

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

MICHAEL R. CARNEVALE,

Plaintiff,

CASE NO:

vs.

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

Defendant.

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

Plaintiff, MICHAEL R. CARNEVALE ("Carnevale"), through undersigned counsel, hereby sues Defendant, BROWARD COUNTY, a political subdivision of the State of Florida, ("Broward 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 Broward County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to emergency orders issued by Broward County, and because all or part of the claim for relief at issue in this litigation arose in Broward County.

PARTIES

4. Plaintiff, Carnevale, is a resident of Florida and a resident of Broward County. Plaintiff has been negatively impacted by emergency orders issued by Broward County, which have caused interference with his personal livelihood, liberty and business enterprise.

5. Plaintiff is a gym owner and the owner of *Fitness1440, Plantation*, a gym business located in Broward County at 7067-A West Broward Blvd., Plantation, FL 33317.

6. Broward County is a proper Defendant in this action because Broward County created and implemented "BROWARD COUNTY ADMINISTRATOR'S EMERGENCY ORDER 20-21," ("Order 20-21") on July 8th, 2020, and "BROWARD COUNTY ADMINISTRATOR'S EMERGENCY ORDER 20-22," ("Order 20-22") on July 17th, 2020, which both 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 July 8th, Broward County issued Order 20-21. Unlike existing national and State of Florida emergency orders, Order 20-21 requires Broward County residents to wear face masks in various circumstances.

10. Order 20-21 reads, in part:

Section 3. Facial Coverings Requirements.

A. Facial Coverings Required. Facial coverings are required to be worn by all persons in Broward County as set forth herein, unless expressly excepted in Section B below. Facial coverings must cover the person's nose and mouth and comply with the CDC recommendations located at <https://www.cdc.gov/coronavirus/2019-ncov/preventgetting-sick/diy-cloth-face-coverings.html>. Where a particular activity falls within more than one provision below, the stricter facial covering requirements shall apply and govern.

1) In Public and Private Spaces, Including At All Establishments, When Social Distancing Cannot Be Maintained: All persons in Broward County must wear a facial covering while outside the geographical boundaries of their residential property if social distancing of at least six feet (6') between persons not of the same household cannot be consistently maintained;

2) All Times At Establishments Other Than Amenities Regardless of Social Distancing: All persons at an establishment (as defined in Section 1 of this Order) other than an amenity (amenities are places such as parks, pools, and beaches and are subject to Section 3.A.1 above) must wear facial coverings at all times, including while entering, exiting, and otherwise moving around within such establishment, regardless of whether social distancing is also maintained;

3) Workers In Any Establishment: All persons while working in any capacity in an establishment must wear a facial covering regardless of whether social distancing is also maintained, including all workers involved in preparing, handling, or serving food;

4) Common Areas: All persons while in any common area of a multi-family housing development or residential facility, including without limitation the reception area, hallways, and elevators; and

5) As Otherwise Ordered: Facial coverings are also required to the extent expressly required by any Executive Order of the Governor or any Broward County Emergency Order or attachment thereto, which may include additional facial covering requirements for specific activities.

B. Persons for whom Facial Coverings are Not Required.

The facial covering requirements of this Emergency Order do not apply to the following individuals under the conditions stated:

- 1) Children under the age of two (2) (who should not wear facial coverings per CDC Guidelines), and any child, regardless of age, while under the custody of a licensed childcare facility, including daycare centers;
- 2) Persons receiving goods or services from a business or establishment for the shortest practical period of time during which the receipt of such goods or services precludes the wearing of a facial covering (such as eating, drinking, or receiving a facial grooming);
- 3) A person with a disability or medical condition that prevents the person from wearing a facial covering; however, any establishment may forbid any such person from entering the establishment without wearing a facial covering provided the establishment offers an appropriate alternate method of patronage or accommodation to the person, if reasonably available, which method may include an accommodation that does not fundamentally alter the operations of the business establishment or jeopardize the health of that establishment's employees and other patrons, such as providing curbside service or delivery. Nothing in this section imposes any obligation on any establishment (except as may otherwise exist under applicable law) to permit persons not wearing facial coverings to enter or patronize any establishment;
- 4) Public health and safety, fire, and other life safety personnel, as their personal protective equipment requirements will be governed by their respective agencies;
- 5) While actively engaging in strenuous physical activity or exercise that renders the wearing of a facial covering unsafe, including while swimming or otherwise in a pool, ocean, or other body of water, provided that social distancing of at least six feet (6') between persons not of the same household is maintained to the maximum extent practicable; and
- 6) A person working indoors in an establishment who is the only person in the room; or persons working in an establishment other than a retail, restaurant, or personal services establishment, indoor amusement facility, or gym or fitness center, when there is no other person of a different household within six feet (6').

