

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY, FLORIDA**

JOSEPH R. BRACCIALE,

Plaintiff,

CASE NO:

vs.

CITY OF KEY WEST, a political
subdivision of the State of Florida,

Defendant.

**VERIFIED COMPLAINT FOR WRIT OF QUO WARRANTO,
EMERGENCY INJUNCTIVE RELIEF, AND DECLARATORY JUDGMENT**

Plaintiff, JOSEPH R. BRACCIALE ("Bracciale"), through undersigned counsel, hereby
sues Defendant, CITY OF KEY WEST, a political subdivision of the State of Florida, ("Key
West"), 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. This is a lawsuit for writ of quo warranto over which this court has jurisdiction under Art. V, section 5(b) of the Florida Constitution.
4. Venue is proper in Monroe County, Florida under Fla. Stat. § 47.011 (2019), because it is where the cause of action accrued, it relates to a directive issued the City of Key West, a city within Monroe County, and because all or part of the claim for relief at issue in this litigation arose in Monroe County.

PARTIES

5. Plaintiff, Bracciale, is a Florida resident and a resident of Key West. Plaintiff has been negatively affected by a directive issued by Key West, which has caused interference with his personal liberty and business enterprise.

6. Plaintiff suffers from asthma and works in Key West.

7. Key West is a proper Defendant in this action because Key West created and implemented State of Local Emergency Directive 2020-13: Use of Facial Coverings and Required Health Screenings for All Businesses, Amendment 3 ("Directive 2020-13"), on July 13th, 2020, which deprives Plaintiff's rights guaranteed to him by the Florida Constitution.

FACTS

8. 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).

9. 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.

10. Thereafter, on July 13th, Key West issued Directive 2020-13. Unlike existing national and State of Florida emergency orders, Directive 2020-13 requires Key West residents to wear face masks in various circumstances.

11. Directive 2020-13 reads in part:

C. Face Covering Requirements.

1. Every person over the age of six, while physically located in the City of Key West, and who is away from their residence, shall wear a face covering at all times, regardless of whether social distancing is also maintained.

2. The operator and/or employee of a business establishment shall ensure that every individual while on the premises of that establishment complies with this section.

(cont.)

H. The Key West Police department, code enforcement officers, and any other personnel as provided for in the Florida Statutes or the City of Key West Code of Ordinances may enforce this Emergency Directive and all other applicable City of Key West Emergency Directives against any person, business establishment, or entity violating any provision of any such Emergency Directive. All such enforcing authorities are authorized to enforce the provision the City of Key West Emergency directives as a civil citation, and administrative notice of violation, and /or as a criminal violation, including as authorized y the City of Key West Code of Ordinances Section 20-07, section 5, and as hereby authorized by the City of Key West. Violations of City of Key West Emergency Directives may be prosecuted as criminal violations in the same manner as misdemeanors are prosecuted, including fines not to exceed \$500 per violation, imprisonment, to to include 60 days, or both, and/or as an administrative notice of violation including fines up to \$250 dollars per day per violation for the first violation, \$500 per day per violation for a repeat violation or fines up of up to \$5,000 per violation for a violation that is irreparable or irreversible in nature and/or as a civil citation to appear in county court not to exceed \$500 per violation...

(cont.)

(Emergency Directive 2020-13)

12. Plaintiff is a business owner who is personally and adversely affected by the mandate to wear a mask that is contained within Directive 2020-13 and the risk of punishment that exists for not doing so. Plaintiff is presumptively required by Directive 2020-13 to wear a mask.

13. 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>.)

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

LAW

15. Directive 2020-13 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). Directive 2020-13 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 Directive 2020-13, which requires him to wear a mask or risk receiving civil punishment for not doing so.

16. Directive 2020-13 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). Directive 2020-13 is arbitrary and unreasonable because it is not backed by a compelling state interest or any facts proving such an interest. Additionally, Directive 2020-13 makes no exception for people similar to Plaintiff that have a medical or sensory disability and therefore are unable to safely wear a mask. Plaintiff will be unreasonably burdened and punished for not wearing a mask, despite the fact that he cannot safely do so. Due process of law protects against the unreasonable legislative deprivation of life, liberty, or property and Directive 2020-13 deprives Plaintiff of his liberty. Plaintiff has been deprived of substantive due process by way of Key West's interference with his private action and personal liberty.

