, which authorizes the circuit courts to enter injunctions, and the inherent power of Florida courts to grant injunctive and declaratory relief.

19 The jurisdiction of this Court is also invoked pursuant to Article I, Sections 2, 6, 9, 10, 12, 21, and 23, and Article X, Section 6 of the Constitution of the State of Florida.

20 The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Secs. 1983, 1985, and 1988. This is a cause of action also arising under Article I, Section 10 of the Constitution of the United States, and under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

21. The jurisdiction of this Court is also invoked pursuant to *Smith v. Avino*, 91 F.3d 105 (11th Cir. 1996), abrogated on other grounds *Steel Co. v. Citizens for Better Env.*, 523 U.S. 82 (1998) (noting that government may impose a curfew during times of emergency but they must be imposed in good faith, have a factual basis, and be necessary to maintain order) and *SW v. State*, 431 So. 2d 339 (2DCA 1983), “Government has a legitimate right to enact laws for the protection of minors, but such laws must reasonably relate to their purpose without unduly limiting individual freedoms.”

22. An actual and existing controversy exists between Plaintiffs and Defendant Hillsborough County relative to their respective rights and duties as set forth herein.

23. Venue is proper in Hillsborough County, because Hillsborough County is the



County where the Plaintiffs and Defendants are located, and where relief is sought from the enforcement of the unconstitutional threat to personal and property rights brought about through enforcement of the challenged order.

#### **IV. PARTIES**

24. Plaintiff TONYA ESTEVEZ, is the Business Operator of *Little Habana Café*, located at 13350 Lincoln Road, Riverview, Florida 33578. Ms. Estevez is a resident of Hillsborough County.

25. Plaintiff, FERNANDO CESPEDES, is the Business Operator of *Family Focus Insurance Solutions*, located at 5522 Hanley Road, Suite 112, Tampa, Florida 33634. Mr. Cespedes is a resident of Hillsborough County.

26. Plaintiff, DOMENIC DIFANTE, is the Business Operator of *Panini's Bar and Grill*, located at 3973 Van Dyke Road, Lutz, 33558. Mr. Difante is a resident of Hillsborough County.

27. At all times material hereto, Defendant HILLSBOROUGH COUNTY, FLORIDA, was and is a political subdivision of the State of Florida. Naming HILLSBOROUGH COUNTY, FLORIDA, as a Defendant in this action is intended to include all HILLSBOROUGH COUNTY, FLORIDA representatives, employees, and agents, including but not limited to, the County Board of Commissioners, the COUNTY EMERGENCY POLICY GROUP, the County Attorney's Office, and all employees and agents under whose authority to enact and enforce licensing laws, regulations and ordinances is duly governed and limited by, *inter alia*, Sec.286, et.seq., Florida Statutes (Florida "Sunshine" law) and Article I, Section 24, Florida Constitution, as well as the defined authorization to carry out county government responsibilities under Chapter 125, Florida

Statutes, duly governed, limited and enumerated by, *inter alia* Sec.125.01, Sec. 125.011, Sec. 125.66 and Sec. 286, et.seq. of the Florida Statutes (Florida Constitution, effective July 1, 1993), and the Hillsborough County Charter.

**V. PLAINTIFFS' STATEMENT OF JURISDICTIONAL ALLEGATIONS  
ESTABLISHING STANDING, RIPENESS AND A RIGHT TO RELIEF**

28. Plaintiffs assert that their position, as set forth in this Complaint, is legally sound and supported by fact and law (see enclosure 1). The Defendants' threatened actions in the form of an Executive Order that enlists and requires Businesses to act as agents of the State, and whose violation of the EPG EO can result in arrest and prosecution in County Criminal Court have created a bona fide controversy between the parties, and Plaintiffs are in doubt as to their rights, privileges and immunities with respect to the EPG EO and, the unconstitutional delegation of legislative authority exercised by the EPG under County Code Sections 22-22 through 22-24. Plaintiffs require, therefore, a declaratory judgment determining their rights, privileges and immunities, and relief from repeated and continuing legislative actions by the EPG.

29. **Ms. Estevez** is the owner of the *Little Habana Cafe* restaurant. Little Habana Café employs five individuals. Because of the Executive Order, Ms. Estevez chose to close the dining in part of the restaurant down because it they believe it is impossible to determine how to apply the rules to their customers. Rather than lose goodwill, they announce publicly, and on Facebook that they were closing the dining room until further notice. Business was done up to 70 percent prior to this Executive Order, and Ms. Estevez fears that being compelled to enforce this EO would create problems with her customer base. Rather than lose business goodwill, she has closed down part of her business.

30. **Mr. Cespedes** is the President of *Family Focus Insurance*. This insurance agency

does business with the general public where they offer life, health insurance options for seniors and veterans. Mr. Cespedes employs 12 agents who meet with members of the general at this office or the home. Because every employee must be properly license, any arrest resulting in a fine or confinement would mean the immediate loss their license and future employment.

31. **Mr. Difante** is the owner operator of Panini's Bar and Grill in Lutz, Florida. Panini's is a restaurant and bar. Mr. Difante employs over 40 individuals, and serves over well over 1000 customers a week. As the owner operator, he is very concerned that he might be arrested. In addition, he is worried about the loss of good will and customers. The shutdown cost him over \$30,000 a week in lost revenues. Mr. Difante is concerned that any arrest could result in the loss of his liquor license and ultimately require him to close his business completely.

32. There is a clear, present, actual, substantial and bona fide justifiable controversy between the parties.

33. All conditions precedent to the institution and maintenance of this cause of action have occurred or have been performed.

34. The acts, practices and jurisdiction of Defendant, HILLSBOROUGH COUNTY, as set forth herein, were and are being performed under color of state law and therefore constitute state action within the meaning of that concept.

35. Plaintiffs are and will be threatened with adverse treatment and a denial of due process and their civil rights, on the basis of the EPG EO that is hopelessly vague and fails to alert Plaintiff's as to what specific conduct could result in their arrest.

36. Plaintiffs have no adequate remedy at law. No amount of money damages could adequately compensate the Plaintiffs for the irreparable harm described herein, specifically the deprivation of constitutionally protected fundamental rights.

37. Plaintiffs and the public at large will suffer irreparable injury if injunctive relief is not granted, and Defendants are permitted to enforce the provisions of the EO while also retaining continued law-making authority delegated to the EPG as challenged herein.

38. The public interest would best be served by the granting of injunctive relief, and, indeed, the public interest is disserved by permitting the enforcement of invalid EO as manifest in the EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP establishing an Order requiring the Wearing of Protective Face Coverings in response to County Wide Threat from the COVID 19 Virus, and the flawed procedures in violation of Florida Statute's that resulted in this flawed and vague order that violates numerous constitutional rights, as set forth herein.

39. The financial and non-financial losses the Plaintiffs have suffered is the direct result of the discriminatory, irrational, and unequal restrictions from the EPG overreaching adoption and enforcement of the Executive Order's challenged herein.

40. Plaintiffs have and will continue to suffer the harms of loss of their property rights, their business goodwill, and other freedoms as set forth above due to the actions of the EPG and the adoption and enforcement of the herein described Executive Orders.

41. Plaintiffs and the public at large will suffer irreparable injury if injunctive relief is not granted, and if the Respondent is permitted to enforce the provisions of the offending Executive Orders.

