

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

ERIC A. GONYON,

Plaintiff,

CASE NO:

vs.

HILLSBOROUGH COUNTY, a political
subdivision of the State of Florida,

Defendant.

_____ /

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

Plaintiff, Eric A. Gonyon ("Gonyon"), through undersigned counsel, hereby sues Defendant, HILLSBOROUGH COUNTY, a political subdivision of the State of Florida, ("Hillsborough County"), and alleges the following:

JURISDICTION AND VENUE

1. This is a lawsuit for injunctive relief over which this Court has jurisdiction.
2. This is a lawsuit for declaratory judgment over which this Court has jurisdiction under Fla. Stat. § 86 (2019).
3. Venue is proper in Hillsborough County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to certain orders issued by Hillsborough County, through the Hillsborough County Emergency Policy Group ("EPG"), an agent and delegated political authority of Hillsborough County, and because all or part of the claim for relief at issue in this litigation arose in Hillsborough County.
4. Hillsborough County has delegated its law-making powers during a state of emergency to the EPG as codified in the Hillsborough County Comprehensive Emergency Management Plan. (Hillsborough County Code of Ordinances and Laws Chapter 22, Article II).

The Hillsborough County Emergency Policy Group is comprised of three County Commissioners, the mayors from the cities of Plant City, Tampa, and Temple Terrace, the Sheriff, and Chairman of the School Board.

PARTIES

5. Plaintiff, Gonyon, is a Florida resident, a resident of Hillsborough County, and the owner of Hillsborough County business A Land of Delight Natural Farm, located at 2514 Leaning Pine Lane, Plant City FL 33565. Gonyon and his business have been negatively impacted by orders that have been issued by and through the EPG, an agent of Hillsborough County, that have caused interference with his personal liberty and business enterprise. Plaintiff also has asthma, a breathing condition which makes it difficult to breathe while wearing a mask.

6. Hillsborough County is a proper Defendant in this action because Hillsborough County EPG created and implemented "Executive Order of the Hillsborough County Emergency Policy Group Requiring the Wearing of Protective Face Coverings," ("the Executive Order") on June 23, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

FACTS

7. On April 16, 2020, The White House released "Guidelines for Opening Up America Again," (hereafter "Guidelines") a publication that included a three-phased approach to opening the country during the response to the virus known as COVID-19 and based on the advice of public health experts. The Guidelines advised that individuals "strongly *consider* using face coverings while in public." *Guidelines for Opening Up America Again*, The White House (4-16-2020.) (emphasis added).

8. Afterwards, on April 29th, 2020, the Florida Governor Ron DeSantis released Executive Order 20-112 which included a "phased approach" to reopening Florida. This did not

include the requirement that Floridians wear face masks in any setting. Executive Order 20-112 *Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery*, State of Florida, (April 29th, 2020). Executive Order 20-112 left it up to an individual's own discretion whether to wear a face mask.

9. Thereafter, on June 23th, the Hillsborough County EPG issued the Executive Order. Unlike the existing national and State of Florida emergency orders, the Executive Order requires Hillsborough County residents to wear face masks in various circumstances.

10. The Executive Order reads in part:

1. "Business" as used herein shall mean any commercial or for-profit entity (regardless of corporate structure or formation) that provides goods or services directly to the public. "Business" as used herein does not include religious organizations, private clubs or nonprofit organizations nor does it include any location under the control of Hillsborough County Public Schools, which shall establish its own policy for its locations within the district.

2. "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.

...(cont.)

6. Business operators shall be required to ensure compliance with and enforce the provisions of this Order. Business operators 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 an indoor business location under their control of any persons who fail to adhere to the requirement of this Order. Individuals other than business operators may not be charged with a violation of this Order.

...(cont.)

9. Nothing herein shall require the wearing of face coverings by the following persons:

- a. Persons under the age of two years; and
- b. Persons for whom a face covering would cause impairment due to an existing health condition, and
- c. Persons working in a business or profession who do not have interactions with other persons; and
- d. Persons working in a business or profession who do not have interactions with other persons; and
- e. Persons working in a business or profession who maintain social distancing from another person; and
- f. Persons working in a business or profession where the use of a face covering would prevent them from performing the duties of the business or profession; and
- g. Persons exercising, while maintaining social distancing; and
- h. Persons eating or drinking; and
- i. Public safety, fire and other life safety and health care personnel, as their personal protective equipment requirements, will be governed by their respective agencies; and
- j. The requirement shall not apply when a person who is hearing-impaired needs to see the mouth of someone wearing a face covering in order to communicate; and
- k. The requirement shall not be applied in a manner that would conflict with the Americans with Disabilities Act (ADA).