C. Responsibility. All persons are responsible for complying with the facial covering requirements of this Emergency Order. All establishments are responsible for ensuring all employees and patrons of the establishment comply with the facial covering requirements of this Emergency Order. Failure to comply with any of the requirements set forth herein or in any Broward County Emergency Order by any person or any establishment is subject to enforcement by law enforcement, code enforcement officers, and any other personnel as provided under Florida law or the Broward County Code of Ordinances as a criminal and/or civil violation, including as misdemeanors with fines not to exceed \$500 per violation, imprisonment not to exceed 60 days, or both, and/or as civil fines of \$1,000 per day per violation or fines of up to \$15,000 per violation for a knowing violation that is irreparable or irreversible in nature.

...(cont.) (emphasis added).

(Order 20-21)

11. Thereafter, on July 17th, Broward County issued Order 20-22. Unlike existing national and State of Florida emergency orders, Order 20-22 limits the amount of people a Broward County property owner may have in their home and also creates a nightly curfew for all Broward County residents.

12. Order 20-22 reads in part:

Section 2. Curfew.

Effective commencing July 17, 2020, at 11:00 p.m., a curfew is imposed for all of Broward County, including incorporated and unincorporated areas. The curfew shall be effective from 11:00 p.m. to 5:00 a.m. each day until August 1, 2020, at 5 a.m. During the period of such curfew, no person shall make use of any street or sidewalk in Broward County for any purpose, except for active-duty police, fire rescue, first responders, news media, delivery or transportation drivers, government employees, persons seeking emergency medical care, and medical, health care, and utility service personnel, persons going from their homes directly to their place of employment or returning directly to their homes from their place of employment, persons returning directly to their homes

after commercial travel ending at an airport or seaport, and persons walking their dogs or other pets within two hundred and fifty (250) feet of their residences.

Section 3. Gatherings Prohibited.

A. Private Gatherings. It is a violation of this Emergency Order for any group of persons to gather at a residential property, whether single-family or multi-family, and whether indoors and/or outdoors, where such gathering exceeds ten (10) persons.

Residents of the household and parents and minor children of the residents of the household shall not be counted when determining whether the gathering exceeds ten (10) persons.

B. Other Gatherings. No person or establishment in Broward County shall participate in or permit any in-person gathering of more than ten (10) people at any time, unless

- (i) the gathering occurs in the course of the regular activities and operations of an establishment that is permitted to operate in Broward County under an applicable Emergency Order,
- (ii) the gathering is subject to and complies with the limitations of Section 3.A above,
- (iii) the gathering is expressly permitted by an applicable Emergency Order or Attachment thereto, or;
- (iv) the application of the restriction is expressly preempted by state law or an Executive Order of the Governor. Nothing in this Section 3. B permits any gathering for a specific establishment, use, or activity in excess of the applicable limits stated in the applicable Attachment or Emergency Order.

C. Violations. Any person present at any gathering in violation of the limitations of this section shall be individually liable for a violation of this Emergency Order and subject to all applicable civil and criminal penalties. The owner(s), operators, and landlords of residential or commercial property are individually liable for any prohibited gathering that occurs on their property, regardless of whether such persons are in residence or on site at the time of the violation; however, the owner of residential property that is under a lease with a term of six (6) months or longer shall not be individually liable under this provision.

Section 4. Responsibility to Ensure Compliance with Applicable Orders.

A. Residential Property Residents. All persons who reside on any residential property, whether single family or multi-family, and irrespective of whether they own or rent the property, must ensure

that all persons on the residential property, including guests, comply with all applicable guidelines of any Broward County Emergency Order, including the facial covering requirements. Residents who fail to ensure compliance with all applicable Broward County Emergency Orders by such persons shall be subject to the penalties set forth in Section 8-56 of the Broward County Code of Ordinances, with each person present and in violation of an applicable Emergency Order constituting a separate violation.

(...cont.)

(Order 20-22)

13. Plaintiff is a business owner who is personally and financially affected adversely by: 1) the mandate to wear a mask, 2) the mandate that visitors to his business wear masks, 3) the curfew, 4) the 10-person limit of gatherings inside residences, that are contained within Order 20-21 and Order 20-22.

14. 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>.)

15. Plaintiff's reasonable expectation of privacy has been invaded.

LAW

16. Order 20-21 and Order 20-22 are unconstitutional because they violate the Privacy Clause of Article 1 § 23 of the Florida Constitution. They are 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). Order 20-21 is an infringement of the reasonable and legitimate expectation of privacy that both Plaintiff and all Broward County residents expect and an infringement of their bodily integrity and facial autonomy, in addition to their medical privacy, because it forces them to wear masks for a majority of the day despite whether they are healthy or not. Plaintiff's medical privacy is and will continue to be infringed by Order 20-21, which requires him to wear a mask or risk receiving criminal and civil punishment for not doing so. Order 20-22 is likewise unconstitutional because it criminalizes gatherings inside of a person's home and requires residents to wear face masks inside of their own homes. The Fourth Amendment right to privacy is measured by a two-part test: 1) the person must have a subjective expectation of privacy; and 2) that expectation must be one that society recognizes as reasonable. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). Broward County residents have a legitimate and reasonable expectation of privacy in their own home and these two provisions violate it.