42. Plaintiffs have engaged the undersigned to prosecute this action and vindicate their rights under the law and Plaintiffs would request an award of attorneys' fees pursuant to 42 U.S.C. § 1988, and any other lawful basis.

## VI. GENERAL ALLEGATIONS

### A. DESCRIPTION OF THE HISTORY LEADING TO THE EXECUTIVE ORDER OF THE COUNTY EMERGENCY POLICY GROUP REQUIRING THE WEARING OF PROTECTIVE FACE COVERINGS

43. In December 2019, a cluster of pneumonia cases, caused by a newly identified  $\beta$ -coronavirus, occurred in Wuhan, China. The World Health Organization (WHO) officially named the disease as coronavirus disease 2019 (COVID-19).

44. On February 29, 2020, the United States reports the first death on American soil. WHO declared the outbreak a pandemic on March 11, 2020. Two days later, on March 13, 2020, a US national emergency is declared over the novel coronavirus outbreak.

### B. A DESCRIPTION OF EXECUTIVE ORDER

45. The Executive Order of the Hillsborough County Emergency Policy Group establishing requiring the wearing of protective face coverings lists 16 separate “WHEREAS” findings. The gist’s of these findings is to provide a summary and historical basis for the EO, and to support that such order is necessary and proper (enclosure 2)

46. Noteworthy, the thirteenth “WHEREAS” attempts to cite the CDC as support for the EO. The language used is quite telling, however, given that there is no science that is alluded to that would support a more assertive claim other than using the word “may”. In short, an EO is being imposed on a “may:

WHEREAS, the CDC has indicated cloth face coverings **may** slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and [emphasis added].

47. The order itself consists of 14 paragraphs. The order itself only applies to “Business Operators” as the EO defines them, and creates an order that requires these individuals to serve

as agents of the State. The order itself consists of 11 exceptions that one presumes “Business Operators” must know, and develop some sense of expertise. These include exceptions for the hearing impaired; persons working in professions where the use of face covering would present them from performing duties (and yet not defined what that might be); and an exception for those for whom face covering would cause impairment due to a pre-existing condition (as yet undefined).

48. The first three paragraphs provide a series of definitions. In paragraph 2, it defines “Business operator”:

As used herein shall mean any individual that controls the operation of an indoor location of a business, regardless of the formal title or role held by that individual or entity.

49. In paragraph 7, the EO requires business operators, as defined above, to ensure compliance with this EO. In doing so, they EO effectively drafts into Government service, without prior consent, agents to enforce the policy preferences of the EPG.

Business operators **shall be required** to ensure compliance with and enforce the provision of this Order. Business owners shall 1) **deny admittance** to any indoor business location under their control to any persons who fail to comply with the requirements of this Order and 2) require or **compel** the removal from any indoor business location under their control of any persons who fail to adhere to the requirements of this Order. **Individuals other than business operators may not be charged with the violation of this order.**

50. In Paragraph 9, eleven exceptions are listed, many of which have no definition, but are required to be enforced by the “Business Operator” in one way or another, and presumably subject to second guessing by legal authorities. For example, how is a “Business Operator” to determine what is or what is not an existing health condition that would permit a customer to avoid having to wear a mask. What professions or business exist that allow for the avoidance of masks? Since persons exercising are exempt, one presumes that Gym owners are not covered as a “Business Operator”. Persons eating or drinking are exempt, so one may presume that also

eliminates Bar, Taverns, and Restaurants. In addition to these and others, “Business Operators” must develop an expertise with the American’s with Disability Act and how that may or may not apply to mask wearing. The amount of guesswork required EO is quite staggering.

51. It is Paragraph 12 that is most troubling. It is here that “Business Operators” are subject to criminal sanctions if they get things wrong.

It is the intent of this Order to seek voluntary compliance with the provisions contained herein and to educate and warn of the dangers of non-compliance. However, in the event voluntary compliance is not achieved then, as a last resort, a violation of this Order by a **business operator may be prosecuted**, pursuant to the provision of section 252.50, Florida Statutes, may be prosecuted as a second-degree misdemeanor punishable as provided in section 775.082 or 775.083, Fla. Stat.

## MEMORANDUM OF LAW AND COMPLAINT

### FIRST CLAIM FOR RELIEF

#### THE EPG, AS EMPOWERED, IS CONSTITUTIONALLY FLAWED AS IT VIOLATES THE NON-DELEGATION DOCTRINES

52. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-51 of this Complaint as though fully set forth herein.

53. The Florida Constitution, Article VIII, § 1 states, "(c) Government. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose."

54. Pursuant to the Florida Constitution, Article VIII, § 1, the County Commissioners are the governing body for the County.

55. Fla. Const. Art. VIII, § 1 states, "(g) Charter government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law,

or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law."

56. Pursuant to Fla. Stat. § 125.01(1), "The legislative and governing body of a county shall have the power to carry on county government."

57. Fla. Stat. § 125.01(1) states, "To the extent not inconsistent with general or special law, [County government] power includes, but is not restricted to, the power to . . . t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law."

58. Fla. Stat. § 125.01(1) states the governing body may, "Perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."

59. Pursuant to Fla. Stat. § 125.011(1), "'County' means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word 'county' within the above provisions shall include 'board of county commissioners' of such county."

60. Pursuant to Fla. Stat. § 125.011, "(5) 'Board of county commissioners' includes all members of the board of county commissioners in a county whether their offices are created by the Constitution, the Legislature, or by any home rule charter."

61. Pursuant to Fla. Stat. § 125.66, "(1) In exercising the ordinance-making powers conferred by s. 1, Art. VIII of the State Constitution, counties shall adhere to the procedures prescribed herein."

62. Fla. Stat. § 125.66 provides that the board of county commissioners at any regular



or special meeting may enact or amend any ordinance while giving ten (10) days-notice and an opportunity for people to be heard.

63. Fla. Stat. § 125.66 allows that, "The board of county commissioners at any regular or special meeting may enact or amend any ordinance with a waiver of the notice requirements of subsection (2) by a four-fifths vote of the membership of such board, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary. . . . An emergency ordinance enacted under this procedure shall be transmitted by the clerk of the board of county commissioners by e-mail to the Department of State."

64. The Hillsborough Charter was adopted solely as a County charter, and not a consolidated county and municipal charter, for Home Rule.

65. Hillsborough County Charter Sec. 1.02. defines "the county government" as the government of Hillsborough County, not include or affect any court; any constitutional officer, as defined in Section 1(d) of Article VIII, Florida Constitution; sheriff; district school board; or any municipality.

66. Sec. 2.01. of the County Charter states the county government shall have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors of Hillsborough County.

67. Sec. 3.01. of the County Charter provides that for separation of legislative and executive powers, "the county government shall be divided between legislative and executive branches. No person belonging to one branch shall exercise any powers appertaining to the other branch unless expressly provided herein."

68. Pursuant to Sec. 4.02. of the County Charter, "The board of county commissioners shall consist of seven commissioners, each of whom shall be elected from one of seven districts."

69. The County Charter Sec. 4.08. states that for enactment of ordinances and resolutions, "The commission may take official action only by the adoption of ordinances, resolutions, or motions. [A]ll ordinances, rules and resolutions shall be adopted by at least four (4) affirmative votes, and all motions shall be adopted by majority vote of the members present. A majority of the full commission shall constitute a quorum to conduct business."

