

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

DANIEL W. UHLFELDER,

Plaintiff,

vs.

CASE NO.: 20-CA-552

THE HONORABLE RON DESANTIS,
in his Official Capacity as Governor
of the State of Florida,

Defendant.

AMENDED COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

COMES NOW, Plaintiff, Daniel W. Uhlfelder (hereinafter referred to as “Uhlfelder”), by and through the undersigned counsel, and brings this suit against The Honorable Ron DeSantis (hereinafter referred to as “DeSantis”) in his official capacity as the Governor of the State of Florida, and alleges:

JURISDICTION, VENUE AND PARTIES

1. This is a lawsuit for injunctive relief over which this Court has jurisdiction.
2. Venue is proper in Leon County, Florida under §47.011, Fla. Stat. (2019) because DeSantis maintains his principal places of business in Leon County and because all or part of the claim for relief at issue in this action arose in Leon County.
3. Plaintiff, Uhlfelder, is a Florida resident.
4. DeSantis is a proper Defendant in this action because the “Governor is responsible for meeting the dangers presented to this state and its people by emergencies” pursuant to §252.36(1)(a), Fla. Stat. (2019). The Governor has the responsibility to initiate immediate action to cope with the emerging health problems and try to prevent the spread of

infectious diseases.

5. The laws empowering the executive to act are based on the police power, which has been described as “the sovereign right of the State to enact laws for the protection of lives, health, morals, comfort, and General welfare.” *Cippolone v. Liggett Group, Inc.*, 505 U.S. 504 (1992); *Lorillard Tobacco Company v. Reilly*, 533 U.S. 525 (2001). Under Article IV, Section 1 of the Florida Constitution the Governor is vested with “supreme executive power.”

6. Under various provisions of Chapter 252, Florida Statutes, titled Emergency Management, the Governor may issue executive orders declaring a state of emergency, which shall activate the emergency mitigation, response and recovery aspects of state and local emergency management plans in the affected area, and which shall be authority for the deployment and use of any forces or materials to which the plan applies.

7. Among the Governor’s powers that may be exercised if deemed necessary during an emergency pursuant to Section 252.36, Florida Statutes, are to: issue, amend, and rescind executive orders, proclamations, and rules having the force and effect of law; assume direct operational control over all or part of the emergency management functions of the state or to delegate same; suspend the provisions of any regulatory statute regarding the conduct of state business or the rules of any state agency; utilize all the available resources of the state government and of each political subdivision; commandeer or utilize any private property found necessary to cope with the emergency; “[d]irect and compel the evacuation of all or part of the population from any stricken or threatened area”; “[c]ontrol ingress and egress to and from an emergency area, the movement of persons within the area, and the occupancy of premises therein”; take measures concerning the conduct of civilians, pedestrian and vehicular traffic, public meetings and gatherings, and the “evacuation and reception of civilian population”; “take

such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with [this Chapter] and with the orders and rules made pursuant thereto”; and “employ such measures and give such directions to the Department of Health . . . as may be reasonably necessary for securing compliance” with this Chapter.

8. In the event of an emergency beyond local control, the Governor, or, in the Governor's absence, her or his successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and she or he shall have the power through proper process of law to carry out the provisions of this section. The Governor is authorized to delegate such powers as she or he may deem prudent. The emergency powers described in Paragraphs 6 through 8 herein shall hereinafter collectively be referred to as the “Emergency Powers.”

FACTS

9. The virus known as “Coronavirus” or “COVID-19” (hereinafter referred to as “COVID-19”) is a highly contagious and deadly pandemic disease.

10. According to data from Johns Hopkins University, there are at least 122,666 confirmed cases of COVID-19 in the United States. Nationally, at least 2,147 people have died from COVID-19.

11. According to the Florida Department of Health, there are at least 4,038 cases of COVID-19 in the State of Florida. At least 56 people have died from COVID-19 in Florida.

12. According to the Centers for Disease Control and Prevention (hereinafter referred to as the “CDC”), there is currently no vaccine to prevent COVID-19.

13. According to the CDC and DeSantis’s Executive Order 20-70, the “minimization

of contact is necessary to avoid COVID-19 infection.”

