

**IN THE CIRCUIT COURT OF THE TWELTH JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA**

JOEL D. TILLIS,

Plaintiff,

CASE NO:

vs.

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

Defendant.

_____ /

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

Plaintiff, JOEL D. TILLIS ("Tillis"), through undersigned counsel, hereby sues Defendant, MANATEE COUNTY, a political subdivision of the State of Florida, ("Manatee County"), and alleges the following:

JURISDICTION AND VENUE

1. This is a lawsuit for injunctive relief over which this Court has jurisdiction under Fla. Stat. § 26.012 (2019).
2. This is a lawsuit for declaratory judgment over which this Court has jurisdiction under Fla. Stat. § 86 (2019).
3. Venue is proper in Manatee County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to an order issued by Manatee County, and because all or part of the claim for relief at issue in this litigation arose in Manatee County.

PARTIES

4. Plaintiff, Tillis, is a Florida resident and a resident of Manatee County. Plaintiff has been negatively impacted by a resolution issued by Manatee County, which has caused interference with his personal liberty, professional enterprise, and religious freedom.

5. Plaintiff is a Pastor at Suncoast Baptist Church, located in Manatee County.

6. Manatee County is a proper Defendant in this action because Manatee County created and implemented RESOLUTION NO. R-20-116, ("Resolution 20-116") on July 27th, 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 27th, Manatee County Resolution 20-116. Unlike existing national and State of Florida emergency orders, Resolution 20-116 requires Manatee County residents to wear face masks in various circumstances.

10. Resolution 20-116 reads in part:

SECTION 2. DEFINITIONS.

(i) Face Covering. A “face covering” is a material that covers the nose and mouth and that fits snugly against the sides of the face so there are no gaps. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. Coverings with materials made of multiple layers are highly encouraged. A cloth face covering may be factory-made or sewn by hand, or the cloth face covering can be improvised from household items. The CDC has posted additional information regarding how to make, wear, and wash a cloth face covering at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/aboutface-coverings.html>.

(ii) Business Establishment. A “business establishment” means a location with a roof overhead under which any business is conducted, goods are made or stored or processed or where services are rendered. The term “business establishment” includes transportation network companies, such as Ubers and Lyft, vehicles operated for mass transit, taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire. The term “business establishment” includes locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The term “business establishment” also includes places of worship

(iii) Lodging Establishment. A “lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in section 509.013(4)(a), Florida Statutes (2019). Accordingly, for purposes of this Emergency Resolution, a “lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

SECTION 3. MANDATORY REQUIREMENTS.

(i) An individual in a business establishment must wear a face covering while in that business establishment.

(ii) The requirement in this section does not apply to:

a. Situations in which individuals maintain 6 feet or more of distance between persons. This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a business establishment. Nor does it apply to employees serving food or beverages.

b. A child under the age of 6.

c. 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 exception 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 face covering and function in public are not required to wear one.

d. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.

e. Restaurant and bar patrons while eating or drinking. It is the intent of this exception that a face covering will be worn while traversing a business establishment for ingress and egress, to use the facilities, and while otherwise standing when persons are unable to maintain at least 6 feet of distancing.

f. An individual in a lodging establishment who is inside of the lodging unit, including, but not limited to, a hotel.

(...cont.)

SECTION 4. PENALTIES AND ENFORCEMENT.

(i) A violation of this Emergency Resolution is a noncriminal infraction. A violation of this Emergency Resolution does not authorize the search or arrest of an individual. Prior to the issuance of a citation, the individual will be asked to comply with this Emergency Resolution or be able to explain how an exception in section 3(ii) applies to them. Failure to comply with the requirements of this Emergency Resolution presents a serious

threat to the public health, safety, and welfare, and a citation may be issued for such a violation after the inquiry referenced above.

- (ii) The penalty for a violation of this Emergency Resolution is:
 - a. For a first offense, a fine of \$50.00.
 - b. For a second offense, a fine of \$125.00.
 - c. For a third and each subsequent offense, a fine of \$250.00.
 - d. All other remedies available at law or equity, including injunction, remain available to the County, even after issuance of a citation.