70. Hillsborough County Charter Sec. 5.01. states, "The executive responsibilities and powers of local self-government of the county not inconsistent with this Charter shall be assigned to and vested in the county administrator."

71. The County Charter requires that all Board of Commissioner meeting be held publicly.

72. County Code Chapter 22, Art. II, states in Sec. 22-19, "(a) The Board of County Commissioners of Hillsborough County, Florida finds and declares that in order to protect the emergency situations, the provisions of this article are necessary." (Ord. No. 06-13, § 1, 6-9-2006).

73. County Code Sec. 22-20 defines the Emergency Policy Group as, "that group of elected officials designated in the Hillsborough County Comprehensive Emergency Management Plan, specifically comprised of: Chairperson of the BOCC; Vice-Chairperson of the BOCC; County Commissioner (appointed by the BOCC); Mayor, City of Tampa; Mayor, City of Temple Terrace; Mayor, City of Plant City; Hillsborough County Sheriff; and the Chair of the Hillsborough County School Board."

74. County Code Sec. 22-21. states that, "A declaration by the Emergency Policy Group of a state of local emergency shall effectuate the terms and provisions of this article and the Comprehensive Emergency Management Plan." (Ord. No. 06-13, § 3, 6-9-2006).

75. Sec. 22-22. of the County Code continues, "(a) A state of local emergency shall be

declared by executive order of the Emergency Policy Group if it finds that an emergency, as defined in F.S. § 252.34, has occurred or that the threat thereof is imminent. All executive orders issued under this section shall indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination."

76. The County Code Sec 22-22 states, "(b) The duration of each state of local emergency declared shall be seven days. It may be extended, as necessary . . . by executive order of the Emergency Policy Group" who may also rescind the state of emergency by executive order. (Ord. No. 06-13, § 4, 6-9-2006)

77. County Code Sec 22-2(b) continues, "(1) During the existence of a state of local emergency, the Emergency Policy Group shall have the power and authority to impose by executive order, restriction. . ." public assembly, business opening and closing, prohibit and regulate travel on public streets, highways or any public property; and to impose a curfew; where throughout the EPG may decide who to exempt.

78. Nothing in the County Code Sec. 22 allows for any oversight or supervision of the EPG law-making body by the BOCC or any other entity.

79. No county resident has the voting power to remove all the members of the EPG from their separate elected offices that are not related to the EPG.

80. County Code Sec. 21-22 provide no right to hearing or notice by the people.

81. Nothing in Fla. Stat. § 252 for emergency management authorizes delegation of law-making to any other entity beside the authorizations to the County Board of Commissioners as contained in the Florida Constitution and relevant Florida statutes above.

82. Contrary to the facts in paragraphs above regarding the authorities conferred by the

Florida Constitution and Statutes, and the County Charter, the EPG advertises on its web page under [www.hillsboroughcounty.org](http://www.hillsboroughcounty.org) to the Hillsborough County citizenry that in addition to County Code CH 22, Art. II, the Florida Constitution, Article VIII; and Fla. Statutes Sec 125.66 and CH 252 grant authority for the EPG powers and law-making.

83. The BOCC, as the legislating body of Hillsborough County, may not delegate law-making to other branches. In this particular case, the Sheriff of Hillsborough County, a Constitutional Officer of the State of Florida, and a member of Judicial branch of government, is a voting member of a legislative body.

84. In addition to the Sheriff, the EPG includes mayors from Tampa, Temple Terrace and Plant City, the County Administrator who is Chief of the County's Executive branch, and the School Board Director: none of whom can under the most expansive imagination be viewed as being rightfully vested with legislative authority as has happened within our County.

85. This is all counterintuitive to the Non-Delegation and Separation of Powers Doctrines inherent to the Florida and United States Constitutions, and the Hillsborough County Charter. In near irony, under the County Code that created it, the EPG without any oversight declares emergencies that empower it to enact Executive Orders that serve as laws that are subject to no review outside the Courts in an action such as this.

86. The continued existence of County Code Chapter 22, Art. II, the EPG, and the associated ordinances allow the EPG to arbitrarily repeat its unconstitutional law-making whenever they so decide to declare an emergency, create a law as punishment, and to remove the rights of people who act responsibly.

87. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the EPG EO.

88. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

### **SECOND CLAIM FOR RELIEF**

#### **THE EPG BOARD AS CONSTITUTED VIOLATES THE SEPERATION OR POWER DOCTRINE ENSHRINED UNDER BOTH THE FLORIDA AND UNITED STATES CONSTITUTION.**

89. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-51 of this Complaint as though fully set forth herein.

90. EPG as constituted is in violation of the Florida Constitution in that it allows an unelected body outside the County Board of Commissioners, including a Judicial Officer, the County Sheriff to enact laws in a legislative capacity. Likewise, the Count Administrator, an Executive Officer may enact law under the EPG. Anything passed by the EPG is both null and void ab initio.

91. As stated in Paragraphs 52-86, the EPG is an unlawfully delegated legislative authority in violation of the Florida Constitution, Florida Statues, and County Charter. The EPG membership violates the Separation of Powers envisioned in the Florida Constitution and the County Charter as it places the County Sheriff, the public face of law-enforcement, and Chief Executive of the of the county judicial branch as well as the Chief Executives of three municipalities, all as a law-makers.

92. The Florida Supreme Court recognize non-delegation and separation of powers

doctrines as expressly set forth in the Florida Constitution that prohibit legislative delegation to another branch, and encroachment by one branch on the functions of another: The doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. See, e.g., *Pepper v. Pepper*, 66 So. 2d 280 (Fla. 1953). The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, etc.*, 589 So. 2d 260 (Fla. 1991). The case at bar involves a compelling example of the first form of interference that happened only a few months ago, through the Sheriff, as Judicial officer, enacting criminal statutes (e.g. Safer-at-Home order March 27, 2020) and then using that same order to make a high profile arrest of the Pastor of the River Church on said order (Pastor Ronnie Browne). Such action resulted in Pastor Rodney Howard-Browne being prosecuted and whose case was eventually nolle prose by the State Attorney (see Case # 2020CM3048).<sup>1</sup>

93. Generally, the legislative branch enacts the law, the executive branch implements and enforces the law, and the judicial branch interprets and enforces law validly enacted by the Legislature. See generally, *Kelly v. State*, 795 So. 2d 135, 137 (Fla. 5th DCA 2001). However,

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<sup>1</sup> This Florida Supreme Court has explained Florida’s strict separation of powers doctrine as follows:

The cornerstone of American democracy known as separation of powers recognizes three separate branches of government—the executive, the legislative, and the judicial—each with its own powers and responsibilities. In Florida, the constitutional doctrine has been expressly codified in article II, section 3 of the Florida Constitution, which not only divides state government into three branches but also expressly prohibits one branch from exercising the powers of the other two branches:

Branches of government. —The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

‘This Court . . . has traditionally applied a strict separation of powers doctrine’ [citation omitted], and has explained that this doctrine ‘encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power’ [citation omitted]. [Emphasis added.] *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004); see also *Diaz v. State*, 945 So. 2d 1136, 1143 (Fla. 2006).