17. An additional reason Directive 2020-13 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. Directive 2020-13 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)). 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). Directive 2020-13 lends itself to arbitrary enforcement at an officer's discretion due to its vagueness, overbreadth, and indefinite terms. Violations of Directive 2020-13 can be punished with enormous and arbitrary discretion. Violations can be treated as misdemeanors, administrative notices of violation with fines of \$500 per day, and up to \$5,000 per violation for a violation that is "irreparable or irreversible in nature," and as a civil citation to appear in county court not to exceed \$500 per violation. (Emergency Directive 2020-13, Amendment 3). The subjective language of "irreparable or irreversible" necessarily lends itself to arbitrary enforcement at an officer's discretion due to its vagueness.

18. Additionally, Directive 2020-13 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." (emphasis added). The "basic rights" provision of the Florida Constitution is violated by Directive 2020-13 because Plaintiff is being deprived of his rights to liberty, to pursue happiness and to be rewarded for industry by being forced to wear a mask despite his asthmatic condition.

19. Finally, Directive 2020-13 is unlawful because although the Mayor of Key West issued the Directive, the Mayor lacks the legal authority to issue "Directives" that have the force of law. The City's Charter states that all legislative power is vested in the City Commission. *See* City of Key West Charter §3.01 ("There shall be a city commission with all legislative powers of the city vested therein."). Therefore, the Mayor and the City Manager lack the authority to issue the Directive, and, therefore the emergency Directive is not enforceable. The Mayor and City Manager do not have any independent legal authority under the City's Charter to create and issue the Directive. Neither have been granted any legislative power. *See* City of Key West Charter §3.09 (Duties of Mayor), §4.04 (Duties of City Manager), and thus, they have no legal authority to exercise legislative power via the Directive. Additionally, the City of Key West Code of Ordinances grants no power to the Mayor of City Manager to issue a Directive that has the force of law.

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 Directive 2020-13 was created without legal authority. Additionally, it is presumptively invalid, implicating an infringement of Plaintiff's privacy right under Article I, Section 23 of Florida's Constitution, in addition to violating the Due Process Clause and Equal Protection Clause of the Florida Constitution. 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, Key West has made no attempt to justify this intrusion on privacy. Vague, unproven messaging from the Key West 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 the rights which Key West is violating. 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 "basic rights" provision of the Florida Constitution is violated by Directive 2020-13 because Plaintiff is being deprived of his rights to liberty, to pursue happiness and to be rewarded for industry by being forced to wear a mask despite his asthmatic condition. The likelihood of irreparable harm resulting from the enforcement of Directive 2020-13 is significant not only for the Plaintiff, but also for all of Key West's 24,000 residents.

24. A temporary injunction of Directive 2020-13 will serve the public interest. The citizens of Key West are burdened by the over-reach of their local government that is unprecedented in Florida history and without clear legal authority. The mask requirement violates both the Plaintiff's and the public's fundamental Florida Constitutional rights. It unduly burdens 24,000 Key West residents and employees. The public has a strong interest in protecting their rights and their ability to control their own bodies, health, and medical privacy. Additionally, Directive 2020-13 is 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 Key West from enforcing Directive 2020-13.

COUNT II
DECLARATORY JUDGMENT

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

28. Plaintiff seeks declaratory judgment declaring Directive 2020-13, or portions thereof, as unconstitutional and at conflict with the Article 1, Section 2, 9, and 23 of the Florida Constitution.

29. Plaintiff seeks declaratory judgment declaring that Directive 2020-13 is null and void, issued without valid legal authority, and contrary to the City of Key West Charter.

COUNT III
WRIT OF QUO WARRANTO

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

31. Plaintiff seeks a judgment and final writ determining that Key West lacked the authority to issue Directive 2020-13 and that Directive 2020-13 is, therefore, null and void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

(a) a declaration that Directive 2020-13 violates Article I Sections 2, 9, and 23 of the Florida Constitution.

(b) a temporary injunction enjoining Key West from enforcing Directive 2020-13.

(c) a preliminary writ of quo warranto to Key West that requires it to serve on the undersigned a response hereto pursuant to rule 1.140 of the Florida Rules of Civil Procedure.

(d) a judgment and final writ determining that Key West lacked the authority to issue Directive 2020-13 and that Directive 2020-13 is, therefore, null and void.

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

VERIFICATION

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

By: */s/ Joseph R. Bracciale*

JOSEPH R. BRACCIALE

DATED this 16th day of July, 2020.

/s/ Anthony F. Sabatini
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