

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT,
IN AND FOR MARTIN COUNTY, FLORIDA**

JAMES P. CROCKER,

Plaintiff,

CASE NO:

vs.

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

Defendant.

_____ /

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

Plaintiff, JAMES P. CROCKER ("Crocker"), through undersigned counsel, hereby sues Defendant, MARTIN COUNTY, a political subdivision of the State of Florida, ("Martin 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 Martin County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to an order issued by Martin County, and because all or part of the claim for relief at issue in this litigation arose in Martin County.

PARTIES

4. Plaintiff, Crocker, is a Florida resident and a resident of Martin County. Plaintiff has been negatively impacted by an Ordinance issued by Martin County, which has caused interference with his personal liberty and business enterprise.

5. Plaintiff is the owner of Hog Technologies, a business located in Martin County.

6. Martin County is a proper Defendant in this action because Martin County created and implemented Martin County Ordinance No. 1136, ("Ordinance No. 1136") on July 7th, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

FACTS

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

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

9. Thereafter, on July 7th, Martin County issued Ordinance No. 1136. Unlike existing national and State of Florida emergency orders, Ordinance No. 1136 requires Martin County residents to wear face masks in various circumstances.

10. Ordinance No. 1136 reads in part:

**PART II. PLACES.
MANDATING PERSONS WEAR FACE COVERINGS IN
PUBLIC**

1. Face Coverings

a. Indoor Public Places, Businesses and Establishments. Face coverings must be worn by all persons while obtaining or providing any goods or services or otherwise visiting or working in any indoor public place, business or establishment.

b. Outdoor Public Places, Businesses and Establishments. Face coverings must be worn by all persons while obtaining or providing any goods or services or otherwise visiting or working in outdoor public places, businesses and establishments where social distancing in accordance with CDC guidelines is not possible and/or not being practiced.

c. Restaurants and Food Service Establishments. Face coverings must be worn by all persons in restaurants and any establishment that serves food or beverages whether indoors or outdoors except when actively consuming food or beverages.

...

2. Definitions.

a. Business and Establishment. Businesses and establishments are any locations in which business is conducted, goods are made, stored, sold or processed or services are rendered. Businesses and establishments include, but are not limited to, restaurants, bars, retail stores, salons, massage parlors, tattoo parlors, hotels, grocery stores, gyms, fitness centers, pharmacies, indoor recreational facilities, hospitals, medical offices, dental offices, movie theaters, concert halls, auditoriums, bowling alleys, playhouses, arcades, public transit and vehicles for hire. For purposes of this ordinance, indoor businesses and establishments include any area or location

that is outdoors and has a roof overhead or other overhead covering and one wall where any business is conducted, goods are made, stored, sold or processed or services are provided.

b. Face covering. A face covering includes any covering which snugly covers the nose and mouth and is secured in place. Persons who wear masks should review the CDC and Florida Department of Health guidelines regarding properly and safely applying, removing and cleaning masks. Medical and surgical masks, such as N95 masks or other similar medical surgical masks, should be reserved for health care personnel, police, firefighters, emergency management and other first responders engaged in life/safety activities.

c. Indoor public place. An indoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that is under a roof or other overhead covering and has at least one wall.

d. Outdoor public place. An outdoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that has no walls.

3. Exemptions. Face coverings are not required for the following:

a. Children under six (6) years of age and any child while under the custody of a licensed childcare facility, including schools, summer camps and daycare centers.

b. Individuals prohibited from wearing face coverings by Federal or State safety or health regulations.

c. Public safety, fire or other life safety personnel that have personal protective equipment requirements governed by their respective agencies.

d. Persons actively engaged in exercise and who are social distancing in accordance with CDC guidelines.

e. Persons receiving goods and services from a business or establishment for the shortest practical period of time during which the receipt of such goods or services necessarily precludes the wearing of a face covering such as, but not limited to, consuming food or beverage or receiving dental services, facial grooming or treatments.

f. Persons who have a medical condition or disability that makes the wearing of face coverings unsafe.

i. When a person asserts he or she has a disability that prevents the individual from wearing a mask, the owner, manager or employee of a business or establishment may exclude the person, even if they have a disability, as they pose a direct threat to the health and safety of employees and other patrons, even if asymptomatic, and the business or establishment shall reasonably accommodate the disabled person in a manner that does not fundamentally alter its operations or cause an undue hardship or jeopardize the health of the employees and customers.

g. Persons may temporarily remove face coverings while assisting persons who are hearing impaired or who rely on reading lips in order to communicate.

h. Persons in private rooms of a lodging establishment, such as hotel, motel or vacation rental; however, face coverings must be worn in common areas as proscribed by this ordinance.

i. Persons engaged in outdoor work or recreation with appropriate social distancing pursuant to CDC guidelines in place and being practiced.

