

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR ST. JOHNS COUNTY, FLORIDA**

JEFFREY D. NAGER,

Plaintiff,

CASE NO: CA20 - 724

vs.

CITY OF ST. AUGUSTINE, a political  
subdivision of the State of Florida,

Defendant.

\_\_\_\_\_ /

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

Plaintiff, JEFFREY D. NAGER ("Nager"), through undersigned counsel, hereby sues Defendant, CITY OF ST. AUGUSTINE, a political subdivision of the State of Florida, ("St. Augustine"), 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 St. Johns County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to certain orders issued by St. Augustine, a city within the boundaries of St. Johns County, and because all or part of the claim for relief at issue in this litigation arose in St. Johns County.

## PARTIES

4. Plaintiff, Nager, is a Florida resident, a resident of St. Johns County, and an employee in St. Augustine. Plaintiff has been negatively impacted by an order that has been issued by St. Augustine, which has caused interference with his personal liberty and employment. Nager is employed as a security manager of various businesses in St. Augustine.

5. Plaintiff, has asthma, a medical condition which makes breathing difficult. Plaintiff currently uses an inhaler and takes a long term steroidal inhaler twice a day. Plaintiff's asthmatic condition is stimulated by breathing obstructions such as a mask.

6. St. Augustine is a proper Defendant in this action because St. Augustine created and implemented both Resolution No. 2020-22 and Administrative Order No. 20-11, ("Administrative Order 20-11") on June 26, 2020, which deprive Plaintiff's rights guaranteed to him by the Florida Constitution.

## FACTS

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

8. Afterwards, on April 29th, 2020, the Florida Governor Ron DeSantis released Executive Order 20-112 which included a "phased approach" to reopening Florida after the onset of the virus known as COVID-19. This Order did not include the requirement that Floridians wear face masks in any setting. Executive Order 20-112 *Phase 1: Safe. Smart. Step-by-Step.*

*Plan for Florida's Recovery*, State of Florida, (April 29th, 2020). Executive Order 20-112 left it up to an individual's own discretion whether to wear a face mask.

9. Thereafter, on June 26th, St. Augustine City Manager issued Administrative Order 20-11. Unlike the existing national and State of Florida emergency orders, the Administrative Order 20-11 requires St. Augustine residents to wear face masks in various circumstances.

10. Administrative Order 20-11 reads:

Section 1. Definitions.

*Face Covering* shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands. Types of coverings include a face mask, homemade mask, or other covering, such as a scarf, bandana, handkerchief, or other similar cloth covering or shields.

*Social Distancing* shall mean keeping space between yourself and other people by staying at least six (6) feet (about 2 arms' length) from other people.

*Companion* shall mean a person by whom you are accompanied.

Section 2. Face Coverings Required.

a. Every person working, living, visiting, or doing business in the City of St. Augustine shall wear a face covering in any indoor location, other than their home or residence, when not maintaining social distancing from other person(s), excluding family members or companions.

b. Nothing herein shall require or allow a person to wear a face covering so as to conceal the identity of the wearer in violation of Chapter 876, Florida Statutes.

c. All businesses are encouraged to prohibit entry of any person who is not wearing a face covering with the exception of those below listed persons.

Section 3. Exceptions.

Nothing herein shall require the wearing of face coverings by the following people:

- a. Persons under the age of two years; and
- b. Persons observing social distancing in accordance with CDC guidelines; and
- c. Persons for whom a face covering would cause impairment due to an existing health condition; 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 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 does not apply to any outdoor activity permitted under City, County, or State order, but face coverings should be readily available when coming within six (6) feet of an individual not part of a person's immediate family or cohabitating living unit.

Section 4. Enforcement.

Pursuant to Sec. 252.46, Florida Statutes, this Order shall have the full force and effect of law, and pursuant to Chapter 2, Article VI, of the Code of the City of St. Augustine, a violation of this Order shall be a non-criminal civil infraction, enforceable under Chapter 2, Article VI, Division 2, of the City Code, which carries a penalty of up to a \$500.00 fine.

Section 5. Effective Date; Expiration Date.

a. This Order shall become effective on June 27, 2020, at 12:01 AM.

b. This Order shall remain in effect in the City of St. Augustine for so long as a state of emergency is in effect or unless otherwise modified or repealed.

(Administrative Order 20-11)

11. Plaintiff is a business employee who is personally and adversely affected by the mandate to wear a mask that is contained within Administrative Order 20-11. Plaintiff is presumptively required by Administrative Order 20-11 to 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. Administrative Order 20-11 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). Administrative Order 20-11 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 Administrative Order 20-11, which requires him to wear a mask or risk receiving a civil fine for not doing so.

14. Administrative Order 20-11 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). Administrative Order 20-11 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 the City of St. Augustine which eventually resulted in the issuance of the

Administrative Order 20-11 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 Administrative Order 20-11 deprives Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way of St. Augustine's interference with his private action and personal liberty.

