

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

DARRIS FRIEND, *et al.*,
Plaintiffs,

Case No. 01-2021-CA-2412

v.

CITY OF GAINESVILLE,

Defendant.

_____ /

**ORDER GRANTING PLAINTIFFS'
PETITION FOR TEMPORARY INJUNCTION**

THIS CAUSE came before the Court for hearing on September 20, 2021 on Plaintiffs' *Complaint, Declaration, and Petition for Emergency Injunctive Relief* (the "Petition"), attended by the Plaintiffs and their counsel, and counsel for the City of Gainesville. The Court has reviewed the pleadings (the *City of Gainesville's Response in Opposition to Petition for Emergency Injunctive Relief*, the *Plaintiffs' Response to City of Gainesville's Opposition to Plaintiffs' Petition for Emergency Injunctive Relief*,) and case law submitted by the parties, has heard testimony from Plaintiff, Christine Damm, has heard the argument of counsel, and is duly advised in the premises. The Court finds and rules as follows:

1. The City of Gainesville (the "City") has enacted a policy requiring its employees to be "fully vaccinated" for Covid-19 on or before October 30, 2021, or face progressive disciplinary action, up to and including termination of employment (the "Vaccine Mandate").¹

2. At the Hearing, the Plaintiffs (who are City employees) argued that the Vaccine Mandate facially implicates their right to privacy under the Florida Constitution, Article I, § 23

¹ The City Commission voted to adopt the requirement for City employees to be vaccinated at its August 5, 2021 City Commission Meeting. City Manager Memorandum No. 210040, authored by Lee R. Feldman, City Manager, and dated August 12, 2021, formalizes the City's directives and provides the details for implementing the City's Vaccine Mandate. The Plaintiffs' witness testified that the City had informed her, as an employee, that the policy's deadline for vaccination or termination is October 30, 2021. The City's counsel was unable to confirm or deny the deadline with certainty. The Court's conclusions herein are the same, whatever the actual deadline.

and that because the right to privacy is implicated that this Court is required to review the City's policy under a strict scrutiny standard (i.e. to determine whether the policy serves a compelling government interest and utilizes the least restrictive means to serve that interest).

3. The City did not put on **any** evidence, at all, at the injunction hearing. Without any evidence, the Court is unable to consider whether the Vaccine Mandate serves a compelling interest through the least restrictive means, whether the Vaccine Mandate meets a strict scrutiny test, a rational basis test, or whether it meets any other standard. The City did not file any affidavits or declarations, did not submit any documentary evidence, and did not call any witnesses.

4. For the reasons set forth below, the Plaintiffs' Emergency Petition for Injunctive Relief is GRANTED.

Application of the Right to Privacy to the Vaccine Mandate

5. The United States Supreme Court has previously analyzed the constitutionality of a compelled vaccination law by reviewing the vaccination mandate in the context of the rights afforded citizens under the constitution of the individual state. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 26 (1905). Therefore, this Court must review the City's Vaccine Mandate within the context of the protections contained within the Florida Constitution.

6. Florida's constitutional right to privacy is contained in Article I, § 23 of the Florida Constitution and provides, in part, as follows:

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 . . .

7. The right to privacy guarantees provided to Florida citizens under the Florida Constitution are broader than the right to privacy guarantees provided to citizens under the U.S. Constitution. *Green v. Alachua County*, 2021 WL 2387983 at *3 (Fla. 1st DCA 2021).

8. Florida's right to privacy is contained in the Declaration of Rights of the Florida Constitution. A right explicitly contained in the Declaration of Rights of the Florida Constitution is considered a fundamental right. *State v. J.P.*, 907 So.2d 1101, 1109 (Fla. 2005). Because the right to privacy is a fundamental right in Florida, the government can only infringe upon that right if necessary to accomplish a compelling government interest, using the least restrictive means necessary to serve that interest (this test is commonly referred to as the "strict scrutiny" standard of review). *Id.*, see also *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544 (Fla. 1985); *Green v. Alachua County*, 2021 WL 2387983 (Fla. 1st DCA 2021).

9. Therefore, this court must determine whether the City's Vaccine Mandate implicates Plaintiffs' fundamental right to privacy, such that the Vaccine Mandate should be reviewed under the strict scrutiny standard of review.

10. Florida law provides that citizens have the right to refuse unwanted medical treatments. *In re Guardianship of Browning*, 568 So.2d 4, 11 (Fla. 1990) (holding that "a competent person has the constitutional right to choose or refuse medical treatment, and that right extends to relevant decisions concerning one's health").

11. Federal law holds that compelled physical intrusion into the human body is an invasion of bodily integrity that implicates significant, constitutionally protected privacy interests. *Missouri v. McNeely*, 569 U.S. 141, 143 (2013).