5. Enforcement and Penalties.

a. A violation of this ordinance is a noncriminal infraction and shall be enforced by County law enforcement agencies. A violation of this ordinance does not authorize the search or arrest of an individual. It is the intent of this ordinance to seek voluntary compliance with the provisions contained herein and to educate and warn of the benefits of compliance and the dangers of noncompliance. Prior to the issuance of a citation, the individual will be asked to comply with the ordinance or be able to explain how an exemption in paragraph 3 applies to them. It is up to the discretion of the law enforcement officer to determine whether the circumstances warrant the issuance of a written warning to the individual for noncompliance. Failure to comply with the requirements of this ordinance presents a serious threat to the public health, safety and welfare. A citation may be issued for a violation after the above inquiry and if the individual received a prior written warning.

b. The penalty for a violation of this ordinance is:

- i. First offense: A fine of \$50.00.
- ii. Second offense: A fine of \$100.00.
- iii. Third offense and each subsequent offense: A fine of \$250.00.
- iv. All other remedies available at law or equity, including injunctive or other equitable relief, remain available to the County, even after issuance of a citation.

(Ordinance No. 1136)

11. Plaintiff is a business owner who is personally and adversely affected by the mandate to wear a mask that is contained within Ordinance No. 1136 and the risk of punishment that exists for not doing so. Plaintiff is presumptively required by Ordinance No. 1136 to wear a mask.

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>.)

13. Plaintiff's reasonable expectation of privacy has been invaded and infringed by Martin County, which is forcing Plaintiff and other Martin County residents to wear a mask for a majority of the day.

LAW

14. Ordinance No. 1136 is unconstitutional because it violates the Privacy Clause of Article 1 § 23 of the Florida Constitution. It is unconstitutional both facially and as-applied. 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). Ordinance No. 1136 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 by forcing them to wear masks. Plaintiff's medical privacy is and will continue to be infringed by Ordinance No. 1136, which requires him to wear a mask or risk receiving criminal and civil punishment for not doing so.

15. Ordinance No. 1136 is also unconstitutional, both facially and as-applied, 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). Ordinance No. 1136 is arbitrary and unreasonable because it is not backed by a compelling state interest or any facts proving such an interest. Due process of law protects against the unreasonable legislative deprivation of life, liberty, or property and Ordinance No. 1136 deprives Plaintiff of his

liberty. Plaintiff has been deprived of substantive due process by way of Martin County's interference with his private action and personal liberty.

16. An additional reason Ordinance No. 1136 is unconstitutional and violates the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because it is void for vagueness and overbroad. It is unconstitutional both facially and as-applied. Ordinance No. 1136 leaves the most significant terms contained within it undefined. Due process is violated when a law “forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning.” *D'Alemberte v. Anderson*, 349 So.2d 164, 166 (Fla. 1977) (quoting *Cline v. Frink Dairy Co.*, 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 (1927)). Significant unclear terms and phrases left undefined include: "receiving goods and services," "shortest practical period of time during which the receipt of such goods or services necessarily precludes the wearing of a face covering," and "medical condition or disability that makes the wearing of face coverings unsafe." These ambiguous phrases and terms are unclear and Martin County has created immediate confusion for the person of common intelligence. Ultimately, the language of Ordinance No. 1136 is too vague for the average citizen to understand, forcing Martin County residents and employers to guess at its meaning and then be subject to criminal and civil punishment. A law is void for vagueness when persons of common intelligence must guess as to its meaning and differ as to its application, or if it lends itself to arbitrary enforcement at an officer's discretion. *Davis v. Gilchrist County Sheriff's Office*, 280 So. 3d 524, 532 (Fla. 1st DCA 2019). Ordinance No. 1136 lends itself to arbitrary enforcement at an officer's discretion due to its vagueness, overbreadth, and indefinite terms. Furthermore, the Ordinance states that "(i)t is up to the discretion of the law enforcement officer to determine whether the circumstances warrant the

issuance of a written warning to the individual for noncompliance." This broad discretion will necessarily lend itself to arbitrary enforcement.

17. Additionally, Ordinance No. 1136 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." It is unconstitutional both facially and as-applied. This "basic rights" provision of the Florida Constitution is violated by Ordinance No. 1136 because Plaintiff's right to control the property of his own body and face is fundamental. Property rights are among the basic substantive rights expressly protected by the Florida Constitution. *Smith v. Wiker*, 192 So. 3d 603, 604 (Fla. 2d DCA 2016).

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 Ordinance No. 1136 is presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida's Constitutional, the Due Process Clause of the Florida Constitution, and Florida's Equal Projection Clause. 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, Martin County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Martin County 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 Martin County 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 Ordinance No. 1136's enforcement is significant not only for the Plaintiff, but also for all of Martin County's 161,000 residents.

22. A temporary injunction of Ordinance No. 1136 will serve the public interest. The citizens of Martin County 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 161,000 Martin county 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 Ordinance No. 1136 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 Martin County from enforcing Ordinance No. 1136.

COUNT II
DECLARATORY JUDGMENT

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

26. Plaintiff seeks declaratory judgment declaring Ordinance No. 1136, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

26. Plaintiff seeks declaratory judgment declaring that Ordinance No. 1136 is illegal and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Ordinance No. 1136 violates Article I Sections 2, 9, and 23 of the Florida Constitution.

(b) a temporary injunction enjoining Martin County from enforcing Ordinance No. 1136

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

VERIFICATION

I, JAMES P. CROCKER, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By: */s/ James P. Crocker*

JAMES P. CROCKER

DATED this 12th day of July, 2020.

/s/ Anthony F. Sabatini
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