‘[t]he powers of the government’ that are ‘divided into three departments’ are not defined or enumerated in the Constitution or by statute. They are to be determined, as occasion requires, by a consideration of the language and intent of the Constitution, as well as of the history, the nature, and the powers, limitations, and purposes of the republican form of government established and maintained under the Federal and State Constitutions. See *Florida Motor Lines, Inc. v. Railroad Commissioners*, 129 So. 876, 881 (Fla. 1930); see also *Simms v. Dep’t of Health and Rehabilitative Services*, 641 So. 2d 957 (Fla. 3d DCA 1994); *Kelly*, 795 So. 2d at 137.

94. To determine whether a certain power belongs to a particular branch of government, it is the “essential nature and effect of the governmental function to be performed” which determines whether a certain power is legislative, executive or judicial in nature.” Id.; *Commission on Ethics v. Sullivan*, 489 So. 2d 10, 12 (Fla. 1986); *Simms*, supra. This fundamental constitutional principle is reflected in Section 20.02(1), Florida Statutes (2019): The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. <sup>2</sup>

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<sup>2</sup> The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. “The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.” *Commission on Ethics*, 489 So. 2d at 13

In *Bush*, The Florida Supreme Court explains the important function of the judiciary:

The framers of the Constitution of Florida, doubtless, had in mind the omnipotent power often exercised by the British Parliament, the exercise of judicial power by the Legislature in those States where there are no written Constitutions restraining them, when they wisely prohibited the exercise of such powers in our State.

That Convention was composed of men of the best legal minds in the country—men of experience and skilled in the law—who had witnessed the breaking down by unrestrained legislation all the security of property derived from contract, the divesting of vested rights by doing away the force of the law as decided, the overturning of solemn decisions of the Courts of the last resort, by, under the pretence of remedial acts, enacting for one or the other party litigants such provisions as would dictate to the judiciary their decision, and leaving everything which should be expounded by the judiciary to the variable and ever-changing mind of the popular branch of the Government.

*Trustees Internal Improvement Trust Fund v. Bailey*, 10 Fla. 238, 250 (1863).

95. The EPG's existence, under its given powers, where the BOCC unconstitutionally delegated legislative authority in violation of the non-delegation doctrine concurrently violates Separation of Powers. All executive orders and laws issued by the EPG are constitutionally void. The Sheriff and Mayors each have a duty to enforce both the Florida Constitution and Florida state laws and statutes, and to provide for the security, safety and well-being of County citizens. This is accomplished through the delivery of law enforcement services, the operation of the County Jail, and the provision of court security. As noted, the Office of the Sheriff functions as the Executive Officer of the court. Under Florida law, the Sheriff derives his legal authority from the Constitution of the State of Florida. The Sheriff is vested with the ability to appoint and direct deputies who will act in his name and office to enforce the appropriate and applicable laws of the State of Florida. Likewise, the Mayor's serve as the Chief Executive of their respective municipalities. Vested with great authority, they have the responsibility to ensure that their respective police departments enforce statutes and ordinances within their respective jurisdiction.

96. The EPG however, is unconstitutionally delegated the legislative authority of the BOCC as vested by the Florida Constitution, Florida Statutes and the County charter. By its very nature, the BOCC is within the legislative arm of State government. Authority is granted by Article 8 of the Florida Constitution, Section 125.66add 125 --- and Chapter 252, Florida Statutes. Hillsborough County enacted Hillsborough County Code of Ordinances and Laws Chapter 22,

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Under the express separation of powers provision in our state constitution, “the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power,” and “the legislature cannot, short of constitutional amendment, reallocate the balance of power expressly delineated in the constitution among the three coequal branches.”

*Bush v. Gore*, 885 So. 2d at 329-30 (citing *Chiles v. Children A, B, C, D, E & F*, 589 So. 2d 260, 264 (Fla. 1991)) (emphasis added).



Article II, Sections 22-23 in order to protect the health, safety, and welfare of the County's residents during declared emergencies.

97. Accordingly, the fact that the Hillsborough County Sheriff and the Mayors of the local city governments are voting member of this board empowered to enact orders subject to prosecution in a County Criminal Court violates the Florida and United States Constitution separation of powers doctrine. Because of the unconstitutional delegation of legislative powers given to the EPG, combined with its membership, Plaintiffs have a substantial likelihood of success on the merits and a clear legal right to an injunction against continued operation of the EPG and CH 22 of county code, and the enforcement of the EPG Curfew, and injunctive relief should issue.

98. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the EPG EO.

99. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

### **THIRD CLAIM FOR RELIEF**

#### **THE EPG EO VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES AND FLORIDA CONSTITUTION**

100. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-51 of this Complaint as though fully set forth herein.

101. Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances.

102. Courts have generally ruled that most classifications imposed by the government do not deny persons equal protection of the laws. Generally, a legislature may make distinctions among people for any proper purpose, as long as the distinction is rational.<sup>3</sup> There must be a logical relationship between the purpose of a law and any classification of people that it makes. Without this "rational basis," a law will be struck down when challenged in court.<sup>4</sup>

103. The EPG EO at issue here, however, is utterly irrational. It proposes to create criminal sanctions for one group of individual (business operators) for the illegal actions of another group of individual (anyone who is not a business operator) and who are specifically excluded from any sanctions for their actions.<sup>5</sup> Under the EO, the business owner/operator can be sanctions for the conduct of minors who refuse to wear a mask.

104. The EPG EO has done something quite amazing. They have created an entire new theory of criminal liability. That is to say, that a business operator may be prosecuted for the actions of others without any showing of agreement or assistance. In Florida, if you help another person commit a crime, you are a principal and must be treated as if you had done all the things the other person or persons did if (1) you had a conscious intent that the criminal act be

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<sup>3</sup> To pass the rational basis test, the statute or ordinance must have a legitimate state interest, and there must be a rational connection between the statute's/ordinance's means and goals.

<sup>4</sup> *Reed v. Reed*, 404 U.S. 71 (1971), the United States Supreme Court invalidated an Idaho statute that preferred males over females in the selection of a probate administrator. The Court explained that the equal protection issue was "whether a difference in the sex of the competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of [the statute]." The Court concluded that it did not since it was arbitrary to prefer men over women merely to avoid hearings on the merits

<sup>5</sup> See Paragraph 7 and Paragraph 12 of the EPG EO.

done and (2) you did some act or said some word which was intended to incite, cause, encourage, assist, or advise the other person or persons to actually commit the crime.

105. However, the EPG EO has created an entirely new theory of criminal law out of whole cloth. That is to say, that a business owner can be arrested and prosecuted for simply his status as a business operator when others, not subject to any penalty whatsoever, engage in activities that the EO attempts to prohibit. Such strict liability for the actions of 3d parties is unique.

106. Clearly, such a theory of criminal liability is wholly irrational and violates the Equal protection doctrine as found under the 14<sup>th</sup> Amendment to the United States Constitution.

107. Pursuant to Section 26.012 (3), F.S., 2019 and to Rule 1.610, Fla.R.Civ.P., Plaintiffs are entitled to declaratory relief and preliminary, and permanent injunctive relief invalidating and restraining enforcement of the EPG EO.

108. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

#### **FOURTH CLAIM FOR RELIEF**

#### **THE EPG EO IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD**

109. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-51 of this Complaint as though fully set forth herein.