14. According to DeSantis’s Executive Order 20-70, Florida’s beaches, are “potential gathering places for the spread of COVID-19.”

15. Additionally, Florida has a very large population of older adults, a high-risk group for COVID-19 according to the CDC.

16. On March 17, 2020, DeSantis issued Executive Order 20-68 directing parties accessing public beaches in the State of Florida to follow the CDC guidance in limiting their gatherings to no more than 10 persons, distance themselves from other parties by 6 feet and support beach closures at the direction of local authorities (hereinafter collectively referred to as “Social Distancing”).

17. On March 20, 2020, DeSantis issued Executive Order 20-70, directing, *inter alia*, the beaches to close in Broward County and Palm Beach County due the risk of community spread of COVID-19.

18. Uhlfelder has repeatedly demanded that DeSantis close all Florida beaches. DeSantis has refused.

19. To date, DeSantis has refused to issue a statewide Beach Closure Order although he has the authority to do so.

20. Meanwhile, at least 26 states, 66 counties, 14 cities and 1 territory in the United States have urged or ordered their residents to stay at home.

21. In Florida specifically, at least 13 counties have issued Safer-at-Home orders or enacted similar measures, including, but not limited to:

- a). Alachua County;
- b). Broward County;
- c). Collier County;
- d). Duval County;

- e). Gadsden County;
- f). Hillsborough County;
- g). Lee County;
- h). Leon County;
- i). Miami-Dade County;
- j). Orange County;
- k). Osceola County;
- l). Palm Beach County; and
- m). Pinellas County.

22. At least 21 Florida cities have issued Safer-at-Home orders or enacted similar measures, including, but not limited to:

- a). Aventura;
- b). Bal Harbour Village;
- a) Boca Raton;
- b) Cooper City;
- c) Coral Gables;
- d) Coral Springs;
- e) Dania Beach;
- f) Doral;
- g) Fort Lauderdale;
- h) Gainesville;
- i) Golden Beach;
- j) Hallendale;
- k) Hollywood;
- l) Jacksonville;
- m) Miami;
- n) Miami Beach;
- o) Orlando;
- p) Sunny Isles Beach;
- q) Surfside;
- r) Tallahassee; and
- s) Tampa.

23. While some counties and cities have voluntarily issued Beach Closure Orders in the face of Desantis's refusal to order a statewide Beach Closure Order, at least 8 counties in Florida have either failed to issue a Beach Closure Order or have explicitly stated their beaches will remain open, including, not limited to:

- a) Jefferson County;

- b) Taylor County;
- c) Dixie County;
- d) Levy County;
- e) Monroe County;
- f) Indian River County;
- g) Brevard County; and
- h) Volusia County.

24. Moreover, local governments have eschewed beach closures despite beach closures being mandated at the county-level, e.g., the City of Mexico Beach in Gulf County or the Town of Longboat Key in Manatee and Sarasota Counties.

25. The unenforceability of DeSantis's Social Distancing directive to beachgoers was laid bare by numerous, well-documented instances of beachgoers failing to observe proper Social Distancing practices.

26. Likewise, DeSantis has refused to issue a statewide Safer-at-Home Order, that is, an order which encourages residents to stay at home as much as possible during the continued COVID-19 crisis but which allows for travel outside the home for essential activities and allows for non-essential activities so long as proper CDC recommendations, including Social Distancing, are followed.

27. DeSantis's failure to use the Emergency Powers at his disposal and issue a statewide Beach Closure Order and Safer-at-Home Order is an existential threat to Floridians, many of whom are now more likely to contract this lethal disease than residents of other states, and as a result thereof: (i) become gravely ill; (ii) transmit COVID-19 to others; and (iii) die.

28. COVID-19's spread has wreaked havoc on the national economy in addition to

state and local economies.

29. DeSantis's failure to use the Emergency Powers at his disposal will needlessly exaggerate and prolong COVID-19's deleterious economic effects because: (i) a greater number of Floridians will become ill and remain unable to work and thereby earn an income and (ii) greater numbers of sick Floridians will necessitate the prolonged implementation of emergency measures, such as Social Distancing, which in turn harms the State's economy by depressing, *inter alia*, consumer spending.