(...cont.)

(Resolution 20-116)

11. Plaintiff is a business owner who is personally and adversely affected by the mandate to wear a mask that is contained within Resolution 20-116 and the risk of punishment that exists for not doing so. Plaintiff is presumptively required by Resolution 20-116 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 Manatee County, which is forcing Plaintiff and other Manatee County residents to wear a mask for a majority of the day.

LAW

14. Resolution 20-116 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). Resolution 20-116 is a radical infringement of the reasonable and legitimate expectation of privacy that Plaintiff and most Floridians expect to have over their own bodily and facial autonomy in addition to their medical privacy by forcing them to wear masks for the majority of the day. Plaintiff's medical privacy is and will continue to be infringed by Resolution 20-116, which requires him to wear a mask or risk receiving civil punishment for not doing so.

15. Resolution 20-116 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). Resolution 20-116 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 Resolution 20-116 deprives Plaintiff of his liberty by forcing him to wear a mask for the majority of the day. Plaintiff has been deprived of substantive due process by way of Manatee County's interference with his private action and personal liberty. The forced wearing of masks bears no rational relationship to a legitimate government interest.

16. An additional reason Resolution 20-116 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. Resolution 20-116 leaves 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)). Section 3(c) of Resolution 20-116 includes an unclear and undefined phrase that leads to essential ambiguity:

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 exception 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 face covering and function in public are not required to wear one.

(emphasis added)

This ambiguous phrase is unclear and Manatee County has created immediate confusion for the person of common intelligence. Ultimately, the language of Resolution 20-116 is too vague for the average citizen to understand, forcing Manatee County residents and employers to guess at its meaning and then be subject to 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). Resolution 20-116 lends itself to arbitrary enforcement at an officer's discretion due to its vagueness, overbreadth, subjective and indefinite terms and because an officer would be forced to have to guess at whether a person is in compliance with this section.

17. Additionally, Resolution 20-116 is unconstitutional because it violates Article 1, Section 3 of the Florida Constitution, the Religious Freedom Clause, which reads: "There shall be no law respecting the establishment of religion or *prohibiting or penalizing the free exercise thereof.*" Additionally, Resolution 20-116 violates the Florida Religious Freedom Restoration Act because the language of Resolution 20-116 requires both clergy members like Plaintiff and churchgoers to wear masks during service or face government civil fines and punishment. Plaintiff is a Pastor whose religious beliefs are sincerely held and the requirement to wear a mask in Resolution 20-116 infringes upon the free exercise of Plaintiff's religion by making it more difficult for him to preach and for members of the choir at his church to sing. Manatee County has burdened Plaintiff's practice of his religion preventing him from being able to effectively preach.

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 Resolution 20-116 is presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida's Constitution, the Due Process Clause of the Florida Constitution, and Florida's Religious Freedom 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, Manatee County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Manatee County regarding public "safety" has not come close to establishing a compelling state interest justifying the intrusion. Ultimately, the 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 Manatee 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 the enforcement of of Resolution 20-116 is significant not only for the Plaintiff, but also for all of Manatee's County's 400,000 residents.

22. A temporary injunction of Resolution 20-116 will serve the public interest. The citizens of Manatee 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 400,000 Manatee 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 of Resolution 20-116 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 Manatee County from enforcing of Resolution 20-116.

COUNT II
DECLARATORY JUDGMENT

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

26. Plaintiff seeks declaratory judgment declaring of Resolution 20-116, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 3, 9, and 23 of the Florida Constitution.

26. Plaintiff seeks declaratory judgment declaring that Resolution 20-116 is illegal and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that of Resolution 20-116 violates Article I Sections 3, 9, and 23 of the Florida Constitution.

(b) a temporary and permanent injunction enjoining Manatee County from enforcing of Resolution 20-116.

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

VERIFICATION

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

By: */s/ Joel D. Tillis*

JOEL D. TILLIS

DATED this 3rd day of August, 2020.

/s/ Anthony F. Sabatini
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