110. There are innumerable components of the EPG EO that leave unlimited discretion to County officials whereby the order is impermissibly vague for a "criminal" form of legislation. In addition, the EO requires business owners to determine who and whom to "discriminate"

against as a state actor.<sup>6</sup> Wrong decisions that can be second guess could result in criminal penalties.

111. The vagueness of the EPG EO at issue further establishes the Plaintiffs' clear legal right to the relief they seek and a substantial likelihood of success on the merits.

112. Vagueness doctrine rests on the due process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. By requiring fair notice of what is punishable and what is not, vagueness doctrine also helps prevent arbitrary enforcement of the laws. Additionally, under vagueness doctrine, an order of this nature is also void for vagueness if an order's delegation of authority to police and/or administrators is so extensive that it would lead to arbitrary prosecutions.

113. As is here, one is susceptible to prosecution for violations of the Executive Order without ever even showing that they have violated any of the substantive statutory regulations set forth above. This lack of "personal blameworthiness" renders the threatened criminal prosecution of the Plaintiffs entirely unlawful, because of the vague nature of the Executive Order, and the potential that individual engage in the same exact conduct are subject to differing outcomes depending on the discretion of the arresting officer.

114. The vagueness and overbreadth of the Executive Order at issue further establishes the Plaintiffs' clear legal right to the relief they seek and a substantial likelihood of success on the merits.<sup>7</sup> The vagueness and overbreadth of the challenged order is perhaps most exemplified by

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<sup>6</sup> The EPG EO requires business operators to determine who qualifies under the ADA, or who may have legitimate reasons not to wear a mask based on a medical condition. It is here that they become state actors, although engaged in private conduct. In other instances, in which the discrimination is being practiced by private parties, the question essentially is whether there has been sufficient state involvement to bring the Fourteenth Amendment into play. There is no clear formula. "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance.

<sup>7</sup> The Supreme Court of the United States has ruled on the subject of vague and indefinite statutes and has held that if the act of which a "Respondent" (or "any person" who stands accused) had not previously been construed by the State Courts to fall within the activities proscribed by the act, then until after such construction has occurred, no

the excessive provisions pointing to other Executive Orders, which point to other Emergency Orders and their amendments from one specific County, making it impossible to put anyone on fair notice as to what is allowed or not allowed.<sup>8</sup>

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person can be convicted of a crime that is described in indefinite and vague terms:

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court. As was said in United States v. Harris, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989:

“The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.

“Thus we have struck down a state criminal statute under the Due Process Clause where it was not ‘sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.’ Connally v. General Const. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322. We have recognized in such cases that ‘a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law,’ *ibid.*, and that “No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.” Lanzetta v. New Jersey, 306 U.S. 451, 453, 59 S.Ct. 618, 619, Bouie v. City of Columbia, 84 S.Ct. 1697 (1964)

80. Other courts, including in Florida, have entered similar holdings:

“The ordinance is also unconstitutionally overbroad. By its language the ordinance criminalizes conduct which is beyond the reach of the city's police power inasmuch as conduct “in no way impinges on the rights or interests of others” See Lazarus v. Faircloth, 301 F.Supp. 266, 272 (S.D. Fla. 1969); Effective law enforcement does not require that citizens be at the “mercy of the officers; whim or caprice,” See Brinegar v. United States, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879, 1890 (1949); “...and the just concerns of the public regarding crime must take rational expression and not become a mindless fear that erodes the rights of a free people” See Hayes v. Municipal Court of Oklahoma City, 487 P.2d 974, 980 (Okla.Crim.App.1971). “A penal statute that brings within its sweep conduct that cannot conceivably be criminal in purpose or effect cannot stand.” See City of Pompano Beach v. Capalbo, 455 So.2d 468 (Fla. 4th DCA 1984).

<sup>8</sup> Additionally, the cases of Effie, Inc. v. City of Ocala, 438 So.2d 506 (Fla. 5th DCA 1983), are instructive in the in this action. In that case, the plaintiff appealed a trial court's ruling that the city code provisions are valid. Effie contended that the challenged provisions were invalid because they failed to provide any standards or guidelines upon which the city council may act, thereby permitting the exercise of unbridled discretion by the council, thus denying Effie equal protection of the law. In determining that the ordinance was void for insufficiency of standards upon which the City could exercise its discretionary authority, the Court stated:

“We think a City Council may not deprive a person of his property by declining a permit to erect upon it a certain type of garage where the only restriction on the use of the police power is that it shall not be exercised before “due consideration” is given by someone, presumably the councilmen, to the effect of the building upon traffic. Both the quoted words, as well as their synonyms, could be construed to allow all manner of latitude in the grant of a permit in one case

115. According to the U.S. Supreme Court in *Connally v. General Construction Co.* (1926), a law is unconstitutionally vague when people “of common intelligence must necessarily guess at its meaning.”<sup>9</sup> Whether or not the law regulates free speech, if it is unduly vague it raises serious problems under the due process guarantee, which is applicable to the federal government by virtue of the Fifth Amendment and to state governments through the Fourteenth Amendment.

116. Additionally, the “means selected” of an Executive Order has no reasonable relation to the “object to be attained,” if that object is to “prevent the increase in COVID 19 cases”. The enforcement mechanism only applies to a small class of individual’ s who are likely complying, but subject to penalty for the actions of those who are not subject to the penalties found within the

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and the denial of a permit in a similar one, and would give every opportunity for the exercise of the power with partiality.

“The present ordinance could easily become such an instrument of discrimination...Clearly, the opportunity for the exercise of unbridled discretion is present here, and whether so exercised or not, renders the ordinance unconstitutional.”

<sup>9</sup> At least three Florida Supreme Court cases have declared Florida statutes unconstitutional on substantive due process grounds. *Schmitt v. State*, 590 So.2d 404, 413 (Fla. 1991); *State v. Walker*, 444 So.2d 1137 (Fla. 2d DCA 1984), aff’d 461 So.2d 108 (Fla. 1984); *State v. Saiez*, 489 So.2d 1125 (Fla. 1986). In *Saiez*, at 1128 the Court invalidated a statute which prohibited possession of credit card embossing machines under Section 817.63, F.S. (1983). Though the statute had a permissible goal, attempting to curtail credit card fraud, the means chosen, prohibiting possession of the machines, did not bear a rational relationship to that goal. Criminalizing the mere possession of the machines interfered with “the legitimate personal and property rights of a number of individuals who use [them] for non-criminal activities.” *Id.* at 1129. In other words, the statute criminalized activity that was otherwise inherently innocent.

In the *Saiez* case, the Court ruled that the statute violated substantive due process under the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Florida Constitution. The Court stated: “The due process clauses of our federal and state constitutions establish a ‘sphere of personal liberty’ for every individual subject only to reasonable intrusion by the state in furtherance of legitimate state interests. *See Del Percio*, 476 So.2d at 202 (quoting from *Richards v. Thurston*, 424 F.2d 1281, 1284 (1st Cir.1970))....