30. Florida's own Commissioner of Agriculture Nikki Fried noted that "public health experts agree on the way to stop [COVID-19]: staying home[,]" and reiterated her call for a statewide Safer-at-Home Order.

31. In an open letter to DeSantis, over 900 Florida healthcare workers have called for DeSantis to take stronger action to slow the spread of COVID-19, including, the issuance of an immediate, statewide "shelter-in-place order."

32. An online petition, entitled "SHUTDOWN FLORIDA[,]" imploring DeSantis to take more serious action than what he has taken already, has over 360,000 signatures.

33. This consensus in public opinion and expert opinion underscores the urgent need for DeSantis to take decisive, concrete action to prevent the spread of COVID-19. Rather than myopically focusing on visitors from other states or the largest counties, DeSantis must take drastic and uniform action, including but not limited to the issuance of a statewide Beach Closure Order and a Safer-at-Home Order. DeSantis's patchwork response is unsustainable, inefficient, dangerous, and unconstitutional in many respects.

34. If DeSantis fails to issue a statewide Beach Closure Order or Safer-at-Home Order, more Floridians, indeed, potentially vastly more Floridians and non-residents, will become sick, spread the disease and die.

35. Uhlfelder has no adequate remedy at law.

COUNT I
INJUNCTIVE RELIEF

36. Uhlfelder realleges and incorporates herein paragraphs 1 through 35 above.

37. Uhlfelder seeks injunctive relief directing DeSantis to close all of Florida's beaches.

38. There is a significant likelihood of irreparable injury resulting from the spread of COVID-19 if an injunction ordering the statewide closure of Florida's beaches is not issued.

39. DeSantis is obligated by the Florida Statutes, the Florida Constitution and his oath of office to take the basic step of issuing a statewide Beach Closure Order to assist in preventing the spread of COVID-19. Mr. DeSantis's failure to issue a statewide Beach Closure Order is an abject failure of his obligation to faithfully execute the Florida Statutes, observe the Florida Constitution and thereby uphold his oath of office.

40. Consequently, Uhlfelder's probability of success on the merits of this action is high.

41. The potential harm, if any, caused by closing Florida's beaches is vastly outweighed by the high risk of the continued, rapid spread of COVID-19.

42. The public policy goal of blunting the spread of one of the most far-reaching and deadly viral outbreaks in human history is served by closing Florida's beaches.

WHEREFORE, the Plaintiff, Uhlfelder, respectfully requests this Court to issue an emergency temporary injunction requiring: (i) the closure of all public and private beaches; (ii) prohibition of any pedestrian or vehicle traffic on all public and private beaches; (iii) allowing emergency personnel and other relevant state and local government employees to access any public or private beaches as necessary to ensure this Order is carried out; and (iv) any such other

and further relief as the Court deems just and proper.

COUNT II
INJUNCTIVE RELIEF

43. Uhlfelder realleges and incorporates herein Paragraphs 1 through 35 above.

44. Uhlfelder seeks injunctive relief directing DeSantis to issue a temporary Safer-at-Home Order.

45. The continued operation of essential businesses is required to provide goods and services to the public.

46. Nevertheless, COVID-19 is a highly contagious, deadly disease that is spread by person-to-person contact.

47. As a result, thereof, Leon County, where DeSantis resides and works, in addition to several other counties and cities, has issued a Stay-at-Home Order.

48. The Second Judicial Circuit has also issued Administrative Order 2020-03, closing all “court operations and facilities to all but essential court proceedings and critical proceedings related to the public health emergency[,]” in addition to making provisions to “reschedule, postpone or cancel all other hearings or establish means to conduct other hearings by telephone or video.”

49. A Safer-at-Home Order is therefore necessary at this critical juncture to combat the spread of COVID-19 by encouraging members of the public to remain indoors except for activities related to the provision of essential commodities and services, such as:

- a) For health and safety. To engage in activities or perform tasks essential to health and safety, or to the health and safety of one’s family or household members (including, but not limited to, one’s pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.

