IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

JUSTIN GREEN,
Plaintiff,

vs.

ALACHUA COUNTY, a political subdivision of the State of Florida, and the Honorable **RON DESANTIS**, in his official capacity as Governor of the State of Florida,
Defendants.

CASE NO.: 01-2020-CA-001249

DIVISION: J

ORDER DENYING PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE comes before the Court upon the Plaintiff's "Emergency Motion for Temporary Injunction," filed May 8, 2020, pursuant to Fla. R. Civ. P. 1.610. On May 21, 2020, a hearing was held on the motion. Upon consideration of the motion, the evidence presented at the hearing, the legal argument of the parties, and the record, this Court finds and concludes as follows:

The Plaintiff moves the Court to enter a temporary injunction enjoining Alachua County from enforcing the mask requirement of Amended Emergency Order 2020-21. Plaintiff asserts that the mask requirement is not within the scope of the Alachua County Board of County Commissioner's (BOCC) authority and that it has an immediate and deleterious effect on the Plaintiff's rights guaranteed under both the United States Constitution and the Florida Constitution.

The purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought. *State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC,* 236 So. 3d 466, 472 (Fla. 1st DCA 2018), *reh'g denied* (Feb. 21, 2018) (citing *Planned Parenthood of Greater*

Orlando, Inc. v. MMB Props., 211 So.3d 918, 924 (Fla. 2017)). A temporary injunction is an extraordinary remedy that should be granted sparingly. *Id.* (citing *Sch. Bd. of Hernando Cty. v. Rhea*, 213 So.3d 1032, 1040 (Fla. 1st DCA 2017)). This is especially true where, as here, the act being enjoined is an act of a co-equal branch of government. *Florida Dep't of Health v. Florigrown, LLC*, 44 Fla. L. Weekly D1744 (Fla. 1st DCA July 9, 2019) (Wetherell, J., concurring), *review granted*, SC19-1464, 2019 WL 5208142 (Fla. Oct. 16, 2019). To obtain a temporary injunction, the movant must establish (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. *Bayfront HMA Med. Ctr., LLC*, 236 So. 3d at 472.

1. *Substantial Likelihood of Success on the Merits*

"A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated." *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 753 (Fla. 1st DCA 1994), *approved sub nom. Naegele Outdoor Advert. Co., Inc. v. City of Jacksonville*, 659 So. 2d 1046 (Fla. 1995), *as modified on reh'g* (Aug. 24, 1995). "It is not enough that a merely colorable claim is advanced." *Id.* The petition or other pleading must demonstrate prima facie, clear legal right to the relief requested. *Mid-Florida At Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357–58 (Fla. 5th DCA 1988). The establishment of a clear legal right to the relief requested is an essential requirement prior to the issuance of a temporary injunction. *Id.*

Here, the Plaintiff fails to show a prima facie, clear legal right to the relief requested. There is no recognized constitutional right *not* to wear a facial covering in *public* locations or to expose other citizens of the county to a contagious and potentially lethal virus during a declared

pandemic emergency.[1] Article I, § 23, Florida Constitution, "was not intended to provide an absolute guarantee against all governmental intrusion into the private life of an individual." *Stall v. State*, 570 So. 2d 257, 262 (Fla. 1990) (citing *Florida Board of Bar Examiners re Applicant*, 443 So.2d 71, 74 (Fla.1983)).

For example, in *Picou v. Gillum*, which dealt with Florida's motorcycle helmet laws, the Eleventh Circuit Court of Appeals noted that "[t]here is little that could be termed private in the decision whether to wear safety equipment [in public]." The Court went on to explain that

> there is no broad legal or constitutional "right to be let alone" by government. In the complex society in which we live, the action and nonaction of citizens are subject to countless local, state, and federal laws and regulations. Bare invocation of a right to be let alone is an appealing rhetorical device, but it seldom advances legal inquiry, as the "right"—to the extent it exists—has no meaning outside its application to specific activities. The Constitution does protect citizens from government interference in many areas—speech, religion, the security of the home. But the unconstrained right asserted by appellant has no discernable bounds, and bears little resemblance to the important but limited privacy rights recognized by our highest Court. As the Court has stated, "the protection of a person's *general* right to privacy—his right to be let alone by other people—is like the protection of his property and his very life, left largely to the law of the individual States." *Katz v. United States*, 389 U.S. 347, 350–51, 88 S.Ct. 507, 510–11, 19 L.Ed.2d 576 (1967) (citations omitted).
> ...
> The helmet requirement does not implicate appellant alone. Motorcyclists normally ride on public streets and roads that are maintained and policed by public authorities. Traffic is often heavy, and on highways proceeds at high rates of speed. The required helmet and face shield may prevent a rider from becoming disabled by flying objects on the road, which might cause him to lose control and involve other vehicles in a serious accident. See *Bogue*, 316 F.Supp. at 489.
>
> It is true that a primary aim of the helmet law is prevention of unnecessary injury to the cyclist himself. **But the costs of this injury may be borne by the public**. A motorcyclist without a helmet is more likely to suffer serious head injury than one wearing the prescribed headgear. State and local governments provide police and ambulance services, and the injured cyclist may be hospitalized at public expense…. see, e.g., *Kassell v. Consolidated Freightways Corp.*, 450 U.S. 662, 675, 101 S.Ct. 1309, 1318, 67 L.Ed.2d 580 (1981), we think Florida's helmet requirement a rational exercise of its police powers.