“The due process clauses of our federal and state constitutions do not prevent the legitimate interference with individual rights under the police power, but do place limits on such interference. *State v. Leone*, 118 So.2d 781, 784 (Fla.1960)...“Moreover, in addition to the requirement that a statute's purpose be for the general welfare, the guarantee of due process requires that the means selected shall have a reasonable and substantial relation to the object sought to be attained and shall not be unreasonable, arbitrary, or capricious. *See Nebbia v. New York*, 291 U.S. 502, 525, 54 S.Ct. 505, 510, 78 L.Ed. 940 (1934); *Lasky v. State Farm Insurance Co.*, 296 So.2d 9, 15 (Fla.1974); *L. Maxcy, Inc. v. Mayo*, 103 Fla. 552, 139 So. 121, 129 (1931).

subject EO. As in *Delmonico*, *Robinson*, and *Walker*<sup>10</sup>, the Respondent has chosen a means which is not reasonably related to achieving *any* legitimate rational purpose. It was unreasonable to criminalize a class of “business operator’s”, while not applying to “religious organizations, private clubs or nonprofit organizations,” or the Government offices, or Public Schools.<sup>11</sup>

117. It is not the Government’s job to treat its citizens as though they were children, and the elected official are the only adults in the room. It should equally be found unconstitutional to use Executive Orders to limit only the Plaintiffs as the lynchpin to achieve whatever purpose the EO was purportedly designed to advance, since it seems improbable that enforcing these provisions only against the Plaintiffs will have any remedial impact, other than putting honest people out of work and limiting their income.

118. The subject Executive Orders are vague, contradictory, way overbroad, confusing, capricious and discriminatory, and are perfect examples of an abuse of power that fails the rational basis test, and thus violates due process and equal protection of the law. These flaw supports the Plaintiffs request for injunctive relief. It is also for these reasons, that the Executive Order should be found unconstitutionally vague and overbroad. The Executive Order provisions are not minor, and they do violence to the Plaintiffs civil liberties.

119. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees pursuant to 42 U.S.C. § 1988.

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<sup>10</sup> As Judge Grimes phrased it in *Walker*, “without evidence of criminal behavior, the prohibition of this conduct lacks any rational relation to the legislative purpose” and “criminalizes activity that is otherwise inherently innocent.” 444 So.2d at 1140. Such an exercise of the police power is unwarranted under the circumstances and violates the due process clauses of our federal and state constitution.

<sup>11</sup> It is unknown whether Private Schools are exempt or not, since some private schools are considered a business.

**FIFTH CLAIM FOR RELIEF**

**SUPPLEMENTAL JURISDICTION CLAIMS:  
VIOLATIONS OF THE FLORIDA CONSTITUTION**

120. Plaintiff incorporates herein by reference each and every allegation contained in paragraphs 1-51 of this Complaint as though fully set forth herein.

121. Article I of the Florida constitution contains important provisions regarding the basic rights of all Florida citizens to be treated equally before the law and to 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. While there is no single, inflexible test by which our courts decide whether the requirements of procedural due process have been met, fundamentally it has been defined by the Courts to mean a structure of laws and procedures that hears before it condemns and proceeds upon inquiry and renders a judgment after trial.<sup>12</sup> Unfortunately, none of these fundamental requirements were met in the underlying Executive Orders that subjects “business operators’ to criminal sanctions for failing to adhere to government policy objectives in a manner that is sufficient based on a subjective analysis of the State official involved.

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<sup>12</sup> See *Watson v. Pest Control* commission of Florida, 199 So2nd 777 (4th DCA, 1967). The constitutional guarantee of due process extends to every type of legal proceeding. See *Pelle v. Dinners Club*, 287 So2nd 737, (Fla. DCA 3rd Dist 1974); *Tomayko v. Thomas*, 143 So2nd 227 (Fla. 3rd DCA, 1962); *State ex rel. Barancik v. Gates*, 134 So2nd 497 (Fla. 1961); It cannot be simply ignored by labeling the proceedings as merely “quasi-judicial” or administrative. Nor can it be merely colorable or illusory. See *Ryan’s Furniture Exchange v. McNair*, 120 Fla 109, 162 So. 483 (1935). Nor can it be a mere sham or pretense, *Robbins v Robbins*, 429 So2nd 424, 3rd DCA (1983). As outlined in the case of *Neff v. Adler*, 416 So2nd 1240 at 1242-43 (Fla 4th DCA 1982) the fundamentals of procedural due process include a hearing before an impartial decision-maker, after fair notice of the charges and allegations with a fair opportunity to present one’s own case. Fundamental due process includes the duty of the individual presiding over the hearing to apply a correct principle of law or rule, see *State v. Smith*, 118 So2nd 792 (Fla.1st DCA, 1960).



122. The EPG EO violates the Plaintiffs' constitutional rights as protected in the Florida Constitution. Given that the Legislature, has provided the Governor with immense authority once a declared state of emergency is issued, the only bulwark to protect the citizens of the State of Florida from abuse of power is to be found in both the Florida and United States Constitution. After Reconstruction was completed, the Florida Constitution has provided intrinsic and unalienable rights and liberties to its citizens. Chief among those rights and liberties are those found in Article 1 of the Florida Constitution.<sup>13</sup>

123. The penalties provisions found in Executive Order threaten the Plaintiffs' liberty for its violation, and penalties for failing to enforce, as unpaid and forced laborer for the Government, for activities that the Government does not approve. This is a clear abuse of power. Article I,

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<sup>13</sup> Article 1, Sections 2, 6, 9, 10, 12, 21 and 23 the Florida Constitution provides, in pertinent part:

a. SECTION 2. Basic rights. —All-natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

b. SECTION 6. Right to work. —The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

c. SECTION 9. Due process. —No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

d. SECTION 10. Prohibited laws. —No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

e. SECTION 21. Access to courts. —The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

f. SECTION 23. Right of privacy. —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. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

In addition, Article X, Section 6 of the Constitution of the State of Florida stats as follows:

SECTION 6. Eminent domain. —

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.
- (c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

Section 9 of the Florida Constitution provides that “No person shall be deprived of life, liberty or property without due process of law...”<sup>14</sup>

124. Respondent’s Executive Orders have proximately and legally caused tremendous financial harm to Plaintiffs businesses, which will continue to have deleterious effects unless and until Respondent is enjoined by this Court from enforcing these respective Orders (see *Supra* above). Requiring Plaintiffs to abstain from conducting lawful business in the State of Florida, despite other compliance measures being taken to satisfy the public health interests at stake, because of the actions of third parties, violates their Florida Constitutional liberty rights. See Sections 2, 6, 9, 12 and 23 specifically of the Florida Constitution, Article I.

125. Florida constitutional guarantee of equal protection and the Fourteenth Amendment’s guarantee of equal protection are substantially equivalent and analyzed in similar fashion. In addition, Florida’s constitutional guaranty of equal protection under Article 1 Section 2 of the Florida Constitution has been defined to mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness. In the instant case, the Executive Order has the practical effect of treating “business operators”, differently than most everyone else. The disparate and unequal treatment of these separate entities is not fully explained and have no rational basis.

126. Requiring Plaintiffs to abstain from conducting lawful business in the State of Florida with their customers, despite other compliance measures being taken to satisfy the public health

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<sup>14</sup> See generally *Stromberg v. California*, 283 U.S. 259 (1931) (voided a state statute on grounds of its interference with free speech. State common law was also voided, with the Court in an opinion by Justice Black asserting that the First Amendment enlarged protections for speech, press, and religion beyond those enjoyed under English common law).

interests at stake, violates their Florida Constitutional liberty rights as found in Article I, section 2.