- b) For necessary supplies and services. To obtain necessary services or supplies for oneself and one's family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies needed to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.
- c) For outdoor activity. To engage in outdoor activity, provided those individuals comply with Social Distancing, limiting gatherings to no more than 10 people, and all other measures as advised by the CDC, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas that are open to the public.
- d) For work. To work, and travel to and from a place of work.
- e) To take care of others. To care for a family member, friend, or pet in another household.
- f) For worship. To attend religious services in places of worship, and travel to and from a place of worship.

50. A statewide Safer-at-Home Order is less invasive than an outright lockdown of all persons in the State and would permit the operation of businesses, specifically by encouraging all businesses to implement and practice Social Distancing and other CDC recommendations, Persons who visit such establishments should be subject to the following provisions:

- a) Gatherings of 10 or more persons. Social or recreational gatherings of 10 or more persons should be prohibited. Local law enforcement should be authorized to disperse gatherings of 10 or more persons which do not conform with the CDC recommendations. A "social or recreational gathering" should not include a group of persons at the following locations:
 - b) Office spaces, child-care facilities, residential buildings or any type of temporary shelter or housing;
 - c) Hospitals, nursing homes, assisted living facilities and other health care facilities;
 - d) Places of worship;
 - e) Grocery stores and pharmacies;

- f) Airports; and
- g) Any other location at which persons purchase supplies and services in furtherance of their employment.

51. The above-discussed contents of the proposed Safer-at-Home Order in shall be collectively referred to hereinafter as the “Contents.”

52. There is a significant likelihood of irreparable injury resulting from the spread of COVID-19 if an injunction directing the issuance of a Safer-at-Home Order is not granted.

53. DeSantis is obligated by the Florida Statutes, the Florida Constitution and his oath of office to take the basic step of issuing a Safer-at-Home Order to assist in preventing the spread of COVID-19. Mr. DeSantis’s failure to issue a statewide Safer-at-Home Order is an abject failure of his obligation to faithfully execute the Florida Statutes, observe the Florida Constitution and thereby uphold his oath of office.

54. Consequently, Uhlfelder’s probability of success on the merits of this action is high.

55. The potential harm caused by issuing a Safer-at-Home Order is vastly outweighed by the high risk of the continued, rapid spread of COVID-19.

56. Additionally, the public policy goal of blunting the spread of one of the most far-reaching and deadly viral outbreaks in human history is served by issuing a Safer-at-Home Order and reducing person-to-person contact.

WHEREFORE, the Plaintiff, Uhlfelder, respectfully requests this Court to issue an emergency temporary injunction requiring: (i) the issuance of a Safer-at-Home Order which contains the Contents and (ii) any such other and further relief as the Court deems just and proper.

DATED this 29th day of March, 2020.

/s/ Daniel W. Uhlfelder

DANIEL W. UHLFELDER, ESQ.

FL Bar No. 0133922

daniel@dwulaw.com (primary)

paralegal@dwulaw.com (secondary)

reception@dwulaw.com (secondary)

STEPHEN FRANCIS BARBER, ESQ.

FL Bar No. 1018463

stephen@dwulaw.com (primary)

paralegal@dwulaw.com (secondary)

reception@dwulaw.com (secondary)

DANIEL W. UHLFELDER, P.A.

124 East County Highway 30-A

Santa Rosa Beach, FL 32459

T: (850) 534-0246

F: (850) 534-0985

/s/ Gautier Kitchen

Gautier Kitchen, Esquire

Florida Bar No.: 0689793

THE KITCHEN LAW FIRM

103 N. Meridian Street

Tallahassee, Florida 32301

Telephone: (850) 329-6715

gautier@kitchen-law.com

josh@kitchen-law.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the Florida Courts E-filing Portal to and correct copy of the foregoing was filed and served via Florida e-Filing Portal to: Nicholas A. Primrose, Deputy General Counsel, Executive Office of the Governor, The Capitol, PL-05, Tallahassee, Florida 32399-0001 [Primary e-mail: Nicholas.Primrose@eog.myflorida.com; Secondary e-mail address: Erin.Kraeft@eog.myflorida.com] on this 29th day of March, 2020.

/s/ Daniel W. Uhlfelder

DANIEL W. UHLFELDER, ESQ.