[1] *See Nucci v. Target Corp.*, 162 So. 3d 146, 153 (Fla. 4th DCA 2015) ("Before the right to privacy attaches, there must exist a legitimate expectation of privacy.").

> **Legislatures and not courts have the primary responsibility for balancing conflicting interests in safety and individual autonomy. Indeed, the evidence suggests that arguments asserting the importance of individual autonomy may prevail in the political process.**
> **…**
> **Although a narrow range of privacy rights are shielded from the political process by the Constitution, the desirability of laws such as the Florida helmet requirement is a matter for citizens and their elected representatives to decide.**

Picou v. Gillum, 874 F.2d 1519, 1521–22 (11th Cir. 1989) (emphasis added).[2]

The protection of the safety and welfare of the public is inherent in the role of local government.[3] "Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, ... matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996). "It is in the public interest to have a healthy, whole citizenry." *Bogue v. Faircloth*, 316 F. Supp. 486, 489 (S.D. Fla. 1970). "[N]o person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them." *State v. Eitel*, 227 So. 2d 489, 491 (Fla. 1969).

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[2] *See also Pac. Legal Found. v. Dep't of Transp.*, 593 F.2d 1338, 1347 n. 72 (D.C.Cir.1979) ("Petitioners also assert that the passive restraint rule violates the individual's right to privacy. We find no basis for this contention. Passive restraints protect not only the owner or driver of the car, but also any passengers, and thus involve more than a purely individual concern. Also, by their very nature passive restraints involve no intrusion on an intimate area of activity, as in cases concerning the family or procreation decisions where courts have defended privacy interests."). The United States Supreme Court itself rejected a due process attack on a similar traffic-safety law during the pre-*Bowers* period, albeit by summary affirmance of a lower court decision. *See Simon v. Sargent*, 409 U.S. 1020, 93 S.Ct. 463, 34 L.Ed.2d 312 (1972), *aff'g* 346 F.Supp. 277, 279 (D.Mass.) (concluding there was no constitutional right not to wear a motorcycle helmet).

[3] *See* § 252.38, Fla. Stat. (2019) ("Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."); *see also State Dept. of Agric. & Consumer Services Div. of Animal Indus. v. Denmark*, 366 So. 2d 469, 470 (Fla. 4th DCA 1979) ("It is within the police power of the State to enact laws to prevent the spread of infectious or contagious diseases.").

Furthermore, “there are circumstances in which a public emergency, for instance, a fire, the spread of infectious or contagious diseases or other potential public calamity, presents an exigent circumstance before which all private rights must immediately give way under the government's police power.” *Davis v. City of S. Bay*, 433 So. 2d 1364, 1366 (Fla. 4th DCA 1983).

The temporary mandate to wear masks in limited circumstances is similar to the requirement to wear helmets or seatbelts. The stated purpose for the mask requirement is to limit the spread of this contagious, airborne virus and the BOCC has provided evidence which includes substantial data indicating that face coverings may assist in reducing the spread of the virus. Alachua County is responsible for reducing the spread of COVID-19 among its citizens and also for ensuring its citizens have access to medical care if they become infected. An individual Alachua County citizen’s right to be let alone is no more precious than the corresponding right of his fellow citizens not to become infected by that person and potentially hospitalized. The evidence reflects that the BOCC has weighed public health data from the World Health Organization, the United States Centers for Disease Control and Prevention, the Florida State Department of Health, the University of Florida, and other public health recommendations in enacting the requirement of wearing facial coverings in certain public locations. It is not the role of the Court to second guess the prudence of BOCC’s decision given the conflicting evidence as to the extent of the efficacy of facial coverings.

This Court additionally finds that the facial covering requirement contained in the County’s emergency order is neither a medical treatment, compelled or otherwise, nor compelled speech. The Plaintiff cites to no precedent which directly supports these arguments and this Court declines to adopt the interpretation put forth by the Plaintiff.

Because the facial covering requirement does not violate any of the constitutional rights asserted by the Plaintiff, strict scrutiny does not apply in this case. There is no recognized right to a reasonable expectation to privacy in a public location, particularly as that right pertains to facial coverings. In addition, the emergency order only requires the use of a facial covering under limited circumstances where a person is coming into contact with the public in a closed setting, such as public transit and a business where social distancing measures are not possible or are difficult to implement. The requirement to wear a facial covering during the limited circumstances set forth in the ordinance is a minimal inconvenience; and, its benefits to the public in potentially reducing the spread of COVID-19 outweigh any inconvenience. Furthermore, pursuant to section 252.38(3)(a)5., Florida Statutes, the County's emergency order is subject to review every 7 days.[4] Thus, the facial covering requirement is not permanent and is subject to removal by the BOCC at each weekly review of the emergency order.