15. An additional reason Administrative Order 20-11 is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because it is void for vagueness. Administrative Order 20-11 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 2 of Administrative Order 20-11 contains an exception for "Persons for whom a face covering would cause impairment due to an existing health condition." This vague and undefined exception would lend itself to arbitrary enforcement at an enforcement official's discretion. Other unclear exceptions include: "Persons for whom a face covering would cause impairment due to an existing health condition," and for "Persons working in a business or profession where use of a face covering would prevent them from performing the duties of the business or profession." St. Augustine has created immediate confusion for the person of common intelligence. Ultimately, the language of Administrative Order 20-11 is too vague for the average citizen to understand, forcing St. Augustine residents and employees to guess at its meaning and then be subject to the civil punishment of 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). Administrative Order 20-11 lends itself to arbitrary enforcement at an officer's discretion due to its vagueness and indefinite terms.

16. Additionally, Administrative Order 20-11 is unconstitutional because it violates the Equal Protection Clause of Art. 1 § 2 of the Florida Constitution, which reads: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability." With the creation and implementation of Administrative Order 20-11, St. Augustine has created an environment of vagueness, confusion, and uncertainty where Plaintiff will likely be discriminated against and harassed for not wearing a mask, resulting in unequal treatment by government without a rational basis. Plaintiff and many others will likely be denied entry to public and private buildings due to not wearing a mask. Additionally, in Administrative Order 20-11, certain government employees are exempt from wearing masks, namely "public safety, fire, and other life safety and health care personnel...". (Administrative Order 20-11, Section 3.). 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 St. Augustine—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, St. Augustine 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, St. Augustine has no reason for treating government employees differently and the classification is not rationally related to a legitimate end.

17. Finally, both Administrative Order 20-11, and its accompanying Resolution No. 2020-22, are illegal and void because nowhere within the Charter of the City of St. Augustine or the Code of the City of St. Augustine are such allowances of power contained. The City Charter, Article 4, Division 4, Section 4.09, "Election; powers and duties," states that only the Mayor has the ability to "to take command of the police and *govern the city by proclamation* during times of grave public danger or emergency." (emphasis added). The City manager lacks the ability to do so. Additionally, Resolution No. 2020-22 is without force and not a properly implemented Ordinance as is required to have the force of law. A resolution is not the proper legal act or expression for a law which would result in a \$500 civil fine.

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 Administrative Order 20-11 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, St. Augustine has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the St. Augustine regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion. Ultimately, this explicit constitutional right of privacy embraces more privacy interests and extends more protection than the right of privacy provided under the due process clause of the federal constitution. *Winfield*, 548.

20. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which the St. Augustine government is infringing upon. The test for the unavailability of an adequate remedy at law is whether the "irreparable injury is an injury

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

21. Unless an injunction is issued, Plaintiff will suffer irreparable harm because his Constitutional rights are being violated. The mask requirement infringes Plaintiff's right to privacy under the Florida Constitution, Article 1, Section 23. The likelihood of irreparable harm resulting from Administrative Order 20-11's enforcement is significant not only for the Plaintiff, but also for St. Augustine other 15,000 residents and employees.

22. A temporary injunction of Administrative Order 20-11 will serve the public interest. The citizens of the St. Augustine 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 15,000 St. Augustine residents and employees. The public has a strong interest in protecting their rights and their ability to control their own bodies and health. Additionally, the Administrative Order 20-11 is written so vaguely that it lends itself to arbitrary enforcement at an officer's discretion.

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

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

24. Plaintiff seeks injunctive relief enjoining St. Augustine from enforcing Administrative Order 20-11.

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

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

26. Plaintiff seeks declaratory judgment declaring Administrative Order 20-11, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

27. Plaintiff seeks declaratory judgment declaring that Administrative Order 20-11 and Resolution No. 2020-22 are illegal void since both violate the City Charter of City of St. Augustine.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Administrative Order 20-11 violates Article I Sections 2, 9, and 23 of the Florida Constitution.

(b) a declaration that Administrative Order 20-11 and Resolution No. 2020-22 are illegal void since both violate the City Charter of City of St. Augustine.

(c) a temporary injunction enjoining St. Augustine from enforcing Administrative Order 20-11.

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

**VERIFICATION**

I, JEFFREY D. NAGER, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By: */s/ Jeffrey D. Nager*

JEFFREY D. NAGER

**DATED** this 1st day of July, 2020.

*/s/ Anthony F. Sabatini*  
ANTHONY F. SABATINI, ESQ.  
FL BAR No. 1018163  
[anthony@sabatinilegal.com](mailto:anthony@sabatinilegal.com)  
SABATINI LAW FIRM, P.A.  
1172 S. Grand Highway Ste #2  
Clermont, FL 34711  
T: (352)-455-2928

Attorney for Plaintiff