12. The City's Vaccine Mandate requires City employees to receive a complete dose of the COVID-19 vaccines. These vaccinations are administered through intramuscular

injection. The City’s Vaccine Mandate requires a compulsory vaccination procedure that can reasonably be considered a form of medical treatment and/or a medical procedure, and thus, this mandate implicates the City employees’ fundamental right to privacy.

13. If a challenged law *implicates* Florida's right to privacy, the burden shifts to the government to prove that the law furthers a compelling state interest in the least restrictive way—also known as the “strict scrutiny” standard. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1252-1253 (Fla. 2017); *see also, Green v. Alachua County*, 2021 WL 2387983 at *3.

14. This “strict scrutiny” standard applies equally to constitutional challenges in instances when the government seeks to enforce laws, and also, in instances when the government employer seeks to enforce workplace policies. *See City of N. Miami v. Kurtz*, 653 So. 2d 1025, 1028 (Fla. 1995).

15. If the government fails to put on evidence of its compelling state interest, as the City failed to do here, the Court is not required to (and, in fact, cannot) make factual findings that the government has any compelling state interest. *Green*, 2021 WL 2387983 at *3 (“When the government fails to offer evidence to demonstrate a compelling state interest, the trial court then is absolved of having to make any finding to that effect”). In the instant case, the City failed to put on any evidence that the Vaccine Mandate serves a compelling state interest or that the Vaccine Mandate was the least restrictive means to accomplish that interest.

16. The City’s Vaccine Mandate facially interferes with its employees’ right to refuse unwanted medical treatments and/or procedures, implicates Plaintiffs’ fundamental right to privacy, and is “presumptively unconstitutional.” *Gainesville Woman Care, LLC.*, 210 So. 3d at 1245; and *Green*, 2021 WL 2387983 at *5.

17. The City had an opportunity to present evidence that would show that this Vaccine Mandate was the least restrictive means to meet a compelling government interest. The City did not do that and, in fact, did not present any evidence, at all. Therefore, the Court is required to find that the City failed to meet its burden of proving that the Vaccine Mandate furthers a compelling state interest in the least restrictive way. *See Gainesville Woman Care*, 210 So. 3d at 1260-61; *Green*, 2021 WL 2387983 at *3.

Elements for an Injunction

18. The analysis for issuance of a temporary injunction based on a privacy challenge under Florida's constitution is entirely different from the ordinary four-element analysis for other temporary injunction proceedings. *Id.*; and *Green*, 2021 WL 2387983 at *2.

19. When a law is challenged on privacy grounds, the Court must first make a single, threshold *do novo* inquiry whether the challenged law invades an individual's right to privacy. *Green*, 2021 WL 2387983 at *2. This court has conducted that inquiry and has determined that the challenged policy invades and/or implicates the Plaintiffs' constitutionally protected right to privacy.

20. *Green* instructs, and this Court is bound to follow, that because the City failed to offer evidence demonstrating any compelling state interest that would justify the infringement on Plaintiffs' right to privacy, the remaining prongs of the injunction inquiry collapse into the first prong of likelihood of success on the merits, which is established by the threshold determination that the challenged law implicates a privacy right. *Green*, 2021 WL 2387983 at *3 (*citing Gainesville Woman Care*).

21. In other words, having determined that the City's Vaccine Mandate implicates Plaintiffs' privacy rights (and with no showing of a compelling interest demonstrated by the

City), this Court is required to presume that the Plaintiffs have adequately demonstrated the four elements required for this Court to order the requested injunctive relief: likelihood of success on the merits, lack of an adequate legal remedy, irreparable harm, and the public and private interests at stake. *Id.*


22. Therefore, the Court ENJOINS Defendant City of Gainesville, as follows:

- a. The City shall not enforce the Vaccine Mandate policy.
- b. The City shall not terminate or discipline any employee for failure to comply with the Vaccine Mandate.

23. The Court determines that, giving due regard for the public interest, no bond is required to be posted, pursuant to Rule 1.610(b).

24. This injunction will continue in force until further order of the Court.

DONE AND ORDERED in Chambers at the Alachua County Family & Civil Justice Center, Gainesville, Florida on Wednesday, September 22, 2021.

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Monica Brasington, Circuit Judge
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on Wednesday, September 22, 2021.

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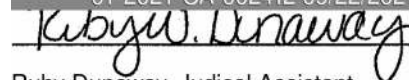
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A handwritten signature in black ink, appearing to read "Ruby W. Dunaway", is written over a horizontal line.

Ruby Dunaway, Judicial Assistant

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