...(cont.)

12. 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 non-compliance is not achieved then, as a last resort, violation of this Order may be prosecuted, pursuant to the provisions of 252.50.

Fla. State., as a second degree misdemeanor punishable as provided in Section 775.082 or 775.083, Fla Stat.

...(cont.)

11. Plaintiff is a business owner who is personally and negatively affected by the mandate to both wear a mask and also the mandate to enforce the mandatory mask provision contained within the Executive Order. Plaintiff is presumptively required by the Executive Order to both enforce the Order upon the premises of his business and also wear a mask, which he cannot safely do because he has an asthmatic medical condition.

12. In a highly cited paper published by the Center for Disease Control, it was found that medical researchers did "not find evidence that surgical-type face masks are effective in reducing laboratory-confirmed influenza transmission, either when worn by infected persons (source control) or by persons in the general community to reduce their susceptibility." (The Center for Disease Control, *Policy Review*, " Xiao, J., Shiu, E., Gao, H., Wong, J. Y., Fong, M. W., Ryu, S....Cowling, B. J. (2020). Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures. *Emerging Infectious Diseases*, 26(5), 967-975. <https://dx.doi.org/10.3201/eid2605.190994>.)

LAW

13. The Executive Order is unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution. Article 1 § 23 of the Florida Constitution states: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." The explicit constitutional right of privacy listed in the Florida Constitution embraces more privacy interests and

extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla.1985). The Executive Order is a radical infringement of the reasonable and legitimate expectation of privacy that most Floridians expect to have over their own bodily and facial autonomy in addition to their medical privacy. Plaintiff's medical privacy is and will continue to be infringed by the Executive Order which requires him to both wear a mask and investigate and require any visitor to his business to also wear mask.

14. The Executive Order is also unconstitutional because it violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution, which reads: "No person shall be deprived of life, liberty or property without due process of law...". The due process clause protects the individual against the arbitrary and unreasonable exercise of governmental power. *Noel v. State*, 191 So. 3d 370, 373 (Fla. 2016). The Executive Order is arbitrary and unreasonable because it is not backed by a compelling state interest or any facts proving such an interest. (See Section 11 of this complaint.) The original basis for the state of emergency in Hillsborough County which resulted in the issuance of the Executive Order was to reach a goal of "flattening the curve" of new hospitalizations resulting from COVID-19 and the mask mandate is not rationally related to it. Due process of law protects against the unreasonable legislative deprivation of life, liberty, or property and the Executive Order deprives Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way of Hillsborough County's interference with his private action and personal liberty and also the private action of visitors to his business.

15. An additional reason the Executive Order is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because it is void for vagueness. The Emergency Order leaves the most significant terms contained within it undefined. Due process is violated when a statute “forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning.” *D'Alemberte v. Anderson*, 349 So.2d 164, 166 (Fla. 1977) (quoting *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 (1927)). Section 9 (f) of the Emergency Order, which contains a list of exceptions to the ordinance, reads: "Persons working in a business or profession where the use of a face covering would prevent them from performing the duties of the business or profession." (Hillsborough County Emergency Order, Sec. 9(f)). This unclear exception would confuse any person as to its meaning and would allow any government enforcement official absolute discretion in interpreting and enforcing the Executive Order. Multiple terms in the Executive Order also remain undefined, such as "social distancing," and "conflict with the Americans with Disabilities Act." Hillsborough County has created immediate confusion for the person of common intelligence. Ultimately, the language of the Executive Order is too vague for the average citizen to understand, forcing Hillsborough County residents to guess at the meaning and then be subject to the heavy criminal and civil punishment: up to 60 days of jail and a \$500 dollar fine. A statute is void for vagueness when persons of common intelligence must guess as to its meaning and differ as to its application, or if it lends itself to arbitrary enforcement at an officer's discretion. *Davis v. Gilchrist County Sheriff's Office*, 280 So. 3d 524, 532 (Fla. 1st DCA 2019). The Executive Order lends itself to arbitrary enforcement at an officer's discretion due to its vagueness and indefinite terms.