127. The penalties listed Executive Order represent violations of the Fifth and Fourteenth Amendments, as well as Article I, § 9 of the Florida Constitution which exist to prevent an unjust taking and demand due process.<sup>15</sup>

128. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Respondent is enjoined from implementing and enforcing the Orders.

129. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988.

**MEMORANDUM OF LAW FOR  
CONSIDERATIONS FOR THE ISSUANCE OF INJUNCTIVE RELIEF**

130. A temporary injunction should be granted where there is a showing of:

(1) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, (2) the substantial likelihood of success on the merits, (3) that the threatened injury to petitioner outweigh any possible harm to the respondent, and (4) that the granting of the preliminary injunction will not disserve the public interest. See *Cosmic Corp. v. Miami-Dade County*, 706

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<sup>15</sup> Florida courts have routinely held that the Florida Constitution provides just compensation to property owners when their land is taken for public use because the law seeks to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. Inverse condemnation is a claim made by a property owner that the effect of a governmental action on its property is so devastating that it is the equivalent of the direct exercise of eminent domain, and thus requires just compensation under the Fifth or 14th amendments. Such claims are also referred to as regulatory takings. In order to establish liability, the property owner must prove that it was deprived of all or substantially all economically beneficial use of its property, whether temporarily or permanently. See Florida's Bert J. Harris, Jr., Private Property Rights Protection Act, F.S. §70.001 et se.

So.2d 347 (Fla. 3d DCA, 1998). The same considerations generally apply to the issuance of a Temporary Restraining Order, usually an emergency procedure to maintain the status quo until an injunction hearing can be held. In this submittal, the Plaintiffs will set forth a substantial and sufficient basis to show that each of these separate criteria are met and the facts and law set forth herein clearly justify the injunctive relief sought.

**A. THE ENFORCEMENT OF THE CHALLENGED  
EO HAS CAUSED AND IS CAUSING PLAINTIFFS IRREPARABLE HARM AND  
PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW**

131. The Plaintiffs in this action are residents who seek judicial review, due to the unlawful powers to legislate being exercised by the EPG, and the vague nature of the EO and in the manner in which it was passed in violation of Florida Statutes.

132. The pertinent portions of this legislation, all of which point to its unconstitutionality even if legislative authority to the EPG was Constitutional, are set forth in the following section, but the bottom line is that the County, with no authority and on the basis of a completely unconstitutional scheme, has now put Plaintiffs on the precipice of being taken into custody of law enforcement, in violation of their civil liberties, for otherwise lawful activities, with no adequate legal remedy. And there is no end to the EPG's ability to repeat enactment of laws that violate the Plaintiffs' rights and liberties.

133. The EPG EO manifests a clear and present threat to the civil liberties of Plaintiffs' resulting in several forms of irreparable harm, vastly exceeding any form of harm simply compensable with money damages. The most egregious form of the irreparable harm occasioned by the challenged EO is found in the loss of constitutional rights and freedoms manifest in the Plaintiffs' rights to engage in the conduct of their lives without excessive government interference

with Orders that have no nexus to the goals they attempt to achieve. In every case, the EO is not narrowly tailored, as it applies to just “business operators” within Hillsborough County, and fails to obtain the compelling interest it asserts. That is to stop the spread of COVID 19.

134. The Plaintiff’s rights and freedoms include, generally, the right to due process of law, the right to equal protection of the law, and the right to earn a living and enjoy the fruits of one’s labors, as well as the ownership and use of private property without undue governmental interference. The loss of any constitutional right or freedom, in and of itself, constitutes irreparable harm. See *Tampa Sports Authority v. Johnston*, 914 So.2d 1076 (Fla. 2d DCA 2005). Even more importantly, the loss of customers for business impacted adversely by the EO, and the loss of business goodwill and threats to a business’ vitality are also irreparable harm, all of which clearly justify injunctive relief.

135. The irreparable harm described above is the direct result of the threatened enforcement of the EPG EO, and the application of the unconstitutional provisions of the order against Plaintiffs. Plaintiffs have no adequate remedy at law because there is no plain, certain, prompt, speedy, sufficient, complete, practical, or efficient way to attain the ends of justice without enjoining *immediately* the threatened enforcement of curfew. This threat could only come from improper review and/or insufficient training of the law enforcement agencies charged with the responsibility to enforce the curfew. Relief is sought on the basis of the likelihood of success set forth in the arguments in that section. Plaintiffs have met this requirement for the issuance of a temporary restraining order or, in the alternative, a temporary injunction, against the enforcement of the unconstitutional Curfew.

**B. THE MAINTENANCE OF THE STATUS QUO IS  
JUSTIFIED AND NECESSARY  
WHILE THIS MATTER IS LITIGATED**

136. The status quo prior to the EPG EO should be maintained while litigation is ongoing, that being that Plaintiffs be allowed to continue in their lawful pursuits absent the threat of arrest and/or confinement. Plaintiffs should continue to live peaceably, without fear of arrest or other harassment by the County, or any functionary assigned by the County to “enforce” or “inspect” the subject activities. Plaintiffs’ other constitutional rights and the maintenance of the status quo require the issuance of a TRO and subsequent temporary injunction.<sup>16</sup>

137. In the instant action, the last “peaceable non-contested condition” that preceded this controversy was that the Plaintiffs were enjoying their rights to engage in both their business and property rights and the fruits of their pursuits, unencumbered by governmental interference. The status quo should be preserved by the issuance of a TRO and subsequent temporary Injunction.

**C. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD  
OF SUCCESS ON THE MERITS INVALIDATING  
THE CHALLENGED LEGISLATION**

138. The next consideration in evaluating the grant of injunctive relief is whether the party seeking the injunction shows a substantial likelihood of success on the merits. In the instant action, Plaintiffs can and will show numerous grounds supporting the relief requested, any one of which would be sufficient to justify the injunctive relief sought herein, and all of which clearly establish that the challenged legislation is invalid and unconstitutional.

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<sup>16</sup> ... The status quo preserved by a temporary injunction is the last peaceable non-contested condition that preceded the controversy, *Bowling v. National Convoy & Trucking Co.*, 135 So. 541 (Fla. 1931). One critical purpose of temporary injunctions is to prevent injury so that a party will not be forced to seek redress for damages after they have occurred. *Lewis v. Peters*, 66 So.2d 489 (Fla. 1953). ... *Bailey v. Christo*, 453 So.2d 1134 (Fla. 1st DCA 1984).

139. The fact that legislation of a penal nature would operate to deprive a person of due process does not, of itself, justify the invocation of the injunctive machinery in relation to that suit. However, *when a criminal statute or ordinance is invalid, and its enforcement will result in injury to, or destruction of, property or personal rights, equity may intervene.* Deeb v. Stoutamire, 53 So. 2d 873 (Fla. 1951); Metropolitan Dade County v. Florida Processing Co., 218 So. 2d 474 (Fla. Dist. Ct. App. 3d Dist. 1969)(emphasis added).<sup>17</sup>

140. Equally as dominant as a “general rule” is the fact that the injunctive remedy is appropriate, on proper showing of injury, to *restrain the enforcement of an invalid law.* Daniel v. Williams, 189 So. 2d 640 (Fla. Dist. Ct. App. 2d Dist. 1966); Board of Com'rs of State Institutions v. Tallahassee Bank & Trust Co., 100 So. 2d 67 (Fla. Dist. Ct. App. 1st Dist. 1958)(emphasis added). The injury may consist in the infringement of a property right. See Louisville & N.R. Co. v. Railroad Com'rs, 63 Fla. 491, 58 So. 543 (1912). It may also exist in the right to earn a livelihood and continue in one's employment. Watson v. Centro Espanol De Tampa, 158 Fla. 796, 30 So. 2d 288 (1947). Persons who are the subject of harassment by overzealous, improper, or bad-faith use of valid statutes may be afforded the protection of injunctive relief. Kimball v. Florida Dept. of Health and Rehabilitative Services, 682 So. 2d 637 (Fla. Dist. Ct. App. 2d Dist. 1996). The instant action manifests all these components. As will be shown in the sections below, this case is one deserving of the grant of injunctive relief.