17. Order 20-21 and Order 20-22 are unconstitutional because, both facially and as-applied, because they violate 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...". Neither of the two Broward County Emergency Orders are not rationally related to a legitimate government interest. No evidence or basis exists to show that limiting the amount of people may have in the privacy of their own home, or that criminalizing the non-wearing of face masks at home, would serve a legitimate government interest. 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). Order 20-21 and Order 20-22 are arbitrary and unreasonable because they are 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 Order 20-21 and Order 20-22 unreasonably deprive Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way of Broward County's interference with his private action and personal liberty. Furthermore, the curfew contained in Order 20-22 is purely arbitrary, unreasonable and not related to a rationally related to a legitimate government interest. Because the spread of COVID-19 has not been proven to occur only at night, limiting the free movement of Broward residents at that time bears no relationship to the goal of reducing the spread of COVID-19. Lastly, the requirement in Order 20-21 and Order 20-22 that customers wear face masks while in gyms while they are exercising is not rationally related to a legitimate government interest and it is also highly dangerous and risks injury to Broward County residents by obstructing their breathing while they are exercising.

18. Order 20-21 and Order 20-22 are also unconstitutional because they violate the Due Process Clause of Art. 1 § 9 of the Florida Constitution is because they are void for vagueness and overbroad. They are unconstitutional both facially and as-applied. Order 20-21 and Order 20-22 are unconstitutional because they leave the most significant terms contained within them 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 phrases left undefined in the exceptions to the provision mandating the wearing of face coverings, to give one example, include: "while actively engaging in strenuous physical activity or exercise that renders the wearing of a facial covering unsafe." (Order 20-21). It is impossible to subjectively determine what "strenuous physical activity" is for an individual due to the subjective nature of the word strenuous. Ambiguous phrases and terms are unclear and Broward County has created immediate confusion for the person of common intelligence. Ultimately, the language of Order 20-21 is too vague for the average citizen to understand, forcing Broward County residents 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). Order 20-21 lends itself to arbitrary enforcement at an officer's discretion due to it's vagueness, overbreadth, and indefinite terms.

19. Order 20-22 is unconstitutional because it violates the Article 1, Section 12 of the Florida Constitution.

SECTION 12. Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court...

The "searches and seizures" clause of the Florida Constitution is violated by Order 20-22 because the Order would criminalize harmless behavior and therefore allow for the unreasonable search and seizure of homes and persons inside of their homes. A “search” occurs when expectation of privacy that society is prepared to consider reasonable is infringed. *Purifoy v. State*, 225 So.3d 867, 971 (Fla. 1st DCA, 2017).

20. 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.

21. Plaintiff has a very high likelihood of success on the merits because Order 20-21 and Order 20-22 are presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida's Constitutional and the Due Process Clause of

the Florida Constitution, Article I, Section 9. 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, Broward County has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Broward 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.

22. Plaintiff lacks an adequate remedy at law. No other remedy exists to protect Plaintiff's rights which Broward 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..

23. 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 Order 20-21 and Order 20-22's enforcement is significant not only for the Plaintiff, but also for all of Broward County's 1,900,000 residents.

24. A temporary injunction of Order 20-21 and Order 20-22 will serve the public interest. The citizens of Broward 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 Broward County's 1,900,000 residents. The public has a strong interest in protecting their rights and their ability to control their own bodies and health. Additionally, the Orders are written so vaguely that it lends itself to arbitrary enforcement at an officer's discretion.

COUNT I
INJUNCTIVE RELIEF

25. Plaintiff realleges and incorporates herein paragraphs 1 – 24.

26. Plaintiff seeks injunctive relief enjoining Broward County from enforcing Order 20-21 and Order 20-22.

COUNT II
DECLARATORY JUDGMENT

27. Plaintiff realleges and incorporates herein paragraphs 1 – 24.

28. Plaintiff seeks declaratory judgment declaring Order 20-21 and Order 20-22, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 9, Section 12, and 23 of the Florida Constitution.

29. Plaintiff seeks declaratory judgment declaring that Order 20-21 and Order 20-22 are illegal and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Order 20-21 and Order 20-22 violate Article I Sections 9, 12, and 23 of the Florida Constitution.

(b) a temporary injunction enjoining Broward County from enforcing Order 20-21 and Order 20-22.

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

VERIFICATION

I, MICHAEL R. CARNEVALE, declare under penalty of perjury pursuant to the laws of Florida that the foregoing is true and correct,

By: */s/ Michael R. Carnevale*

MICHAEL R. CARNEVALE

DATED this 26th day of July, 2020.

/s/ Anthony F. Sabatini
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