16. Additionally, Executive Order is unconstitutional because it violates the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution, which reads: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry...". The Executive Order, without reason, excludes "nonprofit organizations" from the requirement to wear a mask. The legal treatment of non-profit businesses from for-profit is a violation of the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution. Such a classification must bear a rational relationship to a legitimate government interest. Furthermore, in the Executive Order certain government employees are exempt from wearing masks, namely "public safety, fire, and other life safety and health care personnel...". (Hillsborough County EPG Executive Order Sec. 9(i)). No difference of risk or exposure and infection exists between those required to wear masks and government employees. Additionally, this exception subsection doesn't just limit these certain employees from the requirement that they wear masks on the job; but instead it suspends mask-requirement for them indefinitely: anywhere they visit in Hillsborough County—at any time—is exempted from the legal requirement to wear a mask. By arbitrarily requiring only a portion of the population to comply with the mask mandate, Hillsborough County treats similarly situated people and businesses differently without a rational basis and places unique burdens on some individuals and not on others without justification. Such a classification must bear a rational relationship to a legitimate government interest or it will violate Florida Constitution's equal protection clause. *North Broward Hospital District v. Kalitan*, 219 So. 3d 49, 55 (2017). No conceivable state of facts can provide a rational basis for classifying government employees as existing in a different situation than the average patron or employee. Thus, Hillsborough

County has no reason for treating government employees differently and the classification is not rationally related to a legitimate end. Finally, the the criminal punishment of businesses for actions taken by members of the public on the premises of the business property violates the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution because there is no rational basis for punishing the business instead of the individual person who violated the Executive Order. Such a method of legal enforcement and classification is unprecedented.

17. Finally, the Emergency Order is illegal because the Hillsborough County Emergency Policy Group lacks the legal authority to either make private business owners act as enforcers of the mask mandate or create the mask mandate. Nowhere is this power listed in the Hillsborough County Code of Ordinances and Laws. Sec. 22-23 of the Hillsborough County Code of Ordinances and Laws, titled "Emergency management powers of the Emergency Policy Group," lists the limited and exact powers in an emergency and the section lists no such authority. Article II of the Hillsborough County Code of Ordinances and Laws defines the specific powers of the EPG and nowhere contained within it is the power to make private business operators act as enforcement agents of County policy. (Hillsborough County Code of Ordinances and Laws, Art. II). Additionally, the EPG lacks the legal authority to issue an order which would result in criminal arrest.

18. To obtain a preliminary injunction, Plaintiff must prove: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017). All four elements are shown and proved below.

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

20. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which the Hillsborough County government is infringing upon. The test for the unavailability of an adequate remedy at law is whether the "irreparable injury is an injury that cannot be cured by money damages." *Lutsky v. Schoenwetter*, 172 So.3d 534, 534 (Fla. 3d DCA 2015) (citing *Grove Isle Ass'n, Inc. v. Grove Isle Assocs., LLLP*, 137 So.3d 1081,

1092 (Fla. 3d DCA 2014)). The deprivation of Plaintiff's rights cannot be remedied by money or any judgment other than an injunction. The ability to move freely has been deprived from the Plaintiff, disallowing him to be "let alone and free." Art. 1 § 23, Fla. Const..

21. Unless an injunction is issued, Plaintiff will suffer irreparable harm because his Constitutional rights are being violated. The mask requirement infringes Plaintiff's right to privacy under the Florida Constitution, Article 1, Section 23. Worse, Plaintiff could be arrested and fined if he does not comply with the unconstitutional mandate. The likelihood of arrest and irreparable harm resulting from the Emergency Order's enforcement is significant not only for the Plaintiff, but also for Hillsborough County other 1,500,000 residents.

22. A temporary injunction of the Emergency Order will serve the public interest. The citizens of the Hillsborough County public are burdened by the over-reach of their local government unprecedented in Florida history. The mask requirement violates both the Plaintiff's and the public's fundamental Florida Constitutional rights. It unduly burdens 1,500,000 Hillsborough County residents. The public has a strong interest in protecting their rights and their ability to control their own bodies and health. Additionally, the Executive Order is written so vaguely that it lends itself to arbitrary enforcement at an officer's discretion and would allow for the arrest and prosecution of law-abiding citizens.

COUNT I
INJUNCTIVE RELIEF

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

24. Plaintiff seeks injunctive relief enjoining Hillsborough County or any other government entity from enforcing the Executive Order.

COUNT II
DECLARATORY JUDGMENT

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

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

(b) a temporary injunction enjoining Hillsborough County or any other government entity from enforcing the Executive Order.

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

VERIFICATION

I, ERIC A. GONYON, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By: */s/ Eric A. Gonyon*

ERIC A. GONYON

DATED this 26th day of June, 2020.

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