#### **D. THE PUBLIC INTEREST AND “BALANCING TEST”**

141. The Constitutions of the State of Florida and the United States are the ultimate expressions of the public interest. As a result, the Plaintiffs’ rights to enjoy their constitutionally

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<sup>17</sup> The circumstances must be exceptional and the danger of irremediable loss must be great and immediate. Pohl Beauty School v. City of Miami, 118 Fla. 664, 159 So. 789 (1935). Both conditions are present in this action.

protected rights to conduct their lives free from government intrusion and interference, enjoy due process of law, equal protection of the laws, and the numerous other rights articulated in the above sections cannot be lawfully abridged through the enforcement of the EPG EO. The greatest public interest lies in the freedoms and rights to due process guaranteed by the Constitution.<sup>18</sup> Therefore, the overall public interest is served by safeguarding these Constitutional freedoms and the right to due process.

142. Additionally, there are volumes of state statutes and regulations in place that can and are being used to regulate Plaintiffs and deter criminal activity as put forward by the EO. The Plaintiff's should not be burdened with enforcing an EO at the risk of being cited for criminal misconduct, so the "balancing test" clearly tilts in favor of the Plaintiffs. Accordingly, the requested TRO/Temporary Injunction should issue.

**E. NOTICE REQUIRMENTS OF THE  
FLORIDA RULE OF CIVIL PROCEDURE 1.610**

143. A Temporary Injunction may be granted without written or oral notice to the adverse party only if it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. That has been clearly shown in the pleadings as stated, *infra*.

144. In addition, the movant's attorney must certify in writing any efforts that have been made to give notice and the reasons why notice should not be required. In this case, the County Attorney's office is located a few blocks from the Courthouse, and will be served concurrently

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<sup>18</sup> ... Similarly, the public interest is served by any abatement of unconstitutional activity. *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1071, (7th Cir. 1976). *Decker, supra* See, also, *DiDomenico v. Employers Cooperative Industry Trust*, 676 F.Supp. 903 (N.D. Ind. 1987) and *Zurn Constructors, supra*.



with the electronic filing of this complaint. However, for this court to grant relief, we urge this court to give consideration that notice should not be required, as the injuries to Plaintiff's and those similarly situated is immediate, ongoing, and compelling. Failure to grant immediate relief subjects these Plaintiff's to potential criminal sanctions under an EO that is on its face vague, and violative of the Constitutional rights of the Plaintiffs.

145. In addition, however, is the actions of the EPG, which are ongoing. This is the third time the EPG has taken actions to limit the rights and privileges of the citizens of Hillsborough County. This court should consider how the Safer-at-Home EO resulted in the unconstitutional arrest of a local Pastor, with a highly covered press conference that included the elected Sheriff and the State Attorney. The State Attorney used the arrest to engage in fundraising. These Plaintiff's fear the same fate of being the one singled out to made a public example, and the subject of a press conference, by elected official's seeking political gain.

146. Thereafter, the EPG enacted a county wide curfew, with no notice, only to withdraw that curfew within 72 hours, and only after a lawsuit, such as this one, was threatened by the undersigned.

147. We are now here again, litigating a poorly worded, confusing, inane, and poorly thought out EO, that was the result of a lack of deliberation, and represents a product that was rushed without considering the secondary effects. This rushed legislation results in real, present and ongoing harm to the Plaintiff's, as has been shown *infra*, that demands the relief requested.

148. Consider one aspect of this drama that is never contemplated or discussed. The impact of this poorly worded and vague legislation has disrupted the community and ruptured the fabric of our society. Neighbor is being pitted against neighbor. Rather than brining the community together, this EO has split the community apart and caused widespread disruption

and anxiety, as people grapple with what this EO means, and what is required. It has caused everyone to act out of fear, and this fear is causing problems throughout both the business community and the citizenry at large.

149. In that respect, the undersigned counsel respectfully request that this court accept these reasons, and the complaint as a whole, along with the knowledge that real harm is happening in real time, and waive the notice requirement by granting the TRO.

## VI. CONCLUSION

Plaintiffs have demonstrated their entitlement to either a TRO or a Temporary Injunction under Florida law and further still have demonstrated their entitlement to either a Preliminary or Permanent Injunction under State law. As shown herein, Plaintiffs will suffer irreparable harm if injunctive relief and a Temporary Injunction do not issue: as a matter of law, there is no adequate remedy at law for the current and continued deprivation of their constitutional rights and Plaintiffs have a clear legal right to the relief requested and a substantial likelihood of success on the merits in this action. Most importantly, the public interest demands the preservation of constitutional rights and representation by the people in law-making by the officials they elect for this function. Accordingly, this Court is requested to hold an appropriate hearing and **GRANT** the request for *Temporary Injunction*, temporarily enjoining further enactments by the EPG, further operation of Hillsborough Code CH 22, and actions by the Defendants, and all others acting at the behest of the state, from enforcing the challenged EO against the Plaintiffs, until such time as a full evidentiary hearing can be held on the issuance of a permanent injunction

**WHEREFORE**, Plaintiffs respectfully request this Court grant the relief requested herein, and issue a TRO and subsequent Temporary Injunction against Defendants, enjoining the enforcement of the EPG EO against Plaintiffs and all other citizens of Hillsborough County,

pending the Court's determination of the merits of an application for a Permanent Injunction.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully requests that this Court GRANT the following relief:

- a) Declaring the Emergency Policy Group itself as well as the EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP requiring the wearing of protective face coverings in response to County Wide Threat from the COVID 19 Virus, to be violative of the aforementioned Florida and United States Constitutional and statutory provisions as stated above, and;
- b) Entertain proceedings for the issuance of a Temporary and Permanent Injunction from applying and enforcing the EXECUTIVE ORDER of the COUNTY EMERGENCY POLICY GROUP requiring the wearing of protective face coverings in response to County Wide Threat from the COVID 19 Virus, in whole or in part, against Plaintiffs and all other residence of Hillsborough County.
- c) Awarding any and all attorney's fees and costs as authorized by law;
- d) Awarding any and all actual, consequential and special damages to which Plaintiffs are entitled.
- e) Such other and further relief as this Court deems fit, just, and equitable.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been furnished to Christine Beck, Esq., Hillsborough County Attorney's Office, 601 East Kennedy Blvd., 27<sup>th</sup> Floor, Tampa FL, 33602, via e-mail to [Beck.C@hillsboroughcounty.org](mailto:Beck.C@hillsboroughcounty.org), on this 25<sup>th</sup> day of June 2020

Respectfully Submitted,

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