

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

ISRAEL HAM,
STEVEN GORDON,
PHILLIP HOOKS,
HOLLYE MERTON,
and TOLAR POWELL,

PLAINTIFFS,

v.

CASE NO.1:20-cv-00111-MW-GRJ

ALACHUA COUNTY BOARD
OF COUNTY COMMISSIONERS,
and THE ALACHUA COUNTY MANAGER,

DEFENDANTS.

**PLAINTIFFS' ADDENDUM TO THE MOTION FOR EMERGENCY
INJUNCTIVE RELIEF AND MEMORANDUM**

Plaintiffs, through the undersigned counsel, submit to this Court additional evidence in support of the Motion for Emergency Injunctive Relief and Memorandum (ECF No. 7), pursuant to the Order Setting Expedited Briefing Schedule (ECF No. 16).

The additional evidence is presented as follows:

1. Exhibit A: May 12th, 2020 Gainesville Sun article. County Commissioner Chuck Chestnut said when he forgot to bring a mask with him to the store, a worker “had an attitude” toward him and denied him entry. “It kind of pissed me off”, he said. “Some businesses are taking it to the extreme.”

2. Exhibit B: May 19th, 2020 Gainesville Sun article titled “Masks still mandatory after county flips decision: The Alachua County Commission, after rescinding its mask requirement Tuesday morning, voted again in the afternoon to reinstate the rule.”

3. Exhibit C: First Amendment to the Emergency Order No. 2020-25 Full Phase One Step By Step Recovery Order Alachua County, Florida, dated May 19th, 2020. This “First Amendment to 2020-25” is the most current Alachua County Emergency Order at the time of filing this Plaintiffs’ Addendum. Section 4 of this First Amendment to 2020-25 requires mandatory masks. Section 4 (c) states: “A facial covering shall not be required for children under six, persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem. It is the intent of this provision that those individuals who cannot tolerate a facial covering for a medical, sensory or any other condition which makes it difficult for them to utilize a facial covering and function in public are not required to wear one. It is recognized that this requirement is broader than what might be considered to be a covered condition under the Americans with Disabilities Act.” The County has changed the wording of the “Face Mask Ordinance” by adding the following language to Section 4 (c): “It is the intent of this provision that those individuals who cannot tolerate a facial covering for a

medical, sensory or any other condition which makes it difficult for them to utilize a facial covering and function in public are not required to wear one. It is recognized that this requirement is broader than what might be considered to be a covered condition under the Americans with Disabilities Act.” This language in the most current Order follows the clause included in the previous two Orders cited in the Motion for Emergency Motion for Injunctive Relief and Memorandum (ECF No. 7.2: Exhibit B), and the Amended Exhibit A (ECF No. 9.1: Amended Exhibit A). **“A facial covering shall not be required for children under six, persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem.”** (Emphasis added). First Amendment to 2020-25 still contains an enforcement provision with teeth for failure to comply. Provision 14 states: “For failure to comply with the requirements of section 4 of this Order, the County or municipalities within their jurisdictions will direct any individual acting in violation to come into compliance immediately. Failure to comply with the requirements of section 4 of this Order presents a serious threat to the public health, safety, and welfare, pursuant to Chapter 162, Florida Statutes, and a citation may be issued immediately for such violation. The County shall enforce the first violation of section 4 of this Emergency Order through a fine of \$125.00 to the violator. The second violation of section 4 of this Emergency Order shall be subject to a fine of \$250.00 to the violator. All subsequent violations of

section 4 of this Order shall constitute a Class V violation under Article II, Chapter 24 of the Alachua County Code of Ordinances, requiring a mandatory court appearance and subject to a fine not to exceed \$500.00. All other remedies available at law or equity, including injunction, remain available to the County, even after issuance of a citation. The municipalities may enforce this Order as provided by Florida law and municipal code.”

4. Exhibit D: Alachua County Emergency Orders from March 23, 2020 to May 2nd, 2020. In addition to: Exhibit C: First Amendment to the Emergency Order No. 2020-25 Full Phase One Step By Step Recovery Order Alachua County, Florida, dated May 19th, 2020; ECF No. 7.2, May 17th Emergency Order; and ECF No. 9.1, May 4th Emergency Order, Alachua County has enforced 7 other emergency orders. There have been a total of 10 emergency orders due to a continuous pattern by Defendants of amending orders.

5. Exhibit E: Screenshot from Alachua County Covid-19 community website: Frequently Asked Questions May 18th, 2020. The Defendants were informing businesses to “restrict its customers to those who are following the Order” ... and that businesses “may ask for the assistance of Law Enforcement or Codes Enforcement”. The website also informed businesses to ask their customers about their medical conditions. At the time of this filing, the Alachua County Covid-19 community website no longer includes information about “What questions can a

business ask an individual who is not wearing a facial covering?”. That heading, and the language below the heading, has been removed.

6. Exhibit F: Screenshot from Alachua County Covid-19 community website: Frequently Asked Questions May 20th, 2020. The Defendants inform that “If you claim an exemption you may be asked about the basis for the exemption. This is not a violation of HIPAA or the ADA if the questions are limited to an explanation of why you shouldn’t have to wear a facial covering. You may ask to answer the questions out of the hearing of any other members of the public. You only need to answer the questions if you are seeking an exemption, unless you have medical documentation you can present.” As of the time of this filing, the above quoted language has been removed from the website.

7. Exhibit G: Screenshot from Alachua County Covid-19 community website: Frequently Asked Questions May 25th, 2020. Most current website information, at the time of this filing.

8. Exhibit H: Screenshot of the Alachua County Covid-19 Recovery Dashboard taken May 25th, 2020. The Defendants are using information from the Florida Department of Health and embedding that data into their own county specific “Dashboard”. The total number of Covid-19 cases according to Florida Department of Health and Alachua County is 354 total cases. The total number of Covid-19

related fatalities according to Florida Department of Health and Alachua County is 7 (seven).

Respectfully submitted May 25th, 2020.

/s/Raemi Eagle-Glenn, Esq.

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Certificate of Service

I hereby certify that a copy of the **PLAINTIFFS' ADDENDUM TO THE MOTION FOR EMERGENCY INJUNCTIVE RELIEF AND MEMORANDUM** has been served upon Attorney Robert Charles Swain via email to bswain@alachuacounty.us and cao@alachuacounty.us, and Attorney Sylvia Torres via email to Storres@alachuacounty.us.

/s/Raemi Eagle-Glenn, Esq.