2. Lack of an Adequate Remedy at Law

"Injunctive remedies do not ordinarily lie where there is an adequate remedy at law available to the complaining party." *Meritplan Ins. Co. v. Perez*, 963 So. 2d 771, 776 (Fla. 3d DCA 2007). Here, the Plaintiff has failed to assert any actual damage which could not be remedied by law were the facial covering requirement found to be unconstitutional. Although the Plaintiff asserts that his rights are being violated, as previously noted, there is no recognized constitutional right to privacy, under either the U.S. Constitution or the Florida Constitution, implicated here; nor is there forced medical treatment or compelled speech. Even if the mask requirement were to ultimately be found unconstitutional, it is a *de minimis* infringement on the

[4] § 252.38, Fla. Stat. (2019) ("The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 7-day increments."). *See also* Op. Att'y Gen. 2004-58 (2004) ("I am of the opinion that when a county has declared a state of local emergency pursuant to section 252.38(3)(a) 5., Florida Statutes, and wishes to extend that declaration, such declaration must be renewed every seven days.").

plaintiff's public interactions. Although the county's emergency order does not mandate that an individual purchase masks for themselves or for their employees, if they are a business, [5] any such cost paid by an individual or business is capable of being remedied by monetary compensation.[6] Furthermore, as noted in the County's response, the Plaintiff could file a federal § 1983 claim seeking damages.

3. Likelihood of Irreparable Harm Absent the Entry of an Injunction

"It is standard hornbook law that a temporary injunction will only be issued in situations wherein the plaintiff can clearly demonstrate that irreparable injury would follow the denial of the injunction." *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So. 2d 372, 373 (Fla. 1st DCA 1986) (citing *Cramp v. Board of Public Instruction of Orange County*, 118 So.2d 541, 554 (Fla.1960). "Irreparable injury will never be found where the injury complained of is 'doubtful, eventual, or contingent.'" *Id.* (quoting *First National Bank in St. Petersburg v. Ferris*, 156 So.2d 421, 424 (Fla. 2d DCA 1963)). "Mere general allegations of irreparable injury are not sufficient." *Stoner v. S. Peninsula Zoning Comm'n*, 75 So. 2d 831, 832 (Fla. 1954). Furthermore, "[t]he long established rule in this jurisdiction is that before an injunction will issue, it must appear that there is a reasonable probability, not a bare possibility, that a real injury will occur." *Miller v. MacGill*, 297 So. 2d 573, 575 (Fla. 1st DCA 1974).

Here, the Plaintiff fails to allege a reasonable probability that a *real injury* will occur unless the temporary injunction is issued. The wearing of a face covering in public under the limited circumstances contained in the emergency order will not, in any way, alter the Plaintiff's

[5] To the extent that a person or business does so, that is a personal or business decision, not the product of state action.

[6] "Irreparable harm for the purpose of an injunction is not established where the harm can be compensated for adequately by money damages." *Supreme Serv. Station Corp. v. Telecredit Serv. Ctr., Inc.*, 424 So. 2d 844, 844–45 (Fla. 3d DCA 1982).

physical person or result in permanent disfigurement. Thus, a temporary injunction is not appropriate.

4. Injunctive Relief Will Serve the Public Interest

"[C]onsideration of the public interest militates against issuance of a temporary injunction in this case." *DiChristopher v. Bd. of County Com'rs*, 908 So. 2d 492, 497 (Fla. 5th DCA 2005), *decision clarified on denial of reh'g* (Aug. 12, 2005). The prevention of the spread of COVID-19 "is clearly needed for the health and safety of the public." *Id.* "Where the potential injury to the public outweighs an individual's right to relief, the injunction will be denied." *Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495, 497 (Fla. 5th DCA 2004); *see also Knox v. Dist. Sch. Bd. of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002) ("[A]n injunction may be denied where the injury to the public outweighs any individual right to relief."). Here, there is a global pandemic involving COVID-19, a virus which the CDC and others advise is spread through airborne transmission and is spread by asymptomatic individuals. Multiple sources relied upon by the County reflect that mitigation is dependent upon the use of social distancing and personal protection equipment, such as face masks/coverings. The County's need to take measures to control the spread of COVID-19 clearly outweighs the Plaintiff's private interest in not wearing a mask in the limited circumstances required by the county's emergency order; and, an injunction in this situation would disserve the public interest.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

Defendant's motion is hereby **DENIED**.

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, on this Tuesday, May 26, 2020.

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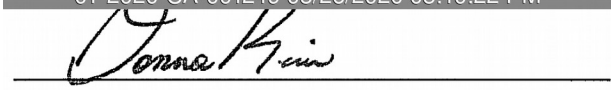

Donna M. Keim, Circuit Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished by e-mail delivery, on this Tuesday, May 26, 2020, to the following:

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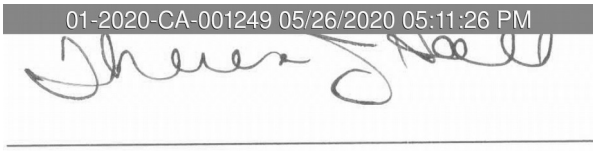

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